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DRAFT 6/22/06

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

H. RAY LAHR,

Plaintiff,

v.

NATIONAL TRANSPORTATION SAFETY BOARD, *et al.*,

Defendants.

No. CV 03-08023-AHM (RZx)

Date: July 10, 2006
Time: 10 a.m.
Judge: Hon A. Howard Matz

1. REPLY IN SUPPORT OF DEFENDANTS' SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO THE CENTRAL INTELLIGENCE AGENCY

2. THIRD DECLARATION OF DAVID M. GLASS

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REPLY IN SUPPORT OF DEFENDANTS' SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO THE CENTRAL INTELLIGENCE AGENCY

STATEMENT

In this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, plaintiff, H. Ray Lahr, seeks compliance with certain requests for records that he submitted to the National Transportation Safety Board (NTSB) and the Central Intelligence Agency (CIA) by letters dated October 8, 2003. *See* 2d Am. Compl. ¶¶ 6-8, 12, 19. The requested records deal with the explosion in 1996 of TWA Flight 800. Moye Decl. at 48; 1st Buroker Decl. at 72. Plaintiff is a conspiracy theorist who believes that "[t]he government covered up the true cause of the disaster – missile fire" and that "a conspiracy to obstruct justice" existed. Pl.'s Opp'n CIA's Mot. Partial Summ. J. (June 5, 2006) (Pl. Mem.) at 10, 21.

Defendants, the NTSB, the CIA, and the National Security Agency (NSA), have filed three motions for partial summary judgment: (1) NTSB's Motion for Partial Summary Judgment (NTSB Motion); (2) Defendants' Motion for Partial Summary Judgment as to the CIA (First CIA Motion); and (3) Defendants' Second Motion for Partial Summary Judgment as to the CIA (Second CIA Motion). The NTSB Motion addresses the search for records that the NTSB conducted and 29 records from which material has been withheld pursuant to the statutory

exemptions to FOIA, 5 U.S.C. § 552(b). Mem. P. & A. Supp't NTSB's Mot. Partial Summ. J at 4-5, 5 n.2, 10-25; *see* Moye Decl. 303-452, 456-60, 463-98. The First CIA Motion addresses the search for records that the CIA conducted and 26 records from which material has been withheld pursuant to the statutory exemptions. Mem. P. &. A. Supp't Defs.' Mot. Partial Summ. J. as to CIA at 8-25; *see* 2d Buroker Decl. ¶ 8. The Second CIA Motion addresses 12 records from which material has been withheld pursuant to the statutory exemptions. Mem. P. & A. Supp't Defs.' 2d Mot. Partial Summ. J. at 2-16; *see* Giles Decl. ¶ 7; 3d Buroker Decl. at 50-56; 1st Supp. Moye Decl. ¶¶ 6(a)-(d). Taken together, the three motions address all issues presented in this case, including all responsive records from which contested withholdings have been made.

Plaintiff opposes the Second CIA Motion. However, he has not shown that the CIA has conducted an insufficient search for records; that any of the statuory exemptions has been misapplied to any of the records covered by the Second CIA Motion; that any segregable nonexempt material has been withheld from any of those records; or that any such record should be reviewed *in camera*. The Second CIA Motion should therefore be granted.

ARGUMENT

I. PLAINTIFF HAS NOT SHOWN THAT THE CIA HAS CONDUCTED AN INSUFFICIENT SEARCH FOR RECORDS.

When plaintiff responded to the First CIA Motion, he alleged that the CIA had conducted an insufficient search for records because he believed that certain records existed for which the CIA had failed to account. *See* Pl.'s Mem. Opp'n CIA's Mot. Partial Summ. J. (Sept. 13, 2005) at 26, 28; Pl.'s Sur-Reply CIA's Reply Opp'n Mot. Partial Summ. J. at 11-13. In his opposition to the Second CIA Motion, he recycles the same argument. Pl. Mem. at 23. However, the argument has no more merit now than it did when plaintiff first made it. An agency receiving a FOIA request must conduct "'a search reasonably calculated to uncover all relevant documents.'" *Citizens Comm'n on Human Rights v. FDA*, 45 F.3d 1325, 1328 (9th Cir. 1995) (quoting *Zemansky v. EPA*, 767 F.2d 569, 571 (9th Cir. 1985)). In adjudicating the sufficiency of a search, "'the issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the *search* for those documents was *adequate*." *Citizens Comm'n*, 45 F.3d at 1328 (quoting *Zemansky*, 45 F.3d at 1328) (emphasis in the original). Accordingly, "the agency's failure to turn up a particular document, or mere speculation that as yet uncovered documents might exist, does

not undermine the determination that the agency conducted an adequate search for the requested records." *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C.Cir. 2004).

