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11
 12 IN THE UNITED STATES DISTRICT COURT FOR THE
 13 EASTERN DISTRICT OF CALIFORNIA
 14

15 LARRY BERMAN,
 16 Plaintiff,
 17 v.
 18 CENTRAL INTELLIGENCE AGENCY,
 19 Defendant.
 20

CIV. S-04cv2699 DFL-DAD
**DEFENDANT'S RESPONSE TO
 PLAINTIFF'S STATEMENT OF
 UNDISPUTED MATERIAL
 FACTS**

Date: June 1, 2005
 Time: 10:00 a.m.
 Courtroom: 7 (14th floor, DFL)

<u>UNDISPUTED MATERIAL FACT</u>	<u>DEFENDANT'S RESPONSE</u>
1. Plaintiff Larry Berman is tenured Professor of Political Science at the University of California, Davis, and a noted historian and author on the presidency, foreign policy and Vietnam.	Undisputed.

<p>2. Professor Berman’s historical research and writings largely depend on publicly available information, including declassified intelligence documents reflecting what information was available and conveyed to the president.</p>	<p>Undisputed. However, Defendant lacks sufficient information to form a belief of the truth or falsity of the asserted fact.</p>
<p>3. PDBs and other presidential briefings are of particular importance to Professor Berman’s work and an accurate historical account of the American presidency and foreign policy because such documents represent factual information conveyed to the presidency.</p>	<p>Undisputed. However, Defendant lacks sufficient information to form a belief of the truth or falsity of the asserted fact.</p>
<p>4. Learning what the President knew and when is important to understanding how and why foreign policy decisions are made during the nation’s history.</p>	<p>Undisputed.</p>
<p>5. On March 3, 2004, in work in connection with an ongoing scholarly project, Professor Berman made a Federal Freedom of Information Act (“FOIA”) request to the CIA to obtain four PDBs dated August 6, 1965, August 8, 1965, March 31, 1968 and April 2, 1968.</p>	<p>Undisputed. However, Defendant lacks sufficient information to form a belief of the truth or falsity of the assertion that Plaintiff made his request in connection with an ongoing scholarly project.</p>
<p>6. In a letter dated April 15, 2004, the CIA denied Professor Berman’s FOIA request under FOIA exemptions (b)(1), (b)(3) and (b)(5).</p>	<p>Undisputed.</p>
<p>7. In this letter, the CIA also refused to confirm or deny the existence of the requested PDBs.</p>	<p>Undisputed.</p>
<p>8. On May 6, 2004, Professor Berman appealed the CIA’s denial.</p>	<p>Undisputed.</p>

<p>1 9. In his appeal letter, Professor Berman 2 requested that the CIA declassify “reasonably 3 segregable portions of the PDBs while 4 protecting any truly sensitive information on 5 sources and methods, etc.”</p>	<p>Undisputed.</p>
<p>6 10. In a letter dated June 21, 2004, Professor 7 Berman was informed by the CIA that “the 8 Agency Release Panel has considered your 9 appeal and determined that the records must 10 continue to be withheld in their entirety on the 11 basis of Freedom of Information Act 12 exemptions (b)(1), (b)(3) and (b)(5).[”]</p>	<p>Undisputed.</p>
<p>13 11. On December 22, 2004, after exhausting his 14 administrative remedies, Professor Berman filed 15 a complaint in the U.S. District Court for the 16 Eastern District of California against the CIA 17 seeking access to the PDBs dated August 6, 18 1965, March 31, 1968 and April 2, 1968, among 19 other relief.¹</p>	<p>Undisputed.</p>

28 ¹ The CIA has averred that a March 31, 1968 PDB was not prepared. See Answer, n.1 at 2.

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Dated: May 11, 2005

Of Counsel:

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By: /s/ Caroline Lewis Wolverton