

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

NATIONAL SECURITY COUNSELORS, *

*

Plaintiff, *

*

v. *

*

Case: 1:11-cv-00442 (RMC)

CENTRAL INTELLIGENCE AGENCY, *

*

et al.,

*

Defendants. *

*

* * * * *

**PLAINTIFF’S OPPOSITION TO DEFENDANT CENTRAL INTELLIGENCE
AGENCY’S MOTION FOR SUMMARY JUDGMENT ON COUNTS 1 AND 2 OF
PLAINTIFF’S FIRST AMENDED COMPLAINT**

Plaintiff National Security Counselors (“NSC”) commenced this litigation against Defendants Central Intelligence Agency (“CIA”) and Department of Defense (“DOD”) pursuant to the Freedom of Information Act (“FOIA”), seeking to obtain, *inter alia*, CIA policy, guidance, reference, and training materials on the subject of Mandatory Declassification Review (“MDR”). On August 29, 2011, CIA moved for summary judgment on Counts 1 and 2 of the First Amended Complaint, arguing that its searches for responsive records in both instances were adequate and reasonable. (Def. CIA’s Mem. P. & A. Supp. Mot. Summ. J. at 1 (“CIA’s Mem.”).) For the reasons discussed below, this Motion should be denied.

As the issues in controversy are extremely narrow, Plaintiff accepts CIA’s recitation of the factual background of the case and its characterization of the legal standards. The only difference between the parties is whether CIA’s searches meet the reasonableness standard described in CIA’s Memo.

ARGUMENT

I. COUNT 1 -- CIA'S NARROW INTERPRETATION OF THE TERM "CURRENT" UNREASONABLY LIMITED THE SCOPE OF ITS SEARCH

In FOIA Request #F-2010-01033, NSC requested "current . . . regulations, policy statements, guidelines, memoranda, checklists, worksheets, instructions, and similar documents on the topic of Mandatory Declassification Review ("MDR")." (Lutz Decl., Ex. A.) In later correspondence, NSC clarified the meaning of the term "current," stating that the intention was "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." (Lutz Decl., Ex. C.) In this letter, NSC further amended the request with the sentence, "This request is limited to documents in current use, and records that are no longer in effect may be excluded from your response." (*Id.*) In response to this request, CIA claimed that it only located one responsive document, a copy of 32 C.F.R. § 1908 that it released in full. CIA bases its entire argument for the failure of its search to locate any other responsive records on its strained definition of the term "current," which does not comport with either the plain meaning of the term or basic common sense. (CIA's Mem. at 7-8.)

Agencies have a duty to construe the subject material of FOIA requests liberally to ensure responsive records are not overlooked. *See Nation Magazine, Washington Bureau v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995). An agency may not "read [a] request so strictly that the requester is denied information the agency well knows exists in its files, albeit in a different form from that anticipated by the requester." *Hemenway v. Hughes*, 601 F. Supp. 1002, 1005 (D.D.C. 1985). "[A]ll federal agencies should go as far as they reasonably can to ensure that they include what requesters want to have included within the scopes of their FOIA

requests.” Department of Justice, Office of Information Privacy, *OIP Guidance: Determining the Scope of a FOIA Request*, FOIA Update, Vol. XVI, No. 3, at 4 (1995). See also *Amnesty Int’l USA v. CIA*, 728 F. Supp. 2d 479, 499 (S.D.N.Y. 2010) (rejecting CIA’s argument that its search for records about the “attention shake” interrogation technique was adequate because it located no records due to the technique being called the “attention grasp”).

The CIA claims that all of its regulations, policy statements, guidelines, memoranda, checklists, worksheets, instructions, and similar documents on the topic of MDR are immediately rendered obsolete each time that the controlling Executive Order is replaced. (See Lutz Decl. ¶ 28 (“Only documents used under the provisions of Executive Order 13292 would have been ‘in current use’”).) This interpretation, besides constituting a flagrant violation of the rule set forth in *Hemenway* and *Nation Magazine*, cannot be reconciled with the simple fact that the MDR provisions of E.O. 13292 are virtually unchanged from its predecessor order, E.O. 12958. Compare E.O. 13292 § 3.5, with E.O. 12958 § 3.6 (paragraph (b) of the later Order adds records created by the Vice President and certain committees, commissions, or boards to the class of records covered by the section). Even assuming *arguendo* that such formal agency policy documents as regulations would require reissuance to be current, the vast majority of responsive records, such as checklists, worksheets, and similar reference or training documents, would still be used by CIA analysts when processing MDR requests. Such documents would by definition be “in current use.” See Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/current> (last visited Oct. 2, 2011) (defining “current” as “generally accepted, used, practiced, or prevalent at the moment”).

CIA further fails to justify summary judgment in light of the fact that it has publicly admitted to the creation of at least one *major* document which would be responsive to this

request (which it was required by law to create), even assuming *arguendo* that only records created after 2002 are “current.” The implementing regulation for the National Archives and Records Administration (“NARA”) Information Security Oversight Office (“ISOO”) requires all agencies which classify records to submit declassification guides to ISOO every five years for approval. 32 C.F.R. § 2001.32(d). In April 2006, CIA provided a Declassification Plan to ISOO, in which it stated:

CIA prepared and submitted its first declassification guide to the Information Security Oversight Office (ISOO) and the Information Security Classification Appeals Panel (ISCAP) for approval in August 1996. Following preparation of a revised version of the guide that incorporated ISOO recommendations, the guide was resubmitted to ISOO/ISCAP in January 2001. ISCAP unanimously approved the guide in May 2001. The guide is dated 17 May 2001 and requires five-year updating in 2006 under ISOO implementing directive 32 CFR 2001.32(d). CIA will submit an updated guide for ISCAP approval prior to May 2006.

CIA Information Service Center, CIA FY 2006 Declassification Plan Required Under Executive Order 12958, “Classified National Security Information,” As Amended 15 (Apr. 15, 2006), available at http://www.foia.cia.gov/docs/DOC_0001492381/DOC_0001492381.pdf (last visited Oct. 2, 2011).¹ Since agencies are required to submit this guide every five years, it is reasonable to conclude that CIA did submit its updated guide by May 2006, or at the very least by the time CIA conducted its search for records in 2010-2011. Given that the entire purpose of these

¹ As an aside, it should be noted that this document serves as *prima facie* evidence that even in 2006, four years after the issuance of E.O. 13292, CIA was still citing to E.O. 12958 for its declassification provisions, only referencing the intervening order with the attachment of “as amended.” This fact by itself stands in silent witness against CIA’s proposition that any MDR records created since 2002 would be invalid unless they specifically cited to E.O. 13292.

Declassification Guides is to establish procedures for declassification, CIA's proposition that its 2006 Declassification Guide is not derived from E.O. 13292 is completely without merit.²

Lastly, CIA's description of the records systems searched in response to this request does not square with the other evidence obtained by NSC regarding the records systems of the CIA Office of Information Management Services ("IMS"). The Lutz Declaration states: "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" (Lutz Decl. ¶ 30 (emphasis added).) This description is deficient for two reasons. First, the initial records system described only applies to *Agency-wide* regulatory issuances, and given that IMS is the only office that performs Mandatory Declassification Review, MDR materials would not be likely to be "Agency-wide regulatory issuances."³

Second, and most relevant, is the fact that in response to an NSC FOIA request for "all [CIA] records pertaining to the search tools and indices available to [IMS] for conducting

² In response to a request from Defendants' counsel, Plaintiff's counsel specifically indicated that this guide would be responsive to this request in July 2011, over a month before CIA filed this Motion. (Email from McClanahan to Ellington of 7/15/11, attached as part of Ex. A.) This email also detailed several other records or classes of records which would be likely to be responsive. (*Id.*) CIA's response was that its search was reasonable.

³ However, the internal CIA regulations known as "Agency Regulations" and "Headquarters Regulations" specified in Ex. A would be likely to be located in this records system, as would the "Headquarters Handbook." (Ex. A.) *See also* AR 70-5 – Declassification and Release (implying from the subject matter that MDR information would likely be in the redacted portions), attached as Ex. B; OMB Watch, *Another Non-Disclosure First*, at <http://www.ombwatch.org/node/1364> (Apr. 21, 2003) (describing "Headquarters Handbook on releasing information to the public") (last accessed Oct. 2, 2011); Letters from Viscuso to McClanahan of 2/10/11 (acknowledging existence of at least two editions of "Headquarters Handbook"), attached as Ex. C.

searches of its own records in response to FOIA requests” (Letter from McClanahan to Viscuso of 1/26/11 at 1, attached as Ex. D), CIA provided three records, two of which described single records systems.⁴ (Letter from Viscuso to McClanahan of 5/26/11, attached as Ex. E.) The first released document described the CIA Automated Declassification and Release Environment (“CADRE”) records system, which “supports two primary information and release business processes: Freedom of Information Act (FOIA), Executive Order 12958, Privacy Act (PA) case management and the 25-year Declassification Program.”⁵ (Ex. E at 1.) The second released document described the Space Management and Retirement Tracking (Version 2) (“SMART2”) records system, which “is a database that provides the automated inventory of records retired to the [Agency Archives and Records Center (“AARC”).]” (Ex. F at 1.) The CADRE system only includes individual case management records, and the SMART2 system only includes records retired to the CIA Archives; neither system would “contain policies, training materials and similar documents on the topic of the CIA’s [MDR program]” (Lutz Decl. ¶ 30), or on anything else for that matter.⁶ Either CIA provided an insufficient response to the request for IMS materials in that request,⁷ or CIA did not conduct an adequate search for MDR materials in this

⁴ The third released record was a copy of the CIA Privacy Act Systems of Records Notice published in the *Federal Register*.

⁵ The Court should again note the citation to E.O. 12958, not E.O. 13292, in an official CIA document purporting to describe a system in use in 2011.

⁶ None of the Privacy Act records systems (CIA-4, CIA-6, and CIA-14) identified in the release letter involve policy, guidance, or reference materials. *See* 70 Fed. Reg. 42418 (July 22, 2005).

⁷ As the referenced request is the subject of Count 18 of another case currently before Judge Howell, *National Security Counselors v. CIA*, No. 11-444, NSC also intends to challenge the adequacy of CIA’s search for responsive records when presented with a Motion for Summary Judgment in that case. However, neither this Court nor Judge Howell should allow CIA to present mutually contradictory information in the two cases.

request. The two options cannot both be true. Without further detailed information regarding the “other IMS records systems” searched in response to this request, CIA cannot meet the burden of summary judgment.

For the foregoing reasons, summary judgment should be denied on Count 1 and the Court should order CIA to perform a *liberal* search for *all* IMS records pertaining to Mandatory Declassification Review that have not been retired to the AARC.⁸

II. COUNT 2 – THE LUTZ DECLARATION IS AMBIGUOUS ON EXACTLY WHICH DOCUMENTS WERE NEVER CREATED

Unlike with Count 1, Plaintiff is willing to concede the possibility that CIA’s search for responsive records to FOIA Request #F-2011-00396 was adequate and that no records were located because none were created. In fact, until CIA filed this Motion, Plaintiff was under the impression that such was the case. However, the curiously conditional language used in the Lutz Declaration, coupled with CIA’s obdurate refusal to subsequently clarify the issue, have raised new doubts. Without further clarification, the Court should not grant summary judgment on Count 2.

