THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER, Plaintiff, v. OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE Defendant.	Case No. 17-cv-0163 RC

DEFENDANT'S RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Local Rule 7(h)(1), Defendant respectfully submits its response to Plaintiff's statement of material facts that it contends are not in dispute:

31. This statement does not contain facts material to the resolution of the parties' motions for summary judgment. Defendant admits that the document cited by Plaintiff in support of its statement, a Joint Statement from the Department of Homeland Security and the Office of the Director of National Intelligence on Election Security states, in part, that recent "thefts and disclosures are intended to interfere with the U.S. election process."

32. This statement does not contain facts material to the resolution of the parties' motions for summary judgment. This statement constitutes a quotation from Exhibit 2 to Plaintiff's Motion for Summary Judgment, to which Defendant respectfully refers the Court for a complete and accurate description of its contents.

33. Defendant admits that, on January 6, 2017, the U.S. Intelligence Community published Exhibit 1 to Plaintiff's Motion for Summary Judgment, a declassified version of a classified assessment addressing the motivation and scope of Russian efforts to influence the 2016 U.S. presidential election. Declaration of Edward Gistaro in support of Defendant's Motion for Summary Judgment ("Gistaro Decl.") ¶¶ 9, 22. Defendant further admits that the declassified report contained the unclassified content of the classified report including all of the conclusions regarding Russian interference with the 2016 election. *Id.* ¶ 22. The second sentence of this statement does not contain facts material to the resolution of the parties' motions for summary judgment, but Defendant admits that it issued Exhibit 2 to Plaintiff's Motion for Summary Judgment on January 6, 2017. The remainder of the second sentence of Plaintiff's statement in this paragraph is a quotation from Exhibit 2 to Plaintiff's Motion for Summary Judgment, to which Defendant respectfully refers the Court for a complete and accurate description of its contents.

34. This statement does not contain facts material to the resolution of the parties' motions for summary judgment. This statement constitutes characterizations of and a quotation from Exhibit 1 to Plaintiff's Motion for Summary Judgment, to which Defendant respectfully refers the Court for a complete and accurate description of its contents.

35. This statement does not contain facts material to the resolution of the parties' motions for summary judgment. This statement purports to constitute characterizations of and quotations from Exhibit 1 to Plaintiff's Motion for Summary

Judgment, to which Defendant respectfully refers the Court for a complete and accurate description of its contents.

36. This statement does not contain facts material to the resolution of the parties' motions for summary judgment. This statement constitutes characterizations of and quotations from Exhibit 1 to Plaintiff's Motion for Summary Judgment, to which Defendant respectfully refers the Court for a complete and accurate description of its contents.

37. This statement does not contain facts material to the resolution of the parties' motions for summary judgment. This statement purports to constitute characterizations of and quotations from Exhibit 1 to Plaintiff's Motion for Summary Judgment, to which Defendant respectfully refers the Court for a complete and accurate description of its contents.

38. This statement does not contain facts material to the resolution of the parties' motions for summary judgment, but Defendant admits that it has a commitment to transparency.

39. This statement does not contain facts material to the resolution of the parties' motions for summary judgment.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER, Plaintiff, v. OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE Defendant.	)	Case No. 17-cv-0163 RC

DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT

Respectfully submitted: August 22, 2017

CHAD A. READLER
Acting Assistant Attorney General

MARCIA BERMAN
Assistant Branch Director

/s/ Jennie L. Kneedler
JENNIE L. KNEEDLER
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, D.C. 20001
Tel. (202) 305-8662
Fax (202) 616-8470
Email: Jennie.L.Kneedler@usdoj.gov
D.C. Bar # 500261

Attorneys for Defendant

I. INTRODUCTION

Plaintiff, the Electronic Privacy Information Center ("EPIC" or "Plaintiff"), asks this Court to penalize the Office of the Director for National Intelligence ("ODNI") for its good faith decision to release a declassified version of a highly classified report ("classified report") assessing Russian efforts to influence the 2016 U.S. presidential election by arguing that this effort at transparency undermines ODNI's ability to withhold the contents of the classified report. This argument is not only inconsistent with the governing law of this Circuit, but crediting it would undermine the very transparency that Plaintiff seeks.

