

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

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NATIONAL SECURITY COUNSELORS)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:11-cv-00442 (RMC)
)	
CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE)	
)	
Defendants.)	
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**DEFENDANT CENTRAL INTELLIGENCE AGENCY’S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

PRELIMINARY STATEMENT

Plaintiff brings a four-count complaint under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, against the Central Intelligence Agency (“CIA”) and the Department of Defense (“DOD”). At this point in the litigation, summary judgment is appropriate with respect to the First Amended Complaint’s two counts against the CIA. Specifically, summary judgment should be entered for the CIA on Count 1 because, after conducting a careful and thorough search for records in response to the FOIA request at issue in Count 1, the CIA located one responsive record and released that record to Plaintiff in full. Similarly, the CIA is entitled to summary judgment on Count 2 because the agency carefully and thoroughly searched but found no records that were responsive to the FOIA request at issue in that count.

I. BACKGROUND

A. Count 1 – FOIA Request No. F-2010-01033

By letter dated April 23, 2010, Plaintiff submitted a FOIA request to the CIA “for copies of all current Central Intelligence Agency (“CIA”) regulations, policy statements, guidelines,

memoranda, training materials, handbooks, manuals, checklists, worksheets, instructions, and similar documents on the topic of Mandatory Declassification Review (“MDR”).” See Declaration of Martha Lutz (“Lutz Decl.”) ¶ 7 & Ex. A. Plaintiff specified that “[t]his request is limited to documents in current use as of 23 April 2010.” Id. The CIA acknowledged receiving this request by letter dated May 5, 2010, and assigned it Request No. F-2010-01033. Id. ¶ 8 & Ex. B.

By letter dated May 7, 2010, Plaintiff sought to clarify the date limitation it had placed on FOIA Request No. F-2010-01033, stating that “this request is limited to documents in current use, and records that are no longer in effect may be excluded from your response.” See id. ¶ 9 & Ex. C. Plaintiff noted that it had included the limitation “so that the CIA would not waste time attempting to locate obsolete records that may once have been used but were no longer indicative of current CIA policies or practices.” Id.

On February 28, 2011, Plaintiff filed the instant action against the CIA and other federal agencies, alleging in Count 1 that the CIA constructively denied this request for records. See Compl., Dk. No. 1, ¶¶ 7–11.¹

The CIA subsequently concluded its search for records responsive to FOIA Request No. F-2010-01033, see infra Argument Section II, and provided Plaintiff with a final response by letter dated May 24, 2011, see Lutz Decl. ¶ 11 & Ex. D. The CIA stated that it had conducted a thorough search for records responsive to Plaintiff’s request and located one responsive document. Id. That document—a CIA regulation appearing at 32 C.F.R. Part 1908—was released to Plaintiff in full. See id. ¶ 11 & Ex. E.

¹ By Order dated July 21, 2011, the Court granted Plaintiff’s motion for leave to file an amended complaint. Counts 1 and 2 of Plaintiff’s First Amended Complaint are identical in all material respects to Counts 1 and 2 of Plaintiff’s original complaint. See First Am. Compl., Dkt. No. 18, ¶¶ 6–10.

B. Count 2 – FOIA Request No. F-2011-00396

By letter dated November 30, 2010, Plaintiff submitted a FOIA request to the CIA for a copy of the “special procedures for the [Mandatory Declassification] review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods’ developed by the Director of Central Intelligence pursuant to Sections 3.6(e) of Executive Order 12,958 and 3.5(e) of Executive Order 13,292.” See Lutz Decl. ¶ 12 & Ex. F.² The CIA acknowledged receiving this request by letter dated December 20, 2010, and assigned it Request No. F-2011-00396. Id. ¶ 13 & Ex. G.

The CIA conducted a search for records responsive to FOIA Request No. F-2011-00396, see infra Argument Section III, and provided a final response to Plaintiff by letter dated January 27, 2011, see Lutz Decl. ¶ 14 & Ex. H. The CIA stated that it did not locate any records responsive to the request and advised Plaintiff of its right to appeal this determination administratively. Id. Plaintiff filed an administrative appeal by letter dated January 29, 2011, see id. ¶ 15 & Ex. I, which the agency acknowledged and accepted by letter dated February 4, 2011, see id. ¶ 16 & Ex. J. The CIA informed Plaintiff that its appeal would be considered by the Agency Release Panel (“ARP”).

