

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASSASSINATION ARCHIVES AND	:
RESEARCH CENTER, et al.	:
	:
Plaintiffs,	:
	:
v.	: Civil Action No. 21- 01237 (CRC)
	:
CENTRAL INTELLIGENCE AGENCY	:
Washington, D.C. 20505	:
	:
Defendant.	:

**PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT COMBINED
WITH OPPOSITION TO CIA’S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Assassination Archives and Research Center (“AARC”) and James H. Lesar hereby move for summary judgment against defendant Central Intelligence Agency (“CIA) to obtain an order to require CIA to perform an adequate search for responsive records in this case and to release such records to plaintiffs. AARC and Lesar also oppose CIA’s motion for summary judgment. A memorandum of points and authorities in support of Plaintiffs’ motion and combined opposition follows.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR
SUMMARY JUDGMENT COMBINED WITH OPPOSITION TO CIA’S
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BACKGROUND

Plaintiffs' Freedom of Information Act ("FOIA") request seeks information Plaintiffs believe, based on decades of experience, to be among the most promising leads to solving the 1963 assassination of President Kennedy.

Plaintiff Assassination Archives and Research Center ("AARC") is a non-profit, non-stock corporation, organized in 1984 under Section 501(c) of the Internal Revenue code. AARC is committed to collecting, preserving and making available to the public research materials relating to political assassinations and related subjects; conducting research and seminars in the field of political assassinations, and publishing and disseminating scientific and public information concerning political assassinations and related subjects. As part of its research and public information functions, AARC uses government records made available to it under the FOIA. AARC's archive contains the largest collection of materials on the assassination of President John F. Kennedy in private hands. AARC does not espouse or support a particular theory about the assassination of President Kennedy. Plaintiff James H. Lesar is a private citizen and attorney and serves as President of the AARC. Mr. LESAR has devoted decades of study and research as to the circumstances of the assassination of President Kennedy.

Plaintiffs' FOIA request seeks records related to (1) the owner of the Texas

School Book Depository building in 1963, David Harold Byrd¹; (2) Byrd's African safari hunting host and guest visitor to Dallas in late 1963, Werner von Alvensleben, who according to released CIA predecessor organization Office of Strategic Services ("OSS") records had served as an assassin for the Nazi leader Heinrich Himmler in Germany in 1933. OSS document, 9/28/1945, Exhibit 1, para. 1(c); and (3) the 1954 Doolittle Report that recommended that the CIA be permitted to act ruthlessly and beyond the norms of civilized human conduct to achieve its goals in the Cold War. Doolittle Report, Exhibit 4, Doc. C03066212, pp. 61-62 of Exh. 4 (pp 2-3 of the Report)(pagination added to Exhibit in lower right corner of pages).

The chair of the Doolittle commission was General James Doolittle, who was a self-described substantial friend of David Harold Byrd. ECF 1-1 p.4 Obituary. CIA is so sensitive about the 68-year old Doolittle Report that in this case CIA claims that in 191 pages of records dated 1955 related to key portions of that report not a single word can be released to the public. *Vaughn* index, ECF 19-2 p.

¹ President Kennedy was said to have been hit by bullets fired from the Texas School Book Depository building. At the time of the assassination David Harold Byrd owned that building. <https://www.washingtontimes.com/news/2006/may/02/20060502-103326-3519r/> David Harold Byrd was a cousin of U.S. Senator Harry Byrd, Sr. of Virginia and his brother, U.S. Navy Admiral Richard E. Byrd. Sen. Byrd led the "Massive Resistance" strategy to the *Brown v. Bd. Of Education* school integration decision (347 U.S. 483 (1954)). David Harold Byrd financially supported Admiral Byrd's explorations of Antarctica. In appreciation Admiral Byrd named a mountain range in Antarctica the Harold Byrd Mountains. *"I'm an Endangered Species: The*

17, Denied in Full Records- document C02152332- 35 pages; C02384822- 131 pages, C02384828- 18 pages; C03298720- 7 pages.

Specifically, plaintiffs AARC and Lesar's FOIA request dated July 4, 2020, attached to the complaint (ECF #1-1) asks for the following records or information (CIA's statement of the request is partial and leaves out most detail and context):

1. Search for and release all records or information in any format related to David Harold Byrd (deceased) of Dallas, Texas. Mr. Byrd died on September 14, 1986 (see attached obituary from the Dallas Times-Herald). Mr. Byrd owned the Texas School Book Depository **Building** at the time of the assassination of President Kennedy in 1963, and reportedly removed the "sniper's window" from the building after the assassination and displayed it in his mansion. Mr. Byrd was an owner and financier of government contracting companies including Texas Engineering Manufacturing Company (TEMCO), E-Systems, and Ling-TEMCO-Vaught (LTV). E-Systems was well known as a CIA contractor, so much so that in 1975 CIA solicited E-Systems to purchase its proprietary airline, Air America. David Harold Byrd was also active in the oil business and varied other business enterprises. David Harold Byrd co-founded the Civil Air Patrol (CAP) in 1941 and served in command capacities in CAP until the early 1960's. The Civil Air Patrol is the official auxiliary of the US Air Force. In the 1950's Mr. Byrd served with Cord Meyer, Sr. on the national executive board of CAP (Cord Meyer, Jr. was a ranking CIA executive).
2. Search for and release all records and information in any format related to Werner von Alvensleben, Jr. (died 1998), of Mozambique (formerly Portuguese East Africa). Mr. Alvensleben owned and operated the big game hunting company named Safarilandia in Portuguese East Africa, later Mozambique. According to released Office of Strategic Services (OSS) records, Mr. Alvensleben served as a valued double agent for OSS during World War II in Portuguese East Africa. OSS records state that Mr. Alvensleben was a member of the Bavarian Military Police in 1933, headed

