

# Exhibit R



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December 18, 2020

Mr. Mark Lilly  
Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, DC 20505

Reference: F-2019-02140

Dear Mr. Lilly,

I am writing to appeal the decision made in your final response to my FOIA request referenced above. As you characterized it in your response, I am seeking records associated with:

**The Italo-American Trading Company, in particular any information on Ante Pavelic and/or Krunoslav Draganovic and their involvement in operations conducted at the behest of the U.S. Government during the Post World War II era Cold War.**

Your decision included the release of a one-page document in full and seven redacted records citing FOIA exemptions (b)(1), (b)(3) and (b)(6). Further, you acknowledged that "additional material was determined to be currently and properly classified and must be denied in its entirety on the basis of FOIA exemptions (b)(1) and (b)(3)" with the further explanation that "(b)(3) pertains to information exempt from disclosure by statute." The relevant statutes you cited are Section 6 of the Central Intelligence Agency Act of 1949 and Section 102A(i)(1) of the National Security Act of 1947.

The main points that I will be covering in this appeal are:

- The controlling law that applies to my request is the Nazi War Crimes Disclosure Act
- FOIA exemptions (b)(1), (b)(3) and (b)(6) are not listed as exemptions in the Nazi War Crimes Disclosure Act and therefore do not apply to this request
- FOIA exemption (b)(1) implements the instructions contained in Executive Order 13526 which supports the release of records when applied to this request
- FOIA exemption (b)(3) does not apply to this request because the statutes cited allow for discretion over authorized disclosures and the sources and methods contained in the records no longer require protection

- FOIA exemption (b)(6) does not apply to deceased individuals and therefore does not apply to any of the information contained in the records I am seeking which are more than seventy years old and involve individuals known to have died
- Of the eight documents you provided, seven are already publicly available via the CIA FOIA Library website and are a tiny fraction of the more than one million pages of records released by the CIA through the Nazi War Crimes Disclosure Act concerning the activities, individuals and time frame reflected in this request
- Your decision to redact information is inconsistent with previously released versions of two of the documents available from the CIA website which do not contain the redactions you imposed
- The Nazi War Crimes Disclosure Act requires you to show that the disclosure of sources and methods “would clearly and demonstrably damage the national security interests of the United States” before you can withhold records.

### **Controlling Law**

All of the records I am seeking fall under the Freedom of Information Act 5 USC 552 as amended by P.L. 105-246, the Nazi War Crimes Disclosure Act. The historical record is clear and overwhelming that the records concerning individuals and activities I am seeking are covered by the Act’s definition of Nazi war crimes records in Section 3(a). This is further reinforced by the fact that the document which I submitted as a foundation for my request and the documents that you released in full and in part are all stamped as having been declassified under the Nazi War Crimes Disclosure Act.

There are three important elements to consider about the Nazi War Crimes Disclosure Act and its application to my FOIA request:

- (1) The Act states in Section 3 (b)(1) that “the Nazi War Criminal Records Interagency Working Group *shall release in their entirety* Nazi war criminal records that are described in subsection (a).” [emphasis added]
- (2) Section 3 (b)(2)(A-J) itemize the exemptions that an agency head may apply when deciding not to release individual records. In Section 3 (b)(3)(A), the Act states that when applying the exemptions, “there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption *may only be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption.* [emphasis added] An agency head who makes such a determination shall promptly report it to the committee of Congress with appropriate jurisdiction.” Importantly, the Act further states that “the exemptions set forth in paragraph (2) shall constitute the only authority pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).”
- (3) Section 4 calls for expedited processing of FOIA requests for Nazi War Criminal Records.

Your decision to deny an unknown number of documents and to redact information from seven other records does not cite any exemptions listed in the Nazi War Crimes Disclosure Act which, as indicated above, “shall constitute the only authority” by which relevant records may be withheld from release. Despite the failure to properly cite exemptions from the Nazi War Crimes Disclosure Act, I would like to address FOIA exemptions (b)(1), (b)(3) and (b)(6) that you do cite beginning with (b)(6), which covers “personnel and medical files and similar files the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy.” The personal privacy protections afforded by (b)(6) do not apply to individuals who are deceased, which is the case for both Ante Pavelic (died December 28, 1959) and Krunoslav Draganovic (died July 5, 1983). If there are any living individuals mentioned in the records I am requesting, which is unlikely given their age, then the appropriate action on your part would be to redact the relevant personal information, rather than deny the entire record.

