IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

ALL PARTY PARLIAMENTARY GROUP ON EXTRAORDINARY RENDITION, *et al.*,	)	
Plaintiffs,	)	Civ. Action No. 09-02375 (RMU)
vs.	)	
U.S. DEPARTMENT OF DEFENSE, *et al.*,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF DEFENDANTS' PARTIAL MOTION TO DISMISS

In 2002, Congress determined that U.S. intelligence agencies were inappropriately and unduly burdened by having to respond to Freedom of Information Act ("FOIA") requests filed by foreign government entities and their representatives. As a result, Congress enacted 5 U.S.C. § 552(a)(3)(E), which prohibits intelligence community agencies from providing records in response to such requests. Plaintiffs fall within the scope of 5 U.S.C. § 552(a)(3)(E), so, in accordance with Congress' explicit prohibition on providing such requesters with records under FOIA, the intelligence community agencies named in this lawsuit hereby move to dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The government's position is supported by both the plain language of the statute, as well as its legislative purpose. While Plaintiffs understandably disclaim their representative status, the undisputed facts demonstrate just the opposite. Plaintiff Andrew Tyrie is an elected Member of the British Parliament, and Plaintiff All Party Parliamentary Group ("APPG") is comprised entirely of Members and Peers of the British Parliament. As a result, Mr. Tyrie and the APPG are representatives of a foreign government entity, regardless of however they may characterize their

own interest in their activities. Plaintiff Joseph Cyr is an American attorney who provided legal assistance to Mr. Tyrie and his political group in preparing their FOIA request. Defendants reasonably viewed Mr. Cyr as nothing more than an agent of Mr. Tyrie and the APPG. Accordingly, pursuant to federal law, Plaintiffs are barred from obtaining records from U.S. intelligence agencies, and the Court should dismiss all Plaintiffs' claims against these agencies with prejudice.

FACTUAL BACKGROUND

In December 2008, Plaintiffs filed FOIA requests with approximately 35 separate executive branch agencies and components. *See* Compl. ¶¶ 50-52; Compl., Exs. A-E. This motion pertains to a number of these entities, namely, the Central Intelligence Agency ("CIA"); the Federal Bureau of Investigation ("FBI"); the Defense Intelligence Agency ("DIA"); the National Security Agency ("NSA"); the intelligence elements of the Army, Navy, Air Force, and Marine Corps; the National Reconnaissance Office ("NRO"); the intelligence collection offices and directorates within the U.S. Unified Combatant Commands[1]; the Office of Intelligence and Analysis within the Department of Homeland Security ("I&A"); the Coast Guard's Command for Intelligence and Criminal Investigations within the Department of Homeland Security; and the Bureau of Intelligence and Research within the Department of State ("INR") (hereinafter, all these entities will be referred to as the "IC Defendants").

Plaintiffs' FOIA requests seek information on 43 separate topics, including records concerning: (i) various aspects of "the extraordinary rendition, secret detention, and coercive interrogation of suspected terrorists and the involvement and cooperation of the UK and other

[1] The U.S. Unified Combatant Commands to whom Plaintiffs sent FOIA requests include the U.S. Joint Forces Command, U.S. European Command, U.S. Northern Command, U.S. Strategic Command, U.S. Special Operations Command, U.S. Intelligence and Security Command, U.S. Transportation Command, U.S. Southern Command, U.S. Southern Command, U.S. Central Command, and U.S. Pacific Command. U.S. Pacific Command informed Plaintiffs by letter dated January 14, 2010, that it had no located any responsive records.

governments in such activities," (ii) the "identity, location and treatment of specific detainees," and (iii) "the source of information about specific alleged terrorist plots." Compl. ¶ 51; *see also* Compl., Exs. A-E (copies of Plaintiffs' FOIA requests). Plaintiffs also sought fee waivers and expedited processing as part of their requests. *Id.* ¶ 52.

