IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH., Plaintiff, v. CENTRAL INTELLIGENCE AGENCY, Defendant.	Case No.: 1:15-cv-01431 (TSC)

JOINT STATUS REPORT

On August 23, 2017, the Court denied Defendant's motion for reconsideration. ECF No. 24. On September 8, 2017, the Court issued a minute order requiring the parties to submit a jointly proposed schedule for moving forward with this case. The parties have been unable to agree on a proposed schedule, and herby submit the following statements.

Defendant's Position:

In this Court's opinion denying Defendant's motion for reconsideration, this Court stated that "Defendant may supplement the record with additional information and move again for summary judgment." Order Denying Motion for Reconsideration, at 8 (Aug. 23, 2017), ECF No. 24. Defendant intends to move again for summary judgment on the basis that its *Glomar* response was proper, and will file additional information to allow the Court to determine "whether President Obama's statement constitutes an official acknowledgement of records that the CIA keeps or regularly accesses." *Id.* Defendant respectfully propose the below briefing

schedule, which will provide time for the preparation and review of a new declaration and supporting brief. [1]

- Defendant's Opening Brief: November 3, 2017
- Plaintiff's Opposition Brief: December 1, 2017
- Defendant's Reply Brief: December 22, 2017

Plaintiff states that he intends to file a forthcoming brief arguing that Defendant has committed perjury, and asking this Court to order immediate release of materials at issue in this case. *See infra*. Plaintiff has identified no basis for such a claim. Nor, in any event, would the immediate release of documents be proper; as this Court has already held, "a court's rejection of an agency's *Glomar* response only requires the agency to process the records; the rejection does not require disclosure of the records themselves." Order at 4. To the extent Plaintiff intends to put forth new evidence in support of a motion for the release of records, the proper forum would be in response to Defendant's summary judgment motion about the propriety of its *Glomar* response.

Plaintiff's Position:

Plaintiff Grant F. Smith respectfully submits the following information pertaining to the proposed schedule in compliance with Judge Tanya S. Chutkan's order issued 9/8/2017.

On 9/15/2017 Plaintiff conferred with Joseph Borson, counsel for Defendant.

Borson indicated on 9/15/2017 he will be proposing an extended, leisurely briefing

[1] While Plaintiff references his pending appeal in the D.C. Circuit of a different decision, *Grant v. Smith*, 16-cv-1610 (TSC), as a basis for an accelerated schedule, he has not identified any basis for how information sought in this case would be relevant to his appellate reply brief in another action. Moreover, in that appeal, the D.C. Circuit has denied a motion to supplement the record on the basis that the information sought to be included "was not part of the district court record and appellant has not shown that it is relevant to any issue on appeal." Order (Aug. 1, 2017), No. 17-5091 (D.C. Cir.).

schedule terminating in yet another motion for summary judgement allowing the CIA to neither confirm nor deny the existence of U.S. intelligence support to Israel. The Plaintiff leaves it to the Defendant to elaborate on any details.

As the court has already conditionally acknowledged, the existence of a secret intelligence budget has already been confirmed by President Obama, who stated in 2015 "American military and intelligence assistance, which my administration has provided at unprecedented levels, Israel can defend itself against any conventional danger." Plaintiff estimates, based on the public availability of data about past U.S. foreign aid to Israel, under the Obama parameters secret intelligence aid must total billions of dollars in addition to the $4.0 billion already given to Israel each year. The Plaintiff believes all aid has been unlawful since 1976 under the Symington and Glenn Amendments to the US Arms Export Control Act. 22 U.S. Code Chapter 39 which conditions U.S. aid to non-signatories of the Nuclear Non-Proliferation Treaty with nuclear weapons programs, like Israel. This court is familiar with those arguments having considered them in several related cases.

In September of 2015, based on President Obama's parameters, the Plaintiff drafted a news report with proposed titles to be submitted to the publishers of Antiwar.com and the *Washington Report on Middle East Affairs*. One proposed title was "Unlawful Secret CIA Aid to Nuclear Israel Costs Taxpayers Extra $1.9 Billion Per Year." However, if President Obama adjusted for inflation, the title would have to be, "Unlawful Secret CIA Aid to Nuclear Israel Costs Taxpayers Extra $13.2 Billion Per Year." Yet, under an expansive interpretation of President Obama's term "unprecedented," it could actually be much, much more. The Plaintiff believes he has made a good-faith effort to determine and verify the amount.

