

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION  
CENTER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
JUSTICE,

Defendant.

13 Civ. 1961 (KBJ)

**THIRD DECLARATION OF MARK A. BRADLEY**

I, Mark A. Bradley, do hereby state and declare as follows:

1. I am the Director of the Freedom of Information Act (“FOIA”) and Declassification Unit of the Office of Law and Policy in the National Security Division (“NSD”) of the United States Department of Justice (“DOJ” or “Department”). NSD is a component of the Department. NSD formally began operations on October 2, 2006, by, *inter alia*, consolidating the resources of the Department’s Office of Intelligence Policy and Review (“OIPR”)<sup>1</sup> and the Counterterrorism Section (“CTS”) and Counterespionage Section (“CES”) of the Department’s Criminal Division.

2. In addition, under a written delegation of authority pursuant to section 1.3.(c) of Executive Order 13526, I hold original classification authority at the TOP SECRET level. I am authorized, therefore, to conduct classification reviews and to make original classification and declassification decisions.

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<sup>1</sup> OIPR is now known as the Office of Intelligence (“OI”).

3. I submit this declaration in support of DOJ's Consolidated Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment and Reply in Further Support of Defendant's Motion for Summary Judgment. I make the statements herein on the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties. Additionally, I have personally reviewed all of the withheld documents discussed in this declaration and in my prior declaration.

4. On October 31, 2014, I submitted a declaration in support of DOJ's Memorandum in Support of Defendant's Motion for Summary Judgment. That declaration addressed the withholdings in twenty-five semiannual reports which the Government is required to submit to the Senate and House Judiciary Committees, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence pursuant to sections 108(a) and 306 of the Foreign Intelligence Surveillance Act ("FISA"). These semiannual reports cover, among other things, all pen register/trap and trace surveillances conducted under FISA by the Federal Bureau of Investigations ("FBI"), and/or the National Security Agency ("NSA"), and/or the Central Intelligence Agency ("CIA") from July 1, 2000 to December 21, 2012. These reports are listed as documents 115-139 in the *Vaughn* index.

5. Plaintiff, the Electronic Privacy Information Center ("EPIC"), submitted its Combined Opposition to Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment on November 21, 2014. In its motion, EPIC states that the Government had inconsistently applied some of redactions in the semiannual reports. Specifically, plaintiff cites the fact that the numbers of United States persons who were targeted were redacted in documents 126 and 137 even though the numbers of targeted United States persons were listed in the other reports. The reports in question were produced to plaintiff on or before August 7, 2014. To my

knowledge, plaintiff did not raise its questions with the Department of Justice, through counsel or otherwise, prior to filing its summary judgment brief on November 21. Regardless, the inconsistency plaintiff cites regarding United States person numbers was the result of a clerical error, and NSD is now releasing the numbers which had been redacted in documents 126 and 137. Further, upon discovering these administrative errors, NSD FOIA re-reviewed all of the semiannual reports and discovered that the number of United States persons targeted had also been inadvertently redacted in document 136. NSD will be releasing that number as well.

6. EPIC also states that the numbers of targeted United States persons were not included in December 2005 and July 2006 semiannual reports (documents 124 and 125). EPIC is correct, but this is not the result of any redaction to these documents made pursuant to FOIA or otherwise. Rather, those numbers were not included in those reports.

7. Further, EPIC also points out that documents 124 and 128 do not contain the exact numbers of targeted persons and instead state that “at least” a certain number of people were targeted. EPIC is correct, but again, this is not the result of any redaction to these documents made pursuant to FOIA. Rather, the exact numbers of targeted persons were not included in those reports.

8. As explained in my October 31, 2014 declaration, summary descriptions of compliance incidents and information pertaining to intelligence sources and methods have also been withheld as exempt. In some cases, intelligence sources and methods have been withheld from sections in the reports that, according to their unredacted headings, discuss significant legal interpretations by the FISC, its jurisdiction, or its procedures. That is because the descriptions of those compliance incidents and legal interpretations cannot be reasonably segregated from highly sensitive, classified information and then released. After carefully reviewing the withheld

paragraphs I have found that the descriptions of the compliance incidents and legal analysis cannot reasonably be segregated and released without risking disclosure of the manner and means by which the United States Government collects intelligence information. I have also determined that segregating these paragraphs would produce misleading and/or meaningless sets of words and phrases which would have minimal or no informational content.

9. Executive Order 13526 § 1.7(e) states, “[c]ompilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that ... meets the standards for classification under [Executive Order 13526].” This provision of the Executive Order is a recognition that seemingly mundane and non-sensitive material, when viewed in the context of other available information, reveal highly sensitive information to sophisticated adversaries of the United States. For the descriptions of compliance incidents and legal interpretations contained in some of the withheld paragraphs, it is my judgment that any information in those paragraphs that, viewed in isolation, could be considered unclassified, when combined with other information that is available to the public in the context of plaintiff’s FOIA request at issue in this litigation, can reasonably be expected to reveal (directly or by implication) classified national security information concerning the timing or nature of intelligence activities. In these circumstances, the disclosure of even seemingly mundane portions of these descriptions or legal analysis, when considered in conjunction with other publicly available information, could reasonably be expected to assist a sophisticated adversary in deducing particular intelligence activities or sources and methods, and possibly lead to the use of countermeasures that may deprive the United States of critical intelligence.

10. For these reasons, I have determined that these paragraphs are not reasonably

segregable, including as to the legal analysis and compliance incident descriptions they contain. As a result, all of those paragraphs discussed above which contain descriptions of compliance incidents and legal analysis are properly classified pursuant to subparagraphs (c) and (g) of Section 1.4 of Executive Order 13526 at the SECRET and TOP SECRET levels and properly withheld under FOIA Exemption One.

11. Plaintiff also noted that the reports released by NSD in response to plaintiff's FOIA request do not include current overall classification markings, but rather have their classification markings struck through. That is because the documents, as released to plaintiff, are no longer classified – the properly classified information has been withheld pursuant to FOIA Exemption 1, 5 U.S.C. § 552(b)(1). A true and correct copy of the re-reviewed, corrected semi-annual reports to Congress are attached as an exhibit to this declaration. We have now un-redacted portion classification markings in the relevant sections responsive to plaintiff's request. As noted, I have reviewed all of these documents. They were properly marked for classification pursuant to Executive Order 13,526.

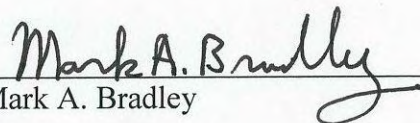
12. Plaintiff has also argued that the summary descriptions of FISA investigations contained in the reports to Congress are not compiled for law enforcement purposes, but are compiled for oversight purposes. As I understand FBI official David M. Hardy is also stating in his Third Declaration, the summary descriptions in these reports are drawn from information contained in FBI investigative files. The information was, therefore, compiled for law enforcement purposes. Moreover, as I explained in my Second Declaration, revealing the law enforcement techniques and intelligence methods discussed in the redacted portions of the reports to Congress would risk circumvention of the law because it could reasonably be expected to permit subjects of FBI national security investigations to circumvent the law enforcement

techniques, thus evading detection and/or thwarting FBI national security investigations. I cannot describe these law enforcement techniques and intelligence methods further on the public record, but further detail is provided in the classified portions of the First and Third Declarations of David M. Hardy.

**CONCLUSION**

I certify, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 11<sup>th</sup> day of December 2014

  
Mark A. Bradley