⁸ It is Plaintiff’s understanding of CIA records management procedures that regulations, policy documents, training materials, and the like which become obsolete or are no longer in effect are retired to the AARC. Plaintiff stipulates that a reasonable definition of “current” for this request is “records that are not retired to the AARC.” Furthermore, the Court should require CIA to use the date the new search is commenced as a cut-off date, which has been repeatedly held by this Circuit to be reasonable. *See Pub. Citizen v. Dep’t of State*, 276 F.3d 634, 644 (D.C. Cir. 2002) (favoring “date-of-search cut-off” because its use “might . . . result[] in the retrieval of more [responsive] documents”); *McGehee v. CIA*, 697 F.2d 1095, 1104 (D.C. Cir. 1983), *vacated on other grounds on panel reh’g & reh’g en banc denied*, 711 F.2d 1076 (D.C. Cir. 1983). Given that a new controlling Executive Order (E.O. 13526) has been issued in the interim, not to mention the significant passage of time regardless, CIA should not be allowed to narrowly construe the scope of the request again and defeat the entire purpose of the request—to learn the procedures *currently* used by CIA analysts when they process MDR requests.

The Lutz Declaration states:

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 and 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 12,292” 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.

. . . 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.

(Lutz Decl. ¶¶ 34-35 (substitution in original) (emphasis added).)

The point of controversy is the meaning of the use of the singular-form term “the then Director of Central Intelligence.” It is unclear which “then Director of Central Intelligence” Ms. Lutz is referring to. John Deutch was the Director of Central Intelligence (“DCI”) when E.O. 12958 was issued in 1995. George Tenet was the DCI when E.O. 13292 was issued in 2002. Porter Goss, Michael Hayden, and Leon Panetta held the position (or its replacement position, Director of the Central Intelligence Agency (“D/CIA”)) between Director Tenet and the issuance of E.O. 13526 in 2009, which transferred this responsibility to the Director of National Intelligence. Numerous “Acting” DCIs or D/CIAs held the position in between them. If CIA has adopted the narrow interpretation (as evidence in this and other cases clearly demonstrates it tends to do) that President Clinton specifically ordered *Director Deutch* to develop these special procedures, and that procedures developed in 2001 by Director Tenet or in 2005 by Director Goss would not be “responsive” because they were not developed by “the then Director of Central Intelligence” as of 1995 (or 2002, in the case of Goss), then the Court should refute this interpretation and order CIA to conduct a search for all “special procedures for MDR” developed

by or under the direction of *any* DCI or D/CIA between 1995-2009, in accordance with the plain meaning of the request.

If, however, CIA *did* conduct such a search, or did in fact discover that *no* DCI or D/CIA ever created or directed to be created such “special procedures” in that time period, then the Court should grant summary judgment on Count 2 only upon receipt of a clear and unambiguous statement of that fact. Plaintiff would voluntarily dismiss Count 2 under those circumstances. However, Plaintiff maintains that CIA should be made to pay attorneys’ fees for the time spent drafting this Opposition, due to the fact that Plaintiff made this same offer immediately upon reading CIA’s Motion and only spent time and energy drafting this Opposition regarding Count 2 because of CIA’s refusal to cooperate. Plaintiff’s counsel stated:

Based on our conversations on this issue, I understood you to say that *the CIA* had never developed these special procedures, but the declaration does not clearly convey that. Please confirm that neither John Deutch, George Tenet, Porter Goss, Michael Hayden, nor Leon Panetta (nor any of the Acting DCIs between them) ever developed such special procedures, and that nobody at the CIA did so in their names. If this is an accurate statement, please amend or supplement your filing. As we discussed, if you do so, I am willing to voluntarily dismiss Count 2, but I need an unambiguous filing from the CIA before I can do that. Right now it sounds like all Ms. Lutz is saying is that either John Deutch or George Tenet (it is unclear which one is the “then DCI” that is referred to, since they were each DCI at the passage of EO 12958 and EO 13292, respectively) did not develop these procedures, but not that they were never developed, period.

(Email from McClanahan to Ellington of 8/29/11, attached as part of Ex. H.) In response, CIA’s counsel stated that no clarification would be forthcoming, citing the fact that the Lutz Declaration stated that “CIA is not reasonably able to formulate a search strategy that would locate *documents that were never created.*” (Email from Ellington to McClanahan of 8/30/11 (*citing* Lutz Decl. ¶ 34) (emphasis added), attached as Ex. H.) However, if CIA has defined “documents” to mean only those records that were created by *one* “then Director of Central

Intelligence” (presumably John Deutch or George Tenet, or even both), then the statement that the “documents” were never created remains technically true while still completely subverting the plain meaning of the request.

The information that the Director of Central Intelligence, or even CIA writ large, failed to obey not one but two explicit Executive Orders over the course of fifteen years is itself of great public interest. As CIA concedes, President Clinton issued E.O. 12958 to “set[] forth a uniform system for classification.” (Lutz Decl. ¶ 28.) Prior to E.O. 12958, agencies had declassified records according to ad hoc and often idiosyncratic standards, including but not limited to inconsistent definitions of such critical terms as “intelligence sources and methods.” A necessary part of the creation of a uniform system of classification is a consistent treatment of the most common classified records. For this reason, President Clinton (and President Bush after him) tasked three agency leaders with creating such consistent procedures: “After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information, 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, and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.” E.O. 12958 § 3.6(e); E.O. 13292 § 3.5(e).

Despite these clear orders from two Presidents, CIA appears not to have done as directed, yet remains reluctant to unambiguously admit it. As such, the information that CIA truly never fulfilled this classification mandate is clearly “likely to add to the fund of information that citizens may use in making vital political choices.” *Cotton v. Heyman*, 63 F.3d 1115, 1120 (D.C. Cir. 1995) (describing factor of whether FOIA action results in a public benefit, a critical part of

any attorneys' fees determination) (*quoting Blue v. Bureau of Prisons*, 570 F.2d 529, 534 (5th Cir. 1978)). Therefore, even though Count 2 would be dismissed voluntarily upon receipt of this clarification, the Court should still award attorneys' fees on that count. *Cf. Oil, Chem. & Atomic Workers v. DOE*, 141 F. Supp. 2d 1, 5-7 (D.D.C. 2001) (awarding attorneys' fees after voluntary dismissal), *rev'd*, 288 F.3d 452 (D.C. Cir. 2002), *superseded by statute, Judicial Watch, Inc. v. BLM*, 610 F.3d 747, 749 (D.C. Cir. 2010).

For the foregoing reasons, the Court should deny CIA's Motion for Summary Judgment with respect to Count 2 unless CIA provides unambiguous clarification of the reason for the nonexistence of responsive records.

CONCLUSION

For the foregoing reasons, the Court should deny CIA's Motion for Summary Judgment. Plaintiff furthermore requests a Status Conference regarding the controversy over the ambiguity of the Lutz Declaration with respect to Count 2, in hopes that the issue may be resolved without requiring a formal Memorandum Opinion.

Date: October 2, 2011

Respectfully submitted,

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Counsel for Plaintiff

EXHIBIT A

From: [Ellington, Alicia N. \(CIV\)](#)
To: [Kel McClanahan, Esq.](#)
Cc: [Ellington, Alicia N. \(CIV\)](#)
Subject: RE: 11-442 - Places to look for CIA records
Date: Friday, July 15, 2011 2:57:25 PM

Thanks for your message, Kel. I will review and then consult with agency counsel.

Thanks,
Nikki

A. Nicole Ellington

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From: Kel McClanahan, Esq. [<mailto:kel@nationalsecuritylaw.org>]
Sent: Friday, July 15, 2011 2:48 PM
To: Ellington, Alicia N. (CIV)
Subject: 11-442 - Places to look for CIA records

As promised, here are the most likely places that I can think of for finding records responsive to the two CIA FOIA requests. However, the Agency ostensibly knows more about where it keeps records than someone on the outside who has never seen the inside of the IMS, so this is *not* an exhaustive list; just a list of the places I know about.

1) CIA Declassification Guide:

http://www.foia.cia.gov/docs/DOC_0001492381/DOC_0001492381.pdf. p. 15 (among other mentions in CIA and NARA records)

“CIA prepared and submitted its first declassification guide to the Information Security Oversight Office (ISOO) and the Information Security Classification Appeals Panel (ISCAP) for approval in August 1996. Following preparation of a revised version of the guide that incorporated ISOO recommendations, the guide was resubmitted to ISOO/ISCAP in January 2001. ISCAP unanimously approved the guide in May 2001. The guide is dated 17 May 2001 and requires five-year updating in 2006 under ISOO implementing directive 32 CFR 2001.32(d). CIA will submit an updated guide for ISCAP approval prior to May 2006.”

This should go without saying. A “Declassification Guide” that does not discuss one of the primary forms of declassification would be surreal.

2) ARs and HRs:

Agency Regulations (AR) and Headquarters Regulations (HR) are internal CIA regs, classified by numbers. ARs in category 10 (e.g. AR 10-1) are “Security” regs, and ARs in category 70 (e.g. AR 70-1) are “Information and Records Management.” Presumably HRs in these categories mirror the AR categories, but we do not know for certain. In any case, it is extremely unlikely that something like declassification review does not appear in *some* of these ARs and HRs, especially in Categories 10 or 70. For instance, AR 70-5 (<http://jamesmadisonproject.org/files/AR%2070->

[5%20Declassification%20and%20Release.pdf](#)) is entirely devoted to "Declassification and Release," and although MDR does not appear in the portion that has been released, one would expect that it would likely be in the parts redacted from the January 2008 release.

3) "Headquarters Handbook":

As recent as February, the CIA acknowledged the existence of a document entitled the "Headquarters Handbook" about releasing information to the public. See, e.g. <http://www.ombwatch.org/node/1364> (2003 description of the book). In February, CIA again acknowledged the existence of the document and said it was unclassified (letters attached). Portions of this document from the early 1980s are posted in the CIA's Electronic Reading Room. As with the Declassification Guide, it is difficult to imagine a book about releasing information to the public that does not mention one of the key provisions for releasing information to the public, namely, MDR.

My main concern with the CIA's search is the suspicion that it did something like look for "Mandatory Declassification Review" and didn't find any records because they don't contain that particular phrase, but instead talk about "declassification review under Sec. 3.5 of the Executive Order" or some such. Therefore, in any future searches, since the very people conducting the search *are* the people most likely to be expert in this particular field, i.e. IMS employees, please remind them that they should know where the records are likely to be because they most likely *wrote them* or at the very least consult them. They can't rely blindly on a "keyword search" if the person doing the search knows very well where the records are.

I hope this helps. Please let me know if you need anything else.

