UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD, Plaintiff, v. CENTRAL INTELLIGENCE AGENCY, Defendant.	)	Civil Action No. 1:13-cv-1324 (JEB)

GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT

The government hereby moves for summary judgment pursuant to Fed. R. Civ. P. 56. The reasons for this motion are set forth in the accompanying memorandum.

Dated: January 21, 2015

Respectfully submitted,

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GOVERNMENT'S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

In this single count action, brought under the Freedom of Information Act ("FOIA"), plaintiff, Jason Leopold, sought from the Central Intelligence Agency ("CIA") a copy of the Executive Summary of the Senate Select Committee on Intelligence ("SSCI") report on the Central Intelligence Agency's ("CIA") detention and interrogation program. On December 9, 2014, SSCI publicly released this document, with limited redactions. The government now moves for summary judgment on the grounds that the redactions in this document, taken under FOIA exemptions 1, 3, and 6, were necessary and proper, and is entitled to summary judgment in this case.

FACTUAL AND PROCEDURAL BACKGROUND

I. PLAINTIFFS' FOIA REQUEST.

By letter dated April 28, 2014, plaintiff sought "the CIA's copy of the 480-page executive summary of the Senate Select Committee on Intelligence's (SSCI) report on the agency's detention and interrogation program." A copy of plaintiff's request is attached as Exhibit A to the January 21, 2105 Declaration of Martha Lutz . On June 19, 2014, plaintiff

amended his complaint to include this FOIA request to the CIA, and to substitute the Agency as a defendant in this matter. ECF No. 24.

II. RECORDS AT ISSUE.

In March 2009, the SSCI undertook a study of the CIA's detention and interrogation program. Lutz Decl. ¶ 5. On December 13, 2012, SSCI approved a draft of the Committee Study on the CIA's Detention and Interrogation Program ("Committee Study"), which included twenty findings and conclusions, and transmitted it to the Executive Branch for review. *Id.* The Committee Study was subsequently circulated to Executive Branch agencies for their review and comment. *Id.* After receiving the CIA's response and the SSCI Minority Staff's views, the SSCI revised certain finding and conclusions and updated the Committee Study. *Id.* On April 3, 2014, the SSCI voted to send the Executive Summary of the updated Committee Study to the President for declassification. *Id.* A copy of Senator Dianne Feinstein's letter is attached as Exhibit B to the Lutz Declaration. In that letter, SSCI requested that the Executive Summary be declassified "quickly and with minimal redactions." *Id.*

The Director of National Intelligence and the CIA, in consultation with other Executive Branch agencies, conducted a declassification review of the Executive Summary. Lutz Decl. ¶ 6. On August 1, 2014, at the direction of the President, the DNI declassified a redacted version of that document and the President delivered it to SSCI that day. *Id.* Shortly thereafter, the Executive Branch entered into extensive discussions with SSCI about the material proposed for declassification. *Id.* At the conclusion of those discussions, a declassified version of the Executive Summary was transmitted to SSCI for its unrestricted disposition on December 8,

2104. *Id.* On December 9, 2014, SSCI publicly released a final version of the Executive Summary. *Id.* The Lutz Declaration addresses this version of the Executive Summary. *Id.* ¶ 7.

The Executive Summary released by SSCI is a 499-page report that contains minimal redaction. Lutz Decl. ¶ 8. In fact, the redacted material, which comprises approximately seven percent of the Executive Summary, is limited to discrete pieces of classified material and statutorily protected material and/or personally-identifying information that implicates an individual's privacy interest. The vast majority of the redactions in the Executive Summary concern CIA equities. *Id.* There are also limited redactions requested by U.S. Department of State, the National Security Agency, the Department of Defense, and the Federal Bureau of Investigation, with whom the CIA has consulted in connection with this motion. *Id.* As explained below, limited classified, statutorily-protected, and personally-identifiable information was redacted from the Executive Summary -- information that clearly falls within the ambit of Exemptions 1, 3 and 6. *Id.*

ARGUMENT

I. THE CIA PROPERLY WITHHELD INFORMATION PURSUANT TO EXEMPTIONS 1 AND 3 TO PROTECT CLASSIFIED NATIONAL SECURITY INFORMATION CONTAINED IN THE EXECUTIVE SUMMARY.