In responding, the CIA and I&A declined to process Plaintiffs' FOIA requests pursuant to 5 U.S.C. § 552(a)(3)(E). *See* Exhibits 1-2. Defendant NSA declined to process Plaintiffs' request on the grounds that: (i) the request sought information that did "not fall within the purview" of the NSA; and (ii) that "the fact of the existence or non-existence of" certain items in Plaintiffs' FOIA request "is currently and properly classified in accordance with Executive Order 12958, as amended." *See* Exhibit 3. Defendant FBI initially provided Plaintiffs with records, but subsequently supplemented its response to inform Plaintiffs that it would "not respond further, given the statutory command contained in 5 U.S.C. § 552(a)(3)(E), which prohibits agencies within the intelligence community from providing records to representatives of non-U.S. government entities." *See* Exhibit 4. INR also declined to process Plaintiffs' request in light of 5 U.S.C. § 552(a)(3)(E). *See* Exhibit 5. The Coast Guard also invoked 5 U.S.C. § 552(a)(3)(E) on behalf of its Intelligence and Criminal Investigations Command. *See* Exhibit 6.

The following additional facts, drawn from the Complaint and its attachments, must be accepted as true for purposes of this motion:

- Plaintiff Andrew Tyrie is a Conservative Party Member of the Parliament of the United Kingdom. Compl. ¶ 28; Compl., Exs. A-E at 2. His mailing address, as set forth in the underlying FOIA request from which this litigation arises, is "House of Commons, London, SW1A 0AA, United Kingdom." Compl., Exs. A-E at 13.

- Plaintiff APPG is a group of over 60 Members of Parliament and Peers from the Parliament of the United Kingdom. Compl. ¶ 17; Compl., Exs. A-E, at 1. APPG's mailing address, as set forth in the underlying FOIA request from which this litigation arises, is "c/o Office of Andrew Tyrie, MP [Member of Parliament], House of Commons, London, SW1A 0AA United Kingdom." Compl., Exs. A-E, at 13.
- Plaintiff Joe Cyr is a U.S. citizen and an attorney in the New York office of the Lovells LLP law firm. Compl. ¶ 30; Compl., Exs. A-E, at 2. Plaintiff Cyr "assisted the APPG and Mr. Tyrie on a *pro bono* basis in the drafting and filing" of the underlying FOIA request. Compl., Exs. A-E, at 2.

STATUTORY BACKGROUND

The section of the Freedom of Information Act at issue in this motion is 5 U.S.C. § 552(a)(3)(E), which provides that:

> (E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a (4))) shall not make any record available under this paragraph to—
>
> (i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or
>
> (ii) a representative of a government entity described in clause (i).

5 U.S.C. § 552(a)(3)(E). Agencies included in the scope of this provision are those that are part of, or contain "an element of," the "intelligence community." As defined in the National Security Act of 1947, as amended, the "intelligence community" ("IC") includes the following:

> (A) Office of the Director of National Intelligence.
>
> (B) Central Intelligence Agency.
>
> (C) National Security Agency.

(D) Defense Intelligence Agency.

(E) National Geospatial-Intelligence Agency.

(F) National Reconnaissance Office.

(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

(I) Bureau of Intelligence and Research of the Department of State.

(J) Office of Intelligence and Analysis of the Department of the Treasury.

(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

(L) Such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

50 U.S.C. § 401a(4).

ARGUMENT

I. STANDARD OF REVIEW

The IC Defendants seek to dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), which provides that a complaint may be dismissed when it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint." *Browning v. Clinton*, 292 F.3d 235, 242 (D.C. Cir. 2002). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (internal quotation marks omitted). "In resolving a Rule 12(b)(6) motion, the court must treat the complaint's factual allegations — including mixed