Kel

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Kel McClanahan, Esq.
Executive Director
National Security Counselors

"As a general rule, the most successful man in life is the man who has the best information."
Benjamin Disraeli, 1880

"Quis custodiet ipsos custodes?" ("Who watches the watchers?")
Juvenal, Satire VI

EXHIBIT B

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

(b) (2)
(b) (3)

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

Date: 06/03/97

Category: 70 - Information and Records Management **OPR:** OIM

Title: AR 70-5 DECLASSIFICATION AND RELEASE

[Redacted]

PEN AND INK CHANGE: 7 March 2001

On 18 August 2000, the Director of Central Intelligence Agency signed a delegation of authority giving the Deputy Executive Director authority to classify, declassify, and release Agency information. The change is reflected in paragraph f(3) and are designated by bold text.

This regulation was written by the Office of the Associate Deputy Director for Administration/Information Services, [Redacted]

5. DECLASSIFICATION AND RELEASE

SYNOPSIS. This regulation provides policy and guidance regarding the declassification¹ and release² of information that documents Central Intelligence Agency activities, and the activities of predecessor organizations (hereinafter "Agency information").

¹Declassification, as discussed in this regulation, refers to declassification carried out under the authority of Executive Order 12958. Thus, declassification, in the context of this regulation, does not apply to imagery, since the declassification of imagery is carried out under the separate authority of Executive Order 12951.

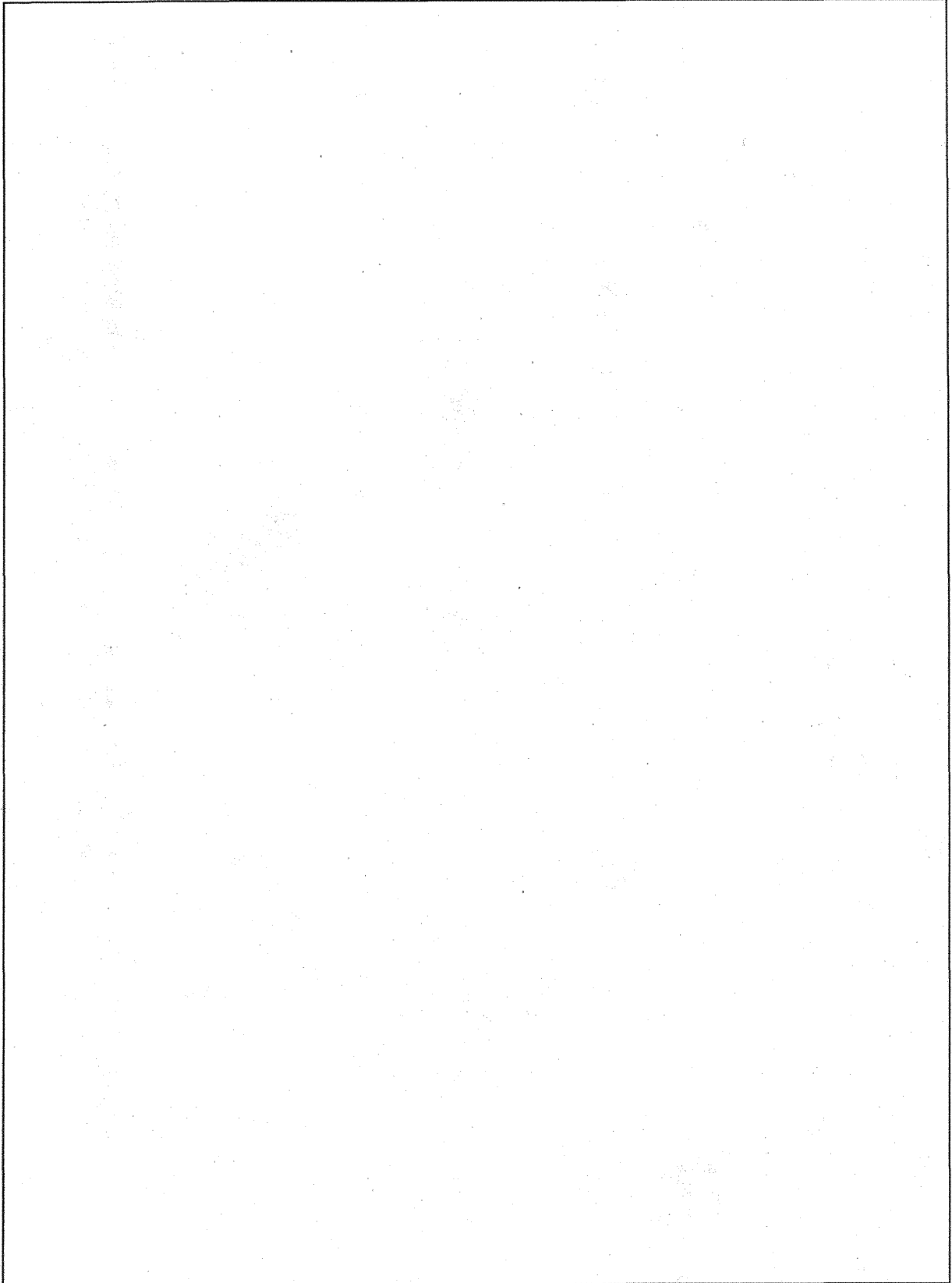
²Release, in the context of this regulation, relates only to unclassified information. Information which is classified and provided to authorized recipients outside of the Agency does not fall within the scope of this regulation.

[Redacted]

