

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF MARTHA M. LUTZ
CHIEF OF THE LITIGATION SUPPORT UNIT
CENTRAL INTELLIGENCE AGENCY

I. INTRODUCTION

I, MARTHA M. LUTZ, hereby declare and state:

1. I am the Chief of the Litigation Support Unit of the Central Intelligence Agency ("CIA" or "Agency"). I have held this position since October 2012. Prior to assuming this position, I served as the Information Review Officer ("IRO") for the Director's Area of the CIA for over thirteen years. In that capacity, I was responsible for making classification and release determinations for information originating within the Director's Area, which includes, among other offices, the Office of the Director of the CIA, the Office of Congressional Affairs, and the Office of General Counsel. I have held other

administrative and professional positions within the CIA since 1989.

2. As the Chief of the Litigation Support Unit, I am responsible for the classification review of CIA documents and information that 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 am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order No. 13526. Because I hold original classification authority at the TOP SECRET level, 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 Executive Order 13526 and applicable regulations.

3. Pursuant to authority delegated by the Executive Director of the CIA, I also have been appointed as a Records Validation Officer ("RVO"). As a RVO, I am authorized to sign on behalf of the CIA regarding searches for records and the contents of any located or referred records that are under the cognizance of any or all CIA directorates or areas.

4. Through the exercise of my official duties, I am 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. I am submitting this declaration in support of the Motion for Summary Judgment filed by the United States Department of Justice in this proceeding.

5. The purpose of this Declaration is to explain and justify, to the greatest extent possible on the public record, the CIA's actions in responding to Plaintiff's FOIA request to the Department of Defense ("DOD") and Plaintiff's FOIA request to the CIA. I have divided this declaration into seven parts. Part II discusses Plaintiff's FOIA request to the DOD and the CIA's response to this request; Part III discusses the application of FOIA exemptions supporting the CIA's response to Plaintiff's FOIA request to the DOD; Part IV discusses Plaintiff's FOIA request to the CIA; Part V discusses the CIA's response to Plaintiff's FOIA request to the CIA in which the CIA neither confirmed nor denied the existence or nonexistence of records, known as a *Glomar* response;¹ Part VI discusses the application of FOIA exemptions supporting the *Glomar* response to Plaintiff's request, and Part VII discusses the absence of official authorized disclosures.

¹ The origins of the *Glomar* response trace back to this Circuit's decision in *Phillippi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976), which affirmed CIA's use of the "neither confirm nor deny" response to a FOIA request for records concerning CIA's reported contacts with the media regarding Howard Hughes' ship, the "Hughes Glomar Explorer."

II. PLAINTIFF'S FOIA REQUEST TO THE DOD AND THE CIA'S RESPONSE TO THIS REQUEST

6. By letter dated 1 July 2009, Plaintiff, Jeremy Bigwood, submitted a FOIA request to the DOD seeking: "all records [starting with the date May 1st, 2009 until the time of the search] relating to: The coup against Honduras' President Manuel Zelaya." During the DOD's processing of this request, the DOD identified records that potentially contained CIA equities. Accordingly, the DOD referred the identified documents to the CIA for the CIA's review.

7. In response to the DOD's referral of documents, the CIA reviewed the approximately 85 identified documents. The CIA determined that approximately 62 of the referred documents contained relevant CIA information that must be withheld from disclosure. The CIA redacted this material on the basis of FOIA exemptions (b)(1) and (b)(3), citing Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 (formerly codified at 50 U.S.C. § 403g)² (the "CIA Act") and Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024 (i)(1) (formerly codified at 50 U.S.C. § 403-1(i)(1))(the "National Security Act").

² The Office of Law Revision Counsel recently implemented an editorial reclassification of Title 50 of the U.S. Code. See <http://uscodebeta.house.gov/editorialreclassification/reclassification.html>. To avoid confusion, this declaration cites to both the current and former sections.

8. Of the approximately 62 documents that contained CIA information that must be withheld, one document was a slide titled, "Intelligence," and the remaining 61 were documents titled either "Intelligence Executive Highlights" or "Intelligence Highlights." These documents contained CIA-originated intelligence or analytical assessments derived from CIA-originated intelligence. Thus, as described in the *Vaughn* index attached to the Declaration of Lisa Bloom, the documents contain CIA information that pertains to intelligence activities, intelligence sources, and/or intelligence methods.

III. FOIA EXEMPTIONS SUPPORTING THE CIA'S RESPONSE TO PLAINTIFF'S FOIA REQUEST TO THE DOD

9. Working under my direction, Agency officers carefully examined the documents that the DOD referred for the CIA's review. These officers conducted a line-by-line review with the aim of distinguishing exempt and nonexempt information, including identifying all meaningful reasonably segregable, non-exempt information for release. The CIA asked the DOD to not release certain information based on the following FOIA exemptions.

A. Exemption (b)(1): Classified Information

10. Exemption (b)(1) provides that the FOIA does not require the production of records 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[.]” 5 U.S.C. § 552(b)(1). As explained below, I have determined that the information withheld pursuant to exemption(b)(1) in the responsive documents satisfies the substantive and procedural requirements of Executive Order 13526, which governs classification.

11. Section 1.1(a) of Executive Order 13526 provides that information may be originally classified under the terms of this order if the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage. The Executive Order also mandates that records be properly marked and prohibits the classification of records for an improper purpose.

