

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES)
UNION OF MASSACHUSETTS, INC.,)
)
Plaintiff,)
)
vs.)
)
THE CENTRAL INTELLIGENCE)
AGENCY, *et al.*,)
)
Defendants.)
)
)
_____)

Civil Action No. 1:22-cv-11532

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff’s Freedom of Information Act (FOIA) requests, dated August 15, 2022, were directed to the Central Intelligence Agency (CIA), the Director of National Intelligence (ODNI), the United States Department of Defense (DoD), and the National Security Agency (NSA) and sought the production of:

1. The Alleged Declassification Standing Order.
2. Any written transmittal of the Alleged Declassification Standing Order from the Executive Office of the President of the United States to [CIA, ODNI, DoD, NSA], including by letter, memoranda, or email.
3. All records created by [CIA, ODNI, DoD, NSA] that were declassified pursuant to the Alleged Declassification Standing Order.

Decl. of Michael G. Seidel (“Seidel Decl.”), ¶ 3.

2. Plaintiff defined the “Alleged Declassification Standing Order” with reference to a statement reportedly made by former President Trump that he “had a standing order that

documents removed from the Oval Office and taken to the residence were deemed to be declassified the moment he removed them.” Seidel Decl., ¶ 3 (quoting Plaintiff’s FOIA Request, ECF No. 9-1 at 1).

3. Plaintiff framed its requests by stating: “on August 8, 2022, federal law enforcement agents searched premises located at 1100 South Ocean Boulevard, Palm Beach, Florida, pursuant to a Search and Seizure Warrant issued by the United States District Court for the Southern District of Florida,” and indicating that court documents stated that “the August 8, 2022 search of Mar-a-Lago resulted in the seizure of classified records.” Seidel Decl., ¶ 4 (quoting Plaintiff’s FOIA Request, ECF No. 9-1 at 1).

4. The FBI is the primary investigative agency of the federal government with authority and responsibility to investigate all violations of federal law not exclusively assigned to another agency. Seidel Decl., ¶ 11.

5. The FBI has an active criminal investigation concerning the potential improper removal and storage of classified information in unauthorized spaces, as well as the potential unlawful concealment or removal of government records. Seidel Decl., ¶ 5.

6. The FBI, in consultation with Special Counsel Smith’s office, coordinated with CIA, ODNI, DoD, and NSA as to their responses to Plaintiff’s requests to ensure that the integrity of the investigation noted in paragraph 5, *supra*, was appropriately protected. Seidel Decl., ¶ 5.

7. Based on the FBI’s determination that confirming or denying the existence of responsive records, could, in itself, reasonably be expected to interfere with its investigation, made in consultation with Special Counsel Smith’s office, CIA, ODNI, DoD, and NSA each issued a *Glomar* response to Plaintiff in response to its August 15, 2022, FOIA request. Seidel Decl., ¶¶ 6, 10.

8. Assuming the existence of the records requested by Plaintiff, such records would be part of the ongoing criminal investigation describing in paragraph 5 above, concerning the potential improper removal and storage of classified information in unauthorized spaces, as well as the potential unlawful concealment or removal of government records. For example, the existence or non-existence of the “Alleged Declassification Standing Order,” would bear on whether records with apparent classification markings were in fact classified—a key fact in the investigation. That investigation is within the law enforcement duties of the FBI, and therefore, any records compiled as part of that investigation would be compiled for law enforcement purposes. Seidel Decl., ¶ 12.

9. While the FBI’s investigation into this matter has been officially acknowledged, the existence or non-existence of the “Alleged Declassification Standing Order,” or whether Defendants have such an order, has not been officially acknowledged, and nor has any evidence the investigation has developed with regard to its existence or non-existence. Seidel Decl., ¶ 15.

10. In the FBI’s judgment, if evidence regarding the existence or nonexistence of the “Alleged Declassification Standing Order” were disclosed at this stage of the FBI’s investigation, such a disclosure could reasonably be expected to hamper and interfere with the pending investigation. Seidel Decl., ¶ 16.

11. The FBI reached the conclusion in paragraph 10, *supra*, because it assessed that confirmation or denial of whether CIA, ODNI, DoD, and/or NSA has the “Alleged Declassification Standing Order,” or documents that establish its existence (collectively, “the *Glomar* facts”), would disclose facts gathered during the course of the pending investigation that might lead persons of interest to alter their testimony; destroy, adulterate, or fabricate evidence; or refuse to cooperate with the Government altogether. Seidel Decl., ¶ 16.

12. In the FBI's judgment, any testimony gathered after the disclosure of the *Glomar* facts could thus be tainted, since each person the FBI interviewed thereafter would have the opportunity to mold his or her statements in light of the prematurely disclosed evidence. Seidel Decl., ¶ 16.

13. In the FBI's judgment, confirmation or denial of the existence or non-existence of responsive records would provide those intent on interfering with the investigation additional pieces of information necessary to target their behaviors to maximize the effect of any efforts to undermine the investigation. Seidel Decl., ¶ 16.

14. In the FBI's judgment, confirmation or denial of the existence or non-existence of responsive records, reasonably could be expected to severely hamper the FBI's ability to ascertain the truth and, assuming there was a violation of the law, for the matter to be successfully prosecuted. Seidel Decl., ¶ 16.

15. The FBI reasonably foresees that disclosing whether or not the "Alleged Declassification Standing Order" exists, and whether or not Defendants have it, would harm the interests protected by Exemption (b)(7)(A). Seidel Decl., ¶ 18.

Dated: February 6, 2023

Respectfully submitted,

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