Plaintiff's central argument also rests on a misunderstanding of the nature of the document withheld. As explained in the Declaration of Edward Gistaro ("Gistaro Decl."), filed in support of Defendant's Motion for Summary Judgment, the declassified report consists of the unclassified portions of the classified report. Gistaro Decl. ¶ 22 (the "[declassified] report contain[s] the unclassified content of the classified report"); Declassified Report at i ("This . . . document does not include the full supporting information . . . . Given the redactions, we made minor edits purely for readability and flow."). To assuage any doubt, Defendant provides the Declaration of Dustin Razsi, the current Vice Chair of the National Intelligence Council ("NIC"), who makes clear that all of the substantive unclassified and declassified content[1] in the classified report is contained in the declassified report; the remainder of the contents of the classified report

---

[1] As the Razsi Declaration explains, the classified report contains unclassified content, declassified content that the Director of National Intelligence declassified for inclusion in the declassified report (to provide the public with as much information as possible), and classified content. *See* Razsi Decl. ¶¶ 8-9.

are currently and properly classified because release of the information reasonably could be expected to harm national security. *See* Razsi Decl. ¶¶ 8, 10.

The Gistaro Declaration persuasively described how providing the exact same substantive unclassified and declassified information that is contained in the declassified report in the form of a redacted version of the classified report reasonably could be expected to cause harm to the national security. Gistaro Decl. ¶¶ 20, 26, 30-34. Plaintiff has provided no reason for this Court to discredit the statements in the Gistaro Declaration, especially considering the substantial deference this Court must give agency declarations describing potential harm to national security. Nor has Plaintiff pointed to any case law holding that ODNI must provide the same substantive content in the declassified report to Plaintiff in a different format, especially when doing so could cause damage to the national security. This is because such case law does not exist. Therefore, Defendant has demonstrated that no portion of the classified report safely can be released.

Also unavailing is Plaintiff's claim that the Gistaro Declaration fails adequately to explain why the classified report must be withheld pursuant to Exemptions 1 & 3. The Gistaro Declaration provides the same level of detail that the D.C. Circuit has found sufficient to explain how withheld information "logically and plausibly" fits within those exemptions. The Razsi Declaration provides additional information to demonstrate that the contents of the classified report pertain to intelligence sources and methods, and that release of the withheld information reasonably could be expected to result in danger to the national security. Razsi Decl. ¶¶ 9-12. Given this, and the fact that all of the substantive information in the classified report either remains classified, or is contained in the declassified report, Defendant's motion for summary judgment should be granted.

II. ARGUMENT

While Plaintiff may be correct that the public is interested in the information contained in the classified report, *see* Pl.'s Mem. of Points and Auth. in Supp. of its Opp'n to Def.'s Mot. for Summ. J. and Cross-Mot. for Summ. J. ("Pl.'s Mem.") at 4-8, ECF No. 18-1, this fact is not material to the Court's resolution of Defendant's motion. Congress recognized that, regardless of the public interest, "legitimate governmental and private interests could be harmed by release of certain types of information and provided nine specific exemptions under which disclosure could be refused." *FBI v. Abramson*, 456 U.S. 615, 621 (1982). ODNI has sufficiently explained why the classified report must be withheld in the interests of national security.

In its attempt to discredit ODNI's "logical and plausible" showing, Plaintiff would have this Court ignore the deference owed to the Executive in the area of national security, as well as the unique nature of the document at issue. This is a case about a single document – a highly classified report by the U.S. Intelligence Community containing its assessment of Russian interference in the 2016 election. ODNI, in the interest of transparency, already has revealed to the public the report's conclusions in the form of a declassified report. What has been withheld is some of the information that supports these conclusions, "including specific intelligence on key elements of the influence campaign." Declassified Report at i. Given the nature of the classified report, and the conclusions set forth in the declassified report, the Gistaro Declaration demonstrates that releasing the information in the classified report would reveal intelligence sources and methods, and could reasonably be expected to cause serious or exceptionally grave harm to the national security. Declassified Report, Background at 1

("the declassified report does not and cannot include the full supporting information, including specific intelligence and sources and methods").