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

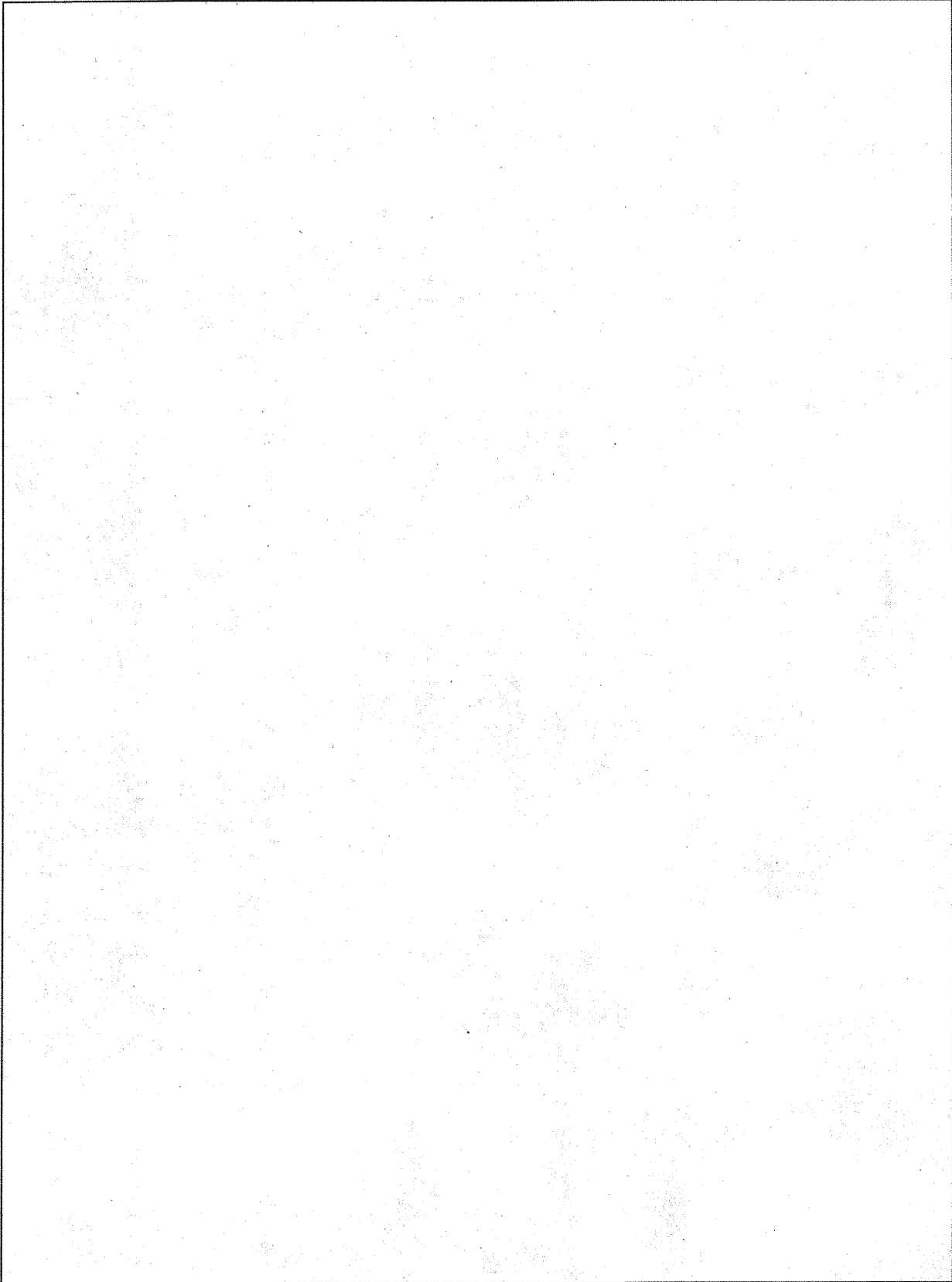
APPROVED FOR RELEASE
DATE: JAN 2008

~~ADMINISTRATIVE - INTERNAL USE ONLY~~



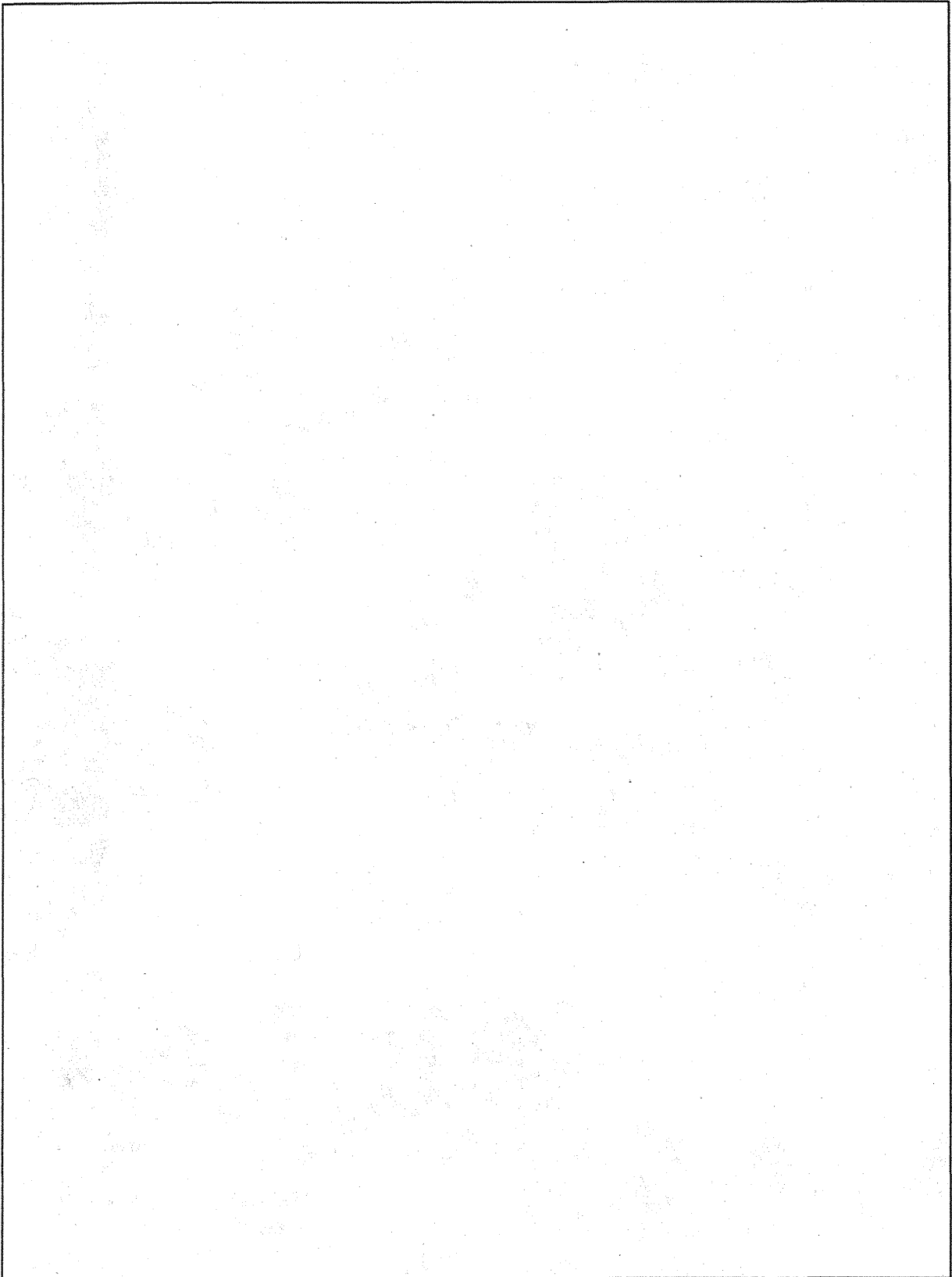
~~ADMINISTRATIVE - INTERNAL USE ONLY~~

~~ADMINISTRATIVE - INTERNAL USE ONLY~~



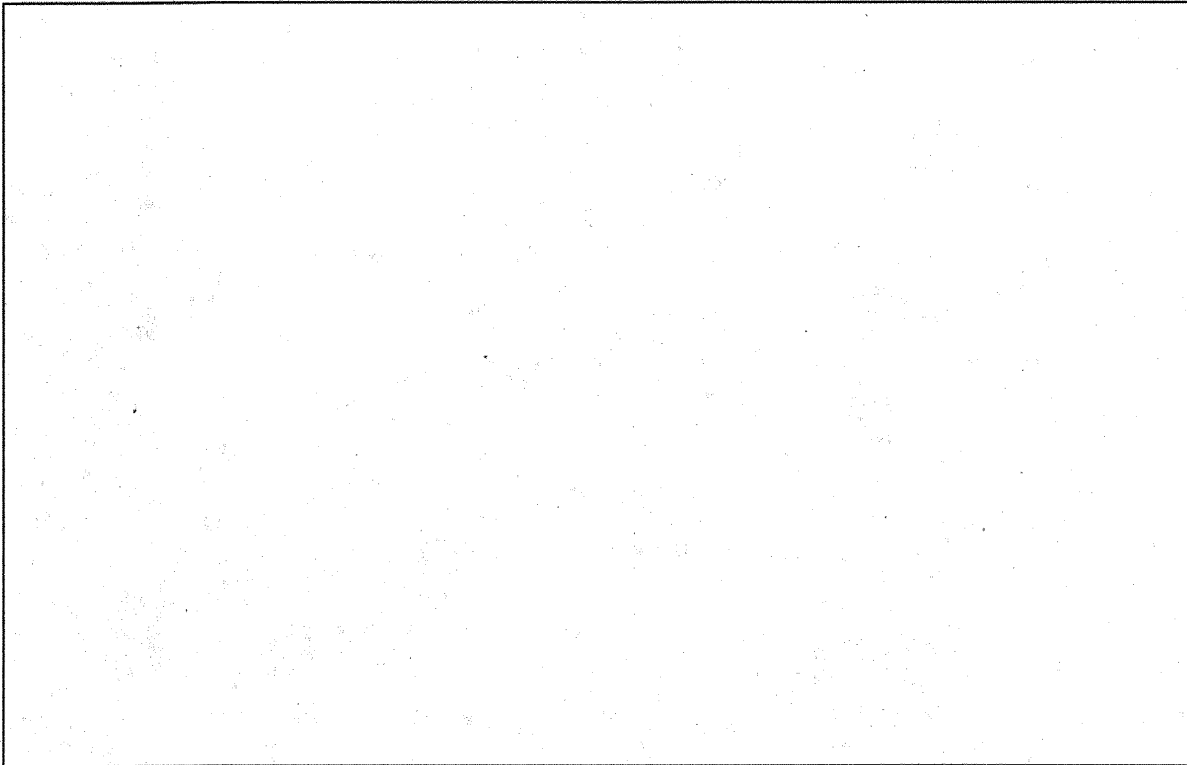
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f. **RELEASE OF INFORMATION.** A decision to publicly release any Agency information (orally, or in electronic or written format) requires not only a declassification review, but also a review to determine whether the Agency has a legal obligation, or the discretionary authority, to claim other exemptions or legal privileges against the disclosure of such information. Thus, the authority to declassify Agency information is not synonymous with the authority to publicly release Agency information. The authority to release Agency information is restricted to the following persons as set forth below, and any previous delegations of release authority are hereby rescinded:

- (1) The DCI, as the head of the CIA, has release authority with respect to all Agency information (including information under the cognizance of the statutory Office of the DCI) the disclosure of which is not precluded by law.
- (2) The Deputy Director of Central Intelligence is delegated release authority with respect to all Agency information (including information under the cognizance of the statutory Office of the DCI) the disclosure of which is not precluded by law.
- (3) The Executive Director **and Deputy Executive Director are** is delegated release authority with respect to all Agency information (except information under the cognizance of the statutory Office of the DCI) the disclosure of which is not precluded by law.
- (4) The Deputy Director of Central Intelligence for Community Management/Executive Director for Intelligence Community Affairs is delegated release authority with respect to all Community Management Staff information the

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

disclosure of which is not precluded by law.

- (5) The General Counsel is delegated, consistent with DCI authority, release authority with respect to Agency information (including information under the cognizance of the statutory Office of the DCI) to be released to the courts, the Department of Justice, or otherwise in the conduct of the General Counsel's statutory responsibilities, when the disclosure of that information is not precluded by law.
- (6) The Inspector General is delegated, consistent with DCI authority, release authority with respect to Agency information (including information under the cognizance of the statutory Office of the DCI) to be released to the Congress or otherwise in the conduct of the Inspector General's statutory responsibilities, when the disclosure of that information is not precluded by law.
- (7) The Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, and the heads of elements within the DCI Area are delegated release authority with respect to all Agency information within their functional responsibilities, when the disclosure of that information is not precluded by law.
- (8) Deputy Directors and heads of elements within the DCI Area may delegate release authority to subordinate officials as necessary. Such delegations shall be in writing and sent to the Director of Information Management who will maintain a file of such delegations.
- (9) The DCI Area IRO is delegated release authority for DCI Area information and each Directorate IRO is delegated release authority for information from that Directorate, when disclosure of that information is not precluded by law. The DCI Area IRO may release information within the functional responsibilities of an element within the DCI Area in coordination with that element or in accordance with mutually agreed upon procedures.
- (10) Deputy Directors and heads of elements within the DCI Area (or their designees) have the authority to authorize the release of material received from a current CIA employee that is intended for nonofficial publication when consistent with the standards of review required by AR 6-2 .
- (11) The DCI has designated the DDA as the "senior agency official" within the meaning of section 5.6 of Executive Order 12958. As such, the DDA has further delegated to the Director of Information Management (D/IM), as both the classification system manager for CIA and the Agency Information Review Officer, release authority with respect to material denied by the Agency on initial information requests, when that material is unclassified or has been declassified and the Agency does not claim any exemption or privilege from disclosure.
- (12) The Director of Congressional Affairs is delegated release authority with respect to Agency information (including information under the cognizance of the statutory Office of the DCI) to be released to Members of Congress, or Congressional committees, or Congressional staff, when that information is unclassified or has

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

been declassified and the Agency does not claim any exemption or privilege from disclosure.

- (13) The Director of Public Affairs is delegated release authority with respect to Agency information (including information under the cognizance of the statutory Office of the DCI) to be provided to the media that is unclassified or that has been declassified and for which the Agency does not claim any exemption or privilege from disclosure.
- (14) The Information and Privacy Coordinator is delegated release authority with respect to Agency material (including material under the cognizance of the statutory Office of the DCI) responsive to Freedom of Information Act, Privacy Act, and Executive Order Mandatory Declassification requests, when that material is unclassified or has been declassified and the Agency does not claim any exemption or privilege from disclosure.
- (15) The Director of the Center for the Study of Intelligence (D/CSI) is delegated release authority with respect to 25 year old permanent Agency material exempt from automatic declassification, Agency material that is part of the Historical Review and Publications programs, Agency information requested by the Department of State for the Foreign Relations of the United States Series, and Agency materials provided as part of academic outreach programs under the purview of the D/CSI, when that information or material is unclassified or has been declassified and the Agency does not claim any exemption or privilege from disclosure. The Chief, Historical Review Group is delegated release authority, to be exercised on behalf of the D/CSI, for Agency information and material that has been reviewed for systematic declassification, when that information or material is unclassified or has been declassified and the Agency does not claim any exemption or privilege from disclosure.
- (16) The Automatic Declassification Program Manager is delegated release authority with respect to 25 year old or older permanent Agency records, not exempt from automatic declassification, when those records are unclassified or have been declassified and the Agency does not claim any exemption or privilege from disclosure.
- (17) All Agency focal point officers appointed by the EXDIR or D/IM for a special search are delegated release authority with respect to Agency information (including information under the cognizance of the statutory Office of the DCI) responsive to that special search, when that information is unclassified or has been declassified and the Agency does not claim any exemption or privilege from disclosure.
- (18) The D/IM is delegated exclusive authority (except as otherwise specifically set forth in this subsection) to publicly release or otherwise disclose to anyone outside the Agency all Agency-wide regulatory issuances; provided that no Agency-wide regulatory issuance may be publicly released or otherwise disclosed by the D/IM unless it has first been reviewed for release or disclosure by the Office of Primary

EXHIBIT C

Central Intelligence Agency



Washington, D.C. 20505

10 February 2011

Kel McClanahan, Esq.
Executive Director
National Security Counselors
1200 S. Courthouse Road, Suite 124
Arlington, VA 22204

Reference: EOM-2010-01286

Dear Mr. McClanahan:

Your facsimile of 16 September 2010 requested an Executive Order 13526 mandatory declassification review of the following document: "the last edition of the Central Intelligence Agency ('CIA') Office of Information Management Services ('IMS') document known as the 'Headquarter Handbook' or 'HHB.'"

