

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

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

PLAINTIFF’S STATEMENT OF GENUINE ISSUES

Plaintiff, by and through his undersigned counsel, pursuant to Local Civil Rule 7(h) and in opposition to Defendants’ motion for summary judgment, responds to Defendants’ Statement of Material Facts Not in Dispute (“Defendants’ Statement”) as follows:

Plaintiff’s FOIA Request to Southcom

1. **Undisputed But Incomplete.** Plaintiff submitted two FOIA requests to the United States Southern Command (“Southcom”): one on July 1, 2009 (the “Coup d’État Request”) and one on July 8, 2009 (the “RVV Request”). Declaration of Jeremy Bigwood (“Bigwood Decl.”) ¶¶ 3, 8 & Exs. A-B.

2. **Disputed.** The Coup d’État Request sought records concerning “observations or reports about the activities of the Honduran Armed Forces with respect to the coup – as well as the coup itself. This would definitely include any records of the passage of the kidnapped president through any military bases, such as Soto Cano... [and] any reports about the impending [sic] coup d’État before it actually took place.” In addition, the Coup d’État Request specifically

sought “inter-agency communications to and from USSOUTHCOM, as US officers in Honduras may have been informing other US government entities about the coup.” Bigwood Decl. Ex. A. The RVV Request sought records concerning Honduran Army General Romeo Vásquez Velásquez. *Id.* Ex. B.

2.¹ **Undisputed But Incomplete.** Plaintiff does not dispute that Southcom FOIA personnel identified the six components listed in Defendants’ Statement as likely to have information responsive to Plaintiff’s requests. But Southcom failed to identify or search other units that were also likely to possess responsive records, including: Air Forces Southern (“AFSOUTH”); U.S. Army South (“USARSO”); U.S. Naval Forces Southern Command (“USNAVSO”); the U.S. Military Group (“MILGRP”); the National Military Command Center (“NMCC”); and certain subcomponents of Joint Task Force Bravo (“JTF-B”), including the Staff Judge Advocate (“CJA”), Army Forces Battalion (“ARFOR”), Joint Security Forces (“JSF”), Medical Element (“MEDEL”), the 1st Battalion 228th Aviation Regiment (“1-228th”), the 612th Air Base Squadron (“612th”), and the Army Support Activity command (“ASA”). Bigwood Decl. ¶¶ 27-37. Further, Southcom acknowledged the inadequacy of its initial search by agreeing to conduct additional searches, as discussed in paragraph 6 of Defendants’ Statement and below.

3. **Undisputed But Incomplete.** Plaintiff does not dispute that Southcom’s FOIA office sent personnel to Honduras. But Southcom has not identified those personnel, nor provided any evidence that the personnel who designed, supervised and/or executed either its initial search or its supplemental search were qualified to do so. Bloom Decl. ¶ 7-8; Declaration of Daniel Regard (“Regard Decl.”) ¶¶ 17, 19 (b)-(c), 25.

¹ This is the second paragraph “2” in Defendants’ Statement.

4. **Disputed.** There is no reference to any search terms in Defendants' Statement. Moreover, Southcom has not provided evidence sufficient to show the search terms used in any of its electronic searches. The Declaration of Major Lisa R. Bloom ("Bloom Decl.") provides what appears to be a partial list of search terms. Bloom Decl. ¶ 7. Defendants' counsel previously supplied a different list of search terms to Plaintiff's counsel. Declaration of Pamela Spees ("Spees Decl.") ¶ 6. Bloom attests that the terms in her Declaration were used in Southcom's initial electronic search, but does not assert that they were used consistently across all systems and databases queried. Bloom Decl. ¶ 7. There is no evidence, from any source, as to the search terms used in Southcom's supplemental electronic search. *See* Bloom Decl. 12. Nor is there any evidence, from any source, as to the systems or software on which any of Southcom's electronic searches were run, nor as to the connectors or Boolean operators, if any, used in those searches. *Id.* ¶ 12. Similarly, there is no evidence concerning the nature of the paper files that Southcom asserts it searched manually, and no evidence as to the instructions or protocols used for any of its manual searches. *Id.* ¶¶ 7, 12. Further, as noted above, Defendants have provided no evidence concerning the identity or qualifications of the personnel who designed, supervised or executed any of Southcom's searches. Regard Decl. ¶¶ 7, 8(b).