² Executive Order 12958 stated in Section 3.6(e), a subsection of the provision addressing mandatory declassification review, that “[a]fter consultation with affected agencies, . . . the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods.” 60 Fed. Reg. 19,825, 19,835 (Apr. 20, 1995). On March 25, 2003, Executive Order 12958 was amended by Executive Order 13292, which set forth its MDR provisions in Section 3.5. See 68 Fed. Reg. 15,315 (March 28, 2003). Section 3.5(e) of Executive Order 13292 is materially identical to Section 3.6(e) of Executive Order 12958.

On December 29, 2009, President Obama signed Executive Order 13526, which revoked Executive Order 12958 and its amendments, including Executive Order 13292, as of June 27, 2010. See 75 Fed. Reg. 707, 731 (Jan. 5, 2010). Section 3.5(f) of Executive Order 13526 directs the Director of National Intelligence, instead of the Director of Central Intelligence, to “develop special procedures for the review of information pertaining to intelligence sources, methods, and activities.” Id. at 718.

Id.

By letter dated March 15, 2011, the CIA informed Plaintiff that the ARP had considered and denied its appeal. See id. ¶ 18 & Ex. K. Specifically, the letter confirmed that “[n]o records responsive to your request were located.” Id.

Plaintiff’s FOIA Request No. F-2011-00396 is the basis for Count 2 of Plaintiff’s First Amended Complaint, which alleges that the CIA improperly constructively denied the request. See First Am. Compl., Dkt. No. 18, ¶¶ 11–22.

II. SUMMARY JUDGMENT LEGAL STANDARD

This Court may properly resolve Plaintiff’s two FOIA claims against the CIA pursuant to Rule 56 of the Federal Rules of Civil Procedure. See Harrison v. Exec. Office for U.S. Attorneys, 377 F. Supp. 2d 141, 145 (D.D.C. 2005) (“FOIA cases are typically and appropriately decided on motions for summary judgment.”). Pursuant to Federal Rule of Civil Procedure 56(a), this Court must grant summary judgment if the record evidence demonstrates that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). As applied in FOIA litigation, “in order for an agency to prevail on a motion for summary judgment, it must prove that no genuine issue of material fact exists, viewing the facts in the light most favorable to the requester.” Hornbostel v. U.S. Dep’t of the Interior, 305 F. Supp. 2d 21, 26 (D.D.C. 2003) (citing Weisberg v. U.S. Dep’t of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Accordingly, summary judgment should be freely granted where, as here, there are no material facts at issue and the agency is entitled to judgment as a matter of law. See Alyeska Pipeline Serv. Co. v. U.S. EPA, 856 F.2d 309, 313–15 (D.C. Cir. 1988).

ARGUMENT

I. FOIA REQUIRES AGENCIES TO CONDUCT REASONABLE, NOT EXHAUSTIVE, SEARCHES.

In order to prevail on summary judgment in a FOIA action, an agency must demonstrate that it “conducted a search reasonably calculated to uncover all relevant documents.” Weisberg v. U.S. Dep’t of Justice, 705 F.2d 1344, 1351 (D.C. Cir. 1983). In other words, FOIA requires the agency to make “a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” Oglesby v. U.S. Dep’t of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a search is judged not by its results “but by the appropriateness of the methods used” to execute it. Iturralde v. Comptroller of the Currency, 315 F.3d 311, 315 (D.C. Cir. 2003). Thus, “in assessing the reasonableness of a search, a court is not guided by whether the search actually uncovered every document” or even “whether the search was exhaustive.” Brannum v. Dominguez, 377 F. Supp. 2d 75, 79 (D.D.C. 2005) (internal quotation marks and citation omitted); see also Meeropol v. Meese, 790 F.2d 942, 952–53 (D.C. Cir. 1986) (explaining that “a search is not unreasonable simply because it fails to produce all relevant material”). An agency need not search every record system, although it “cannot limit its search to only one . . . if there are others that are likely to turn up the information requested.” Oglesby, 920 F.2d at 68. In short, the agency’s search is measured against a standard of reasonableness as applied to the specific FOIA request at issue. See Campbell v. U.S. Dep’t of Justice, 164 F.3d 20, 27 (D.C. Cir. 1998); Lazaridis v. U.S. Dep’t of Justice, 766 F. Supp. 2d 134, 140–41 (D.D.C. 2011) (“[W]hen an agency’s search is questioned, the Court must determine the adequacy of the agency’s search, guided by principles of reasonableness.”).