A. ODNI Has Shown that the Classified Report Must be Withheld Pursuant to Exemption 1

The Gistaro Declaration (1) states that the substantive information in the classified report that is not included in the declassified report qualifies as one or more types of sensitive intelligence provided by the Central Intelligence Agency ("CIA"), the Federal Bureau of Investigation ("FBI") or the National Security Agency ("NSA"), (2) identifies each type of intelligence information, and (3) explains why it is logical and plausible that release of each category of information reasonably could be expected to harm national security. *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007) ("Ultimately, an agency's justification for invoking a FOIA exemption is sufficient if it appears 'logical' or 'plausible.'") (citation omitted). Mr. Gistaro has 27 years of experience as an intelligence officer, and, in his position as the Deputy Director of National Intelligence for Intelligence Integration, oversees the activities of the NIC, the Vice Chair of which supervised the assembling of the classified report. Gistaro Decl. ¶¶ 10, 12-14, 30. Given Mr. Gistaro's position and experience, he is well qualified to describe the information contained in the classified report, and the potential harms to national security if the information were released to the public. The Declaration of Mr. Razsi supports the statements in the Gistaro Declaration by providing further details regarding the harms that reasonably could be expected to occur if the information were released.

Plaintiff has not pointed to contrary evidence in the record, or evidence of agency bad faith. Therefore, Defendant has shown that the information is properly withheld pursuant to Exemption 1. *Wolf*, 473 F.3d at 374. This is especially true here, where the

information withheld "implicat[es] national security, a uniquely executive purview." *Ctr. for Nat'l Sec. Studies v. DOJ*, 331 F.3d 918, 926-27 (D.C. Cir. 2003) (The D.C. Circuit has "consistently deferred to executive affidavits predicting harm to the national security, and ha[s] found it unwise to undertake searching judicial review."); *see also Larson v. Dep't of State*, 565 F.3d 857, 864 (D.C. Cir. 2009) (A court "accord[s] substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record because the Executive departments responsible for national defense . . . matters have unique insights into what adverse affects [*sic*] might occur as a result of a particular classified record."); *Gardels v. CIA*, 689 F.2d 1100, 1106 (D.C. Cir. 1982) ("The CIA has the right to assume that foreign intelligence agencies are zealous ferrets."). Therefore, as explained further below, ODNI properly has withheld the classified report pursuant to Exemption 1.

1. ODNI Has Shown that Signal Intelligence Information Must Be Withheld in the Interests of National Security

First, ODNI has explained the signal intelligence (SIGINT) information contained in the classified report, and why it must be withheld to avoid causing harm to national security. The NSA produces SIGINT by collecting, processing, and analyzing foreign electromagnetic signals to obtain intelligence information necessary to the national defense, national security, and conduct of foreign affairs. Gistaro Decl. ¶ 15a. The Razsi Declaration explains that the language and portion marks of the classified report reveal whether specific secret and top secret intelligence was gathered from human sources, signal intelligence sources, or other classified sources. Armed with this understanding, the Russian Government could look at the specific nature of the information contained in the classified report to identify which Russian agencies, bureaus, activities, geographic

regions, or modes of communication are being successfully targeted by the Intelligence Community for signal intelligence gathering, and the overall quality and maturity of the United States' current signal interception capabilities. Razsi Decl. ¶ 10. This would pose an exceptionally grave danger to national security and the Intelligence Community's ongoing intelligence gathering activities because it would inform the Russians where they need to improve their counterintelligence capabilities. *Id.*

Moreover, factual details in the classified sections of the report provide even greater insight into these areas. If a specific detail is revealed to have been obtained via SIGINT, the Russians would be able to more accurately identify which of their communications have been compromised, and identify the possible locations (i.e. listening stations) or modes (e.g. taps) that the United States is relying on to obtain that information. *Id.* ¶ 11.

