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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

DIANE ROARK,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No.: 6:12-CV-01354-MC

**REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Defendant the United States of America, by S. Amanda Marshall, United States Attorney for the District of Oregon, and through James E. Cox, Jr., Assistant United States Attorney for the District of Oregon, submits this reply brief in support of Defendant's motion for summary judgment.

I. INTRODUCTION

In her opposition to Defendant's motion for summary judgment, Plaintiff Diane Roark ("Plaintiff") acknowledges that the government is entitled to retain possession of some of the classified documents that were seized during the search of her residence. Nevertheless, she argues that the government's determination that other documents are classified is incorrect and that such documents – as well as unclassified documents protected by statute and/or governed by the terms of her non-disclosure agreement ("NDA") with her former employer the House Permanent Select Committee on Intelligence ("HPSCI") – must be returned to her. Plaintiff's arguments regarding documents in each of these categories are incorrect, and the government's continuing interest in the classified and/or protected information in these documents precludes return of the property to Plaintiff.

First, Plaintiff has failed to raise a dispute of material fact regarding the government's determination that certain documents contain classified information. Plaintiff argues that the government's classification determination is inconsistent because other documents about the same National Security Agency ("NSA") programs have been deemed unclassified. Plaintiff appears to assume that all documents referencing the same national security programs must all have the same classification level. But that is not the case. As one might expect, the classification level of a document depends on the specific information and the level of detail in that document. Furthermore, the government's classification determination is not subject to review. In this case, the government has provided detailed evidence that describes the documents in question and provides the basis for the classification level of those documents. Thus, the government has met its burden to show that these documents are classified documents in which the government has a continuing interest.

Plaintiff's argument in opposition to the government's retention of documents and notebooks containing information protected by the National Security Agency Act of 1959 ("NSAA") is that the NSA has a record of overreach in applying this designation to information. The government disputes Plaintiff's opinion, but that disagreement is immaterial because all of the unclassified documents at issue here include information which the NSAA itself specifically designates as protected information – the name(s) of NSA employees in non-public positions. *See* 50 U.S.C. § 3605.

Plaintiff's assertion that HPSCI has no basis to claim an interest in the property at issue also fails. Plaintiff does not – and cannot – dispute that her NDA with HPSCI covers classified and unclassified national security information as well as information received in executive session. The fact that Plaintiff executed a narrower NDA with the executive branch regarding Secure Compartmented Information ("SCI") does not relieve her of the obligations in the NDA she signed with her employer.

Plaintiff also devotes substantial argument to issues that are not material to this case. These immaterial issues include Plaintiff's view of the lawfulness and efficiency of NSA programs and the lawfulness of the criminal investigation which led to the seizure of her property. Plaintiff initially attempted to plead claims regarding these issues in her Complaint, but these claims were dismissed at the outset of the case. (Docket ("Dkt") # 35.) These issues have no bearing on the issue in this case – which is the government's continuing interest in protecting sensitive national security information.

Finally, Plaintiff requests that the Court "[r]eaffirm in part the Maryland District Court decision in the related Rule 41 (g) case of *JK. Wiebe et al. v. National Security Agency et al.* CA No. RDB-11-3245, 2012 WL 1670046 (D.Md. Sept. 14, 2012), by confirming that the National

Security Agency (NSA) may not refuse to return all of a person's personal property or computer and its contents on the grounds that one allegedly classified or unclassified but 'protected' document has been found among those possessions.” The government fully agrees that the Maryland court’s ruling in the parallel Rule 41(g) case was sound and that it should be adopted by this court as well. The government only seeks to retain classified or protected government information- not Plaintiff’s unclassified personal property on the computer. The only reason the government has not yet returned non-government information on Plaintiff’s computer is because the parties were not able to reach an agreement on return procedures, and the government did not want to unilaterally review and return material prior to a ruling from the Court.

In sum, the government has met its obligations to show that it has a continuing interest in the property it has not returned to Plaintiff, and the Court should grant the government’s motion for summary judgment.

II. ARGUMENT

A. The Scope of Plaintiff’s Claim.

1. Plaintiff no longer seeks the return of six items in the government’s possession (and a portion of a seventh).

Plaintiff no longer seeks the return of six documents (HC2, HC4, part of HC5, HC6, HC9, and HC21) and one CD (HC7) retained by the government from the 2007 search. (Dkt # 87 at p. 9.) She acknowledges that this property is executive branch material marked as classified or protected information that she “unintentionally packed” in her files.¹ (*Id.*) Thus, the remaining items subject to Plaintiff’s return of property claim are:

¹ While Plaintiff claims her possession of these documents was inadvertent, it was still a violation of government policy and of Plaintiff’s HPSCI NDA. *See* Executive Order (E.O.) 13526, Part 4 (providing that “[c]lassified information may not be removed from official premises without proper authorization”); Dkt # 81, Ex. 1 at p. 10 (“Removal of any classified

- the computer hard drive;
- 10 documents (identified as HC1, HC3, part of HC5, HC11-14, HC16, HC19, HC20);²
- and 13 appointment notebooks/day planners (identified as HC23-29; HC31-36).

(Dkt # 84, Ex. 3.)

2. The government does not possess any additional property from the 2007 search and seizure.

Although Plaintiff has withdrawn her claim for return of a few items in the government's possession, she claims that "some paper documents [] are known to be missing" and she "requests that the Court direct the Federal Bureau of Investigation . . . to ascertain what happened to these emails and to determine whether any other paper documents are missing." (Dkt No. 87 at pp. 8-9.) There is no basis for Plaintiff's request and it should be denied.

First, Plaintiff's allegation of missing documents is unsupported by any admissible evidence, such as a declaration or affidavit.