12. Original Classification Authority: Pursuant to a written delegation of authority in accordance with Executive

Order 13526, I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification decisions. I have determined that certain records or portions of records responsive to Plaintiff's FOIA request to the DOD being withheld on the basis of exemption (b)(1) are currently and properly classified SECRET and CONFIDENTIAL.

13. U.S. Government Information: The information being withheld on the basis of exemption (b)(1) is owned by the U.S. Government, was produced by or for the U.S. Government, and is under the control of the U.S. Government.

14. Classification Categories in Section 1.4 of the Executive Order: Exemption (b)(1) is asserted in this case to protect information that concerns "foreign government information" and "intelligence activities (including covert action), [or] intelligence sources or methods," pursuant to §§ 1.4(b) and (c) of the Executive Order. These categories of information and the harm to national security that may result from their unauthorized disclosure are discussed further below.

15. Proper Purpose: I have determined that none of the information at issue has been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of

information that does not require protection in the interests of national security.

16. Marking: I have determined that the responsive documents containing information being withheld on the basis of exemption (b)(1) are properly marked in accordance with § 1.6 of the Executive Order.

17. Damage to the National Security: In this case, I have determined that certain information was properly withheld on the basis of (b)(1) because its disclosure could be expected to lead to the identification of foreign government information as well as intelligence activities, sources, and methods of the CIA within the meaning of §§ 1.4(b) and (c) of Executive Order 13526. Some information is classified as SECRET because it constitutes information the unauthorized disclosure of which could reasonably be expected to result in serious damage to national security. Some information is classified CONFIDENTIAL because it constitutes information the unauthorized disclosure of which could reasonably be expected to result in damage to national security.

18. Here, the information withheld pursuant to exemption (b)(1) pertains to the CIA's collection of foreign intelligence, its use of liaison services and other sources, and other classified intelligence methods and operational activities. Below, I provide a general description of intelligence sources,

methods, and activities and their classified nature. The classified information relating to intelligence activities, sources, and methods that is being withheld in this case is described in the *Vaughn* index attached to the Declaration of Lisa Bloom.

19. Some of the information sought by Plaintiff's FOIA request to the DOD relates to intelligence sources. One of the core functions of the CIA is to collect foreign intelligence from around the world for the President and other United States Government officials to use in formulating policy decisions. To accomplish this function, the CIA must rely on information from knowledgeable sources that the CIA can obtain only under an arrangement of absolute secrecy. Intelligence sources will rarely furnish information unless they are confident that they are protected from retribution or embarrassment by the absolute secrecy surrounding the source-CIA relationship. In other words, intelligence sources must be certain that the CIA can and will do everything in its power to prevent the public disclosure of their association with the CIA.

20. The CIA relies on clandestine human sources--often called "assets"--to collect foreign intelligence, and it does so with the promise that the CIA will keep their identities and their relationships with the CIA secret. This is because the revelation of this secret relationship could harm the individual

and inhibit the CIA's ability to collect foreign intelligence from that individual and others in the future. When a foreign national abroad cooperates with the CIA, for example, it is often without the knowledge of his or her government or organization, and the consequences of the disclosure of this relationship can be swift and far-ranging, from economic reprisals to harassment, imprisonment, or death. In addition, such disclosure may place in jeopardy the lives of every individual with whom the foreign national has had contact, including his or her family and associates.

21. Another type of CIA source is a "liaison relationship." A liaison relationship is a cooperative and secret relationship between the CIA and an entity of a foreign government. Most CIA liaison relationships involve a foreign country's intelligence or security service. Liaison relationships between the CIA and other foreign intelligence services or government entities are initiated and continued only on the basis of a mutual trust and understanding that the existence and details of such liaison arrangements will be kept in the utmost secrecy. The CIA's liaison relationships are critical and extremely sensitive. Accordingly, officially acknowledging foreign liaison information--or even the existence of a particular liaison relationship--can undermine a foreign

government's trust in the CIA's ability to protect their sensitive intelligence information.

22. Additionally, in many foreign countries, cooperation with the CIA is not a popular concept. If a foreign liaison service's cooperation with the CIA were to be officially confirmed by the CIA, then that service and government could face a popular backlash that reasonably could be expected to reduce or eliminate the information-sharing relationship with the CIA. This, in turn, reasonably could be expected to damage U.S. national security. In this case, a foreign liaison provided foreign government information, which is also classified pursuant to section 1.4(b) of Executive Order 13526. "The unauthorized disclosure of foreign government information is presumed to cause damage to the national security." Executive Order 13526 § 1.1(d).

23. Plaintiff's FOIA request to the DOD also implicates intelligence methods. Intelligence methods are the means by which an intelligence agency accomplishes its objectives. Intelligence methods must be protected in situations where a certain capability or technique or the application thereof is unknown to others, such as a foreign intelligence service or terrorist organization, which could take countermeasures. Secret information collection techniques are valuable from an intelligence-gathering perspective only so long as they remain

unknown and unsuspected. Once the nature of an intelligence method or the fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized and the CIA's ability to apply that method in other situations is significantly degraded.

24. The CIA must do more than prevent explicit references to intelligence methods; it must also prevent indirect references that would tend to reveal the existence (or non-existence) of such methods. One vehicle for gathering information about the CIA capabilities is by reviewing officially-released information. The CIA knows that terrorist organizations and other hostile groups have the capacity and ability to gather information from myriad sources, analyze it, and deduce means and methods from disparate details in order to defeat the CIA's collection efforts. Thus, even seemingly innocuous, indirect references to an intelligence method could have significant adverse effects when juxtaposed with other publicly-available data.

