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amended (codified at 50 U.S.C. § 3024). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(U) Classification of Declaration

3. (U) Section 1.1(a)(4) of E.O. 13526 provides that information may be classified only if unauthorized disclosure of the information reasonably could be expected to cause damage to U.S. national security and the original classification authority is able to identify or describe the damage. Section 1.2(a) of E.O. 13526 states that information shall be classified at one of three levels: TOP SECRET if its unauthorized disclosure reasonably could be expected to result in exceptionally grave damage to the national security; SECRET if its unauthorized disclosure reasonably could be expected to result in serious damage to the national security; and CONFIDENTIAL if its unauthorized disclosure reasonably could be expected to result in damage to the national security. Section 1.4 of E.O. 13526 lists the substantive categories of national security information, including: “(c) intelligence activities . . . intelligence sources or methods, or cryptology;” and (g) “vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security.” I have determined that the NSA information at issue in this case concerns one or more of these categories, specifically intelligence sources, methods, vulnerabilities and capabilities, and foreign activities of the United States. E.O. 13526, § 1.4. Based on my review of the NSA information at issue in this case, I have determined that the information is currently and properly classified at the TOP SECRET level pursuant to the provisions of E.O. 13526.

~~TOP SECRET//SI//ORCON//NOFORN~~

~~TOP SECRET//SI//ORCON//NOFORN~~

4. (U) In addition to classified information, this declaration also references Special Intelligence (SI), which is a subcategory of Sensitive Compartmented Information (SCI), for which the Director of National Intelligence (DNI) imposes additional safeguards and access requirements. At the beginning of each paragraph of this declaration, the letter(s) in parentheses designate(s) the degree of sensitivity of the information the paragraph contains. When used for this purpose, "U," "C," "S," and "TS" indicate, respectively, that the information is UNCLASSIFIED, or is classified CONFIDENTIAL, SECRET, or TOP SECRET. Where "SI" information is at issue in the paragraph, these letters will follow after the classification letters.

5. (U) Finally, in addition to the separate levels of classification markings defined by E.O. 13526, there are also dissemination controls appropriately associated with classified information. Dissemination control markings identify the expansion or limitation on the distribution of the information. Not Releasable to Foreign Nationals or NOFORN (NF) is an explicit foreign release marking used to indicate that the information may not be released in any form to foreign governments, foreign nationals, foreign organizations, or non-US citizens without permission of the originator of the information.

(U) Certain Redactions Taken in the Attorney General Semiannual Reports

6. (U) In its Order dated 4 February 2016, the U.S. District Court for the District of Columbia indicated that "because it is difficult to glean from the Hardy and Bradley declarations precisely what information DOJ is actually withholding from Documents 115-139 [the semiannual reports], ... this Court finds that it needs ... one or more declarations tailored to the government's reasons for making those redactions." Order at 8. The Court also requested a supplemental *Vaughn* index identifying which of the redactions relate to (1) "significant legal interpretations by the FISC;" (2) "its jurisdiction;" or (3) "its procedures." *Id.*

~~TOP SECRET//SI//ORCON//NOFORN~~

~~TOP SECRET//SI//ORCON//NOFORN~~

7. ~~(S//SI//NF)~~ NSA withheld from disclosure information in DOCUMENT 129, at page 51, pursuant to FOIA Exemptions 1 and 3. [REDACTED]

[REDACTED]

[REDACTED] The redacted material is responsive to the first category of this Court's order in that the material concerns a significant legal interpretation of the Foreign Intelligence Surveillance Court (FISC).

8. ~~(S//SI//NF)~~ I have reviewed the redacted information [REDACTED] [REDACTED] and determined that it is currently and properly classified at the TOP SECRET level in accordance with E.O. 13526 because the release of this information could reasonably be expected to cause exceptionally grave damage to national security. This information meets the criteria for classification set forth in Sections 1.4(c) and 1.4(g) of E.O. 13526 and is thus exempt from disclosure pursuant to FOIA Exemption 1, 5 U.S.C. § 552(b)(1). Exemption 1 provides that the FOIA protects from disclosure information that has been deemed classified "under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy," and that is in fact currently properly classified pursuant to such Executive Order. The current Executive Order that establishes such criteria is E.O. 13526. Section 1.1 of E.O. 13526 provides that information may be originally classified if: 1) an original classification authority is classifying the information; 2) the information is owned by, produced by or for, or is under the control of the Government; 3) the information falls within one or more of the categories of information listed in section 1.4 of the Executive Order; and 4) the

~~TOP SECRET//SI//ORCON//NOFORN~~

~~TOP SECRET//SI//ORCON//NOFORN~~

original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, and the original classification authority is able to identify or describe the damage.

