UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Harry T. Cason, Plaintiff, -v.- Central Intelligence Agency, Defendant.	)	Case Number: 1:11-cv-00001 (DAB)

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

The Central Intelligence Agency (CIA) maintains that acknowledging the existence or nonexistence of 31-64 year old records on the Catholic lay group Opus Dei would reveal CIA sources and methods and undermine the security of our nation. It claims that as a matter of policy, the CIA will never acknowledge the existence or nonexistence of any records, no matter how old, about any foreign organization. This policy applies even where, as is the case here, the CIA has already acknowledged the existence of some records about that organization.

It is impossible to reconcile this policy, or its application in this case, with the CIA's obligations under the Freedom of Information Act (FOIA). In response to a request, FOIA requires agencies either to disclose responsive records or to explain why those records fall within one of FOIA's nine exemptions. In what is known as a Glomar response, however, an agency may refuse to respond to a FOIA request when acknowledging the existence or nonexistence of responsive records would itself reveal information exempt under FOIA. The need for, and proper scope of, the Glomar response is best illustrated by the case that first recognized it. In *Phillippi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976), the plaintiff requested records on a CIA operation that had not been officially acknowledged. Under those circumstances, to acknowledge the existence of responsive records would have been to acknowledge the covert program.

This case is not like *Phillippi*. Harry Cason does not request records about a secret program or secret source of information. Rather, he seeks decades-old records about a transnational organization on which the CIA has already officially acknowledged

possessing records. Because acknowledging the existence or nonexistence of responsive records, without more, will not reveal CIA sources or methods or harm national security, this Court should deny the CIA's motion for summary judgment and grant Cason's motion for partial summary judgment. Specifically, the Court should require the CIA either to disclose all responsive records or to explain why all or parts of any responsive records are properly withheld under one of FOIA's exemptions.

BACKGROUND

Plaintiff Harry Cason is pursuing his political science PhD through the City University of New York. For over a decade, he has been working on a dissertation on the United States' involvement in Spain's transformation during Francisco Franco's dictatorial regime (1936-1975). *See* Compl., Doc. # 1, ¶ 3.

On June 25, 2009, Cason submitted a FOIA request to the CIA for "information or records on the Catholic lay group Opus Dei, beginning as early as you have any information and reports on this group up to 1980." Compl. Exh. 1. By way of example, Cason described two reports of which he was aware: a 1952 report "Opus Dei in Barcelona" and an August 17, 1964 report that was referenced in a letter from an official at the American Embassy in Madrid to a Department of State official. *Id.*

The CIA partially denied Cason's request in a letter dated July 31, 2009.[1] It stated that 207 pages of responsive records are releasable, including the 1952 "Opus Dei in Barcelona" report and a 1975 analytical memorandum, "Spain: Problems of the

[1] Although the partial denial letter was dated July 31, 2009, it was postmarked September 8, 2009. Compl. Exh. 3. The CIA does not challenge the timeliness of Cason's appeal.

Succession."[2] At the same time, however, it stated that it could "neither confirm nor deny the existence or nonexistence of records responsive to [Cason's] request" because the fact of their existence or nonexistence is exempt under FOIA exemption 1, which covers classified information, and FOIA exemption 3, which covers information protected from disclosure by other statutes. In support of its exemption 3 argument, the CIA claimed that the existence or nonexistence of the records is "intelligence sources and methods information," exempt under section 6 of the CIA Act, 50 U.S.C. § 403g. Compl. Exh. 2. Cason appealed the denial on September 29, 2009. Compl. Exh. 3. On November 5, 2009, the CIA responded that it had received and was processing the appeal. Compl. Exh. 4. Cason filed this lawsuit on January 3, 2011.