Autobiography of a Free Enterpriser", David Harold Byrd, Pacesetter Press, Houston, Texas, 1978, pages 3, 97-98.

by Heinrich Himmler (the Bavarian Military Police became the Nazi SS, according to OSS records). In 1933 Mr. Alvensleben was sent to Austria to participate in the assassination of an Austrian official. Mr. Alvensleben was arrested by the Austrians and imprisoned for this activity. According to reports in the Dallas Morning News, Mr. Alvensleben was in Dallas, Texas as a guest of David Harold Byrd in late 1963. Further, David Harold Byrd was reported to be present at Mr. Alvensleben's Safarilandia on November 22, 1963, the day of President Kennedy's murder. Due to Mr. Alvensleben's service as a valued double agent for OSS in World War II, it is likely that Mr. Alvensleben served as an asset of the CIA after the war, or had contact with the CIA.

3. Search for and release all records and information in any format related to the Doolittle Report of 1954 and its appendices A-D. The Doolittle Report was the result of a commission established by President Eisenhower to study the activities of the CIA and headed by General James Doolittle. The Doolittle Report called for more aggressive CIA covert activities that had previously been believed to be repugnant and contrary to American values. Requesters seek full release of the requested materials. As shown in the attached obituary of David Harold Byrd, General Doolittle and Mr. Byrd were substantial friends who shared an interest in aviation from the early years. Mr. Byrd and General Doolittle were Safari hunting partners on several occasions.

AARC and Lesar received no response or determination on their request even though the U.S. Postal Service tracking system showed that the request had been delivered to CIA on July 9, 2020. After receiving no response for over nine months AARC filed this action on May 6, 2021.

CIA initially contended that it had not received AARC's FOIA request. ECF#9, para. 2. AARC's counsel sought information from the post office where the request had been mailed, McLean, Virginia 22101. That post office provided him

with a document from the U.S. Postal service intranet showing that a CIA representative signed for receipt of AARC's request including a scan of his signature. AARC's counsel provided this information to government counsel, and as a result CIA reversed its position and admitted that it had received AARC's request. ECF#10, para. 17, CIA Answer.

Subsequently CIA has released records to AARC and Lesar responsive to their request, referred other documents to other agencies for response, and withheld a large quantity of records related to the Doolittle Report. Document releases attached as Exhibit 2 (CIA first release October 19, 2021); Exhibit 3 (FBI Direct Referral response Dec. 16, 2021); Exhibit 4 (CIA 2nd Release Dec. 22, 2021); Exhibit 5 (Dept. of State Response March 2022). The Doolittle Report is document # C03066212 in Exhibit 4, at page 56 of the December 22, 2021 release. CIA has refused to search its operational files in response to AARC's request even though these files are the most likely to contain records that will shine light on the circumstances of the assassination of President Kennedy.

ARGUMENT

I. CIA MUST BE ORDERED TO SEARCH ITS OPERATIONAL FILES FOR RESPONSIVE RECORDS.

The subject matter of AARC and Lesar's request, the assassination of President Kennedy, is not exempt from search of operational files under FOIA under the CIA Information Act of 1984 (50 USC §3141(c)(3)). The D.C. Circuit has held that the exemption from search does not apply to matters investigated by the Senate Select Committee on Government Operations With Respect to Intelligence Activities ("Church Committee") and that the scope of the Church Committee investigation specifically encompassed operations of the CIA and other federal agencies in investigating the assassination of President Kennedy. Church Committee, *The Investigation of the Assassination of President John F. Kennedy: Performance of the Intelligence Agencies*, S.Rep. No. 94-755, Book V, at 1 (1976), portions attached hereto as Exhibit 6; *Morley v. CIA*, 508 F. 3d 1108, 1117 (D.C.Cir. 2007).

Further, the assassination of President Kennedy was the subject of an investigation by the Department of Justice at the time and a Presidential Commission, the Warren Commission, which was assisted by the Department of

Justice. The operational files search exemption does not extend to investigations by the Department of Justice by the language of 50 U.S.C. §3141(c)(3).

In addition, former CIA Director Richard Helms has publicly stated that CIA initiated an investigation of the assassination of President Kennedy that began with an effort to find out if CIA operatives were in Dallas at the time of the assassination. <https://www.youtube.com/watch?v=e3nDUEgh05o>

Government investigative agencies, and in particular the CIA, did not inform the Warren Commission about plots to kill Fidel Castro undertaken or developed by U.S. government agencies. Exhibit 7, Foreword by former President Gerald R. Ford (member of the Warren Commission), “A Presidential Legacy and The Warren Commission”, FlatSigned Press, Nashville, TN, 2007, p. XXII. All of these matters are subject to FOIA search under the terms of 50 U.S.C. §3141(c)(3).

In addition, CIA plots to assassinate Fidel Castro that may have been related to the assassination of President Kennedy were the subject of an investigation by the Inspector General (“IG”) of the CIA ordered by President Johnson in 1967. CIA IG Report on Plots to Assassinate Fidel Castro dated May 23 1967 attached hereto as Exhibit 8. Such Inspector General investigations are also exceptions from the FOIA search exemption of 50 U.S.C. §3141(c)(3) and by

language of that statute FOIA searches must be conducted for such records or information.

Further, the House of Representative Select Committee on Assassinations investigated all of these issues as part of its investigation of the assassination of President Kennedy. The Congress of the United States unanimously passed a law in 1992, enacted by the President, requiring the expeditious release to the public of all government records related to the assassination of President Kennedy and investigations of the assassination. President John F. Kennedy Records Collection Act of 1992, codified at 44 U.S.C. §2107 notes.