questions of law and fact — as true and draw all reasonable inferences therefrom in the plaintiff's favor." *See Smith v. Fenty*, Civil Action No. 09-1002 (RMU), --- F. Supp. 2d ----, 2010 WL 535009, at *2 (D.D.C. Feb. 16, 2010) (citing *Macharia v. United States*, 334 F.3d 61, 64, 67 (D.C. Cir. 2003); *Holy Land Found. for Relief & Dev. v. Ashcroft*, 333 F.3d 156, 165 (D.C. Cir. 2003)). The Court's indulgence, however, only goes so far, because "[w]hile many well-pleaded complaints are conclusory, the court need not accept as true inferences unsupported by facts set out in the complaint or legal conclusions cast as factual allegations." *Smith*, 2010 WL 535009, at *2 (citing *Warren v. District of Columbia*, 353 F.3d 36, 40 (D.C. Cir. 2004); *Browning*, 292 F.3d at 242).

II. THE IC DEFENDANTS ARE PROHIBITED BY LAW FROM RELEASING DOCUMENTS BECAUSE PLAINTIFFS ARE REPRESENTATIVES OF A NON-U.S. GOVERNMENT ENTITY

To the best of the IC Defendants' knowledge, the meaning and scope of § 552(a)(3)(E) has never before been adjudicated. Although the IC Defendants submit that the statutory language is unambiguous, it is nevertheless an issue of first impression whether, as here, foreign office-holders are entitled to sue U.S. intelligence agencies under FOIA. Defendants respectfully submit that under Section 552(a)(3)(E), Plaintiffs are barred from obtaining records from U.S. intelligence agencies, and Plaintiffs have therefore not stated a claim upon which relief can be granted and their complaint should be dismissed.[3]

[3] The prohibition on the dissemination of IC records to Plaintiffs applies regardless of whether the records are in the possession of an IC agency or another agency; this is the only way to ensure that the purposes of the prohibition in 5 U.S.C. § 552(a)(3)(E) are fulfilled and that IC records and resources are protected. To do otherwise would allow Plaintiffs to circumvent Congress' prohibition by obtaining IC records from non-IC agencies through a referral process, even though FOIA explicitly permits "consultation . . . with another agency having a substantial interest in the determination of the request . . ." 5 U.S.C. § 552(a)(6)(B)(iii)(III).

A. The Text of the Statute is Unambiguous

An exercise in statutory construction begins with the statutory text. *See, e.g., Duncan v. Walker*, 533 U.S. 167, 172 (2001) ("We begin, as always, with the language of the statute."); *Richardson v. United States*, 526 U.S. 813, 818 (1999). Section 552(a)(3)(E) uses the terms "any government entity" and "representative thereof." 5 U.S.C. § 552(a)(3)(E). The statute does not define the terms, and "[w]hen terms used in a statute are undefined, we give them their ordinary meaning." *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995); *see also Blackmon-Malloy v. U.S. Capitol Police Bd.*, 575 F.3d 699, 708 (D.C. Cir. 2009) (emphasizing "Supreme Court's instruction that courts should construe statutory language in accord with its ordinary or natural meaning in the context of the statutory scheme since statutory language, plain or not, depends on context") (internal quotation marks and citations omitted).

1. "Any Government Entity" Should be Broadly Construed

The term "any government entity" should be construed broadly according to its plain meaning, *i.e.*, to mean any political organ exercising any type or shade of political authority (whether executive, legislative or judicial) at any level (local, regional or national). *Black's*, for example, defines "government" as, *inter alia*, "an organization through which a body of people exercises political authority; the machinery by which sovereign power is expressed" and states that, "[i]n this sense, the term refers collectively to the political organs of a country regardless of their function or level, and regardless of the subject matter they deal with." *Black's Law Dictionary* 764 (9th ed. 2009); *see also Black's Law Dictionary* 695 (6th ed. 1990) ("the whole class or body of officeholders or functionaries considered in the aggregate, upon whom devolves the executive, judicial, legislative and administrative business of the state").

