

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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JEREMY BIGWOOD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:11-cv-00602-KBJ
	)	The Honorable Ketanji Brown Jackson
UNITED STATES DEPARTMENT OF	)	
DEFENSE and CENTRAL	)	
INTELLIGENCE AGENCY,	)	
	)	
Defendants.	)	

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**DEFENDANTS’ STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

Defendants, by and through their undersigned counsel, pursuant to Local Civil Rule 7(h) and in support of their Motion for Summary Judgment, hereby make the following statements of material facts as to which there is no genuine dispute.

Plaintiff’s FOIA Request to Southcom

1. On July 1, 2009, Plaintiff submitted a FOIA request to Southcom. Bloom Declaration ¶ 4.
2. This request sought two categories of records. First, all records relating to “the coup against Honduras’ President Manuel Zelaya,” including, but not limited to, “any observations or reports about the activities of the Honduran Armed Forces with respect to the coup – as well as the coup itself”; “any records of the passage of the kidnapped president through any military bases, such as Soto Cano – which has a significant US presence”; any reports about the “coup d’etat before it actually took place”; and “inter-agency communications to and from USSOUTHCOM, as US officers in Honduras may

have been informing other US government entities about the coup”; Second, all records relating to General Romeo Vasquez Velasquez of the Honduran military. *Id.* ¶ 4.

2. Southcom FOIA personnel identified six components as likely to have information responsive to Plaintiff’s requests: the Intelligence Directorate, the Operations Directorate, the Plans Directorate, the Office of Public Affairs, the Security Cooperation Office at the U.S. Embassy in Tegucigalpa, and Joint Task Force-Bravo at Soto Cano Air Base in Honduras. *Id.* ¶ 9.

3. To assist in the search, Southcom’s FOIA office sent personnel to Honduras. *Id.* ¶ 10.

4. The directorates and units were directed to conduct manual searches of their paper files, as well as electronic searches of their desktops, hard drives, shared drives, storage data bases, and Microsoft Outlook email files using the search terms described above for documents responsive to the Plaintiff’s FOIA requests. *Id.*

5. Combining responses from all of the directorates and units, Southcom produced a total of 298 pages in its first production. *Id.*

6. In an effort to resolve certain concerns that Plaintiff raised about the first production of documents, Southcom agreed to conduct further document searches. Based on its discussions with Plaintiff, USSOUTHCOM determined that the appropriate time period for the searches was May 1, 2009 to April 21, 2011. *Id.* ¶ 11.

7. For the supplemental searches, Southcom’s FOIA identified the J2, J3, the SCO at the U.S. Embassy in Tegucigalpa, Honduras and Joint Task Force-Bravo in Comayagua, Honduras as the directorates and units likely to have documents responsive to the Plaintiff’s request. *Id.* ¶ 12. These directorates and units conducted thorough

manual searches of their paper files, as well as electronic searches of their desktops, hard drives, shared drives, storage data bases, and Microsoft Outlook email files for documents responsive to the Plaintiff's FOIA requests. *Id.*

8. These searches produced 784 pages—the second production. Combined, the two productions totaled 1019 pages, including responsive and non-responsive material.

9. Based on a review of the documents located in both sets of searches, Southcom determined that no other components of Southcom were likely to have information responsive to Plaintiff's FOIA request. *Id.* ¶ 13.

10. In reviewing the records retrieved by both searches, Southcom's FOIA office consulted with seventeen other government agencies possessing equities and interests in the documents, and one non-attributable agency. *Id.* ¶ 16.

10. Southcom withheld portions of the documents under Exemptions 1, 3, 5, 6, 7(D), and 7(E). *Id.* ¶¶ 17-30.

11. The information withheld by Southcom under Exemption 1 has been classified by an original classification authority and is owned or controlled by the United States. Geary Declaration ¶¶ 11-12; Lutz Declaration ¶¶ 12-13.

12. An original classification authority has determined that the information withheld by Southcom under Exemption 1 falls within sections 1.4(a), (b), (c), and (d) of E.O. 13526 and that the Government's disclosure of the requested information could be expected to result in damage to national security. *Id.* ¶¶ 14-23; Lutz Declaration ¶¶ 17-27.

