

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**AMERICAN CIVIL LIBERTIES)
UNION OF MASSACHUSETTS, INC.,)**

Plaintiff,)

vs.)

Civil Action No. 1:22-cv-11532-DJC

**THE CENTRAL INTELLIGENCE)
AGENCY, et al.,)**

Defendants.)

DECLARATION OF MICHAEL G. SEIDEL

I, Michael G. Seidel, declare as follows:

1. I am the Section Chief of the Record/Information Dissemination Section (RIDS), Information Management Division (IMD), Federal Bureau of Investigation (FBI), Winchester, Virginia. I joined the FBI in September 2011, and prior to my current position, I was the Assistant Section Chief of RIDS from June 2016 to July 2020; Unit Chief, RIDS Litigation Support Unit from November 2012 to June 2016; and an Assistant General Counsel, FBI Office of the General Counsel, Freedom of Information Act (FOIA) Litigation Unit, from September 2011 to November 2012. In those capacities, I had management oversight or agency counsel responsibility for FBI FOIA and Privacy Act (FOIPA) litigation cases nationwide. Prior to my joining the FBI, I served as a Senior Attorney, U.S. Drug Enforcement Administration (DEA) from September 2006 to September 2011, where among myriad legal responsibilities, I advised on FOIPA matters and served as agency counsel representing the DEA in FOIPA suits nationwide. I also served as a U.S. Army Judge Advocate General's Corps Officer in various assignments from 1994 to September 2006 culminating in my assignment as Chief, General

Litigation Branch, U.S. Army Litigation Division where I oversaw FOIPA litigation for the U.S. Army. I am an attorney licensed in the State of Ohio and the District of Columbia.

2. In my official capacity as Section Chief of RIDS, I supervise approximately 238 FBI employees, supported by approximately 82 contractors, who staff a total of ten (10) Federal Bureau of Investigation Headquarters (FBIHQ) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, and the FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order 13526, 75 Fed. Reg. 707 (Dec. 29, 2009) and the preparation of declarations in support of Exemption 1 claims asserted under the FOIA. The Section Chief, RIDS has been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 13526, §§ 1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

3. Through the exercise of my official duties, I have become familiar with this civil action, the FBI's coordination of responses with other government agencies, and the underlying FOIA requests from Plaintiff, dated August 15, 2022, 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). Those requests each 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.

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.” Plaintiff’s FOIA Request, ECF No. 9-1 at 1

4. 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.” Plaintiff’s FOIA Request, ECF No. 9-1 at 1.

5. As discussed in submissions before the United States District Court for the Southern District of Florida, *see In Re Sealed Search Warrant*, Case No. 22-MJ-8332 (S.D. Fla.), 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. Accordingly, the FBI, in consultation with

Special Counsel Smith's office,¹ coordinated with CIA, ODNI, DoD, and NSA as to their responses to Plaintiff's requests to ensure that the integrity of the investigation was appropriately protected.

6. As a result of that coordination, and 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, CIA, ODNI, DoD, and NSA each issued a *Glomar*² response to Plaintiff in response to its August 15, 2022, FOIA request. They each explained that this determination was made in coordination with the FBI, and that confirmation that they have or do not have responsive records would be tantamount to acknowledging the existence or nonexistence of aspects of an ongoing investigation that the FBI has not previously acknowledged. They further explained that the FBI had advised: 1) if the requested records exist, they would be relevant to the FBI's ongoing investigation and 2) confirmation as to the existence or nonexistence of such records could reasonably be expected to interfere with the ongoing investigation.

7. This declaration is being submitted in support of Defendants' Motion for Summary Judgment in the above-captioned matter.

¹ The office referenced here is the office of Special Counsel Jack Smith, appointed by Attorney General Merrick Garland on November 18, 2022. See <https://www.justice.gov/opa/pr/appointment-special-counsel-0>.

² The phrase "*Glomar* response" stems from a case in which a FOIA requester sought information concerning a ship named the Hughes Glomar Explorer, and the CIA refused to confirm or deny its relationship with the Glomar vessel because to do so would compromise the national security or divulge intelligence sources and methods. *Phillipi v. CIA*, 655 F.2d 1325 (D.C. Cir. 1981). *Glomar* responses are proper "if the fact of the existence or nonexistence of agency records falls within a FOIA exemption." *Wolf v. C.I.A.*, 473 F.3d 370, 374 (D.C. Cir. 2007).