The Court need not look any further than the actual text of the statute to support this broad construction. For example, expressly excluded from the term "any government entity" are states, territories, commonwealths, or districts of the United States, or any subdivisions thereof. If Congress had not intended the term "government entity" to be broadly construed — *i.e.*, as the term is commonly understood — it would not have needed to carve out the full range of U.S. government entities and subdivisions thereof. *See id.* ("In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, [it] includes state and county governments, and city and township governments.").

Furthermore, Congress chose to use the phrase "any government [lower-case 'g'] entity," as opposed to "*a* government entity" or "*the* government [upper-case 'G'] entity," thereby signaling the statute's broad application to include not only ruling parties or executive authorities in foreign countries, but the full panoply of governmental bodies and subdivisions and components thereof. In short, the phrase "any government entity," read according to its plain meaning and within the context of the relevant statutory provision, should be construed broadly according to its common American usage.

2. "Representative" Should be Broadly Construed

In like fashion, the definition of the word "representative" is susceptible to a broad and multi-faceted reading consistent with its plain meaning. According to *Merriam-Webster's Dictionary*, the definition of the term "representative" includes, *inter alia*, "one that represents another or others, *e.g.*, one that represents a constituency as a member of a legislative body; a member of the House of Representatives of the United States Congress or a state legislature; one that represents another as agent, deputy, substitute, or delegate usually being invested with the authority of the principal; one that represents a business organization; and a typical example of a

group, class, or quality: specimen." "Definition of 'representative (noun),'" *Merriam-Webster Online Dictionary* (searched for at http://www.merriam-webster.com, Feb. 19, 2010); *see also Blackmon-Malloy*, 575 F.3d at 711 n.3 (citing *Webster*'s definition of the verb "end" in construing Congressional Accountability Act's counseling and mediation pre-complaint requirements); *Natural Res. Def. Council v. EPA*, 571 F.3d 1245, 1278-1279 (D.C. Cir. 2009) (citing to *Webster*'s definition of the word "actual" in construing National Ambient Air Quality Standard for ozone). The term "representative" should therefore be construed to mean, at a minimum, a member of a foreign legislative or policy-making body and a legal representative (*e.g.*, the *representation* of a client), consistent with its plain meaning in the English language.

B. Plaintiffs Are Representatives of Any Non-U.S. Government Entity

For the reasons set forth below, Plaintiffs' status as holders of high foreign office (and, in the case of Mr. Cyr, as a representative of such office-holders**)** means that they are prohibited from receiving documents from U.S. IC agencies. Plaintiffs, however, have gone to great lengths in their complaint and FOIA requests to present themselves as mere private citizens, suggesting in substance that because they were not specifically directed to file their FOIA request by the UK Prime Minister himself, they should not be considered to be representatives of "any" non-U.S. "government entity" pursuant to Section 552(a)(3)(E). *See* Compl. ¶¶ 24-31 (alleging, *inter alia*, that Mr. Tyrie and APPG do not represent "the UK Government" and that APPG "has no official status within Parliament" and "does not receive any government funding"). But Plaintiffs' subjective characterizations of their reasons and motives for seeking the requested information, as well as their transparent claims to be acting as mere private citizens, are irrelevant to this motion, even if true.

1. Andrew Tyrie and the All Party Parliamentary Group

As described above, the Complaint alleges that Mr. Tyrie is an elected member of the Parliament of the United Kingdom, *see* Compl. ¶ 28, and that his address of record for purposes of the FOIA request is the House of Commons itself, *see* Compl., Exs. A-E, at 13. Both the Parliament of the United Kingdom and the House of Commons are "government entities" as that term is commonly understood. Mr. Tyrie, as an elected Member of Parliament serving in the House of Commons, is a representative of one or both of those government entities (again, according to the plain meaning of the word "representative," described above). Accordingly, Mr. Tyrie is a representative of a non-U.S. government entity and thus is not entitled to receive documents from U.S. IC agencies under FOIA.