### **FOIA Exemption (b)(1)**

FOIA exemption (b)(1) relies on an Executive Order that specifically authorizes records “to be kept secret in the interest of national defense or foreign policy” and further requires that the records in question are “properly classified pursuant to such Executive Order.” This exemption describes a category of records that may be eligible for exemption from release along with the criteria that must be applied in that analysis. Executive Order 13526 of December 29, 2009 is the current order which informs the application of exemption (b)(1). EO 13526 states in Part 1, Section 1.1 (b): “If there is significant doubt about the need to classify information, it shall not be classified,” and adds in Section 1.5 (d): “No information may remain classified indefinitely.” EO 13526 further states in Section 1.7:

“Classification Prohibitions and Limitations. (a) In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to:

- (1) conceal violations of law, inefficiency, or administrative error;
- (2) prevent embarrassment to a person, organization, or agency;
- (3) restrain competition; or
- (4) prevent or delay the release of information that does not require protection in the interest of the national security.

The events associated with this FOIA request took place more than seventy years ago in the very early stages of the Cold War and concern espionage activities in Yugoslavia, a state which no longer exists, but which was of interest due to its affiliation with the Soviet Union, which also no longer exists. The history of the time period is well studied and continuing study serves the public interest. Much of the advances made in the public’s understanding of this history has been due to the release of more than eight million pages of documents via the Nazi War Crimes Disclosure Act, including more than a million pages released by the CIA. Most of those records, including seven of the eight that you released in connection with this request, were declassified between 2001 and 2008. As EO 13526 clearly states, “No information may remain classified indefinitely” and the passage of time weighs heavily on the side of declassifying the records sought in this request. This enormous body of records and the specific information cited in the document provided as a basis for this request cast significant doubt on the need to maintain classification for the requested records. The document cited in my FOIA request was a one-page record from the dossier of Krunoslav Draganovic, which I obtained from the CIA FOIA Library website:

[https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%2C%20KRUNOSLAV\\_0014.pdf](https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%2C%20KRUNOSLAV_0014.pdf)

The stated subject of the document is: **Italo-American Trading Company and Jugoslav Anti-Tito Activity**. The only redactions in the record are for the identification of the *Analyst* and *Source Cryptonym*. The “*Pertinent Information*” section is labeled “d),” which suggests there are other sections to the document which can and should be released, and specifically states:

“That the U.S. Intelligence Service employs PAVELIC, currently hidden in Rome, as ‘Commander’ of its espionage groups sent into Jugoslavia out of Italy and Austria; uses Father Krunoslav



DRAGANOVITCH (sic), Ecclesiastical College of St. Girolamo of the Illirians, Rome, as 'organizer' of local (Rome) espionage groups; and also employs at least one other Rome priest, Father Augustin JURETICH, of the same address as DRAGANOVITCH, in this work."

The specific allegations of the existence of the "Italo-American Trading Company" and the affiliation between U.S. Intelligence and Pavelic, Draganovic and Juretich may or may not be true, but they are publicly stated in this declassified record. The analysis that resulted in the decision to declassify this record must, at a minimum, be consistently applied to all additional records that shed light on the matter. Furthermore, as a consequence of this current FOIA request, the CIA must conduct a new review to determine whether any part of the records continue to deserve secrecy in support of current national security interests. The Agency may not rely on decisions and analyses that were conducted in 2001 when the record was declassified. Any legitimate redaction must be narrowly drawn as exercised in this document and not serve as justification for a complete denial of the record according to the presumptions in favor of releasing information as stated in the Nazi War Crimes Disclosure Act and EO 13526.

