

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
JUDICIAL WATCH, INC.,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	1:11-cv-00890-JEB
v.	)	
	)	
U.S. DEPARTMENT OF DEFENSE, and	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendants.	)	
_____	)	

**[PROPOSED] ORDER**

Upon consideration of Defendants' Motion for Summary Judgment, and any response and reply thereto, it is hereby ORDERED that summary judgment is GRANTED in favor of defendants U.S. Department of Defense and the Central Intelligence Agency. Plaintiff's amended complaint is dismissed, with prejudice.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. James E. Boasberg  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC., )

Plaintiff, )

v. )

U.S. DEPARTMENT OF DEFENSE, )  
et al. )

Defendants. )

Case No.: 1:11-cv-00890

**DECLARATION OF JOHN BENNETT  
DIRECTOR, NATIONAL CLANDESTINE SERVICE  
CENTRAL INTELLIGENCE AGENCY**

I, JOHN BENNETT, hereby declare and state:

1. I am the Director of the National Clandestine Service ("NCS") of the Central Intelligence Agency ("CIA" or "Agency"). I was appointed to this position in July 2010. I joined the Agency in 1981 and have over twenty-five years of experience as a CIA officer. Over the course of my career, I have held a variety of leadership positions with the Agency, including Chief of the Special Activities Division and Deputy Chief of the Africa Division. Most of my career with the CIA has been spent in overseas operational positions, including my four tours as the Chief of overseas CIA Stations.

2. The NCS is the organization within the CIA responsible for conducting the CIA's foreign intelligence and

counterintelligence activities. As Director of the NCS, it is my responsibility to oversee its mission of strengthening the national security and foreign policy objectives of the United States through the clandestine collection of human intelligence, technical collection, and Covert Action. One of the additional responsibilities that comes with this position is the authority to assess the current, proper classification of CIA information based on the classification criteria of Executive Order 13526. Pursuant to the original TOP SECRET classification authority that has been delegated to me, I am authorized to make original classification and declassification decisions. When called upon to exercise this authority, I ensure that any determinations regarding the classification of CIA information are proper and that the public release of such information does not jeopardize the national security by disclosing classified intelligence activities, methods, or operational targets, or endanger United States government personnel, facilities, or sources.

3. I am submitting this declaration in support of the government's motion for summary judgment in this proceeding. Through the exercise of my official duties, I have become familiar with this civil action, the underlying Freedom of Information Act ("FOIA") request, and the responsive records described below. I make the following statements based upon my

personal knowledge and information made available to me in my official capacity.

4. The purpose of this declaration is to describe, to the greatest extent possible on the public record, the bases for my determination that the responsive CIA records in this case cannot be publicly disclosed.<sup>1</sup> This declaration is divided into three sections. First, I describe the Plaintiff's FOIA request and the CIA's response. Second, I describe the CIA records that are at issue in this case, each of which I have personally reviewed. Third, I set forth the reasoning for my determination that the responsive records are protected from disclosure pursuant to FOIA exemptions (b)(1) and (b)(3) because they contain information pertaining to classified CIA intelligence activities and methods, sensitive military operations and plans, and the foreign activities of the United States, the release of which reasonably could be expected to cause exceptionally grave damage to the national defense and foreign relations of the United States. This conclusion is based on, among other things, my over twenty-five years of experience with the CIA, including my extensive service in hostile overseas environments; my knowledge of the 1 May 2011 operation that killed Usama Bin Laden ("UBL") and the responsive records in this case that are

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<sup>1</sup> At the Court's request, the CIA is prepared to supplement this unclassified declaration with a classified declaration containing additional information that the CIA cannot file on the public record.

related to that operation; and my experience in countering the current threat that the United States faces from al-Qa'ida and other hostile groups around the world.

PLAINTIFF'S FOIA REQUEST AND THE CIA'S RESPONSE

5. On 5 May 2011, the CIA received a FOIA request from Judicial Watch, Inc. ("Plaintiff"), for "all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011." A true and correct copy of the request is attached to this declaration as Exhibit A. The CIA has interpreted Plaintiff's request as referring to the operation conducted by the United States that resulted in the death of Usama bin Laden on or about 1 May 2011.<sup>2</sup>

6. On 13 May 2011, Plaintiff filed a complaint in the United States District Court for the District of Columbia against the U.S. Department of Defense ("DoD"), which had also received the same FOIA request from Plaintiff.

7. On 23 May 2011, the CIA sent Plaintiff a letter acknowledging receipt of Plaintiff's FOIA request and advised that it would be processed in accordance with the FOIA. A true and correct copy of the letter is attached to this declaration as Exhibit B.

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<sup>2</sup> This operation occurred on 2 May 2011 in Pakistan. Due to the difference in time zones, it was 1 May 2011 in the United States.

8. On 8 June 2011, Plaintiff filed an amended complaint adding the CIA as a defendant.

9. On 28 July 2011, DoD and CIA filed an answer to Plaintiff's amended complaint.

10. In response to Plaintiff's FOIA request, the CIA conducted a search reasonably calculated to locate records responsive to Plaintiff's request for all photographs and/or video recordings taken of UBL on or about 1 May 2011. The search was conducted by CIA employees who have access to the pertinent CIA records and who are qualified by training or practice to search those records for information in the course of their professional duties. The search specifically included the records systems of the CIA components most likely to have records related to the 1 May 2011 operation described below. Given the nature of the operation and the close proximity in time between the operation and Plaintiffs' FOIA request, the CIA was able to determine with particularity which components were most likely to have responsive records. Based on my knowledge of the CIA's records systems and the search that was conducted, I have determined that the CIA searched the records systems likely to contain records responsive to Plaintiff's FOIA request.