25. Intelligence methods include the use of human assets and liaison relationships, described above. Intelligence methods also include the CIA's selection of targets for intelligence collection or operational activities. When a foreign intelligence service or adversary nation learns that a particular foreign national or group has been targeted for

intelligence collection by the CIA, it will seek to glean from the CIA's interest what information the CIA has received, why the CIA is focused on that type of information, and how the CIA will seek to use that information for further intelligence collection efforts and clandestine intelligence activities. If terrorist groups, foreign intelligence services, or other hostile entities were to discover what the CIA has or has not learned about certain individuals or groups, this information could be used against the CIA to thwart future intelligence operations, jeopardize ongoing human sources, and otherwise derail the CIA's intelligence collection efforts. Finally, intelligence methods include specific technical capabilities and the financial resources to effectively implement those capabilities.

26. The CIA has also withheld information concerning clandestine intelligence activities, which lie at the heart of the CIA's mission. Intelligence activities refer to the actual implementation of intelligence sources and methods in the operational context. Accordingly, the discussion above of the harm to national security stemming from the disclosure of "sources and methods" applies with equal force to the disclosure of "intelligence activities." An acknowledgment of information regarding specific intelligence activities can reveal the CIA's specific intelligence capabilities, authorities, interests, and

resources. Terrorist organizations, foreign intelligence services, and other hostile groups use this information to thwart CIA activities and attack the United States and its interests. These parties search continually for information regarding the activities of the CIA and are able to gather information from myriad sources, analyze this information, and devise ways to defeat the CIA activities from seemingly disparate pieces of information.

27. Finally, some of the material being withheld would reveal information concerning U.S. foreign relations and foreign activities, the disclosure of which reasonably can be expected to harm the national security. In carrying out its legally authorized intelligence activities, the CIA engages in activities which, if officially confirmed, reasonably could be expected to cause damage to U.S. relations with affected or interested nations. Although it is generally known that the CIA conducts clandestine intelligence operations, identifying an interest in a particular matter or publicly disclosing a particular intelligence activity could cause the affected or interested foreign government to respond in ways that would damage U.S. national interests. An official acknowledgement that the CIA possesses the requested classified information could be construed by a foreign government, whether friend or foe, to mean that the CIA has operated within that country's

borders or has undertaken certain intelligence operations against its residents. Such a perception could adversely affect U.S. foreign relations with that nation.

B. Exemption (b)(3): Protected by Statute

28. FOIA exemption (b)(3) provides that FOIA does not apply to matters that are:

specifically exempted from disclosure by statute (other than section 552b of this title), if that statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld . . .

5 U.S.C. § 552(b)(3).

29. Section 6 of the CIA Act, as amended, 50 U.S.C. § 3507 (formerly codified at 50 U.S.C. § 403g) provides that the CIA shall be exempted from the provisions of "any other law" (in this case, FOIA) which requires the publication or disclosure of, inter alia, the "functions" of the CIA. Accordingly, under section 6, the CIA is exempt from disclosing information relating to its core functions, which plainly include the utilization of clandestine intelligence activities, sources, and methods. The CIA Act therefore constitutes a federal statute that "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3).

30. Here, pursuant to Section 6 of the CIA Act, and as discussed above, the CIA withheld information from the identified documents related to intelligence activities, sources, and methods. Although no harm rationale is required by exemption (b)(3), the harm to national security resulting from disclosure of the redacted information previously discussed in the context of the necessity of withholding the information under exemption (b)(1) also apply in this context.

31. Additionally, the CIA has determined that Section 102A(i)(1) of the National Security Act, as amended, 50 U.S.C. § 3024 (formerly codified at 50 U.S.C. § 403-1(i)(1)), which provides that the Director of National Intelligence "shall protect intelligence sources and methods from unauthorized disclosure" also applies to certain withheld information. As an initial matter, the National Security Act is likewise a well-recognized exemption (b)(3) withholding statute that both refers to particular types of matters to be withheld, and "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b)(3). Under the direction of the DNI pursuant to section 102A of the National Security Act, as amended, and in accordance with section 6 of the CIA Act, as amended, and sections 1.6(b) and 1.6(d) of Executive Order 12333, the DCIA is responsible for protecting CIA intelligence sources and methods from

unauthorized disclosure. Accordingly, the CIA relies on the National Security Act as well as the CIA Act to withhold information that would reveal intelligence sources and methods and their application.

IV. PLAINTIFF'S FOIA REQUEST TO THE CIA

32. By letter dated 2 December 2010, Plaintiff submitted a FOIA request to the CIA seeking: "any and all records, regardless of media concerning: the Honduran National Business Council more commonly known by its acronym COHEP (Consejo Hondureño de la Empresa Privada)." Plaintiff also specifically stated that he was "especially interested in any and all meetings between CIA officers, assets or agents and COHEP." See 2 December 2010 Letter, attached as Exhibit A.

