IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, *et al.*, *Plaintiffs*, *v.* CENTRAL INTELLIGENCE AGENCY, *et al.*, *Defendants*.	Civil Action No. 1:18-cv-2709 (TNM)

DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS

Pursuant to Local Civil Rule 7(h), Defendants submit this response to the Statement of Material Facts ("SOMF"), Dkt. No. 36, filed by Plaintiff Committee to Protect Journalists ("CPJ") in support of its cross-motion for summary judgment in the above-captioned case.

1-12. Defendants are not required to respond to the statements in these paragraphs because the alleged facts, regardless of whether true, are not material to the resolution of CPJ's Cross-Motion for Summary Judgment in this Freedom of Information ("FOIA") case. "Material facts" are those facts which, under the governing substantive law, "might affect the outcome of the suit." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed. R. Evid. 401 (providing that "[e]vidence is relevant if … the fact is of consequence in determining the action"). None of the purported facts in these paragraphs has any bearing on the outcome of this FOIA suit under applicable law. Since

parties must identify genuine issues only with respect to "material" facts," Fed. R. Civ. P. 56(c), Local Civil Rule 7(h), Defendants are not required to respond to these paragraphs.

13-14. Undisputed.

15-21. Defendants are not required to respond to the statements in these paragraphs because the alleged facts, regardless of whether true, are not material to the resolution of CPJ's Cross-Motion for Summary Judgment in this Freedom of Information ("FOIA") case. "Material facts" are those facts which, under the governing substantive law, "might affect the outcome of the suit." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed. R. Evid. 401 (providing that "[e]vidence is relevant if … the fact is of consequence in determining the action"). None of the purported facts in these paragraphs has any bearing on the outcome of this FOIA suit under applicable law. Since parties must identify genuine issues only with respect to "material" facts," Fed. R. Civ. P. 56(c), Local Civil Rule 7(h), Defendants are not required to respond to these paragraphs.

22. Defendants clarify that the quotation in this paragraph is of the FOIA request that the Open Society Justice Initiative submitted in entirely distinct litigation. *See Open Soc'y Justice Initiative v. CIA*, 19-cv-234-PAE (S.D.N.Y.), Dkt. No. 1 (Complaint), Defendants' Exhibit ("DEX") 3; *id.* Exhibit A thereto (a copy of the underlying FOIA request, attached as an exhibit to that Complaint). It is not, as this paragraph implies, a statement made at any time in the course of that other litigation by either the Central Intelligence Agency ("CIA") or the Office of the Director of National Intelligence ("ODNI"), or any other agency Defendant to that suit. In that separate litigation, the Open Society Justice Initiative agreed to "limit[] the request to records created on or after

October 1, 2018." DEX 4 (April 27, 2019 joint status letter, also available at 19-cv-234-PAE, Dkt. No. 27).

It is undisputed that the CIA and ODNI produced nonexempt records, as result of searches of each agency's press office, in response to that narrowed request. *See* Pl. Exhibit 20 at 1. Any remaining responsive records "have been withheld in full pursuant to FOIA [E]xemptions (b)(1) and (b)(3), and portions are also subject to [E]xemptions (b)(5) and (b)(6)." *Id.* CIA and ODNI take the position in the S.D.N.Y. litigation that neither "can provide additional information to Plaintiff about the number or type(s) of document(s) withheld because to do so would itself reveal a classified fact and information relating to sources or methods protected by FOIA [E]xemptions 1 and 3." *Id.* at 2.

23-40. Undisputed.

Respectfully submitted,

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