We have located the document responsive to your request. As it is unclassified, it is exempt from Executive Order Mandatory Review per section 3.5(a) of Executive Order 13526.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Viscuo". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Susan Viscuo
Information and Privacy Coordinator

Central Intelligence Agency



Washington, D.C. 20505

10 February 2011

Kel McClanahan, Esq.
Executive Director
National Security Counselors
1200 S. Courthouse Road, Suite 124
Arlington, VA 22204

Reference: EOM-2011-00099

Dear Mr. McClanahan:

Your letter of 2 October 2010 requested an Executive Orders 12958, 13292, and 13526 mandatory declassification review of the following document: "the current edition of the Central Intelligence Agency ('CIA') Office of Information Management Services ('IMS') document known as the 'Headquarters Handbook' or 'HHB.'"

We have located the document responsive to your request. As it is unclassified, it is exempt from Executive Order Mandatory Review per Section 3.5(a) of Executive Order 13526.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Viscuso", with a long horizontal flourish extending to the right.

Susan Viscuso
Information and Privacy Coordinator

EXHIBIT D

NATIONAL SECURITY COUNSELORS

1200 SOUTH COURTHOUSE ROAD
SUITE 124
ARLINGTON, VA 22204

TELEPHONE: (301) 728-5908
FACSIMILE: (240) 681-2189

KEL MCCLANAHAN, ESQ., EXECUTIVE DIRECTOR (admitted in NY, DC)
EMAIL: KEL@NATIONALSECURITYLAW.ORG

BRADLEY P. MOSS, ESQ., DEPUTY EXECUTIVE DIRECTOR (admitted in IL, DC)
EMAIL: BRAD@NATIONALSECURITYLAW.ORG

26 January 2011

Susan Viscuso
Acting Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

Re: FOIA Request – IMS search tools and indices

Dear Ms. Viscuso:

This is a request on behalf of National Security Counselors (“NSC”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, for a copy of **all Central Intelligence Agency (“CIA”) records pertaining to the search tools and indices available to the Office of Information Management Services (“IMS”) for conducting searches of its own records in response to FOIA requests.**

Almost every sworn declaration signed by the CIA Information and Privacy Coordinator in a FOIA case contains the following standard language:

Because CIA’s records systems are decentralized and compartmented, each component must then devise its own search strategy, which includes identifying which of its records systems to search as well as *what search tools, indices, and terms to employ.*

This request is for records that describe or discuss the search tools and indices that the IMS (as a CIA component) can choose between when devising a search strategy for IMS records. This is limited to *only* those search tools and indices that would be *personally used by IMS personnel* to search *IMS records systems.*

Two types of records will be responsive to this request:

1. Records which *describe* the search tools and indices.
2. The actual contents of the indices. I.e., if an index contains 1000 terms that can be used in a search, then we seek a list of those 1000 terms.

When processing this request, please note that the DC Circuit has previously held that agencies have a duty to construe the subject material of FOIA requests *liberally* to ensure responsive records are not overlooked. See *Nation Magazine, Washington Bureau v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995). Accordingly, you are hereby instructed that the term “record” includes, *but is not limited to*: 1) all email communications to or from any individual within your agency; 2) memoranda; 3) inter-agency communications; 4) sound recordings; 5) tape recordings; 6) video or film recordings; 7) photographs; 8) notes; 9) notebooks; 10) indices; 11) jottings; 12) message slips; 13) letters or correspondence; 14) telexes; 15) telegrams; 16) facsimile transmissions; 17) statements; 18) policies; 19) manuals or binders; 20) books; 21) handbooks; 22) business records; 23) personnel records; 24) ledgers; 25) notices; 26) warnings; 27) affidavits; 28) declarations under penalty of perjury; 29) unsworn statements; 30) reports; 31) diaries; or 32) calendars, regardless of whether they are handwritten, printed, typed, mechanically or electronically recorded or reproduced on any medium capable of conveying an image, such as paper, CDs, DVDs, or diskettes. Furthermore, in line with the guidance issued by the Department of Justice (“DOJ”) on 9 September 2008 to all federal agencies with records subject to FOIA, agency records that are currently in the possession of a U.S. Government contractor for purposes of records management remain subject to FOIA. Please ensure that your search complies with this clarification on the effect of Section 9 of the OPEN Government Act of 2007 of the definition of a “record” for purposes of FOIA. Finally, please consider this letter an affirmative rejection of any limitation of your search to records created prior to the date of this request. To the contrary, we stipulate that this search should be restricted to records created prior to the date of the first substantive review of this request by CIA FOIA personnel (as opposed to the date that receipt of the request was acknowledged by the CIA).

Lastly, the CIA is specifically prohibited from adopting an overbroad interpretation of the terms “relating to,” “related to,” or “pertaining to” with respect to the scope of this request; an interpretation that “a request for all documents ‘relating to’ a subject is overbroad because all documents ‘relate to’ others in some remote fashion” is specifically rejected. Therefore, in conclusion, the CIA is hereby instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought. If, even given these restrictions, the CIA still determines that this request does not reasonably describe the records sought, it is instructed to contact NSC pursuant to 32 C.F.R. § 1900.12(c) to discuss reformulation of the request before rejecting the request as overbroad, vague, or unduly burdensome.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please “black out” rather than “white out” or “cut out.” In addition, we draw your attention to President Obama’s 21 January 2009 *Memorandum for the Heads of Executive Departments and Agencies*, directing federal agencies to adopt a presumption in favor of disclosure and stating that government information should not be kept confidential “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.” To permit us to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and

explain the basis for your exemption claims. This description should include a list of the withheld documents, pursuant to *Shermco Indus. v. Sec’y of the U.S. Air Force*, 452 F. Supp. 306, 317 n.7 (N.D. Tx. 1978) (“A person cannot effectively appeal a decision about the releasability of documents . . . if he is not informed of at least a list of the documents to which he was denied access . . . and why those decisions were made. Denial of this information would in all likelihood be a violation of due process as well as effectively gutting the reasons for applying the exhaustion doctrine in FOIA cases.”).

We are hereby requesting classification as a representative of the news media. NSC is a non-profit organization under Virginia law, has the ability to disseminate information on a wide scale, and intends to use information obtained through FOIA in original works. According to 5 U.S.C. § 552(a)(4)(A)(ii), codifying the ruling of *Nat’l Security Archive v. Dep’t of Defense*, 880 F.2d 1381 (D.C. Cir. 1989),

the term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

NSC has clear intent to “publish[] or otherwise disseminate[] information to the public.” *Id.* at 1386 (quoting the following legislative history: 1) “It is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’*” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); 2) “A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, *or other entity that is in the business of publishing or otherwise disseminating information to the public* qualifies under this provision.” 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Our website, where much of the information received through our FOIA requests is posted for all to review, can be accessed at <http://www.nationalsecuritylaw.org>. In addition, we also intend to use information obtained through FOIA in our own published opinion editorials, journal articles, and the like. I personally have already published information received through FOIA in this manner (Kel McClanahan, *A Perception Based Model for Comparing Intelligence Communities*, 25(2) AMER. INTELLIGENCE J. 46 (Winter 2007/2008) (includes material obtained through a CIA FOIA request)), and our Document Vault contains summaries of the records we have obtained, as well as analyses of their relevance. Therefore, in accordance with the Freedom of Information Act and relevant case law, NSC should be considered a representative of the news media.

We are also requesting a public interest fee waiver. There can be no question that the information sought would contribute to the public’s understanding of government operations or activities and is in the public interest. As noted above, almost every time the CIA appears in a FOIA lawsuit, it mentions the “search tools [and] indices” that are available to each component. However, no further information regarding these search tools and indices is ever forthcoming. To better understand what types of resources the CIA uses when processing its FOIA requests, we chose the component simplest to search by FOIA analysts—their own. Once more is known about how IMS conducts searches of its own records, requesters can begin to make educated guesses about how other CIA components conduct their searches, which will allow any informed

member of the public to couch future requests in terms most likely to fit within the configuration of the CIA's records systems. After all, any frequent requester has been told at least once by the CIA that "CIA records systems are not configured in a way that would allow us to perform a search reasonably calculated to lead to responsive records." Armed with the information responsive to this request, requesters will be able to avoid this response through careful phrasing and language choices.

In addition, with respect to the specific requirement that NSC must demonstrate an expertise in the subject area in order to satisfy the fee waiver criterion that disclosure of the requested information must contribute to the understanding of the public at large, I personally have worked as a national security and information and privacy lawyer for three years, have litigated several FOIA/PA cases, teach National Security Law at the University of the District of Columbia, and recently received an LLM in National Security Law from Georgetown University Law Center.

We also specifically state for the record our unwillingness to pay any fees for this request. Please do not delay the processing of this request by needlessly requesting further confirmation of our unwillingness to pay fees or terminate the processing of this request for failure to provide you with such confirmation. This statement is a full and unequivocal refusal to pay *any* fees for this request.

Please ensure that, in accordance with the DC Circuit's ruling in *Chambers v. Dep't of the Interior*, 568 F.3d 998 (D.C. Cir. 2009), all records potentially responsive to this FOIA request are immediately preserved from destruction until the final resolution of this FOIA action. Destruction of potentially responsive records after the receipt of a FOIA request is considered "contumacious conduct" by the DC Circuit. *See id.* at 1004.

The CIA is required by law to respond to this request within 20 working days. Failure to timely comply may result in the filing of a civil action against your agency in a United States District Court.

We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .doc, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, NSC does not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, NSC will accept a paper copy of responsive records.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me.

Sincerely,



Kel McClanahan
Executive Director

EXHIBIT E

Central Intelligence Agency



Washington, D.C. 20505

26 May 2011

Kel McClanahan, Esq.
Executive Director
National Security Counselors
1200 South Courthouse Road
Suite 124
Arlington, VA 22204

Reference: F-2011-00682

Dear Mr. McClanahan:

This is a final response to your 26 January 2011 Freedom of Information Act (FOIA) request for **“all Central Intelligence Agency (“CIA”) records pertaining to search tools and indices available to the Office of Information Management Services (“IMS”) for conducting searches of its own records in response to FOIA requests.”** We processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 431, as amended. Our processing included a search for records as described in our 16 February 2011 acceptance letter existing through the date of that letter.

We completed a thorough search for records responsive to your request and located three documents, one of which can be released in full. Please note only sections CIA-4, CIA-6 and CIA-14 are responsive to this request. The remaining two documents can be released in segregable form with deletions made on the basis of FOIA exemption (b)(3). FOIA exemption (b)(3) pertains to information exempt from disclosure by statute. The relevant statute is the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403, as amended, e.g., Section 6, which exempts from the disclosure requirement information pertaining to the organization, functions, including those related to the protection of intelligence sources and methods, names, official titles, salaries, and numbers of personnel employed by the Agency. Copies of these documents and an explanation of exemptions are enclosed at Tab A.