5. **Undisputed.**

6. **Undisputed But Incomplete.** Plaintiff does not dispute that Southcom agreed to conduct further document searches, and that it made a determination as to the appropriate time period. But Plaintiff did not stipulate to that time period, which was inconsistent with the specific terms of the RVV Request, which sought documents going back to 1979. Bigwood Decl. Ex. B; Spees Decl. ¶ 10 & Ex. F.

7. **Undisputed But Incomplete (first sentence)**. Plaintiff does not dispute that “Southcom’s FOIA [personnel] 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 responsive documents.” But Southcom failed to identify or search other units that were also likely to possess responsive records, including: Air Forces Southern (“AFSOUTH”); U.S. Army South (“USARSO”); U.S. Naval Forces Southern Command (“USNAVSO”); the U.S. Military Group (“MILGRP”); the National Military Command Center (“NMCC”); and certain subcomponents of Joint Task Force Bravo (“JTF-B”), including the Staff Judge Advocate (“CJA”), Army Forces Battalion (“ARFOR”), Joint Security Forces (“JSF”), Medical Element (“MEDEL”), the 1st Battalion 228th Aviation Regiment (“1-228th”), the 612th Air Base Squadron (“612th”), and the Army Support Activity command (“ASA”). Bigwood Decl. ¶¶ 27-37.

Disputed (second sentence). Southcom’s supplemental search was not thorough. Southcom failed to search all of the locations that were reasonably likely to possess responsive records. Bigwood Decl. ¶¶ 27-37. Further, Southcom’s supplemental search, like its initial search, was deficient in both its construction and its execution. Regard Decl. ¶ 4(b). Defendants have not provided evidence from which it is possible to fully understand what searches were executed or how they were executed. Regard Decl. ¶¶ 16-33. Defendant’s description of its supplemental search, in particular, is entirely cursory. Bloom Decl. ¶ 12; Regard Decl. ¶ 39. However, given the search term list provided by Major Bloom—and even assuming that those phrases were interpreted as broadly as possible by the systems on which the searches were run—Southcom’s initial and supplemental searches would still appear inadequate. *Id.* ¶ 34. Thus, the searches as described were not reasonably calculated to uncover all, or indeed

most, of the records responsive to Plaintiff's FOIA requests. *Id.* ¶ 41. The fact that Southcom's searches missed or overlooked numerous categories of documents that should have been produced—even after Plaintiff's counsel brought these deficiencies to Southcom's attention—further undercuts Defendants' assertion that its search was “thorough.” Bigwood Decl. ¶¶ 15, 21; Spees Decl. ¶¶ 11(a)-(f).

8. **Partially Disputed.** Plaintiff does not dispute that the Second Production contained 784 pages. The two productions totaled 1082 pages, not 1019 pages. Spees Decl. ¶ 4.

9. **Undisputed But Incomplete.** Plaintiff does not dispute that Southcom determined not to search any other components. But in making that determination Southcom failed to identify or search other units that were also likely to possess responsive records, including: Air Forces Southern (“AFSOUTH”); U.S. Army South (“USARSO”); U.S. Naval Forces Southern Command (“USNAVSO”); the U.S. Military Group (“MILGRP”); the National Military Command Center (“NMCC”); and certain subcomponents of Joint Task Force Bravo (“JTF-B”), including the Staff Judge Advocate (“CJA”), Army Forces Battalion (“ARFOR”), Joint Security Forces (“JSF”), Medical Element (“MEDEL”), the 1st Battalion 228th Aviation Regiment (“1-228th”), the 612th Air Base Squadron (“612th”), and the Army Support Activity command (“ASA”). Bigwood Decl. ¶¶ 27-37.

10. **Undisputed.**

10.² **Undisputed But Incomplete.** Plaintiff does not dispute that Southcom withheld portions of the documents and cited the listed exemptions as the justification for doing so. But Defendants' declarations and *Vaughn* Index fail to establish, as required by 5 U.S.C. § 552(a)(4)(B), that the cited exemptions are applicable. *See* Bloom Decl. ¶¶ 17-34; Declaration of

² This is the second paragraph 10 in Defendants' Statement.