ARGUMENT

Unless the CIA can show that it properly asserted the Glomar response, Cason has a right to the records he requested or an explanation of why those records are exempt under FOIA. *See* 5 U.S.C. § 552(a)(3)(A), (a)(6)(A)(i), (b); *Wilner v. NSA*, 592 F.3d 60, 68 (2d Cir. 2009); *Phillippi*, 546 F.2d at 1012. To rely on the Glomar response, the CIA must submit a declaration explaining, "in as much detail as possible," that confirming or denying the existence or nonexistence of responsive records would itself reveal exempt information. *Wilner*, 592 F.3d at 68. Although the agency's detailed declaration is entitled to substantial weight, ultimately the court must review the agency's decision de novo. *Id.*

[2] Cason never received the 4-page "information report" associated with the 1952 "Opus Dei in Barcelona Report." *See* Compl. Exh. 3; Pratzner decl. ¶¶ 38-39. His counsel contacted Mr. Harwood, counsel for the CIA, who said he would alert the CIA FOIA office to this fact. The CIA notes that the information report is partially redacted. *Id.* Although Cason does not challenge any redactions to the records he received, he has not waived his right to challenge redactions to the 1952 information report.

at 68-69. FOIA's exemptions are narrowly construed, and any doubt as to their applicability must be resolved in favor of disclosure. *Id.* at 69.

The CIA has failed to satisfy its burden. In support of its exemption claims, the CIA relies solely on a declaration that refers exclusively to the CIA's general policy of not responding to requests for records about "foreign organizations."[3] The declaration is insufficient to justify withholding the information under FOIA exemption 3 because it provides no explanation of why acknowledging the existence or nonexistence of 31-64 year old records on Opus Dei would reveal a CIA source or method. FOIA exemption 1 does not apply either because the requested records, including their existence or nonexistence, are subject to automatic declassification, and because it is implausible that the existence or nonexistence of a half-century-old interest in Opus Dei would undermine national security.

I. The Pratzner declaration relies on an overbroad categorical rule of exclusion.

The Pratzner declaration attempts to justify the CIA's Glomar response by reference to a general policy of not responding to requests for records on foreign organizations. *See* Pratzner Decl., Doc. #17, ¶ 18. Because the CIA has not shown that the existence or nonexistence of all such records necessarily falls within a FOIA exemption, the policy is overbroad and thus insufficient to support the CIA's Glomar response in this case.

[3] The Pratzner declaration does not define "foreign organization." Because the definition purportedly encompasses Opus Dei, a religious organization with no formal state affiliations, the definition appears to sweep broadly. Indeed, because the CIA does not monitor domestic organizations, its policy likely covers requests for records about *any* organization.

"[R]ules exempting certain categories of records from disclosure are . . . permitted . . . [o]nly when the range of circumstances included in the category 'characteristically support[s] an inference' that the statutory requirements for exemption are satisfied." *Nation Magazine, Washington Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 893 (D.C. Cir. 1995) (quoting *Landano v. United States*, 508 U.S. 165, 176-80 (1993)). Thus, in *Landano*, the Supreme Court rejected the FBI's categorical rule that all records relating to a law enforcement source fall within FOIA exemption 7(D), which protects information provided by a *confidential* source. It acknowledged that "the Government often can point to more narrowly defined circumstances that will support the inference [of confidentiality]" but rejected the FBI's broad rule in favor of a "more particularized approach." *Id.* at 179-80; *see also Nation Magazine*, 71 F.3d at 895 (rejecting categorical rule in Glomar context). By contrast, the Supreme Court upheld a categorical rule in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). There, the Court concluded that rap sheets, as a category, can always be withheld under FOIA because "it is always true that the damage to a private citizen's privacy interest from a rap sheet's production outweighs the FOIA-based public value of such disclosure." *Id.* at 779.

The CIA's categorical refusal to confirm or deny the existence or nonexistence of records relating to foreign organizations is unacceptably overbroad, and therefore violates FOIA. First, the policy fails to make distinctions based on the age of the requested records. As explained below, the existence or nonexistence of 31-64 year old records is unlikely to reveal intelligence sources or methods; most records over 25 years old are

subject to automatic declassification; and old records not subject to automatic declassification are, as a category, less likely than contemporary records to pose a threat to national security. The Pratzner declaration's only direct reference to the age of the requested records is:

> Although the information at issue in this case relates to the period prior to 1980, the insight that it could provide into CIA's intelligence-gathering activities, and potential ways to frustrate those activities, would be relevant and useful today.

Pratzner Decl. ¶ 20. "Such a conclusory statement completely fails to provide the kind of fact-specific justification that either (a) would permit [the plaintiff] to contest the affidavit in adversarial fashion, or (b) would permit a reviewing court to engage in effective *de novo* review of the [agency's] redactions." *Halpern v. FBI*, 181 F.3d 279, 293 (2d Cir. 1999).

