



7 November 2022

John Greenewald, Jr.
27305 West Live Oak Road
Suite #1203
Castaic, CA 91384
john@greenewald.com

Reference: F-2017-01848

Dear Requester:

This letter is a final response to your 1 June 2017 Freedom of Information Act (FOIA) request for a **copy of records, electronic or otherwise, pertaining to Leslie G. Kinney v. Central Intelligence Agency, Civil Action No. 16-5777 BHS**. We processed your request in accordance with the FOIA (5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 3141, as amended).

We completed a thorough search for records responsive to your request and located the eight enclosed documents: one of which we determined can be released in its entirety and seven can be released in segregable form with deletions made on the basis of FOIA exemptions (b)(3), (b)(5), and/or (b)(6). Additional material was located and must be denied in its entirety on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), and/or (b)(6). Exemption (b)(3) pertains to information exempt from disclosure by statute. The relevant statutes are Section 6 of the Central Intelligence Agency Act of 1949, as amended, and Section 102A(i)(1) of the National Security Act of 1947, as amended.

As the CIA Information and Privacy Coordinator, I am the CIA official responsible for this determination. You have the right to appeal this response to the Agency Release Panel, in my care, within 90 days from the date of this letter. Please explain the basis for your appeal.

Please be advised that you may also seek dispute-resolution services from the CIA FOIA Public Liaison or from the Office of Government Information Services (OGIS) of the National Archives and Records Administration. OGIS offers mediation services to help resolve disputes between FOIA requesters and Federal agencies.

To contact CIA directly with questions or to appeal the CIA's response to the Agency Release Panel:	To contact the Office of Government Information Services (OGIS) for mediation or with questions:
Information and Privacy Coordinator Central Intelligence Agency Washington, DC 20505 TEL: (703) 613-1287 FAX: (703) 613-3007	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road – OGIS College Park, MD 20740-6001 TEL: (202) 741-5770 FAX: (202) 741-5769 / ogis@nara.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony J. Capito". The signature is fluid and cursive, with the first name "Anthony" and last name "Capito" clearly distinguishable.

Anthony J. Capito
Information and Privacy Coordinator

Enclosures

This document is made available through the declassification efforts
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F-2015-02398

August 3, 2015

AUG 18 2015

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Dear CIA FOIA Officer:

This is a request under the general provisions of 5 USC 552, the Freedom of Information Act in conjunction with the Privacy Act, U.S C 552a. It is requested the CIA furnish to me in their entirety, the personnel file, and any and all other documents related to the following person:

James Harold Nichols
DPOB: 26 July, 1899, Grundy Center, Iowa
Date of Death: 19 February, 1960, Spokane, WA

James Harold Nichols worked for the Office of Strategic Services (OSS) during World War Two. Nichols's personnel file **is not** listed among the 23,000, OSS personnel records released several years ago by the National Archives and Record Administration (NARA). I have been advised by senior archivists at NARA that many employment/personnel records of former OSS employees were not part of the general release at that time and are still held by the CIA.

If any of the requested material is deemed by you to be exempt from disclosure under the FOIA Act, I request a specific statement of the portion or portions deleted or withheld, a full statement of the reasons for the denial of access and specific citations of statutory authority for the denial.

Please do not hesitate to telephone or email me with any questions or comments you might have concerning this request. Thank you for your consideration of this request.

Sincerely,

(b)(6)

[Redacted signature box]

Leslie G. Kinney

(b)(6)

[Redacted signature box]

(b)(6)

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FROM:

Leslie Kinney



INSPECT

AUG 14 2015

TO:

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Hand Opened

AUG 14 2015

and Inspected

IN

AUG 14 2015

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Central Intelligence Agency

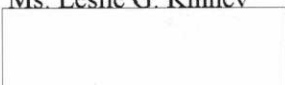


Washington, D.C. 20505

3 September 2015

Ms. Leslie G. Kinney

(b)(6)



Reference: F-2015-02398

Dear Ms. Kinney:

This is a final response to your 3 August 2015 Freedom of Information Act (FOIA) request, received in the office of the Information and Privacy Coordinator on 18 August 2015, for **the personnel file and any other documents about James Harold Nichols, who "worked for the Office of Strategic Services (OSS) during World War Two."** We accepted and processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 3141, as amended. Our processing included a search for records that would reveal an openly acknowledged Agency affiliation existing up to and including the date the Agency started its search and did not locate any responsive records.