An agency may satisfy its summary judgment burden in a FOIA action by submitting

affidavits or declarations that “explain in reasonable detail and in a non-conclusory fashion the scope and method of the agency’s search.” Swope v. U.S. Dep’t of Justice, 439 F. Supp. 2d 1, 5 (D.D.C. 2006); see also Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982) (explaining that the affidavits need not “set forth with meticulous documentation the details of an epic search for the requested records”). The process of conducting a reasonable search requires “both systemic and case-specific exercises of discretion and administrative judgment and expertise” and “is hardly an area in which the courts should attempt to micro manage the executive branch.” Schrecker v. U.S. Dept’t of Justice, 349 F.3d 657, 662 (D.C. Cir. 2003) (internal quotation marks and citation omitted). Therefore, in evaluating the adequacy of a search, courts accord agency affidavits “a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents.” SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (internal quotation marks and citation omitted).

II. THE CIA IS ENTITLED TO SUMMARY JUDGMENT ON COUNT 1 BECAUSE IT CONDUCTED A REASONABLE SEARCH IN RESPONSE TO PLAINTIFF’S FOIA REQUEST AND FULLY PRODUCED THE RESPONSIVE DOCUMENT THAT WAS FOUND.

As described in the Declaration of Martha Lutz, the Information Review Officer (“IRO”) for the Director of Central Intelligence Area (“Director’s Area”), the CIA conducted a search that was reasonably calculated to locate the records responsive to Plaintiff’s FOIA Request No. F-2010-01033. See Lutz Decl. ¶¶ 1, 19–31. The declaration explains that the CIA’s Information Management Services (“IMS”) component acts as the gatekeeper for all FOIA requests made to the CIA. Id. ¶ 19. An experienced IMS professional analyzes each request to determine which CIA directorates might reasonably be expected to possess responsive records that are subject to FOIA. Id. Because the CIA’s records systems are decentralized and compartmentalized, the IRO for each

identified directorate must then determine which components within the directorate are reasonably likely to have responsive records. Id. ¶ 20. The IRO works with personnel from those components “to devise a search strategy tailored to the component’s configuration of its records systems and unique characteristics of that configuration.” Id. “This process includes identifying which of the records systems to search as well as which search strategies to employ.” Id. The records located through the search are then reviewed to determine whether they are actually responsive to the FOIA request and whether any FOIA exemptions apply. Id. ¶¶ 21–22.

The CIA followed these procedures in processing Plaintiff’s FOIA Request No. F-2010-01033. Id. ¶ 24. The Lutz Declaration explains how CIA personnel determined that the Director’s Area was the only one of the agency’s five directorates that was reasonably likely to possess current “regulations, policy statements, guidelines, memoranda, training materials, handbooks, manuals, checklists, worksheets, instructions, and similar documents on the topic of [MDR].” See Lutz Decl. ¶¶ 24, 26 & Ex. A. This determination was both logical and reasonable given that the Director’s Area includes Information Management Services, which not only acts as the initial reception point for all FOIA requests but also “administers the CIA’s Executive Order Mandatory Declassification Review program and maintains records relating to that program.” Id. ¶ 25.

The Lutz Declaration further relates how, in processing the request, staff in the Director’s Area noted that Plaintiff requested only current CIA documents on the topic of mandatory declassification review and, indeed, limited the request to “documents in current use as of 23 April 2010.” Id. ¶ 27 & Ex. A. Mandatory declassification review has been required by a series of Executive Orders addressing classified national security information, and the governing MDR provisions are those contained in the Executive Order that is currently in effect. See id. ¶ 28. On April 23, 2010, the operative MDR provisions were set forth in Section 3.5 of Executive Order

13292. As a result, only CIA documents on the topic of MDR that were used under Section 3.5 of Executive Order 13292 would have been current as of April 23, 2010. See id. Conversely, any CIA documents addressing MDR that were based on outdated MDR provisions would no longer be current and would therefore be outside the scope of Plaintiff's request. See Lutz Decl. Exs. A & C.