Second, the CIA's policy covers requests for records about foreign organizations even where the CIA has already officially acknowledged the existence of records on that organization. Here, for example, the CIA produced some records relating to Opus Dei at the same time it refused to confirm or deny the existence of other records on Opus Dei. Compl. Exh. 2.

Finally, the policy fails to consider whether the foreign organization at issue is from a country with whose regime we have current foreign relations or is from a country whose regime is long out of power. For example, during nearly the entire period of interest to Cason, Spain was run by Francisco Franco, whose regime ended over 30 years ago. Because the CIA's FOIA exemption 3 claim relies on the effect disclosure would have on foreign relations, *see* section III below, this failure is significant.

II. The CIA's response is not justified under FOIA exemption 3 because acknowledging the existence or nonexistence of old records on Opus Dei would not reveal an intelligence source or method.

FOIA exemption 3 covers matters "specifically exempted from disclosure by statute." 5 U.S.C. § 552(b)(3). The CIA argues that Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 403-1(i)(1), and Section 6 of the Central Intelligence Act of 1949, 50 U.S.C. § 403g, justify its Glomar response because they protect from disclosure "intelligence sources and methods." There is no question that both statutes qualify as exemption 3 statutes under FOIA. The only issue is whether acknowledging the mere existence or nonexistence of old records on Opus Dei would reveal an intelligence source or method.

Intelligence "sources" and "methods" are discrete categories.[4] Intelligence sources are individuals or institutions that provide, have provided, or have been engaged to provide information of the kind necessary for the agency to effectively perform its intelligence functions.[5] *See CIA v. Sims*, 471 U.S. 159, 164, 169 (1984). Requests for which *any* response would implicate intelligence sources are those about a possible source or those that specify the source of the sought information. *See, e.g.*, *Wolf v. CIA*, 473 F.3d 370, 372 (D.C. Cir 2007) (request for records about deceased foreign politician); *Frugone v. CIA*, 169 F.3d 772, 773 (D.C. Cir. 1999) (request for records about requester's own former employment with CIA); *Minier v. CIA*, 88 F.3d 796, 799 (9th Cir. 1996) (request for records about an individual's affiliation with the CIA); *Hunt v. CIA*, 981 F.2d 1116,

[4] This is not to say there is not significant overlap between the two categories. Many requests will implicate both intelligence sources and methods.

[5] The CIA does not argue that Opus Dei might itself be an intelligence source. For this reason, among others, foreign organizations are different from foreign nationals.

1119 (9th Cir. 1992) ("To confirm or deny the existence of records on [the foreign national] could . . . reveal intelligence sources or targets."); *Arabian Shield Development Co. v. CIA*, No. 3-98-CV-0624-BD, 1999 WL 118796, at *1 (N.D. Tex. Feb. 26, 1999) (request for records sent by a particular individual); *see generally ACLU v. DOD*, 389 F. Supp. 2d 547, 563 (S.D.N.Y. 2005) ("Most [Glomar] cases involve requests by persons who claim to have had employment or other personal connections to the agency, or who seek such information about others who may have had such relationship.").

Requests that implicate intelligence methods are those that assume that the agency is using, or ask about the agency's use of, a particular methodology. In the original Glomar case, *Phillippi v. CIA*, the plaintiff requested CIA records on a shipping vessel named the Hughes Glomar Explorer. Several news organizations had published stories alleging that the boat was owned and operated by the CIA. The D.C. Circuit held that under these circumstances, the CIA can refuse to acknowledge the existence or nonexistence of responsive records on the ground that to do so would reveal whether the CIA had ties to the ship. *See* 546 F.2d at 1010-12; *see also Wilner*, 592 F.3d 60 (request for records relating to warrantless surveillance or physical searches of the plaintiffs); *Earth Pledge Found. v. CIA*, 988 F. Supp. 623, 625, 628 (S.D.N.Y. 1996) ("The plaintiffs' request seeks official confirmation of an unconfirmed CIA field station [in today's Santo Domingo]," which "even to confirm or deny the existence of . . . would compromise the CIA's ability to gather intelligence.").