With respect to any other records, in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, as amended, and Section 102A(i)(1) of the National Security Act of 1947, as amended. Therefore, your request is denied pursuant to FOIA exemptions (b)(1) and (b)(3). An explanation of exemptions is enclosed for your review and retention.

As the CIA Information and Privacy Coordinator, I am the official responsible for this determination. You have the right to appeal this response to the Agency Release Panel, in my care, within 45 days from the date of this letter. Please include the basis of your appeal.

For your information, we maintain a copy of the roster of OSS personnel. We checked the listing for Mr. Nichols' name, and it did not appear on the roster.

Sincerely,

A handwritten signature in black ink that reads "Michael Lavergne".

Michael Lavergne
Information and Privacy Coordinator

Enclosure

September 15, 2015

Mr. Michael LaVergne
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

SEP 23 2015

Attention: FOIA Appeal/Agency Release Panel

Dear Administrator:

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552.

Background:

On August 3, 2015, I submitted a FOIA request to the Central Intelligence Agency (copy attached) which was received in the office of the Information and Privacy Coordinator on August 18, 2015. By letter dated September 3, 2015, I received your final response. (copy attached) My request was assigned CIA FOIA reference number: F-2015-02398.

Background:

I requested the CIA furnish to me, in their entirety, the personnel file, and any and all other documents related to the following person: **James Harold Nichols, DPOB: 26 July, 1899, Grundy Center, Iowa. Date of Death: 19 February, 1960, Spokane, WA.**

James Harold Nichols worked for the Office of Strategic Services (OSS) during World War Two and continued to work for its successor agency, the CIA until approximately 1949 or 1950. Nichols's personnel file **is not** listed among the 23,000 personnel records of OSS released several years ago by the CIA to the National Archives and Record Administration (NARA). I have been advised by senior archivists at NARA that many employment/personnel records of former OSS employees who transitioned to the CIA were not part of that general release and are still held by the CIA.

Your response letter dated September 3, 2015 is ambiguous and confusing. Your letter states in paragraph one: "Our processing included a search for records that would reveal an openly acknowledged Agency affiliation existing up to and including the date the Agency started its search and did locate any responsive records."

Can you please clarify the preceding paragraph; especially the nebulous term "openly acknowledged?" Does your above response mean the CIA searched for all records of James Harold Nichols and did not find any record of Nichols being employed as a permanent hire or contractor by the OSS as well as the Central Intelligence Agency? **If your response means a conclusive search of both the OSS and the CIA, files was conducted, and the results were negative, then please notify me of that fact by email or in writing and disregard the following appeal. If that is not the case, and the CIA maintains a file or an index listing of James Harold Nichols, please accept the following appeal.**

Appeal:

The information I have requested is clearly releasable under FOIA and is not protected by any of the Act's nine exemptions. Therefore, I appeal your denial of my request which you have cited under FOIA exemptions (b)(1) and (b)(3).

James Harold Nichols died in 1960. He left no heirs, had no children, and was not married. His records are not covered by any provisions of the Privacy Act of 1974 or its later revisions.

If Mr. Nichols was involved in any matters associated within the purview of Section 6 of the CIA Act of 1949, involving security of foreign intelligence activities of the United States or national security, those activities would now be considered obsolete, archaic, historical, and would have no bearing on current national security interests, diplomacy, nor would they be protecting any current intelligence sources. Therefore, exemption under (b)(1) of the FOIA is not applicable. All intelligence sources that related to the period of James Harold Nichols employment in the 1940's are now deceased. All known electronic or technical intelligence sources utilized in the 1940's are widely known, have been published, and outdated. The methods of intelligence collection utilized by the OSS and the early CIA in the 1940's, which was mostly HUMINT, cannot be an adequate defense for withholding records in 2015 under exemptions (b)(1) or (b)(3) of the FOIA.

