

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN AFTERGOOD,)
)
 Plaintiff,)
)
 v.) Civil Action No. 01-2524 (RMU)
)
 CENTRAL INTELLIGENCE AGENCY,)
)
 Defendant.)
_____)

**DEFENDANT'S RESPONSE TO "PLAINTIFF'S REPLY TO OPPOSITION
TO STRIKE THE DECLARATION OF JOHN E. McLAUGHLIN"**

Plaintiff commenced this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1996 & West Supp. 2004), seeking the disclosure of certain intelligence budget information for fiscal years 1947 through 1970. On July 20, 2004, plaintiff filed a Motion for Summary Judgment. Defendant simultaneously opposed plaintiff's motion and filed a cross-motion for summary judgment on September 15, 2004. Accompanying defendant's cross-motion was the Declaration of John E. McLaughlin [hereinafter McLaughlin Decl.], who was at that time the Acting Director of Central Intelligence (DCI).¹ On September 22, 2004, plaintiff filed a motion to strike former Acting DCI McLaughlin's declaration [hereinafter "Motion to Strike"]. On October 20, 2004, defendant filed an opposition to plaintiff's Motion to Strike, to which plaintiff replied on October 22, 2004 [hereinafter "Reply"].

¹ Porter J. Goss became DCI on September 24, 2004, replacing former Acting DCI McLaughlin.

In his Reply, plaintiff alleges that former Acting DCI McLaughlin's averment concerning congressional nondisclosure of aggregate intelligence budget figures is "still false" because on May 22, 2000, Congressman Earl Blumenauer "publicly identified" the aggregate intelligence budget figures for Fiscal Years 1997 and 1998 when speaking on the House floor.² Pl.'s Reply at 2. However, plaintiff's Reply is yet another example of how he has contrived an allegation of "falseness" by neglecting to mention certain relevant details concerning the very disclosure upon which he relies in making such an allegation. Accordingly, defendant respectfully suggests that it is compelled to respond to plaintiff's Reply in order to bring those omitted details to the Court's attention -- especially given that they pertain to a motion to strike the declaration of an acting agency head on "falseness" grounds.

First, plaintiff's Reply neglects to mention that the 1997 and 1998 aggregate intelligence budget figures cited by Congressman Blumenauer in May 2000 had already been disclosed by defendant more than two years earlier. See Press Release, Statement by the Director of Central Intelligence Regarding the Disclosure of the Aggregate Intelligence Budget for Fiscal Year

² It is quite puzzling that plaintiff would now argue that Congress has disclosed aggregate intelligence budget figures, given that he previously advised the Court in no uncertain terms that "Congress . . . unlike the executive branch has not disclosed aggregate intelligence budget figures." Pl.'s Mot. to Strike at 4 n.2 (emphasis added).

1997 (Oct. 15, 1997), available at www.fas.org/sgp/foia/victory.html (copy attached as Attach. A); Press Release, Statement by the Director of Central Intelligence Regarding the Disclosure of the Aggregate Intelligence Budget for Fiscal Year 1998 (Mar. 20, 1998), available at www.fas.org/sgp/foia/intel98.html (copy attached as Attach. B). Indeed, the fact of the disclosure of those intelligence budget figures by defendant was explicitly discussed during the very same debate in which Congressman Blumenauer made the statement upon which plaintiff so heavily relies. See, e.g., 146 Cong. Rec. H3498 (daily ed. May 22, 2000) ("[T]he intelligence community has voluntarily disclosed the 1998 and 1997 [aggregate intelligence] budgets.") (statement of Rep. Roemer), available at 2000 WL 660048 (copy attached as Attach. C); id. at H3503 (noting that former DCI George J. Tenet disclosed aggregate intelligence budget figures in 1997 and 1998) (statement of Rep. Goss).

A second relevant detail omitted from plaintiff's Reply is that Congressman Blumenauer's statement was made in the context of a debate during which the House of Representatives considered -- and later rejected -- a proposal that would have required the disclosure of the very same type of intelligence budget information that plaintiff now claims was "publicly identified" by Congressman Blumenauer. See id. at H3498.³ This omission is

³ Yet another detail that plaintiff's Reply fails to mention
(continued...)

particularly significant and troubling given that former Acting DCI McLaughlin's declaration discussed the rejection of this and other proposed congressional measures that would have required the disclosure of aggregate intelligence budget figures. See McLaughlin Decl. ¶ 13 (noting that "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, when Congressman Blumenauer's statement is viewed together with these additional relevant details, it becomes clear that he actually "publicly identified" nothing more than aggregate intelligence budget figures that defendant, not Congress, had already "publicly identified" years earlier. As

³(...continued)

is that even proponents of this proposal did not support the disclosure of agency-specific intelligence budget figures such as those solely at issue in this litigation. See, e.g., 146 Cong. Rec. H3499 (daily ed. May 22, 2000) ("We are asking for [disclosure of] the aggregate level [budget], not broken down by agency.") (statement of Rep. Roemer); id. at H3502 ("I support the Roemer Amendment . . . to disclose the aggregate amount of the past year's intelligence budget, but . . . I for one will oppose declassification [of intelligence budgets] even at the agency level.") (statement of Rep. Dixon).

such, these details -- and plaintiff's failure to mention them -- do warrant special attention.

Respectfully submitted,

KENNETH L. WAINSTEIN
(D.C. Bar #451058)
United States Attorney

R. CRAIG LAWRENCE
(D.C. Bar #171538)
Assistant United States
Attorney

Dated: October 26, 2004

FRANK P. MENNA
Senior Attorney
Office of Information and
Privacy
United States Department of
Justice
Flag Building, Suite 570
Washington, DC 20530-0001
(202) 514-3642