The records that were released in response to my FOIA request bolster the argument for declassifying additional records and illustrate how your denial was overly broad and inconsistent. The record you released in full is actually the second of a two-page document I previously obtained from your website. The first page of this document is one of the seven documents you released to me in a redacted form. The two page record can be found here:

[https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%2C%20KRUNOSLAV\\_0046.pdf](https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%2C%20KRUNOSLAV_0046.pdf)

This record is part of a dossier containing 96 documents related to Krunoslav Draganovic that can be retrieved from the CIA website. There are numerous other records that reference him and are publicly available via the CIA website and in records held by the National Archive and Records Administration. Similarly, there is a considerable body of records available concerning Ante Pavelic along with many other entities, individuals, and events involving their activities after the Second World War that are publicly available via the CIA FOIA Library website and other U.S. government archives. The Executive Order in place at the time did not prevent their release on the grounds of protecting U.S. national defense or foreign policy interests. Considering the vast scope and nature of previously declassified records via the Nazi War Crimes Disclosure Act and the requirements imposed by EO 13526, another review by you of the records I am seeking is justified. Finally, to reiterate, FOIA exemption (b)(1) is not one of the exemptions listed in the Nazi War Crimes Disclosure Act and cannot be applied to records covered by the Act.

### **FOIA Exemption (b)(3)**

As is the case with (b)(1), FOIA exemption (b)(3) is not listed in the Nazi War Crimes Disclosure Act and does not specifically apply to the records being requested. Nevertheless, I would like to address the issues that arise and their appropriate application to my request. As you state in your response, (b)(3) "pertains to information exempt from disclosure by statute" 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."

The relevant statutes you cited are:

*Central Intelligence Agency Act of 1949, Section 6: In the interests of the security of the foreign intelligence activities of the United States and in order further to implement section 102A(i) of the National Security Act of 1947 that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure.*

*National Security Act of 1947, Section 102A:*

- i) Protection of Intelligence Sources and Methods.—  
(1) The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.*

FOIA exemption (b)(3)(A)(i) does not apply here because it requires the statute “leave no discretion on the issue.” Both statutes cited by you affirm that the Director of National Intelligence shall protect intelligence sources and methods from “unauthorized disclosure,” which clearly leaves the door open to exercising discretion over authorized disclosures. By the very nature of my pursuit via the Freedom of Information Act as amended by the Nazi War Crimes Disclosure Act, I am seeking authorized disclosure of records. There is nothing in either statute that compels the DNI to issue an irrevocable blanket prohibition from public release of classified documents. Instead, the Freedom of Information Act, Nazi War Crimes Disclosure Act and Executive Order 13526 collectively provide a roadmap for authorized declassification and release of records that were originally classified. The CIA must balance the interests of secrecy against that of disclosure by following that roadmap rather than relying entirely on the two statutes listed above as stated in your response.

The second element of FOIA exemption (b)(3) concerns “particular criteria “and “particular types” of material that can be withheld. Allow me to reiterate that exemption (b)(3) cannot properly be applied to my request or any request that falls under the Nazi War Crimes Disclosure Act. This is evident from the fact that the issues tackled in FOIA (b)(3)(A)(ii) are addressed and supplanted by the exemption found in Nazi War Crime Disclosure Act Section 3 (b)(2)(B) concerning records that “*reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States.*” There are several reasons why both the FOIA and NWCDCA exemptions concerning sources and methods do not and should not apply to my request.

First, there is a presumption in the Nazi War Crimes Disclosure Act that the public interest in the release of Nazi war criminal records outweighs the potential harm to national security that might result. If it can be established that there are specific sources and specific methods that still require protection, that information can be redacted without resorting to the denial of an entire document’s release. Furthermore, the sources and methods implicated in the requested records are more than seventy years old. The protection of sources and methods that may have attended to these records in the past must be thoroughly reconsidered given the unlikely fact that any individuals remain alive or that the methods employed remain a secret (see next paragraph) and constitute a national security interest.

