

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN AFTERGOOD,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

)

) Civ. Action No. 01-2524
(RMU)

)

DECLARATION OF JOHN E. McLAUGHLIN

I. INTRODUCTION.

I, JOHN E. McLAUGHLIN, hereby declare:

1. I am the Acting Director of Central Intelligence (ADCI), a position I have held since 12 July 2004. Prior to serving as ADCI, I served since 19 October 2000 as the Deputy Director of Central Intelligence. Before that, I served in various capacities in the Central Intelligence Agency (CIA) since 1972

2. The CIA and the position of Director of Central Intelligence (DCI) were established by the National Security Act of 1947 (Act), codified as amended at 50 U.S.C. §§ 401 *et seq.* Pursuant to section 102(a) of the Act, 50 U.S.C. § 403(a), as ADCI, I serve as head of the

United States Intelligence Community; act as the principal advisor to the President of the United States for intelligence matters related to national security; and serve as the head of the Central Intelligence Agency.

3. Under section 102A of the Act, 50 U.S.C. § 403-1, the function of the CIA is to assist me as ADCI to carry out my responsibilities as set forth in subparagraphs (1) through (5) of section 103(d) of the Act. Pursuant to that section, codified at 50 U.S.C. § 403-3(d), as head of the CIA, I am charged with collecting intelligence through human sources and other appropriate means (excluding police, subpoena, and law enforcement powers or internal security functions); to provide overall direction for the collection of national intelligence through human sources by elements of the U.S. Intelligence Community (ensuring that the most effective use is made of resources and that the risks to the United States and those involved in the collection of national intelligence through human sources are minimized); to correlate and evaluate intelligence related to the national security and to provide appropriate dissemination of such intelligence; to perform such additional services as are of common concern to the elements of the U.S. Intelligence Community; and to perform such other functions and duties related to intelligence

affecting the national security as the President or National Security Council may direct. A more particularized statement of the authorities of the DCI and CIA is set forth in sections 1.5 and 1.8 of Executive Order 12333, 3 C.F.R. 200 (1981).

4. By virtue of my position as ADCI, I have official custody and control of the files and records of the CIA, and pursuant to section 104(a) of the Act, 50 U.S.C. § 403-4(a), I have, to the extent recommended by the National Security Council and approved by the President, access to all intelligence related to the national security which is collected by any department, agency, or other entity of the United States

5. Sections 103(c) and 104 of the Act outline my responsibilities as head of the U.S. Intelligence Community, including the development and approval of an annual budget. Moreover, I am specifically charged by section 103(c) 7 of the Act, 50 U.S.C. § 403-3(c)(7), and by section 1.3(a)(5) of Executive Order 12333, to protect intelligence sources and methods from unauthorized disclosure. Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. § 403g) also directs me to "be responsible for protecting intelligence sources and methods from unauthorized disclosure."

6. Through the exercise of my official duties, I have become aware of this civil litigation. The representations set forth herein are based upon my personal review and appraisal of the information discussed below and upon discussions with CIA and other Intelligence Community personnel who are knowledgeable about the activities described herein.

7. I understand that plaintiff has filed a lawsuit seeking "disclosure of historical U.S. intelligence budget information from 1947 through 1970, including aggregate budget information as well as subsidiary agency budget totals" "intelligence budget information" I also understand that plaintiff alleges that the CIA has improperly withheld such information. Although CIA possesses information on the total CIA budget for all but one of the fiscal years 1947 through 1970,¹ it does not possess budget information on the Intelligence Community or other agencies for those years. Instead, a search conducted pursuant to plaintiff's FOIA request found only a few budget numbers (which may or may not be accurate) from other agencies for one of those years (1947

¹ Although CIA has located some budget documents for fiscal year 1965, it has been unable to reconstruct the total CIA budget figure for 1965

8. For reasons discussed more fully below, I have determined that the intelligence budget information located must be withheld from public disclosure pursuant to FOIA Exemption (b)(3), because its release would tend to reveal intelligence methods that I am statutorily charged with protecting by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. My purpose in submitting this declaration is to describe for the Court as fully as I may on the public record my bases for making the above determinations.

