

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

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ASSASSINATION ARCHIVES AND	:	
RESEARCH CENTER	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 17- 00160(TNM)
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CENTRAL INTELLIGENCE AGENCY	:	
	:	
	:	
Defendant.	:	

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**STATEMENT OF MATERIAL FACTS**  
**FOR WHICH THERE IS NO GENUINE DISPUTE**

Plaintiff Assassination Archives and Research Center (“AARC”) hereby files this Statement of Material Facts for Which There is No Genuine Dispute under Local Rule 7(h) in support of its Motion for Partial Summary Judgment.

1. On August 25, 2012, AARC sent a FOIA request to the CIA Seeking documents relating to plots to assassinate Adolf Hitler, and in particular CIA studies of such plots in the Fall of 1963 as part of its efforts to topple Fidel Castro of Cuba. Letter from James H. Lesar, AARC, to CIA, FOIA Request (August 25, 2012) (attached to Complaint as Exhibit 1 [ECF #1-1]).

2. On October 19, 2012, after receiving a no records response dated October 11, 2012, AARC amended its FOIA request to CIA. Letter from James H. Lesar,

AARC to CIA (October 19, 2012)(attached to Complaint as Exhibit 2 [ECF #1-2]). Specifically, as amended, AARC requested:

1. All records pertaining to any plot to assassinate Adolf Hitler, including, but not limited to, all records in any way reflecting or referencing the CIA's study in 1963 of plots to assassinate Hitler. As I did with my original request, I attach a copy of the September 25, 1963 Memorandum for the Record of Walter M. Higgins, Jr. of the Joint Chiefs re: "Briefing of Desmond Fitzgerald on CIA Cuban Operations and Planning."

2. All records on or pertaining to communications by or with Allen Dulles regarding plots to assassinate Adol(f) Hitler during Dulles's service in the Office of Policy Coordination (OPC), the Office of Strategic Services (OSS), and the Central intelligence Agency (CIA).

3. All index entries or other records reflecting the search for records responsive to this request in its original or amended form, including all search times used with each of the components searched.

These records are relevant to various official investigations, including those of the President's Commission on the Assassination of President John F. Kennedy (The Warren Commission), the Senate Select Committee on Government Operations with Respect to Intelligence Activities (The Church Committee), and the House Select Committee On Assassinations (The HSCA). As such, the immunity from search and review for operational files does not apply to these records. Please conduct a full search of operations files for all records pertaining to this request.

3. By letter dated December 6, 2012 the Information and Privacy Office of the CIA acknowledged receipt of AARC's amended request and assigned it FOIA reference number F-2013-00195. December 6, 2012 CIA Information and Privacy Office letter attached to Complaint as Exhibit 3 (ECF #1-3). This letter made no

determinations as to AARC's request, rather with regard to Item 1 of the request, CIA said it could conduct a search for records pertaining to any plot to assassinate Adolph (sic) Hitler.

4. However, the CIA's December 6, 2012 letter identified in #3 above stated that the portion on the CIA's study in 1963 of plots to assassinate Hitler was addressed in CIA's 11 October 2012 "no records" response under reference number F-2012-02068 which AARC subsequently appealed. (CIA letter dated October 11, 2012 attached to Complaint as Exhibit 4 [ECF #1-4]; AARC's administrative appeal letter dated October 21, 2012 attached to Complaint as Exhibit 5 [ECF#1-5]).

5. CIA has not ruled on AARC's October 21, 2012 administrative appeal of this decision, despite the elapse of over three years since the filing of the administrative appeal.

6. CIA's December 6, 2012 letter stated that it would conduct a search for Items 2 and 3 of the amended request. (ECF #1-3).

7. AARC received no determination on its amended request until it got a letter dated June 5, 2015, by which the CIA informed AARC that a search revealed no records responsive to AARC's request. (CIA June 5, 2015 letter attached to Complaint as Exhibit 6 [ECF #1-6]).

8. However, by letter dated November 2, 2015 CIA notified AARC, “(p)lease be advised that our letter of 5 June 2015 was sent to you in error. Your request is still under review. We apologize for any inconvenience.” (Exhibit 6 to Complaint [ECF #1-6].)

9. By letter dated April 29, 2016 CIA notified AARC that the June 5, 2015 letter remained unchanged and that CIA located no records responsive to AARC’s request. (Exhibit 6 to Complaint [ECF #1-6]). As of the filing of the complaint the CIA had not provided any documents responsive to AARC’s request.

10. After AARC filed the complaint in this case, CIA stated it was conducting yet another search for responsive records, and on August 18, 2017 CIA released six responsive records to AARC. Exhibit 1 hereto. No explanation was offered as to CIA’s repeated prior statements that no responsive records had been found.

11. The requested records are highly relevant to several official investigations, including the Department of Justice and Federal Bureau of Investigation, President's Commission on the Assassination of President John F. Kennedy (“The Warren Commission”), the Senate Select Committee on Government Operations with Respect to Intelligence Activities (“The Church Committee”), and the House Select Committee on Assassinations (“The HSCA”).