Similarly, according to the Complaint, the APPG consists of over "60 Members of Parliament and Peers from the Parliament of the UK . . . ;" Compl. ¶ 17. APPG's address of record is Mr. Tyrie's office at the House of Commons. *Id.*, Exs. A-E. Accordingly, for the same reasons that Mr. Tyrie is prohibited from receiving documents from IC agencies under FOIA, APPG is also ineligible: APPG is a self-described group of representatives of one or more non-U.S. government entities, *i.e.*, the Parliament of the United Kingdom, the House of Commons and/or the House of Lords (entities that are commonly and plainly understood to be "government entities").[4]

As described above, Plaintiffs suggest that because they are not acting at the direction of "the UK Government," however that term might be understood according to historical British custom, Section 552(a)(3)(E) is inapplicable to their request. Such an interpretation of the statutory language would render the law meaningless. For example, if Plaintiffs' construction of

[4] APPG's status as an organizational plaintiff does not alter the calculation. If it were otherwise, parties within the scope of Section 552(a)(3)(E) could circumvent the statute merely by banding together as a group and filing their FOIA request on behalf of that group. This, in turn, would render the statute meaningless.

the statute were in fact the law, foreign legislators and heads of state (including those from nations hostile to the United States) would have the right to sue the CIA and other U.S. intelligence agencies under FOIA — in an effort to force the disclosure of sensitive information — merely by claiming in a civil complaint to be acting in their capacity as "interested private citizens." A plain reading of the statutory text, however, demonstrates that Plaintiffs' status as foreign office-holders is dispositive. The statute makes no allowance for representatives of government entities who might, for whatever reason, have some personal interest in filing a FOIA request, or who might plausibly claim, according to some foreign historical custom, to have acted without the express authorization of whatever political party might be in power at a particular time. The Court can therefore accept as true that Plaintiffs have not filed their request at the express direction of anyone other than themselves — and that they are not acting as "agents" of "the UK Government" as that phrase might be understood in the British lexicon — and still find that Plaintiffs have not stated a claim upon which relief can be granted.[5]

Nor is the interpretation of the statute offered by Plaintiffs consistent with congressional intent. First, as described above, such an interpretation would vitiate the statute, and it would not be reasonable to infer that Congress drafted its law to be so easily circumvented. *Cf. Kaseman v.*

[5] Although not relevant for purposes of the instant motion, Plaintiffs' claims that they are acting as mere private citizens are unpersuasive. For example, both the Complaint and the underlying FOIA request are replete with evidence that the FOIA request is inextricably linked to Plaintiffs' roles as Members of Parliament. First, Mr. Tyrie went to great lengths to highlight his status as a Member of Parliament in the FOIA request and provided an official House of Commons address and e-mail. *See* Compl., Ex. A at 2 ("Mr. Tyrie is a Member of the Parliament of the United Kingdom and the Chairman of the APPG."); *id.* at 13 (providing address for APPG as "c/o Andrew Tyrie MP" and providing Mr. Tyrie's address as "House of Commons, London SW1A 0AA, United Kingdom"). Second, the APPG was described as a "group of over 60 Members of Parliament and Peers from the Parliament of the United Kingdom who have joined together to collect, examine, and publicly disseminate information about the topic of 'extraordinary rendition,' the involvement and/or cooperation of the United Kingdom (the "UK") in 'extraordinary rendition,' and related issues." *Id.* at 1. Third, the request includes a number of statements referencing Plaintiffs' planned uses of the requested information, all of which reinforce the view that Mr. Tyrie (and the APPG) were acting as representatives of Parliament when they made their requests. *See* Compl., Ex. A at 5 (referring to APPG's work to "clarify and publicize the legal obligations owed by the UK in relation to rendition and to detainees capture by UK forces in Iraq, Afghanistan, and elsewhere"). Plaintiffs plainly, according to their own admissions, submitted these requests as part of their effort to influence British policy and inform the British public, and these interests are clearly related to Mr. Tyrie's (and the APPG's) membership in Parliament.

