

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION  
CENTER,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civ. No. 1:13-cv-01961

**DECLARATION OF MARTHA M. LUTZ  
CHIEF OF THE LITIGATION SUPPORT UNIT  
CENTRAL INTELLIGENCE AGENCY**

I, MARTHA M. LUTZ, hereby declare and state:

1. I am the Chief of the Litigation Support Unit of the Central Intelligence Agency ("CIA" or "Agency"). I have held this position since October 2012. Prior to assuming this position, I served as the Information Review Officer ("IRO") for the Director's Area of the CIA for over thirteen years. In that capacity, I was responsible for making classification and release determinations for information originating within the Director's Area, which includes, among other offices, the Office of the Director of the CIA, the Office of Congressional Affairs, and the Office of General Counsel. I have held other administrative and professional positions within the CIA since 1989.

2. As the Chief of the Litigation Support Unit, I am responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to Section 1.3(c) of Executive Order No. 13526. Because I hold original classification authority at the TOP SECRET level, I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of Executive Order 13526 and applicable regulations.

3. Through the exercise of my official duties, I am familiar with this civil action and the underlying FOIA request submitted to the DOJ. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

**I. BACKGROUND**

4. Plaintiff submitted a FOIA request to the Department of Justice ("DOJ"), National Security Division in October 2013. In the course of processing the request, DOJ identified several documents which were referred to the National Security Agency ("NSA"). NSA, in turn, determined that one responsive document

in fact originated with the CIA. NSA referred the document to the CIA so that the CIA could evaluate whether any portions of the record were appropriate for release to the Plaintiff. As discussed below, CIA released portions of the document and determined that other information must be withheld pursuant to FOIA Exemptions b(1) and b(3).

5. The referred document is a declaration submitted by the then Director of Central Intelligence ("DCI") George G. Tenet to the Foreign Intelligence Surveillance Court ("FISC"). This declaration, hereinafter referred to as the "Tenet Declaration," was submitted by the CIA to the FISC in support of an application from DOJ to the court seeking authority for the installation and use of "pen register trap and trace" devices in furtherance of FBI investigations of terrorist suspects. The Tenet Declaration provides the CIA's terrorist threat assessment. Although CIA released some information from the Tenet Declaration, the Agency determined that other portions of that document remain currently and properly classified and, as such, are protected from disclosure under the FOIA pursuant to Exemptions (b) (1) and (b) (3).

## **II. FOIA EXEMPTIONS PROTECTING CLASSIFIED INFORMATION**

### **A. Exemption (b) (1)**

6. Exemption (b) (1) provides that the FOIA does not require the production of records that are: "(A) specifically

authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1). As explained below, the Exemption (b)(1) withholdings present in the responsive CIA document satisfy the procedural and the substantive requirements of Executive Order 13526.

7. Section 1.1(a) of Executive Order 13526 provides that information may be originally classified under the terms of this order if the following conditions are met: (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 U.S. Government; (3) the information falls within one or more of the categories of information listed in Section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage. The Executive Order also mandates that records be properly marked and that the records have not been classified for an improper purpose.

i. Procedural Requirements

8. Original classification authority. Pursuant to a written delegation of authority in accordance with Executive Order 13526, I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification decisions. I have determined that portions of the CIA record responsive to Plaintiff's request are currently and properly classified.

9. U.S. Government information. The information at issue is owned by the U.S. Government, was produced by or for the U.S. Government, and is under the control of the U.S. Government.

10. Classification categories in Section 1.4 of the Executive Order. Exemption (b)(1) is asserted in this case to protect information that concerns "intelligence activities (including covert action), intelligence sources or methods, or cryptology," pursuant to § 1.4(c) of the Executive Order.

11. Damage to the national security. I have determined that the CIA information contained in the responsive CIA record is classified TOP SECRET, because it constitutes information the unauthorized disclosure of which could reasonably be expected to result in exceptionally grave damage to the national security.

12. Proper purpose. With respect to the information for which Exemption (b)(1) is asserted in this case, I have

determined that this information has not been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.

13. Marking. The document is properly marked in accordance with Section 1.6 of the Executive Order.

**ii. Substantive Requirements**

14. I have reviewed the contents of the Tenet Declaration and determined that it contains information that is currently and properly classified.

15. Specifically, I have determined that this information was properly withheld because its disclosure could be expected to lead to the identification of intelligence sources, methods and activities of the CIA within the meaning of § 1.4(c) of Executive Order 13526. Disclosure of this information could reasonably be expected to result in exceptionally grave damage to national security and therefore that information is currently and properly classified at the TOP SECRET level. The danger to national security that could occur if the classified information were to be disclosed is described in Part III below.

**B. Exemption (b) (3)**

16. Exemption (b) (3) protects information that is specifically exempted from disclosure by statute. A withholding statute under Exemption (b) (3) must (A) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establish particular criteria for withholding or refer to particular types of matters to be withheld. 5 U.S.C. § 552(b)(3).