As the CIA Information and Privacy Coordinator, I am the CIA official responsible for this determination. You have the right to appeal this response to the Agency Release Panel, in my care, within 45 days from the date of this letter. If you choose to do so, please include the basis of your appeal. Please note that no appeal shall be accepted for this determination if the information in question is the subject of pending federal litigation. *See* 32. C.F.R. 1900.42(c).

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Viscuso", written over a horizontal line.

Susan Viscuso
Information and Privacy Coordinator

Enclosures

EXHIBIT F

CIA Automated Declassification and Release Environment - CIA [redacted]

Page 1 of 4

ANYONE USING THIS SYSTEM EXPRESSLY CONSENTS TO MONITORING. DATA CONTAINED WITHIN THIS [redacted] MAY NOT BE SOURCED.

The accredited security level of this system is: ~~TOP SECRET~~ [redacted]

(U)CIA Automated Declassification and Release Environment

UNCLASSIFIED//~~FOUO~~

From CIA [redacted]

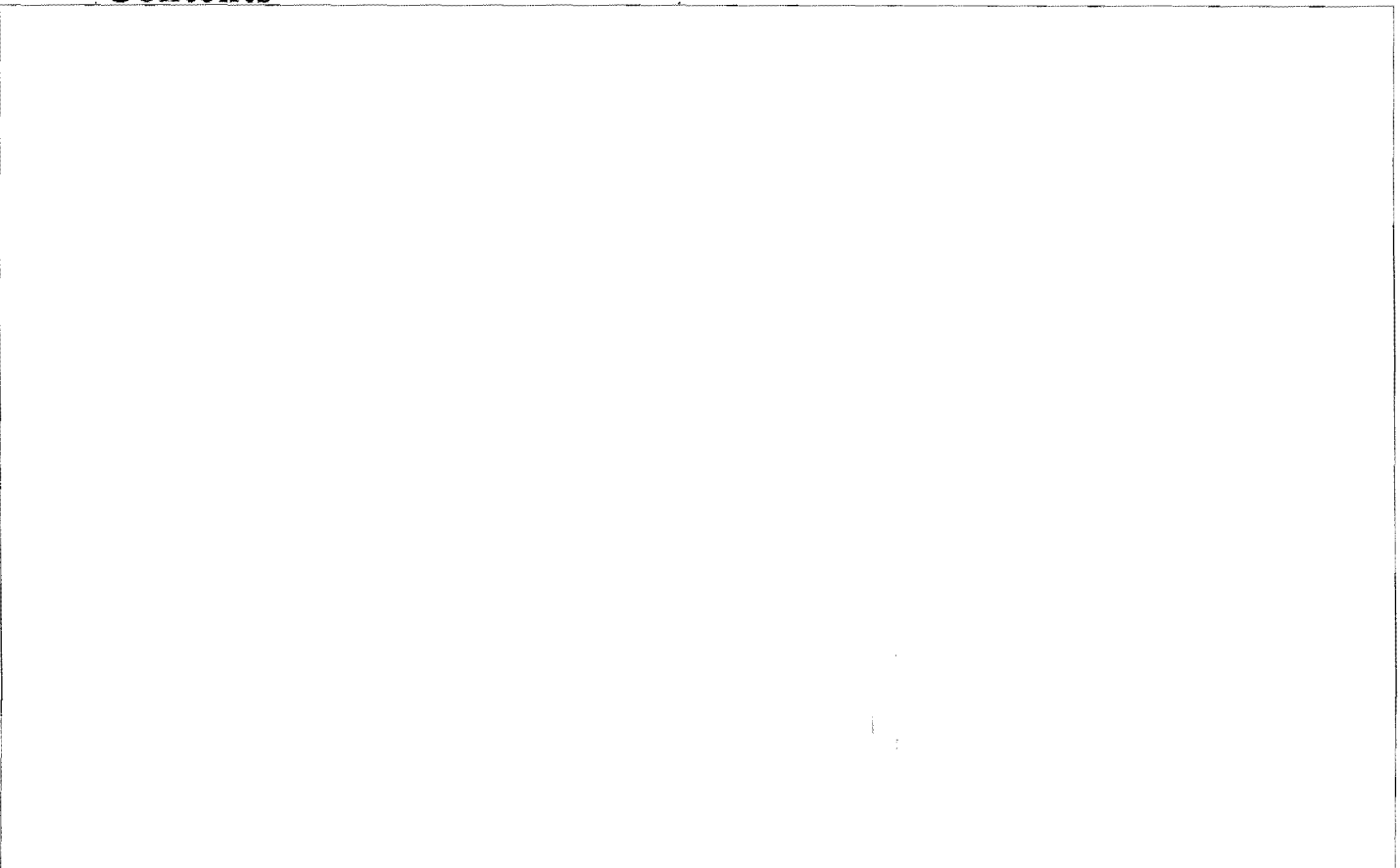
(U//~~FOUO~~) The CIA Automated Declassification Release Environment, or CADRE, supports two primary information and release business processes: Freedom of Information Act (FOIA), Executive Order 12958, Privacy Act (PA) case management and the 25-year Declassification Program, all within IRRG.

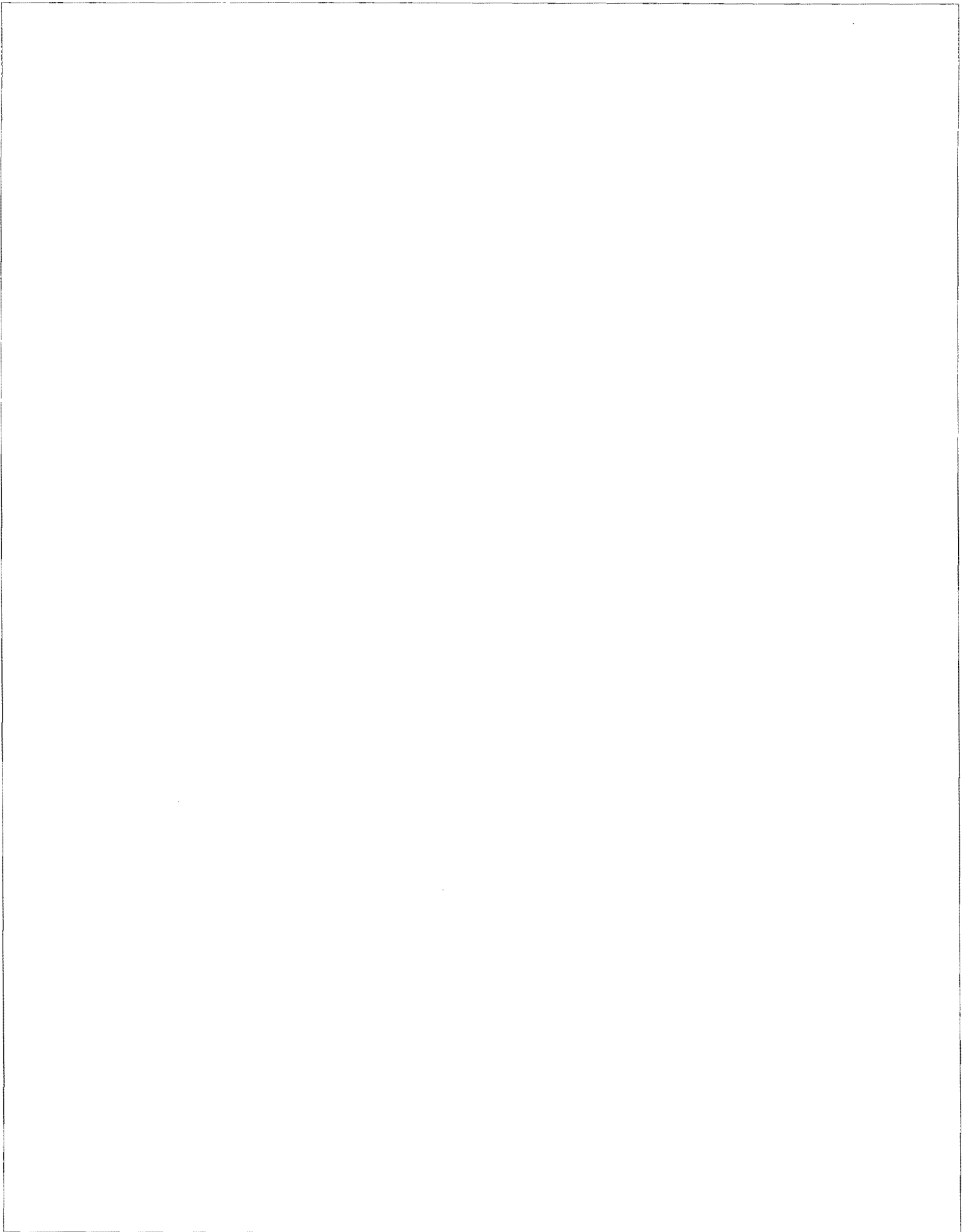
(U//~~FOUO~~) It allows users to search a single system for a document's release history, replacing three previous IRRG systems: the Image Workflow Automation System (IWAS), the Management of Officially Released Information (MORI) system, and the Electronic Records Web Interface (ERWI). It enables comparison of documents across release programs to minimize entry of duplicate documents and maximize the consistency of releases.

(U//~~FOUO~~) [redacted]

APPROVED FOR RELEASE DATE:
11-May-2011

Contents





Searching

- With Release 2.1.1, users should no longer need to put wildcards around search terms, except when they are looking for variations of a given word. The guidance provided previously was to search on '%bulgaria%' when attempting to find hits on 'bulgaria'. Users only need to use the wildcards now when they are looking for variations of Bulgaria.
- When searching using the MORI ID users will need to use the wildcard (%) after in order to retrieve expected results. If searching on the Group ID users will need to use the wildcard in front. Only searches in the format MORI ID:GROUP ID do not need wildcards to return expected results. *Remember that MORI and CADRE searches do not function the same; for Case Management, the full Case and Document picture still exists within MORI not CADRE; therefore, the same search performed in each system will produce different results.*

- The CADRE default is to show the 1st 200 hits from a given search. From the Search and Retrieval Menu select, 'File ---> Show All Results' to see all hits

