

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JEFFREY SCUDDER

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY

Defendant.

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Civil Action No: 12-807 (RBW)

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DECLARATION OF JEFFREY SCUDDER¹

I, Jeffrey Scudder, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I am the plaintiff in this Freedom of Information Act ("FOIA") case against the defendant Central Intelligence Agency ("CIA"). I make this Declaration on personal knowledge and in support of my Motion for Summary Judgment on Electronic Production of Requested Records or Alternatively for Discovery and/or an Evidentiary Hearing.

2. I have 23 years in the Intelligence Community, almost all of it in information technology ("IT"). I have been a computer programmer, headed the CIA's Chief Information Officer's Architecture and System Engineering staff for the National Clandestine Service ("NCS"), worked in Information Security for the Counter Intelligence Center, and was a senior IT project manager at both the Federal Bureau of Investigation and CIA. I spent two years working in Information Management Systems ("IMS") and have a deep knowledge of the CIA's Automated Declassification and Release Environment ("CADRE") system, which is what the CIA's FOIA office uses.

¹ This sworn declaration was submitted for prepublication review to defendant Central Intelligence Agency. It was drafted with the intent to be completely free of classified information. Nevertheless, should any information be redacted by the CIA as classified the full version should be reviewed by this Court, including requiring the CIA to substantively defend the classification determinations.

Exhibit 2

C. A. No. 04-0814

3. I not only used the system for two years but I also worked with the CACI system engineers who designed CADRE and I spent considerable time testing its capabilities. Additionally, while in IMS I managed numerous declassification efforts including records pertaining to Air America, the diaries of the first four CIA Directors, and Site 85. I presented over a dozen times to the Agency Review Board concerning classification policy issues and I am personally responsible for six changes in CIA classification and acknowledgement policies. I received two Exceptional Performance Awards and a Meritorious Unit Citation from IMS.

FOIA PROCEDURAL HISTORY

4. This case involves three FOIA requests that I submitted to the CIA in December 2010. Exhibit "A". The requests were respectfully for:

(a) Electronic copies of 133 Studies in Intelligence (SII) articles listed in the accompanying pages. This request was assigned reference number F-2011-00448 by the CIA.

(b) Electronic copies of 282 Studies in Intelligence (SII) articles listed in the accompanying pages. This request was assigned reference number F-2011-00449 by the CIA.

(c) Electronic copies of 1,572 Studies in Intelligence (SII) articles listed in the accompanying pages. This request was assigned reference number F-2011-00450 by the CIA.

5. I specifically requested production of all responsive records in electronic format. Id.

6. As I never received an acknowledgement I wrote the CIA on June 27, 2011 and requested a status update. Exhibit "B". The CIA finally acknowledged receipt by letter dated July 27, 2011 and assigned the three requests the reference numbers listed above. Exhibit "C".

FACTUAL HISTORY

7. I spent two years (2007-2009) working in IMS/Historic Collections Division (“HCD”). The existence of HCD was the result of a compromise between former CIA Director William Casey and the Congressional intelligence oversight committees. Pursuant to the CIA Information Act of 1986, 50 U.S.C. §§ 701 – 702, CIA was allowed to exempt its operational data from FOIA request searches and from twenty – five year automatic declassification processes. As a compromise HCD would review and manually redact classified material for releases to the public. While I worked in HCD I came across three document projects that had been ready for release to the public for a decade but for some reason had never been. While investigating the status of these three projects I learned an interesting story.

8. Many years earlier the director of CIA’s Center for the Study of Intelligence (“CSI”) forwarded a number of Studies in Intelligence articles to IMS for review prior to release. After a considerable amount of time the CSI Director approved the release of the articles to the National Archives & Records Administration (“NARA”) on his own authority. Upon learning of this decision IMS leadership was upset and went to CIO/Legal to ascertain whether the documents could be pulled back from NARA, which the CIA is authorized to do but has rarely if ever done.

9. IMS claimed the articles contained classified material but CIO/Legal did not agree that release of the articles would damage national security. CIO/Legal only noted that the CSI articles should contain a disclaimer stating they were not government work product but personal opinion pieces. As a result an internal office “feud” developed and IMS refused to release any more material from Studies on Intelligence articles. I was taken aback by this as the American taxpayers had already paid for all the work to scan, redact, and review over 10,000 pages of material and this was exactly the type of information HCD was suppose to release to the public.

