

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN AFTERGOOD

Plaintiff,

v.

NATIONAL RECONNAISSANCE OFFICE

Defendant.

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) **Case No. 1:05CV01307 (RBW)**
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DEFENDANT’S STATEMENT OF MATERIAL FACTS
WHICH ARE NOT IN GENUINE DISPUTE

Pursuant to LCvR 7(h) and in support of Defendant’s Motion for Summary Judgment, Defendant respectfully submits this statement of material facts as to which there are no genuine disputes.

1. On 22 March 2005, Plaintiff submitted a FOIA request to the National Reconnaissance Office ("NRO") seeking a copy of all unclassified portions of the NRO Congressional Budget Justification Book (CJB) for Fiscal Year 2006. Complaint ¶ 13; (Defendant’s Exhibit 1 paragraph 5; hereinafter, DEX # ¶ #) and DEX 1 Tab A.

2. On 29 March 2005, the NRO denied the request on the grounds that should any responsive records exist, they would be contained in operational files which according to the Intelligence Authorization Act for 2003 (IAA), are exempt from the search and review provisions of the FOIA. Complaint ¶ 14; DEX 1 ¶ 6 and Tab B.

3. On April 7, 2005, Plaintiff appealed. Complaint ¶ 15 DEX 1 ¶ 7 and Tab C.

4. On 18 May 2005, the NRO denied the appeal again citing the operational file exemption.

Complaint ¶ 16; DEX 1 ¶ 8 and Tab D.

5. The NRO is responsible for the research, development, acquisition and operation of overhead reconnaissance systems for the collection of intelligence essential for the U.S. National Security. DEX 1 ¶ 2.

6. The NRO develops and operates highly sensitive spy satellites but does not analyze the information and therefore does not produce finished intelligence. DEX 1 ¶ 2.

7. Pursuant to the authority granted by the 2003 IAA, the Director of the NRO proposed a list of operational files for designation as Operational Files exempt from the provisions of the FOIA. (Defendant's Exhibit 1 paragraph 12; hereinafter, DEX # ¶ #) and DEX 1 ¶ 12 and TAB E.

8. The proposed list includes a section entitled Budget and Finance Records Files. DEX 1 ¶ 12 and TAB E. The proposed list defined Budget and Finance records as those "pertaining to budget formulation, execution and review Included are consolidated budget estimates and justifications. DEX 1 ¶ 13 and TAB E.

9. The proposed list, including the provisions governing Budget and Finance Records, was approved by then Director of Central Intelligence George Tenet on April 8, 2003. DEX 1 ¶ 12 and TAB E.

10. The CBJB is provided to Congress each year as a budget estimate and justification for all NRO programs. Complaint ¶ 2; DEX 1 ¶ 14.

11. The CBJB contains detailed information on the means and methods used by the NRO to collect intelligence. (DEX 1 ¶ 15)

12. The CBJB does not contain intelligence. DEX 1 ¶ 15.

13. The CBJB is a compilation of information contained in other documents and budget submissions DEX 1 ¶ 15.

Respectfully submitted,

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