

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN AFTERGOLD)	
)	
Plaintiff,)	
)	
v.)	Case No. 01-2524 (RMU)
)	
CENTRAL INTELLIGENCE AGENCY)	
)	
Defendant.)	
)	

**AMENDED SUPPLEMENTAL COMPLAINT
FOR INJUNCTIVE RELIEF
UNDER THE FREEDOM OF INFORMATION ACT**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. §552. Plaintiff Steven Aftergood, acting *pro se*, seeks disclosure of historical U.S. intelligence budget information from 1947 through 1970, including aggregate budget information as well as subsidiary agency budget totals. Defendant Central Intelligence Agency (CIA) has refused to release the requested historical data.
2. This complaint amends and replaces the claims stated in a previous supplemental complaint, dated October 17, 2002.

A Violation of the Freedom of Information Act

3. CIA's sustained refusal to disclose the requested historical intelligence budget information on asserted national security grounds is a violation of the Freedom of Information Act, because the requested information has no bearing on national security today. Nor does it implicate intelligence sources and methods.

4. The information's obvious remoteness from real, current security vulnerabilities is underscored by the fact that many of the largest components of today's intelligence community did not even exist throughout much of the period for which budget data is requested. These include the National Security Agency (established in 1952), the National Reconnaissance Office (1961), Defense Intelligence Agency (1961), and the National Imagery and Mapping Agency (1996).

5. Furthermore, CIA's opposition to disclosure of the requested budget data is logically compromised by the fact that CIA itself declassified the aggregate intelligence budget totals from 1997 and 1998. Given this contrary record evidence, any claim that similar information that is thirty to fifty years *older* is too sensitive to release is untenable.

6. CIA has taken an extreme position in this case that is far beyond the boundaries of reasonable disagreement over the requirements of national security.

7. Accordingly, plaintiff requests below that the Court issue a written finding "that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding." Such a finding is one of the prerequisites for a Special Counsel proceeding to determine whether disciplinary action is warranted. 5 U.S.C. §552(a)(4)(F).

A Violation of the U.S. Constitution

8. The government has violated its obligation -- which exists independent of this FOIA action -- to disclose the requested information. The obligation stems from the U.S. Constitution, which requires without exception that "a regular statement and account of the receipts and expenditures of *all* public money shall be published from time to time." U.S. Const., Art. 1, Sect. 9, Cl. 7 (emphasis added).

9. Such a "statement and account" is the sole category of executive branch information that is subject to a constitutional publication requirement, reflecting the profound importance of budget disclosure to our form of government.

10. The precise implications of the statement and account clause, including the level of detail of the required statement and the frequency of publication intended by the phrase "from time to

time," are unspecified. Nevertheless, it is clear that the phrase "all public money" does not allow an exemption from publication for a major category of government spending such as intelligence. Nor can "from time to time" possibly mean "never," as defendant CIA would have it in this case.

11. Beyond the limited flexibility that is implicit in the phrase "from time to time," the government cannot withhold an entire category of budget information indefinitely, certainly not for decades.

12. The Director of Central Intelligence does not have the authority to extinguish a constitutional requirement. In particular, he cannot use his classification authority under executive order 12958 to permanently "classify" information the periodic disclosure of which is guaranteed by the Constitution. Nor can he legitimately withhold from publication the constitutionally promised "statement and account" by designating it an "intelligence source" or "method."

13. Therefore, the requested information is constitutionally precluded from being "properly classified" by executive order or otherwise withheld from disclosure under the FOIA.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to the FOIA, 5 U.S.C. § 552(a)(4)(B), the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and 28 § 1331 and 1361.

15. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

16. Plaintiff Steven Aftergood is a citizen of the United States and a resident of Washington, DC.

17. Defendant Central Intelligence Agency is an agency of the United States government which has possession of the information requested by plaintiff under the Freedom of Information Act.

STATEMENT OF THE CASE

18. Plaintiff first sought disclosure of the requested budget information under the FOIA on May 11, 1995. The Request was denied by CIA on May 30, 1995, citing FOIA exemptions (b)(1) and (b)(3). Upon administrative appeal, it was again denied five years later by CIA's Agency Release Panel on December 14, 2000. Plaintiff's December 7, 2001 complaint based on the 1995 initial request and seeking disclosure only of the 1947 and 1948 aggregate budget figures was dismissed as time-barred by Court order dated September 6, 2002, which also granted leave to file a supplemental complaint.

19. The supplemental complaint derived from a new initial FOIA Request, dated February 22,

2002, which is identical in scope to the original 1995 Request, i.e. it sought historical U.S. intelligence budget information from 1947 to 1970, including all releasable budget data. Receipt of the Request was acknowledged by letter from CIA Information and Privacy Coordinator Kathryn I. Dyer dated March 27, 2002.

20. On September 12, 2002, plaintiff filed an administrative appeal of the pending Request. By letter dated October 3, 2002, defendant CIA acknowledged having received the administrative appeal on September 13, 2002.

21. Plaintiff therefore exhausted his administrative remedies 20 business days after September 13, which was October 15, 2002, and filed a supplemental complaint on October 17. While the Request had sought historical budget information from 1947 to 1970, including aggregate as well as subsidiary figures, the supplemental complaint again specified only the 1947 and 1948 aggregate figures. Defendant answered the supplemental complaint on December 10, 2002, "admitting" plaintiff's assertion that it had possession of the information requested.

22. In a subsequent June 27, 2003 administrative response, however, Defendant stated that it was "unable to locate" documents containing the aggregate U.S. intelligence budget figure for 1947 or 1948, although it did locate subsidiary agency information for 1947. No further response to the initial FOIA Request was received, nor was any basis in law provided for withholding the 1947 subsidiary agency budget information.

23. The present amended supplemental complaint, therefore, seeks the full scope of information requested in the February 22, 2002 initial FOIA Request: historical U.S. intelligence budget information from 1947 to 1970, to include aggregate figures as well as subsidiary agency budget totals.

CAUSES OF ACTION

24. Plaintiff incorporates each allegation of paragraphs 1- 23 as if fully set forth herein.

25. Defendant CIA's failure to release the requested information violates the Freedom of Information Act, 5 U.S.C. § 552.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that the Court:

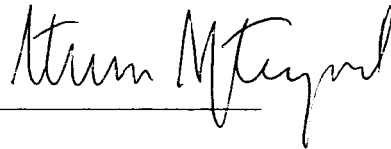
- a. declare that the defendant's refusal to produce the requested information is unlawful;
- b. order defendant to release to plaintiff documents that provide historical U.S. intelligence budget data from 1947 to 1970, including aggregate annual budget figures as well as subsidiary agency totals;

c. issue a written finding pursuant to 5 U.S.C. §552(a)(4)(F) (2000) "that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding";

d. award plaintiff his costs in this action; and

e. grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Aftergood", written over a horizontal line.

Steven Aftergood

Plaintiff *pro se*

July 2, 2003