

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

JEREMY BIGWOOD,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF
DEFENSE and CENTRAL
INTELLIGENCE AGENCY,
Defendants.

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) Civil Action No. 1:11-cv-00602-KBJ
) The Honorable Ketanji Brown Jackson
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DECLARATION OF MAJOR LISA R. BLOOM

I, LISA R. BLOOM, do hereby declare the following to be true and correct:

1. I am a military lawyer in the United States Army with the rank of Major. I presently serve as the Deputy of the Administrative Law Division within the Office of the Staff Judge Advocate, United States Southern Command (USSOUTHCOM). I have served in this position since July 2013. My duties include the management of day-to-day operations of USSOUTHCOM’s Freedom of Information Act (FOIA) program. I am also the USSOUTHCOM counsel with primary responsibility for this case. The FOIA Office, comprised of a FOIA manager and a supporting FOIA specialist, receives, processes, and responds to requests for USSOUTHCOM records under the FOIA and the Privacy Act. At the direction of my FOIA team, USSOUTHCOM personnel search Agency records systems under their control to identify documents and other information which may be responsive to individual requests. Subject matter experts within USSOUTHCOM then determine whether responsive records or portions thereof should be withheld under any applicable statutory FOIA or Privacy Act

exemptions. Upon completion of the search and redaction process, the records are forwarded to my office for review.

2. The activities of my staff are governed by the Freedom of Information of Act, 5 U.S.C. § 552 as amended by Public Law No. 110-175, 121 Stat. 2524, and Public Law No. 111-83, S564, 123 Stat. 2124, 2184; DOD Freedom of Information Act Program Regulation, found at 32 C.F.R. Part 286; DOD Directive 5400.07; “DOD Freedom of Information Act (FOIA) Program,” January 2008, as amended; DOD Directive 5400.07-R, “DOD Freedom of Information Act (FOIA) Program,” September 1998; and SOUTHCOM Regulation 27-2.

3. The statements I make in this declaration are made on the basis of my own personal knowledge, my review of files relating to this case, and information I have received in the performance of my official duties.

PLAINTIFF’S FOIA REQUESTS

4. In this action, Plaintiff seeks access, pursuant to the FOIA, 5 U.S.C. § 552, to certain records maintained by USSOUTHCOM, a component of the DOD, and the Central Intelligence Agency (CIA). Plaintiff submitted to Defendant, DOD, two FOIA requests seeking (1) records relating to the 2009 military coup d’état against then-Honduran President Manuel Zelaya, including “any observations or reports about the activities of the Honduran Armed Forces with respect to the coup – as well as the coup itself”; “any records of the passage of the kidnapped president through any military bases, such as Soto Cano – which has a significant US presence”; any reports about the “coup d’etat before it actually took place”; and “inter-agency communications to and from USSOUTHCOM, as US officers in Honduras may have been

informing other US government entities about the coup”; and (2) records relating to General Romeo Velasquez of the Honduran Army.¹

5. In accordance with the Proposed Production Schedule submitted to the Court on June 6, 2011, Defendant, DOD, produced 71 documents in response to both requests.

6. On or around September 26, 2013, Defendant, DOD, produced a second collection of 88 responsive documents to the Plaintiff. In total, DOD has produced 160 documents totaling 1,019 pages in response to Plaintiff's FOIA requests.

USSOUTHCOM'S SEARCH FOR RESPONSIVE RECORDS

7. A series of discussions between DOD and Plaintiff established that the appropriate time period for the search was from May 1, 2009 through April 21, 2011. These discussions were also the basis for the search terms that USSOUTHCOM applied. The search terms included: Coups/Coups d'états; Zelaya; Honduras 2009; Elections 2009; Zelaya's Arrest; Zelaya Resignation; Military Activities/Zelaya; Court Decisions/Zelaya; Manual Zelaya; Zelaya Exile; Zelaya Oust; Zelaya Arrest; Zelaya Removal; Honduras Coups; Romeo Vasquez; CHOD Vasquez; and General Vasquez.