Collection methods utilized in the 1940's are no longer unique. They are known to the general public, the press, and foreign intelligence agencies. Early OSS and CIA intelligence collection methods have no useful value to foreign governments and espionage agencies. If that were the case, the personnel record of the OSS's original Director, William Donavon, his staff, and other early operatives of the OSS and CIA would still be classified. There should be no distinction between the personnel file of William Donavon and that of James Harold Nichols. If the files of James Harold Nichols exist, and in the unlikely event those files are still a national security issue, I am certain those concerned words and sentences can be adequately redacted to protect national security.

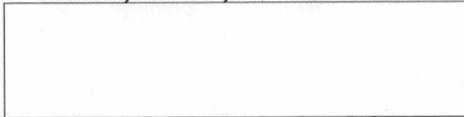
Release of many similar personnel files have been made in the past by the CIA. Therefore,

no harm to the CIA, the general public, or to the Federal Government's national security interests would occur by releasing the files associated with James Harold Nichols.

This matter of James Harold Nichols occupation and activities in the 1940's is of extreme importance to my research. I trust that upon re-consideration, you will reverse the decision denying me access to this material and grant my original request. However, if you deny this appeal, I intend to initiate a lawsuit to compel disclosure. I have made this request in the capacity of a scholar and historical researcher. This matter is of timely value to me. I would appreciate that you expedite my appeal in every way possible. In any case, I will expect to receive your decision within 20 business days, as required by the statute.

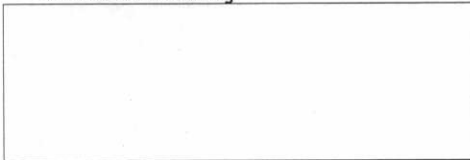
Thank you for your assistance.

(b)(6)



Leslie G. Kinney

(b)(6)



Attachment



Washington, D.C. 20505

3 September 2015

Ms. Leslie G. Kinney

(b)(6)

Reference: F-2015-02398

Dear Ms. Kinney:

This is a final response to your 3 August 2015 Freedom of Information Act (FOIA) request, received in the office of the Information and Privacy Coordinator on 18 August 2015, for **the personnel file and any other documents about James Harold Nichols, who "worked for the Office of Strategic Services (OSS) during World War Two."** We accepted and processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 3141, as amended. Our processing included a search for records that would reveal an openly acknowledged Agency affiliation existing up to and including the date the Agency started its search and did not locate any responsive records.

With respect to any other records, in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, as amended, and Section 102A(i)(1) of the National Security Act of 1947, as amended. Therefore, your request is denied pursuant to FOIA exemptions (b)(1) and (b)(3). An explanation of exemptions is enclosed for your review and retention.

As the CIA Information and Privacy Coordinator, I am the official responsible for this determination. You have the right to appeal this response to the Agency Release Panel, in my care, within 45 days from the date of this letter. Please include the basis of your appeal.

For your information, we maintain a copy of the roster of OSS personnel. We checked the listing for Mr. Nichols' name, and it did not appear on the roster.

Sincerely,

A handwritten signature in cursive script that reads "Michael Lavergne".

Michael Lavergne
Information and Privacy Coordinator

Enclosure

August 3, 2015

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Dear CIA FOIA Officer:

This is a request under the general provisions of 5 USC 552, the Freedom of Information Act in conjunction with the Privacy Act, U.S C 552a. It is requested the CIA furnish to me in their entirety, the personnel file, and any and all other documents related to the following person:

James Harold Nichols
DPOB: 26 July, 1899, Grundy Center, Iowa
Date of Death: 19 February, 1960, Spokane, WA

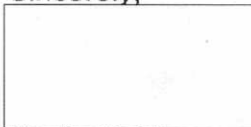
James Harold Nichols worked for the Office of Strategic Services (OSS) during World War Two. Nichols's personnel file is not listed among the 23,000, OSS personnel records released several years ago by the National Archives and Record Administration (NARA). I have been advised by senior archivists at NARA that many employment/personnel records of former OSS employees were not part of the general release at that time and are still held by the CIA.

If any of the requested material is deemed by you to be exempt from disclosure under the FOIA Act, I request a specific statement of the portion or portions deleted or withheld, a full statement of the reasons for the denial of access and specific citations of statutory authority for the denial.