THE RESPONSIVE RECORDS AT ISSUE

11. As a result of this search, the CIA located a total of fifty-two (52) unique records that are responsive to Plaintiff's FOIA request. These records are photographs and/or video recordings taken of UBL on or about 1 May 2011, the day that the United States conducted an operation that resulted in his death. These records contain post-mortem images of UBL's body. As a result, many of them are quite graphic, as they depict the fatal bullet wound to UBL's head and other similarly gruesome images of his corpse. Many of the images were taken inside of UBL's compound in Abbottabad, Pakistan, in which he was killed, while others were taken as his corpse was being transported from the Abbottabad compound to the location where he was ultimately buried at sea. Several other images depict the preparation of his body for burial as well as the burial itself. Some of the responsive photographs were taken so that the CIA could conduct a facial recognition analysis in order to confirm that the body of the deceased individual was that of UBL. The CIA's facial recognition technology, which is highly classified, compares unique facial features, such as bone structure, age spots, hair growth patterns, and the size and shape of the eyes, ears, and nose, as well as the relative positioning of facial features. The CIA compared historical photographs of UBL with some of

these responsive photographs and concluded with high confidence that the deceased individual was in fact UBL.

12. As described below, these responsive records reflect information pertaining to classified CIA intelligence activities and methods, as well as information pertaining to classified military plans and operations and sensitive foreign activities of the United States. I have determined that the public release of these records reasonably could be expected to cause exceptionally grave damage to the national security of the United States. In addition, because of the highly classified nature of these images, I cannot further describe their contents or the circumstances in which they were obtained on the public record without potentially causing harm to national security. Among other things, release of additional descriptive information concerning the responsive records could expose whether the CIA utilized certain intelligence methods, equipment, tools, technical capabilities, or other operational methods in the course of and immediately after effectuating this highly sensitive operation.

THE BASES FOR WITHHOLDING THE RESPONSIVE RECORDS PURSUANT TO  
FOIA EXEMPTIONS (b) (1) AND (b) (3)

I. FOIA Exemption (b) (1)

13. The authority to classify information is derived from a succession of Executive Orders, the most recent of which is

Executive Order 13526 ("Order"). FOIA exemption (b)(1), 5 U.S.C. § 552(b)(1), provides that the FOIA does not apply to matters 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). As described below, I have determined that the responsive records at issue in this case are currently and properly classified in accordance with the substantive and procedural requirements of Executive Order 13526, thereby making them exempt from disclosure under FOIA exemption (b)(1).

14. Section 1.3(a) of the Order provides that the authority to classify information originally may be exercised only by the President, the Vice President, agency heads and officials designated by the President, and United States Government officials delegated authority pursuant to section 1.3(c). Section 1.3(c)(3) provides that TOP SECRET original classification authority may be delegated only by the President, the Vice President, or any agency head or official designated pursuant to section 1.3(a)(2).

15. In accordance with section 1.3(a)(2) of the Order, the President designated the Director of the CIA as an official who

may classify information originally as TOP SECRET.<sup>3</sup> Section 1.3(b) of the Order provides that original TOP SECRET classification authority includes the authority to classify information originally as SECRET and CONFIDENTIAL.

16. Section 6.1(i) of the Order defines "classified national security information" or "classified information" as "information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form." Section 6.1(cc) of the Order defines "national security" as the "national defense or foreign relations of the United States."

17. Section 1.1(a) of the Order provides that information may be originally classified under the terms of this Order only if all of the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the United States Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of the Order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in some level

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<sup>3</sup> Order of President, Original Classification Authority, 75 Fed. Reg. 735 (Jan. 5, 2010).

of damage to the national security and the original classification authority is able to identify or describe the damage.

18. *Original Classification Authority.* Pursuant to section 1.3(c)(2) of the Order, the Director of the CIA has delegated original TOP SECRET classification authority to me. As an original classification authority, I am authorized to conduct classification reviews and to make original classification decisions.

19. *U.S. Government Information.* Information may be originally classified only if the information is owned by, produced by or for, or is under the control of the United States Government. The information responsive to Plaintiff's FOIA request is information that is owned by or under the control of the United States Government.

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20. *Proper Purpose.* In accordance with Section 1.7(a) of this Order, I have determined that no information concerning the records responsive to Plaintiff's FOIA request has been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.

21. *Categories in Section 1.4 of the Executive Order.*

Executive Order 13526 addresses classification of information relating to intelligence and national security. Section 1.4(c) provides that information shall be classified only when it pertains to, *inter alia*, information concerning "intelligence activities (including covert action), intelligence sources or methods, or cryptology." Section 1.4(d) provides that information regarding "foreign relations or foreign activities of the United States" may be classified. In this case, all of the responsive records are the product of a highly sensitive, overseas operation that was conducted under the direction of the CIA; accordingly, I have determined that all of the records pertain to intelligence activities and/or methods as well as the foreign relations and foreign activities of the United States. I further describe this information and its relation to the national security below. In addition, while the records responsive to Plaintiff's FOIA request belong to the CIA, the responsive records also reveal information concerning "military plans, weapons systems, or operations" that are classified pursuant to Section 1.4(a). These DoD equities will be further addressed in the declarations of Admiral William H. McRaven and Lieutenant General Robert B. Neller, which are also being filed in support of the government's motion for summary judgment in this proceeding.