Given the nature of the SIGINT, the purpose of the classified report, and the conclusions reached in the declassified report, it is certainly logical and plausible that release of information in the classified report containing intelligence gleaned from signal intelligence reasonably could be expected to harm national security by exposing capabilities, and impairing future access to such intelligence. In *Larson v. Dep't of State*, 565 F.3d at 866, the D.C. Circuit held that the NSA had carried its burden to show that information derived from signal intelligence was properly withheld pursuant to Exemption 1 where "[d]isclosure of that information would inform those targets of their vulnerabilities and the NSA's specific capabilities, sources, and methods, prompting the targets to undertake countermeasures to deny access to those communications." The Gistaro and Razsi Declarations describe similar harms that reasonably could be expected

to result from disclosure of signal intelligence information; therefore, ODNI has demonstrated that this information was properly withheld.

2. ODNI Has Shown that Releasing Human Intelligence Information Contained in the Classified Report Reasonably Could Be Expected to Endanger Human Sources

Second, the Gistaro Declaration explained that some of the information in the classified report consists of intelligence gathered by clandestine human sources, and that release of the classified human intelligence in the report to the public or foreign authorities reasonably could be expected to expose human intelligence sources. Gistaro Decl. ¶ 15b. Mr. Razsi adds that the language and portion marks of the classified report reveal whether specific secret and top secret intelligence was gathered from human sources, signal intelligence sources, or other classified sources. If the Russian Government were armed with this information, they could identify which Russian agencies, bureaus, activities or geographic regions host persons who are providing the Intelligence Community with information, and the overall quality and maturity of U.S. human intelligence operations within Russia. Razsi Decl. ¶ 10. This would constitute an exceptionally grave danger to national security and the Intelligence Community's ongoing intelligence gathering activities because it would inform the Russians where they need to improve their counterintelligence capabilities. *Id*.

Also, within the classified sections of the report where human intelligence is presented, specific facts and details would assist the Russians in narrowing their search for human sources. If a specific piece of information is tied to human intelligence, the Russians will be able to identify who is likely to possess such information and seek to

determine the identity of the sources. This would place U.S. intelligence assets in extreme jeopardy. *Id.* ¶ 11.

The D.C. Circuit repeatedly has recognized the need to withhold information that could lead to the discovery of human intelligence sources precisely because, as Mr. Gistaro and Mr. Razsi explained, exposure would subject these sources to physical danger and impair the Intelligence Community's ability to recruit similarly situated individuals in the future. *Compare* Gistaro Decl. ¶ 15b and Razsi Decl. ¶¶ 10-11 *with Larson*, 565 F.3d at 863 (CIA carried its burden to show that Exemption 1 applied to documents where, *inter alia*, disclosure of the information could lead to discovery of an intelligence source and undermine the CIA's ability to attract future intelligence sources); *Wolf*, 473 F.3d at 376 (agency affidavit logically and plausibly sufficed to show potential harm that could reasonably be expected to result from acknowledgement that the CIA maintained contact with a foreign national as a source, since it would undermine the CIA's ability to attract potential intelligence sources in the future). Therefore, ODNI has demonstrated that information in the classified report that is gathered from human intelligence is properly withheld pursuant to Exemption 1.

3. ODNI Has Shown that Releasing the Classified Report Would Expose Intelligence Methods, Thereby Harming National Security

Third, the classified report contains details that would disclose intelligence methods, enabling foreign intelligence to counter U.S. intelligence efforts, and otherwise provide entities hostile to the United States with an advantage over U.S. national security. Gistaro Decl. ¶ 15c; *see also* Razsi Decl. ¶ 11 (explaining that disclosing the extent of the Intelligence Community's understanding of specific Russian activities would assist the Russians in identifying active intelligence methods in order to defeat them). The D.C.

Circuit has found similar descriptions of withheld intelligence methods and the harms that reasonably could be expected to result from their disclosure sufficient to demonstrate that withholding pursuant to Exemption 1 is proper. For example, in *Larson*, the CIA explained that disclosing the documents at issue "could lead to the unauthorized disclosure of intelligence methods, the means by which the agency accomplishes its intelligence-gathering mission." 565 F.3d at 863. The D.C. Circuit found that the CIA had carried its burden to show that Exemption 1 applied where the CIA said that intelligence methods "are valuable for intelligence gathering only so long as those who would use countermeasures against them remain unsuspecting. Even seemingly trivial details may be of great significance to foreign intelligence services with a broad view of the intelligence landscape in their attempts to discover and thwart CIA intelligence-gathering methods." *Id*; *see also Wolf*, 473 F.3d at 376 (agency described how revealing targets of CIA surveillance would reveal intelligence methods, allowing the target to use its counterintelligence and security resources most efficiently to frustrate the CIA).