THE FBI'S DUAL LAW ENFORCEMENT AND INTELLIGENCE MISSIONS

8. The FBI's mission is to "[p]rotect the American people and uphold the Constitution of the United States." *See* the FBI's mission statement at <http://www.fbi.gov/about/mission>. The FBI's mission priorities include protecting the United States from terrorist attacks; protecting the United States against foreign intelligence, espionage, and cyber operations; combating significant cybercriminal activity; combating public corruption at all levels; protecting civil rights; combating transnational criminal enterprises; combating significant white-collar crime; and combating significant violent crime. *Id.* Pursuant to 28 U.S.C. §§ 533–534, and Executive Order 12,333 as implemented by the Attorney General's Guidelines for Domestic FBI Operations (AGG-DOM) and 28 C.F.R. § 0.85, 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, to conduct investigations and activities to protect the United States and its people from terrorism and threats to the national security, and to further the foreign intelligence objectives of the United States.

GLOMAR RESPONSES TO PLAINTIFF'S FOIA REQUESTS

9. The FBI relies on *Glomar* responses in instances where even acknowledging the existence or nonexistence of responsive records would result in harm protected against by one or more FOIA exemptions. To be credible and effective, the FBI must use the *Glomar* response in all similar cases regardless of whether responsive records exist, including in instances in which the FBI does not possess any records responsive to a particular request. If the FBI issued a *Glomar* response only when it actually possessed responsive records, the *Glomar* response would itself be an admission that the responsive records exist.

10. As noted above, the CIA, ODNI, DoD, and NSA, in coordination with the FBI, issued *Glomar* responses to Plaintiff's FOIA requests, refusing to confirm or deny the existence of responsive records. These responses were based on the FBI's determination, made in consultation with Special Counsel Smith's office, that merely acknowledging the existence or non-existence of records responsive to Plaintiff's requests reasonably could be expected to interfere with its ongoing investigation, triggering the harm against which FOIA Exemption (b)(7)(A) protects.

APPLICABILITY OF EXEMPTION (b)(7)(A)

Exemption (b)(7) Threshold

11. Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. As explained above, 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, to conduct investigations and activities to protect the United States and its people from terrorism and threats to national security, and to further the foreign intelligence objectives of the United States.

12. Plaintiff's requests seek the "Alleged Declassification Standing Order"; any written transmittal of the "Alleged Declassification Standing Order" from the Executive Office of the President of the United States to CIA, ODNI, DoD, and NSA; and all records created by CIA, ODNI, DoD, and NSA that were declassified pursuant to the "Alleged Declassification Standing Order." 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.

Exemption (b)(7)(A)

13. FOIA Exemption (b)(7)(A) protects “records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A).

14. In addition to satisfying Exemption (b)(7)’s threshold, an agency must establish that (a) there is a pending or prospective law enforcement proceeding and (b) disclosure of responsive records could reasonably be expected to adversely affect it.

15. As explained above, the “Alleged Declassification Standing Order,” if it were to exist, would relate to the FBI’s ongoing investigation described above. 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.

16. 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. This is because confirmation or denial of whether CIA, ODNI, DoD, and/or NSA has the

“Alleged Declassification Standing Order,” or documents that establish its existence, 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. Any testimony gathered after the disclosure 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. More than that, 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. This, in turn, 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.

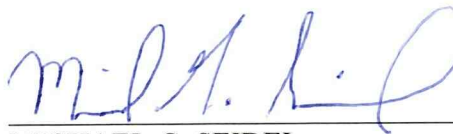
17. Therefore, a *Glomar* response to the Plaintiff’s requests in this case is justified under FOIA Exemption (b)(7)(A).

CONCLUSION

18. For all the reasons explained herein, the *Glomar* responses issued by the CIA, ODNI, DoD, and NSA in coordination with the FBI are justified under Exemption (b)(7)(A). Additionally, for all the reasons stated above, 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).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of February 2023.

A handwritten signature in blue ink, appearing to read "M. G. Seidel", written over a horizontal line.

MICHAEL G. SEIDEL
Section Chief
Record/Information Dissemination Section
Information Management Division
Federal Bureau of Investigation
Winchester, Virginia