In this case, the CIA has described in detail the search for responsive records that it has made. *See* 1st Buroker Decl. ¶¶ 15-25. Plaintiff has not identified any place where the CIA should have looked, but did not. Nor has he shown that the CIA has failed otherwise to "'conduct[] a search reasonably calculated to uncover all relevant documents.'" *See Citizens Comm'n*, 45 F.3d at 1328 (quoting *Zemansky*, 767 F.2d at 571). His allegation that the CIA has conducted an insufficient search for records should therefore be rejected.

II. PLAINTIFF HAS NOT SHOWN THAT ANY OF THE STATUTORY EXEMPTIONS HAS BEEN MISAPPLIED TO ANY RECORD COVERED BY THE SECOND CIA MOTION.

A. *Plaintiff Has Not Shown That Exemption 2 to Has Been Misapplied to Any of the Records Covered by the Aforesaid Motion.*

The NSA has relied on Exemption 2 to withhold, from the records covered by the Second CIA Motion, the computer program that the CIA used to prepare its simulation of the explosion of TWA Flight 800. *See* Giles Decl. ¶¶ 7, 11. Plaintiff contests the withholding by alleging that Exemption 2 "'relates only to the internal rules [or] practices of an agency.'" Pl. Mem. at 21 (purporting to quote "the Attorney General's Oct[.] 12, 2001 Report"; in fact quoting S. Rep. No. 813, 89th

Cong., 1st Sess. 8 (1965)). However, the interpretation of Exemption 2 upon which plaintiff relies was rejected in *Hardy v. Bureau of Alcohol, Tobacco & Firearms*, 631 F.2d 653 (9th Cir. 1980). Adopting the interpretation of Exemption 2 contained in H.R. Rep. No. 1497, 89th Cong, 2d Sess. 10 (1966), *Hardy* held that "law enforcement materials, the disclosure of which may risk circumvention of agency regulation, are exempt under Exemption 2." 631 F.2d at 656.

In this case, the NSA has relied on the interpretation of Exemption 2 adopted in *Hardy* to withhold the computer program used by the CIA to prepare its simulation of the explosion of TWA Flight 800. *See* Giles Decl. ¶¶ 10-11. Plaintiff has not attempted to show – let alone shown – that the program is *not* entitled to protection under that interpretation. *See* Pl. Mem. at 21. The withholding of the program should therefore be upheld.

B. *Plaintiff Has Not Shown That Exemption 3 Has Been Misapplied to Any of the Records Covered by the Second CIA Motion.*

1. *Plaintiff Has Not Shown That Exemption 3 Has Been Misapplied by the NSA to Any of the Records Covered by the Second CIA Motion.*

As an alternative ground for withholding the aforementioned computer program, the NSA has relied on Exemption 3 and § 6(a) of the NSA Act of 1959, 50 U.S.C. § 402 note. *See* Giles Decl. ¶¶ 12-14. Plaintiff contests the withholding

on two grounds. First, he alleges that the CIA, the NSA, or both have placed improper reliance on Exemption 3 and § 6(a) to withhold simulations prepared through the use of the program, or material input into the program to produce the simulations. *See* Pl. Mem. at 19, 20. Plaintiff is mistaken. Only the program has been withheld pursuant to Exemption 3 and § 6(a), and only the NSA has withheld it.

