IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH, *PRO SE*	)	
Plaintiff,	)	
vs.	)	
UNITED STATES	)	
DEPARTMENT OF TREASURY	)	Case: 17-1796
UNITED STATES	)	**Oral Argument Requested**
OFFICE OF PERSONNEL MANAGEMENT	)	
	)	
Defendants.	)	

MOTION FOR MISTRIAL OR DISMISSAL WITHOUT PREJUDICE

The original Freedom of Information Act, 5 U.S.C. § 552 requests which necessitated this court action originally had timely, noble and important research objectives. Unfortunately, the perfidy of responding agencies, lack of due agency abidance to statutory response deadlines in the administrative phase and delayed, grudging release of data after this complaint was filed that was often unusable, combined with the passage of time have rendered those original noble objectives moot.

Under 5 U.S.C. § 552, all federal agencies are required to respond to a FOIA request within 20 business days, unless there are "unusual circumstances." Defendant OPM should have responded to Plaintiffs FOIA within 20 working days and entered into a back-and-forth dialogue about available records. This could have opened up an avenue for Plaintiff to

acquire requested records by narrowing, triangulating, anonymizing and/or omitting requests for certain data fields even as Plaintiff pursued his parallel request with Treasury.

Instead, OPM refused to acknowledge Plaintiff's initial FOIA request for nearly a decade. (ECF 44-5). OPM never released a FOIA tracking number to Plaintiff although it internally generated one (#2013-00406). (ECF 44-5). In short, OPM completely thwarted the letter of the law and spirit of FOIA.

At the judicial level, this court also stymied the letter of the law and spirit of FOIA and became "stuck" when it found for on March 31, 2019 Defendants' motion for summary judgement. No memorandum of points of law substantiating the legal reasoning for the finding were issued for a year. Plaintiff was left casting about for something to respond to as the purposes driving the FOIA sunset. Only the filing of a judicial complaint finally dislodged what appeared to be a hastily written filing, leading to subsequent attempts to compel abidance by 5 U.S.C. § 552.

This entire process has been a complete tragedy in terms of due process. That tragedy would be further compounded if any portion of it were to guide as a precedent other FOIA transparency initiatives. It wasn't always this way, and it didn't have to end up like this. (See Exhibit 1).

Plaintiff therefore requests that the present action be declared a mistrial and terminated without prejudice. Or, failing that, that it be dismissed without prejudice so that Plaintiff may regroup and begin anew to seek transparency and accountability through FOIA that Americans deserve, in a less compromised venue.

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Exhibit 1

Five Things You Can't Know About Israel and Its Lobby

DC FOIA court curtails releasable information

by Grant Smith Published onJanuary 17, 2020 at Antiwar.com

Since 9/11 Israel and its lobby have been hard at work narrowing U.S. policy options toward Iran down to military confrontation. The United States District Court for the District of Columbia is also in the narrowing business. After initially complying with the Freedom of Information Act (FOIA) and releasing information about Israel's extensive nuclear weapons program in 2015, the court of Judge Tanya S. Chutkan slowly became yet another federal cog in vast secrecy machine that thwarts release of information about Israel. That withheld information includes CIA files on the theft and diversion of US government owned weapons grade uranium into Israel's nuclear weapons program. Top-line budget numbers for billions in secret US intelligence support to Israel. Portions of a 2012 Obama administration gag order outlawing release of US government information about Israel's nuclear weapons program. Presidential letters promising Israel that the White House will not uphold the Treaty on the Non-Proliferation of Nuclear Weapons and Arms Export Control Act. Also retained are the identities of officials working at the Office of Terrorism and Financial Intelligence at the US Department of Treasury.

It didn't start out this way.

In 2015 Israel and its US lobby were pushing for US attacks on Iran's nuclear facilities and against the Iran nuclear deal (the JCPOA) which was aimed at averting such attacks. US District Judge Tanya S. Chutkan's order that the Department of Defense had to release a 1987 study titled "Critical Technology Assessment in Israel and NATO Nations" about Israel's extensive nuclear weapons production facilities, misuse of US civilian nuclear support supplied under the Atoms for Peace program, and Israel's secret work on hydrogen bomb development helped undercut the Israeli war narrative. The report finally entering the public domain provided long missing context that Israel, not Iran, is the Middle East's leading state sponsor of clandestine nuclear weapons development, proliferation and related foreign espionage.

The Nation Magazine featured a story on the stunning release of the report, while the now defunct neoconservative *Weekly Standard* deemed it a "shocking breach" that the Obama administration had dared to defy Israel and its lobby's mandate that official US government information about the Israeli nuclear weapons program may never, ever be released to Americans.

Later in 2015 Judge Chutkan seemed slightly less eager to allow any court-ordered release of thousands of files on how Israeli spies – in collaboration with Pittsburgh area US Zionist organization leaders – conducted an illegal diversion of US government-owned bomb grade nuclear material from the Nuclear Materials and Equipment Corporation (NUMEC) in Apollo, Pennsylvania. The material wound up in Israel's Dimona nuclear weapons production facility. Enough pressure was brought to bear that the CIA released classified evidence about how it had thwarted two FBI investigations into the caper by failing to share intelligence. CIA released a small number of documents from the CIA's thousands of NUMEC files. Today the toxic site of the defunct NUMEC smuggling front is undergoing a $350 million cleanup funded by US taxpayers. Those taxpayers may never learn the full story of that sloppily run plant that CIA officials dubbed "an Israeli operation from the beginning."