22. *Damage to National Security.* Section 1.2(a) of the Order provides that information shall be classified at one of three levels if the unauthorized disclosure of the information reasonably could be expected to cause damage to the national security, and the original classification authority is able to identify or describe the damage. Information shall be classified TOP SECRET if its unauthorized disclosure reasonably could be expected to result in *exceptionally grave damage* to the national security; SECRET if its unauthorized disclosure reasonably could be expected to result in *serious damage* to the national security; and CONFIDENTIAL if its unauthorized disclosure reasonably could be expected to result in *damage* to the national security. Consistent with the Order, I have determined that all of the responsive records are classified TOP SECRET because their unauthorized disclosure reasonably could be expected to result in *exceptionally grave damage* to the national security. I further describe this *exceptionally grave damage* below. In addition to the description set forth below, I also refer the Court to the declarations of Admiral McRaven and Lieutenant General Neller, which I have relied upon and which further describe how the unauthorized disclosure of information in the responsive records relating to DoD equities reasonably could be expected to cause harm to the national security.

a. **Harm to National Security from Release of Images of UBL**

23. In this case, the responsive records contain images of UBL's body after he was killed. These post-mortem images of the former leader of al-Qa'ida include photographs of the gun-shot wound to his head. In short, these pictures are gruesome. As a result, the release of these graphic photographs and other images of UBL's corpse reasonably could be expected to inflame tensions among overseas populations that include al-Qa'ida members or sympathizers, encourage propaganda by various terrorist groups or other entities hostile to the United States, or lead to retaliatory attacks against the United States homeland or United States citizens, officials, or other government personnel traveling or living abroad. Therefore, I have determined that releasing images of UBL taken during and/or after the 1 May 2011 operation reasonably could be expected to cause exceptionally grave damage to the national defense and foreign relations of the United States. As such, all of the records responsive to Plaintiff's request are properly classified as TOP SECRET and are therefore exempt from disclosure pursuant to FOIA exemption (b)(1). In reaching this determination, I was mindful of President Obama's statement that "given the graphic nature of these photos, [releasing them] would create some national security risk," as they might be used

as "an incitement to additional violence [or] a propaganda tool."

24. More specifically, the public release of the responsive records would provide terrorist groups and other entities hostile to the United States with information to create propaganda which, in turn, could be used to recruit, raise funds, inflame tensions, or rally support for causes and actions that reasonably could be expected to result in exceptionally grave damage to both the national defense and foreign relations of the United States. Al-Qa'ida has a very effective propaganda operation. For example, when abuse of Iraqi detainees at the Abu Ghraib prison was disclosed, al-Qa'ida made very effective use of that information on extremist websites that recruit jihadists and solicit financial support. Similarly, post-mortem images of UBL would provide encouragement and ready-made ammunition for al-Qa'ida propaganda which could lead to violence and deadly attacks against the United States homeland or United States citizens, officials, or other government personnel traveling or living abroad.

25. The damage to the United States national security that could result through the public disclosure of the responsive records is not merely conjectural. Indeed, since UBL's death, al-Qa'ida has already attempted to use the circumstances surrounding his death and burial as propaganda to recruit and

further its goal of harming the United States. For instance, the summer 2011 edition of Inspire Magazine, an English-language online magazine published by al-Qa'ida in the Arabian Peninsula ("AQAP"), included an article devoted to the so-called "martyrdom" of UBL. In addition, Ayman Al-Zawahiri, the current al-Qa'ida leader, released a video in June 2011 eulogizing UBL. In the video, Zawahiri attacked the United States' assertions that UBL received an appropriate Islamic burial at sea. Thus, releasing post-mortem images of UBL that reflect the gruesome nature of his fatal injuries, as well as his burial at sea, could enhance al-Qa'ida's efforts to use these events to further attack and otherwise inflict exceptionally grave damage to the security interests of the United States.

26. The public release of graphic, post-mortem images of UBL could also generate fodder for extremist commentary that could further incite attacks against the United States and its citizens. For instance, although the United States military took cautionary steps in producing deceased al-Qa'ida in Iraq (or "AQI") leader Abu Musab al-Zarqawi's posthumous image through cleaning the body, foreign editorials criticized the released by labeling the photo a "trophy." Editorials in Pakistan also portrayed the repeated rebroadcasts of the photo as an "ad for jihad" that was broadcast around the world. In this case, such controversy relating to release of the UBL

images could similarly be used by al-Qa'ida or other hostile entities as propaganda to recruit jihadists, solicit financial support, or encourage attacks against the United States.

27. Moreover, the release of graphic and posthumous images of UBL, including images of his burial, could be interpreted as a deliberate attempt by the United States to humiliate the late al-Qa'ida leader. For example, media scenes involving photos of UBL juxtaposed against scenes of celebration in the United States could cause feelings of denigration and could trigger violence, attacks, or acts of revenge against the United States homeland or its citizens, officials, or other government personnel living or traveling overseas. Accordingly, I have determined that disclosure of the responsive records reasonably could be expected to cause exceptionally grave damage to the United States. Therefore, the responsive records are properly classified as TOP SECRET and thus protected from disclosure pursuant to FOIA exemption (b)(1).

**b. Harm to National Security from Release of Information Pertaining to CIA Intelligence Activities and Methods**

28. In addition to the harm described above, which applies to all of the responsive images, additional harm to national security could be caused by the fact that release of certain responsive records could also reveal intelligence activities and methods that were employed during or after the operation.

Generally speaking, intelligence methods are the means by which the CIA accomplishes its mission, while intelligence activities embody the operational implementation of such methods.

Intelligence methods include the basic business practices and methodological "tools" used by the CIA to accomplish its mission. The term "intelligence methods" is not limited to sophisticated techniques and electronic devices. "Intelligence methods" also include, among other things, seemingly innocuous facts such as where the CIA operates or has operated and how long the CIA operated in a particular part of the world. Once an intelligence method (or the fact of its use in a certain situation) is discovered, its continued successful use by the CIA is seriously jeopardized. If information about a particular intelligence method is disclosed, that information can also be used by adversaries of the United States to detect, prevent, or damage U.S. intelligence operations or to advance affirmative hostile operations against the United States. For similar reasons, the CIA must protect from public disclosure not only the information about the intelligence methods that it utilizes, but also information that reveals methods the CIA does not use, as this may indicate a potential weakness or vulnerability in the CIA's operations or capabilities.

