

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH

Plaintiff,

v.

Civil No. 1:15-cv-00224 (TSC)

CENTRAL INTELLIGENCE AGENCY

Defendant.

PLAINTIFF'S NOTICE OF SUPPLEMENTAL EXHIBITS

The Plaintiff thanks the Court for allowing this filing of supplemental exhibits that support the Plaintiff's assertion relevant Central Intelligence Agency operational files can be searched and released under provisions within [50 USC 3141: Operational Files of the Central Intelligence Agency](#) or the CIA Information Act.¹ According to the administrative and post-complaint filing CIA correspondence so far received by the Plaintiff in this FOIA, the Defendant has not yet given due consideration as to why files covering the subject matter requested by the Plaintiff easily meet these conditions for review and release.

Under 50 U.S.C. § 3141(c) "exempted operational files shall continue to be subject to search and review for information concerning...(3) the specific subject matter of an investigation by the congressional intelligence committees, the Intelligence Oversight Board,

¹ 50 USC 3141: Operational files of the Central Intelligence Agency, [http://uscode.house.gov/view.xhtml?req=\(title:50%20section:3141%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title50-section3141\)&f=treesort&edition=prelim&num=0&jumpTo=true#amendment-note](http://uscode.house.gov/view.xhtml?req=(title:50%20section:3141%20edition:prelim)%20OR%20(granuleid:USC-prelim-title50-section3141)&f=treesort&edition=prelim&num=0&jumpTo=true#amendment-note), Office of Law Revision Council (OCLC), US House of Representatives, browsed October 31, 2015

the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of National Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.”

Plaintiff offers for the Court’s consideration the following four additional exhibits and contextualization of previously filed exhibits revealing that the specific subject matter was investigated by the US Department of Justice and the Congress in attempts to find out if there was “any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.”

Attached to this notice as Exhibit 16 is an April 22, 1976 Memorandum for the President from US Attorney General Edward Levi. It advises that because of the suspected NUMEC diversion "any persons presently employed as federal officials who may have participated in, or concealed any offense, I believe it necessary to conduct an investigation."

Attached to this notice as Exhibit 17 is a Justice Department memo dated March 3, 1976 and related correspondence about Joint Committee on Atomic Energy Chair Senator Howard H. Baker's request to AG Levi for a briefing on that investigation.

Attached to this notice as Exhibit 18 is a December 7, 1978 Memorandum from Legal Counsel to the FBI Director regarding the Justice Department task force investigation “to determine if there is any individual agency in the Government which knew about a possible violation of the Atomic Energy Act and did nothing about it.” The Justice Department's task force had by this time rejected the traditional process of working through the FBI to obtain relevant government agency files as being “too burdensome and would

unreasonably delay the inquiry of the Task Force.” This is how and why the Department of Justice ultimately came into direct possession of so many CIA files on the subject matter, as listed in the original complaint’s Exhibit 14 Memorandum to the Attorney General from Frederick D. Baron RE: NUMEC Investigation—April 25, 1979. The memo stated that the Internal Security Section investigation “completed a detailed review of thousands of CIA documents...”

On a parallel track the Government Accounting Office,² an independent nonpartisan agency that performs investigations and research for Congress—also actively investigated the NUMEC subject matter as it pertained to any impropriety, or violation of law, Executive order, or presidential directive, in the conduct of an intelligence activity. GAO did so on behalf of not just the intelligence oversight committees specifically mentioned in the CIA Information Act, but the entire Congress.

Through GAO, as indicated in Exhibit 11, Congress on August 12, 1977 chartered an investigation and received on December 18, 1978 a classified GAO report titled “Nuclear Diversion in the U.S.? 13 Years of Contradiction and Confusion.” Among the four subjects of the congressional investigation was potential conduct of intelligence activity impropriety—specifically whether weapons-grade nuclear material “was diverted to Israel by NUMEC’s management with the assistance of the CIA.”

Information released by the Defendant on August 31, 2015 in response to this FOIA complaint is attached as Exhibit 19 with center-top page numbering added by the Plaintiff as a "Release Page #" header. A review of memos and files within Exhibit 19 reveals multiple

² Legally renamed the Government Accountability Office in 2004

visits to members of Congress by CIA officials in conjunction with ongoing Congressional investigations attempting to determine whether CIA acted with impropriety as their questions make clear, as well as additional documentation of the existence of operational files and derivatives containing the subject matter sought by the Plaintiff.