The Lutz Declaration additionally describes how, with the scope of Plaintiff's request in mind, staff in the Director's Area conducted a search of the relevant Director's Area records systems for responsive records. Id. ¶ 29. Specifically, the Declaration notes that the "Director's Area maintains all internal Agency-wide regulatory issuances in one searchable records system." Id. ¶ 30. Staff in the Director's Area "searched this records system, as well as other IMS records systems that might contain policies, training materials and similar documents on the topic of the CIA's Executive Order Mandatory Declassification Review program." Id. This explanation shows how the agency tailored its search to Plaintiff's request, satisfying its duty to conduct a reasonable search by targeting those records systems that would reasonably be expected to have responsive records. See Oglesby, 920 F.2d at 68. The search located 32 C.F.R. Part 1908, a regulation on the topic of MDR that was in current use as of April 23, 2010, and that was released to Plaintiff in full. Id.

The Lutz Declaration thus establishes that the CIA made "a good faith effort" to search for the records requested by Plaintiff in FOIA Request No. F-2010-01033, using methods that were reasonably calculated to produce the information requested. See Oglesby, 920 F.2d at 68. Because the CIA conducted a reasonable search and produced in full the one responsive record it located, the Court should enter summary judgment for the CIA on Count 1 of Plaintiff's First Amended Complaint.

III. THE CIA IS ENTITLED TO SUMMARY JUDGMENT ON COUNT 2 BECAUSE, AFTER CONDUCTING A REASONABLE SEARCH, IT DID NOT LOCATE ANY RESPONSIVE RECORDS.

The CIA has similarly demonstrated that it is entitled to summary judgment on Count 2 of Plaintiff's First Amended Complaint, which is based on Plaintiff's FOIA request "for a copy of the 'special procedures for the [Mandatory Declassification] review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods' developed by the Director of Central Intelligence pursuant to Sections 3.6(e) of Executive Order 12,958 and 3.5(e) of Executive Order 13,292." Lutz Decl. at Ex. F. The Lutz Declaration establishes that the CIA satisfied its duty to conduct a reasonable search for records responsive to this request. It states that the CIA conducted a search for records responsive to FOIA Request No. F-2011-00396 by following its procedures for responding to FOIA requests. See id. ¶ 19–23, 32. Specifically, it explains how, pursuant to those procedures, the Director's Area was tasked to search for responsive records after it was identified by IMS professionals as the only CIA directorate reasonably likely to possess such records. Lutz Decl. ¶¶ 32–33. The logic of this determination is readily apparent given the nature of Plaintiff's request. In addition, the Lutz Declaration specifies that "IMS searched relevant record systems containing all files reasonably likely to contain responsive materials and located no records responsive to Plaintiff's request." Id. ¶ 33.

Moreover, the Lutz Declaration further explains that "[n]o records were located responsive to F-2011-00396 because no special procedures on MDR were ever developed by the then Director of Central Intelligence pursuant to the noted Executive Orders." Id. ¶ 35. Based on this sworn statement, there can be no genuine dispute of material fact with respect to whether the CIA adequately searched for records responsive to Plaintiff's FOIA Request No. F-2010-00396. See Weisberg, 705 F.2d at 1351 (noting that an agency may justify the grant of summary judgment on

a FOIA claim by establishing that the documents the requester sought “were in fact never created”). The CIA is accordingly entitled to summary judgment on Count 2 of Plaintiff’s First Amended Complaint.

CONCLUSION

For the foregoing reasons, the CIA’s Motion for Summary Judgment on Counts 1 and 2 of Plaintiff’s First Amended Complaint should be granted.

Dated: August 29, 2011

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL SECURITY COUNSELORS,)
)
 Plaintiff,)
)
 v.)
)
 CENTRAL INTELLIGENCE AGENCY)
 and DEPARTMENT OF DEFENSE,)
)
 Defendants.)

Civ A. No. 1:11-cv-00442-RMC

DECLARATION OF MARTHA LUTZ, INFORMATION REVIEW OFFICER,
DIRECTOR'S AREA, CENTRAL INTELLIGENCE AGENCY

I. INTRODUCTION

I, MARTHA LUTZ, hereby declare and state:

1. I am the Information Review Officer ("IRO") for the Director of Central Intelligence Area ("Director's Area") of the Central Intelligence Agency ("CIA"). The Director's Area encompasses the Office of the Director of the Central Intelligence Agency. I have held this position since 19 January 1999. I have held various administrative and professional positions within the CIA since 1989.

