

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<b>LAURENCE A. JARVIK</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No.: 08-1911 (RMU)</b>
	)	
v.	)	
	)	
<b>CENTRAL INTELLIGENCE AGENCY</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**PLAINTIFF'S MOTION FOR IN CAMERA REVIEW OF THE PURPORTEDLY  
CLASSIFIED DOCUMENTS**

COMES NOW, Plaintiff Laurence A. Jarvik, by and through his undersigned counsel, and hereby respectfully requests that this Court order the CIA to turn over the purportedly classified documents to this Court for an in camera review and states as follows in support:

**INTRODUCTION**

1. Dr. Jarvik’s effort to obtain information and records from the CIA concerning recent violence in Andijan, Uzbekistan and the aftermath began nearly three years ago. For much of that time, the CIA has essentially just ignored Dr. Jarvik entirely, necessitating this, a second lawsuit by him. And, despite a recent settlement that was entered into with the expectation that the CIA would finally provide documents in response to Dr. Jarvik’s FOIA and bring an end to this litigation, Dr. Jarvik’s efforts have thus far produced nothing – except a litigation file.

2. Indeed, when the time came for it to comply with its agreement to search for and produce records, the CIA – which previously opposed Dr. Jarvik’s application for a fee waiver on the theory the issue was not one of public interest – responded not with documents or a confirmation that it has none, but with a letter stating that it has documents but every last scrap of paper it has concerning the violence in Adijan and the aftermath of that violence is classified. The result? Not one

document was brought to light and our government's response to, involvement in and/or role in, if any, in these events remains behind a shroud of silence.<sup>1</sup>

3. In 2006, Dr. Jarvik filed with a FOIA request with the CIA, seeking reports related to the violence in Andijan, Uzbekistan and its aftermath. He requested a fee waiver.

4. CIA denied Dr. Jarvik request for a fee waiver. He appealed denial of the fee waiver to this Court. This Court found that CIA denied Dr. Jarvik's fee waiver correctly. *See Jarvik v. CIA*, 495 F. Supp. 2d 67, 69 (D.D.C. 2007).

5. Dr. Jarvik accepted this Court's decision. The undersigned wrote numerous letters to various individuals at the CIA on Dr. Jarvik's behalf, informing the CIA that Dr. Jarvik decided to go ahead with his FOIA request and pay reasonable fees and requesting an invoice.

6. The CIA did not respond to any of these letters.

7. In October 2008, Dr. Jarvik filed this lawsuit seeking to compel the CIA to respond to his FOIA request.

8. On January 14, 2009, the Parties filed a Joint Motion to Stay this Proceedings, subsequently granted by this Court per their agreement. Under the Joint Motion, the case was stayed until May 11, 2009. CIA was to provide Dr. Jarvik with any and all responsive CIA records not subject to the FOIA statute exceptions. Dr. Jarvik was to dismiss this lawsuit within thirty (30) days of receiving the documents. The Parties were to bear their respective costs and fees. *See* Docket No. 4. The Court stayed this case but retained jurisdiction over its subject matter, pending the completion of the parties' obligations under the agreement.

---

<sup>1</sup>Ironically, the resulting total public ignorance fomented by the CIA itself was thus the basis for the CIA's position that the matter was not one of public interest in response to Dr. Jarvik's 2006 request.

9. On March 24, 2009, the CIA sent a letter to Dr. Jarvik, attached hereto as “**Exhibit A.**” In this letter, CIA now claims that all responsive documents are classified and subject to one of the FOIA exemptions.

**REQUEST FOR *IN CAMERA* REVIEW**

10. The CIA’s May 24, 2009 letter represents a sharp reversal from the CIA’s position(s) in the prior litigation that there is no evidence of the United States government involvement in the Andijan events and that the matter is not one of public interest. Further, it strains credulity -- at least in Plaintiff’s eyes -- that the CIA now asserts that every scrap of responsive material is classified ; likewise, in Plaintiff’s view, the CIA’s “compliance” with the settlement is troubling and, at best, casts serious doubt on the CIA’s good faith in connection with the joint motion.

11. This Court retained jurisdiction under the terms of the settlement, the basic essence of the agreement by the parties being that Dr. Jarvik would not be required to dismiss his suit until the CIA complied with its end and searched for and produced responsive records consistent with the FOIA.