Second, plaintiff alleges that the "*Vaughn* index" that the NSA has submitted in support of the withholding contains insufficient information to permit the withholding. *See* Pl. Mem. at 19. Here, too, plaintiff is mistaken. "[W]hen the affidavit submitted by an agency is sufficiently detailed to establish that the requested documents should not be disclosed, a *Vaughn* index is not required." *Minier v. CIA*, 88 F.3d 796, 804 (9th Cir. 1996). Accordingly, "no need for a *Vaughn* index" exists "when a FOIA requester has sufficient information to present a full legal argument." *Id.*

The text of § 6(a) permits the withholding of "any information with respect to the activities of [the NSA]." The protection provided by § 6(a) "is, by its very terms, absolute." *Linder v. NSA*, 94 F.3d 693, 698 (D.C. Cir. 1996). Accordingly, the NSA need only show that a particular record "concern[s] a specific NSA

activity" and that its disclosure "would reveal information integrally related to that activity." *Hayden v. NSA/Cent. Sec. Serv.*, 608 F.2d 1381, 1390 (D.C. Cir. 1979).

In this case, the NSA alleges that the disclosure of the above computer program "could expose how the U.S. Government analyzes the performance characteristics of foreign weapons systems that are aerodynamic or ballistic." Giles Decl. ¶ 11. By so alleging, NSA has given the parties "sufficient information to present a full legal argument" as to the applicability of § 6(a) to the program. *See Minier*, 88 F.3d at 804. Plaintiff makes no attempt to present such an argument, much less a persuasive attempt. *See* Pl. Mem. at 19-20.

2. *Plaintiff Has Not Shown That Exemption 3 Has Been Misapplied by the CIA to the Records Covered by the Second CIA Motion.*

The CIA has relied on Exemption 3 and 50 U.S.C. § 403g to withhold, from five of the records covered by the Second CIA Motion, the names of CIA personnel. 3d Buroker Decl. ¶ 9. Conceding that he "could not find a case where a court ordered the disclosure of CIA names," plaintiff asks that a "balancing test" be applied to Exemption 3 and that the names be disclosed. *See* Pl. Mem. at 20-21. However, "the sole issue for decision [under Exemption 3] is the existence of a relevant statute and the inclusion of withheld material within that statutes's coverage." *Goland v. CIA*, 607 F.2d 339, 350 (D.C. Cir. 1979). Accordingly, it is

well established that no "balancing test" exists under Exemption 3. *See, e.g., McDonnell v. United States*, 4 F.3d 1227, 1248 (3d Cir. 1993) (holding that the withholding of grand jury material under Exemption 3 does not require application of a "'factual balancing test'"); *id.* at 1250 n.17 (holding that "a court reviewing an agency's withholding under Exemption 3 does not balance the privacy interest of the subject of the documents, as it should in applying Exemption 7(C)") & 1250 n.17; *Meyerhoff v. U.S. EPA*, 958 F.2d 1498, 1505 n.3 (9th Cir. 1992) (Rymer, J., concurring) (stating that "presuming a balancing result in the face of congressional silence" would "render Exemption 3 superfluous"); *Fla. Immigrant Advocacy Ctr. v. NSA*, 380 F. Supp. 2d 1332, 1334 (S.D. Fla. 2005) (holding that, "if either Exemption 1 or 3 of the FOIA applies, that is an absolute bar to the Plaintiff's request without resort to the balancing of Plaintiff's need for the information verses [sic] the extent of the national security interests involved").

Even assuming, *arguendo*, that a "balancing test" did exist under Exemption 3, disclosure of the names that the CIA has withheld would not be justified. Plaintiff alleges that the individuals whose names have been withheld "have committed crimes." Pl. Mem. at 20. However, he points to no evidence that would "warrant a belief by a reasonable person" that anyone engaged in criminal behavior when he or she took part in the analysis of the explosion of TWA Flight

800 that the CIA conducted. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004). Accordingly, no justification would exist for disclosure of the names that the CIA has withheld even assuming, *arguendo*, that a balancing test existed under Exemption 3.

C. *Plaintiff Has Not Shown That Exemption 4 Has Been Misapplied to Any of the Records Covered by the Second CIA Motion.*

The CIA has relied on Exemption 4 to withhold, from two records covered by the Second CIA Motion, "information relate[d] to the flight characteristics and performance of Boeing 747, for example, lift coefficient, drag coeffiecient, and pitching moment coefficient data." 3d Buroker Decl. ¶ 10. The Boeing Company (Boeing) considers this information to be proprietary and so, therefore, does the CIA. *See id.*

Contesting the withholding of this information, plaintiff alleges that "there is no chance that Boeing would suffer a substantial competitive injury upon disclosure" because the Boeing 747 is "an aircraft placed in service 38 years ago, and since succeeded by three successive models." Pl. Mem. at 12, 13. However, this allegation is undercut by Boeing's continued production and marketing of new and modified 747s. As a recent news article stated:

Boeing has confirmed that first deliveries of its stretched fuselage B747-8 freighter will take place in 2009.