2. As IRO for the Director's Area, I am authorized to assess the current, proper classification of CIA information based on the classification criteria of Executive Order 13526.¹

¹ On 29 December 2009, President Obama signed Executive Order 13526, which in pertinent part superseded Executive Order 12958, as amended, on 27 June 2010. See 75 Fed. Reg. 707 (Jan. 5, 2010).

As the IRO, I am responsible for the final review of documents containing information originated by offices organized under the Director's Area or otherwise implicating Director's Area interests, including documents which may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. I also task and coordinate record searches concerning files or documents reasonably likely to be maintained by the Director's Area.

3. As a senior CIA official under a written delegation of authority pursuant to section 1.3(c) of Executive Order No. 13,526, 75 Fed. Reg. 707 (Jan. 5, 2010), reprinted in 50 U.S.C.A. 435 note at 215 (2010) ("E.O. 13526"), I hold original classification authority at the TOP SECRET level. This means that I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of E.O. 13526.

4. As part of my official duties, I ensure that determinations as to the release or withholding of information related to the Agency are proper and do not jeopardize CIA interests, personnel, or facilities, and, on behalf of the Director of the Central Intelligence Agency, do not jeopardize intelligence activities, sources or methods.

5. I am submitting this declaration in support of the CIA's motion for summary judgment in this proceeding. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA requests. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

6. Part II of this declaration will chronicle Plaintiff's FOIA request (F-2010-01033) and CIA's response, Part III will chronicle Plaintiff's FOIA request (F-2011-00396) and CIA's response; and Part IV will describe CIA's reasonable searches conducted in response to Plaintiff's two FOIA requests.

II. PLAINTIFF'S FOIA REQUEST (F-2010-01033)

7. By letter dated 23 April 2010, Plaintiff submitted a request to the CIA pursuant to the FOIA for copies of "all current Central Intelligence Agency ("CIA") regulations, policy statements, guidelines, memoranda, training materials, handbooks, manuals, checklists, worksheets, instructions, and similar documents on the topic of Mandatory Declassification Review ("MDR")." The Plaintiff specifically limited the request to "documents in current use as of 23 April 2010." A true and correct copy of that letter is attached to this Declaration as Exhibit A.

8. By letter dated 5 May 2010, CIA accepted Plaintiff's request and assigned the request reference number F-2010-01033.

As requested, CIA limited the search to documents in current use as of 23 April 2010. A true and correct copy of that letter is attached to this Declaration as Exhibit B.

9. By letter dated 7 May 2010, Plaintiff clarified the requested search limitation and stated that "this request is limited to documents in current use, and records that are no longer in effect may be excluded from your response." Plaintiff further explained that this limitation was included "so that the CIA would not waste time attempting to locate obsolete records that may once have been used but were no longer indicative of current CIA policies or practices." A true and correct copy of that letter is attached to this Declaration as Exhibit C.

10. On 28 February 2011, Plaintiff filed the above captioned action against the CIA and other U.S. Agencies pursuant to the FOIA, the Federal Declaratory Judgment Act, and the All Writs Act. The first cause of action relates to F-2010-01033, and notes that no Agency determinations occurred within twenty days after the FOIA request was accepted.

11. By letter dated 24 May 2011, CIA sent a final response to Plaintiff stating that a complete and thorough search for records was conducted, and one responsive document was located. The responsive document was released to Plaintiff in full. A true and correct copy of that letter and the corresponding

responsive document are attached to this Declaration as Exhibit D and Exhibit E.

III. Plaintiff's FOIA Request (F-2011-00396)

12. By letter dated 30 November 2010, Plaintiff submitted a request pursuant to the FOIA for a copy of the "special procedures for the [Mandatory Declassification] review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods' developed by the Director of Central Intelligence pursuant to Sections 3.6(e) of Executive Order 12,958 and 3.5(e) of Executive Order 13,292." A true and correct copy of that letter is attached to this Declaration as Exhibit F.

13. By letter dated 20 December 2010, CIA accepted Plaintiff's request and assigned the request reference number F-2011-00396. A true and correct copy of that letter is attached to this Declaration as Exhibit G.