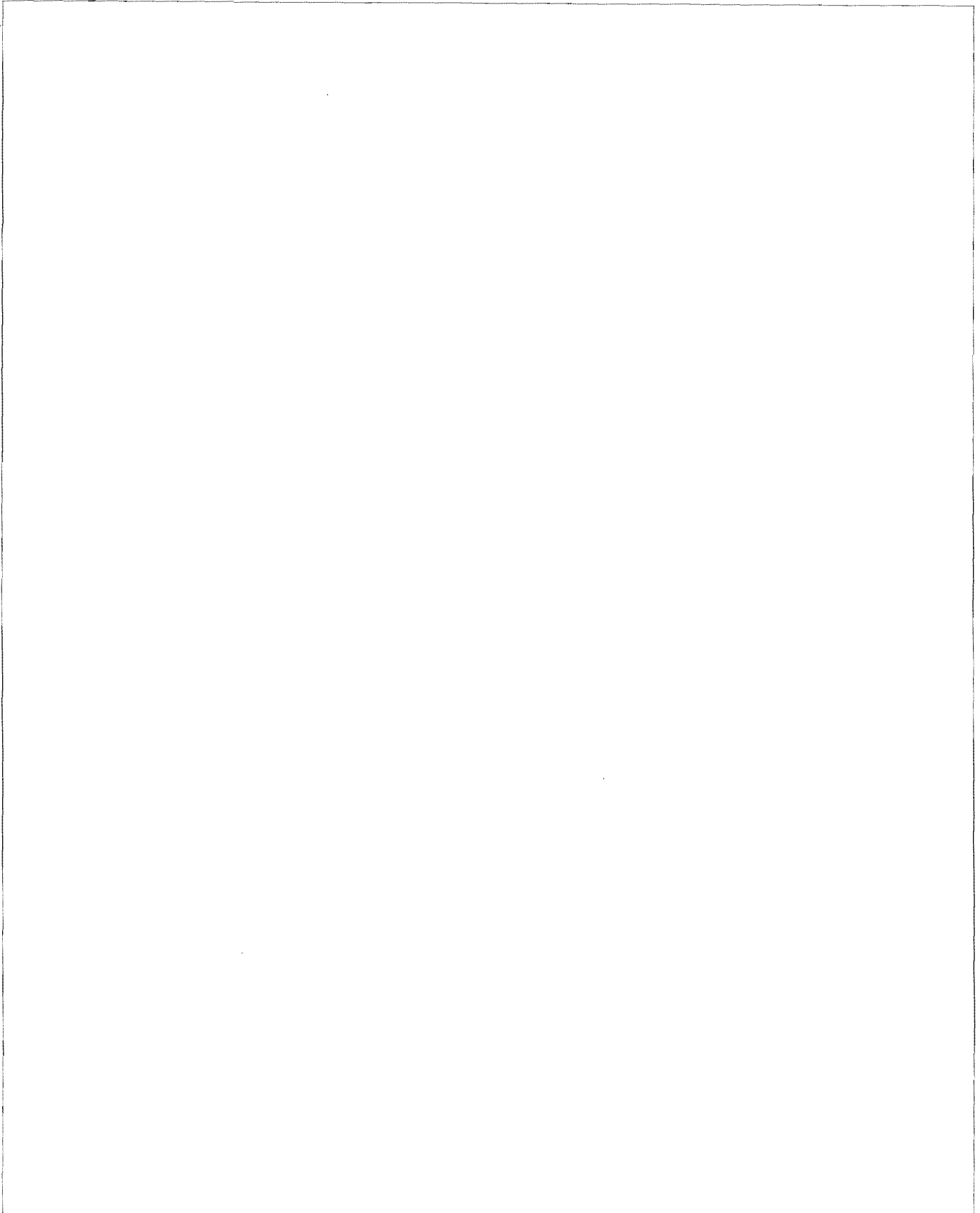


EXHIBIT G

Space Management And Retirement Tracking (Version2) - CIA

Page 1 of 4

(b)(3)
NR

ANYONE USING THIS SYSTEM EXPRESSLY CONSENTS TO MONITORING. DATA CONTAINED WITHIN THIS MAY NOT BE SOURCED.

The accredited security level of this system is: ~~TOP SECRET~~/

(U//~~FOUO~~)Space Management And Retirement Tracking (Version2)

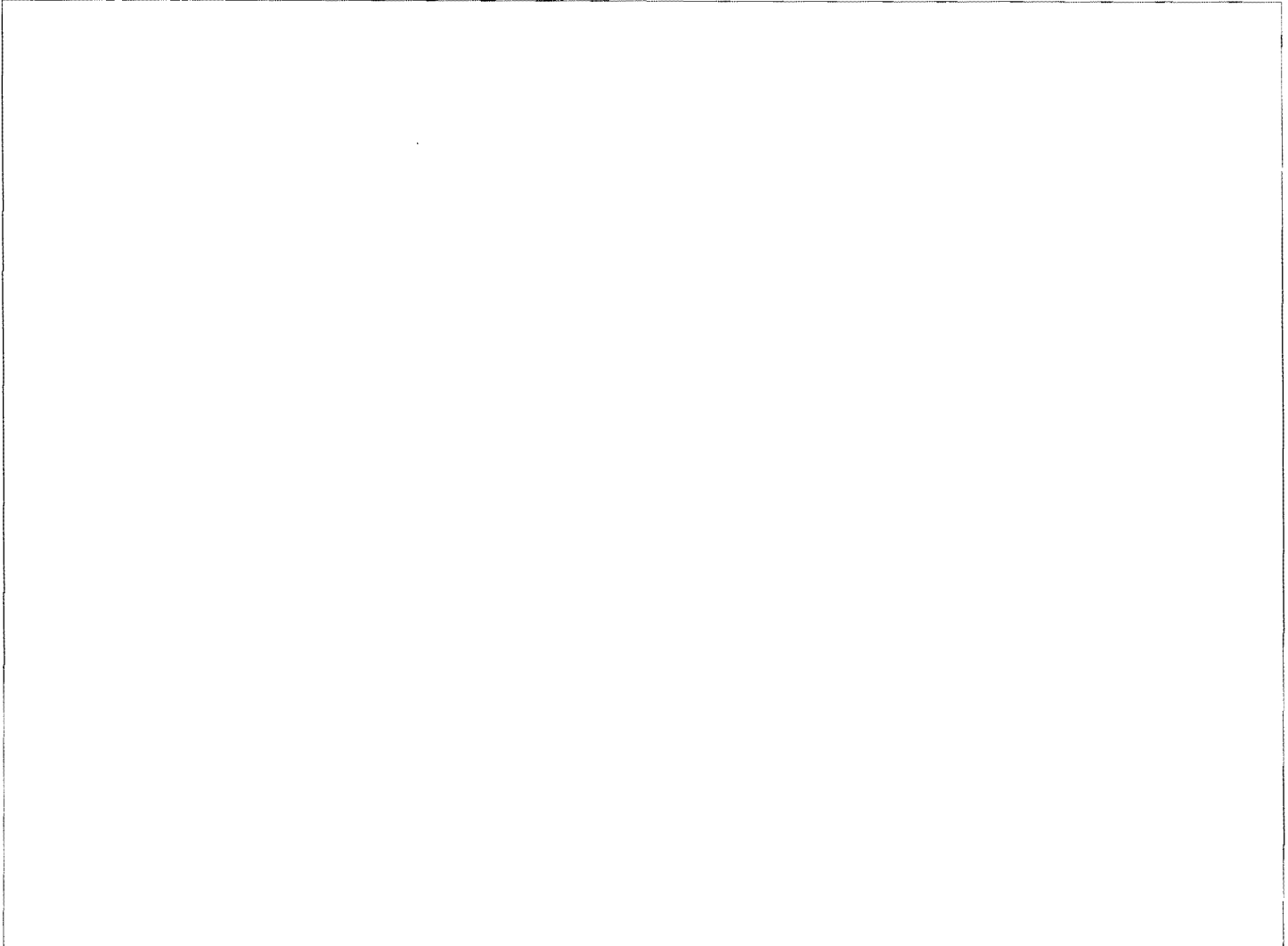
APPROVED FOR RELEASE DATE:
11-May-2011

UNCLASSIFIED//~~AFUO~~

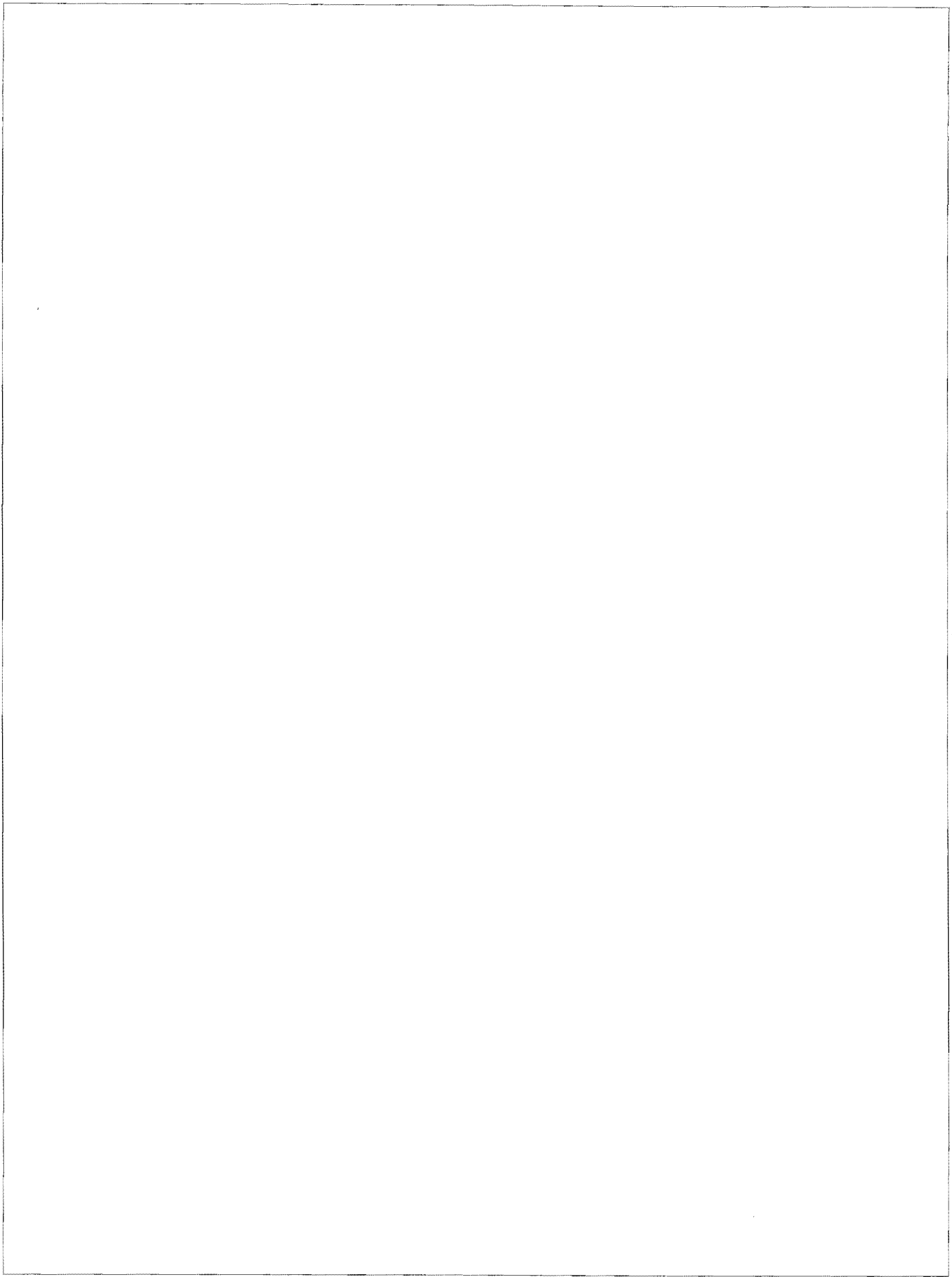
From CIA

SMART2 (Space Management and Retirement Tracking System) is a database that provides the automated inventory of records retired to the AARC. The system records pertinent information about retired records, (i.e. classification, retirement job number, box number, sequential file folder number, file folder title, inclusive dates of the material within the file folder, and disposition date.) The system is used not only for the retirement of records, but for the ability to search and retrieve records in cases of Freedom of Information Act/Privacy Act (FOIA/PA) requests, Executive Order (E.O.), and special searches from Congress or other government agencies.