29. In this case, the release of certain responsive records would reveal information about intelligence methods and

activities by providing insight into the manner in which the photographs or video recordings were obtained as well as the purpose, utility, or manner in which the photographs or video recordings could be used by the CIA and the extent or limitations of such capabilities. By way of example, release of post-mortem photographs of UBL that were used to conduct facial recognition analysis could provide insight into the manner in which such analysis is conducted or the extent or limitation of such analysis. Release of other images could similarly reveal the types of equipment or other tools that were utilized (or not) during the execution of a highly sensitive intelligence operation, as well as information regarding the purpose, extent, or limitations of such tools. Such disclosures could allow hostile governments, intelligence agencies, and other adversaries to take steps to evade, counter, or replicate the CIA's intelligence collection methods, thereby limiting their utility or rendering them obsolete. Moreover, even seemingly innocuous details contained in the responsive records could be harmful if publicly disclosed. Foreign intelligence services specialize in collecting information from many sources and draw conclusions from all of the information gathered. While information in isolation may seem innocuous on its face, it can nonetheless be combined with similar information which could

further expose intelligence methods and assist in efforts to uncover, evade, or counter such methods or capabilities.

30. Because insight into the intelligence methods and activities associated with the 1 May 2011 operation could assist those who wish to detect, evade, replicate, or counter such methods, I have determined that disclosure of certain responsive records reasonably could be expected to result in exceptionally grave damage to the national security. As such, these responsive records are properly classified and therefore exempt from disclosure pursuant to FOIA exemption (b)(1).

#### II. FOIA Exemption (b)(3)

31. FOIA exemption (b)(3), 5 U.S.C. § 552(b)(3), provides that the FOIA disclosure provisions do not apply to matters that are specifically exempted from disclosure by statute, 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.

32. *National Security Act of 1947*. Section 102A(i)(1) of the National Security Act, as amended, 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,<sup>4</sup> the CIA is authorized to protect CIA sources and methods from unauthorized disclosure. As described above, I have determined that disclosure of the responsive records would reveal information pertaining to the intelligence methods and activities of the CIA. Therefore, the responsive records are protected from public disclosure by the National Security Act and FOIA exemption (b)(3).

33. *Central Intelligence Agency Act of 1949*. Section 6 of the CIA Act, as amended, provides:

In the interests of the security of the foreign intelligence activities of the United States and in order to further implement section 403-1(i) of this title that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the . . . [CIA] shall be exempted from . . . the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles; salaries, or numbers of personnel employed by the Agency.

50 U.S.C. § 403g. As one of the CIA's primary functions is to collect intelligence through human sources and by other

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<sup>4</sup> Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), reprinted in 50 U.S.C.A. § 401 note at 25, and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008), requires the Director of the Central Intelligence Agency to "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure...."

appropriate methods, Section 6 of the CIA Act authorizes the CIA to withhold information pertaining to intelligence methods and activities that is related to the CIA's core functions. In this case, the information described above concerning the CIA's intelligence methods and activities is specifically protected from disclosure by the CIA Act because such methods and activities constitute a core function of the CIA.

34. Accordingly, the responsive records are subject to the protections of both the National Security Act and the CIA Act and are therefore exempt from disclosure pursuant to FOIA exemption (b)(3). In contrast to Executive Order 13526, the CIA's statutory requirements under the National Security Act and the CIA Act to further protect intelligence methods are absolute and do not require the CIA to identify or describe the harm to the national security that reasonably could be expected to result from their unauthorized disclosure. Nonetheless, the information withheld pursuant to exemption (b)(3) is the same as the information described above relating to intelligence methods and activities withheld pursuant to exemption (b)(1). Thus, its disclosure reasonably could be expected to result in exceptionally grave damage to the national security of the United States.

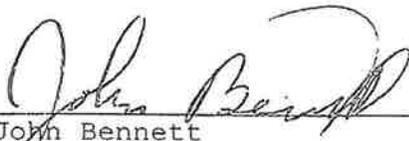
35. *Segregability Analysis.* Finally, I conducted a careful review of each responsive record to ensure the information was properly withheld pursuant to the FOIA exemptions as outlined above. Any non-exempt information in the responsive records is so inextricably intertwined with any exempt information that there are no meaningful, reasonably segregable, non-exempt portions. Accordingly, I have determined that the responsive records must be withheld in full.

CONCLUSION

36. Disclosure of the responsive records in this case reasonably could be expected to cause exceptionally grave damage to the national security of the United States, and the records are therefore exempt from disclosure pursuant to FOIA exemption (b)(1). In addition, such records are subject to the protections of the National Security Act and the CIA Act and are therefore exempt from disclosure pursuant to FOIA exemption (b)(3).

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

Executed this 26th day of September 2011.

  
\_\_\_\_\_  
John Bennett  
Director, National Clandestine Service  
Central Intelligence Agency

# **EXHIBIT A**

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**Judicial Watch**

*Because no one is above the law!*

F-2011-01345

May 4, 2011

VIA CERTIFIED MAIL & FACSIMILE (703-613-3007)

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, DC 20505

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the Central Intelligence Agency produce, within twenty (20) business days, all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

Judicial Watch also requests a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 U.S.C. § 552(a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under the OPEN Government Act of 2007, Section 6(b).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its

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analysis, as well as the records themselves. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, pdfs). When necessary, Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or [mibekesha@judicialwatch.org](mailto:mibekesha@judicialwatch.org). Thank you for your cooperation.

Sincerely,



Michael Bekesha  
Judicial Watch, Inc.