Please do not hesitate to telephone or email me with any questions or comments you might have concerning this request. Thank you for your consideration of this request.

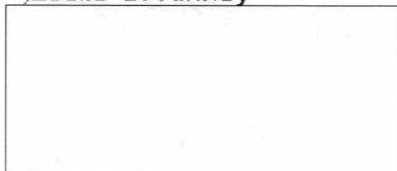
Sincerely,

(b)(6)



Leslie G. Kinney

(b)(6)



(b)(6)

FROM: Leslie Kinney



TO: Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

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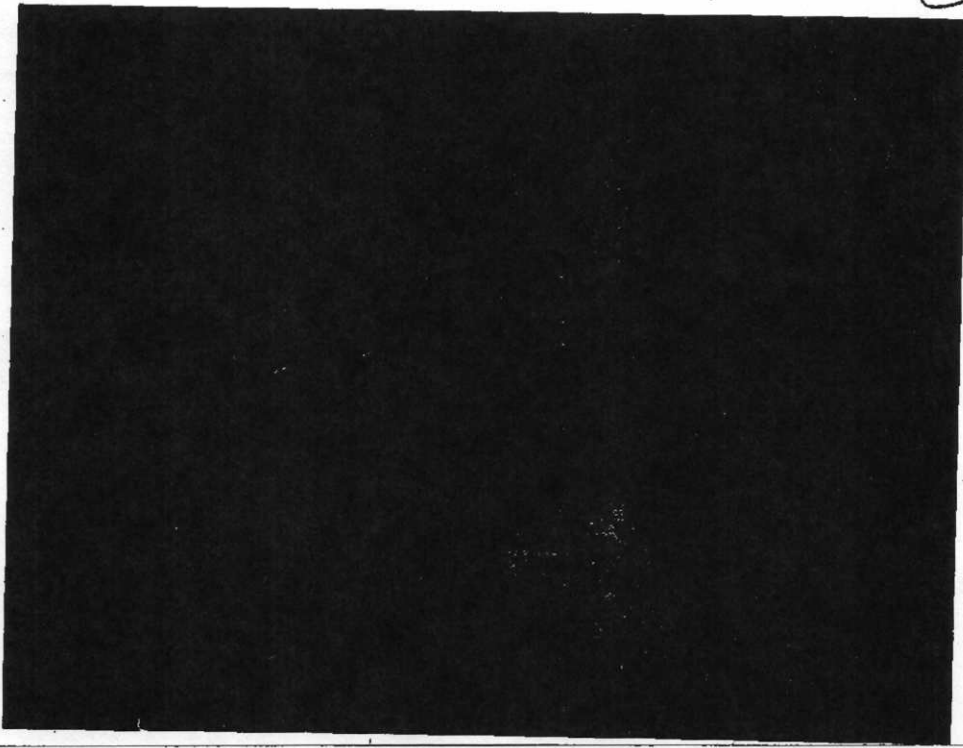
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Central Intelligence Agency



Washington, D.C. 20505

5 February 2016

(b)(6)

Mr. Leslie G. Kinney



Reference: F-2015-02398

Dear Ms. Kinney:

We received your 15 September 2015 correspondence requesting an administrative appeal under the Freedom of Information Act (FOIA) for the personnel file and any other documents about James Harold Nichols, who "worked for the Office of Strategic Services (OSS) during World War Two." Please continue to use this case reference number so that we can more easily identify your FOIA administrative appeal.

You are appealing our failure to locate records that would reveal an openly acknowledged Agency affiliation with Mr. James Harold Nichols and our determination to neither confirm nor deny the existence or nonexistence of records that would reveal a classified connection between the CIA and Mr. James Harold Nichols. ***Your appeal has been accepted and arrangements are being made for its consideration by the Agency Release Panel.***

You will be advised of the panel's determination. In order to afford requesters the most equitable treatment possible, we have adopted the policy of handling appeals on a first-received, first-out basis. Despite our best efforts, however, the large number of public access requests CIA receives creates processing delays making it unlikely that we can respond to you within 20 working days. In view of this, some delay in our reply must be expected, but every reasonable effort will be made to respond as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Michael Lavergne".