Yet the government in this case avoids searching for or investigating the information presented by plaintiffs, namely that a convicted Nazi assassin was in the company of the owner of the Texas School Book Depository building at the time of the assassination of President Kennedy, and was the guest of the owner of the building in Dallas in late 1963 and early 1964 (Exhibit 9- *Dallas Morning News* articles from January 9 and 19th 1964 reporting Werner von Alvensleben's visit to Dallas as guest of D. Harold Byrd). And this convicted assassin came from a family in which his father was reported to U.S. intelligence to be a specialist in

political assassinations after World War I in Germany.² Further the owner of the Texas School Book Depository building was deeply involved with secret defense and intelligence activities through the Temco, Ling-Temco-Vaught, and E-Systems companies, and his relationship with General Doolittle. The Court should order the government to search for, release and investigate this new information related to the assassination of the President, including search of its operational files, and including classified files retrieved from former President Trump. (Former President Trump has expressed strong interest in the assassination of President Kennedy and may have had possession of government files on the topic).

The government has access to the records needed to search for this information, such as CIA operational files and visa information from 1963-64, and CIA contracting information for these companies. Werner von Alvensleben and D. Harold Byrd's CIA records should be reviewed, as well as contracting files for the Byrd related companies.

As a valuable double agent for OSS during World War II, Werner von

² The father, also named Werner von Alvensleben, appears in the authoritative work on Nazi Germany, "The Rise and Fall of the Third Reich" by William L. Shirer. This Werner von Alvensleben (father) was present with Adolf Hitler in Berlin the night in 1933 when Hitler was informed he would be named Chancellor of Germany. Von Alvensleben precipitated a crisis by inaccurately informing Hitler that a coup was being undertaken to prevent Hitler from coming to power. Hitler called out the SA Brown Shirts and the police to prevent such a coup, according to Shirer, and Hitler then took power as Chancellor the next day. Page 182, "The Rise and Fall of the Third Reich", William L. Shirer, Simon and Shuster, New York 1960. Werner von

Alvensleben would have been a prime candidate to serve as a CIA asset in Portuguese East Africa (Mozambique) after the war. Exh. 1, hereto, OSS Documents. The Doolittle Report describes OSS World War II veterans as CIA's invaluable asset in forming a hard core of capable men from World War II to build the Cold War CIA. Doolittle Report, Exhibit 4, p. 77, doc.# C03066212 (pagination added in lower right corner of pages).

D. Harold Byrd was a defense contractor who was a principal of the Ling-Temco-Vaught conglomerate ("LTV") in the 1960's. LTV and its subcomponent E-Systems were large scale defense contractors that had CIA contracts as part of their business portfolios. Byrd was a substantial personal friend and safari partner of General Jimmy Doolittle,³ who was called upon in 1954 by President Eisenhower to conduct a Top Secret study of CIA covert operations with a purpose to strengthening them. The Doolittle Report called for increased CIA covert operations and warned that the American public might have to be educated that American values of fair play needed to be dispensed with in the Cold War ("(t)here are no rules in such a game"). The Doolittle Report called for a CIA "if necessary, more ruthless than that employed by the enemy." Doolittle Report,

Alvensleben, Jr. was not a titled Baron despite frequent references to him using that title. Publisher's Note, *Baron in Africa*, Brian Marsh, Safari Press, Inc. 2001 page xv.

³ "I'm an Endangered Species: The Autobiography of a Free Enterpriser", David Harold Byrd, Pacesetter Press, Houston, Texas, 1978, page 40.

Exhibit 4, pp. 61-62 Doc. #C03066212.

In 1963 Werner von Alvensleben, convicted in 1933 of attempted assassination on behalf of the Nazis in Austria, headed a large hunting preserve in Portuguese East Africa (Mozambique) called Safarilandia. Multiple reports in hunting and gun publications state that Werner von Alvensleben was legendary for using a 6.5 mm Mannlicher-Schoenauer rifle for his hunting activities.⁴ The rifle found on the sixth floor of the TSBD and alleged to be connected to the assassination of President Kennedy was a 6.5 mm Mannlicher-Carcano. Warren Commissioner John McCloy questioned the FBI firearms expert who testified before the Warren Commission in 1964 as to whether the ammunition found in the Mannlicher-Carcano and on the floor at the TSBD could be fired from a Mannlicher-Schoenauer rifle (ammunition for the Mannlicher-Carcano and Mannlicher-Schoenauer are said to be virtually identical). The FBI firearms expert said he did not know the answer to the question. Warren Commissioner McCloy stated that he was familiar with the Mannlicher-Schoenauer rifle in that it was the preferred

⁴ The Daily Caller, 8-12-2015, <http://dailycaller.com/2015/08/12/gun-test-alexander-arms-6-5-grendel-hunter/> (“Hunting history is rife with the tales of derring-do with 6.5mm cartridges. W.D.M. Bell whacked many elephants and Werner von Alvensleben slew hundreds of buffalo with what they termed a “small-bore rifle,” namely, the 6.5×54 Mannlicher-Schönauer”). Read more: <http://dailycaller.com/2015/08/12/gun-test-alexander-arms-6-5-grendel-hunter/#ixzz49IeXGBzJ>

sporting rifle in Austria and that he owned one.⁵ Further, Commissioner McCloy specifically questioned the FBI firearms expert as to the diameter of the bullet found in the TSBD building. FBI expert Frazier gave McCloy a diameter of 6.65 millimeters, which is too small a diameter for a Mannlicher-Carcano bullet, but is consistent with the reportedly slightly smaller Mannlicher-Schoenauer bullet.