# **EXHIBIT B**

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Central Intelligence Agency



Washington, D.C. 20505

23 May 2011

Mr. Michael Bekesha  
Judicial Watch, Inc.  
425 Third Street, SW  
Suite 800  
Washington, D.C. 20024

Reference: F-2011-01345

Dear Mr. Bekesha:

On 4 May 2011, the office of the Information and Privacy Coordinator received your 4 May 2011 Freedom of Information Act (FOIA) request on behalf of Judicial Watch, Inc., for: **“all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011.”** We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

We accept your request and will process it in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 431, as amended, and will search for responsive records existing through the date of this acceptance letter. As a matter of administrative discretion, and in accordance with our regulations, the Agency has waived the fees for this request.

The large number of FOIA requests CIA receives has created unavoidable delays making it unlikely that we can respond within the 20 working days the FOIA requires. You have the right to consider our honest appraisal as a denial of your request and you may appeal to the Agency Release Panel. A more practical approach would permit us to continue processing your request and respond to you as soon as we can. You will retain your appeal rights and, once you receive the results of our search, can appeal at that time if you wish. We will proceed on that basis unless you object.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Viscuso", written over a horizontal line.

Susan Viscuso  
Information and Privacy Coordinator

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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JUDICIAL WATCH, INC.	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action No. 1:11-cv-00890-JEB
	)	
U.S. DEPARTMENT OF DEFENSE, et al.,	)	
	)	
Defendants	)	
	)	
	)	

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DECLARATION OF WILLIAM T. KAMMER

I, William T. Kammer, hereby declare under penalty of perjury that the following information is true and correct:

1. I am the Chief, Freedom of Information Division (FOID), Executive Services Directorate, Washington Headquarters Service, a Component of the Department of Defense (DoD), and have held that position since August 2005. As Chief, I am responsible for implementation of the DoD Freedom of Information Act (FOIA) Program and issuance of agency-wide policy guidance and instruction on FOIA matters. See 32 CFR 286. Additionally, I supervise the processing of initial FOIA requests for documents within the possession and control of the Office of the Secretary of Defense (OSD) and the Office of the Chairman of the Joint Chiefs of Staff (OCJCS). Within FOID, the Office of Freedom of Information (OFOI) processes FOIA requests for OSD/OCJCS. Also within FOID is the Defense Freedom of Information Policy Office (DFOIPO), which is responsible for the processing of FOIA appeals

for the OSD, the Joint Staff, and the Combatant Commands, including the U.S. Special Operations Command (USSOCOM). DFOIPO is also responsible for providing FOIA policy guidance and direction for the DoD FOIA Program.

2. I am familiar with the subject litigation and the FOIA request submitted by plaintiff in this case. The statements in this declaration are based upon my personal knowledge, upon my review of information available to me in my official capacity, and upon my conclusions.

3. On May 3, 2011, OFOI received a FOIA request from plaintiff dated May 2, 2011. The request asked for “all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011.” OFOI interpreted this request as referring to the operation conducted by United States forces that resulted in the death of Osama bin Laden on or about 1 May 2011. See Exhibit 1. On May 9, 2011, OFOI provided an interim response to plaintiff, advising plaintiff that due to unusual circumstances, it would be unable to make a release determination within the 20-day statutory period. See Exhibit 2. Plaintiff filed its complaint on May 13, 2011.

4. OFOI determined that the DoD Components likely to have records responsive to plaintiff’s FOIA request were the OCJCS, USSOCOM, and the Department of the Navy.

5. Within the OCJCS, a single action officer in the Directorate for Global Operations maintained all documents related to the operation. This action officer searched all hard copy records and the only stand alone computer used to store electronic records, and no responsive records were located. Additionally, the email files of the Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, were searched and no responsive records were located. This search was conducted by the Joint Staff Office of the Chief Information Officer (JS/OCIO). JS/OCIO searched the active inbox on the Exchange server and all supporting personal storage table files

within Admiral Mullen's profile on the Secure Internet Protocol Router network. The search was limited to emails dated May 1, 2011 through May 31, 2011.

6. The mission of USSOCOM is to provide Special Operations Forces to defend the United States and its interests. A priority of USSOCOM is to "Deter, Disrupt, and Defeat Terrorist Threats," and a primary aspect of this priority is to plan and conduct special operations. When a special operation is conducted, the military service Components of USSOCOM (U.S. Army Special Operations Command, Navy Special Warfare Command, U.S. Air Force Special Operations Command, and Marine Corps Special Operations Command) provide Special Operations Forces (personnel and equipment) to the operation. Accordingly, it is DoD FOIA policy that documents created or maintained by these military service Components during or for a joint special operation come under the cognizance of USSOCOM and not the military services for purposes of the FOIA. Therefore, USSOCOM and not the military services, is responsible for the searches of records responsive to plaintiff's FOIA request at those service components that may have participated in the subject operation.

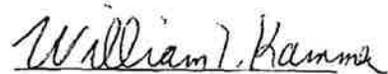
7. USSOCOM searched the Headquarters and relevant Components, and no records responsive to plaintiff's request were located. The specific filing systems searched at the Headquarters USSOCOM offices and relevant Components were all hard copy and electronic records including all email records during the inclusive dates of May 1, 2011, through May 31, 2011.

8. Because the body of Osama bin Laden was buried at sea from the U.S. Navy aircraft carrier USS Carl Vinson, OFOI coordinated with Commander, Naval Air Forces, U.S. Pacific Fleet, (COMNAVAIRPAC) on obtaining a search for responsive records on the USS Carl Vinson. COMNAVAIRPAC advises that although no USS Carl Vinson personnel took any photographs or videos of the burial, emails in the ship's computers system discussing the

operation were looked at in an effort to identify any mention of responsive video recordings or photographs. This effort did not reveal evidence of any such video recordings or photographs on the USS Carl Vinson.

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

Dated this 22nd day of September 2011, at Alexandria, Virginia.



William T. Kammer

# **Exhibit**

# **1**

# **Exhibit**

# **1**



**Judicial Watch**  
*Because no one is above the law!*

11-F-0931

May 2, 2011

**VIA CERTIFIED MAIL & FACSIMILE (703-696-4506)**

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

Pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the U.S. Department of Defense produce, within twenty (20) business days, all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011.