The Executive Summary contains information that is currently and properly at the TOP SECRET level and is being withheld under Exemption 1. Lutz Decl. ¶¶ 9-17. As explained below, the information redacted from the Executive Summary could lead to the identification of intelligence sources, methods and activities and/or cause damage to foreign relations or foreign activities of the United States, including confidential sources, within the meaning of 1.4(c) and 1.4(d) of the Executive Order. *Id.*; E.O. 13526, §§ 1.4(c), 1.4(d). Revelation of any of this

information could reasonably be expected to cause exceptionally grave damage to the national security of the United States. Lutz Decl. ¶¶ 9-17. The CIA was fully justified in withholding this national security information.

A. Requirements under Exemption 1.

In a case concerning questions of national security, such as this one, the D.C. Circuit has instructed district courts to give "substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record." *Salisbury v. United States*, 690 F.2d 966, 970 (D.C. Cir. 1982); *see also Gardels v. C.I.A.*, 689 F.2d 1100, 1104-05 (D.C. Cir. 1982); *Assassination Archives and Research Ctr. v. C.I.A.*, 177 F. Supp. 2d 1, 5-6 (D.D.C. 2001), *aff'd*, 334 F.3d 55 (D.C. Cir. 2003). This is because "the Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse affects [sic] might occur as a result of a particular classified record." *Larson v. Dep't of State*, 565 F.3d 857, 864 (D.C. Cir. 2009) (*quoting Ctr. for Nat'l Sec. Studies v. U.S. Dep't of Justice*, 331 F.3d 918, 927 (D.C. Cir. 2003)). Thus, in the national security context, "the government's burden is a light one." *ACLU v. U.S. Dep't of Defense*, 628 F.3d 612, 624 (D.C. Cir. 2011). And, "[t]he CIA's arguments need only be both 'plausible' and 'logical' to justify the invocation of a FOIA exemption in the national security context." *Id.*

Exemption 1 protects records that are: (1) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and (2) are in fact properly classified pursuant to Executive Order. *See* 5 U.S.C. § 552 (b)(1). Substantial weight is accorded to an agency's determination that potential harm merits classification of particular information. *See, e.g., Frugone v. C.I.A.*, 169 F.3d 772, 775 (D.C.

Cir. 1999); *Military Audit Project*, 656 F.2d 724, 745 (D.C. Cir. 1981); *Washington Post v. U.S. Dep't of Defense*, 766 F. Supp. 1, 6-7 (D.D.C. 1991). A court should be reluctant to second-guess such agency determinations in a FOIA case implicating national security. *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 837 (D.C. Cir. 2001); *Halperin v. C.I.A.*, 629 F.2d 144, 148 (D.C. Cir. 1980). Accordingly, summary judgment for the government should be granted where agency affidavits explain with "reasonable specificity" rather than through conclusory statements why the information is currently and properly classified, and where those affidavits are not called into question by contradictory evidence in the record or by evidence of agency bad faith. *Halperin*, 629 F.2d at 148.[1]

The relevant Executive Order currently in effect is E.O 13526, "Classified National Security Information." E.O. 13526, 75 Fed. Reg. 707 (Dec. 29, 2009). Section 6.1(i) of the Executive Order defines "classified national security information" or "classified information" as "information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form." Section 6.1(cc) of the Order defines "national security" as the "national defense or foreign relations of the United States."