9. ~~(TS//SI//OC/NF)~~ [REDACTED]

[REDACTED]

10. ~~(S//SI//NF)~~ [REDACTED]

[REDACTED]

~~TOP SECRET//SI//ORCON//NOFORN~~

~~TOP SECRET//SI//ORCON//NOFORN~~

[REDACTED]

11. ~~(TS//SI//NF)~~ [REDACTED]

[REDACTED]

12. ~~(S//SI//NF)~~ Information [REDACTED]

[REDACTED] is also protected from release by statute and is exempt from release based on FOIA Exemption 3, 5 U.S.C. § 552(b)(3). Exemption 3 provides that FOIA does not require the production of records that are:

“specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.”

~~TOP SECRET//SI//ORCON//NOFORN~~

~~TOP SECRET//SI//ORCON//NOFORN~~

5 U.S.C. § 552(b)(3).¹ Specifically, there are three Exemption 3 statutes that protect this information from public release: Section 6 of the NSA Act, 50 U.S.C. § 3605, 18 U.S.C. § 798, and 50 U.S.C. § 3024(i)(1).

13. ~~(S//NF)~~ The withheld information relates to a “function of the National Security Agency,” 50 U.S.C. § 3605. Indeed, such information relates to one of NSA’s primary functions, its SIGINT mission. [REDACTED]

[REDACTED] it follows that this information would disclose “information with respect to [NSA’s] activities” in furtherance of its SIGINT mission. 50 U.S.C. § 3605.

14. ~~(S//NF)~~ Additionally, this information is protected from release under 18 U.S.C. § 798, which protects from disclosure classified information concerning the communications intelligence activities of the United States, or information obtained by communications intelligence processes. [REDACTED]

[REDACTED] thereby falling within the scope of protection offered by this statute.

15. ~~(S//NF)~~ Finally, this information is protected from public release pursuant to Section 102A(i)(1) of the National Security Act, as amended, 50 U.S.C. § 3024(i)(1), which states that “[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” [REDACTED]

[REDACTED] Therefore, it falls squarely within the protection of this statute.

¹ The OPEN FOIA Act of 2009 was enacted on October 28, 2009, Pub. L. 111-83, 123 Stat. 2142, 2184; 5 U.S.C. § 552(b)(3)(B), after the applicable National Security Act provision was enacted, and therefore is not applicable to the analysis in this case.

~~TOP SECRET//SI//ORCON//NOFORN~~

~~TOP SECRET//SI//ORCON//NOFORN~~

SEGREGABILITY

16. (U) Document 129 has been reviewed for purposes of complying with FOIA's segregability provision, which requires the Government to release "any reasonably segregable portion of a record" after proper application of the FOIA exemptions. 5 U.S.C. § 552(b). Multiple agencies performed an intensive, line-by-line review of each document, redactions were surgically applied to protect information exempted from release under the FOIA, and all reasonably segregable, non-exempt information has been released.

17. (U) Further, in accordance with E.O. 13526, § 1.7(e), with respect to all of the redactions taken of NSA equities, it is my judgment that any information in that document that, viewed in isolation, could be considered unclassified, is nonetheless classified in the context of this case because it can reasonably be expected to reveal (directly or by implication) classified national security information concerning the timing or nature of intelligence activities, sources, and methods when combined with other information that might be available to the public or adversaries of the United States. In these circumstances, the disclosure of even seemingly mundane portions of the document, 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.

~~TOP SECRET//SI//ORCON//NOFORN~~

~~TOP SECRET//SI//ORCON//NOFORN~~

CONCLUSION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 18th day of March, 2016, pursuant to 28 U.S.C. § 1746.

David J. Sherman

Dr. David J. Sherman
Associate Director for Policy and Records,
National Security Agency

~~TOP SECRET//SI//ORCON//NOFORN~~