Judicial Watch also requests a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 U.S.C. § 552(a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). In addition, if records are not produced within twenty (20) business days, Judicial Watch is entitled to a complete waiver of search and duplication fees under the OPEN Government Act of 2007, Section 6(b).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves. It also will make the records available to other members of the media or researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of

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425 Third St., SW, Suite 800, Washington, DC 20024 Tel: (202) 646-5172 or 1-888-593-8442  
FAX: (202) 646-5199 Email: info@JudicialWatch.org www.JudicialWatch.org

**May 2, 2011**

**Page 2 of 2**

search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or [mbekesha@judicialwatch.org](mailto:mbekesha@judicialwatch.org). Thank you for your cooperation.

Sincerely,



Michael Bekesha  
Judicial Watch, Inc.

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425 Third St., SW, Suite 800, Washington, DC 20024 Tel: (202) 646-5172 or 1-888-593-8442  
FAX: (202) 646-5199 Email: [info@JudicialWatch.org](mailto:info@JudicialWatch.org) [www.JudicialWatch.org](http://www.JudicialWatch.org)

# **Exhibit**

# **2**



**DEPARTMENT OF DEFENSE**  
**OFFICE OF FREEDOM OF INFORMATION**  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

**MAY 09 2011**

Ref: 11-F-0931

Mr. Michael Bekesha  
Judicial Watch  
425 Third Street, SW  
Suite 800  
Washington, DC 20024

Dear Mr. Bekesha:

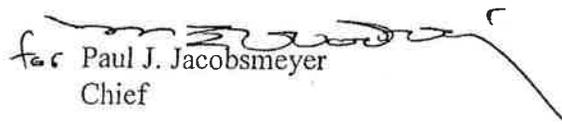
This is an interim response to your May 2, 2011, Freedom of Information Act (FOIA) request for, "all photographs and/or video recordings of Osama (Usama) Bin Laden taken during and/or after the U.S. military operation in Pakistan on or about May 1, 2011." You have also requested a waiver of search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) & (iii) as a member of the news media. Your request has been assigned FOIA case number 11-F-0931.

Prior to you submitting your request, this Office received multiple FOIA requests from several representatives of the news media for these records; thus, you will not incur charges associated with this FOIA request. As a result, your request for a fee waiver in this instance is moot.

At this time, we are unable to make a release determination on your request within the 20-day statutory time period. Although the FOIA contains provisions for an extension of 10 more business days, that additional time will not be sufficient to complete the work required to process your request and arrive at a final release decision. There are unusual circumstances which impact our ability to quickly process your request. They are: the volume of requests received concerning the death of Osama bin Laden; the need to coordinate searches for records with multiple offices; and the requirement to coordinate the review of records with more than one office or organization having a substantial interest in either the determination or the subject matter of the records. As a matter of information, our current administrative workload is approximately 1,360 open requests. I apologize for the anticipated delay in responding to your request, but due to the complexity of the request this Office is unable to estimate when the processing of this request will be completed. Your continued patience is appreciated.

If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense. To submit your appeal, you should write directly to the Defense Freedom of Information Policy Office, ATTN: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20101-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 11-F-0931, and should be clearly marked "Freedom of Information Act Appeal".

Sincerely,

  
for Paul J. Jacobsmeyer  
Chief

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF DEFENSE,  
*et al.*

Defendants.

Case: 1:11-cv-00890

DECLARATION OF WILLIAM H. MCRAVEN

1. (U) I, William H. McRaven, hereby declare under penalty of perjury that the following information is true and correct: I am an Admiral in the United States Navy. I am currently serving as Commander, United States Special Operations Command (USSOCOM), a Component of the Department of Defense (DoD), at MacDill Air Force Base, in Tampa, Florida, and have held that position since August 2011. USSOCOM ensures the readiness of joint special operations forces and, as directed, conducts operations worldwide. Its mission includes providing fully capable Special Operations Forces (SOF) to defend the United States and its interests; synchronizing the planning of global operations against terrorist networks; deterring disrupting and defeating terrorist threats; planning and conducting special operations; and fostering interagency cooperation.

[REDACTED]

2. (U) Through the exercise of my official duties and as a result of my personal knowledge, I am familiar with the request for photographs and video recordings in this case. I am also familiar with the declaration of John Bennett, Director of the National Clandestine Service, that includes his determination as the appropriate CIA official that the records responsive to this request are classified under sections 1.4 (a), (c) and (d) of Executive Order 13526. This declaration supplements that one to explain further how the responsive records contain sensitive information that pertains to military plans, weapons systems, or operations under Section 1.4(a) of the Executive Order and is specific to special operations. I have reviewed the records responsive to this request. This declaration describes the harm that release of the requested records could reasonably be expected to cause to the national security and supplements the declaration of John Bennett noted above.

3. (U) For the reasons set forth in this declaration, I have concluded that the official release of the responsive records could reasonably be expected to:

- a. (U) Make the special operations unit that participated in this operation and its members more readily identifiable in the future;
- b. (U) Reveal classified Sensitive Site Exploitation Tactics, Techniques, and Procedures and other classified information specific to special operations; and

captured and killed personnel so that the enemy could develop counter-measures to defeat future military operations.