[1] The CIA has described, to the greatest extent possible, the nature of the redacted information and the reasons that information remains currently and properly classified. Lutz Decl. ¶ 21. However, should the Court require additional detail, the CIA is prepared to submit an *in camera, ex parte* declaration that provides further information about the redacted material. *Id.* These types of submissions have been long-accepted by courts in the cases, such as this one, involving sensitive national security issues. *See Phillippi v. C.I.A.*, 546 F.2d 1009, 1013 (D.C. Cir. 1976); *Pub. Citizen, Inc. v. Dep't of State*, 100 F. Supp. 2d 10, 27 (D.D.C. 2000), *aff'd in part, rev'd in part on other grounds*, 276 F.3d 634 (D.C. Cir. 2002).

An agency can demonstrate that it has properly withheld information under Exemption 1 if it establishes that it has met the requirements of E.O. 13526. Under E.O. 13526, information may be classified if:

> (1) an original classification authority is classifying the information;
>
> (2) the information is owned by, produced by or for, or is under the control of the United States Government;
>
> (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
>
> (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

E.O. 13526, §1.1 (a); Lutz Decl. ¶¶ 8-10. The Executive Order also mandates that records be properly marked and that they cannot be classified for an improper purpose. E.O. 13526, § 1.7(a); Lutz Decl. ¶ 8.

B. The CIA Followed the Mandated Procedures.

In determining that the information withheld under Exemption 1 is classified, the CIA has adhered to the mandated procedures. Ms. Lutz has been delegated original TOP SECRET classification authority by a written delegation of authority. E.O. 13256, § 1.3(c)(2); Lutz Decl. ¶ 2. The information classified is within the control of the United States, and falls within the categories of information listed in E.O. 13256, § 1.4. Lutz Decl. ¶ 8. In this case, the documents contain information regarding the CIA's intelligence activities (including covert action), intelligence sources or methods (including cryptology), and information that pertains to foreign relations or foreign activities of the United States, including confidential sources. Lutz Decl. ¶¶ 17, 21-39. Ms. Lutz properly determined that "the unauthorized disclosure of the information . .

. reasonably could be expected to result in damage to the national security," and both identified and described that damage. E.O. 13526, § 1.1(a); Lutz Decl. ¶¶ 17, 21-39. She also ensured that the procedural requirements were followed: that the documents were properly marked in accordance with § 1.6 of the Executive Order. Lutz Decl. ¶ 11-16.

As explained below, Ms. Lutz identified certain types of information that were redacted from the Executive Summary that was released by SSCI and explained with specificity how the disclosure of this information could reasonably be expected to result in exceptionally grave damage to the national security of the United States.

C. Requirements under Exemption 3.

Under Exemption 3, FOIA does not require disclosure of information that is:

> specifically exempted from disclosure by statute (other than section 552b of this title) if that statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

5 U.S.C. § 552(b)(3). "Exemption 3 differs from other FOIA exemptions in that its applicability depends less on the detailed factual contents of specific documents; the sole issue for decision is the existence of a relevant statute and the inclusion of withheld material within the statute's coverage." *Fitzgibbon v. C.I.A.*, 911 F.2d 755, 761-62 (D.C. Cir. 1990) (quoting *Association of Retired R.R. Workers v. United States R.R. Retirement Bd.*, 830 F.2d 331, 336 (D.C.Cir.1987)). Thus, with respect to the CIA's Exemption 3 claim, the sole task for the court "is to determine whether or not the material withheld falls within the exemption claimed i.e., whether it relates to intelligence sources and methods." *Id*. at 762. In making this determination, the court is to "accord substantial weight and due consideration to the CIA's affidavits." *Id*.

The CIA and Ms. Lutz reviewed the documents responsive to plaintiffs' FOIA request, and determined that two withholding statutes apply to the information withheld under Exemption 3: the National Security Act of 1947, and the Central Intelligence Agency Act of 1949 ("CIA Act").

