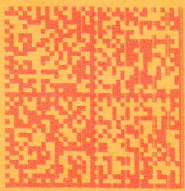


049J00743240

US OFFICIAL MAIL
\$0 1.300
01/23/2012

For Private Use
\$300 Penalty
Mailed From 22314
US POSTAGE



049J00743240
US OFFICIAL MAIL
\$0 1.300
01/23/2012
For Private Use
\$300 Penalty
Mailed From 22314
US POSTAGE

SSS
Private Use \$300

Lynnae D. Williams
460 L. Street, NW #823
Washington, DC 20001

istrict of Virginia
icams, U.S. Attorney's Building
on Avenue
irginia 22314-5794

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2012 JAN 23 P 1:00

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

_____))
 LYNNAE D. WILLIAMS,))
))
 Plaintiff,))
 v.))
))
 DAVID H. PETRAEUS,))
 Director, Central Intelligence Agency, *et al.*,))
))
 Defendants.))
 _____))

Civ. No. 1:12-cv-28 (LO/IDD)

EMERGENCY UNOPPOSED MOTION TO PERMANENTLY SEAL COMPLAINT AND
SUBSTITUTE REDACTED COMPLAINT

Pursuant to Local Civil Rule 5(C), David H. Petraeus and the Central Intelligence Agency (“CIA”), collectively, Defendants, move the Court for an Order (i) permanently placing under seal in a safe designated for information classified at the “CONFIDENTIAL” level Lynnae D. Williams’s complaint filed on January 10, 2012; (ii) permanently placing under seal and in a safe designated for information classified at the “CONFIDENTIAL” level the Declaration of Alan Simpson, dated January 20, 2012, (the “Simpson Declaration”), submitted herewith; and (iii) substituting the redacted version of the complaint, submitted as Exhibit A to the Simpson Declaration.¹ Defendants also respectfully request that the complaint be sealed while this motion remains pending. Plaintiff has informed the Government that she does not oppose this motion. The grounds for this motion are:

¹ Defendants have not yet been served in this action. This motion is being filed by counsel making a special appearance, and should not at all be construed as a waiver of service.

1) This is an action brought by *pro se* plaintiff Williams, a former CIA employee, concerning allegations related to the revocation of her security clearance and her termination by the CIA.

2) The complaint alleges, inter alia, that Defendants improperly shared plaintiff's medical information and improperly revoked her security clearance and terminated her because of an alleged disability.

3) As explained in the Simpson Declaration, the complaint identifies certain classified information.

4) If the classified information is revealed to the public, it could seriously harm the national security interests of the United States.

5) To prevent public disclosure of classified information, Defendants request that the Court enter an Order under Local Civil Rule 5 placing the originally-filed complaint and the Simpson Declaration permanently under seal and in a safe designated for information classified at the "CONFIDENTIAL" level.

6) Defendants have prepared a redacted complaint, which has been reviewed and approved by government officials for public disclosure, to substitute for the original complaint, and have attached this complaint as Exhibit A to the Simpson Declaration.

7) Plaintiff does not oppose this motion.

Accordingly, Defendants request that the Court enter an Order placing the complaint filed January 10, 2012, and the Simpson Declaration permanently under seal and in a safe designated for information classified at the "CONFIDENTIAL" level. Defendants also respectfully request that the complaint be sealed while this motion remains pending.

Dated: January 23, 2012

Respectfully submitted,

NEIL H. MACBRIDE
UNITED STATES ATTORNEY

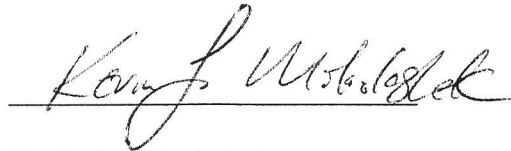
By: 

Kevin J. Mikolashek
Assistant United States Attorney
Justin W. Williams U. S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
(703) 299-3809 (direct)
(703) 299-3983 (fax)
kevin.mikolashek@usdoj.gov
Specially Appearing for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January, 2012, a true and correct copy of the EMERGENCY UNOPPOSED MOTION TO PERMANENTLY SEAL COMPLAINT AND SUBSTITUTE REDACTED COMPLAINT was mailed by first-class mail to:

Lynnae D. Williams
Plaintiff, Pro Se
460 L. St. NW, #823
Washington, DC 20001
202-577-6474



Kevin J. Mikolashek
Assistant United States Attorney
Justin W. Williams U. S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
(703) 299-3809 (direct)
(703) 299-3983 (fax)
kevin.mikolashek@usdoj.gov
Specially Appearing for Defendants

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2012 JAN 23 P 1:00

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

_____))
 LYNNAE D. WILLIAMS,))
))
 Plaintiff,))
))
 v.))
))
 DAVID H. PETRAEUS,))
 Director, Central Intelligence Agency, *et al.*,))
))
 Defendants.))
 _____))

Civ. No. 1:12-cv-28 (LO/IDD)

ATTACHMENT FILED EX PARTE
AND UNDER SEAL

MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY UNOPPOSED MOTION TO
PERMANENTLY SEAL COMPLAINT AND SUBSTITUTE REDACTED COMPLAINT

Pursuant to Local Civil Rule 5(C), David H. Petraeus and the Central Intelligence Agency (“CIA”), collectively, Defendants, hereby submit this memorandum of law in support of their Emergency Unopposed Motion to Permanently Seal Complaint and Substitute Redacted Complaint.

INTRODUCTION

This is an action brought by *pro se* plaintiff Williams, a former CIA employee, concerning allegations related to the revocation of her security clearance and her termination by the CIA. As part of its function, the CIA protects from disclosure information that is classified pursuant to Executive Order 13526, insofar as disclosure of that information could harm the national security of the United States. Only authorized individuals are permitted to have access to classified information, and public disclosure of classified information is prohibited. See generally United States v. Reynolds, 345 U.S. 1 (1953); El-Masri v. United States, 479 F.3d 296,

304 (4th Cir. 2007); Ellsberg v. Mitchell, 709 F.2d 51, 54 & n.6 (D.C.Cir. 1983); Black v. United States, 62 F.3d 1115, 1117-19 (8th Cir.1995).

The complaint, which was not reviewed by a government classification officer prior to its filing, has been determined to contain limited classified information. The complaint alleges, inter alia, that Defendants improperly shared plaintiff's medical information and improperly revoked her security clearance and terminated her because of an alleged disability. As set forth in the accompanying declaration of an agency classification official, Alan Simpson, (the "Simpson Declaration"), the complaint specifically reveals limited classified information.

To prevent public disclosure of this classified information, Defendants request that the complaint and the Simpson Declaration be permanently placed under seal and in safe designated for information classified at the "CONFIDENTIAL" level. Defendants also respectfully request that the complaint be sealed while this motion remains pending.

ARGUMENT

- I. The Complaint Filed January 10, 2012, And The Simpson Declaration Should be Placed Under Seal And In A Safe Designated for Information Classified at the "CONFIDENTIAL" Level Pursuant to Local Rule 5

With respect to the sealing of documents that would otherwise be placed onto the public record, the Fourth Circuit has held as follows:

[B]efore a district court may seal any court documents . . . it must (1) provide public parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and rejecting the alternatives.

Ashcraft v. Conoco, Inc., 218 F.3d 288, 302 (4th Cir. 2000). This Court has incorporated what has become known as the "Ashcraft factors" into its local rules. See LOC. CIV. R. 5.¹

¹ Local Rule 5(C) requires that the party moving to seal documents provide:

Docketing the motion to seal “reasonably in advance of deciding the issue” is sufficient to provide public notice. In re Knight Publishing Company, 743 F.2d 231, 235 (4th Cir. 1984). The first element of the *Ashcraft* analysis has therefore been satisfied.

With respect to the remaining Ashcraft factors, national security concerns warrant that the complaint and the Simpson Declaration be permanently placed under seal, as there are no other alternatives to prevent the disclosure of classified information. Cf. United States ex rel. Jack Permison v. Superlative Techs., 492 F. Supp. 2d 561, 564 (E.D.Va. 2007) (Ellis, J.) (“[S]ealing of court records is not warranted absent presence of factors sufficient to outweigh strong interest in public access, such as national security considerations”). Indeed, as set forth in the Simpson Declaration, the complaint filed on January 10, 2012, specifically identifies classified information, which, if revealed, could cause serious harm to the national security of the United States. There is therefore no alternative but to seal the complaint (and the Simpson Declaration submitted herewith, which identifies specifically the classified information in the complaint) from public disclosure.