THE BASES FOR MY CONCLUSIONS

4. (U) My conclusions are based upon my years of service and experience in the United States military and in special operations units. In particular:

- a. (U) I have served in the United States Armed Forces for more than 30 years at various levels of command and staff. I am personally qualified in U.S. Navy Sea, Air and Land (SEAL) operations. Prior to assuming command of USSOCOM, I commanded the Joint Special Operations Command (JSOC), a Sub-Unified Command of USSOCOM, from June 2008 until 2011. I have commanded at every level within the special operations community, including assignments as Deputy Commanding General for Operations at JSOC, Commodore of Naval Special Warfare Group ONE, Commander of SEAL Team THREE, Task Group Commander in the Central Command area of responsibility, Task Unit Commander during DESERT STORM and DESERT SHIELD, Squadron Commander at Naval Special Warfare Development Group, and SEAL Platoon Commander at Underwater Demolition Team TWENTY-ONE/SEAL Team FOUR. As a result of my experiences, I have intimate, extensive knowledge of our

unconventional forces and capabilities of the enemies arrayed against us;

b. (U) SOF units currently operate worldwide in more than 70 countries, including a significant number in Afghanistan. As the SOCOM Commander, I receive and review daily operations briefings, reports and intelligence analyses from Central Command, the Joint Staff, the Defense Intelligence Agency, the Central Intelligence Agency and the National Security Agency. Given my familiarity with current special force operations, I provide briefings to the Senate and House Armed Services Committees. In short, my job requires me to be an expert in special forces operations; and

c. (U) I have also considered and relied upon the analysis and assessments of DoD resident subject-matter experts on the Middle-Eastern region; and

d. (U) In reaching my conclusions I have reviewed and relied upon the declaration of John Bennett noted above.

5. (S) The responsive records would reveal unique information about the unit, making members readily identifiable in the future and, therefore, placing them and their families at great risk of being specifically targeted by the enemy. Multiple photos depict equipment used by the particular special operations unit during this operation. Among what is shown are certain types of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] are unique to special operations forces, though not necessarily this unit. Combined [REDACTED]

[REDACTED]

[REDACTED] future.

6. (S) Classified Sensitive Site Exploitation (SSE) Tactics, Techniques, and Procedures (TTPs) are also revealed in the photos. The unit that participated in the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These TTPs are classified SECRET pursuant to the [REDACTED] Classification Manual 380-5, dated May 01, 2006. The release of the photos will cause damage to national security by [REDACTED]

[REDACTED]

[REDACTED]

7. (S) In addition, [REDACTED]

[REDACTED] Specifically, the unit that conducted the operation [REDACTED] [REDACTED]

[REDACTED] This type of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is classified SECRET. A careful review of the relevant photos [REDACTED]

[REDACTED]

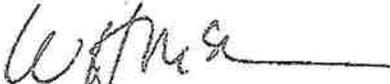
CONCLUSION

8. (U) In light of my knowledge and experience, the additional information described herein, and given the sensitive information specific to special operations contained in the responsive records, I believe that the responsive records must be withheld in order to protect future military operations and the security of the special operations forces participating in them. It is my opinion that the release of the

responsive records could reasonably be expected to cause harm to the national security by making the special operations unit that participated in this operation and its members more readily identifiable in the future; providing the enemy information that will allow them to analyze the TTPs used during SSE, including the methods used for identification of captured and killed enemy personnel; and possibly provide them the opportunity to defeat SOF practices in the future.

(U) I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26 day of September, 2011

  
WILLIAM H. MCRAVEN  
Commander  
U.S. Special Operations Command  
Tampa, Florida

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case: 1:11-cv-00890
	)	
U.S. DEPARTMENT OF DEFENSE,	)	
<i>et al.</i>	)	
	)	
Defendants.	)	
_____		

**DECLARATION OF ROBERT B. NELLER**

1. I am a Lieutenant General in the United States Marine Corps. I am currently the Director of Operations, J-3, on the Joint Staff at the Pentagon. The J-3 is responsible for all DoD operational matters outside of the continental United States. As such, the J-3 coordinates and communicates frequently with the staffs of U.S. Central Command, U.S. European Command, U.S. Pacific Command, U.S. Southern Command, U.S. Special Operations Command, and the Intelligence Community to ensure combatant command concerns are addressed by the Joint Staff. I evaluate and synthesize such concerns and advise and make recommendations to the Chairman of the Joint Chiefs of Staff regarding our worldwide military operations.

2. Through the exercise of my duties and as a result of my personal knowledge, I am familiar with the request for photographs and video recordings in this case. I have

reviewed the records responsive to this request. I am also familiar with the declaration of John Bennett, Director of the National Clandestine Service, that includes his determination as the appropriate CIA official that these photographs and video recordings are classified under sections 1.4 (a), (c) and (d) of Executive Order 13526. This declaration supplements that one to explain further how these responsive records pertain to military plans, weapons systems and operations under Section 1.4(a) of the Executive Order. This declaration describes the harm to the national security which reasonably could be expected to result from disclosure of this information, and supplements the declaration of John Bennett noted above.

3. For the reasons set forth in this declaration, I have concluded that the release of the responsive records could reasonably be expected to:

- a. Endanger the lives and physical safety of the Soldiers, Sailors, Airmen, and Marines in the United States Armed Forces presently serving in Afghanistan, as well as other U.S. officials, Coalition Forces allied with the United States, and contractors serving with these forces;
- b. Endanger the lives and physical safety of Afghan civilians at large, and police and military personnel of the Government of Afghanistan working in coordination with the United States and Coalition Forces operating in support of Operation ENDURING FREEDOM, NATO-led operations, and contractors serving with these forces;

- c. Aid the recruitment efforts and other activities of insurgent elements, weaken the new democratic government of Afghanistan, and add extremist pressures on several of our regional allies; and
- d. Increase the likelihood of violence against United States interests, personnel and citizens worldwide.