The Gistaro Declaration also explains that intelligence methods are revealing of intelligence sources and vice versa. Specifically, knowledge that a particular method is being employed can be used by foreign intelligence to pinpoint the availability and identity of a particular source or group of sources. Gistaro Decl. ¶ 15c. Given the harm to national security that could reasonably be expected to result from the disclosure of human sources, *id*. ¶ 15b, information that would reveal intelligence methods must also be withheld to avoid reasonably likely harms to national security.

4. ODNI Has Shown that Releasing the Classified Report Would Reveal Intelligence Activities in a Way that Reasonably Could Be Expected to Harm National Security

And fourth, releasing the classified report would expose intelligence activities – the operations that the Intelligence Community conducts to protect and preserve U.S. national security. According to Mr. Gistaro, intelligence activities rely on intelligence sources, embody intelligence methods, and reflect U.S. intelligence interests, objectives and capabilities. Knowledge of U.S. intelligence activities provides foreign governments with information that can assist them in detecting, tracking and exposing U.S. intelligence sources and methods, as well as impairing the United States' overall intelligence strategy. Gistaro Decl. ¶ 15d.

Mr. Razsi adds that disclosing the extent of the Intelligence Community's understanding of specific Russian activities would assist the Russians in identifying the United States' active sources, methods, and specific operations/activities in order to defeat them. These sources, methods, and activities are used across the entire spectrum of U.S. intelligence gathering against the Russian Government. Therefore, their disclosure would have negative effects across a broad spectrum of national security concerns, such as nuclear proliferation and terrorism. Razsi Decl. ¶ 11. The D.C. Circuit has found similar language sufficient to sustain an agency's burden under Exemption 1. *Public Citizen v. Dep't of State*, 276 F.3d 634, 644 (D.C. Cir. 2002) (language in agency declaration was sufficient where it stated that disclosure of information "could enable foreign [actors] opposed to United States foreign policy objectives to identify U.S. intelligence activities, sources or methods and to undertake countermeasures that could

frustrate the ability of the U.S. Government to acquire information necessary to the formulation and implementation of U.S. foreign policy").

The above discussion also demonstrates why this case is wholly distinguishable from *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 30-31 (D.C. Cir. 1998). *See* Pl.'s Mem. at 16-17. In *Campbell*, the agency declaration did not contain any specific reference to the subject of the FOIA request "or any other language suggesting that the FBI tailored its response to a specific set of documents." *Id.* That is clearly not the case here, where the Gistaro and Razsi Declarations describe at length how the classified report was prepared, the types of information withheld from the classified report, and the specific harms that reasonably could be expected to result if these types of information were released to the public.

The ODNI has therefore sustained its burden to show that the classified report properly was withheld pursuant to Exemption 1.[2]

B. ODNI Has Demonstrated that the Information Withheld in the Classified Report Relates to Intelligence Sources and Methods

Plaintiff does not challenge that Section 102(A)(i)(1) of the National Security Act is an Exemption 3 statute, *see* Pl.s' Mem. at 18; therefore, to sustain its burden under the Exemption, ODNI need only show that the information in the classified report that is not

[2] The Gistaro Declaration demonstrates that the procedural and substantive requirements of Executive Order 13,526 have been satisfied, Gistaro Decl. ¶¶ 2, 15-17, and Plaintiff's vague suggestion otherwise, *see* Pl.'s Mem. at 27, is unavailing. *See Judicial Watch, Inc. v. DOD*, 715 F.3d 937, 944 (D.C. Cir. 2013) (agency declaration from official with original classification authority who reviewed documents and determined that they were correctly classified was sufficient to support agency's overall classification decision). Plaintiff does not dispute that Mr. Gistaro has original classification authority, or that Mr. Gistaro determined that the classified report remains properly classified. *See* Pl.'s Statement of Material Facts Not in Dispute and Resp. to Def.'s Statement of Facts Not in Dispute ¶ 18, ECF No. 18-2.

in the declassified report relates to intelligence sources and methods. *Larson*, 565 F.3d at 865. The discussion in the Gistaro and Razsi Declarations amply demonstrate that it does by explaining the information contained in the classified report regarding signal intelligence sources, human intelligence sources, intelligence methods, and intelligence activities. Gistaro Decl. ¶¶ 15, 20b, 30-34; Razsi Decl. ¶¶ 9-12.