12. As such, CIA concedes that the exception from search and review

Of operational files does not apply to these records pursuant to 50 U.S.C. Sec. 3141(c)(3).

13. The Higgins memorandum of the Joint Chiefs of Staff meeting of September 25, 1963 states that CIA Cuba Task Force chief Desmond Fitzgerald briefed the Joint Chiefs that CIA was studying the plot to kill Hitler to develop avenues for ousting Fidel Castro from power in Cuba. (Attached to Exhibits 1 and 2 to Complaint [ECF#1-1, ECF#1-2]).

14. Information about CIA plots to kill Fidel Castro was withheld from the Warren Commission. (See #22 below). However, subsequent official investigations of the assassination of President Kennedy focused on these plots as a possible cause of the President's assassination, amid reports that a plot to assassinate Castro had been turned and redirected against President Kennedy. (See # 17, #18 and #19 below).

15. The Church Committee investigated the performance of the intelligence agencies in the investigation of President Kennedy's assassination and found it wanting. The scope of the Church Committee investigation specifically encompassed operations of the CIA and other federal agencies in investigating the assassination of President Kennedy. *See* Church Committee, *The Investigation of the Assassination of President John F. Kennedy: Performance of the Intelligence*

Agencies, S.Rep. No. 94-755, Book V, at 1 (1976), Exhibit 1 hereto. Morley v. CIA, 508 F. 3d 1108, 1117 (D.C.Cir. 2007).

16. The scope of the Church Committee's investigation also included plots to overthrow and/or assassinate Fidel Castro in 1963, including the plot involving AMLASH in which Desmond Fitzgerald was personally involved and a related program to foster dissension in the Cuban military and possibly provoke a coup. "Alleged Assassination Plots Involving Foreign Leaders", Interim Report of the Select Committee to Study Governmental Operations with respect to Intelligence Activities, United States Senate ("Church Committee"), 94<sup>th</sup> Congress, Report No. 94-465, November 20, 1975, page 86 and fn. 2, Exhibit 1 hereto.

17. In addition, CIA plots to assassinate Fidel Castro were the subject of an investigation by the Inspector General ("IG") of the CIA ordered by President Johnson in 1967. CIA IG Report on Plots to Assassinate Fidel Castro dated May 23 1967 attached hereto as Exhibit 2.

18. This IG investigation specifically investigated the activities of Desmond Fitzgerald in 1963 that are subject of AARC's FOIA request, including Fitzgerald's CIA activities in September, October and November 1963. CIA IG Report pp. 75-111. Fitzgerald's activities in relation to the AMLASH project were also the specific subject of the IG investigation. Id. pp. 78-111.

19. Further, the assassination of President Kennedy was the subject of an investigation by the Department of Justice and a Presidential Commission, the Warren Commission. Former CIA Director Richard Helms has publicly stated that CIA initiated an investigation of the assassination of President Kennedy that began with an effort to find out if CIA operatives were in Dallas at the time of the assassination. <https://www.youtube.com/watch?v=e3nDUEgh05o>

20. AARC attaches the declaration of journalist and author William E. Kelly, Jr. who has long studied ties between the evidence in the Kennedy assassination and the July 20 plot. Exhibit 2.

21. Government investigative agencies, and in particular the CIA, did not inform the Warren Commission about plots to kill Fidel Castro undertaken or developed by U.S. government agencies. Foreword by former President Gerald R. Ford (member of the Warren Commission), "A Presidential Legacy and The Warren Commission", FlatSigned Press, Nashville, TN, 2007, p. XXII, Exhibit 3.

22. The CIA claims to have been unable to locate any records responsive to AARC's request. This claim does not square with the available evidence. The September 25, 1963 Higgins Memorandum of the Joint Chiefs meeting clearly states in paragraph 13 that CIA was studying in detail the plot to assassinate Adolf Hitler to develop an approach to overthrowing Fidel Castro (ECF# 1-1, page 7). It

follows that there would be records or information related to this detailed study of the plot. The fact that it is a detailed study supports the conclusion that records or information would be created about this matter, and supports the conclusion that considerable material would be memorialized in records.

23. On October 26, 2017 President Trump issued this official statement instructing release of records related to the assassination of President Kennedy:

Today, President Donald J. Trump took action to ensure release of the remaining President John F. Kennedy Assassination Records. Accordingly, the National Archives and Records Administration will make approximately 2,800 records available in full for public access today. The remaining records will be released with agency-proposed redactions on a rolling basis in the coming weeks. The President has demanded unprecedented transparency from the agencies and **directed them to minimize redactions without delay**. The National Archives will therefore release more records, **with redactions only in the rarest of circumstances**, by the deadline of April 26, 2018. (**emphasis added**). The White House Office of the Press Secretary For Immediate Release October 26, 2017.

24. CIA's multiple reversals in conducting this search and reporting it to AARC set forth in paragraphs 7, 8 and 9 above raise very troubling questions as to the adequacy of the search.



Respectfully submitted,

/s/ Daniel S. Alcorn

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