10. Additionally, I also discovered that in the intervening decade CSI paid to have every previously published article re-scanned into PDF files that allowed word searching. Unfortunately the original scanning was so poor that some of the articles are not even legible. During numerous meetings I tried to get IMS to input the PDF files into CADRE but I was told this was not possible. However, I worked with the IMS scanning team to demonstrate that PDF files can be automatically turned into TIFF images and incorporated directly into CADRE. I even attended the Adobe user conference (Adobe owns both the PDF and TIFF technologies) in Los Angeles, California to educate myself with all the relevant information to make this happen. I did so as a CIA employee. My goal was to use the new PDF images the taxpayers already paid for to create and release the files to the public.

11. When that effort failed I tried to re-release the previously processed CSI articles using the new PDF versions. Unfortunately that effort also failed. I was memorably told by one of the senior managers in IMS: "Jeff just make this whole thing go away". It was my opinion, however, that IMS was violating both the principle and the letter of the law and I believed in HCD's mission that we "tell the CIA's story". Thus when I transferred to the Counter Intelligence Center I decided to force IMS's hand by submitting FOIA requests for these articles. I did so on my own time and in my personal capacity. That way the CIA was legally required to process the articles for declassification and public release, even though the majority of the articles had already undergone that very process years earlier.

THE CIA'S CLAIM THAT IT CANNOT PRODUCE ELECTRONIC RECORDS IS DEMONSTRABLY FALSE AND INTENTIONALLY DISINGENUOUS

12. The CIA sent a letter to my attorney dated April 12, 2013 and asserted that "although your client requested these records electronically, we have determined that records are not readily reproducible in such a format." Exhibit "D".

13. Based on my professional experience and first-hand knowledge in working at the CIA, such an assertion is demonstrably false and intentionally disingenuous.

14. In drafting this declaration I have reviewed the Additional Authority for the CIA's Position Regarding 5 U.S.C. § 552(a)(3)(B) (filed December 14, 2011) ("CIA Position"), which included a sworn declaration dated December 13, 2011, from Susan Viscuso ("Viscuso") ("First CIA Decl."), who was then the CIA's Privacy & Information Coordinator, as well as CIA's Supplemental Memorandum and Declaration (filed January 13, 2012), which included a declaration from Viscuso dated January 13, 2012 ("Second CIA Decl."). The documents were all filed as part of a FOIA lawsuit (which coincidentally seeks some of the same records as in my requests) in National Security Counselors v. Central Intelligence Agency, Civil Action No. 11-cv-00443 (D.D.C.) (BAH). These CIA filings address the specific question of whether the CIA can produce electronic records in response to FOIA requests.

Generating Digital FOIA Output

15. The CIA claims that "due to the manner in which it maintains the requested documents that it cannot simply copy them onto a CD or DVD, and that the documents are not readily reproducible by the Agency in that form or format." Parties' Joint Proposed Briefing Schedule at 1 (filed April 10, 2013). This is simply not accurate. CADRE sits on the Agency's Common Work Environment ("CWE"), which is a classified system used by the entire organization. In CIA's day-to-day work there are numerous processes and activities that require moving material from the high-side (or CWE) to the low-side (unclassified system). For example, every week CIA Contract Officers have to correspond with the myriad of companies the Agency deals with, technical rep and project managers need to discuss work product with vendors, CIA Public Affairs e-mails material to the media as well as the public, and the list goes on and on.

16. To accommodate this every day reality CIO and Office of Security developed a process and technology to make the transfer from the high to low side secure and efficient. Each CIA office can identify an officer to be a Data Transfer Officer ("DTO"). These individuals are trained on how to

operate software to transfer files. In addition a software program was developed to transfer and write data without spilling, changing files, or adding or deleting anything from the transferred data. In fact, and quite importantly, the DTO is allowed to have a working DVD drive in which he/she can burn files onto a DVD for passage to the requestor or to upload on CIA's unclassified system. The process that we utilized is very similar to how an external FOIA request is processed by the CIA.

17. When I was a project manager and needed to release a Statement of Work I would write the document on the high-side. Then I would pass it to an IMS Information Management Officer ("IMO") who would review it to ensure it contained no classified data. When the document was approved I would create a DTO request and send the request and the document to my DTO who would move the document to the low-side where I would take it and e-mail it to the contractor. If any legal filings from CIA's Office of General Counsel are e-mailed to the Department of Justice or a Court, such as Viscuso's declarations, they would use this process as well. The point I wish to emphasize is that CIA has developed and already implements on a daily basis a solution to high-side to low-side data transfer. There is absolutely no issue, problem or vulnerability in moving a document or information in pdf format from a classified system to an unclassified DVD. It is done every single day at CIA, especially with our personnel records – many of which contain classified information such as assignment locations. CIA employees often ask for copies of their personnel records and this process allows classified versions to be redacted so as to be unclassified and then provided to us on a DVD. To claim otherwise that this cannot or is not done at CIA, such as Viscuso claims in her declarations, is nothing less than disingenuous.