33. By letter dated 22 December 2010, the CIA acknowledged receipt of the Plaintiff's request and assigned a tracking number, F-2011-00475. See 22 December 2010 Letter, attached as Exhibit B. In that letter, the CIA's Acting Information and Privacy Coordinator asserted a *Glomar* response, informing Plaintiff that "[i]n accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to [Plaintiff's] request." See 22 December 2010, Letter. Additionally, the letter explained, "The fact of the existence or nonexistence of requested records is currently and properly classified and is

intelligence sources and methods information that is protected from disclosure by section 6 of the CIA Act of 1949, as amended, and section 102A(i)(1) of the National Security Act of 1947, as amended. Therefore, [Plaintiff's] request is denied pursuant to FOIA exemptions (b)(1) and (b)(3)." See 22 December 2010, Letter.

34. By letter dated 27 December 2010, Plaintiff appealed this determination. See 27 December 2010 Letter, attached as Exhibit C. The CIA accepted Plaintiff's appeal by letter dated 7 January 2011--see 7 January 2011 Letter, attached as Exhibit D, and the CIA provided a final response to Plaintiff by letter dated 7 March 2011--see 7 March 2011 Letter, attached as Exhibit E. As stated in the final response, the CIA Agency Release Panel ("ARP") determined that "the CIA can neither confirm nor deny the existence or nonexistence of records responsive to [Plaintiff's] request because the 'fact of' the existence or nonexistence of records responsive to [Plaintiff's] request is currently and properly classified." See 7 March 2011 Letter.

35. On 23 March 2011, Plaintiff filed this lawsuit.

V. THE CIA'S GLOMAR RESPONSE TO PLAINTIFF'S CIA FOIA REQUEST

36. As discussed above, the CIA is charged with carrying out a number of important functions on behalf of the United States, which include, among other activities, collecting and analyzing foreign intelligence and counterintelligence. A

defining characteristic of the CIA's intelligence activities is that they are typically carried out through clandestine means, and therefore, they must remain secret to be effective. In the context of the FOIA, the CIA must carefully evaluate whether its response to a particular FOIA request could jeopardize the clandestine nature of its intelligence activities or otherwise reveal previously undisclosed information about its sources, capabilities, authorities, interests, strengths, weaknesses, resources, etc.

37. In this case, while the CIA can acknowledge that CIA information was included in the DOD's documents responsive to Plaintiff's broad FOIA request to the DOD, the CIA cannot confirm or deny whether it has any records responsive to Plaintiff's specific request to the CIA about an identified organization. Plaintiff requested "any and all records" regarding "the Honduran National Business Council more commonly known by its acronym COHEP (Consejo Hondureño de la Empresa Privada)." See 2 December 2010. Acknowledging the existence or nonexistence of records responsive to this request would expose whether the CIA maintains an intelligence interest in COHEP, and, if so, the breadth and scope of that interest. It would also reveal where the CIA does or does not operate and who its intelligence partners may be. Such a response necessarily would reveal intelligence activities, sources and methods, foreign

government information, and would also concern information about U.S. foreign relations. Moreover, no authorized United States Executive Branch official has officially acknowledged whether the CIA does or does not have an intelligence interest in COHEP. As a result, the CIA's only option is to state that it can neither confirm nor deny the existence or nonexistence of the requested records.

38. In a typical circumstance, a FOIA requester submits a request to the CIA for information on a particular subject, and the CIA responds by conducting a search of non-exempt records and advising whether responsive records were located. If records are located, the CIA provides non-exempt records or reasonably segregable non-exempt portions of records, and withholds the remaining exempt records and exempt portions of records. In this typical circumstance, the CIA's response, either to provide or not provide records sought, actually confirms the existence or non-existence of CIA records. Normally, such confirmation poses no harm to the national security. This is because the response focuses on releasing or withholding specific substantive information and the fact that the CIA possesses or does not possess such records is not itself a classified fact. Indeed, this typical process occurred in the context of Plaintiff's FOIA request to the DOD; the CIA could acknowledge that its information appeared in SOUTHCOM's

Intelligence Executive Highlights about a significant event in a foreign country without harming national security.

39. In certain circumstances, however, the fact of the existence or nonexistence of the requested records is itself classified and could reveal foreign government information, intelligence activities, intelligence sources and methods, and impact U.S. foreign relations. In those circumstances, the CIA cannot confirm that it possesses or does not possess such information. But the CIA cannot deny to the court or in legal proceedings that it does not have responsive records when in reality it does. Accordingly, the CIA's only permissible alternative is to neither confirm nor deny the existence or nonexistence of the requested records.

40. To be credible and effective, the CIA must use the *Glomar* response consistently in all responses where the existence or non-existence of requested records is itself a classified fact, including those instances in which the CIA does not possess records in response to a particular request. If the CIA were to give a *Glomar* response only when it possessed responsive records, and inform requesters when it had no records, the *Glomar* response would quickly be interpreted as an admission that responsive records exist. This practice would reveal the very information the CIA was attempting to protect, would provide a valuable advantage to terrorist organizations

and foreign intelligence services, and would jeopardize the CIA's intelligence activities worldwide.

41. In this case, the CIA asserts a *Glomar* response over Plaintiff's request to the CIA because the existence or nonexistence of CIA records about COHEP is a properly classified fact, the disclosure of which reasonably could be expected to cause serious damage to the national security. In other words, what is classified is not just potential individual documents themselves on a document-by-document basis, but also the mere fact that the CIA does or does not possess responsive records. Any response other than a *Glomar* response would acknowledge an intelligence interest, or lack thereof, in the subject matter of Plaintiff's FOIA request to the CIA and would reveal foreign government information, intelligence activities, sources and methods.