District of Columbia, 444 F.3d 637, 642 (D.C. Cir. 2006) ("When possible, statutes should be interpreted to avoid untenable distinctions, unreasonable results, or unjust or absurd consequences.") (internal quotation marks and citations omitted).

Second, as the Supreme Court has explained, "[t]he basic purpose of FOIA is to ensure an informed *citizenry*, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable *to the governed*." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (emphasis added) (internal citations omitted). Not only are Mr. Tyrie and APPG not members of the United States citizenry (and thus not "the governed" for whom FOIA was enacted), they are actually high office-holders in a foreign country and, according to their Complaint, are currently engaged in a wide-ranging investigation of U.S. counterterrorism programs. Whatever the merits or motives of their investigation might be (none of which are relevant to the instant motion), the U.S. intelligence community should not be required to offer its assistance. Congress has expressly barred U.S. intelligence agencies from providing any documents to Plaintiffs in response to their FOIA requests, and it would be inconsistent with the underlying purpose of FOIA, as articulated by the Supreme Court, to allow foreign office-holders to circumvent the plain meaning of Section 552(a)(3)(E) by claiming to be acting as private citizens.

Third, the legislative history of FOIA Section 552(a)(3)(E) demonstrates the intent of Congress to prohibit U.S. intelligence agencies from responding to FOIA requests from, *inter alia*, foreign office-holders and their representatives. In construing a federal statute, it is appropriate to look to the congressional policy or policies animating the statute. *See, e.g.*, *Regions Hosp. v. Shalala*, 522 U.S. 448, 460 n.5 (1998); *Brotherhood of Locomotive Eng'rs v. Atchison, Topeka & Santa Fe Ry. Co.*, 516 U.S. 152, 157-58 (1996).

One reason Congress enacted Section 552(a)(3)(E) was to alleviate the resource burdens on U.S. intelligence agencies. This provision was added into FOIA in 2002, as part of the Intelligence Authorization Act (Sec. 312, Pub Law 107-306), because Congress was concerned that intelligence community agencies were inappropriately expending resources to respond to requests from representatives of foreign governmental entities. The relevant legislative report noted the following:

> As currently structured, FOIA provides to any person a broad right of access to declassified Intelligence Community records, whatever the purpose of his or her request. As a result, foreign persons and governments (including those that may support or participate in terrorist activities) have generated requests that require a significant commitment of Intelligence Community resources to process. CIA estimates that requests from foreign governments and foreign nationals comprise approximately 10 percent of the FOIA requests received annually based on the last three years. From FY 1999 through FY 2001, these foreign government FOIA requests increased at the rate of once percent per annum. Elements of the Intelligence Community are required by law to process these requests without regard to the nationality of the individual making the request. *Because elements of the Intelligence Community routinely handle classified national security information, the resources required to perform the painstaking, line-by-line reviews necessary to ensure the proper protection of such classified information are substantial. This section will prevent the diversion of the Intelligence Community's limited declassification resources for this purpose.*

H.R. Rep. No. 107-592, at 27 (2002) (emphasis added).

Allowing these self-described foreign office-holders and their representatives to circumvent the statute by claiming "private citizen status" would frustrate one of the central purposes of this law, *i.e.*, alleviating the administrative burden on U.S. intelligence agencies. Furthermore, an interpretation of the statute that would require intelligence community officials to research the governmental systems of foreign lands to determine who is specifically

authorized to speak for "the Government," as that term is understood locally, would also defeat the purpose of alleviating the FOIA processing burden.[6]