Here, the CIA argues that acknowledging the mere existence or nonexistence of old CIA records on Opus Dei would reveal CIA sources or methods for two reasons. First,

it argues that the existence of responsive records would indicate that the agency has an intelligence-gathering interest in Opus Dei; whereas if responsive records do not exist, it would suggest the opposite. Second, it claims that the existence of responsive records would signal that the CIA has the capability of surveilling Opus Dei. Such information, the CIA argues, could prompt Opus Dei to identify and nullify relevant sources and methods. If, however, responsive records do not exist, the CIA claims, that fact would suggest that the CIA does not have adequate sources and methods for gathering intelligence on Opus Dei. CIA Memorandum 17-18.

These arguments are unconvincing. The fact of whether the CIA has an intelligence-gathering interest in Opus Dei has no direct relationship to intelligence sources or methods. For example, if the CIA acknowledged that it had five reports on Opus Dei from the 1960s but that they were all properly classified and nonreleasable, the public would have no information about how, or from whom, the CIA acquired the information contained in those reports. Arguing otherwise, the Pratzner declaration states that "disclosing whether or not the CIA has additional records relating to a foreign organization . . . would indicate whether CIA has an intelligence-gathering interest in Opus Dei, and the extent to which it has pursued intelligence-gathering activities." Pratzner decl. ¶ 16. This argument is conclusory and relies on an overbroad reading of "intelligence sources and methods," one unsupported by the statutes' plain language. Accordingly, the only question is whether revealing the existence or nonexistence of responsive records would say something meaningful about the CIA's *ability* to surveil Opus Dei.

Acknowledging the existence or nonexistence of old records on Opus Dei would say nothing about the CIA's surveillance capabilities. First, the requested records are between 31 and 64 years old. Whether the CIA had the ability to monitor Opus Dei during that era—before the internet, cell phones, and the full range of modern technologies—says nothing about the CIA's capabilities today. And as discussed in section I above, the Pratzner declaration provides no explanation to the contrary. Second, surely the CIA has the capability to surveil a foreign organization like Opus Dei. Unlike a foreign individual, who could be in hiding, Opus Dei has offices all around the world, a website with contact information, and a listing on Yahoo!'s yellow pages. And third, the CIA has already released records on Opus Dei. If the existence of any responsive records would reveal CIA methods, the CIA has already done so.

Considering the CIA's arguments together further reveals their weaknesses. The CIA argues that an acknowledgment that no responsive records exist would signal *both* that the CIA has no intelligence gathering interest in Opus Dei *and* that it does not have the capability to surveil Opus Dei. *See* CIA Memorandum 18; Pratzner decl. ¶ 16. But these inferences are mutually exclusive because for Opus Dei to infer from this information that the CIA does not have the capability to surveil it, it must first assume that the CIA would surveil it if it had the capability. That Opus Dei could reasonably draw two mutually exclusive inferences from any acknowledgment that no responsive records exist, renders that response uninformative.

The relationship between exemptions 1 and 3 further supports a limited reading of "intelligence sources and methods." Section 1.5 of Executive Order 12,958—the national

security classification executive order in place at the time of Cason's request—covers many categories of information, only one of which is intelligence sources and methods. *See* Exec. Order 12,958, attached as Exh. 1. In addition to intelligence sources and methods, section 1.5 includes the more expansive categories of "intelligence activities" and "foreign activities." The tradeoff for including broader categories of information than the exemption 3 statutes at issue in this case is that Executive Order 12,958 also requires that unauthorized disclosure be "expected to cause damage to the national security that the original classification authority is able to identify or describe." Exec. Order 12,958 § 1.3(a)(3). Intelligence agencies would be able to effectively ignore this harm requirement if, as the CIA argues, "intelligence sources and methods" was so broad that it covered all intelligence activities and foreign activities.

If all or a part of a responsive record contains intelligence sources or methods, that information could be withheld under FOIA. But because acknowledging the simple existence or nonexistence of old records on Opus Dei would not reveal intelligence sources or methods, the CIA's Glomar response was not justified under FOIA exemption 3.

III. The CIA's response is not justified under FOIA exemption 1 because the existence or nonexistence of old records on Opus Dei is not properly classified.

Exemption 1 protects 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 [an] Executive order." 5 U.S.C. § 552(b)(1). The current national security classification executive order, Executive Order 13,526, provides that, in response to a FOIA request, "[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." *See* Exec. Order 13,256 § 3.6(a), attached as Exh. 2. The fact of the existence or nonexistence of the requested records was classified under Executive Order 12,958, Pratzner decl. ¶ 5 n.1, which was superseded by Executive Order 13,526 in June 2010.