Mr. Razsi also explains that, in the process of creating the declassified report, ODNI carefully considered intelligence sources and methods, and identified some of the classified contents for inclusion in the declassified report that present the classified report's conclusions, without full supporting information that would reveal sources and methods. Razsi Decl. ¶ 9. Given this, the four types of information described, and the fact that all unique substantive information in the classified report that is not in declassified report falls into one of these four categories, *see id*. ¶¶ 8, 10, the entire classified report is properly withheld as relating to sources or methods. *CIA v. Sims*, 471 U.S. 159, 169-70, 177 (1985) (recognizing the "wide-ranging authority" provided by the National Security Act to protect intelligence sources and methods); *Larson*, 565 F.3d at 865, 868 ("easily" concluding that information that could lead to the discovery of an intelligence source and information derived from signal intelligence related to intelligence sources and methods); *Wolf*, 473 F.3d at 376-77 (CIA's interest in an individual foreign national qualified as an intelligence source or method). Therefore, ODNI has properly withheld the classified report pursuant to Exemption 3.

C. The Release of the Declassified Report Does Not Undermine ODNI's Determination that the Entire Classified Report Must Be Withheld

ODNI does not dispute that there is unclassified and declassified content in the classified report that is substantively identical to information contained in the declassified

report; however, this fact does not support releasing any portion of the classified report, for two reasons. First, as the Razsi Declaration makes clear, the substance of all of the unclassified and declassified language within the classified report was included in the declassified report. The only reason the words in the declassified report are not *verbatim* the same as the unclassified and declassified content in the classified report is to improve the readability and flow of the declassified report for the public. In other words, any changes in language were made to provide narrative continuity, but no substantive unclassified or declassified content in the classified report was withheld in the declassified report. *See* Razsi Decl. ¶ 8; *see also* Declassified Report at i ("This . . . document does not include the full supporting information . . . . Given the redactions, we made minor edits purely for readability and flow.").

Second, the Gistaro Declaration persuasively describes how releasing substantively identical unclassified and declassified information in the form of a redacted classified report reasonably could be expected to harm national security. Gistaro Decl. ¶¶ 20, 26, 30-34.[3] Mr. Razsi's Declaration expands on this point, noting that, in creating the declassified report, ODNI identified some of the classified contents of the classified report for inclusion in the declassified report. This content presents the classified report's conclusions without full supporting information that would reveal sources and methods.

---

[3] Plaintiff's selective quotations from the Gistaro Declaration do not question this showing. *See* Pl.'s Mem. at 24. ODNI set out to prepare a declassified report because it believed that releasing a redacted version of the classified report might require redacting significant amounts of unclassified information (or all of the unclassified information). Once both the declassified report and the classified report existed as separate documents, and ODNI performed another good faith review of the classified report to determine if a redacted version could be released, it is entirely logical that ODNI would be in a position to make a more definitive determination in this regard. *See* Gistaro Decl. ¶¶ 20b, 30, 31.

Razsi Decl. ¶ 9. Release of a declassified report, rather than a redacted classified report, mitigated the risk of declassifying information in the classified report for public release, since a reader of the declassified report would not be able to distinguish between unclassified and declassified content. *Id.* If the Russian Government were able to determine which portions of the classified report had been declassified for public release, they would be able to use this knowledge to identify which information the United States derived from human intelligence, signal intelligence, or other classified sources. *Id.* Nothing in FOIA requires an agency to provide the exact same substantive information that is already available to the public in a different format, especially when providing the information in that format reasonably could be expected to harm national security. *See Mead Data Ctr. v. Dep't of Air Force*, 566 F.2d 242, 261 n.55 (D.C. Cir. 1977) ("[A] court may decline to order an agency to commit significant time and resources to the separation of disjointed words, phrases, or even sentences which taken separately or together have minimal or no information content."); *cf. Hayden v. NSA*, 608 F.2d 1381, 1385, 1389 (D.C. Cir. 1979) (there was no need to release a redacted version of an *in camera* declaration when doing so would "merely duplicate[] material already in the public record").