II. BACKGROUND.

9. As head of the Intelligence Community, my responsibilities include developing and presenting to the President an annual budget request for the National Foreign Intelligence Program (NFIP), and participating in the development by the Secretary of Defense of the annual budget requests for the Joint Military Intelligence Program (JMIP) and Tactical Intelligence and Related Activities (TIARA). The budgets for the NFIP, JMIP, and TIARA jointly constitute the aggregate budget of the United States for intelligence and intelligence-related activities. In some years, Congress passes supplemental appropriations acts that add funds to the amounts contained in the regular annual appropriations. Although the amounts provided by

the annual and supplemental appropriations for these programs are not presented or identified in a single budget request or document, taken together they constitute the overall intelligence budget. Therefore, the Intelligence Community aggregate budget figure consists of the aggregate of the NFIP, JMIP, TIARA, and any supplemental appropriations for the particular fiscal year.

10. During the years 1947 through 1970, we did not have an Intelligence Community in the sense that we have an Intelligence Community now, nor did we have NFIP, TIARA and JMIP. Instead, funds for intelligence purposes were clandestinely appropriated to separate agencies, such as the War Department, the Navy, and the State Department. As a result, the DCI and the CIA do not have archives of budget records of the Intelligence Community or other agencies for the years 1947 through 1970

11. At the creation of the modern national security establishment in 1947, national policymakers had to address a paradox of intelligence appropriations: the more they publicly disclosed about the amount of appropriations, the less they could publicly debate about the objects of such appropriations without causing damage to the national security. They struck the balance in favor of keeping secret the amount of appropriations.

12. Consequently, for over fifty years, the Executive Branch, when seeking intelligence appropriations from Congress, has not publicly disclosed its annual budget requests in order to prevent the identification of intelligence activities that could be revealed by disclosing trends in intelligence spending and by enabling any correlation between specific spending figures and particular intelligence programs.

13. Likewise, Congress has never publicly disclosed the aggregate amount that it has appropriated for intelligence purposes. Neither has it publicly disclosed the total amount appropriated for the CIA. Since 1947, Congress has provided funding for the various intelligence programs of the United States through separate appropriations acts enacted for several departments and agencies. The aggregate intelligence budgets and the total CIA budgets have never been publicly identified, both to protect the classified nature of the intelligence programs themselves and to protect the classified intelligence methods used to transfer funds to and between intelligence agencies. Congress also has provided, through sections 5 and 8 of the CIA Act of 1949, statutory authority for the secret transfer and spending of those clandestinely appropriated intelligence funds. Furthermore, on at least

three occasions in recent years, Congress has reaffirmed these protections by rejecting legislative proposals that would have required the United States to disclose the aggregate intelligence budget on an annual basis. Indeed, in 2000 the House of Representatives rejected a proposed amendment to the Intelligence Authorization Act For Fiscal Year 2001 that would have required the disclosure of the aggregate intelligence budget for the previous fiscal year. Thus, Congress's own treatment of intelligence appropriations since 1947, coupled with the statutory authority that it has provided for the clandestine transfer and spending of those funds, demonstrate its intent that intelligence budget information--in particular aggregate intelligence budgets and CIA budgets--should not be publicly disclosed.

14. Consistent with these Congressional measures, and because I am responsible by statute for protecting against the disclosure of information that would tend to reveal intelligence sources and methods, it is essential that I consider carefully any action that could undermine that protection.

III. CONSIDERING THE CURRENT REQUEST

15. In response to plaintiff's FOIA request, I have carefully considered the ramifications of releasing the

total CIA budgets for fiscal years 1947-70 and a few budget numbers from other agencies for fiscal year 1947. I have concluded that publicly disclosing the intelligence budget information that plaintiff seeks would tend to reveal intelligence methods that, in the interest of maintaining an effective intelligence service, ought not be publicly revealed

16. In evaluating whether to release the intelligence budget information, I have taken into consideration several significant factors

A. Disclosing U.S. Intelligence Information To Adversaries.

17. Our adversaries can gain useful information about U.S. intelligence programs and activities from budget figures. Information about the intelligence budget has been and continues to be of great interest to nations wishing to calculate the strengths and weaknesses of the United States and their own points of vulnerability to U.S. intelligence agencies. Foreign governments also have been and continue to be keenly interested in U.S. intelligence priorities. Nowhere have those priorities been better reflected than in the level of spending on particular intelligence activities. That is why foreign intelligence services, to varying degrees, have devoted and continue to

devote resources to learning the amounts and objects of intelligence spending by other governments.