The existence or nonexistence of records responsive to Cason's request is not properly classified for two independent reasons: (1) because all of the requested records are more than 25 years old, even if this information were initially properly classified, it is now subject to mandatory declassification, and (2) because when the existence or nonexistence of these records was classified it was—and remains—implausible that acknowledging their existence or nonexistence would harm national security, this information was not initially properly classified.

A. The existence or nonexistence of responsive records over 25 years old is subject to automatic declassification.

Section 3.4(a) of Executive Order 12,958 requires that "all classified information contained in records that (1) are more than 25 years old, and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed."[6] Here, all records responsive to Cason's request are more than 25 years old and plainly of "permanent historical value," and the CIA does not argue otherwise.[7] Because any responsive records would be subject

[6]Section 3.4 of Executive Order 13,526 is identical, but because the CIA is justifying its exemption 1 claim on Executive Order 12,958, this memorandum refers to that Executive Order.

[7] Records of "permanent value" or "historical interest" are those that are saved at the National Archives. Under 44 U.S.C. § 2112, "the Archivist [of the National Archives and Records Administration] may dispose by sale, exchange, or otherwise, of papers,

to automatic declassification, the fact of their existence or nonexistence cannot logically be classified.

To be sure, automatic declassification is subject to certain exemptions. Most relevant to this case are exemptions (1) and (6), which provide that an agency head may exempt from automatic declassification information that if released "should be expected to":

> (1) 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;
>
> (6) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

Exec. Order 12,958 § 3.4(b).

The CIA has not, however, made any claim that these exemptions are met here. *See Hall v. CIA*, 668 F. Supp. 2d 172, 188-89 (D.D.C. 2009) (stating that it is the CIA's burden to show that old records fit within one of the mandatory declassification provision's exemptions). Although the CIA makes analogous claims under different legal provisions, the standards for satisfying the exemptions to mandatory declassification are significantly higher. For example, for purposes of its FOIA exemption 3 claim, the CIA

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documents, or other materials which the Archivist determines to have no permanent value or historical interest or to be surplus to the needs of a Presidential archival depository." As interpreted in NARA's regulations, "[t]hrough a records scheduling and appraisal process, the Archivist of the United States determines which Federal records have temporary value and may be destroyed and which Federal records have permanent value and must be preserved and transferred to the National Archives of the United States." 36 C.F.R. § 1220.12.

argues that acknowledging the existence or nonexistence of responsive records would reveal "intelligence sources or methods." *See* section II above. But to satisfy exemption 1 of the mandatory declassification provision, the CIA must show not only that release would reveal an intelligence source or method, but also that it would "clearly and demonstrably damage the national security interests of the United States." Exec. Order 12,958 § 3.4(b)(1). As argued above, because acknowledging the existence or nonexistence of old records about Opus Dei would not reveal CIA sources or methods, it would certainly not reveal CIA sources or methods *and* "clearly and demonstrably" harm national security.

Similarly, as discussed in the following subsection, as part of its claim that the existence or nonexistence of responsive records was properly classified, the CIA argues that acknowledging their existence or nonexistence would "cause damage to the national security that the original classification authority is able to identify or describe," by, in part, harming foreign relations. But to satisfy exemption 6 of the mandatory declassification provision, disclosure must "*seriously and demonstrably* impair relations between the United States and a foreign government . . . or ongoing diplomatic activities." Exec. Order 12,958 § 3.4(b)(6) (emphasis added). As argued below, because acknowledging the existence or nonexistence of old records on Opus Dei would not harm national security, it would certainly not "seriously and demonstrably" harm national security.

For these reasons, the existence or nonexistence of responsive records over 25 years old is subject to automatic declassification. *See Hall*, 668 F. Supp. 2d. at 188-89 (denying summary judgment to the CIA "as to those documents that are more than

twenty-five years old" under Executive Order 12,958's automatic declassification provision).

B. It is implausible that acknowledging the existence or nonexistence of old records on Opus Dei would harm national security.