14. By letter dated 27 January 2011, CIA provided a final response to Plaintiff stating that CIA did not locate any records responsive to Plaintiff's request. A true and correct copy of that letter is attached to this Declaration as Exhibit H.

15. By letter dated 29 January 2011, Plaintiff appealed the adequacy of the CIA search. A true and correct copy of that letter is attached to this Declaration as Exhibit I.

16. By letter dated 4 February 2011, CIA accepted Plaintiff's appeal. The letter noted that the appeal would be considered by the Agency Release Panel ("ARP"). A true and correct copy of that letter is attached to this Declaration as Exhibit J.

17. On 28 February 2011, Plaintiff filed the above captioned action against the CIA and other U.S. Agencies pursuant to the FOIA, the Federal Declaratory Judgment Act, and the All Writs Act. The second cause of action relates to F-2010-00396, and notes that no Agency determination occurred within twenty days of the appeal.

18. By letter dated 15 March 2011, CIA informed Plaintiff that the ARP considered Plaintiff's appeal. The letter confirmed that no records were located responsive to Plaintiff's request. A true and correct copy of that letter is attached to this Declaration as Exhibit K.

IV. CIA's Reasonable Searches Conducted in Response to Plaintiff's FOIA Requests

19. The Information Management Services ("IMS") component of the CIA is the initial reception point for all requests for information under the FOIA. Experienced IMS professionals analyze each request, determine which CIA directorate or directorates might reasonably be expected to possess records that are subject to the FOIA access provisions and responsive to

a particular request, and transmit a copy of the request to the IRO for the appropriate directorate or directorates for action.

20. Because the CIA's records systems are decentralized and compartmented, each directorate IRO must determine which components and/or records systems within the directorate might reasonably be expected to possess records responsive to a particular request. Within the Director's Area for example, the IRO works with personnel within each of its components to devise a search strategy tailored to the component's configuration of its records systems and unique characteristics of that configuration. This process includes identifying which of the records systems to search as well as which search strategies to employ. In many of the components, the IMS professionals conducting FOIA searches are the same professionals searching records in support of the component's daily mission.

21. After a tasked component locates documents in response to the FOIA request for information, officers must review the documents to determine whether they are responsive to the request. Because of the nature of a particular records system, or the search strategies, a search may locate many documents that are not responsive to the request.

22. After officers remove non-responsive documents, the IROs must then review the remaining documents to determine which, if any, FOIA exemptions apply, and whether they can

reasonably segregate nonexempt information from exempt information. In evaluating responsive documents, officers must segregate exempt information to avoid any disclosure of classified information, information concerning CIA intelligence sources and methods, or other information protected by the FOIA exemptions.

23. When all of the components and IROs complete their respective reviews, a review is then conducted from a corporate perspective on behalf of the entire CIA and additional exempt information that reflects overall CIA equities may be identified. IMS professionals incorporate all of their recommendations regarding exemptions, segregation, redaction, and release, resolve conflicting recommendations, and ensure that the release or withholding determinations comply with law and published CIA regulations. A final record copy of each document is then produced and a response is provided to the requester.

A. CIA Search for Records Responsive to F-2010-01033

24. The CIA processed Plaintiff's request, F-2010-01033, for information following the procedures as set forth above. IMS professionals determined that the Director's Area was the only directorate reasonably likely to have records responsive to Plaintiff's FOIA request, and tasked the Director's Area to conduct a search for responsive records.

25. The Director's Area includes the Office of the Chief Information Officer, which includes Information Management Services ("IMS")) and others. The Director's Area is responsible for conducting searches in response to FOIA requests for information relating to the Agency's Executive Order Mandatory Declassification Review program and to the Agency's information management regulations, policies, and similar documents concerning the Agency's classification management and public information release programs. Within the Director's Area, IMS administers the CIA's Executive Order Mandatory Declassification Review program and maintains records relating to that program.

26. IMS professionals did not task the other CIA Directorates: the Directorate of Intelligence ("DI")², the Directorate of Science and Technology ("DS&T")³, the National Clandestine Service ("NCS")⁴, or the Directorate of Support ("DS")⁵ because there was no reasonable expectation that a search

² The DI is the organization within CIA responsible for providing timely, accurate, and objective all-source intelligence analysis on national security and foreign policy issues to the President, Cabinet, and senior policymakers in the U.S. Government.

