

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH, *PRO SE*

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Case # 1:15-cv-01431 (TSC)

For Process Service
Grant F. Smith, IRmep
1100 H St. NW Suite 840
Washington, D.C. 20005

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,

DEFENSE INTELLIGENCE AGENCY,

NATIONAL SECURITY AGENCY,

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Defendants.

FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order the production of the Central Intelligence Agency (CIA) intelligence budget that pertains to line items supporting Israel for the years 1990-2015 which the Defendant Central Intelligence Agency has improperly withheld from the Plaintiff.

2. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

3. The Plaintiff has a legal right under FOIA to obtain the information he seeks, and there is no legal basis for the denial by Defendant of said right.

4. Plaintiff, Grant F. Smith, is an author and public interest researcher and founder of the Institute for Research: Middle Eastern Policy, Inc. (IRmep) and is the requester of the records which Defendant is now withholding. Smith's FOIA, mandatory declassification review (MDR) and Interagency Security Classification Appeals Panel (ISCAP) generated releases, research and analysis have been published in *The Washington Report on Middle East Affairs*, *The Wall Street Journal*, *Antivar.com*, *The Washington Examiner*, *Mint Press News*, *LobeLog*, the *Bulletin of the Atomic Scientists*,¹ *Military.com*, *The Jewish Daily Forward*, *Business Insider*, *Mondoweiss.net* and *Courthouse News Service*. They have been carried on broadcast outlets such as C-SPAN, public and commercial U.S. radio stations as well as foreign outlets like the BBC and RT. Plaintiff originally requested this information for use in vital public interest research into how nuclear weapons related know-how, material and technology have been unlawfully diverted into Israeli entities conducting clandestine nuclear weapons-related research and development, undermining the Nuclear Non-Proliferation Treaty, and how the Symington and Glenn Amendments to the 1961 US Foreign Assistance Act are violated by ongoing U.S. foreign assistance to Israel. He is the author of the 2012 book *Divert! NUMEC, Zalman Shapiro and the Diversion of US. Weapons-Grade Uranium into the Israeli Nuclear Weapons Program*.

¹ "Did Israel steal bomb-grade uranium from the United States?" Victor Gilinsky and Roger J. Mattson, Bulletin of the Atomic Scientists, April 17, 2014 <http://thebulletin.org/did-israel-steal-bomb-grade-uranium-united-states7056>

5. In 1996 Congressional testimony by then-Director of Central Intelligence John Deutch testified that "the President is persuaded that disclosure of the annual amount appropriated for intelligence purposes will inform the public and not, in itself, harm intelligence activities."

6. U.S. provides more foreign assistance to Israel than any other country. However only some of this massive assistance is publicly disclosed in reports to Congress and U.S. taxpayers.

7. Elected officials claim the amount of aid the U.S. provides Israel in terms of intelligence services is enormous, however taxpayers have never been allowed to review the dollar amounts over time.

8. Taxpayers cannot assess whether such assistance is well-spent and moderated or withheld in response to Israel's active ongoing espionage penetration of the United States for defense, economic, diplomatic and political intelligence, or ongoing promotion of illegal land seizures which are against longstanding U.S. foreign policy. In 2007 Israel was designated as a top espionage threat against the U.S. government according to the National Security Agency (NSA).²

9. Americans also cannot determine how many of their own tax dollars may be funding violations of their right to privacy. According to released NSA files, under an agreement the United States shares raw intelligence with Israel without proper minimization of "intercepted communications likely to contain phone calls and emails of American

² Israel Flagged as Top Spy Threat to U.S. in New Snowden/NSA Document, Jeff Stein, Newsweek, August 4, 2014

citizens. The agreement places no legally binding limits on the use of the data by the Israelis."³

10. Precedents for disclosing CIA intelligence budgets to the American people are well-established. In *FAS v. CIA*,⁴ the CIA was compelled to release its total intelligence budget after it was determined that the release would "not harm national security or otherwise harm intelligence sources and methods."⁵

11. According to public opinion polls, the majority of Americans (60.7 percent) believe the United States provides "much too much" or "too much" foreign assistance to Israel, the lead recipient.⁶

12. The Symington and Glenn amendments to the 1961 Foreign Assistance Act laws prohibit US foreign aid to any country found trafficking in nuclear weapons technology outside the Nuclear Non-Proliferation Treaty.⁷

13. In a special National Intelligence Estimate, the CIA claimed, "We believe that Israel already has produced nuclear weapons."⁸ Israel is known by the Department of Defense to have nuclear weapons infrastructure similar to that of the United States.⁹

³ "NSA Shares raw intelligence including American's data with Israel" Greenwald, Glenn, The Guardian, September 11, 2013

⁴ 1:97CV01096, 1998

⁵ CIA Discloses FY 1998 Intelligence Budget Total. Federation of American Scientists. <http://www.fas.org/sgp/foia/intel98.html>

⁶ Six in Ten Americans Say U.S. Gives "Too Much" Aid to Israel, Washington Report on Middle East Affairs, November/December 2014, pp. 32-33

⁷ "Israeli Nukes, US Foreign Aid and the Symington Amendment," <http://www.irmep.org/ILA/nukes/default.asp>

⁸ "Special National Intelligence Estimate: Prospects for Further Proliferation of Nuclear Weapons" National Security Archive, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB240/snie.pdf>

⁹ "Israel allowed for the release of a document detailing past nuclear weapons work." *The Jerusalem Post*, March 28, 2015

14. However, the Symington and Glenn Amendments are not enforced. There have neither been cutoffs of unclassified foreign aid nor has the president publicly executed waivers to allow aid continuance as allowed under the laws.