Second, the application of the FOIA (b)(3) exemption that you applied to records released to me is inconsistent with previous releases of the same documents. For example, the document you supplied that is identified as C06864199 contains eleven redactions throughout the text. That same document can be retrieved from the CIA FOIA Library website without any of the redactions, indicating that your recent review of materials was overly broad and aggressive in its determinations of classification. Again,

reconsideration of my request and the release of all relevant records in full is warranted. Here is the link:

[https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%2C%20KRUNOSLAV\\_0049.pdf](https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%2C%20KRUNOSLAV_0049.pdf)

Similarly, with the document identified as C06864194, you chose to redact information from the Document Identification section, boxes 2,3 and 5 under exemption (b)(3). This document is available from the CIA FOIA Library with the information in those boxes visible in a decision made in 2001 when the record was originally declassified. Here is the link:

[https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%2C%20KRUNOSLAV\\_0003.pdf](https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%2C%20KRUNOSLAV_0003.pdf)

The law and public interest warranted a fuller disclosure of information in 2001 than you granted to my request in 2020 – *for the same documents*. The remedy to this situation is not to merely acknowledge this. Instead, the CIA must conduct a new search and review of all the pertinent records and identify *current* justifications for withholding any information in the records I am seeking and certainly not denying entire records. The records I am requesting represent small pieces of a much larger mosaic that is already in the public domain through authorized disclosures. These records reveal an enormous body of information about events and the sources and methods utilized in the historical time period, in general, and in connection with Ante Pavelic and Krunoslav Draganovic, in particular. Given the presumption that release of Nazi war criminal records is in the public interest and outweighs any potential harm to national interests, the passage of time can only argue in favor of further disclosure, not less.

### **Nazi War Crime Disclosure Act Exemption 3(b)(2)(b)**

Although the Freedom of Information Act and Executive Order 13526 provide an exemption to the release of information that reveals sources and methods, the Nazi War Crime Disclosure Act exemption 3 (b)(2)(B) requires an agency to show that revealing such information “*would clearly and demonstrably damage the national security interests of the United States.*” This is a more stringent test and significantly raises the bar on justifications for withholding records. That burden has not been met in connection with the documents I have requested and, for the reasons laid out above, it cannot be met.

In summation, I am appealing your decision and request that a further review be conducted of the records I have requested and that they be released in full under the provisions of the Nazi War Crimes Disclosure Act. This is not an overly burdensome request given the identification of two individuals, Ante Pavelic and Krunoslav Draganovic, and activities that took place in the immediate postwar years. For example, the specific whereabouts of Ante Pavelic were known to the U.S. government in July, 1947 and the decision was made not to apprehend him. By the end of 1948, Pavelic had fled to South America. The focus of my request with regard to Ante Pavelic revolves around those intervening months and can be readily reviewed in an expedited fashion. Krunoslav Draganovic’s connection to U.S. intelligence lasted longer, but again is confined to a time period that ended in 1962 with his termination from employment by the CIA (as confirmed by a record previously released under the Nazi War Crimes Disclosure Act).

In the United States, the public interest in the declassification of records is constant and applies to all documents involving the operation of government. The need for security classification and protection of specific personal information, sources and methods in the records will change over time. My request

was made based on a publicly available record from the CIA FOIA Library website which was declassified in 2001 that you have identified as C06864193, available here:

[https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%20%20KRUNOSLAV\\_0014.pdf](https://www.cia.gov/library/readingroom/docs/DRAGANOVIC%20%20KRUNOSLAV_0014.pdf)

This one-page document from a larger record references other documents under the subject heading of "Italo-American Trading Company and Yugoslav Anti-TITO Activity." This entire record should be released in its entirety. Any additional records concerning the "Italo-American Trading Company" should be released in their entirety. Any records related to the claim made in C06864193, namely "That the U.S. Intelligence Service employs PAVELIC, currently hidden in Rome, as "Commander" of its espionage groups sent into Yugoslavia out of Italy and Austria" should be released in their entirety. Any records related to the additional statement made that U.S intelligence "uses Father Krunoslav DRAGANOVIC, Ecclesiastical College of St. Girolamo of the Illirians, Rome, as "organizer" of the local (Rome) espionage groups" should be released in their entirety. The release of these records is supported by and, in fact, required by the Nazi War Crimes Disclosure Act and Executive Order 13526. Please expedite this request as required by the Nazi War Crimes Disclosure Act and thank you for your efforts on this matter.

Sincerely,



David Schneider  
Sonoma Films