1. National Security Act.

In this case, Ms. Lutz reviewed the Draft Reviews and determined that disclosure of all of the information withheld from disclosure under Exemption 1 would also qualify for protection under the National Security Act. Section 102A(i)(1) of the National Security Act, 50 U.S.C. § 3024(i)(1) (previously codified at 50 U.S.C. § 403-1(i)(1)), as amended, provides that the Director of National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure." This statute qualifies as a withholding statute under Exemption 3. *ACLU*, 628 F.3d at 619; *Larson*, 565 F.3d at 865. The statute does not require that the government articulate the harm that would be occasioned by disclosure, but for the same reasons discussed in the context of Exemption 1, the release of this information could cause damage to the national security.

2. Central Intelligence Agency Act of 1949

Section 6 of the CIA Act, 50 U.S.C. § 3507 (previously codified at 50 U.S.C. § 403g), as amended, provides further authority for withholdings under Exemption 3. That provision provides:

> In the interests of the security of the foreign intelligence activities of the United States and in order to further implement section 3024(i) of this title that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the [CIA] shall be exempted from . . . the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.

50 U.S.C. § 3507. Like section 102(A)(i)(1) of the National Security Act, section 6 of the CIA Act also meets the requirements for withholding information under FOIA Exemption 3. *See, e.g., Military Audit Project*, 656 F.2d at 737 n.39; *Morley v. C.I.A.*, 453 F. Supp. 2d 137, 150-151 (D.D.C. 2006) (protecting CIA employee names and personal identifiers under section 6 of the CIA Act and Exemption 3), *rev'd on other grounds*, 508 F.3d 1108 (D.C. Cir. 2007); *Judicial Watch, Inc. v. U.S. Dep't of Commerce*, 337 F. Supp. 2d 146, 167-68 (D.D.C. 2004) (same). Section 6 of the CIA Act is asserted in this case to protect identifying information of Agency personnel, as well as human sources, including foreign liaison and foreign government information. Lutz Decl. ¶ 20.

In contrast to the analysis for Exemption 1, and under Executive Order 13256 ("Classified National Security Information"), neither the National Security Act's statutory requirement to protect intelligence methods nor the CIA Act's statutory requirement to further protect intelligence sources and methods by protecting CIA organization and functions, requires the CIA to identify or describe the damage to national security that reasonably could be expected to result from unauthorized disclosure. *See, e.g., Hayden v. Nat'l Sec. Agency/Central Sec. Serv.*, 608 F.2d 1381, 1390 (D.C. Cir. 1979) (stating that specific showing of potential harm to national security was unnecessary under Exemption 3, because in enacting the withholding statute Congress had already decided that disclosure of information covered by statute was potentially harmful). Nonetheless, Ms. Lutz notes that release of the information covered under Exemption 3 could damage the national security, and describes the potential harm. Lutz Decl. ¶¶ 21-39. Thus, the determination that Exemption 3 applies to preclude disclosure of information within the Executive Summary at issue in this case that would lead to disclosure of intelligence

sources and methods, as well as CIA employees' identifying information and that of human sources, is entitled to substantial weight, and should be upheld.

II. THE CIA PROPERLY WITHHELD UNDER EXEMPTIONS 1 AND 3 INFORMATION CONCERNING ITS INTELLIGENCE SOURCES, METHODS, AND ACTIVITIES.

As noted above, in this case, the information that is classified and withheld under Exemption 1 is also exempt from disclosure under Exemption 3. Accordingly, while the discussion is specific to the standards for the withholding of classified information under Exemption 1, Exemption 3 also applies.

A. Intelligence Sources.

Certain information in the Executive Summary is classified and withheld on the grounds that revelation of this information would disclose specific intelligence activities, sources and methods utilized by the CIA or by other government agencies. Lutz Decl. ¶ 22. One of the major functions of the Intelligence Community is to gather intelligence from around the world for the President and other United States Government officials to use in making policy decisions. *Id*. To accomplish this, the CIA must rely on information from knowledgeable sources that it can obtain only under an arrangement of absolute secrecy. *Id.* In this case, information is classified and withheld that would tend to identify human sources and the intelligence that they provided. Those human sources include information provided by foreign liaison services and governments.