13. In withholding information under Exemption 3, Southcom determined that the information was protected from disclosure by the National Security Act of 1947

because disclosure of the information would reveal intelligence sources and methods. Bloom Declaration ¶¶ 26-27, Lutz Declaration ¶ 31.

14. In withholding information under Exemption 3, Southcom determined that the information was protected from disclosure because it would reveal the organization or function of a covered Department of Defense entity under 10 U.S.C. § 424, or the identity of personnel covered by 10 U.S.C. § 130b. Bloom Declaration ¶¶ 22-25.

15. In withholding information under Exemption 3, Southcom determined that the information was protected from disclosure under the Central Intelligence Agency Act of 1949 because it would reveal intelligence sources and methods. Bloom Declaration ¶ 27; Lutz Declaration ¶¶ 29-30.

16. In withholding information under Exemption 6, Southcom determined that the privacy interest of the concerned individuals outweighs the public interest in disclosure. *Id.* ¶ 31.

17. In withholding information under Exemption 7, Southcom determined that the information was located in a record containing information designed to prevent a breach of national security. *Id.* ¶ 32.

18. In withholding information under Exemption 7(D), Southcom determined that the information had been obtained from individuals with an implied assurance of confidentiality, and that disclosure of the withheld information would serve to reveal and confirm the identity of those confidential sources. *Id.*

Plaintiff's FOIA Request to the CIA

19. On December 2, 2010, Plaintiff submitted a FOIA request to the CIA seeking “any and all records . . . concerning . . . the Honduran National Business Council more

commonly known by its acronym COHEP (Consejo Hondureno de la Empresa Privada). I am especially interested in any and all meetings between CIA officers, assets or agents and COHEP.” Ex. A to Lutz Declaration.

20. Plaintiff requested that the CIA “search your digital and hard copy archives from January 1st, 2009 until the time your office initiates the processing of this request.” *Id.*

21. CIA issued its final response on December 22, 2010, stating that “[i]n accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by section 6 of the CIA Act of 1949, as amended, and section 102A(i)(1) of the National Security Act of 1947, as amended.” The CIA accordingly denied Plaintiff’s FOIA request, citing FOIA exemptions b(1) and b(3). Ex. B to Lutz Declaration.

22. Plaintiff filed an administrative appeal of this decision on December 27, 2010. Ex. C to Lutz Declaration.

23. The CIA accepted the appeal on January 7, 2011. Ex. D to Lutz Declaration.

24. On March 7, 2011, the CIA’s Agency Release Panel denied the appeal, having “determined that the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request because the ‘fact of’ the existence or nonexistence of records responsive to your request is currently and properly classified.” The CIA again cited FOIA exemptions b(1) and b(3) as the basis for denying the Plaintiff’s request. Ex. E to Lutz Declaration.

25. The CIA determined that this request for information concerning a specific foreign group is sufficiently discrete that the mere confirmation or denial of the existence of responsive records would reveal classified facts – namely, whether the CIA has conducted intelligence activities with respect to that group. Lutz Declaration ¶¶ 41-44.

26. The CIA determined that, by acknowledging the existence or nonexistence of responsive records, it could expose whether it has or had an intelligence interest in the group at issue. *Id.* ¶ 42. The CIA further determined that confirmation of the existence or nonexistence of responsive records would have the potential to reveal human sources or methods by which the CIA may have obtained intelligence, and could adversely affect U.S. foreign relations. *Id.* ¶¶ 42-44.

27. The CIA also determined that acknowledging the existence or nonexistence of the requested records would reveal information protected by Exemption 3 concerning intelligence sources and methods as well as the core functions of the agency. *Id.* ¶ 48.

Dated: January 28, 2014

Respectfully submitted,

STUART F. DELERY  
Assistant Attorney General

RONALD C. MACHEN JR.  
United States Attorney  
District of Columbia

ELIZABETH J. SHAPIRO  
Deputy Director, Federal Programs  
Branch

/s/Thomas D. Zimpleman  
THOMAS D. ZIMPLEMAN  
Illinois Bar No. 6298040  
Trial Attorney

United States Department of Justice  
Civil Division, Federal Programs  
Branch  
20 Massachusetts Ave. NW  
Washington, DC 20001  
Tel: (202) 514-3346  
Fax: (202) 616-8470  
thomas.d.zimpleman@usdoj.gov