42. As stated, acknowledging the existence or nonexistence of records responsive to Plaintiff's FOIA request to the CIA would expose whether or not the CIA has an intelligence interest in the specified organization, COHEP. It would also reveal where the CIA does or does not operate and who its intelligence partners may be. For example, if the CIA acknowledged that CIA records existed about COHEP, one could infer that the CIA had an interest in COHEP and that the CIA either had sources reporting on COHEP or access to reporting concerning COHEP. Such an

acknowledgment would damage the CIA's relationships with sources and foreign liaisons; as discussed above, such relationships with sources and foreign liaisons are vital to the Agency's mission.

43. Conversely, if the CIA were to acknowledge that it has no records concerning COHEP, then foreign intelligence services could infer that the CIA has no intelligence interest in COHEP or that the CIA's efforts to collect such intelligence have failed.

44. Consequently, an official confirmation or denial of the existence or nonexistence of the requested records--which is the unavoidable result of any response other than a *Glomar* response--would reveal information that concerns intelligence activities, intelligence sources and methods, foreign government information, and U.S. foreign relations, which, in turn, reasonably could be expected to cause serious damage to U.S. national security. Accordingly, this information is coextensively exempt from disclosure pursuant to FOIA exemptions (b)(1) and (b)(3).

VI. FOIA EXEMPTIONS SUPPORTING THE CIA'S GLOMAR RESPONSE

A. Exemption (b)(1): Classified Information

45. As discussed above in the context of Plaintiff's broad FOIA request to the DOD, Executive Order 13526 governs classification. In addition to the prior explanation of the

application of exemption (b)(1) to withhold properly classified information, I note that section 3.6(a) of Executive Order 13526 specifically states that "[a]n agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors." Executive Order 13526 therefore explicitly authorizes precisely the type of response that the CIA has provided to Plaintiff in this case.

46. Moreover, consistent with sections 1.1(a) and 3.6(a) of Executive Order 13526, I have determined that the existence or nonexistence of the requested records is a properly classified fact that concerns section 1.4(c) of the Executive Order, "intelligence activities" and "intelligence sources and methods," any such records would be owned by and under the control of the U.S. Government, and the unauthorized disclosure of the existence or nonexistence of requested records reasonably could be expected to result in damage to national security.

47. My determination that the existence or nonexistence of the requested records is classified has not been made to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

B. Exemption (b)(3): Protected by Statute

48. As discussed above, the CIA Act and the National Security Act protect from disclosure, among other things, information that would reveal intelligence activities, sources, and methods. Because revealing whether the CIA has records that are responsive to Plaintiff's specific FOIA request to the CIA would reveal information related to intelligence sources and methods, the fact of the existence or nonexistence of such records is exempt from disclosure under FOIA exemption (b)(3) pursuant to both the National Security Act and the CIA Act. In contrast to Executive Order 13526, these statutes do not require the CIA to identify and describe the damage to the national security that reasonably could be expected to result should the CIA confirm or deny the existence or nonexistence of such records. Nonetheless, I refer the Court to the paragraphs above for a description of the damage to the national security should anything other than a *Glomar* response be required of the CIA in response to Plaintiff's specific FOIA request to the CIA.

VII. THE ABSENCE OF AUTHORIZED OFFICIAL DISCLOSURES

49. In the Complaint filed in this case, Plaintiff states, "Over the past several years, [COHEP] has been identified by the CIA as among the handful of 'powerful political pressure groups and leaders' in Honduras." Compl. at 13. To support this

assertion, Plaintiff cites only the CIA's publication of The World Factbook and provides its web address.

50. While the cited World Factbook website lists COHEP under the heading "Political pressure groups and leaders," the World Factbook website also makes clear that this listing was not necessarily based on information from the CIA. Indeed, the "About" page of the website states:

Information is provided by Antarctic Information Program (National Science Foundation), Armed Forces Medical Intelligence Center (Department of Defense), Bureau of the Census (Department of Commerce), Bureau of Labor Statistics (Department of Labor), Central Intelligence Agency, Council of Managers of National Antarctic Programs, Defense Intelligence Agency (Department of Defense), Department of Energy, Department of State, Fish and Wildlife Service (Department of the Interior), Maritime Administration (Department of Transportation), National Geospatial-Intelligence Agency (Department of Defense), Naval Facilities Engineering Command (Department of Defense), Office of Insular Affairs (Department of the Interior), Office of Naval Intelligence (Department of Defense), US Board on Geographic Names (Department of the Interior), US Transportation Command (Department of Defense), Oil & Gas Journal, and other public and private sources.

CIA, The World Factbook, https://www.cia.gov/library/publications/the-world-factbook/docs/contributor_copyright.html.

51. The CIA prepares the World Fact Book for the use of the federal government and, by extension, the public. It is unclassified and is published on the CIA's website, and it does not contain classified intelligence reporting. Because the World Fact Book is publicly available online and Plaintiff's

request stated that he was "especially interested in any and all meetings between CIA officers, assets or agents and COHEP," see 2 December 2010 Letter, the CIA did not consider the World Fact Book to be a record that Plaintiff was seeking. In any event, the existence of the reference in the World Fact Book does not undermine the CIA's *Glomar* response as it does not disclose the underlying information being protected by this response—namely, whether or not clandestine sources, methods, or activities have been directed at COHEP by the CIA, and whether or not the CIA has an intelligence interest in COHEP. Regardless of how the World Fact Book is viewed, the CIA has not confirmed or denied the existence of any records about COHEP beyond this reference in the World Fact Book, and, therefore, the *Glomar* response remains appropriate with respect to the existence of any *additional* records.