The government does not contest plaintiff's allegation in their request that the owner of the Texas School Book Depository building Byrd had the "sniper's window" removed from the building after the assassination and displayed in his Dallas mansion where it became the focus of high-powered Dallas social events⁶.

In addition the government does not deny that there has been no investigation or search for relevant records of the presence of a convicted Nazi assassin in Dallas in late 1963 and early 1964 in the company of the owner of the TSBD building in the circumstances described above, despite several attempts to investigate the assassination. Summary judgment is inappropriate given this inconclusive state of affairs.

Instead, the government should search for and investigate the information on this topic provided by plaintiffs and report back to the Court and parties. Also,

⁵ Warren Commission Testimony of FBI Firearms expert Frazier, attached here to as Exhibit 10: Vol. 3 Warren Commission documents, page 399.

⁶ "Famed Oswald Window" *Washington Times*, May 2, 2006
<https://www.washingtontimes.com/news/2006/may/02/20060502-103326-3519r/>

CIA should search its files, including operational files, for information on the convicted Nazi assassin, Werner von Alvensleben, and TSBD building owner David Harold Byrd and release that information to plaintiffs. There is no information about Werner von Alvensleben on the 7 CD discs of over 100,000 documents provided plaintiffs by government counsel in another case and stated to be all the documents provided by CIA under the Nazi War Crimes Disclosure Act (NWCDA). Given von Alvensleben's status as a convicted Nazi assassin, he would fall under the coverage of that Act. There is no explanation why there were no documents released under the NWCDA related to von Alvensleben. This is further reason that summary judgment is inappropriate and that CIA must search for and release its files on Werner von Alvensleben.

Plaintiffs have requested information about von Alvensleben and Byrd from the government, but the government refuses to comply. The Court should order the agencies to search their records, including operational files and classified files retrieved from former President Trump, for responsive information and provide it to plaintiffs. (Former President Trump has expressed strong interest in the assassination of President Kennedy and may have had possession of government files on the topic).

II. CIA HAS FAILED TO ADEQUATELY SEARCH FOR, LOCATE, RETRIEVE AND PRODUCE RESPONSIVE RECORDS.

A. Legal Standard Governing Searches

To prevail in a FOIA case, “the defending agency must prove that each document that falls within the class requested either has been produced, is unidentifiable or is wholly exempt from the Act’s inspection requirements.”

National Cable Television Ass’n v. FCC, 479 F.2d 183, 186 (D.C.Cir.1973).

Agency affidavits regarding the search for responsive records are inadequate to support summary judgment where they “do not note which files were searched or by whom, do not reflect any systematic document location, and do not provide information specific enough to enable [the plaintiff] to challenge the procedures utilized.” *Weisberg v. United States Dept. of Justice*, 627 F.2d 365, 371 (D.C.Cir.1980).

When the adequacy of the agency’s search is in dispute, summary judgment for an agency is inappropriate as to that issue. *See Founding Church of Scientology, Inc. v. Nat. Sec. Agency*, 610 F.2d 824, 836-37 (D.C.Cir.1979)(“To accept its claim of inability to retrieve the requested documents in the circumstances presented is to raise the specter of easy circumvention of the [FOIA] . . . and if, in the face of well-defined requests and positive indications of

overlooked materials, an agency can so easily avoid adversary scrutiny of its search techniques, the Act will inevitably become nugatory.”).

It is a truism that the issue is not whether the documents might exist that are responsive to the request, but rather whether the search conducted by the agency was “adequate.” *Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C.Cir.1984)(emphasis in the original); *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C.Cir.1986)(“[a] search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.”) In *Truitt v. Department of State*, 897 F.2d 540 (D.C.Cir.1990), the Court of Appeals expatiated on this standard, stating that:

It is elementary that an agency responding to a FOIA request must conduct a search reasonably calculated to uncover all relevant documents,’ and, if challenged, must demonstrate ‘beyond a material doubt’ that the search was reasonable. “‘The issue is not whether any further documents might conceivably exist but rather whether the government’s search for responsive documents was adequate.’ The adequacy of an agency’s search is measured by a standard of reasonableness,’ and is dependant upon the circumstances of the case.”

Id. at 542 (footnotes omitted)(emphasis added). If such doubt exists as to the adequacy of the search, *Truitt* counsels, “summary judgment for the agency is not proper.” Id. (footnote omitted). Where the sufficiency of the agency’s

identification or retrieval procedure is genuinely in issue, summary judgment is not in order[.] *Founding Church, supra*, 610 F.2d at 836, and the plaintiff is entitled to take discovery on the adequacy of the search. *Weisberg, supra*, 627 F.2d at 371.

Here, the CIA has not demonstrated that the search that it conducted was reasonable. First CIA has not searched its operational files contrary to the plain meaning of the statute 50 USC §3141(c)(3), as argued in I above. Second CIA has not described a search commensurate with the important issues raised in the case, namely, the assassination of the President of the United States. Third, the inadequacy of the CIA's search is evidenced by the absence of records pertaining to known operations, events and activities as set forth in the first Argument above. In paragraph 15 of the Blaine declaration the search term "Byrd" is misspelled as "Bryd" and thus does not document a search for records on D. Harold Byrd. Accordingly, this Court should order the CIA to conduct further searches, including classified files retrieved from former President Trump, and AARC should be allowed to pursue discovery on the CIA's search efforts. (Former President Trump has expressed strong interest in the assassination of President Kennedy and may have had possession of government files on the topic).