Michael Lavergne
Information and Privacy Coordinator

Central Intelligence Agency



Washington, D.C. 20505

APR 21 2016

Ms. Leslie G. Kinney

(b)(6)



Reference: F-2015-02398

Dear Ms. Kinney:

This is a final response to your appeal, received on 15 September 2015, to the Agency Release Panel (ARP) under the Freedom of Information Act (FOIA) from the action(s) of the office of the Information and Privacy Coordinator in its processing of your request under the referenced case identification number.

The ARP carefully considered your petition and determined that your administrative appeal should be denied in full. As the Executive Secretary of the ARP, I am the CIA official responsible for informing you of the appellate determination, described more fully in what follows.

The ARP upheld the initial action with respect to records that might reflect an open or otherwise acknowledged relationship with the CIA. The Agency conducted a reasonable search calculated to uncover material responsive to the request and was unable to locate any responsive records.

The ARP upheld the initial action to neither confirm nor deny the existence or nonexistence of other records that might reveal a classified connection with the CIA in accordance with section 3.6 (a) of Executive Order 13526. The fact of the existence or nonexistence of such records in itself currently and properly classified and is intelligence sources and methods of information protected from disclosure by Section 6 of the CIA Act of 1949 and section 102A(i)(1) of the National Security Act of 1947. Therefore the appropriate FOIA exemptions are (b)(1) and (b)(3).

In accordance with the provisions of the FOIA, you have the right to seek judicial review of this determination in federal district court. Alternatively, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and federal agencies. Using services offered by OGIS does not affect your right to pursue litigation. For more information, including how to contact OGIS, please consult its website, <http://ogis/archives.gov>.

Sincerely,



Michael Lavergne
Executive Secretary
Agency Release Panel

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LESLIE G. KINNEY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action 3:16-cv-5777 (BHS)
)	
Central Intelligence Agency,)	
)	
Defendant.)	
_____)	

DECLARATION OF ANTOINETTE B. SHINER
INFORMATION REVIEW OFFICER
FOR THE LITIGATION INFORMATION REVIEW OFFICE
CENTRAL INTELLIGENCE AGENCY

I, ANTOINETTE B. SHINER, hereby declare and state:

I. INTRODUCTION

1. I currently serve as the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I assumed this position in January 2016.

2. Prior to becoming the IRO for LIRO, I served as the IRO for the Directorate of Support for over sixteen months. In that capacity, I was responsible for making classification and release determinations for information originating within the Directorate of Support. Prior to serving in the Directorate of Support, I was the Deputy IRO for the Director's Area of the CIA ("DIR Area") for over three years. In that role, I was

responsible for making classification and release determinations for information originating within the DIR Area, which included, among other offices, the Office of the Director of the CIA, the Office of Congressional Affairs, the Office of Public Affairs, and the Office of General Counsel. I have held other administrative and professional positions within the CIA since 1986, and have worked in the review and release field since 2000.

3. I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010). This means that I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of Executive Order 13526 and applicable regulations.

4. Among other things, I am responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a.

5. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA request. I make the following statements based upon my personal

knowledge and information made available to me in my official capacity. The purpose of this declaration is to explain and justify, to the greatest extent possible on the public record, the CIA's actions in responding to Plaintiff's FOIA request.

II. PLAINTIFF'S FOIA REQUEST

6. By letter dated 3 August 2015, the Plaintiff, Leslie Kinney, submitted a FOIA request to the CIA seeking "the personnel file, and any and all other documents related to James Harold Nichols." Plaintiff states that James Harold Nichols, "worked for the Office of Strategic Services (OSS)¹ during World War II." The Agency received the request on 18 August 2015. A copy of the letter is attached as Exhibit A.

7. By letter dated 3 September 2015, the CIA provided a final response to Plaintiff's request. The Agency processed the request, searching for records that would reveal an openly acknowledged, unclassified affiliation between the subject of the request and the Agency. The CIA did not find any responsive records as a result of that search. With respect to records that would reveal a classified connection to the Agency, the CIA issued a "Glomar" response,² indicating that the CIA could

¹ The OSS was the predecessor organization to the Central Intelligence Agency. The OSS was abolished in 1945.