52. Plaintiff also asserts, "The CIA had reason to be aware of, and in fact was sent communications reflecting, COHEP's opposition to President Zelaya prior to the coup." Compl. at 13. Plaintiff rests this assertion on a citation to a "Wikileaks" document on a website. Clearly, documents from "Wikileaks" by themselves are not officially authorized and confirmed disclosures of information.

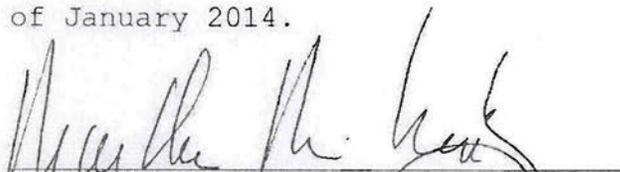
53. Plaintiff has not identified, and I am not otherwise aware of, any official and public disclosure that would

undermine the CIA's *Glomar* response. As explained above, the CIA's possession or non-possession of responsive materials, in and of itself, has independent significance and is properly classified and, consequently, is exempt from disclosure. Accordingly, the CIA's *Glomar* response is appropriate in this case notwithstanding the statements cited in Plaintiff's administrative appeal and subsequent Complaint.

* * *

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

Executed this 28th day of January 2014.



Martha M. Lutz,
Chief of the Litigation Support Unit,
Central Intelligence Agency

Exhibit A

C05617931

UNCLASSIFIED

F-11-00475

Jeremy Bigwood
Investigative Journalist and Photojournalist

3200 16th St. NW #806
Washington, DC 20010
(202) [REDACTED]
[REDACTED]@gmail.com

FREEDOM OF INFORMATION ACT REQUEST

HONDURAS: COHEP

Ms. Susan Viscuso
Acting Information and Privacy Coordinator
Office of Information Services
Central Intelligence Agency
Washington, D.C. 20505

Thursday, December 2nd, 2010

Dear Ms. Viscuso:

In my capacity as an investigative journalist, I am writing your office to request any and all records, regardless of media concerning:

the Honduran National Business Council more commonly known by its acronym COHEP (Consejo Hondureño de la Empresa Privada). I am especially interested in any and all meetings between CIA officers, assets or agents and COHEP.

I would like you to search your digital and hard copy archives from January 1st, 2009 until the time your office initiates the processing of this request.

I would like this request to be made under my "representative of the news media" status, which can be attested to by Googling my name or visiting the following Internet URL:

<http://www.inthesetimes.com/community/profile/3543/>

I agree to pay all photocopying costs in excess of 100 pages up to \$100.00. My preference, however, is to receive digital versions of these records.

If you have any questions about this request or foresee problems in fully releasing the requested records within the twenty day period, feel free to call me within that time period. I can be reached on my cell at (202) [REDACTED]. Please send the hard copies of the requested documents to the above address or

DEC 15 2010

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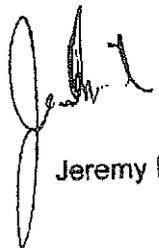
Jeremy Bigwood
Investigative Journalist and Photojournalist

3200 16th Street NW #886
Washington, DC 20010
(202) [REDACTED]@gmail.com

digitized versions to me at my e-mail which is: [REDACTED]@gmail.com.

Thank you in advance for your time and consideration.

Respectfully yours,



Jeremy Bigwood

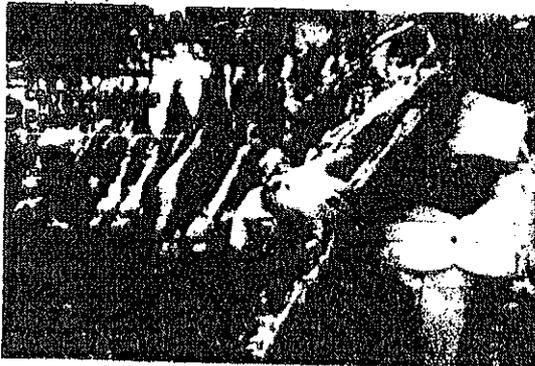
Enclosure: COHEP web pages

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CONSEJO HONDUREÑO DE LA EMPRESA PRIVADA HONDURAN NATIONAL BUSINESS COUNCIL

- Inicio
- Quiénes Somos
- Miembros
- Junta Directiva
- Noticias
- Leyes
- CIES
- Responsabilidad Social
- Comercio
- Eventos
- Publicaciones
- Enlaces
- Contactenos



Presidencia



Ing. Santiago Ruiz
Presidente del Consejo Hondureño de Empresa Privada
Período 2010- 2017

Ingreso en la Bolsa Virtual de Empleos

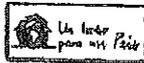
Banco de Colocación
AHIBA

Le invitamos a conocer las oportunidades de empleo que tenemos basados en su perfil.