1. Human sources.

Some of the information that was redacted in the Executive Summary consists of intelligence information collected by human sources for the CIA. As explained by Ms. Lutz, the

CIA relies on individuals around the world to collect foreign intelligence. Lutz Decl. ¶ 23. Revealing details of these secret relationships could harm the individual, and those with whom he or she has had contact, ranging from economic reprisals to harassment, imprisonment, and even death. *Id.* The release of information that would or could identify an intelligence source would also damage the CIA's credibility with all other current intelligence sources and undermine the CIA's ability to recruit future sources, as most individuals will not cooperate with the CIA unless they have confidence that their identities will remain secret. *Id.* ¶ 24. The loss of such intelligence sources, and the accompanying loss of the critical intelligence that they provide, would seriously and adversely affect the national security of the United States. *Id.* ¶ 25.

2. Foreign liaison and government information.

Likewise, the Executive Summary contains classified foreign liaison and foreign government information. Here, discrete pieces of information were redacted from the Executive Summary that would indicate the identity of intelligence sources and the specific information shared. *Id.* ¶ 27. Disclosing the fact of the relationship, the nature of the assistance, or the information provided – which is reflected in these redactions – would suggest to other foreign liaison services and foreign government officials that the U.S. Government is unable or unwilling to observe an express agreement of absolute secrecy, could cause foreign liaison services to curtail cooperation on counterterrorism operations or other activities affecting U.S. national security, and could cause serious damage to relations with that foreign government and other governments as well. *Id.* This could result in a significant loss of intelligence information for the U.S. Government and harm other areas of cooperation and thereby cause damage to national security. *Id.*

Courts have repeatedly recognized the importance of protecting human intelligence sources from unauthorized disclosure. *See Schrecker v. DOJ*, 254 F.3d 162,166 (D.C. Cir. 2001) (affirming the FBI assertion of Exemption 1 to withhold specific information that "should be expected to reveal the identities of a confidential human source . . . or reveal the identity of a human intelligence source"); *Schoenman v. FBI*, 841 F. Supp. 2d 69, 80-83 (D.D.C. 2012) (holding that CIA justified its invocation of Exemption 1 to protect "(a) information that would reveal the identities of human and foreign intelligence service sources; (b) information pertaining to source relationships that the CIA has forged with foreign intelligence services and liaisons; and (c) information pertaining to the CIA's foreign intelligence activities and methods"). *Amnesty Int'l USA v. C.I.A.*, 728 F. Supp. 2d 479, 503 (S.D.N.Y. 2010) (Affirming assertion of National Security Act to withhold, among other items, "the use of human sources for intelligence gathering …; the collection of information from foreign liaisons and governments). Accordingly, this information is properly classified and is exempt from disclosure. *Id.*

B. Intelligence Methods.

The Executive Summary also contains information that would reveal specific intelligence methods of the CIA and other Intelligence Community agencies. Lutz Decl. ¶ 28. Generally, intelligence methods are the means by which the CIA accomplishes its mission. *Id.* As Ms. Lutz explains, intelligence methods are valuable from an intelligence-gathering perspective only so long as they remain unknown and unsuspected. *Id.* Once the nature of an intelligence method or the fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized and the ability to apply that method in other situations is significantly degraded. *Id.* Even references to seemingly innocuous details such as dates and funding amounts associated with a

particular program could reveal broader intelligence priorities and/or sources and methods of intelligence collection when juxtaposed with other publicly-available data. *Id.* ¶ 29.