In addition to national security concerns, sealing the complaint is appropriate because there is no “drastic” effect on the case as a result of sealing the complaint. Defendants have redacted the classified information from plaintiff’s complaint; the redacted version is attached as Exhibit A to the Simpson Declaration and may be substituted for the complaint. Therefore,

-
- (1) [a] non-confidential description of what is to be sealed; (2)[a] statement as to why sealing is necessary, and why another procedure will not suffice; (3)[r]eferences to governing case law; and (4)[u]nless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing.

The rule also provides that the moving party must provide a proposed order reciting “the findings required by governing case law to support the proposed sealing.”

because the “amended pleading supersedes the original pleading, rendering the original pleading of no effect,” no party would be prejudiced by permanently sealing the original complaint.

Young v. City of Mt. Ranier, 238 F.3d 567, 573 (4th Cir. 2001).

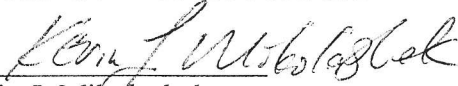
CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court enter an Order pursuant to Local Civil Rule 5 permanently placing the complaint filed January 10, 2012, and the Simpson Declaration under seal and in a safe designated for information classified at the “CONFIDENTIAL” level.

Dated: January 23, 2012

Respectfully submitted,

NEIL H. MACBRIDE
UNITED STATES ATTORNEY

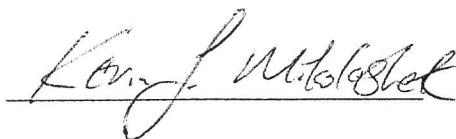
By: 
Kevin J. Mikolashek
Assistant United States Attorney
Justin W. Williams U. S. Attorney’s Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
(703) 299-3809 (direct)
(703) 299-3983 (fax)
kevin.mikolashek@usdoj.gov
Specially Appearing for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January, 2012, a true and correct copy of the MEMORANDUM OF LAW IN SUPPORT OF THE EMERGENCY UNOPPOSED MOTION TO PERMANENTLY SEAL COMPLAINT AND SUBSTITUTE REDACTED COMPLAINT and the proposed Order was mailed by first-class mail to:

Lynnae D. Williams
Plaintiff, Pro Se
460 L. St. NW, #823
Washington, DC 20001
202-577-6474

The Declaration in support of the motion has not been served upon the party above, because it includes classified information.



Kevin J. Mikolashek
Assistant United States Attorney
Justin W. Williams U. S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
(703) 299-3809 (direct)
(703) 299-3983 (fax)
kevin.mikolashek@usdoj.gov
Specially Appearing for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

RECEIVED

2012 JAN 23 P 1:00
CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

_____))
LYNNAE D. WILLIAMS,))
))
Plaintiff,))
))
v.))
))
DAVID H. PETRAEUS,))
Director, Central Intelligence Agency, *et al.*,))
))
Defendants.))
_____))

Civ. No. 1:12-cv-28 (LO/IDD)

ORDER

Having considered the Emergency Unopposed Motion to Permanently Seal Complaint And Substitute Redacted Complaint, the Memorandum and Declaration in support thereof, it is hereby

ORDERED that the Emergency Unopposed Motion to Permanently Seal Complaint And Substitute Redacted Complaint is **GRANTED**; and it is

FURTHER ORDERED that the complaint filed January 10, 2012, and the Simpson Declaration, dated January 20, 2012 (the “documents”), shall be permanently placed under seal and in a safe designated for information classified at the “CONFIDENTIAL” level, because: (i) the documents identify classified information which, if publicly disclosed, could harm the national security of the United States; (ii) there is no other alternative to placing the documents under seal that will prevent disclosure of classified information; (iii) an unclassified redacted complaint has been filed with this motion to substitute for the complaint; and (iv) Plaintiff does not oppose this request.

Dated: _____

UNITED STATES DISTRICT JUDGE