As AARC shows below, it is clear that the CIA has failed to conduct an adequate search. Indeed, a plethora of evidence indicates that the CIA has failed to meet its obligation to search for, locate, retrieve and produce responsive records.

B. The Inadequacy of the CIA's Search Is Evidenced by the Absence of Records Pertaining to Known Operations, Events and Activities

The CIA claims to have been unable to locate any records responsive to AARC's request related to Byrd and von Alvensleben. This claim does not square with the available evidence. Byrd financed and participated in large scale government contracting companies such as TEMCO, E-Systems, and LTV, which are believed to have had large CIA contracts. Von Alvensleben was a valued double agent for OSS in World War II and therefore a likely candidate to be a CIA clandestine asset during the Cold War. It follows that there would be records or information related to Byrd and von Alvensleben. The scale of Byrd's government contracting and the valued nature of von Alvensleben's assistance to U.S. intelligence in World War II support the conclusion that considerable material would be memorialized in records.

In addition, after the assassination of President Kennedy on November 22, 1963 the U.S. government launched an official investigation of the assassination, the Warren Commission. Records related to Byrd's ownership of the Texas

School Book Depository building and von Alvensleben's presence in Dallas contemporaneous to the assassination would have been relevant to this official investigation and preserved for that purpose.

It is simply not credible that no records or information were created and the logical conclusion is that the CIA records remain largely unsearched.

C. CIA's conflicting statements as to whether it received plaintiffs' request undermines the credibility of any CIA statements in this case and requires discovery by plaintiff.

CIA initially contended that it had not received AARC's FOIA request. ECF#9, para. 2. AARC's counsel sought information from the post office where he mailed the request, McLean, Virginia 22101. That post office provided him with a document from the U.S. Postal service intranet showing that a CIA representative signed for receipt of AARC's request including a scan of his signature. AARC's counsel provided this information to government counsel, and as a result CIA reversed its position and admitted that it had received AARC's request. ECF#10, para. 17, CIA Answer.

CIA's reversal in first denying receipt of plaintiffs' request and then conceding receipt raises very troubling questions as to the CIA's conduct of the search for records in this case. In addition to ordering a new and competent search, this Court should allow AARC to conduct discovery on CIA's denial of receipt of the

request in the form of a deposition or depositions of the officials who denied receipt of the request and are responsible for the contradictory responses. Neugent v. U.S. Dept. of Interior, 640 F.2d 386,391 (D.C. Cir. 1981) holding that discovery served prior to summary judgment should be answered in the interests of clarifying the matter.

III.EXEMPTIONS b(1) AND b(3) DO NOT APPLY TO THESE ANCIENT DOCUMENTS

CIA and FBI claim a b(1) national security exemption for material related to the Doolittle Report that is in excess of 50 years old, despite the provisions of Executive Order 13,526 Sec. 3.3 that mandate automatic declassification for material over 50 years in age. While CIA and FBI cite Executive Order 13,526 as their authority they ignore the fact that EO 13,526 Sec, 3.3 mandates automatic declassification of records over 50 years of age. All of the Doolittle Report related documents identified by CIA and FBI are over 50 years in age and thus are automatically declassified. CIA and FBI's failure to address automatic declassification concedes the issue and the records must be released.

Further a new release in this version of the Doolittle Report reveals that CIA had been hiding under pretext of national security that the Doolittle Report found that CIA's polygraph procedures had been extremely useful in uncovering "sexual

perverts” in CIA and recommended that the polygraph program should be continued for this purpose. Doolittle Report, Exh. 4, p. 84 Doc. C03066212. Thus the effect of CIA’s use of the national security exemptions was to keep secret for 68 years that it maintained an active and successful program to identify and oust primarily LGBTQ persons from its ranks. CIA’s withholdings should be viewed in light of such prior experience.

CIA and FBI’s Exemption 3 claim also fails. As argued above, Executive Order 13,526, Section 3.3 authorizes disclosure of the material that is more than 50 years in age due to its automatic declassification provision. Exemption 3 only applies to unauthorized disclosure by its plain language. The material related to the Doolittle report is more than 50 years old, has been automatically declassified by EO 13,526, Sec. 3.3 and must be released.

FBI document C01270964 is largely illegible, and a legible version must be located and released (Exhibit 3). FBI document C01270967 has two redactions blacked out for which no exemption is claimed on pages 3 and 6 of the document (Exhibit 3). The FBI release letter states exemptions are claimed in this case by computer generated numbering and lettering and handwritten exemption claims from prior processing is to be ignored (Exh. 3, second page of release letter dated 12/16/2021, bottom of page note). The two redactions in question have only

handwritten notations and no computer letter. This material must be released since there is no exemption claim.

The CIA and FBI invoked the two Exemption 3 statutes discussed below.

A. *National Security Act of 1947* ("NSA Act") 50 U.S.C. §3024

The NSA Act protects against the unauthorized disclosure of intelligence sources and methods. But this Exemption 3 statute is subject to the same concern pointed out in *King v. United States Department of Justice*, 830 F.2d 210, 221 note 90 (D.C. Cir. 1987). Is the source still alive? Has the source or method been disclosed? Is the source or method really unknown to foreign governments and the press? Are disclosures made by Congress considered "unauthorized"?

As argued above, Executive Order 13526, Section 3.3 authorizes disclosure of the material that is more than 50 years in age due to its automatic declassification provision. Exemption 3 only applies to unauthorized disclosure by its plain language. The material related to the Doolittle Report is more than 50 years old, has been automatically declassified by EO 13,526 Sec. 3.3 and must be released.