12. The CIA’s purported compliance with the deal is plainly suspect and scrutiny by this Court is therefore warranted before the CIA is permitted to claim to have satisfied its end of the deal and Dr. Jarvik is required to dismiss this litigation. Lacking access to the documents, Dr. Jarvik has no way of evaluating whether the CIA’s classification of the responsive records was legitimate such that its response could be characterized as *bona fide* and in good faith. Accordingly, Dr. Jarvik respectfully requests this Court undertake a review of the records and require the CIA to show the Court good cause as to the CIA’s decision to withhold all responsive records, either in writing or by a sealed hearing *ex parte* (to which Dr. Jarvik hereby consents). Pending such a filing and/or

hearing (or, alternatively, in lieu thereof), Dr. Jarvik respectfully requests that this Court order the CIA to turn over to the Court the purportedly classified documents for *in camera* review in order to evaluate the CIA's designation, so that the Court may scrutinize whether the CIA has complied in good faith with what was purported to be an amicable resolution to this dispute. Additionally, Dr. Jarvik requests that the CIA be required to provide him with a log of the documents containing unclassified information necessary and sufficient to identify them and participate adversarially and advocate to the extent practicable in such review. A Proposed Order is attached.

Respectfully submitted,

/s/

Matthew H. Simmons, Esq.  
DC Id. # MD14700  
Simmons & Associates, Chartered  
4833 Rugby Avenue, Suite 100  
Bethesda, MD 20814  
Phone: 301-986-8444  
Fax: 240-597-0749  
Attorney for Plaintiff

**REQUEST FOR A HEARING.**

Plaintiff respectfully requests a hearing on this Matter.

/s/

Matthew H. Simmons, Esq.  
DC BAR # MD14700

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAURENCE A. JARVIK	)	
	)	
Plaintiff,	)	Civil Action No.: 08-1911 (RMU)
	)	
v.	)	
	)	
CENTRAL INTELLIGENCE AGENCY	)	
	)	
Defendant.	)	
_____	)	

[PROPOSED] ORDER

Upon consideration of Plaintiff’s Motion for In Camera Review of the Purportedly Classified Documents, any opposition thereto and upon good cause shown, it is this \_\_\_\_ day of \_\_\_\_\_, 2009, it is hereby ordered

(1) Plaintiff’s Motion is hereby GRANTED;

(2) Defendants are ORDERED to turn over to this Court for an In Camera Review all purportedly classified documents referenced in the CIA’s Letter of March 24, 2009 within fifteen (15) days of this Order;

(3) Defendants are FURTHER ORDERED to show cause \_\_\_ in writing within fifteen (15) days of the date of this Order and/or \_\_\_ at a hearing to be held *ex parte* on \_\_\_\_\_, \_\_\_\_\_, 2009 at \_\_\_\_\_ a.m./p.m.; and,

(4) Defendants are FURTHER ORDERED to provide to Plaintiff a log of all documents responsive to Plaintiff’s FOIA request withheld from production by Defendants as classified within twenty (20) days of the date of this Order. Said log shall contain as much information about and contained within each of said documents as is practicable and not asserted to be classified, including identifying information such as date, time, author(s), recipient(s), type of document and a brief description of the subject matter.

\_\_\_\_\_  
Judge

cc: All Counsel (by ECF)



Washington, D.C. 20505

24 March 2009

Laurence A. Jarvik, Ph.D.  
3735 Jocelyn Street, N.W.  
Washington, D.C. 20015

Reference: F-2009-00252 (formerly F-2007-00055 & F-2006-00677)

Dear Dr. Jarvik:

This is a final response to your 15 February 2006 Freedom of Information Act (FOIA) request, as modified by your letter of 22 March 2006, for records pertaining to "CIA reports relating to the violence [in Andijan, Uzbekistan] of May 2005 and its aftermath, as well as subsequent trials and evacuation of refugees."

We processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 431, as amended. Our processing included a search for records as described in our 14 January 2009 acceptance letter (enclosed) existing through the date of that letter.

We completed a thorough search for records responsive to your request and located material which we determined is currently and properly classified and must be denied in its entirety on the basis of FOIA exemptions (b)(1) & (b)(3). An explanation of exemptions is enclosed.

CIA Information and Privacy Coordinator Delores M. Nelson made this decision, which you may appeal to the Agency Release Panel, in my care, within 45 days from the date of this letter. Please include the basis of your appeal.

Sincerely,

A handwritten signature in cursive script that reads "Delores M. Nelson".

Delores M. Nelson  
Information and Privacy Coordinator

Enclosures

MAR 31 2009