On August 20, 2019 Chutkan reversed herself after initially ruling that President Obama had officially acknowledged that the US had a secret budget for intelligence support for Israel. Such acknowledgment should have availed members of the public the right to know precisely how much more Israel receives in secret taxpayer-funded support, beyond the lion's share of the publicly known US foreign assistance budget already going to Israel. Release of intelligence support to Israel likely would have added billions to the publicly known $282.4 billion Israel has received in foreign assistance since 1948. As a clandestine nuclear power, Israel is ineligible for any US foreign assistance under the Arms Export Control Act, absent waivers and public congressional notifications which have never taken place. Knowing the amount of secret intelligence aid would help Americans understand the total amount unlawfully leaving the US Treasury each year. But after initially "hammering the CIA on request for Israel records" Chutkan – an Obama appointee – finally wavered and then backed down on demands for release of the intelligence budget.

On September 30, 2019 the court ruled that the public also may not see the full, uncensored version of a gag order masquerading as a classification guideline. WNP-136 forbids all federal employees and contractors from publicly acknowledging what Americans and the world already know – that Israel has long had a nuclear weapons program. The only function of this secrecy guideline is providing cover for the White House and federal agencies skirting the laws specifically banning US foreign aid to the non-NPT nuclear state. Releasing the full text of the gag order would also help Americans understand how power really works in Washington. But Chutkan's court ruled even though other classification guidelines are in the public domain, the key provisions in the Israel nuclear gag order should remain secret along with details about how it came into being. Rather than allow official acknowledgment by other US federal agencies that Israel is a nuclear weapons state outweigh demands for secrecy, the Chutkan court ruled that the Department of Energy or US Department of State would have had to issue their own acknowledgments for WNP-136

to be releasable. The CIA long ago classified Israel as a nuclear power but this was deemed to be irrelevant by Judge Chutkan.

On November 27, 2019 Chutkan's court decided that certain secret presidential letters may never be released to the American public. Four US presidents under secret pressure by Israel lobbyists and Israeli government officials early in their presidential administrations each formally pledged not to uphold provisions in the Arms Export Control Act or NPT over Israel. Like WNP-136 these secret letters enabled the illegal transfer of at least $100 billion in publicly known foreign aid for which Israel was ineligible. Ordering the release of one or more of the letters would reveal how power really works, and how abidance to laws (again, the Arms Export Control Act) may be set aside if enough foreign lobbyists are able to secretly pile on the President at vulnerable moments. Most Americans cannot preemptively set aside the enforcement of laws through such suspect maneuvers. They deserve to see how premeditated lawbreaking functions when their tax dollars and laws passed by their congressional representatives are in play. The Chutkan court was unwilling to avail the American public of even a single letter. Instead, it accepted the affidavits of a highly compromised former National Archives and Records Administration (NARA) government classification bureaucrat who had moved to the National Security Council. From that perch, he issued denials as a "neutral" classification authority on letters held in NARA presidential libraries.

Americans are also not allowed to know the identities of employees at a relatively new Department of Treasury unit called the Office of Treasury and Financial Intelligence (OTFI). The creation of this unit was a success of the lobbying division (the American Israel Public Affairs Committee, or AIPAC) of a designated Israeli foreign agent ordered to register as such by the Justice Department in 1962 (the AZC). Few Americans know AIPAC's true origin story or about the failure of the Department of Justice to enforce FARA that allows AIPAC to operate despite continual espionage scandals.

As could be expected, the OTFI's observable activity is almost entirely the conduct of economic warfare against Israel's rivals from within Treasury. While claiming to work to counter nuclear proliferation, it carefully avoids sanctioning or even listing known Israeli nuclear smugglers identified by the FBI and DHS. That includes Israeli Prime Minister Benjamin Netanyahu and self-confessed Israeli spy and arms dealer Arnon Milchan, who owned the front companies used in the infamous "Project Pinto" nuclear weapons trigger smuggling operation.

The most recent in an unbroken succession of undeniably severely compromised, unfit, hard-core Israel partisans who occupied the position as OTFI chief, Sigal Mandelker (the daughter of Israeli immigrants to Pittsburgh who allegedly holds Israeli dual citizenship), is finally departing Treasury for the private sector. Such OTFI political appointees' main qualifications seem only to be their intense devotion to advancing the interests of a foreign country from within the federal bureaucracy. The publicity and reporting surrounding the case and limited public exposure of OTFI's curious blind spots perhaps had something to do with Mandelker's departure. But how far down does the Israel lobby's capture of OTFI

through staffing extend? The FOIA lawsuit to find out remains in a curious state of limbo as Chutkan's dismissal approaches its one year anniversary.

Many Americans still insist on transparency regarding the pay and position of all federal government employees. That transparency started long ago when James Madison listed his salary of $25,000 and position as "president" in the Official Register. They deserve to be given the names of OTFI employees in a timely manner. But the Chutkan court appears to be waiting for a legal designation of OTFI as intelligence or law enforcement officials (which they are not) or some other forthcoming artifice, even though such delays are not allowed after issuance of a ruling.

The Chutkan court officially ended the case by finding for the defendants' motion for summary judgment on March 31, 2019. Chutkan's order severely undermined the plaintiff's right to timely appeal. That is because no memorandum of points of law substantiating the order was ever issued. Almost a year later, no explanation is forthcoming even as the OTFI personnel ratchet up economic warfare against Iran in the aftermath of the military exchange between Iran and the US the Israel lobby worked so diligently to enable.

Unfortunately, Judge Chutkan's courtroom is not an anomaly. Since Freedom of Information Act lawsuit plaintiffs first began seeking judicial review, thousands of established precedents have all tended to narrow and make more difficult the realization of the transparency and accountability FOIA was intended to create in America.

Grant F. Smith is the author of the new book The Israel Lobby Enters State Government. *He is director of the Institute for Research: Middle Eastern Policy in Washington, D.C. and was plaintiff in the above-referenced cases.*