8. Based on the Plaintiff's request, the search terms, and the types of materials the Plaintiff indicated he was seeking, the USSOUTHCOM FOIA office identified the Intelligence Directorate (J2), Operations Directorate (J3), Plans (J5), the Public Affairs Office (PAO), the Security Cooperation Office (SCO) at the U.S. Embassy in Tegucigalpa, Honduras, and Joint Task Force-Bravo in Comayagua, Honduras, as the directorates and units likely to have responsive documents.

¹ Dckt 1, Complaint, ¶¶ 24, 43.

9. The Intelligence Directorate, J2, was the agency most likely to have received or sent inter-agency reports concerning the subject matter of Plaintiff's request. The Operations Directorate, J3, is the USSOUTHCOM directorate tasked with responding to events in USSOUTHCOM's area of focus, including the events that form the subject matter of Plaintiff's FOIA request. The Strategy, Policy, and Plans Directorate, J5, develops mission guidance and long-range plans in response to events. The Public Affairs Office was tasked with searching for responsive documents because it may have issued news releases or received publicly available documents on the subject matter of Plaintiff's request. The Security Cooperation Office, also known as the SCO or MILGP Honduras, is located at the U.S. Embassy in Honduras and sends occasional situation reports concerning its mission; such reports may have related to the subject matter of the Plaintiff's request. Insofar as Plaintiff's request also sought information regarding Soto Cano Air Base, USSOUTHCOM's FOIA office also tasked Joint Task Force Bravo, which is located at Soto Cano Air Base, with conducting searches for responsive documents.

10. To assist in the search, USSOUTHCOM's FOIA office sent personnel to Honduras. The directorates and units were directed to conduct manual searches of their paper files, as well as electronic searches of their desktops, hard drives, shared drives, storage data bases, and Microsoft Outlook email files using the search terms described above for documents responsive to the Plaintiff's FOIA requests. Combining responses from all of the directorates and units, USSOUTHCOM produced a total of 298 pages in its first production.

11. In an effort to resolve certain concerns that Plaintiff raised about the first production of documents -- including the production of additional Intelligence Executive Highlights and inter-agency communications, USSOUTHCOM agreed to conduct further document searches.

Based on its discussions with Plaintiff, USSOUTHCOM determined that the appropriate time period for the searches was May 1, 2009 to April 21, 2011.

12. For these searches, the USSOUTHCOM FOIA office identified the J2, J3, the SCO at the U.S. Embassy in Tegucigalpa, Honduras and Joint Task Force-Bravo in Comayagua, Honduras as the directorates and units likely to have documents responsive to the Plaintiff's request. In particular, J2 was the directorate that produced the Intelligence Executive Highlights and was likely to have relevant inter-agency communications. These directorates and units conducted thorough manual searches of their paper files, as well as electronic searches of their desktops, hard drives, shared drives, storage data bases, and Microsoft Outlook email files for documents responsive to the Plaintiff's FOIA requests. These searches produced 784 pages—the second production. Combined, the two productions totaled 1019 pages, including responsive and non-responsive material.

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

14. Under DOD's FOIA regulations, when a record containing responsive information also contains non-responsive information, USSOUTHCOM is obligated to consult with the requester to seek his or her concurrence on withholding the non-responsive information. In particular, 32 C.F.R. 286.4(n), states DOD's policy for processing records containing non-responsive sections:

(n) Non-responsive information in responsive records. DoD Components shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should DOD Components desire to withhold non-responsive information, the following steps shall be accomplished:

(1) Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

(2) If the responsive record is unclassified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information which is not exempt. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempt under (state appropriate exemption(s)). Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) If the responsive record is classified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all unclassified responsive and non-responsive information which is not exempt. If the non-responsive information is exempt, follow the procedures in paragraph (n)(2) of this section. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552(b)(1), and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

32 C.F.R. § 286.4(n).

15. USSOUTHCOM informed Plaintiff that approximately three-quarters of the information is non-responsive; however, Plaintiff has not consented to USSOUTHCOM withholding this information solely on the grounds of non-responsiveness.