1. Covert personnel.

A number of redactions in the Executive Summary protect the identities of covert CIA employees. Lutz Decl. ¶ 30. As the Lutz declaration explains, covert personnel play a critical role in assisting the CIA in carrying out its mission of gathering and disseminating intelligence. Disclosing the identity of an undercover employee could expose the intelligence activities in which the employee has been involved and the sources with whom the employee has had contact, and could jeopardize the safety of the employee, his or her family, and other persons with whom he or she has had contact. *Id.* Although these individuals were referenced in pseudonym in the report, given the sensitivity of the detention and interrogation program, there is a significant concern that any release of any information that would allow for the identification of these individuals could place these persons and those associated with them in danger. Lutz Decl. ¶ 31.

2. Field installations.

A number of the redactions to the Executive Summary protect the locations of covert CIA installations and former detention centers abroad. Lutz Decl. ¶ 32. The places where the CIA maintains a presence constitutes an intelligence method of the Agency. *Id.* Official acknowledgment that the CIA has or had an installation in a particular location could cause the government of the country in which the installation is located to take countermeasures in order to eliminate the CIA presence within its borders, and could result in terrorists and foreign intelligence services targeting that installation and persons associated with it. *Id.* In some cases, the disclosure of information concerning a covert CIA installation would also indicate the

purpose of the facility which, in and of itself, would reveal other intelligence methods. *Id.* Disclosure of the location of former facilities could harm relationships with foreign liaison services, or more broadly, cause damage to foreign relations between those governments and the United States. *Id.*

3. Code words and pseudonyms.

The use of code words is an intelligence method whereby words and letter codes are substituted for actual names, identities, or programs in order to protect intelligence sources and other intelligence methods. Lutz Decl. ¶ 33. The CIA uses code words in cables and other correspondence to disguise the true name of a person or entity of operational intelligence interest, such as a source, a foreign liaison service, or a covert program. *Id.* The CIA also uses pseudonyms, which are essentially code names, in many of its internal communications. *Id.* When obtained and matched to other information, code words and pseudonyms possess a great deal of meaning for someone able to fit them into the proper framework. *Id.* ¶ 34. For example, the reader of a message is better able to assess the value of its contents if the reader can identify a source, an undercover employee, or an intelligence activity by the code word or pseudonym. By using these code words, the CIA adds an extra measure of security, minimizing the damage that would flow from an unauthorized disclosure of intelligence information. *Id.* The disclosure of code words and pseudonyms can permit foreign intelligence services and other groups to fit disparate pieces of information together and to discern or deduce the identity or nature of the person or project for which the code word or pseudonym stands. *Id.*

4. Dissemination-control information.

The U.S. Government employs a number of intelligence methods to protect and disseminate information, which include procedures for marking documents to indicate the presence of particularly sensitive information contained in the documents. Lutz Decl. ¶ 35. This also includes some internal routing and administrative information that is used to track and control information. *Id.*

All of these types of information are intelligence methods entitled to exemption from release under FOIA. *See Sack v. CIA*, 2014 WL 3375568, at *8 (D.D.C. Jul. 10, 2014) (According "'substantial weight to the CIA's affidavits'" per *Larson*, 565 F.3d at 865, determining that, *inter alia*, the information related to covert personnel and facilities qualified as an intelligence source and method under the National Security Act); *Schoenman*, 841 F. Supp. 2d at 83-84 (holding that the CIA properly "withheld information about classified intelligence sources and methods, including information pertaining to human and foreign intelligence service sources, covert installations, dissemination-control markings, and technical intelligence collection" under the National Security Act).

C. Intelligence Activities.

The Executive Summary also contains classified information that relates to intelligence activities. Intelligence activities refer to the actual implementation of intelligence methods in the operational context, and their disclosure can reveal details regarding specific intelligence methods which could provide America's current adversaries with valuable insight into CIA operations that would impair the effectiveness of CIA's intelligence methods. Lutz Decl. ¶ 36. Foreign intelligence services and terrorist organizations also seek to glean from the CIA's

interests what information the CIA has received, why it is focused on that type of information, and how it will seek to use that information for further intelligence collection efforts and clandestine intelligence activities. *Id.* ¶ 37. If foreign intelligence services or hostile groups were to discover what the CIA has learned or not learned about certain individuals or groups, that information could be used against the CIA to thwart future intelligence operations, jeopardize human sources, and otherwise derail the CIA's intelligence collection efforts. *Id.* For all of these reasons, the classified information in the Draft Reviews relating to intelligence sources, intelligence methods, intelligence activities, and foreign relations or foreign activities remains currently and properly classified.