15. It is not known whether Symington and Glenn Amendment compliance has affected classified intelligence aid because the Defendant has never released such budgetary information. Americans are thus kept in the dark about how much total foreign aid to Israel costs taxpayers.

16. Secrecy about actual total U.S. aid to Israel undermines knowledge of the function of government and voter ability to advise and consent.

17. Secrecy about actual total U.S. aid to Israel undermines news reporting about the gap between public opinion and actual U.S. policy on foreign aid.

18. Secrecy about true levels of U.S. intelligence aid to Israel appear to aid and abet violations of the U.S. Foreign Assistance Act.

19. Classifying or withholding information to conceal violations of the law is forbidden.

20. Under Executive Order 13526 §3.1 it has been determined " (a) that documents may not be classified in order to (1) conceal violations of law, inefficiency or administrative error; (2) prevent embarrassment to a person, organization or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of national security."

21. Quashing warranted public disclosure and informed debate through spurious claims of secrecy undermines governance in the United States and the spirit of FOIA as

reiterated by President Obama upon entering office, "The Freedom of Information Act should be administered with a clear presumption. In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public."¹⁰

22. On March 3, 2015 the Plaintiff filed a Freedom of Information Act request for CIA's "Intelligence Support to Israel Budget 1990-2015." (Exhibit 1)

23. On April 15, 2015 the CIA confirmed receipt of the Plaintiff's FOIA request and assigned it reference number F-2015-01330. (Exhibit 2)

24. On April 15, 2015 the CIA issued a "Glomar" response that "CIA can neither confirm nor deny the existence or non-existence of records responsive to your request." (Exhibit 2)

25. The fact that the United States provides huge amounts of intelligence support to Israel is indisputable, long in the public domain and frequently mentioned by members of Congress, and President and high-level officials of federal agencies.

26. During his August address to American University about the need to ratify an

¹⁰ White House Memorandum on FOIA, January 21, 2009, http://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act

international agreement over the Iranian nuclear program, President Barack Obama stated, "But the fact is, partly due to American military and intelligence assistance, which my administration has provided at unprecedented levels, Israel can defend itself against any conventional danger—whether from Iran directly or from its proxies."¹¹

27. On May 5, 2015 the Plaintiff appealed the Defendant's denial of his FOIA, specifically detailing how increased transparency about intelligence expenditures is essential to American democracy and public evaluation of whether taxpayer dollars are being wisely spent. (Exhibit 3)

28. On May 15, 2015 the Defendant acknowledged receipt of the Plaintiff's May 5, 2015 appeal. (Exhibit 4).

29. The Defendant had 20 working days to respond to the Plaintiff's appeal under CIA's Sec. 1900.42 e. Right of appeal and appeal procedures.

30. The Defendant was required under 32 CFR 1900.33 and 1900.42 e. to inform the requester of the right to judicial review if it requested additional time, but failed to do so.

31. The 20 working day time limit the CIA had to respond to the Plaintiff's appeal expired on June 12, 2015.

32. Given the high importance of the request, public interest and due to the Defendant's failure to respond to his appeal in compliance with the applicable statutes, Plaintiff sought judicial review.

33. On May 5, 2017 Plaintiff filed a FOIA with the DNI, DIA and NSA and others

¹¹ Remarks by the President on the Iran Nuclear Deal, American University, August 5, 2015
<https://www.whitehouse.gov/the-press-office/2015/08/05/remarks-president-iran-nuclear-deal>

seeking the same information as sought from the CIA. (Exhibit 5).

34. On June 5, 2017, the NSA issued a GLOMAR Response, which the Plaintiff Appealed on June 12, 2017, and the NSA denied on September 12, 2017. (Exhibit 6).

35. On July 20, 2017 the DIA acknowledged the FOIA, and assigned it case number FOIA-0454-2017. On October 20, 2017 DIA indicated it had placed the FOIA in a track that would take several years to process. (Exhibit 7).

36. On June 2, 2017 ODNI issued a GLOMAR response. On July 29, 2017 Plaintiff appealed, but ODNI did not issue a timely response. (Exhibit 8)

WHEREFORE, Plaintiff requests this Court:

- (1) Declare the Defendants' failure to comply with FOIA to be unlawful;
- (2) Order the Defendants' to disclose the requested records in their entirety and make copies promptly available to him;
- (3) Award Plaintiff costs in this action, as provided in 5 U.S.C. § 552(a)(4)(E);
- (4) Award attorney's fees if such assistance is later engaged in this action as provided in 5 U.S.C. §552(a)(4)(E) and
- (5) Grant such other and further relief as may deem just and proper.

Respectfully submitted,



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Date: December 1, 2017