COORDINATION WITH OTHER AGENCIES

16. The first and second productions both contained potential equities and interests of seventeen other federal government elements/agencies, specifically from United States European Command (EUCOM); United States Northern Command (NORTHCOM); United States Pacific Command (PACOM); National Ground Intelligence Center (NGIC); Joint Task Force

Guantanamo (GTMO); United States Strategic Command (STRATCOM); Defense Intelligence Agency (DIA); National Geospatial Intelligence Agency (NGA); Office of Naval Intelligence (ONI); Air Force Office of Special Investigations (AFOSI); United States Coast Guard Intelligence Coordination Center (USCG-ICC); CIA, Department of State (DOS); Drug Enforcement Agency (DEA); Federal Bureau of Investigation (FBI); National Air Intelligence Center (NAIC); and one non-attributable agency. As a result, in accordance with DODD 5400.07-R, USSOUTHCOM referred the documents for consultation with those elements and agencies. The responses from those elements/agencies were reviewed and merged into USSOUTHCOM's final productions.

FOIA EXEMPTIONS CLAIMED

17. The 1019 pages were reviewed by the appropriate original classification authorities (OCAs) within USSOUTHCOM and by the OCAs of the other DOD elements and the other federal agencies who had equities within the documents. The various OCAs reviewed these documents to determine whether the documents are currently and properly classified, both procedurally and substantively, in accordance with Executive Order 13526, or whether the documents needed to be reclassified. The OCAs confirmed the documents were properly classified and should remain classified. Moreover, during this review, the Department of State upgraded the classification of portions of 62 records to Confidential in order to prevent the unauthorized disclosure of intelligence that could reasonably be expected to cause damage to national security.

18. No records were withheld pursuant to a *Glomar* denial.

19. Title 5 U.S.C. § 552(b)(1) states that the FOIA does not apply to matters that are:

(A) specifically authorized under criteria established by an

Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order

Portions of Documents Withheld Under 5 U.S.C. 552(b)(1)

20. As stated in the accompanying declaration of Thomas W. Geary, the 1,019 pages released to Plaintiff in this action contained information that is properly classified pursuant to section 1.4 of Executive Order 13526 and exempt from release under FOIA exemption (b)(1). The information determined to be exempt from release under FOIA exemption (b)(1) is described in further detail in USSOUTHCOM's *Vaughn* Index.

Portions of the Documents Withheld Under 5 U.S.C. § 552(b)(3)

21. Subsection (b)(3) of the FOIA permits the withholding of documents that are “specifically exempted from disclosure by statute provided that such statute . . . requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue . . .”

10 U.S.C. § 424(b)

22. The DIA is a covered organization under 10 U.S.C. § 424(b) and has asserted the 5 U.S.C. § 552(b)(3) exemption. The 10 U.S.C. § 424(b) provides in relevant part as follows:

(a) Exemption from disclosure--Except as required by the President or as provided in subsection (c), no provision of law shall be construed to require the disclosure of—

- (1) the organization or any function of an organization of the Department of Defense named in subsection (b); or
- (2) the number of persons employed by or assigned or detailed to any such organization or the name, official title, occupational series, grade, or salary of any such person.

23. Based on the information provided to me in the course of my official duties, release of the information identified in the *Vaughn* Index as being withheld under exemption (b)(3),

portions of documents have been withheld under the specific authority of 10 U.S.C. § 424, because they specifically identify the names, office affiliations, contact information, and titles of covered personnel. Release of this information would identify DIA employees and would also reveal part of the Agency's organizational structure. DIA also withheld DIA web addresses and email addresses that are intended solely for transmission on a closed-loop classified network. These email addresses are not intended for communication with members of the public. Release of this information could give computer-savvy entities with a hostile intent a tangible target and would therefore compromise the nation's cyber security efforts. DIA also withheld information that could potentially reveal sensitive agency functions. DIA also withheld the names of countries and international organizations with which DIA shared intelligence. Release of this information could compromise intelligence-sharing agreements we have with these governments and organizations, and may hinder our relations with other nations with whom we did not share the intelligence.

10 U.S.C. § 130b

24. Portions of these records were also withheld pursuant to 10 U.S.C. § 130b. That statute provides in relevant part:

The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security may, notwithstanding section 552 of title 5, authorize to be withheld from disclosure to the public personally identifying information regarding--

- (1) any member of the armed forces assigned to an overseas unit, a sensitive unit, or a routinely deployable unit; and

(2) any employee of the Department of Defense or of the Coast Guard whose duty station is with any such unit.