The D.C. Circuit has adopted a "deferential posture in FOIA cases regarding the 'uniquely executive purview' of national security." *Larson v. Department of State*, 565 F.3d 857, 865 (D.C. Cir. 2009). In that case, the D.C. Circuit noted that it has "'consistently deferred to executive affidavits predicting harm to the national security, and [has] found it unwise to undertake searching judicial review'" of the assertions in such affidavits. *Id.* (quoting *Ctr. For Nat'l Sec. Studies v. DOJ*, 331 F.3d 918, 927 (D.C. Cir. 2003)). The Court stated, moreover, that "[i]f an agency's statements supporting exemption contain reasonable specificity of detail as to demonstrate that the withheld information logically falls within the claimed exemption and evidence in the record does not suggest otherwise, . . . the court should not conduct a more detailed inquiry to test the agency's judgment and expertise or to evaluate whether the court agrees with the agency's opinions." *Id.* Here, the record shows that that the government has clearly satisfied this standard. Ms. Lutz has identified with specificity the types of information that were redacted from the Executive Summary and explains why release of that information

could cause damage to national security. Moreover, "[i]t is within defendants' broad discretion to determine 'whether disclosure of information may lead to an unacceptable risk of compromising the . . . intelligence-gathering process.'" *ACLU v. DOD*, 664 F. Supp. 2d 72, 78 (D.D.C. 2009) (quoting *Sims*, 471 U.S. at 180). Accordingly, the Court should uphold the Agency's withholding of the classified information contained in the Executive Summary, which reflects intelligence sources and methods.

III. THE CIA PROPERLY WITHHELD INFORMATION PURSUANT TO EXEMPTION 6.

The Supreme Court has adopted a broad construction of the privacy interests protected by Exemption 6. In *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762-63 (1989), the Court rejected a "cramped notion of personal privacy" under FOIA's exemptions and instead emphasized that "privacy encompass[es] the individual's control of information concerning his or her person." More specifically, the Court noted that "[p]rivacy is the claim of individuals . . . to determine for themselves when, how, and to what extent information about them is communicated to others." *Id.* at 764 n.16 (citation omitted).[2] Privacy is of particular importance in the FOIA context because a disclosure required by FOIA is a disclosure to the public at large. *See Painting & Drywall Work Preservation Fund, Inc. v. HUD*, 936 F.2d 1300, 1302 (D.C. Cir. 1991) (if information "must be released to one requester, it must be released to all, regardless of the uses to which it might be put").

[2] Although Reporters Committee was decided under Exemption 7(C), which concerns privacy interests in law enforcement records, the definition of the public interest to be considered is the same as for Exemption 6. *See Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991) (noting that Reporters Committee is controlling in the Exemption 6 context as well, citing *Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989).)