Thomas W. Geary (“Geary Decl.”) ¶¶ 2, 5-27; *Vaughn* Index, ECF No. 25-5. As this is a legal rather than a factual issue, Plaintiff respectfully refers the Court to his Memorandum of Law in Opposition to Motion for Summary Judgment by Defendant United States Department of Defense (“Memorandum of Law”).

11. **Disputed.** General Geary, who states that he is an original classification authority, did not assume his present position until August 2013, long after Southcom’s First Production was released. Geary Decl. ¶ 1. Defendants do not identify the original classification authorities who made classification decisions on behalf of the other government agencies referred to in the first paragraph 10 of Defendants’ Statement.

12. **Disputed.** See paragraph 11, *supra*. Plaintiff does not dispute that Southcom withheld information under Exemption 1. But Defendants’ declarations and *Vaughn* Index fail to establish, as required by 5 U.S.C. § 552(a)(4)(B), that the cited exemption is applicable. *See* Bloom Decl. ¶¶ 17-34; Geary Decl. ¶¶ 2, 5-27; *Vaughn* Index, ECF No. 25-5. As this is a legal rather than a factual issue, Plaintiff respectfully refers the Court to his Memorandum of Law.

13. **Disputed But Incomplete.** Plaintiff does not dispute that Southcom withheld information under Exemption 3. But Defendants’ declarations and *Vaughn* Index fail to establish, as required by 5 U.S.C. § 552(a)(4)(B), that the cited exemption is applicable. *See* Bloom Decl. ¶¶ 17-34; Geary Decl. ¶¶ 2, 5-27; *Vaughn* Index, ECF No. 25-5. As this is a legal rather than a factual issue, Plaintiff respectfully refers the Court to his Memorandum of Law.

14. **Disputed But Incomplete.** Plaintiff does not dispute that Southcom withheld information under Exemption 3. But Defendants’ declarations and *Vaughn* Index fail to establish, as required by 5 U.S.C. § 552(a)(4)(B), that the cited exemption is applicable. *See*

Bloom Decl. ¶¶ 17-34; Geary Decl. ¶¶ 2, 5-27; *Vaughn* Index, ECF No. 25-5. As this is a legal rather than a factual issue, Plaintiff respectfully refers the Court to his Memorandum of Law.

15. **Disputed But Incomplete.** Plaintiff does not dispute that Southcom withheld information under Exemption 3. But Defendants' declarations and *Vaughn* Index fail to establish, as required by 5 U.S.C. § 552(a)(4)(B), that the cited exemption is applicable. See Bloom Decl. ¶¶ 17-34; Geary Decl. ¶¶ 2, 5-27; *Vaughn* Index, ECF No. 25-5. As this is a legal rather than a factual issue, Plaintiff respectfully refers the Court to his Memorandum of Law.

16. **Disputed But Incomplete.** Plaintiff does not dispute that Southcom withheld information under Exemption 6. But Defendants' declarations and *Vaughn* Index fail to establish, as required by 5 U.S.C. § 552(a)(4)(B), that the cited exemption is applicable. See Bloom Decl. ¶¶ 17-34; Geary Decl. ¶¶ 2, 5-27; *Vaughn* Index, ECF No. 25-5. As this is a legal rather than a factual issue, Plaintiff respectfully refers the Court to his Memorandum of Law.

17. **Disputed But Incomplete.** Plaintiff does not dispute that Southcom withheld information under Exemption 7. But Defendants' declarations and *Vaughn* Index fail to establish, as required by 5 U.S.C. § 552(a)(4)(B), that the cited exemption is applicable. See Bloom Decl. ¶¶ 17-34; Geary Decl. ¶¶ 2, 5-27; *Vaughn* Index, ECF No. 25-5. As this is a legal rather than a factual issue, Plaintiff respectfully refers the Court to his Memorandum of Law.