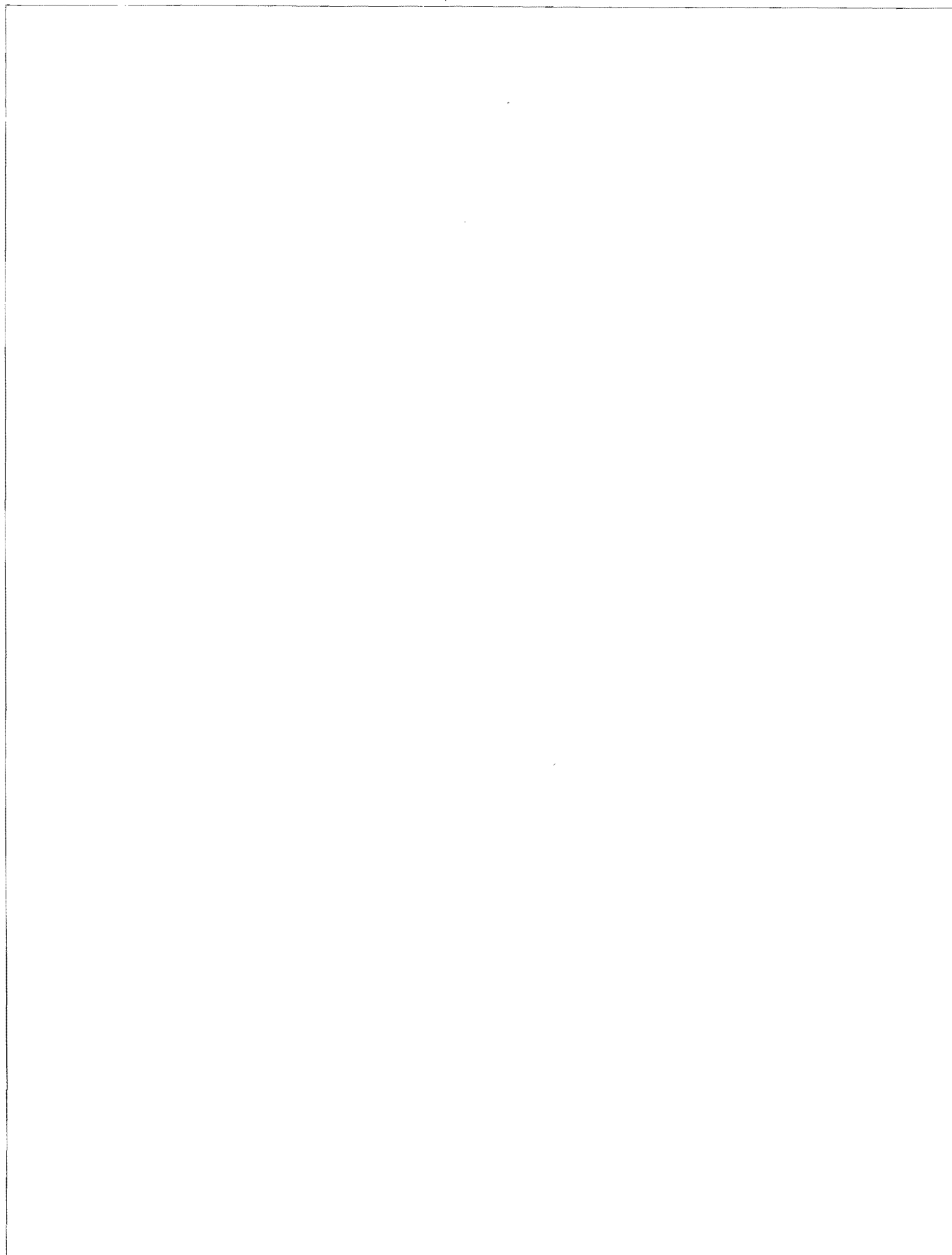
Contents



Space Management And Retirement Tracking (Version2) - CIA



Space Management And Retirement Tracking (Version2) - CIA



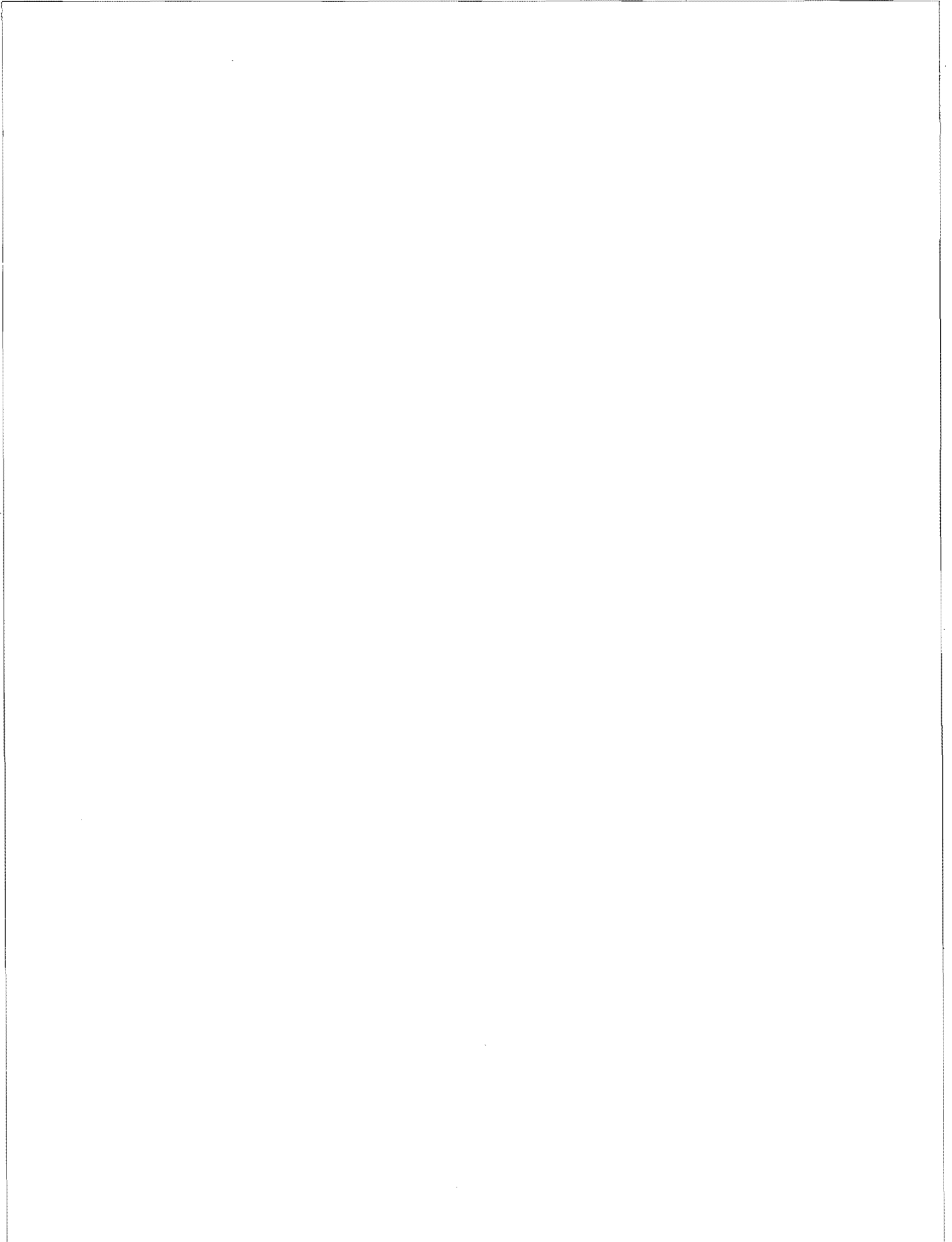


EXHIBIT H

From: [Ellington, Alicia N. \(CIV\)](#)
To: [Kel McClanahan, Esq.](#)
Cc: [Ellington, Alicia N. \(CIV\)](#)
Subject: RE: 11-442
Date: Tuesday, August 30, 2011 9:53:39 AM

Hi, Kel. I disagree with your contention that the declaration is ambiguous. In addition to the sentence you mention below stating that “no such special procedures were ever developed by the then Director of Central Intelligence,” Lutz Decl. ¶ 34; [see also](#) Lutz Decl. ¶ 35, the declaration also states that the “CIA is not reasonably able to formulate a search strategy that would locate documents that were never created,” Lutz Decl. ¶ 34.

I will communicate your position to the agency, however.

Thank you,
Nikki

A. Nicole Ellington

Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW, Room 7226
Washington, DC 20530
(202) 305-8550
(202) 616-8470 (fax)
alicia.n.ellington@usdoj.gov

From: Kel McClanahan, Esq. [<mailto:kel@nationalsecuritylaw.org>]
Sent: Monday, August 29, 2011 11:34 PM
To: Ellington, Alicia N. (CIV)
Subject: 11-442

Hi Nikki,

Quick question. The Lutz Declaration says that no special procedures were developed by “the then Director of Central Intelligence.” However, there were five Directors of Central Intelligence or Directors of the CIA that would have been responsible for developing these procedures between 1995 and 2010, when the responsibility transferred to the DNI. For instance, just because Director Deutch did not develop them when he took over after the issuance of EO 12958 would not absolve Director Tenet of the responsibility when he took over in 1997, and his failure to do so after the issuance of EO 13292 would not absolve Director Goss, and so on.

Based on our conversations on this issue, I understood you to say that *the CIA* had never developed these special procedures, but the declaration does not clearly convey that. Please confirm that neither John Deutch, George Tenet, Porter Goss, Michael Hayden, nor Leon Panetta (nor any of the Acting DCIs between them) ever developed such special procedures, and that nobody at the CIA did so in their names. If this is an accurate statement, please amend or supplement your filing. As we discussed, if you do so, I am willing to voluntarily dismiss Count 2, but I need an unambiguous filing from the CIA before I can do that. Right now it sounds like all Ms. Lutz is saying is that either John Deutch or George Tenet (it is unclear which one is the “then DCI” that is referred to, since they were

each DCI at the passage of EO 12958 and EO 13292, respectively) did not develop these procedures, but not that they were never developed, period.

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Kel McClanahan, Esq.
Executive Director
National Security Counselors

"As a general rule, the most successful man in life is the man who has the best information."
Benjamin Disraeli, 1880

"Quis custodiet ipsos custodes?" ("Who watches the watchers?")
Juvenal, Satire VI