

which would not be available by law to a party other than an agency in litigation with this Agency; or exempt under 5 U.S.C. §552(b) (6) because they are to personnel or similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (A copy of this letter is attached to the Complaint as Exhibit G. A true and correct copy is also attached to this affidavit as Exhibit 5.) The January 10 letter also advised the plaintiff that certain information, originating with other Federal agencies or components would be referred to the originating agency. A total of seventy-nine documents were referred to various agencies for their direct response to plaintiff.

6. An additional NSA document was referred to the NSA by the CIA on July 2, 1979. (The fourth and final CIA referral. In a letter dated December 19, 1979, Mr.

Banner responded to the referral by again advising Mr. Gersten that this record is exempt from release under 5 U.S.C. §552 (b) (1) because it was classified in its entirety, and exempt from release under 5 U.S.C. §552(b) (3) because disclosure of it was prohibited by 18 U.S.C. §798, 50 U.S.C. §403(d) (3) and Public Law 86-36. (A true and correct copy of this letter is attached as Exhibit 6.)

7. By letter dated January 23, 1980, plaintiff appealed the denial of the information referred by CIA and the subsequent denial of his general FOIA request of February 16, 1979. By reply letter dated March 24, 1980, the NSA Freedom of Information Act/Privacy Act Appeals Authority affirmed the denial of plaintiff's request for release of information on the same grounds as cited above. (A copy of this letter is attached to the Complaint as Exhibit K.