18. Given that CADRE is on CWE, it would be simple to have an IMO use the existing DTO process to burn any declassified documents processed through FOIA to a DVD, just as the rest of the organization does and I did all the time while I worked for IMS.

19. The CIA makes the bold statement that “the process of moving responsive documents from the classified system to the unclassified system and then burning the documents to a CD that can be produced to a FOIA requester is labor intensive and can take weeks or even months to complete.” CIA Position at 2, citing First CIA Decl. at ¶¶6-10. I have personal factual knowledge from my own professional working experiences at CIA that unequivocally contradicts this blanket statement. In fact, I will detail three methods that CIA can and does utilize today that can easily be implemented to allow for the release of electronic media for FOIA requestors. I will also discuss the self-imposed hindrances IMS has placed upon itself. Given the ease at which everyone else in CIA can do exactly what Viscuso claims the FOIA office cannot do can only allow for the conclusion that the CIA is intentionally imposing these limitations in order to frustrate FOIA requesters and avoid complying with the spirit, if not the letter, of the law.

First Method – FOIA Hard Copy Is Printed And Re-scanned By Scanning Center

20. Viscuso asserted that when a document is approved for release the current process is to send the file to a printer, print a hard copy of the document and then mail that document to the requestor. Yet one floor below the CIA’s FOIA office is the IMS scanning center. The taxpayers have already spent millions of dollars for high-end, high-speed, high-quality scanners that can scan in approximately 100 pages per minute. While I do not know the exact scanner model the CIA uses so cannot completely accurately predict the speed of scanning (i.e., it could be even faster than 100 pages per minute), at an average rate of 100 pages per minute if every page of the 17,000 pages that allegedly encompasses my FOIA requests were scanned it would take just 2 hours and 50 minutes. Even in a worst – case scenario where two hours is added for the time to reload the scanner and other processing activities, all of the documents would still be digitized in less than five hours, which is likely less time than it would take to

actually print, package and mail the documents. It is certainly less than the “weeks or months” the CIA claims it would take to electronically process a single requester’s FOIA request. First CIA Decl. at ¶10.

21. Indeed, what the Court will later learn with respect to the specific records that are responsive to my three FOIA requests is that many of the articles have already been formally declassified and approved for release. Therefore, there will not even be any reason to re-review or verify the classification status of the documents. The CIA approved DTO process will then allow the FOIA office to copy the files in an electronic format to a DVD that, according to CIO and the Office of Security, can be released to the FOIA requestor without any concern.

22. Of course, if another requester seeks those same records at a later time the Agency can use the existing digital file to simply burn a new DVD. This is the current process HCD, a division within the Information Review and Release Group, uses to create DVD’s for distribution to public events. To date HCD has generated over ten separate DVD compilations containing thousands of documents without, to my knowledge, any glitches, security violations, or increases in cost, labor, or time to complete. This is easily verifiable and uncontroverted. If anything is inefficient, burdensome and costly it is the current CIA FOIA process that would require the CIA to print another 17,000 pages if a similar request to mine was submitted.

Second Method – Print From CADRE To PDF File

23. CADRE files that are currently ready for release are staged in a separate folder and marked as ready for release. The current method is to then select the files and send them to the printer. But if the CIA FOIA office used the system in place throughout the rest of the Agency instead then the individual IMS officer would direct CADRE to print to a PDF file. This is a setting on the users CWE workstation that creates a PDF file instead of sending it to the printer. The system would then take each and every document and create an individual PDF file. The files would reside in the user designated storage drive.

Once complete the files could be sent to a DTO who will follow the Office of Security's approved process to take data from the high side to the low side and burn it to a DVD. There is no need to further review the PDF files because they are the same documents that were being sent to the printer for release. While CIA is deploring to the Court that concerns exist about redactions that might be accidentally or inadvertently removed, or metadata bleeding into the file, or numerous other possible risks, these are not valid concerns with the current IT architecture that exists at CIA.

24. In preparing this declaration I spoke with the senior architect from CACI, the company that developed the technology that CADRE is built upon. This individual still consults with IMS on maintaining CADRE and he verified that sending a file to a printer or sending it to a PDF file will not change any content of the document. What would be printed is sent to the PDF, and nothing is added or removed. The redacted words are not even on the PDF, just the black boxes that are used to show where redacted words once were.

25. As in the first method, using the DTO process to burn files from the classified system to a DVD introduces no new vulnerabilities or risks. The result is a set of PDF files that can easily be released to the public and the process is much quicker than printing, more efficient (my request will consume 34 reams of paper), more "green", less cost to IMS and again leaves CIA with an electronic history of the records that could easily be uploaded into the CIA electronic reading room or forwarded to NARA.