17. Here, the CIA has determined that Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(1) (the "National Security Act"), which provides that the Director of National Intelligence "shall protect intelligence sources and methods from unauthorized disclosure" also applies to the information for which Exemption (b)(1) was asserted.<sup>1</sup> As an initial matter, the National Security Act has been widely recognized to be a withholding statute under Exemption (b) (3) that refers to particular types of matters to be withheld, and "requires that the matters be withheld from the public in such a

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<sup>1</sup> Courts have recognized that not just the DNI, but also CIA and other agencies may rely upon the amended National Security Act to withhold records under FOIA. See, e.g., *Larson v. Dep't of State*, 565 F.3d at 862-63, 865; *Talbot v. CIA*, 578 F. Supp. 2d 24, 28-29 n.3 (D.D.C. 2008). Furthermore, the President specifically preserved CIA's ability to invoke the National Security Act to protect its intelligence sources and methods. See, e.g., Exec. Order No. 13470, § 1.6(d) (revising Exec. Order No. 12333 after the NSA was amended), 73 Fed. Reg. 45325 (July 30, 2008) (reprinted in 50 U.S.C. § 401 note) (requiring that the CIA Director "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure in accordance with guidance from the [DNI]").

manner as to leave no discretion on the issue." 5 U.S.C. § 552(b) (3).

18. In addition, the CIA has determined that Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. §403g (the "CIA Act"), also constitutes a withholding statute under Exemption b(3). Section 6 of the CIA Act provides that the CIA shall be exempted from the provisions of "any other law" (in this case, FOIA) which requires the publication or disclosure of, inter alia, the "functions of the CIA." Accordingly, under Section 6, the CIA is exempt from disclosing information relating to its core functions - which plainly include clandestine intelligence activities. The CIA Act, therefore, constitutes a federal statute which "establishes particular criteria for withholding or refers to types of matters to be withheld." 5 U.S.C. §552(b) (3). As this declaration has explained in detail, releasing the withheld information would require the CIA to disclose information about its core functions, an outcome the CIA Act expressly prohibits.

### **III. DAMAGE TO NATIONAL SECURITY**

19. During the course of this litigation, portions of the classified Tenet Declaration were publicly released. However, the Agency determined that other portions must be withheld because they contain information that would reveal classified intelligence sources, methods and activities.

20. Because revealing additional details about the withheld portions would disclose classified information, I am limited in my ability to describe the intelligence activities, sources and methods at issue and the harm that would be occasioned by their disclosure on the public record.<sup>2</sup> However, publicly I can acknowledge that the redacted information relates to specific intelligence sources, methods and activities utilized by the Agency to track and collect on terrorist threats. The redacted information also relates to the methods utilized by the Agency to corroborate and synthesize collected intelligence. The Tenet Declaration provides numerous, detailed pieces of intelligence information along with details as to how that information was obtained, processed and analyzed.

21. One of the major functions of the CIA is to gather intelligence from around the world for the President and other United States Government officials to use in policy making decisions. Intelligence collection lies at the heart of the Agency's counterterrorism mission. Protection of the Agency's sources and methods of collection is critical to ensuring that the mission of the Agency is fulfilled.

22. Here, terrorist organizations could utilize the intelligence and assessments contained in the Tenet Declaration

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<sup>2</sup> If the Court desires, the CIA is prepared to supplement this unclassified declaration with a classified declaration containing additional information about the withheld information that the CIA cannot file on the public record.

to identify the specific collection methods employed by the Agency. Terrorist groups could use this information to identify CIA intelligence sources and collection capabilities and, in turn, identify intelligence interests and/or exploit gaps in coverage. Indeed, even indirect references to information obtained by classified sources and methods must be protected. Terrorist organizations and other hostile groups have the capacity and ability to gather information from a myriad of public sources, analyze it, and determine the means and methods of intelligence collection from disparate details. This type of disclosure could defeat the specific collection efforts of the CIA and, more broadly, the Intelligence Community. Accordingly, even seemingly innocuous, indirect references to an intelligence method could have significant adverse effects when coupled with other publicly-available data. The disclosure of such information could cause exceptionally grave damage to the national security.

23. Additionally, I note that although the Tenet Declaration is over ten years old, the information contained within it is by no means obsolete. The type of tools the Agency has previously used to collect, vet, and synthesize information, and the intelligence obtained using those methods, tends to indicate the CIA's current collection efforts. Disclosures that could identify past or current intelligence sources and methods

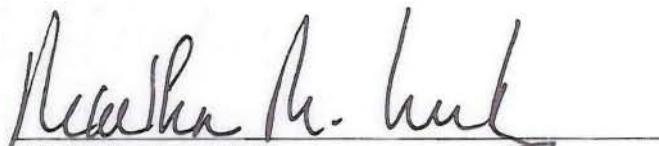
utilized by the CIA would reduce the Agency's ability to collect important intelligence information and create accurate threat reporting and analytical products for U.S. policy makers. Accordingly, disclosure of such methods could reasonably be expected to result in exceptionally grave damage to the national security

24. For the same reasons outlined above, in reviewing the Tenet Declaration, I have determined that the information constitutes protected intelligence sources, methods and activities. As such, the information at issue falls squarely within the scope of Section 102A(i)(1) of the National Security Act and Section 6 of the Central Intelligence Agency Act. Although no harm rationale is required to withhold information under these Exemption b(3) statutes, as noted above, the release of this information could significantly damage the ability of CIA and other members of the Intelligence Community to collect and analyze foreign intelligence information. Accordingly, all of the redacted information contained in the Tenet Declaration is exempt from disclosure pursuant to exemptions b(1) and b(3). Lastly, I have conducted a page-by-page, line-by-line review of this document and have determined that there is no additional segregable, non-exempt CIA information that can be released.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3<sup>rd</sup> day of October 2014.

  
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MARTHA M. LUTZ  
Chief  
Litigation Support Unit  
Central Intelligence Agency