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Joseph W. Lambert  
Director, Information Management Services  
Central Intelligence Agency  
Washington, DC 20505  
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Dear Mr. Lambert:

I would like to submit the following comments concerning the CIA's decennial review of operational file designations.

The operational files exemption allows the CIA to exclude exempted files not only from release, but even from search and review under the Freedom of Information Act. The legislative intent of the operational files exemption was not to withhold more Agency information from disclosure, but rather to forego review of particular categories of sensitive records that would not have been released in any case. This approach, Congress indicated, would lead to a more productive FOIA process, not a less productive one.

In practice, however, the CIA operational files exemption has often been applied to broad categories of information, resulting in additional withholding. On a number of occasions, federal courts have found that the CIA improperly invoked the operational files exemption, e.g. [Morley v. CIA](#), 508 F.3d 1108 (2007); [ACLU v. DoD](#), 351 F.Supp.2d 265 (2005).

The decennial review represents an opportunity to chart a new course. While the CIA Information Act authorizes the DCIA to exempt operational files from the search and review requirements of the FOIA, it does not *require* him to do so. It is permissive, not

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mandatory. And, of course, the DCIA has the authority to rescind prior operational files designations.

With those factors in mind, I would like to offer the follow recommendations, both general and specific.

**1. The operational files exemption should no longer be used to exclude search and review of CIA records that are more than 25 years old.**

At the 25 year mark, the historical interest in permanent CIA records arguably becomes dominant, while operational security considerations recede in significance. Of course, it is understood that all such records would still be subject to the regular FOIA exemptions, including those that require protection of intelligence sources and methods. But at the 25 year mark, CIA records should no longer be exempt from search and review.

**2. Clandestine Service History Program files should be removed from the exempted category.**

The historical value of Agency files is probably strongest in the synoptic histories of the clandestine service. These program files represent a powerful combination of historical import, public interest, and government accountability. They should be removed from the operational files exemption. Indeed, instead of being categorically exempt, these files should be a central focus of the Agency's declassification and disclosure efforts.

**3. Imagery Analysis and Exploitation files should be removed from the exempted category.**

A considerable quantity of intelligence imagery has been declassified and released into the public domain since the CIA Information Act was enacted, and even since the last decennial review in 2005. However, while the imagery itself is available, the accompanying analysis and exploitation files typically are not. This is true even with respect to historical imagery that was obtained from collection systems that are now obsolete. Such analysis and exploitation files should not be exempted from FOIA search and review.

**4. Files pertaining to civilian casualties resulting from CIA operations must not be exempted from FOIA processing.**

There is an overwhelming public interest in the identification and disclosure of human casualties resulting from CIA operations, including CIA covert actions. While the President has properly expressed regret over the accidental killing

of two Americans in a counterterrorism action last January, these are of course not the only civilian casualties of such operations. A failure to acknowledge casualties resulting from CIA operations precludes the possibility of reparations or any other kind of moral reckoning. A change of policy on this topic is imperative.

**5. Files pertaining to CIA detention and interrogation practices should not be included in the exempted category.**

The public controversy over CIA's post-9/11 detention and interrogation programs remains unresolved and continues to smolder. In view of the persistent public interest in this area, the DCIA should ensure that relevant Agency records are not included in the operational files exemption category. Since such records concern "the specific subject matter of an investigation by the congressional intelligence committees," per [50 USC 3141\(c\)\(3\)](#), they should already be subject to search and review in any case.

Thank you for your consideration of these comments.

Yours sincerely,

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