Finally, Section 552(a)(3)(E) promotes clear national security interests of the United States by shielding the U.S. intelligence community from FOIA requests filed by foreign office-holders, thereby preserving finite intelligence resources for the core IC functions of gathering, analyzing and disseminating critical national security intelligence. If the Court were to hold that Plaintiffs are entitled to proceed with their case against the IC Defendants, the door would be open to all manner of foreign heads of state, office-holders, legislators, judges and, potentially, foreign dictators, enemy military commanders, and hostile foreign intelligence services, among others, to sue the CIA and other IC agencies for disclosure of national security secrets under a law originally created to foster open government in the United States for the American citizenry. That result is not, and cannot be, what Congress intended in enacting Section 552(a)(3)(E), and it would also be inconsistent with a plain reading of the text of the statute.

[6] The reasonableness of Defendants' interpretation of the statute is reinforced by Plaintiffs' own FOIA requests. For example, Plaintiffs define the term "UK official" to mean "any UK Government employee . . . regardless of his or her rank *or ability to speak or make decisions on behalf of the UK Government*." Compl., Ex. A at 6 (emphasis added). Read closely, Plaintiffs' own definition of a "UK Government employee" necessarily includes persons who may not be specifically authorized to make decisions on behalf of the "UK Government," as that term is understood. In other words, the mere fact that a person has not been specifically authorized to act on behalf of the "UK Government" is, according to Plaintiffs, immaterial to whether that person is a member of the "UK Government." It follows that Plaintiffs' assertions that they have not been authorized to act on behalf of the "UK Government" are immaterial to whether they are in fact members of the "UK Government," even as that term is understood in Britain. Plaintiffs provide similar definitions for "United States official" and "Other Government official," thereby reinforcing the reasonableness of Defendant's proposed broad construction of the term "any government entity." Although Plaintiffs' definitions are ultimately not relevant to a plain reading of 5 U.S.C. § 552(a)(3)(E), they underscore the weakness of Plaintiffs' claim that they are not "representatives" of "any government entity" pursuant to 5 U.S.C. § 552(a)(3)(E).

2. Joseph Cyr

The inclusion of Mr. Cyr on the underlying FOIA request and as a party to this lawsuit does not exempt Plaintiffs' request from the scope of Section 552(a)(3)(E).[7] Although Plaintiffs allege that Mr. Cyr "joins this request in his individual capacity and not as a representative of the APPG, Mr. Tyrie, or the UK Government" (Compl. ¶ 31), the text of the underlying FOIA request states exactly the opposite. There, Plaintiffs informed the subject federal agencies and components that "Lovells LLP and Mr. Cyr have assisted the APPG and Mr. Tyrie on a *pro bono* basis in the drafting and filing of this Request." *See* Compl., Exs. A-E, at 2. Accordingly, by his own admission, Mr. Cyr is the legal "representative" of Mr. Tyrie and APPG within the meaning of Section 552(a)(3)(E). Mr. Cyr's claims should be dismissed accordingly.

[7] Mr. Cyr is an American lawyer who is employed by the firm of Lovells. Compl. ¶¶ 30-31. He is also listed as co-counsel (with attorneys at the Washington, D.C. firm of Hogan & Hartson) on Plaintiffs' Complaint. Compl. at 22.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' First, Second, and Third Causes of Action as pled in the Complaint, and dismiss all claims against the Central Intelligence Agency; the Federal Bureau of Investigation; the Defense Intelligence Agency; the National Security Agency; the intelligence elements of the Army, Navy, Air Force, and Marine Corps; the intelligence collection offices and directorates within the U.S. Unified Combatant Commands; the National Reconnaissance Office; the Office of Intelligence and Analysis within the Department of Homeland Security; the Coast Guard's Command for Intelligence and Criminal Investigations within the Department of Homeland Security; and the Bureau of Intelligence and Research within the Department of State; because Plaintiffs are prohibited from receiving records from these agencies pursuant to 5 U.S.C. § 552(a)(3)(E).

Dated: February 26, 2010

Respectfully submitted,

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