25. Based on the information provided to me in the course of my official duties, portions of documents have been withheld under the specific authority of 10 U.S.C. § 130b, because they specifically identify the names or other identifying information of covered personnel. Release of this information would identify members of the armed forces assigned to overseas units, sensitive units, or routinely deployable units. Withholding of this information is thus authorized under exemption 3.

50 U.S.C. § 3024(i)

26. A separate exemption (b)(3) statute, 50 U.S.C. § 3024(i) (formerly codified at 50 U.S.C. § 403-1(i)(1)), provides that “The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” DIA carries out its intelligence mission under guidance from the Director of National Intelligence. Therefore, DIA is legally obligated to withhold any intelligence sources or methods contained in their documents from release. Based on the information provided to me in the course of my official duties, release of the information identified in the *Vaughn* Index as being withheld under exemption (b)(3), portions of documents have been withheld under 50 U.S.C. § 3024, because if released, this information could potentially reveal classified sources and methods. Intelligence code words were also withheld. Release of these code words could potentially disclose the method or program in which information was collected. Additionally email addresses on classified networks of non-DIA employees were withheld under exemption (b)(3). The release of these email addresses could give computer-savvy entities with a hostile intent a tangible target and would therefore compromise the nation’s cyber security efforts.

50 U.S.C. § 3507, Section 6 of the CIA Act of 1949

27. A separate exemption (b)(3) statute, 50 U.S.C. § 3507 (formerly codified at 50 U.S.C. § 403g), provides that, “In the interests of the security of the foreign intelligence activities of the United States and in order further to implement section 3024(i) of this title that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of . . . any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.” CIA carries out its intelligence mission under guidance from the Director of National Intelligence. Therefore, CIA is legally obligated to withhold any intelligence sources or methods contained in their documents from release. Based on the information provided to me in the course of my official duties, release of the information identified in the *Vaughn* Index as being withheld under exemption (b)(3), portions of documents have been withheld under 50 U.S.C. § 3507, because if released, this information could potentially reveal classified sources and methods. Intelligence code words were also withheld. Release of these code words could potentially disclose the method or program in which information was collected. Additionally email addresses on classified networks of non-CIA employees were withheld under exemption (b)(3). The release of these email addresses could give computer-savvy entities with a hostile intent a tangible target and would therefore compromise the nation’s cyber security efforts.

Portions of the Documents Withheld Under 5 U.S.C. § 552(b)(5)

28. FOIA Exemption (b) (5) provides that FOIA does not apply to inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the agency. The CIA has reviewed the documents identified as exempt under Exemption (b) (5) on the attached Vaughn Index, and determined that they are intra-agency or inter-agency records that contain information that is protected from disclosure by the deliberative process privilege.

29. The deliberative process privilege protects “the decision making processes of government agencies.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975). “Agencies are, and properly should be, engaged in a continuing process of examining their policies; this process will generate communications containing recommendations which do not ripen into agency decisions; and the lower courts should be wary of interfering with this process.” *Id.* at 151 n.18. To protect agency deliberation, the deliberative process privilege generally protects “documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *Loving v. Dep’t of Defense*, 550 F.3d 32, 38 (D.C. Cir. 2008) (quoting *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001)). “In deciding whether a document should be protected by the privilege [courts] look to whether the document is ‘predecisional’ [–] whether it was generated before the adoption of an agency policy [–] and whether the document is ‘deliberative’ [–] whether it reflects the give-and-take of the consultative process.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

30. As detailed in the attached *Vaughn* Index, DOD has withheld information under the deliberative process privilege from pages SOUTHCOM 12-14, SOUTHCOM 89-91, and SOUTHCOM 141-142. Each of these documents is a daily Situation Report produced by the SCO at the United States Embassy in Tegucigalpa. The information contained in these documents informed deliberations of the U.S. military leadership at USSOUTHCOM concerning potential military

courses of action and likelihood of resumed military-to-military engagement with Honduras. Releasing the information would have a predictable chilling effect on U.S. relations with Honduras and would jeopardize the free and frank exchange of information between USSOUTHOM and its subordinate overseas components. Accordingly, this information is properly exempt from release under FOIA exemption b(5).