² The origins of the Glomar response date back to the D.C. Circuit's decision in Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976), which affirmed the CIA's use of the "neither confirm nor deny" response to a FOIA request for records concerning the CIA's reported contacts with the media regarding Howard Hughes' ship the Hughes' Glomar Explorer.

neither confirm nor deny the existence or nonexistence of records responsive to the request, as the fact of the existence or nonexistence of records was properly classified and protected from disclosure under FOIA exemptions (b) (1) and (b) (3). The letter also stated that CIA maintains a copy of the roster of OSS personnel and Mr. Nichols' name did not appear on the list. A copy of the letter is attached as Exhibit B.

8. On 15 September 2015, Plaintiff filed an administrative appeal requesting clarification of CIA's final response; specifically, whether a conclusive search of both CIA and OSS records was conducted and the results from that search were negative. A copy of the letter is attached as Exhibit C.

9. By letter dated 21 April 2016, CIA's Agency Release Panel (ARP) issued a final response to Plaintiff's appeal, denying it in full. The ARP determined a reasonable search had been conducted to "uncover material responsive to the request and was unable to locate any responsive records." In addition, the ARP upheld the Agency's initial action to neither confirm nor deny the existence or nonexistence of other records that might reveal a classified connection to the CIA. A copy of the letter is attached as Exhibit D.

10. On 12 September 2016, Plaintiff filed the instant complaint.

III. CIA'S SEARCH FOR UNCLASSIFIED RECORDS

11. The CIA's search was limited to records that would reveal an open or acknowledged relationship between James Harold Nichols and the CIA. Given that plaintiff indicated that he believed that the subject of his request, James Harold Nichols, worked for the OSS, the Agency looked to its historical holdings. The CIA has transferred all of its OSS personnel records to the National Archives and Records Administration (NARA), but maintains a copy of the OSS personnel list. The CIA reviewed the OSS list and confirmed that Mr. Nichols' name did not appear.

12. The CIA also conducted a search of records that would indicate that Mr. Nichols maintained an unclassified association with the Agency. The CIA employees who performed the necessary searches have access to the pertinent records, are qualified to search those records and regularly search those records in the course of their professional duties.

13. First, the Agency searched for any previously released records on Mr. Nichols and found no responsive records. Second, based upon this search, and analysis of the subject matter of the request, the Agency determined the Directorate of Operations (DO)³ and the Director of the CIA's Area (DIR)⁴ were

³ The DO is the organization within the CIA responsible for the clandestine collection of foreign intelligence from human sources.

the directorates most likely to maintain records responsive to the request because they were the most likely to maintain records reflecting an overt employment or contractual relationship between Mr. Nichols and the CIA.

14. The search was conducted using the name "James Harold Nichols", "James H. Nichols," and "James Nichols" as search terms, but, ultimately, no responsive records were found. However, with regard to any records responsive to Plaintiff's FOIA request that would reveal a classified connection to the CIA, the Agency invoked the Glomar response, refusing to confirm or deny the existence or nonexistence of such records. As discussed in more detail below, the existence or nonexistence of records revealing a classified connection to the CIA is itself a properly and currently classified fact that could reveal clandestine CIA intelligence activities, sources and methods.

IV. EXEMPTIONS CLAIMED

15. As explained below, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to Plaintiff's FOIA request pursuant to FOIA Exemptions (b) (1) and (b) (3).

⁴ The DIR area is a cluster of offices under the Director of the CIA, such as the Office of General Counsel, the Office of Public Affairs and the Office of Inspector General.

A. FOIA Exemption (b) (1)

16. Exemption (b) (1) provides that FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b) (1). Here, Executive Order 13526 is the operative executive order that governs classification.

17. Pursuant to a written delegation of authority in accordance with Executive Order 13526, I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification decisions. Consistent with section 1.1(a) and 3.6(a) of Executive Order 13526,⁵ and as described below, I have determined that the fact of the existence or nonexistence of the requested records is currently and properly classified.