Luxembourg airline Cargolux has already ordered 10, while Nippon Cargo Airlines has placed a firm order for eight of the aircraft.

Further orders are anticipated from Nippon Cargo because the carrier, an offshoot of leading shipping line Nippon Yusan Kaisha, has said it will operate 14 advanced Boeing 747-8Fs in 2009 and up to 24 in 2015.

* * * *

[Boeing sales and marketing vice-president Randy Tinseth said] production of the 747-400 freighter would stop when the 747-8 variant entered service.

The company had "a handful of positions left" for the 747-400 freighter, he said. Cathay Pacific Airways has already expressed interest in taking some of the aircraft, according to media reports.

Asked * * * if the 747-8 freighters would compete for orders with the existing 747-400 freighters and Boeing's programme to

convert 747-400s to freighters, Mr. Tinseth believed there was enough demand for all three types.

Keith Wallis, *Lengthened Boeing Freighters Earmarked for 2009 Delivery*, Lloyd's List Int'l (June 5, 2006) (3d Glass Decl. at X).

Because the 747 continues to be an important part of Boeing's business, plaintiff is wrong to suggest that "there is no chance that Boeing would suffer a substantial competitive injury" if the material withheld pursuant to Exemption 4 were disclosed. Pl. Mem. at 12. Accordingly, plaintiff has not shown that defendants have misapplied Exemption 4 to the records covered by the Second CIA Motion.

D. *Plaintiff Has Not Shown That Exemption 5 Has Been Misapplied to Any of the Records Covered by the Second CIA Motion.*

The NTSB has relied on Exemption 5 and the deliberative process privilege to withhold, from two of the records covered by the Second CIA Motion, certain "preliminary radar data." 1st Supp. Moye Decl. ¶¶ 6(a), (d). Contesting the withholding of the data from one of those records, plaintiff alleges that "[c]harts of radar data are simply factual evidence, to which there is no deliberative process privilege." Clarke Decl. at 59.[1] However, plaintiff ignores the fact that "[t]he

[1]This objection appears in an exhibit to plaintiff's memorandum in (continued...)

author(s) culled these data from an enormous collection of radar returns to contribute to the flight path derived from the [NTSB's] simulations." 1st Supp. Moye Decl. ¶ 6(d). Accordingly, he ignores the fact that "[t]he very act of distilling the significant facts from the insignificant facts constituted an exercise of judgment by agency personnel." *Id.*

The NTSB has also relied on Exemption 5 and the deliberative process privilege to withhold, from two of the records covered by the Second CIA Motion, certain graphs that "depict various versions of the radar data provided by the Federal Aviation Administration (FAA) for TWA flight 800" and certain graphs that "depict various outcomes of the Main Wreckage Simulation for TWA flight 800, depicting differing parmeters on the x and y axes." 1st Supp. Moye Decl. ¶¶ 6(b), (c). Contesting the withholding of these graphs, plaintiff alleges without having seen the graphs that they involve "false assumptions." Clarke Decl. at 58. However, the deliberative process privilege protects "'subjective documents which

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[1](...continued)
opposition to the Second CIA Motion, not in the memorandum itself. The same is true of other objections that plaintiff makes. *See, e.g.*, Clarke Decl. at 58. However, plaintiff's memorandum is already as long as L.R. 11–6 permits. For this reason alone, this objection should be rejected. *See Solaia Tech. LLC v. Arvinmeritor, Inc.*, 361 F. Supp. 2d 797, 826 (N.D. Ill. 2005) (striking a "seven-page extended exegesis" on the ground that the exegesis constituted "an improper attempt to file seven additional pages of argument in violations of page limits for the briefs") (emphasis omitted).

reflect the personal opinions of the writer rather than the policy of the agency.'" *Maricopa Audubon Soc'y v. U.S. Forest Serv.*, 108 F.3d 1089, 1093 (9th Cir. 1997) (quoting *Assembly of the State of Cal. v. U.S. Dep't of Commerce*, 968 F.2d 916, 920 (9th Cir. 1992)). In this case, the graphs that the NTSB has withheld reflect just such "personal opinions" 1st Supp. Moye Decl. ¶ 6(c) & p. 74. Accordingly, the graphs are entitled to protection under Exemption 5 and the deliberative process privilege even assuming, *arguendo*, that the assumptions they involve are "false."