#### THE BASES FOR MY CONCLUSIONS

4. My conclusions are based upon my years of service and experience in the United States military and intelligence reports and assessments of Department of Defense subject-matter experts on the Middle-Eastern region. In performing my duties, I routinely rely on the views of our combat command operations staffs, intelligence synthesis and reports, and the assessments of subject matter experts. In particular:

- a. I have served in the United States Armed Forces for more than 30 years at various levels of command and staff. I have served in my current position as the Director of Operations, J-3, on the Joint Staff at the Pentagon since January 11, 2011. As a commander of U.S. forces, I have deployed to Okinawa, Japan; Mogadishu, Somalia; Panama; and to Iraq and Afghanistan multiple times in support of OPERATIONS IRAQI FREEDOM and ENDURING FREEDOM. As Director of Operations for the Joint Staff I have traveled to Pakistan, Afghanistan

and Iraq in an official capacity engaging with senior military and government officials. As a result of my experiences, I have intimate, extensive knowledge of our military forces and their capabilities, as well as of the conventional and unconventional forces and capabilities of the enemies arrayed against us;

b. As Director of Operations, J-3, on the Joint Staff, I receive and review daily operations briefings, reports and intelligence analyses from Central Command, the Joint Staff, the Defense Intelligence Agency, National Geospatial Agency, the Central Intelligence Agency and the National Security Agency. I oversee the National Military Command Center, which is responsible for monitoring worldwide events affecting national security and US interests 24 hours a day, seven days a week. Given my familiarity with current military operations, I provide briefings to the Senate and House Armed Services Committees. In short, my job requires me to be an expert in worldwide military and intelligence community operations; and

c. I have also considered and relied upon the analysis and assessments of DOD resident subject-matter experts on the Middle-Eastern region;

d. In reaching my conclusions I have reviewed and relied upon the declaration of John Bennett, noted above.

5. Following the September 11, 2001 attacks on the United States, the U.S. military launched Operation ENDURING FREEDOM to drive the Taliban regime - which provided comfort and support to al-Qaeda terrorists from Afghanistan. As a result of

that successful effort, the Taliban was removed from power, and on October 9, 2004, the Afghan people for the first time ever selected their head of state, the president of Afghanistan, by democratic vote. As part of the U.S. commitment to strengthen and support the Government of Afghanistan, approximately 98,000 U.S. troops remain on the ground as part of Operation ENDURING FREEDOM. Insurgent elements in Afghanistan continue to attack the process of democratic transition by mounting violent and deadly assaults against the U.S. and Coalition forces that remain posted in the region. One of the goals of the insurgency is to use violence against innocent civilians to undercut the mission of the U.S. forces, as well as to stop the transition to democracy, and add radical pressures on our regional allies. In the past, extremist groups have used information to incite violence and as a propaganda and recruiting tool to aid their cause.

6. Based on my review of past incidents and my experience in the field, I believe that release of the responsive records will pose a clear and grave risk of inciting violence and riots against U.S. and Coalition forces. I also believe that release of the responsive records will expose innocent Afghan and American civilians to harm as a result of the reaction of extremist groups, which will likely involve violence and rioting. It is likely that extremist groups will seize upon these images as grist for their propaganda mill, which will result, in addition to violent attacks, increased terrorist recruitment, continued financial support, and exacerbation of tensions between the Afghani people and U.S. and Coalition Forces.

7. For example, when Newsweek incorrectly reported that U.S. military personnel at Guantanamo Bay, Cuba had desecrated the Koran, at least eleven people died and many were hurt during several anti-U.S. protests in Afghanistan. Open sources reported that two United Nations guest-houses were attacked, as were shops and government buildings. Two offices of international aid groups were destroyed. Uprisings were not limited to Afghanistan. Open sources reported that about 12,000 people gathered in Egypt. About 30 people were injured during that protest. A similar number gathered in Beirut, Lebanon, where the crowd carried black banners and burned American and Israeli flags. In Bangladesh's capital of Dhaka, about 5,000 people rallied after Friday prayers, spitting on U.S. flags and burning them. While doing so, they shouted "Death to America!" and "Destroy America!"

8. The reaction to re-publication of the Danish cartoon of the Prophet Muhammad is another example of images being used in information operations to stir violent reactions in Afghanistan and worldwide. In January 2006, a Norwegian publication reprinted a Danish cartoon depiction of the Prophet Muhammad. As a direct result, open sources reported that at least eleven people were killed in Afghanistan, including two people who died when protesters turned on the U.S. airbase at Bagram. As a result of the cartoon, violence erupted elsewhere as well. Again, open sources reported that the cartoon sparked violence between Nigeria's Muslim and Christian communities, leaving nearly 150 people dead and thousands displaced after five days of violence. Five protestors were killed in Pakistan during demonstrations. One teenage boy died in Somalia after protestors attacked police. In Turkey, where U.S. forces are also

stationed, a Catholic priest was killed, allegedly by a teenage shooter who was influenced by the cartoon. Protestors also attacked the Danish embassies in Iran, Syria and Lebanon. In addition to these violent reactions, open sources reported protests at many locations in reaction to the Muhammad cartoon.

9. Based on my years of experience and judgment, I believe that the release of the responsive records would reasonably be expected to endanger the lives and physical safety of the approximately 98,000 U.S. troops in Afghanistan, endanger the lives and physical safety of Afghan civilians at large, and police and military personnel of the Government of Afghanistan, aid the recruitment efforts and other activities of insurgent elements, and increase the likelihood of violence against United States interests, personnel, and citizens worldwide. My opinion is also based upon information set forth in the declaration of John Bennett, noted above, the violent reaction to the Newsweek reports of Koran desecration and the re-publication of the Danish cartoon, as well as my assessment of the current military operations in Afghanistan.

#### CONCLUSION

10. In light of my knowledge and experience, the additional information described herein, and given the inflammatory nature of the responsive records, I believe that the responsive records must be withheld in order to protect the lives of members of the United States Armed Forces, Coalition forces operating in cooperation with the United States, and contractors operating with those forces.

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

Executed this 26<sup>th</sup> day of September, 2011



ROBERT B. NELLER  
Director of Operations, J-3  
Joint Staff  
Washington, D.C.