18. **Disputed But Incomplete.** Plaintiff does not dispute that Southcom withheld information under Exemption 7(D). But Defendants' declarations and *Vaughn* Index fail to establish, as required by 5 U.S.C. § 552(a)(4)(B), that the cited exemption is applicable. See Bloom Decl. ¶¶ 17-34; Geary Decl. ¶¶ 2, 5-27; *Vaughn* Index, ECF No. 25-5. As this is a legal rather than a factual issue, Plaintiff respectfully refers the Court to his Memorandum of Law.

Plaintiff's FOIA Request to the CIA

19-27. **No Response Required**. Plaintiff does not oppose the motion of Defendant Central Intelligence Agency for summary judgment, and therefore does not respond to the factual assertions set forth in paragraphs 19-27 of Defendants' Statement.

Plaintiff's Supplemental Statement of Material Facts

1. Plaintiff Jeremy Bigwood is a freelance investigative journalist, residing in the District of Columbia, whose work focuses in part on the involvement of the United States government in Central American political and military developments. Bigwood Decl. ¶ 2.

2. Southcom failed to respond to Plaintiff's Coup D'État Request or to Plaintiff's RVV Request for over sixteen months, despite multiple inquiries from Plaintiff. Bigwood Decl. ¶ 9. On November 29, 2010, Southcom issued an interim response to the Coup D'État Request, granting expedition and a fee waiver, and on December 16, 2010, it issued an interim response to the RVV Request. *Id.* ¶ 10 & Exs. C-D.

3. Southcom failed to provide any further response to Plaintiff's FOIA requests in December 2010 or January 2011. On February 7, 2011, Plaintiff filed an administrative appeal with respect to each request. Bigwood Decl. ¶ 11 & Exs. E-F. Southcom did not respond. *Id.*

4. On March 23, 2011, having exhausted his administrative remedies, and received no further communications from Southcom, Plaintiff filed this action. Bigwood Decl. ¶ 12.

5. Southcom made its First Production, totaling 71 documents, on June 20 and July 7, 2011, which was approximately two years after Plaintiff submitted his FOIA requests. Bigwood Decl. ¶ 12; Spees Decl. ¶ 4.

6. Plaintiff did not agree or stipulate to Southcom's search terms before Southcom made its First Production. Spees Decl. ¶ 5. Southcom informed Plaintiff that the search was

underway before this action was filed. *Id.* Plaintiff's counsel were first given a list of Southcom's search terms on September 6, 2011. Spees Decl. ¶ 6. That list was different from the list now provided in the Bloom Declaration. *Id.*

7. Southcom made its Second Production, totaling 88 documents, on September 26, 2013, more than three years after Plaintiff submitted his FOIA requests. Spees Decl. ¶ 4.

8. Plaintiff did not agree or stipulate to Southcom's search terms before Southcom made its Second Production. Spees Decl. ¶ 7. Nor would Plaintiff have been in a position to do so without information as to Southcom's databases or search methodology, which Plaintiff was not given. *Id.* at ¶ 4.

9. Plaintiff's counsel identified a number of deficiencies in Southcom's searches and communicated those concerns to Defendants' counsel in detail. Spees Decl. ¶¶ 8-9, ¶¶ 11(a)-(f), & Exs. A-K.

10. Southcom did not produce a number of documents or categories of documents that were likely within its possession and responsive to Plaintiff's requests, including: emails; communications from or to the U.S. Embassy in Tegucigalpa (other than a single cable, already known to Plaintiff, that was produced only after his counsel brought it to Southcom's attention); primary records from Soto Cano Air Base or other documents regarding the aircraft used to exile President Zelaya; Situation Reports before June 29, 2009; Headline News editions other than July 9, 2009; responsive documents described, cited or referred to as source material in the documents that were produced; documents concerning General Vásquez's historical relationship with the United States Military, including his attendance at the School of the Americas; After-Action Reports; and Joint Task Force Bravo logs earlier than July 5, 2009. Bigwood Decl. ¶¶ 14-17, 21(a)-(h); Spees Decl. ¶¶ 8-9, ¶¶ 11(a)-(f); Exs. A-K.

11. Southcom's searches, as described in Defendants' summary judgment papers, were not reasonably calculated to uncover all, or indeed most of, the records responsive to Plaintiff's FOIA requests. Regard Decl. ¶ 37.

Dated: March 18, 2014

Respectfully submitted,

|
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