E. *Plaintiff Has Not Shown That Exemption 6 Has Been Misapplied to Any of the Records Covered by the Second CIA Motion.*

The CIA has relied on Exemption 6 to withhold, from three of the records covered by the Second CIA Motion, the names of special agents of the Federal Bureau of Investigation (FBI) and of eyewitnesses to the explosion of TWA Flight 800. 3d Buroker Decl. ¶ 9. Plaintiff contests its having done so. Pl. Mem. at 16 n.48. For two reasons, he has no basis for doing so.

First, Exemption 6 requires "'a court [to] balance the public interest in disclosure'" against the interest that an individual possesses in the "'control of information concerning his or her person.'" *U.S. Dep't of Defense v. Fed. Labor Relations Auth. (FLRA)*, 510 U.S. 487, 495, 500 (1994) (quoting *Dep't of Justice*

v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 763, 776 (1989)). "[T]he only relevant 'public interest in disclosure' to be weighed in this balance is the extent to which disclosure would serve 'the core purpose of the FOIA,' which is 'contribut[ing] significantly to public understanding of the operations or activities of the government.'" *FLRA*, 510 U.S. at 495 (quoting *Reporters Comm.*, 489 U.S. at 775) (emphasis omitted). In this case, plaintiff alleges that the names of the eyewitnesses should be disclosed because disclosure "would enable the public to ask these eyewitnesses whether they are amenable to being interviewed, and would shed light on the agency's performance." Clarke Decl. at 69. However, none of the eyewitnesses whose names have been withheld took part in the analysis of the explosion of TWA Flight 800 that the CIA conducted. Accordingly, none of them could "shed [any] light on the agency's performance." *See id.*

Second, the eyewitnesses as a group have an interest in avoiding "annoyance or harassment." *See* 1st Buroker Decl. ¶ 34. However, "annoyance [and] harassment" are precisely what would happen if "the public" were given

information about the eyewitnesses that would lead to their being pestered for interviews. The withholding of their names should therefore be upheld.[2]

F. *Plaintiff Has Not Shown That Exemption 7(C) Has Been Misapplied to Any of the Records Covered by the Second CIA Motion.*

Alternatively, the CIA has relied on Exemption 7(C) as a ground for withholding the names of the aforesaid FBI agents and eyewitnesses. 3d Buroker Decl. ¶ 9. Contesting its having done so, plaintiff alleges that the CIA "does not have law enforcement power to conduct an investigation." Pl. Mem. at 17. However, Exemption 7(C) applies by its terms to "records or information compiled for law enforcement purposes," not merely to investigatory records. Accordingly, it is immaterial whether the CIA "ha[s] law enforcement power to conduct an investigation." Even assuming, *arguendo*, that it *were* material, the

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[2]When plaintiff responded to the First CIA Motion, he did not oppose the use of Exemption 6 or, in the alternative Exemption 7(C) to withhold, from the records covered by the First CIA Motion, the names of FBI agents or of eyewitnesses to the explosion of TWA Flight 800. To the contrary, he said: "Plaintiff does not contest the CIA's withholdings of the names of individuals." Pl.'s Mem. Opp'n CIA's Mot. Partial Summ. J. (Sept. 13, 2005) at 21. Changing his position, he now alleges that he *does* contest the use of the above exemptions to withhold, from those records, the names of FBI agents and eyewitnesses. *See, e.g.*, Clarke Decl. at 68. However, his statement that he did *not* contest the withholding of such names from such records should be should be treated as a binding waiver. *See United States v. Olano*, 507 U.S. 725, 733 (1993) (defining a waiver as the "'intentional relinquishment or abandonment of a known right'") (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

CIA conducted its analysis of the explosion of TWA Flight 800 solely because the FBI asked it to do so as part of the criminal investigation, concerning the explosion, that the FBI was conducting. 1st Buroker Decl. ¶ 50. In addition, the CIA has withheld the names of the FBI agents and eyewitnesses solely because the FBI asked it to do so. 3d Buroker Decl. ¶ 9. Plaintiff does not allege that the FBI lacks "law enforcement power to conduct an investigation."

