

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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GOVERNMENT ACCOUNTABILITY	)	
PROJECT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 19-0449 (RDM)
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	

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**DEFENDANT’S STATEMENT OF MATERIAL FACTS**  
**AS TO WHICH THERE IS NO DISPUTE**

Pursuant to Local Civil Rule 7(h)(1), Defendant, Central Intelligence Agency, (“CIA” or “Agency”), hereby respectfully submits its Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

1. By letter dated August 31, 2018, Plaintiff submitted an expedited request to the CIA pursuant to the FOIA seeking records related to the following topics: (i) civil nuclear cooperation with Middle Eastern countries; (ii) the “Middle East Marshall Plan;” (iii) Negotiation of a U.S.-Saudi “123” Civil Nuclear Cooperation Agreement; (iv) the “International Peace Power and Prosperity” (“IP3”) Corporation and any proposal for nuclear and cyber cooperation with Middle Eastern countries; and (v) Westinghouse, its March 2017 bankruptcy, and the U.S. Government’s policy response. Declaration of Antoinette B. Shiner (“Shiner Decl.”) ¶ 6. Plaintiff also listed the names of 18 current and former U.S. Government personnel and 6 individuals purported to be at the IP3 Corporation who Plaintiff states are likely to be referenced in the documents and communications. *Id.*

2. On September 11, 2018, the CIA responded by letter to the Plaintiff explaining that the Plaintiff's request did not meet the criteria for expedited processing because the request neither involved an "imminent threat to the life or physical safety of an individual," nor was it made "by a person primarily engaged in disseminating information" related to "a subject of public urgency concerning an actual or alleged or Federal activity." Shiner Decl. ¶ 7. The CIA stated that the Plaintiff had the option to appeal this decision within 90 days from the date of the letter. *Id.*

3. By letter dated December 4, 2018, the CIA requested further clarity from the Plaintiff with respect to the first category of information Plaintiff requested in order to allow the CIA to conduct a reasonable search. Shiner Decl. ¶ 8.

4. On January 8, 2019, the Plaintiff responded to the CIA's letter seeking clarification. The Plaintiff stated that its first request should be interpreted to mean records regarding cooperation between the United States and Egypt, Jordan, and/or Saudi Arabia. Shiner Decl. ¶ 9. Further, the term "civil nuclear cooperation" should be interpreted to mean "any form of assistance regarding nuclear material, equipment, or technology; changes to U.S. or international law regarding the acquisition of nuclear material, equipment, or technology by foreign countries; funds or financing to acquire nuclear material, equipment, or technology; as well as efforts by US entities and persons to promote the acquisition of civilian nuclear reactors and related services by foreign countries." *Id.*

5. Before the CIA provided a substantive response to Plaintiff's FOIA request, Plaintiff filed its complaint against the CIA and other U.S. Government agencies in this Court on February 22, 2019. Shiner Decl. ¶ 10. While the lawsuit was pending, the CIA completed its review of Plaintiff's FOIA request and determined that, in accordance with section 3.6(a) of Executive Order

13, 526, it could neither confirm nor deny the existence or nonexistence of records responsive to Plaintiff's FOIA request. *Id.* ¶ 11. This is known as a *Glomar* response.

6. The CIA invoked a *Glomar* response in this case because confirming or denying the existence or nonexistence of the requested records would reveal classified information that is protected from disclosure by executive order and federal statute. Shiner Decl. ¶ 12. As an intelligence organization that by its very nature must operate clandestinely to accomplish its foreign intelligence mission, the CIA typically cannot disclose whether or not it has any role or interest in specific U.S. Government meetings with foreign diplomats, policy initiatives or cooperation agreements, or any other topics that may have been discussed. *Id.* Because the requests at issue in this case seek precisely those types of information regarding the CIA's role or interest in sensitive foreign activities, the CIA can neither confirm nor deny that the CIA had any involvement in alleged discussions about various nuclear and/or cyber cooperation agreements with the specified – or any other – Middle Eastern Countries. Confirming or denying whether the CIA has information responsive to the requests at issue would cause harm to national security. *Id.* Accordingly, the CIA must assert a *Glomar* response and refuse to confirm or deny the existence or nonexistence of records that would be responsive to Plaintiff's request. *Id.*

7. The CIA is charged with carrying out a number of important functions on behalf of the United States, which include, among other activities, collecting and analyzing foreign intelligence and counterintelligence. Shiner Decl. ¶ 13. A defining characteristic of the CIA's intelligence activities is that they are typically carried out through clandestine means, and therefore, must remain secret to be effective. *Id.* In the FOIA context, this means that the CIA must carefully evaluate whether its response to a particular FOIA request could jeopardize the clandestine nature of its intelligence activities or otherwise reveal previously undisclosed sensitive

information, including but not limited to, its sources, capabilities, authorities, interests, strengths, weaknesses, and how resources are deployed. *Id.*

8. In a typical scenario, a FOIA requester submits a request to the CIA for information on a particular subject and the CIA conducts a search of non-exempt records and advises whether responsive records were located. Shiner Decl. ¶ 14. If records are located, the CIA provides non-exempt records or reasonably segregable non-exempt portions of records and withholds the remaining exempt records and exempt portions of records. *Id.* In this circumstance, the CIA's response – either to provide or not provide the records sought – actually confirms the existence or nonexistence of CIA records related to the subject of the request. *Id.* Such confirmation may pose no harm to the national security because the response focuses on releasing or withholding specific substantive information contained within the records. *Id.* In those circumstances, the fact that the CIA possesses or does not possess records is not itself classified, though the information contained within the records may be classified. *Id.*

9. In other cases, the mere confirmation or denial of the existence or nonexistence of responsive records would in itself reveal a classified fact: namely, whether the CIA has an intelligence interest in or connection to a particular subject or whether the CIA utilizes particular sources or methods that would enable the CIA to collect the type of information sought in the FOIA request. Shiner Decl. ¶ 15. In these cases, the CIA asserts a *Glomar* response because the very fact of the existence or nonexistence of CIA records responsive to the request is itself a currently and properly classified fact, the disclosure of which reasonably could be expected to cause damage to the national security. *Id.*

10. To be credible and effective, the CIA must use the *Glomar* response consistently in all cases where the existence or nonexistence of records responsive to a FOIA request is a classified

fact, including instances in which the CIA does not possess records responsive to a particular request. Shiner Decl. ¶ 16. If the CIA were to invoke a *Glomar* response only when it actually possessed responsive records, the *Glomar* response would be interpreted as an admission that responsive records exist. *Id.* This practice would reveal the very information that the CIA must protect in the interest of national security. *Id.*

11. After careful review, Ms. Shiner determined that if the CIA were to confirm the existence of records in response to Plaintiff's request, such confirmation would indicate that the CIA had a role or interest in various civil and/or nuclear cooperation agreements with Middle Eastern countries, in economic development planning proposals, or in policy discussions regarding the Westinghouse bankruptcy. Shiner Decl. ¶ 17. On the other hand, if the CIA were to respond by admitting that it did not possess any responsive records, it would indicate that the CIA had no involvement or interest in the agreements, proposals, or alleged discussions. *Id.* Either confirmation would reveal sensitive information about the CIA's intelligence activities, sources, and methods that is protected from disclosure by Executive Order 13,526 and statute. *Id.* Therefore, the CIA asserted a *Glomar* response to Plaintiff's request. *Id.* The fact of the existence or nonexistence of records responsive to Plaintiff's FOIA request is currently and properly classified and exempt from release under FOIA Exemptions 1 and 3. *Id.*

Respectfully submitted,

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*/s/ Patricia K. McBride*

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