Exhibit 19 (pp. 2-11) is an August 6, 1977 record of Senator John Glenn's visit with Associate Deputy Director for Operations (ADDO) Theodore Shackley. He asks, "Was there any U.S. involvement in the diversion...?" (p. 7) and "Was or is there any evidence of a conspiracy to divert nuclear materials from the U.S. to Israel?" (p. 9).

Exhibit 19 (pp. 12-15) is an August 6, 1977 record of Congressman Mike McCormack's visit with ADDO Theodore Shackley about "linkage between the CIA and NUMEC based on what he had read about the material unaccounted for issue..." McCormack inquired "Was anyone in the U.S. Government involved in the NUMEC affair (possible diversion)?" (p. 12). "If President Johnson had directed that a diversion of nuclear materials occur, would the CIA have known about it?" (p. 13)

Exhibit 19 (pp. 60-62) is an August 3, 1977 CIA memo for the record of a meeting with the House Energy Committee and Congressman John Dingell. The congressional staffers noted "various gaps in CIA's records..." (p. 61). In a section of the memo titled, "CIA Involvement in a Diversion Operation" the CIA's Carl Duckett in response to questioning "told the Congressional Staffers that he could say with certainty that CIA, as an institution, had not been involved in any kind of a nuclear materials diversion operation." (p. 63). "After Mr. Duckett finished recounting this vignette Mr. Shackley made the point that the records of the Agency substantiated Mr. Duckett's contention that the Organization was

not involved in any way in a diversion operation which might have resulted in nuclear materials going to Israel.” (p. 64).

Exhibit 19 (pp. 30-35) is an August 26, 1977 record of Congressman Morris Udall’s visit with ADDO Theodore Shackley. Representative Udall asked, “Is it possible that President Johnson, who was known to be a friend of Israel, could have encouraged the flow of nuclear materials to the Israelis?” (p. 32) and “If a diversion of nuclear materials had been authorized by the policy levels of the United States Government, how could this effort have been carried out?” (p. 32) “At the completion of his conversation with the FBI, Representative Udall indicated that he might want to return to CIA to pursue additional questions.” (p. 35).

Exhibit 19 (pp 37-40) is a December 20, 1977 CIA letter from ADDO Theodore Shackley to Senator Daniel K. Inouye, Chairman of the Senate Select Committee on Intelligence (which is not included in the release), responding to his questions about the “CIA role in this matter.” (p. 37).

Exhibit 19 (pp 76-81) lists CIA’s responses to Congressional investigators over the period May 27, 1969 to June 5, 1978 including investigators from the Joint Atomic Energy Committee and the House Intelligence Committee and other oversight committees.

Exhibit 19 (pp 125-131) clarifies that overseas operational related information exists. The CIA made it clear such information was deliberately withheld from the FBI beginning in 1968. According to a May 11, 1977 report by CIA’s Theodore Shackley, the “CIA has not furnished to the FBI sensitive agent reporting...since the decision was made by Directors

Helms, Colby and Bush that this information would not further the investigation of NUMEC but would compromise sources and methods.” (p. 130)

In the end, the Congressional investigation of the CIA for improprieties was a failure as revealed in the Exhibit 14 1978 GAO report conclusions, “From interviews with a former CIA official and with former and current officials and staff of DOE and the FBI we concluded that the CIA did not fully cooperate with DOE or the FBI in attempting to resolve the NUMEC matter....We believe a timely, concerted effort on the part of these three agencies would have greatly aided and possibly solved the NUMEC diversion questions, if they desired to do so.” However the fact of these Congressional and Justice Department investigations and their relevance is not in doubt.

On this basis the Plaintiff respectfully reasserts to the court that even after the passage of a half-decade long FOIA process, by failing to properly consider the CIA Information Act the Defendant has not yet begun to engage in a properly comprehensive search and release of subject matter responsive to Plaintiff’s Freedom of Information Act request.

Dated November 4, 2015

Respectfully submitted,

Grant F. Smith, Pro Se
4101 Davis PL NW #2
Washington, DC 20007
(202) 640-3709