18. I further note that the Agency's response in this matter has not been made to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment

⁵ Section 1.1(a) sets forth procedural standards for classification, which have been satisfied in this case. Section 3.6(a) provides that, "[a]n agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors."

to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

19. As explained below, the Agency refuses to confirm or deny maintaining records that would show a classified association with the CIA in conjunction with Exemptions 1 and 3,⁶ because disclosing that fact would tend to reveal "intelligence activities (including covert action), [or] intelligence sources or methods" within the meaning of section 1.4(c) and "foreign relations or foreign activities of the United States" of the Executive Order.

20. In the normal course, upon receiving a FOIA request, federal agencies conduct searches for responsive documents in their holdings and provide the requester with any non-exempt information contained in those records. However, given the CIA's mandate to collect and analyze foreign intelligence and to conduct counterintelligence, there are many instances where the Agency cannot reveal whether or not it possesses responsive records -- particularly where responding to a request would show the CIA's intelligence interest in, or clandestine connection to, a particular individual or activity. A defining characteristic of the CIA's intelligence activities is that they

⁶ Exemption 3 protects information whose disclosure is specifically exempted by statute. The CIA's assertion of the Glomar response in connection with the National Security Act is discussed below.

are typically carried out through clandestine means, and therefore they must remain secret in order to be effective. Responding to the substance of the request could jeopardize the clandestine nature of the Agency's intelligence activities or otherwise reveal previously undisclosed information about CIA sources, capabilities, authorities, interests, relationships with domestic or foreign entities, strengths, weaknesses, and/or resources.

21. A primary function of the CIA is to gather intelligence from around the world that can be used by the President and other Government officials in making important decisions. To fulfill this responsibility, the Agency depends upon human sources to collect intelligence, identify or provide access to others who may have intelligence information, and support CIA intelligence-gathering activities. Conversely, the CIA also targets certain individuals as part of its foreign intelligence collection efforts. Revealing the identity of a confidential source or a target of collection could cause the exposure of Agency tradecraft, other human sources, specific intelligences interests and activities. Human sources can be expected to furnish information to the CIA only when they are confident that the CIA can and will do everything in its power to prevent the public disclosure of their cooperation. In the case of a person who has been cooperating with the CIA, official

confirmation of that cooperation could cause the targets to take retaliatory action against that person or against his family or friends. It also places in jeopardy every individual with whom the individual has had contact. Thus, the indiscretion of one source in a chain of intelligence sources can ravage an entire spectrum of sources. As such, confirming or denying the existence of records on a particular individual, like Mr. Nichols, reasonably could be expected to cause serious damage to U.S. national security by indicating whether or not CIA maintained any human intelligence sources related to an interest in the subject of the request.

22. I note that Plaintiff's request indicates that Mr. Nichols lived from 1899 until 1960. Despite the fact that any records about him would likely be older than 50 years old, the harms outlined above still hold true. Although Executive Order 13526 requires the automatic declassification of certain records due to age, in recognition of the sensitivity of sources, Section 3.3(h)(1) explicitly exempts information that would "clearly and demonstrably be expected to reveal . . . the identity of a confidential human source or a human intelligence source" from the 50-year declassification provision. Consistent with Section 3.3(h), I have determined that, in this instance, any responsive records that contain information which would reveal a classified connection with the Agency are exempt

from automatic declassification and the Glomar response must be asserted.

B. FOIA Exemption (b) (3)

23. FOIA exemption (b) (3) provides that FOIA does not apply to matters that are:

Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. . .

5 U.S.C. § 552(b) (3).

24. Section 102A(i) (1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i) (1) (the "National Security Act"), provides that the Director of National Intelligence ("DNI"), "shall protect intelligence sources and methods from unauthorized disclosure." Accordingly, the National Security Act constitutes a federal statute which, "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b) (3). Under the direction of the DNI pursuant to section 102A, and consistent with section 1.6(d) of Executive Order 12333, the CIA is authorized to protect CIA sources and methods from unauthorized disclosure. Acknowledging the existence or nonexistence of records reflecting a classified connection to the CIA in this matter would reveal information that concerns intelligence

sources and methods, which the National Security Act is designed to protect.