Nor can ODNI's release of the declassified report support the release of any information contained in the classified report that is not already available to the public. *See, e.g.*, *Assassination Archives & Research Ctr. v. CIA*, 334 F.3d 55, 60 (D.C. Cir. 2003) (rejecting requester's argument that at least some of the withheld information must have been disclosed because the requester had not met its burden of showing that the information duplicated the contents of the withheld document); *Students Against*

Genocide v. Dep't of State, 257 F.3d 828, 835 (D.C. Cir. 2001) (fact that government released some photographs did not provide a reason to question its "good faith in withholding the remaining photographs on national security grounds"); *Public Citizen v. Dep't of State*, 11 F.3d 198, 203 (D.C. Cir. 1993) (rejecting a "rule that would require an agency to release all related materials any time it elected to give the public information about a classified matter" because it "would give the Government a strong disincentive ever to provide its citizenry with briefings on any kind of sensitive topics"). Therefore, Plaintiff cannot rely on ODNI's release of the declassified report to question its withholding of the classified report.

D. ODNI Has Demonstrated that the Entire Classified Assessment Must Be Withheld

Finally, Plaintiff asks this Court to disregard the standard of review it applies to agency declarations in FOIA cases – let alone cases relating to national security – when brushing aside the Gistaro Declaration's detailed explanation of how releasing a redacted version of the classified report reasonably could be expected to harm national security. Gistaro Decl. ¶¶ 20, 26, 30-34. For example, contrary to Plaintiff's suggestions otherwise, Mr. Gistaro, who has 27 years of experience as an intelligence officer, explains in detail how revealing even the number of pages contained in the classified report, or the amount of redacted text, would jeopardize the safety and effectiveness of the Intelligence Community's sources, methods, and activities.[4] *Id.* ¶¶ 31-32; *see also*

---

[4] For this reason, ODNI cannot describe what proportion of the information in the classified report is non-exempt and how it is dispersed throughout the document, without harming national security. *Compare Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002) (to demonstrate that all reasonably segregable material has been released, "the agency is not required to provide so much detail that the exempt material would be effectively disclosed") *with* Pl.'s Mem. at 22, 23 (citing *Mead*, 566

Razsi Decl. ¶ 12 (saying that release of a redacted classified report, even one that only revealed the number of pages in the report, would make the Russian Government better able to estimate the relative strength and maturity of U.S. intelligence activities, including human intelligence and signal intelligence capabilities, thereby hindering ongoing and future intelligence activities and posing a serious threat to national security).

Moreover, Mr. Gistaro explained that classified information is interwoven with unclassified information throughout the classified report, and that release of a redacted classified report would "provid[e] the American public with no information not already available in the declassified report." Gistaro Decl. ¶¶ 31, 34; *see also* Razsi Decl. ¶ 12 (release of a redacted classified report would not provide the public with additional information regarding Russian interference in the 2016 election); *Mead*, 566 F.2d at 261 n.55 ("Since the focus of the FOIA is information, not documents as a whole, and not simply words which the Government has written down, it should be legitimate to consider the information content of the non-exempt material which a FOIA plaintiff seeks to have segregated and disclosed."). This is sufficient to demonstrate that ODNI cannot release a redacted version of the classified report. *Assassination Archives*, 334 F.3d at 58 n.3 (agency declaration adequately explained that no portion of a compendium on "Cuban personalities" could be released without threatening the disclosure of intelligence

---

F.2d at 261). *Mead* is also distinguishable because it involved documents withheld pursuant to the attorney-client and deliberative process privileges, where the agency's description of the documents suggested that they contained non-privileged content. 566 F.2d at 260-61. Moreover, other judges in this district have questioned whether more recent decisions of the D.C. Circuit have "relaxed" the segregability standard set forth in *Mead*. *See, e.g.*, *Soto v. U.S. Dep't of State*, 118 F. Supp. 3d 355, 369-70 (D.D.C. 2015) (citing, *inter alia*, *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106 (D.C. Cir. 2007), and *Johnson*, 310 F.3d 771).

sources and methods, because revealing even the number of names contained in the document would "reveal CIA interest" and "the extent of the U.S. intelligence collection effort directed at Cuba in the 1960s"); *Larson*, 565 F.3d at 863 ("The CIA concluded that no meaningful information could be segregated from the cables for release.").