18. Some of these foreign governments are highly experienced in studying publicly available information comparing it with clandestinely obtained information concerning the U.S. intelligence budget to acquire detailed knowledge and estimates of how the budget has been structured, where intelligence funds have been hidden, how and where intelligence funds have been transferred for various purposes. Foreign governments also have the expertise (which is publicly available and widely taught in universities) to do cost analyses of government programs, including intelligence programs. As a result, these organizations already possess important information that helps them discern how United States intelligence programs have been funded.

19. When a foreign intelligence service gleans from our budget data information about U.S. intelligence priorities and activities, it does not necessarily keep this information to itself. Rather, just as the United States shares intelligence information with cooperating intelligence services when appropriate, hostile

intelligence services share damaging information about U.S. intelligence activities with other nations. Therefore, when I consider the possible damage to U.S. national security from disclosure of intelligence budget information, I must take into account not only sophistication and capabilities of the intelligence services of individual countries, but also the likely widespread disclosure of harmful information to other countries that are less able themselves to analyze U.S. intelligence budget data.

B. Combining Disclosed Information with Classified Information Already Possessed by Adversaries.

20. Finally, in evaluating whether to disclose the intelligence budget information, I have to consider whether a disclosure could add to information that is already available to foreign intelligence services in a way that would tend to reveal intelligence sources and methods. Information that is in the public domain may not be entirely accurate. The official release of intelligence budget information, even if it does not itself reveal specific intelligence activities, would provide valuable analytic benchmarks or clues to make our clandestine transfer and spending of intelligence funds more readily and precisely identifiable by hostile intelligence

services. By providing official confirmation of the upper boundaries for the budgets of each member of the U.S. intelligence community, foreign intelligence services will be able to tell if their estimates and cost analyses of U.S. intelligence programs are accurate. When coupled with other clandestinely obtained information, and when viewed from a perspective spanning many decades, foreign intelligence services would be able to draw the clearest and most cogent picture of U.S. intelligence activities, priorities, vulnerabilities, and strengths. As a result, the release of intelligence budget information would undermine the very statutory and customary protections that Congress has afforded such information from 1947 through today. Thus, official release of the information that plaintiff seeks would tend to reveal intelligence methods that I am by statute obliged to protect.

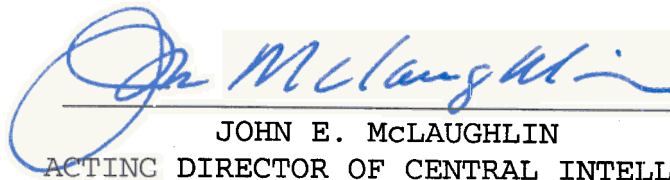
IV. CONCLUSION.

21. Simply stated, the methods of clandestinely providing money to the CIA and the Intelligence Community for the purpose of carrying out the classified intelligence activities of the United States are themselves congressionally enabled intelligence methods. Disclosure of intelligence budget information could assist in finding the locations of secret intelligence appropriations and

thus defeat these congressionally approved clandestine funding mechanisms. Therefore, for the reasons discussed above, and in fulfillment of my statutory responsibility as head of the United States Intelligence Community, as the principal adviser to the President for intelligence matters related to the national security, and as head of the CIA, to protect intelligence sources and methods from unauthorized disclosure, I have determined that the intelligence budget information that plaintiff seeks must be protected from disclosure pursuant to 50 U.S.C. § 403-3(c)(7) in conjunction with Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3)

I hereby certify under penalty of perjury that the foregoing is true and correct

Executed this 14 day of September, 2004.



JOHN E. McLAUGHLIN
ACTING DIRECTOR OF CENTRAL INTELLIGENCE