However, the Plaintiff's submission for publication is now two years overdue. Absent CIA confirmation of the actual top line budget amount of unlawful secret aid being funneled through the U.S. intelligence community to Israel, an amount CIA certainly has access to, the Plaintiff will not be able to obtain publication of his report, and the American public, which overwhelmingly opposes even known aid to Israel, will continue to be in the dark about the functions of government and how much more of their scarce funds are being squandered through illegal means. In the 1980's, when the public found out about the CIA's pursuit of military activities in Central America in violation of the Boland Amendments passed by Congress, the public was able to take informed action. Here, because there is no information, there can be no accountability.

The Plaintiff would also like to submit official, CIA-confirmed amounts of unlawful intelligence aid secretly given to Israel over the years as an exhibit to three judges in the US Court of Appeals for the District of Columbia Circuit. The Plaintiff is attempting to quantify the precise amount of financial harm being inflicted upon American taxpayers through the public and secret delivery of the lion's share of US foreign aid to Israel, which is ineligible to receive it under US Arms Export Control Act. 22 U.S. Code Chapter 39. The Plaintiff believes the Defendant is foreclosing upon his chances of having that case remanded to the Lower Court by the Defendant's endless 2nd and 3rd "bites of the apple" which are overcoming the Plaintiff's extremely limited resources. (See Case No 17-5091, US Court of Appeals for the DC Circuit, Appellant Brief available at: http://irmep.org/CFP/S&G/09182017_Appelant_Brief_v36.pdf). The Plaintiff only has until November 1, 2017 to reference the total amount of unlawful secret intelligence aid in

his Court of Appeals Reply Brief. Even if CIA releases it after that, Plaintiff's time consuming and expensive Appeals Court efforts will have been in vain.

As mentioned during the status conference, the Plaintiff also now believes the Defendants are engaging in "bad faith" tactics and misleading the court.

Plaintiff has completed a FOIA of the other 16 intelligence agencies the Defendants called out and suggested could be involved in delivering or knowing about intelligence aid to Israel. These intelligence organizations have almost universally been baffled by Plaintiff's FOIA requests. The Plaintiff now feels he has purposely been led on a wild goose chase, and would like to submit FOIA responses from each agency the CIA indicated could be in charge of secret intelligence aid to Israel, to this court as evidence, before the Defendants suggest any additional time-wasting shell games.

The Plaintiff also has in his possession formerly classified files of CIA operations that directly refute Defendant's repeated assurances that it engages primarily in HUMINT in this region and therefore disclosing the budget would reveal and engender operations. This is demonstrably false.

Because of these pressing issues, and the repeated deference given to the Defendants, the Plaintiff proposes an accelerated process that has an "end date" centering on his (and indirectly the public's) FOIA rights, as opposed to the Defendants obstructionism.

October 7 – 2017 – Plaintiff Information Brief: CIA has engaged in Perjury plus Proposed Order to Release Budget Data to Plaintiff

October 14 – 2017 – Defendant Response plus Order to Dismiss

October 30 – 2017 Court either orders Defendant to release information, or

dismisses the case, including finding lack of ability for courts to enforce orders upon CIA, for information it does not wish to disclose.

The Plaintiff has already informed this court that in the very recent past, the CIA upon receiving a court order to release information, knowingly destroyed the information, without consequences. See *ACLU v DOD* et al, (Case 1:04-cv-04151-AKH, DOC 472, order refusing to invoke consequences available at https://www.wired.com/images_blogs/threatlevel/2011/10/cianocontempt.pdf

Even under a court order, it is possible that the Defendant would instead engage in the equivalent burning video tapes, whatever that may be. (Moving hard drives with digital budget data offshore, onto an onshore sovereign territory, into custody of a law firm to claim "attorney client privilege," or other tactics intelligence agencies have used in the past during litigation.) Because such moves would only add insult to injury (costing US taxpayers more), the Plaintiff does not wish to precipitate them.

Based on such precedents, and the CIA's past actions, the Plaintiff is realistic about the real world, as opposed to statutory, power of any Court to compel the CIA to do anything. And the Plaintiff would accept a dismissal based on a statement that Courts in general appear to lack the power to compel the CIA to disclose information, if that is what the Court finds in its own deliberations. Plaintiff values his own time and the resources that have been entrusted in him as an agent of public accountability. He also values this Court's time, and the excessive taxpayer dollars that have been consumed in a process that has already lasted far too long. An accelerated process and final decision by October 30, 2017 would place, on a slightly more even playing field, the Defendants unlimited resources and

demands for misdirection and delay against the Plaintiff's far more limited means, but very real public obligations including reporting and Appeals Court deadlines.

DATE: September 22, 2017

Respectfully Submitted,

/s/ *Grant F. Smith*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 22, 2017, I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of electronic filing to the parties.

/s/ *Joseph E. Borson*
JOSEPH E. BORSON