Plaintiff also contests the withholding of the names on the ground that Exemption 7(C) may not be used to redact the names of "high level government employees." Pl. Mem. at 17. However, the names of "high level government employees" have not been redacted here. To the contrary, the names that have been redacted are the names of "FBI special agents." 3d Buroker Decl. ¶ 9.

Plaintiff further contests the withholding of the names on the ground that "overwhelming evidence" exists of "the CIA's dishonesty with regard to eyewitness accounts." Pl. Mem. at 16. However, a requester who wishes to contest the withholding of material under Exemption 7(C) by "show[ing] that responsible officials acted negligently or otherwise improperly in the performance of their duties * * * must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." *Favish*, 541 U.S. at 173. In this case, plaintiff has produced no evidence

suggesting that anyone who worked for the CIA handled any eyewitness account "dishonest[ly]," i.e., in a manner "'characterized by fraud; indicating a lack of probity; knavish; fraudulent; unjust' or 'disposed to cheat or defraud.'" *See Sherwood & Roberts – Kennewick, Inc. v. St. Paul Fire & Marine Ins. Co.*, 322 F.2d 70, 74-75 (9th Cir. 1963) (quoting *Webster's New International Dictionary* (2d ed.)). Accordingly, plaintiff has not shown that the CIA has misapplied Exemption 7(C) to any record covered by the Second CIA Motion.

III. PLAINTIFF HAS NOT SHOWN THAT ANY SEGREGABLE NONEXEMPT MATERIAL HAS BEEN WITHHELD FROM ANY RECORD COVERED BY THE SECOND CIA MOTION.

Plaintiff alleges that defendants have failed to release segregable non-exempt material from nine of the records at issue in this case. Clarke Decl. at 61-66. However, none of those records is a record covered by the Second CIA Motion. *See id.*

IV. PLAINTIFF HAS NOT SHOWN THAT ANY RECORD COVERED BY THE SECOND CIA MOTION SHOULD BE REVEWED *IN CAMERA*.

FOIA "does not mandate that the documents be individually examined in every case." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1976). To the contrary, the *in camera* review of responsive records is a "discretionary" procedure, to be employed "when the issue before the District Court could not be

otherwise resolved." *Id.* Accordingly, "an *in camera* inspection, even of one document, should not be undertaken to satisfy the whim of a party that a searching inquiry is required if only to provide peace of mind. * * * * In other words, *in camera* review should not be used routinely on the theory 'it can't hurt.'" *Xerox Corp. v. United States*, 12 Cl. Ct. 93, 95 n.3 (1987) (quoting *Ray v. Turner*, 587 F.2d 1187, 1195 (D.C. Cir. 1978)).

In this case, plaintiff asks the Court conduct an *in camera* review of one of the records covered by the Second CIA Motion because he believes that the CIA has relied on Exemption 3 and 50 U.S.C. § 403g to redact the names of "high level officials." Clarke Decl. at 79. However, plaintiff is wrong to believe that the names of "high level officials" are not protected by § 403g:

> Section 403g provides "that in order to implement [50 U.S.C. § 403–1(i)], . . . the Agency shall be exempted" from disclosing "the organization, functions, *names*, official titles, salaries, or numbers of personnel employed by the agency." Reading these two statutes together, the CIA may withhold the names of its employees because release of this information would disclose "sources and methods" of intelligence gathering. Thus, the plain language of §§ [403–1(i)] and

403g expressly provides that the CIA is exempted from disclosing the names of its employees.

Minier, 88 F.3d at 801 (citations omitted; emphasis in the original).

Section 403g does not provide that the CIA may withhold the names of certain of its employees, but not the names of others. The request of plaintiff that the Court conduct an *in camera* review of the above record should therefore be denied.

CONCLUSION

For the foregoing reasons, the Second CIA Motion should be granted.

Respectfully submitted,

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Dated: June 26, 2006