A second, independent reason the existence or nonexistence of responsive records is not properly classified is that this information never satisfied the standard for initial classification. To be considered for classification under Executive Order 12,958, (1) the information must pertain to one or more of seven enumerated categories of information, and (2) its release must be "expected to cause damage to the national security that the original classification authority is able to identify or describe." Exec. Order 12,958 §§ 1.2(a)(3), (4), 1.5. As discussed in section II above, the seven enumerated categories include more types of information than the exemption 3 statutes on which the CIA relies, and Cason does not contest that acknowledging the existence or nonexistence of responsive records might relate to old "intelligence activities" or "foreign activities." *See* Exec. Order 12,958 § 1.5(c), (d). The only question is whether release of this information is reasonably likely to cause identifiable or describable damage to the national security.

The CIA argues that responding to Cason's request would harm national security by revealing its intelligence activities and by straining foreign relations. Both claims are implausible and unsupported by the Pratzner declaration, principally because they do not take into account the requested records' ages.[8]

[8] Although the CIA does not state when it classified the existence or nonexistence of records on Opus Dei, it does note that it made the classification decision under Executive Order 12,958, which was the national security classification executive order from 1995

1. Effect on intelligence activities. The CIA states that responding to Cason's request would adversely affect its intelligence activities for several reasons. First, it argues that insofar as responding to the request would reveal intelligence sources or methods, it would enable Opus Dei, or similar groups, to neutralize those sources or methods. CIA Memorandum 12, 13. For the reasons stated in section II above, however, responding to Cason's request would not reveal CIA sources or methods. If particular responsive records would reveal sources or methods, those records, or parts of those records, could be withheld.

Second, the CIA argues that "once alerted to the potential fact that the CIA has taken an interest (or a continuing interest) in Opus Dei, groups or individuals 'who have been or may be collaborating with the organization will be more careful to conceal their activities and may cease engaging in activities that are detectible to the CIA, with negative results for the CIA.'" CIA Memorandum 13 (quoting Pratner Decl. ¶ 19) (alterations omitted)). This position is implausible. As an initial matter, it fails to acknowledge that Cason is requesting records between 31 and 64 years old. If the CIA has responsive records, it would suggest that at the time those records were created, the CIA had some interest in Opus Dei. But that the CIA had some interest in Opus Dei's activities in World War II Italy, for example, says nothing about the CIA's interest in Opus Dei today. In any event, the CIA has already acknowledged that it has at least two records on Opus Dei. It is implausible that the CIA's historic interest in this organization,

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until 2010. Pratzner decl. ¶ 5 n.1. Therefore, the classification decision was made between 15 and 30 years after the most recent requested record.

without more, would surprise anyone at Opus Dei, or affect the activities of any other organization.

2. Effect on foreign relations. The CIA claims that responding to Cason's request would harm foreign relations because it "'could be construed by the governments of the countries where that organization operates, whether friends or adversaries, to mean that the CIA has collected intelligence information on or recruited one of its citizens or resident aliens.'" CIA Memorandum 14 (quoting Pratzner Decl. ¶ 31). Cason's response does not implicate this concern, however. As discussed in section II above, the existence or nonexistence of records on Opus Dei's activities in a foreign country would itself say nothing about the sources or methods used, if any, to gather intelligence in that country. At most, a foreign country would know of the CIA's interest in the organization, which itself could not plausibly harm U.S. foreign relations. Sophisticated intelligence agencies likely have *some* records on every large, politically active organization. And again, to the extent records responsive to Cason's request would reveal information that would harm foreign relations, that information could be redacted.

The age of the responsive records here further undermines the CIA's claim that acknowledging their existence would harm foreign relations. The CIA's interest in a transnational organization half a century ago is unlikely to strain foreign relations today, even more so where the foreign country has undergone a regime shift during the interim period. Opus Dei was founded in and remains particularly prominent in Spain, which is also the principal focus of Cason's research interests. During nearly the entire time period of interest to Cason, Spain was run by the authoritarian Franco regime. In 1978, however,

Spain became a constitutional democracy. It is unsurprising that the CIA would have had some interest in Opus Dei's activities during the Franco regime, and it is implausible that that interest would strain relations between the U.S. and today's democratic Spain.

CONCLUSION

For all these reasons, the Court should deny the CIA's motion for summary judgment, grant Cason's motion for partial summary judgment, and order the CIA either to disclose responsive records or to explain why those records, or parts of those records, are exempt from FOIA's disclosure requirements.

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Respectfully submitted,

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