Ingrese a la Bolsa Virtual de EMPLEOS



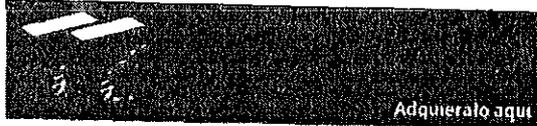
Construye con tu Empresa



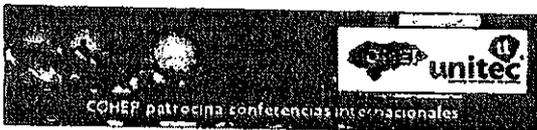
Que en navidad tus buenos deseos se construyan

Me gusta

Libros



Conferencias



Programas

COHEP Impulsa Política de Prevención del VIH/SIDA en las Empresas

Ver Boletín

Combustibles

Precios de Combustibles: Información actual sobre los precios del petróleo, diesel, keroseno y gasolina.

Detalles

Congreso Nacional de Turismo

Proceso de Selección

Proceso de Selección de los Árbitros Nacionales en materia ambiental del CAFTA-DR.

Convocatoria a Becas



CONVOCATORIA

Participa Ya!!!

Cies

CIES

Centro de Investigaciones Económicas y Sociales:
El CIES es el punto focal del COHEP para apoyar la participación activa de la empresa privada en el análisis de los asuntos estratégicos y las políticas que afectan la ruta hacia el desarrollo integral del país.

Navegación

Recent posts

C05617931

www.cohep.com

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Page 2 of 2



Monitoreo de la Conasta Básica - CITE



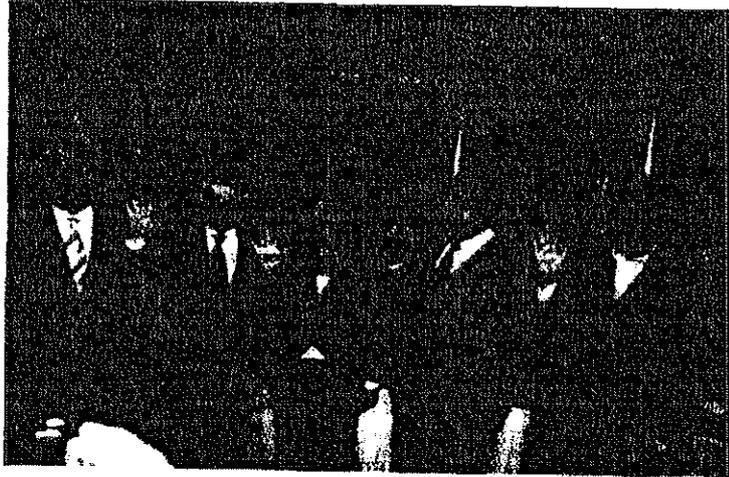
Consejo Hondureño de la Empresa Privada Copyright 2010. © Todos los derechos reservados

Consejo Hondureño de la Empresa Privada (COHEP)
Caj. Topoye, Calle Yera,
Apartado Postal 3240,
Tegucigalpa, Honduras
Tel. (504) 235-3336 Fax (504) 235-3346

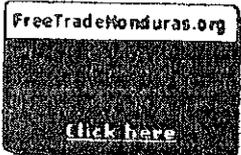
C05617931



New Board of Directors 2009-2010



- Home
- Who We Are
- Members
- Board of Directors
- CIES
- Social Responsibility
- Honduran Laws
- Trade and Commerce
- News
- Events
- Publications
- Links
- Contact Us



[vote here for Rio](#)

[Platano as a 7 wonder of the world](#)

Welcome to the Honduran National Business Council

The Honduran National Business Council (COHEP), founded in 1967, is the highest level business trade organization in Honduras. COHEP's members are 60 trade associations and chambers of commerce representing every productive sector of the Honduran economy.

COHEP is the political and technical arm of the Honduran private sector. Our organizing philosophy is that private initiative, by encouraging investment, employment and wealth creation, is the basic pillar of economic development in Honduras, and a critical support for the democratic system.

This website provides key information about COHEP's activities and members, including:

Extensive [links](#) to important national and international business and trade development websites, including resources for SME's, tariff information, and economic indicators

Our corporate social [responsibility](#) programs

Contact [information](#) for our members

Key [Honduran](#) laws relating to business and labor

Events, [publications](#), and [news](#) relating to our activities

Thank you for visiting us to learn more about our efforts to promote the economic development of Honduras.

Exhibit B

Central Intelligence Agency



Washington, D.C. 20505

22 December 2010

Mr. Jeremy Bigwood
3200 16th Street, NW #806
Washington, D.C. 20010

Reference: F-2011-00475

Dear Mr. Bigwood:

This is a final response to your 2 December 2010 Freedom of Information Act (FOIA) request, received in the office of the Information and Privacy Coordinator on 15 December 2010, for records concerning: "the Honduran National Business Council more commonly known by its acronym COHEP (Consejo Hondureño de la Empresa Privada)." We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

In accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by section 6 of the CIA Act of 1949, as amended, and section 102A(i)(1) of the National Security Act of 1947, as amended. Therefore, your request is denied pursuant to FOIA exemptions (b)(1) and (b)(3). I have enclosed an explanation of these exemptions for your reference and retention. As the Acting 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. Please include the basis of your appeal.