Against these privacy interests, the agency must weigh any public interest in the information. The public interest purpose of FOIA is "not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct." *Reporters Comm.*, 489 U.S. at 773. Because the focus of FOIA is "on the citizens' right to be informed about 'what their government is up to,'" *id*., an agency analyzes the public interest for Exemption 6 purposes by considering "the nature of the requested document and its relationship to the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny." *Id*. at 772 (internal quotations and citation omitted). For a privacy interest to be cognizable under FOIA, it must be "substantial" but in the FOIA context, "substantial . . . means less than it might seem. A substantial privacy interest is anything greater than a *de minimis* privacy interest." *See Multi Ag Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229-30 (D.C. Cir. 2008); *see also Consumers' Checkbook, Ctr. for Study of Servs. v. U.S. Dep't of Health & Human Servs.*, 554 F.3d 1046, 1050 (D.C. Cir. 2009). Once an agency determines that the disclosure of information would threaten a protectable privacy interest, it must engage in the second step of the balancing test that is, the agency must weigh the privacy interest against the public interest in disclosure, if any. *See Reed*, 927 F.2d at 1251. However, because the only relevant public interest under FOIA is "the citizens' right to be informed about 'what their government is up to,'" *Reporters Comm.*, 489 U.S. at 773, an agency must analyze the public interest by considering "the nature of the requested document and its relationship to 'the basic purpose of [FOIA] to open agency action to the light of public scrutiny." *Id*. at 772 (internal quotation marks and citations omitted). This public interest is "not fostered by disclosure of information about private citizens that is accumulated in various

governmental files but that reveals little or nothing about an agency's own conduct." *Id.* at 773. Furthermore, even "a very slight privacy interest" is sufficient to outweigh a complete absence of public interest. *U.S. Dep't of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994); *see also Consumers' Checkbook*, 554 F.3d at 1056. "If there is no public interest in the disclosure of certain information, 'something, even a modest privacy interest, outweighs nothing every time.'" *Horowitz v. Peace Corps*, 428 F.3d 271, 278 (D.C. Cir. 2005) (quoting *Horner*, 879 F.2d at 879).

In this case, the CIA applied Exemption 6 to withhold personally-identifying information of covert and overt CIA personnel, employees of other federal agencies, and other individuals merely mentioned in the Executive Summary. Lutz Decl. ¶¶ 40-41. Each of these individuals maintains a strong privacy interest in this information because its release could subject them to intimidation, harassment, reputational harm, embarrassment or unwanted contact. *Id.* ¶ 41. Extensive media coverage and the sensitivity and controversy surrounding the former detention and interrogation program further heighten those privacy concerns. *Id.* Conversely, given that vast majority of the Executive Summary was released without redaction – the addition of individuals' identities or personal information would not further the core purpose of the FOIA -- informing the public as to the operations or activities of the government. *See e.g., United States Department of State v. Ray*, 502 U.S. 164, 178 (1991) (holding that "[t]he addition of the redacted identifying information [of interviewed Haitian returnees] would not shed any additional light on the Government's conduct of its obligation"). Accordingly, because there are significant privacy concerns and no qualifying public interest in disclosure, the release of this information would constitute a clearly unwarranted invasion of these individuals' personal privacy under Exemption 6. *See Horowitz*, 428 F.3d at 278.

IV. THE CIA HAS REASONABLY SEGREGATED EXEMPT PORTIONS OF THE EXECUTIVE SUMMARY.

FOIA requires agencies to release "[a]ny reasonably segregable portion of a record . . . after deletion of the portions which are exempt under this subsection." 5 U.S.C. § 552(b). Consistent with this obligation, the CIA has provided plaintiffs with as much non-exempt information as possible. Lutz Decl. ¶ 42. Indeed, as shown from the face of the released Executive Summary itself, the redactions taken were limited and discrete. *Id.* The redacted information would reveal classified details of Intelligence Community activities and specific intelligence sources and methods utilized by those agencies, statutorily protected information and/or personally-identifying details, which for the reasons discussed above cannot be disclosed. *Id.* The CIA's segregation of the information at issue is thus reasonable. *See, e.g.*, *Judicial Watch, Inc. v. U.S. Dep't of Housing and Urban Development*, 20 F.Supp.3d 247, 259-60 (D.D.C. 2014) (finding agency's burden of showing documents contained no reasonably segregable information satisfied where agency affiant stated, "HUD made every reasonable effort to produce all reasonable segregable, non-exempt portions of these documents.").

CONCLUSION

For the foregoing reasons, the government's motion for summary judgment should be granted.

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