B. *The CIA Act Exemption 3 Statute* 50 U.S.C. §3507

The CIA and FBI relied on the *Central Intelligence Agency Act of 1949* ("CIA Act"), 50 U.S.C. §3507, as amended. It exempts the Agency from

publishing or disclosing "the organization, names, official titles, salaries, or numbers of personnel employed by the [CIA]." 50 U.S.C. §3507.

In *Phillippi v. CIA* (“*Phillippi*”), 546 F.2d 1009, 1015 n.14 (D.C. Cir. 1976), the D.C. Circuit cautioned that the CIA Act does not permit the agency ‘to refuse to provide any information at all about anything it does.’ Similarly, in *Baker v. CIA*, 580 F.2d 664, 669 (D.C.Cir. 1978), the court held that the CIA Act applies to personnel information.

Despite these admonitions, the agency has recently asserted the CIA Act in several cases to exclude information regarding the organization and functions of the agency generally, on the theory that the CIA only functions through the acts of its employees. *Sack v. CIA*, 49 F. Supp. 3d 15, 22 (D.D.C. 2014) (citations omitted). *Sack* ruled that “[t]he phrase ‘of personnel employed by the Agency’ applies to each item in the list ‘organization, functions, names, official titles, salaries, or numbers’ and thus the CIA Act only applies to personnel information.” *Id.* at 22 (emphasis added).

The CIA’s declarant, Vanna Blaine (“Blaine”) and CIA’s Vaughn index assert the b(3) exemption much more broadly than its proper scope, utilizing blanket assertions and string citations to exemptions. Examples are from the Doolittle Report itself document C03066212 Exh. 4 pp. 122-124 in which a two page

appendix to the report is redaction on a string citation that includes b(3)(CIA Act); Document C02261471, Exh. 4, pp. 26,27,29,32 in which entire pages are deleted under a string citation of exemptions claims including the CIA Act. Plaintiffs have previously identified 191 pages withheld in full in which the b(3)(CIA Act) exemption is string cited as a rationale for withholding. *Vaughn* index, ECF 19-2 p. 17 Denied in Full Records- C02152332- 35 pages, C02384822- 131 pages, C02384828- 18 pages, C03298720 7 pages. There is no reason stated for maintaining the identity of CIA personnel as covert at this late date. The b(3)(CIA Act) exemption is unavailable to CIA and FBI in this situation and the records must be released.

IV. SEGREGABILITY

As noted, CIA is so sensitive about contents of the 68-year old Doolittle Report that in this case CIA claims that in 191 pages of records dated 1955 related to key portions of that report not a single word can be released to the public. *Vaughn* index, ECF 19-2 p. 17 Denied in Full Records- C02152332- 35 pages, C02384822- 131 pages, C02384828- 18 pages, C03298720 7 pages. This claim is made despite the explicit language of the FOIA that “any reasonably segregable portion of a record shall be provided to any person requesting such record.” 5

USC §552(b). Given the age of the records and the paucity of justification for such an extraordinarily broad withholding, CIA's actions are unreasonable and segregable material must be found and released. Due to the age of the records and the scale of total redaction, the court should undertake an *in camera* review of the withheld documents as set forth in 5 U.S.C. §552(a)(4)(B) to determine if exemptions are properly claimed and whether segregable portions can be released as required by the FOIA statute cited above.

CONCLUSION

In consideration of the foregoing, plaintiff AARC hereby moves the court for summary judgment that defendant CIA has not conducted an adequate search for records responsive to AARC's FOIA request, and that CIA be ordered to conduct an adequate search for responsive records, including operational files and classified files recently retrieved from former President Trump, and provide responsive records to AARC. AARC seeks an order of this court compelling CIA to release withheld information as argued in the memorandum above, including *in camera* review of withholdings by the court. Further, in light of the confusion evident in CIA's handling of plaintiffs' request in this case AARC moves that the Court order that AARC be permitted to conduct discovery of CIA's handling of plaintiffs' request.

Respectfully submitted,

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August 12, 2022

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASSASSINATION ARCHIVES AND	:	
RESEARCH CENTER et al.	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 21- 1237(CRC)
	:	
CENTRAL INTELLIGENCE AGENCY	:	
	:	
	:	
Defendant.	:	

STATEMENT OF MATERIAL FACTS
FOR WHICH THERE IS NO GENUINE DISPUTE

Plaintiffs Assassination Archives and Research Center (“AARC”) and Lesar hereby file this Statement of Material Facts for Which There is No Genuine Dispute under Local Rule 7(h) in support of its Motion for Summary Judgment.

1. On July 4, 2020, AARC and Mr. Lesar mailed a FOIA request to the CIA seeking documents relating to David Harold Byrd, Werner von Alvensleben, Jr. and the Doolittle Report. Letter from Daniel S. Alcorn, Esq. to CIA, FOIA Request (July 4, 2020) (attached to Complaint as Exhibit 1 [ECF #1-1]).