Sincerely,

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

Susan Viscuso
Acting Information and Privacy Coordinator

Enclosure

Exhibit C

C05622970

UNCLASSIFIED

Jeremy Bigwood
Investigative Journalist and Photojournalist

3200 16th St. NW #806
Washington, DC 20010
(202) [REDACTED]
[REDACTED]@gmail.com

FREEDOM OF INFORMATION ACT APPEAL
HONDURAS: COHEP
F-2011-00475

Ms. Susan Viscuso
Acting Information and Privacy Coordinator
Office of Information Services
Central Intelligence Agency
Washington, D.C. 20505

Monday, December 27th, 2010

Dear Ms. Viscuso:

This is an appeal of your Glomar "final response" of December 22, 2010 to my FOIA request of December 2, 2010 in which I asked for records regarding:

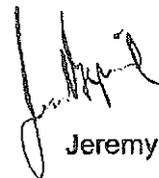
"the Honduran National Business Council more commonly known by its acronym COHEP (Consejo Hondureño de la Empresa Privada). I am especially interested in any and all meetings between CIA officers, assets or agents and COHEP.

I would like you to search your digital and hard copy archives from January 1st, 2009 until the time your office initiates the processing of this request."

I am appealing because I believe that it is highly unlikely that there aren't records of COHEP's activities that couldn't be safely released. It is these records that I seek.

Thank you in advance for your time and consideration.

Respectfully yours,



Jeremy Bigwood

Enclosure: A copy of yours of December 22, 2010.

JAN 04 2011

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20101222-HN-CIA_11-475-COHEP-Glomar.pdf

Central Intelligence Agency



Washington, D.C. 20505

22 December 2010

Mr. Jeremy Bigwood
3200 16th Street, NW #806
Washington, D.C. 20010

Reference: F-2011-00475

Dear Mr. Bigwood:

This is a final response to your 2 December 2010 Freedom of Information Act (FOIA) request, received in the office of the Information and Privacy Coordinator on 15 December 2010, for records concerning: "the Honduran National Business Council more commonly known by its acronym COHEP (Consejo Hondureño de la Empresa Privada)." We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

In accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by section 6 of the CIA Act of 1949, as amended, and section 102A(i)(1) of the National Security Act of 1947, as amended. Therefore, your request is denied pursuant to FOIA exemptions (b)(1) and (b)(3). I have enclosed an explanation of these exemptions for your reference and retention. As the Acting 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. Please include the basis of your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Viscuso".

Susan Viscuso
Acting Information and Privacy Coordinator

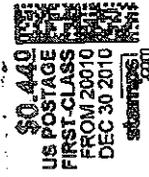
Enclosure

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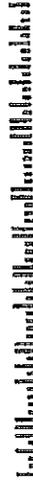
08290097703855



FOIA
or
MDR
Request



Ms. Susan Viscuso
Office of Information Services
Acting Information and Privacy Coordinator
Central Intelligence Agency
Washington DC 20505-0001



Jeremy Ringwood
3200 16th St NW, Apt 808
Washington, DC 20010

Exhibit D

Central Intelligence Agency



Washington, D.C. 20505

7 January 2011

Mr. Jeremy Bigwood
3200 16th Street, NW #806
Washington, D.C. 20010

Reference: F-2011-00475

Dear Mr. Bigwood:

We received your 27 December 2010 letter on 4 January 2011 appealing our 22 December 2010 final response to your Freedom of Information Act (FOIA) request for records concerning "the Honduran National Business Council more commonly known by its acronym COHEP (Consejo Hondureño de la Empresa Privada)." Specifically, you appealed our determination that we can neither confirm nor deny the existence or nonexistence of records responsive to your request on the basis of FOIA exemptions (b)(1) and (b)(3).

Your appeal has been accepted and arrangements will be made for its consideration by the appropriate members of the Agency Release Panel. You will be advised of the determinations made.

In order to afford requesters the most equitable treatment possible, we have adopted the policy of handling appeals on a first-received, first-out basis. Despite our best efforts, the large number of appeals the CIA receives has created unavoidable processing delays making it unlikely that we can respond within 20 working days. In view of this, some delay in our reply must be expected, but every reasonable effort will be made to respond as soon as possible.

Sincerely,

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

Susan Viscuso
Acting Information and Privacy Coordinator

Exhibit E

C05641947

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Central Intelligence Agency



Washington, D.C. 20505

MAR 07 2011

Mr. Jeremy Bigwood
3200 16th Street, NW #806
Washington, D.C. 20010

Reference: F-2011-00475

Dear Mr. Bigwood:

This responds to your 27 December 2010 letter in which you appealed our 22 December 2010 response to your Freedom of Information Act (FOIA) request for records concerning "the Honduran National Business Council more commonly known by its acronym COHEP (Consejo Hondureño de la Empresa Privada)." Specifically, you appealed our determination that we can neither confirm nor deny the existence or nonexistence of records responsive to your request on the basis of FOIA exemptions (b)(1) and (b)(3).

The Agency Release Panel (ARP) considered your appeal and determined that the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request because the "fact of" the existence or nonexistence of records responsive to your request is currently and properly classified. You may deem this response to be a denial of your request on the basis of FOIA exemptions (b)(1) and (b)(3). Therefore, in accordance with Agency regulations set forth in part 1900 of title 32 of the Code of Federal Regulations, the ARP denied your appeal. In accordance with the provisions of the FOIA, you have the right to seek judicial review of this determination in a United States district court.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Koch", written over a horizontal line.

Scott Koch
Executive Secretary
Agency Release Panel

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