

U.S. Court of Appeals Rejects CIA's Motion to Squash Lawsuit on Bay of Pigs History

CIA and Justice Department Argued That Release of Draft History Would "Confuse the Public"

By [The National Security Archive](#)

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National Security Archive Freedom of Information Case to Receive Full Hearing

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Washington, D.C., December 7, 2012 – The U.S. Court of Appeals for the D.C. Circuit yesterday rejected the CIA's attempt to shortcut the National Security Archive's lawsuit under the Freedom of Information Act to obtain the last still-secret history of the disastrous Bay of Pigs invasion in 1961.

With the ruling, the Archive has moved a step closer to compelling openness for the only remaining unreleased volume of a draft history of the Bay of Pigs operation, written by a CIA staff historian in the 1980s. One volume of the five-volume history reached the public through the John F. Kennedy Assassination Records Review Board's action in the 1990s; and the Archive filed its FOIA lawsuit for the remaining volumes in April 2011, on the 50th anniversary of the failed CIA-sponsored invasion of Cuba.

The CIA released three volumes as a result of the FOIA lawsuit, but withheld the final volume by invoking a statutory exemption to the FOIA that protects "predecisional" and "deliberative" agency documents. Judge Gladys Kessler of the U.S. District Court sided with the CIA, explaining that the Agency could withhold this "predecisional" draft because it "does not want to discourage disagreement... among its historians."



The Houston, a supply ship for the CIA's invasion force, was sunk by Cuban T-33s on the morning of April 17, 1961 (CIA photo)

The Archive appealed to the D.C. Circuit, and the CIA then filed a motion for summary affirmance – in effect asking the court to decide in its favor without full briefing or oral argument. In opposing the CIA's motion, the Archive received strong support from more than a dozen organizations representing tens of thousands of historians, archivists, political scientists, educators and researchers around the world, who warned that the CIA's position could create a "chilling effect on access to historical materials."

On Thursday, the D.C. Circuit Court of Appeals rejected the CIA's motion, agreeing with the Archive and its supporters that the case merits the court's full consideration, and set a briefing schedule through March 2013 for the lawsuit to continue.

"The CIA told the courts that a decades-old draft history should stay secret because it would 'confuse the public' and make CIA historians less candid," remarked Tom Blanton, director of the National Security Archive. "In fact, that policy would put off limits half of what's in our country's National Archives, and the only confused people would be government itself, unable to learn from its own mistakes because the history was locked under Maxwell Smart's Cone of Silence."

Allon Kedem and Cliff Sloan of the law firm of Skadden, Arps, Slate, Meagher, and Flom represent the Archive in this case as part of the firm's *pro bono publico* commitment. Veteran FOIA litigator David Sobel represented the Archive in the first stages of the case and won the release of three volumes of the history. The director of the Archive's Cuba Documentation Project, Peter Kornbluh, wrote and filed the original Freedom of Information Act request in the case.

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