Plaintiff provides no meaningful response to the detailed explanation in Mr. Gistaro's Declaration, other than its bare assertion that Mr. Gistaro's conclusions are "implausible." Pl.s' Mem. at 23. But Plaintiff's speculation does not provide a basis for this Court to question Mr. Gistaro's reasoned opinion regarding potential harms to the national security.[5] *E.g.*, *Larson*, 565 F.3d at 864 ("Minor details of intelligence information may reveal more information than their apparent insignificance suggests because, much like a piece of jigsaw puzzle, each detail may aid in piecing together other bits of information even when the individual piece is not of obvious importance in itself.") (citation omitted)); *Sims*, 471 U.S. at 178 (cautioning that "[w]hat may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context") (citation

[5] Therefore, the Court should not review the classified report *in camera* on the theory that "it can't hurt." *Larson*, 565 F.3d at 870 (quotation omitted) (holding that the district court did not abuse its discretion in declining to view the withheld documents *in camera*). *In camera* review is neither necessary or appropriate where, as here, the agency has met its burden to show that the entire contents of the classified report must be withheld pursuant to Exemptions 1 and 3, this position is not contradicted by other evidence in the record, and there is no evidence of agency bad faith. *Id*. (quotation omitted). Moreover, such inspection is "particularly a last resort in national security situations." *Id*. (quotation omitted). Finally, even if the amount of material contained in the declassified report was relevant to this Court's decision whether to conduct an *in camera* review, *see* Pl.'s Mem. at n.4, which it is not, Plaintiff has no basis for knowing how the amount of material contained in the declassified report compares to the amount of material in the classified report. In fact, as explained, *infra*, disclosure of such information could harm national security.

omitted)); *Ctr. for Nat'l Sec. Studies*, 331 F.3d at 928 (noting that "courts have relied on similar mosaic arguments in the context of national security").

Also unavailing is Plaintiff's argument that "extensive public debate" suggests that a redacted version of the classified report could be released without harming national security. Pl.'s Mem. at 24. The D.C. Circuit repeatedly has rejected similar arguments, especially where, as here, the requester is relying on pure speculation as to the contents of the withheld information. *See, e.g.*, *Elec. Privacy Info. Ctr. v. Nat'l Sec. Agency*, 678 F.3d 926, 933 (D.C. Cir. 2012) ("The fact that limited information regarding a clandestine activity has been released does not mean that all such information must be released."); *Students Against Genocide*, 257 F.3d at 835 ("The fact that some information resides in the public domain does not eliminate the possibility that further disclosures can cause harm to intelligence sources, methods and operations.") (quotation omitted).

Therefore, ODNI has demonstrated that release of a redacted version of the classified report would cause serious or exceptionally grave damage to U.S. intelligence efforts and national security. Gistaro Decl. ¶ 34.[6]

---

[6] If the Court finds that ODNI has not adequately demonstrated that the entire classified report must be withheld pursuant to Exemption 1 or Exemption 3, the Court should permit ODNI to submit a supplemental declaration (or examine the classified report *in camera*), rather than granting Plaintiff's motion for summary judgment. *See, e.g., Judicial Watch*, 715 F.3d at 944 (saying doubt as to whether document was properly classified "would merit a remand requiring an agency official to review the documents and file an additional affidavit, or, in rare cases, requiring the district court to review the documents *in camera*"); *Campbell*, 164 F.3d at 31 (remanding case for district court to review documents *in camera* or require the agency to provide a new declaration). This is especially true here, given the nature of the document at issue.

III. CONCLUSION

For the foregoing reasons, the Court should grant Defendant's Motion for Summary Judgment and deny Plaintiff's Cross-Motion for Summary Judgment.