Third Method – Using CADRE's Existing Capabilities.

26. The underlying system that makes up CADRE was set up by CACI. I verified with a senior CACI architect who still works at CIA that CADRE today has the capability to coalesce one or more TIFF images (which is how documents are stored in CADRE) to generate a PDF file. This PDF file would be the exact document that is in CADRE. No redactions or markings would be added or

removed. No metadata would be included and no additional material would be added to the generated PDF file.

27. Other U.S. Government clients that use CACI's technology to redact classified material are already using this capability to generate PDF files for release to the public through FOIA. As the CACI senior architect succinctly told me: "The only reason CIA does not produce electronic versions of FOIA requests is that they choose not to, there is no technical reason to prevent it."

Fighting the Last War

28. I completely agree with CIA about the importance of protecting national security. Each of the FOIA office's current policies is to allegedly prevent a data spill or accidental release of classified material. I have spent the majority of my professional career seeking the same objective. The problem is that the FOIA office has policies and procedure in place that seek to minimize or eliminate vulnerabilities that existed 20 years ago and are no longer relevant in the current IT architecture at CIA. They are deliberately using a workflow that is cumbersome, inefficient, and irrelevant in 2013. And given that nowhere else in the CIA do we follow such procedures this Court should question the sincerity and honesty of the assertions being placed before it by CIA's FOIA staff.

29. As CIA noted when IMS generates an electronic version of a document "a CIA FOIA analyst would have to extract the responsive document from the classified system" and then manually conduct a quality control review to make certain that all appropriate documents have been extracted" in order to ensure that all metadata has been properly removed." First CIA Decl. at ¶7. Why create an entirely unnecessary extra step? This Court should respectfully question why the CIA's FOIA office handles this process different from all other CIA offices.

30. Additionally, CIA stated that " a FOIA analyst ...would have to travel to a different office location", *id.* at ¶9, which I assume means walking downstairs. Yet nothing prevents the FOIA officer

from using DTO's who would allow them to burn records to a DVD and review them in the FOIA office space.

31. CIA also concludes that a FOIA analyst would "conduct a security review of the contents of the CD to insure that no classified information had been inadvertently transmitted." Id. This final step, according to the CIA's office of Security, is 100% unnecessary. Again, it is not currently utilized by divisions such as HCD that deals with tens of thousands of classified and unclassified records. The DTO process is an approved CIA process that transfers the selected files and only the selected files, and nothing else. There is no technological way classified information could be inadvertently recorded to the DVD.

32. CIA is correct that handling workflow the way IMS has outlined it is very inefficient. My facts, backed by CACI architects who designed CADRE, and the CIA's Office of Security is that this workflow is also 100% unnecessary as it is in place to guard against vulnerabilities that no longer exist, or is intentionally in use to thwart FOIA requesters. The fact that the filings in National Security Counselors uses the term "CD" when the CIA phased out CD's years ago highlights that Viscuso, a psychology major with no technical background, and the other IMS managers making policy decisions are not current on CIA technology or capabilities.

33. IMS's current process for handling my 17,000 page FOIA request would be to print all the pages on a laser printer. This would tie up one printer for almost six hours, consume 34 reams of paper, at least one, and possibly two, printer cartridge(s), and necessitate mailing a 70 pound package to me in a form I could not easily utilize. But utilizing one of the above three processes I have sketched out, all of which are already in use within CIA, would allow IMS to instead readily reproduce electronic copies of all the records responsive to my FOIA requests. Adopting another process that CIA already utilizes would result in a format the public can readily use, save an immense cost to the taxpayer, and meet the

green initiative that is important to both the CIA's Director and the CIO. CIA has already spent billions of dollars on a classified IT system that provides the capabilities to do what I have described. In fact, just recently CIA publically announced it was spending \$600 million on a contract with Amazon to store its classified data in Amazon's cloud data storage array. See <http://fcw.com/articles/2013/03/18/amazon-cia-cloud.aspx>. If CIA security is to the point that they can safely store classified material in a commercial cloud, then surely the FOIA office can create a DVD containing unclassified data in an efficient and safe manner.

34. Lastly, I would bring to the Court's attention the President's Executive Order 13642, which is titled "the Executive Order -- Making Open and Machine Readable the New Default for Government Information" that was recently released on May 9, 2013. President Obama directed that "the default state of new and modernized Government information resources shall be open and machine readable." As CIA already has this capability to readily reproduce electronic unclassified records in a secure environment and that can be utilized so as not to jeopardize national security, the law requires it to produce the records I have sought in the format I have requested.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge.

Date: May 22, 2013


Jeffrey Scudder