2. Specifically, AARC requested the following (CIA leaves out much of the explanatory material from the request):

- (1). Search for and release all records or information in any format related to David Harold Byrd (deceased) of Dallas, Texas. Mr. Byrd died on September 14, 1986 (see attached obituary from the Dallas Times-Herald). Mr. Byrd owned the Texas School Book Depository **Building** at the time of the assassination of President Kennedy in 1963, and reportedly removed the “sniper’s window” from the building after the assassination and displayed it in his mansion. Mr. Byrd was an owner and financier of government contracting companies including Texas Engineering Manufacturing Company (TEMCO), E-Systems, and Ling-TEMCO-Vaught (LTV). E-Systems was well known as a CIA contractor, so much so that in 1975 CIA solicited E-Systems to purchase its proprietary airline, Air America. David Harold Byrd was also active in the oil business and varied other business enterprises. David Harold Byrd co-founded the Civil Air Patrol (CAP) in 1941 and served in command capacities in CAP until the early 1960’s. Civil Air Patrol is the official auxiliary of the US Air Force. In the 1950’s Mr. Byrd served with Cord Meyer, Sr. on the national executive board of CAP (Cord Meyer, Jr. was a ranking CIA executive).
- (2) Search for and release all records and information in any format related to Werner von Alvensleben, Jr. (died 1998), of Mozambique (formerly Portuguese East Africa). Mr. Alvensleben owned and operated the big game hunting company named Safarilandia in Portuguese East Africa, later Mozambique. According to released Office of Strategic Services (OSS) records, Mr. Alvensleben served as a valued double agent for OSS during World War II in Portuguese East Africa. OSS records state that Mr. Alvensleben was a member of the Bavarian Military Police in 1933, headed by Heinrich Himmler (the Bavarian Military Police became the Nazi SS, according to OSS records). In 1933 Mr. Alvensleben was sent to Austria to participate in the assassination of an Austrian official. Mr. Alvensleben was arrested by the Austrians and imprisoned for this activity. According to reports in the Dallas Morning News, Mr. Alvensleben was in Dallas, Texas as a guest of David Harold Byrd in late 1963. Further, David Harold Byrd was reported to be present at Mr. Alvensleben’s Safarilandia on November 22, 1963, the day of President Kennedy’s murder. Due to Mr. Alvensleben’s service as a valued double agent for OSS in World War II, it is likely that Mr. Alvensleben served as an asset of the CIA after the war, or had contact with the CIA.

(3) Search for and release all records and information in any format related to the Doolittle Report of 1954 and its appendices A-D. The Doolittle Report was the result of a commission established by President Eisenhower to study the activities of the CIA and headed by General James Doolittle. The Doolittle Report called for more aggressive CIA covert activities that had previously been believed to be repugnant and contrary to American values. Requesters seek full release of the requested materials. As shown in the attached obituary of David Harold Byrd, General Doolittle and Mr. Byrd were substantial friends who shared an interest in aviation from the early years. Mr. Byrd and General Doolittle were Safari hunting partners on several occasions.

(Source: FOIA request attached to Complaint as Exhibit 1 [ECF #1-1];

3. The owner in 1963 of the Texas School Book Depository building

D. Harold Byrd had the “sniper’s window” removed from the building after the assassination and displayed in his Dallas mansion where it became the focus of high-powered Dallas social events⁷.

4. Byrd’s African safari hunting host and guest visitor to Dallas in late 1963, Werner von Alvensleben, according to released CIA predecessor organization Office of Strategic Services (“OSS”) records, had served as an assassin for the Nazi leader Heinrich Himmler in Germany in 1933. OSS document Exhibit 1, 9/28/1945 para. 1(c); As a valuable double agent for OSS during World War II, Werner von Alvensleben would have been a prime candidate to serve as a CIA asset in Portuguese East Africa (Mozambique) after the war. Exh. 1 OSS

⁷ “Famed Oswald Window” *Washington Times*, May 2, 2006
<https://www.washingtontimes.com/news/2006/may/02/20060502-103326-3519r/>

documents. The Doolittle Report describes OSS World War II veterans as CIA's invaluable asset in forming a hard core of capable men from World War II to build the Cold War CIA. Doolittle Report, Exhibit 4, doc. # C03066212, p.77 (pagination added lower right corner).

5. The 1954 Doolittle Report recommended that the CIA be permitted to act ruthlessly and beyond the norms of civilized human conduct to achieve its goals in the Cold War. Doolittle Report, Exhibit 4, Doc. C03066212, pp 61-62 of the Report. The chair of the Doolittle commission was General James Doolittle, who was a self-described substantial friend of David Harold Byrd. ECF 1-1 p.4 Obituary.

6. CIA is so sensitive about contents of the 68-year old Doolittle Report that in this case CIA claims that in 191 pages of records dated 1955 related to key portions of that report not a single word can be released to the public. Vaughn index, ECF 19-2 p. 17 Denied in Full Records- document C02152332- 35 pages, C02384822- 131 pages, C02384828- 18 pages, C03298720 7 pages.

7. US Postal Service Tracking confirmed that AARC and Lesar's July 4, 2020 FOIA request was delivered to CIA on July 9, 2020. CIA did not respond to AARC and Lesar's FOIA request.

8. AARC and Lesar received no determination on their request prior to filing

suit in this court.

9. CIA initially contended that it had not received AARC's FOIA request. ECF#9, para. 2. AARC's counsel sought information from the post office where the request had been mailed, McLean, Virginia 22101. That post office provided him with a document from the U.S. Postal service intranet showing that a CIA representative signed for receipt of AARC's request including a scan of his signature. AARC's counsel provided this information to government counsel, and as a result CIA reversed its position and admitted that it had received AARC's request. ECF#10, para. 17, CIA Answer. CIA failed to make a determination on AARC and Lesar's FOIA request within the twenty working days provided in 5 U.S.C. § 552(a)(6)(A)(i).

10. Subsequently CIA has released records to AARC and Lesar responsive to their Request, referred other documents to other agencies for response, and withheld a large quantity of records related to the Doolittle Report. Document releases attached as Exhibits 2 and 4. The Doolittle Report is document # C03066212 in Exhibit 4, page 56 of the December 22, 2021 release. CIA has refused to search its operational files in response to AARC's request even though these files are the most likely to contain records that will shine light on the circumstances of the assassination of President Kennedy.