25. Therefore, the fact of the existence or nonexistence of records that would reflect a classified connection to the CIA is exempt from disclosure under FOIA exemption (b)(3) pursuant to the National Security Act. In contrast to Exemption (b)(1), this statute does not require the CIA to identify and describe the damage to the national security that reasonably could be expected to result should the CIA confirm or deny the existence or nonexistence of the records. Nonetheless, I refer the Court to the paragraphs above for a description of the damage to the national security should anything other than a Glomar response be required of the CIA in this case. FOIA exemptions (b)(1) and (b)(3) thus apply independently and co-extensively to the aspect of plaintiff's request that would show a classified association with the Agency.

V. CONCLUSION

26. In this case, the CIA conducted a thorough search for responsive records reflecting an open or otherwise unclassified connection to the subject of Plaintiff's request, Mr. Nichols, and no records were found. For records that would reveal a classified connection between Mr. Nichols and the CIA, the fact of the existence or nonexistence of such records is itself a properly classified fact and, as explained above, is intertwined

with intelligence activities, sources, and methods such that this fact is, and must remain, classified and protected by statute. Accordingly, I have determined the only appropriate response is for the CIA to neither confirm nor deny the existence or nonexistence of the requested records under FOIA exemptions (b) (1) and (b) (3).

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of March 2017.

Antoinette B Shiner
Antoinette B. Shiner,
Information Review Officer,
Litigation Information Review Office,
Central Intelligence Agency

Task Information

Task ID: 5394043	Case ID: F-2015-02398	Phase: Appeal	(b)(3) (b)(6)
Case Manager: <input type="text"/>	Requester Name: KINNEY, LESLIE		
Special Handling:	Ext. Agency:		
From: PIPD	To: <input type="text"/>		(b)(3)
Case Action: Search	Task Type: Search	Topic:	
Send Date: 12/07/2015	Due Date:	Return Date: 02/23/2016	(b)(5)
Grant Code: <input type="text"/>	Sub Code:		

Subject: JAMES HAROLD NICHOLS (b)(3)

Instructions: This is an appeal. At the initial level the located no responsive unclassified records and glomar'd any other records. Please advise of your determination at the appellate level. (b)(3)

Thank you,

(b)(3)
(b)(6)

Response: (b)(3)
(b)(5)

~~(U//A//FO)~~ This review was conducted by (b)(3)
(b)(6)

UNCLASSIFIED

UNCLASSIFIED

COMMENTS

(b)(3)
(b)(6)

Date	User	Comment
02/22/2016		QC done
02/18/2016		review complete. Ready for QC
02/17/2016		

(b)(3)
(b)(5)

DOCUMENTS TASKED

(b)(5)

CADRE Ref. ID	Document Title	Pub. Date	No. Pages	Rel. Dec.	Exemptions

UNCLASSIFIED

Task Information

Task ID: 5394042	Case ID: F-2015-02398	Phase: Appeal	(b)(3)
Case Manager: <input type="text"/>	Requester Name: KINNEY, LESLIE		(b)(6)
Special Handling:	Ext. Agency:		
From: PIPD	To: <input type="text"/>		(b)(3)
Case Action: Search	Task Type: Search	Topic:	
Send Date: 12/07/2015	Due Date:	Return Date: 03/23/2016	(b)(5)
Grant Code: <input type="text"/>	Sub Code:		
Subject: JAMES HAROLD NICHOLS			(b)(3)

Instructions: This is an appeal. At the initial level the located no responsive unclassified records and glomar'd any other records. Please advise of your determination at the appellate level.

Thank you,

(b)(3)
(b)(6)

Response: 02/18/2016

(b)(5)

This concludes action on this appeal. Please contact with any questions.

(b)(3)
(b)(6)

(b)(3)

UNCLASSIFIED

UNCLASSIFIED

COMMENTS

Date	User	Comment
03/23/2016		Concur - Senior Review Completed.
02/18/2016		First appellate review complete.

(b)(3)
(b)(6)

DOCUMENTS TASKED

CADRE Ref. ID	Document Title	Pub. Date	No. Pages	Rel. Dec.	Exemptions
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(b)(5)

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