

implies that the defendant has been excessive, let alone arbitrary and capricious, in asserting exemption 1. Likewise, the fact that defendant at this time released the Mayher documents, D-100, D-101, and D-111, after claiming in 1976 that they were exempt pursuant to both (b) (1) and (3), does not indicate that the CIA is misapplying the exemption now. Rather, it is a further indication of the defendant's good faith attempt to resolve this lengthy FOIA dispute.

Plaintiff's sole remaining challenge to the exemption 1 claims is that the CIA failed to apply Executive Order No. 12065, § 1-602,^{7/} and 3-303^{8/} when it classified the documents at issue. We see no evidence in the record to suggest that the defendant has any "basic scientific research information" on UFOs or has attempted to classify any contrary to § 1-602. The defendant's affiants have declared that they applied the terms of Executive Order No. 12065. See Affidavits of Weber ¶ 3, Owen ¶ 3, and Hazzard ¶ 3. All that § 3-303 does is permit the agency, not the court, in rare cases and at its discretion to balance the benefits of disclosure against the damage to the national security. The CIA has established guidelines to implement § 3-303, see Agency Information Security Program Handbook HMB 70-2 at 23, which would not be triggered by a request such as the one at issue. Recognizing that "[f]ew judges have the skill or experience to weigh the repercussions of disclosure of intelligence information," Weissman, supra, at 697, and

^{7/} Executive Order No. 12065, § 1-602 provides:
Basic scientific research information
not clearly related to the national
security may not be classified.

^{8/} Executive Order No. 12065, § 3-303 provides:
It is presumed that information which
continues to meet the classification
requirements in Section 1-3 requires
continued protection. In some cases,
however, the need to protect such
information may be outweighed by the
public interest in disclosure of the
information, and in these cases the
information should be declassified. When
such questions arise, they shall be referred
to the agency head, a senior agency official
with responsibility for processing Freedom of
Information Act requests or Mandatory Review
requests under this Order, an official with Top
Secret classification authority, or the Archivist
of the United States in the case of material covered
in Section 3-503. That official will determine
whether the public interest in disclosure outweighs
the damage to national security that might reasonably
be expected from disclosure.