Portions of the Documents Withheld Under 5 U.S.C. § 552(b)(6)

31. Portions of documents have been withheld pursuant to exemption (b)(6), which permits withholding of “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Based on the information provided to me in the course of my official duties, portions of documents, identified in the *Vaughn* Index, have been withheld under 50 U.S.C. § 552(b)(6). Exemption 6 was used to withhold the names, phone numbers, and other contact information of USSOUTHCOM personnel. In evaluating whether to withhold this information under Exemption 6, Southcom weighed the privacy interest of the concerned individuals against the public interest in disclosure and determined that release of this information would constitute a clearly unwarranted invasion of personal privacy.

Portions of the Documents Withheld Under 5 U.S.C. § 552(b)(7)

32. Portions of documents have been withheld pursuant to exemption (b)(7) of the FOIA permits withholding of records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information meets one of the following requirements:

- (a) could reasonably be expected to interfere with enforcement proceedings,
- (b) would deprive a person of a right to a fair trial or an impartial adjudication,
- (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
- (d) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
- (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
- (f) could reasonably be expected to endanger the life or physical safety of any individual.

Exemption (b)(7) requires the records or information to be "compiled for law enforcement purposes." Information originally compiled by an agency for a law enforcement purpose does not lose exemption (b)(7) protection merely because it is maintained in or recompiled into a non-law enforcement record. Further, information not initially obtained or generated for law enforcement purposes may still qualify under exemption (b)(7) if it is subsequently compiled for a valid law enforcement purpose at any time prior to "when the Government invokes the Exemption."

Exemption (b)(7) applies to records compiled to enforce federal law, state law, and foreign law. Additionally, exemption (b)(7) applies to documents compiled for the law enforcement purpose of pursuing a "violation of federal law as well as a breach of national security." (See *Ctr. for Nat'l Sec. Studies v. DOJ*, 331 F.3d 918, 926 (D.C. Cir. 2003) (finding law enforcement threshold met by records compiled in course of investigation into "breach of this nation's

security").) Therefore, the agency's mandate to protect society and to prevent violence is reviewed in determining whether the exemption (b)(7) threshold is satisfied. Based on the information provided to me in the course of my official duties, portions of documents, identified in the *Vaughn* Index, have been withheld under 50 U.S.C. § 552(b)(7)(D) and 50 U.S.C. § 552(b)(7)(E). This includes information related to military security protocols and information supplied to the SCO in Tegucigalpa regarding the security situation of the embassy or its personnel under an implied promise of confidentiality. Release of this information could reasonably be expected to disclose the identity of a confidential source, and would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

SEGREGABILITY

33. I reviewed Attorney General Holder's memo dated 19 March 2009, which encourages agencies to make discretionary disclosures and directs agencies to segregate and release nonexempt information. The 1019 pages have been reviewed line-by-line to identify information exempt from disclosure for which a discretionary waiver of exemption could be applied. In examining all the documents withheld or partially withheld as listed and described in the *Vaughn* index every effort was made to segregate releasable material from exempt material. Nevertheless, several situations arose in which portions of this material had to be redacted in its entirety because nonexempt information was intertwined with exempt information. Portions were also withheld in their entirety because the process of redacting exempt information produced a meaningless string of words and phrases. No reasonably segregable, nonexempt portions were withheld.

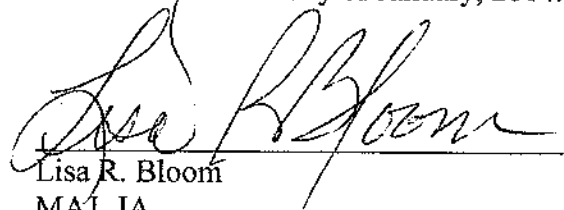
VAUGHN INDEX

34. Appended to this declaration is DOD's *Vaughn* index. It provides additional details regarding the appropriateness of DOD's exemption claims.

CONCLUSION

35. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 23rd day of January, 2014.

A handwritten signature in cursive script, appearing to read "Lisa R. Bloom", is written over a horizontal line.

Lisa R. Bloom

MAJ, JA

Deputy, Administrative Law