³ The DS&T is the organization within CIA responsible for creating and applying technology to fulfill intelligence requirements.

⁴ The NCS is the organization within the CIA responsible for conducting clandestine intelligence operations.

⁵ The DS is the organization within the CIA responsible for providing mission-focused support throughout the directorates, to include security and other general support functions.

of these Directorates would locate information responsive to Plaintiff's FOIA request.

27. F-2010-01033 requests "current regulations, policy statements, guidelines, memoranda, training materials, handbooks, manuals, checklists, worksheets, instructions, and similar documents on the topic of MDR" (emphasis added). As requested by the Plaintiff, the scope of this request was limited to "current" documents that were "in current use as of 23 April 2010." Plaintiff additionally noted that "records that are no longer in effect may be excluded from [the CIA] response." Exhibit C.

28. MDR provisions are derived from the controlling Executive Order which sets forth a uniform system for classification. As of 23 April 2010, the date specified by the Plaintiff, MDR provisions were set forth in Executive Order 13292, which superseded the MDR provisions previously set forth in Executive Order 12958. Only documents used under the MDR provisions of Executive Order 13292 would have been "in current use as of 23 April 2010."

29. Based on the scope of the request as specifically limited by the Plaintiff, the Director's Area conducted a thorough and diligent search of relevant Director's Area records systems for current CIA regulations, policy statements, guidelines, memoranda, training materials, handbooks, manuals,

checklists, worksheets, instructions, and similar documents on the topic of Mandatory Declassification Review that would have been in current use as of 23 April 2010.

30. The Director's Area maintains all internal Agency-wide regulatory issuances in one searchable records system. The Director's Area searched this records system, as well as other IMS records systems that might contain policies, training materials and similar documents on the topic of the CIA's Executive Order Mandatory Declassification Review program, and located one regulation, 32 C.F.R. Part 1908, on the topic of MDR that was "in current use as of 23 April 2010." 32 C.F.R. Part 1908 is based on the authority of Executive Order 12958 or successor orders, to include the then controlling Executive Order 13292, and contains the CIA regulation on the topic of MDR that was in current use as of 23 April 2010. This document was released to requester in full. (Exhibit E).

31. The search conducted by the Director's Area did not locate any additional "current CIA regulations, policy statements, guidelines, memoranda, training materials, handbooks, manuals, checklists, worksheets, instructions and similar documents on the topic of Mandatory Declassification Review" that were "in current use on 23 April 2010."

B. CIA Search for Records Responsive to F-2011-00396

32. The CIA processed Plaintiff's request, F-2010-00396, for information following the procedures as set forth above. IMS professionals determined that the Director's Area was the only directorate reasonably likely to have records responsive to Plaintiff's FOIA request, and tasked the Director's Area to conduct a search for responsive records. IMS professionals did not task the other CIA Directorates because there was no reasonable expectation that a search of these Directorates would locate information responsive to Plaintiff's FOIA request.

33. The Director's Area was initially tasked to search for records responsive to Plaintiff's request. Specifically, IMS searched relevant record systems containing all files reasonably likely to contain responsive materials and located no records responsive to Plaintiff's request.

34. Based on further analysis of the request, it became apparent that no search of CIA records would be likely to locate "special procedures for the [Mandatory Declassification] review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods' developed by the Director of Central Intelligence pursuant to Sections 3.6(e) of Executive Order 12,958 and 3.5(e) of Executive Order 13,292" because I learned that no such special procedures were ever developed by the then Director of Central

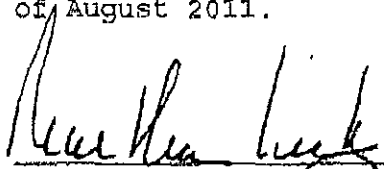
Intelligence under these provisions. Therefore, CIA is not reasonably able to formulate a search strategy that would locate documents that were never created.

V. CONCLUSION

35. CIA conducted reasonable searches of relevant record locations reasonably calculated to locate records responsive to Plaintiff's FOIA requests. As a result of these searches, CIA located one responsive record in F-2010-01033 which was released in full. No records were located responsive to F-2011-00396 because no special procedures on MDR were ever developed by the then Director of Central Intelligence pursuant to the noted Executive Orders.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 26 day of August 2011.



Martha Lutz
Information Review Officer
Director's Area
Central Intelligence Agency