11. The requested records are highly relevant to several official investigations, including the Department of Justice and Federal Bureau of Investigation, CIA, President's Commission on the Assassination of President John F. Kennedy (The Warren Commission), the Senate Select Committee on Government Operations with Respect to Intelligence Activities (The Church Committee), and the House Select Committee on Assassinations (The HSCA). As such, the exception from search and review of operational files does not apply to these records pursuant to 50 U.S.C. Sec. 3141(c)(3). The Church Committee investigated the performance of the intelligence agencies in the investigation of President Kennedy's assassination and found it wanting. CIA is required to search operational files and records for information responsive to plaintiff's request. Morley v. CIA, 508 F.3d 1108,1119 (2007).

12. As noted, the Church Committee investigated the performance of the intelligence agencies in the investigation of President Kennedy's assassination and found it wanting. The scope of the Church Committee investigation specifically encompassed operations of the CIA and other federal agencies in investigating the assassination of President Kennedy. *See Church Committee, The Investigation of the Assassination of President John F. Kennedy: Performance of the Intelligence Agencies*, S.Rep. No. 94-755, Book V, at 1 (1976), Exhibit 6 hereto. Morley v.

CIA, 508 F. 3d 1108, 1117 (D.C.Cir. 2007).

13. Further, the assassination of President Kennedy was the subject of an investigation by the Department of Justice and a Presidential Commission, the Warren Commission. Former CIA Director Richard Helms has publicly stated that CIA initiated an investigation of the assassination of President Kennedy that began with an effort to find out if CIA operatives were in Dallas at the time of the assassination. <https://www.youtube.com/watch?v=e3nDUEgh05o>

14. CIA released records to Plaintiffs in this case on October 19, 2021, Release (1) and on December 22, 2021 (Release 2). These releases are attached hereto as Exhibits 2 and 4. All records at issue are over 50 years old.

15. A new release in this version of the Doolittle Report reveals that CIA had been hiding under pretext of national security that the Doolittle Report found that CIA's polygraph procedures had been extremely useful in uncovering "sexual perverts" in CIA and recommended that the polygraph program should be continued for this purpose. Doolittle Report, Exh. 4, doc. # C03066212, p. 84. Thus the effect of CIA's use of the national security exemptions was to keep secret for 68 years that it maintained an active and successful program to identify and oust primarily LGBTQ persons from its ranks.

16. In 1963 Werner von Alvensleben, convicted in 1933 of attempted

assassination on behalf of the Nazis in Austria, headed a large hunting preserve in Portuguese East Africa (Mozambique) called Safarilandia. Multiple reports in hunting and gun publications state that Werner von Alvensleben was legendary for using a 6.5 mm Mannlicher-Schoenauer rifle for his hunting activities.⁸ The rifle found on the sixth floor of the TSBD and alleged to be connected to the assassination of President Kennedy was a 6.5 mm Mannlicher-Carcano.

17. Warren Commissioner John McCloy questioned the FBI firearms expert who testified before the Warren Commission in 1964 as to whether the ammunition found in the Mannlicher-Carcano and on the floor at the TSBD could be fired from a Mannlicher-Schoenauer rifle (ammunition for the Mannlicher-Carcano and Mannlicher-Schoenauer are said to be virtually indistinguishable). The FBI firearms expert said he did not know the answer to the question. Commissioner McCloy stated that he was familiar with the Mannlicher-Schoenauer rifle in that it was the preferred sporting rifle in Austria and that he owned one.⁹

18. Further, Commissioner McCloy specifically questioned the FBI firearms expert as to the diameter of the bullet found in the TSBD building. FBI expert

⁸ The Daily Caller, 8-12-2015, <http://dailycaller.com/2015/08/12/gun-test-alexander-arms-6-5-grendel-hunter/> (“Hunting history is rife with the tales of derring-do with 6.5mm cartridges. W.D.M. Bell whacked many elephants and Werner von Alvensleben slew hundreds of buffalo with what they termed a “small-bore rifle,” namely, the 6.5×54 Mannlicher-Schönauer”). Read more: <http://dailycaller.com/2015/08/12/gun-test-alexander-arms-6-5-grendel-hunter/#ixzz49IeXGBzJ>

Frazier gave McCloy a diameter of 6.65 milimeters, which is too small a diameter for a Mannlicher-Carcano bullet, but is consistent with the reportedly smaller Mannlicher-Schoenauer bullet.

19. In paragraph 15 of the Blaine declaration the search term “Byrd” is misspelled as “Bryd” and thus does not document a search for records on D. Harold Byrd.

20. CIA is so sensitive about contents of the 68-year old Doolittle Report that in this case CIA claims that in 191 pages of records dated 1955 related to key portions of that report not a single word can be released to the public. *Vaughn* index, ECF 19-2 p. 17 Denied in Full Records- C02152332- 35 pages, C02384822- 131 pages, C02384828- 18 pages, C03298720 7 pages. This claim is made despite the explicit language of the FOIA that “any reasonably segregable portion of a record shall be provided to any person requesting such record.” 5 USC Sec. 552(b).

21. FBI document C01270964 is largely illegible (Exhibit 3). FBI document C01270967 has two redactions blacked out for which no exemption is claimed on pages 3 and 6 of the document (Exhibit 3). The FBI release letter states exemptions are claimed in this case by computer generated numbering and

⁹ Warren Commission Testimony of FBI Firearms expert Frazier, attached here to as Exhibit 10.

lettering and handwritten exemption claims from prior processing is to be ignored (Exh. 3, second page of release letter dated 12/16/2021, bottom of page note). The two redactions in question have only handwritten notations and no computer letter. This material must be released since there is no exemption claim.

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