

Date:

Thursday, March 17, 2016

Shapiro v. CIA, No. 14-00019, 2016 WL 1069646 (D.D.C. Mar. 17, 2016) (Cooper, J.)

Re: Request for records concerning Nelson Mandela

Disposition: Denying CIA's motion to dismiss; granting in part NSA's motion for summary judgment; denying plaintiff's cross-motion for summary judgment

- **Procedural Requirements, Proper FOIA Requests:** "Because [plaintiff's] FOIA request to the CIA conveys exactly which records he seeks, and because the agency has not satisfactorily explained why processing the request would be unduly burdensome, the Court will deny the CIA's motion to dismiss." The court first finds "that [plaintiff's] request 'reasonably describes' the records he seeks." The court finds that, "[r]egardless of how onerous it might be to locate them, there can be no dispute about which items are being requested—records in the CIA's possession that 'mention[]' Nelson Mandela or his three listed aliases." Moreover, the court explains that "when a defendant alleges that a FOIA request does not reasonably describe the records sought, there is a difference in kind between requests for documents that 'mention' or 'reference' a specified person or topic and those seeking records 'pertaining to,' 'relating to,' or 'concerning' the same." "FOIA's reasonable-description requirement does not doom requests that *precisely* describe the records sought, even if compliance might overwhelm an agency's response team." The court then finds that "[w]hether [plaintiff's] request would require the CIA to expend an unreasonable amount of effort cannot be determined from his request alone, 'on its face[]'" and the CIA "has overtly declined to file . . . a declaration [discussing this point], simply asserting in its legal briefing that the documents [plaintiff] requests could not be 'locate[d] ... with a reasonable amount of effort.'"
- **Exemptions 1 & 3, Glomar:** The court first "resolve[s] a preliminary disagreement as to what records were encompassed within [plaintiff's] request[.]" rejects NSA's "position that [plaintiff's] request sought only '*intelligence records* on Mr. Mandela[.]" and finds that plaintiff's request "is plainly a request for 'any and all' records in the NSA's possession that 'mention[]' Nelson Mandela or his three listed aliases." "The Court [then] concludes, based on information provided in [defendant's] [d]eclaration, that confirming or denying whether Mandela was a SIGINT target or of SIGINT interest to the NSA would disclose 'information with respect to the activities' of the NSA, in violation of 50 U.S.C. § 3605(a)." "So with respect to records revealing whether Mandela was a SIGINT target or otherwise of SIGINT interest to the NSA, the agency's Glomar response suffices." Responding to plaintiff's waiver arguments, "based on the previously disclosed documents [plaintiff] has adduced, the Court declines to hold that the precise fact of whether Nelson Mandela was a SIGINT target or otherwise of SIGINT interest has been officially acknowledged." The court finds that "[t]hese documents may well demonstrate that the NSA was, at some level, 'interested' in Nelson Mandela's activities as a prominent dissident and high-ranking political leader." "But they do not divulge whether the NSA 'has or has not targeted Nelson Mandela or considered him to be of SIGINT interest.'" However, "[b]ecause the agency misinterpreted [plaintiff's] original request, the Court finds that the NSA is statutorily obligated to address his outstanding request for all records in the NSA's possession that do *not* reveal whether Nelson Mandela was a SIGINT target or of SIGINT interest to the NSA."

Topic:

District Court

Exemption 1

Exemption 3

Glomar

Procedural