More importantly, Plaintiff fails to allege facts which would call into question the property inventory provided by the government. The only specific documents that Plaintiff alleges have not been accounted for are "a stack of emails with headers and footers removed." (Dkt # 87 at 9.) Plaintiff does not describe the stack of emails any further so it is possible that the documents are among the emails and faxes that the government has not returned (HC1, HC5,

document from the Committee's offices is strictly prohibited, except as provided by these rules."); *id.* at Ex. 4 at p. 3 ("I hereby agree to surrender to the HPSCI . . . upon my separation from the HPSCI staff, all information, material, or restricted data, which I hereby agree not to divulge, publish, or reveal by writing, word, conduct, or otherwise . . .").

² Like the documents to which Plaintiff has withdrawn her return of property claim, HC3 is also an "executive branch paper document" (a memorandum to the Commander, Naval Security Group) so it may have inadvertently have been left off Plaintiff's list of documents for which she withdrew her claim.

HC16, HC19, HC20).³ It is also possible that the electronic versions of these emails are among the emails on her computer (that the government has agreed to review for return).

In any event, the government has already provided evidence from the FBI regarding the property that is still in the government's possession. Laura Pino, the FBI agent serving as the custodian of Plaintiff's property, has declared that the only property still in the FBI's possession is the desktop computer and the documents listed in Exhibit 3 to her declaration. (Dkt # 84, ¶ 4.) The government is not aware of any property that was misplaced or lost since the time of the search and seizure.

Finally, although the government denies that it has misplaced any of Plaintiff's property, it is also not aware of any way to now verify whether any property was lost. The receipts from the seizure and from the returns of property do not have a page by page inventory of every document, so it is not possible to compare the receipts to identify whether there are pages that are not accounted for in the previous returns of property to Plaintiff.

3. There is no basis to grant Plaintiff's request for other forms of relief completely unrelated to her return of property claim.

In addition to requesting the return of the remaining property from the 2007 seizure, Plaintiff's motion for summary judgment includes requests for several other forms of relief, including requests that the Court:

- “[o]verturn NSA’s interpretation of the National Security Agency Act of 1959 (NSA Act) by forbidding invocation of this act . . . to block appeal at the Interagency Security Classification Appeals Panel or other appropriate venue, of NSA’s use of the FOR OFFICIAL USE ONLY designation to withhold unclassified information from the writer or the public”
- “[r]ule that withholding unclassified ‘protected’ material from citizens by any government body may be appealed to the Interagency Security Classification

³ HC16, 19 and 20 include emails that have been cut from full-sized pages. Email excerpts in HC17-18 and HC38 have been returned to Plaintiff.

Appeals Panel, just as withholding of classified material may be appealed, notwithstanding whether NSA Act or pre-publication agreements are invoked to block an appeal”

- permit discovery to allow “factual revelations opening [] search policies to public debate”

(Dkt # 87 at pp. 2-3.) There is no basis for granting these additional requests for relief.

Plaintiff’s only remaining claim in this action is for return of property under Federal Rule of Criminal Procedure 41(g). (Dkt # 35). These additional forms of relief are not for the return of the property at issue, nor are they necessary steps to returning any property to Plaintiff – a point Plaintiff seems to acknowledge. (Dkt #87 at p. 3, “Plaintiff does not seek damages but rather, *in addition to her property*, factual revelations opening these search policies to public debate”) (emphasis added).

B. Plaintiff Is Not Entitled to Return of the Remaining Paper Documents.

1. The government has met its burden to demonstrate that the classified Draft Op-Ed (HC11-13) should not be returned.

Although Plaintiff does not challenge the government’s retention of two classified paper documents (HC2 and HC4) that were in her files, she does contest the government’s retention of three copies of a draft Op-Ed that the government has demonstrated is classified at the SECRET/SI level. (Dkt # 80 at ¶¶ 12-13; Dkt # 87 at pp. 16-22.) None of Plaintiff’s arguments create a genuine dispute of material fact regarding the government’s right to retain this document.

As an initial matter, Plaintiff’s allegation that the government elevated the classification level of the document from SECRET in 2006 to TOP SECRET now is incorrect. (Dkt # 87 at p. 17.) In fact, when Plaintiff submitted the Op-Ed for prepublication review in 2006, NSA determined that the submission was classified at the TOP SECRET level. (Exhibit 1 attached

hereto.) Due to the passage of time, the document is currently classified at the SECRET/SI level. (Dkt # 80 at ¶¶ 12-13.)

Next, Plaintiff alleges inconsistencies between the classification of this document and other documents regarding NSA activities, such as the May 2006 *Baltimore Sun* article and an e-book published by Edward Loomis earlier this year entitled *NSA's Transformation: An Executive Branch Black Eye*. (Dkt # 87 at pp. 19-20.) But Plaintiff is wrong to assume that all sources of information about the same programs or activities must have the same classification level. The classification of each document depends on the specific information in that document. Plaintiff herself acknowledges that it is possible for the addition of even a small detail, such as a system name, to make an otherwise unclassified document classified. (Dkt # 87 at pp. 11-12.) Thus, there is nothing inconsistent about documents that contain different information about the same program or topics having different classification levels.

Plaintiff's remaining arguments contesting the classification of the document involve second-guessing and questioning the motives underlying the government's classification determination. (Dkt # 87 at pp. 21-22.) The attack on the government's motivation is unfounded, as demonstrated by the government's approval of publication of other documents regarding these NSA programs that did not contain classified or protected information. In fact, NSA approved under the prepublication review process two submissions by Maryland plaintiff Mr. Loomis – the aforementioned e-book and an article entitled *The Thomas Drake Case- An Untold Story*. Information about THIN THREAD was also released in the redacted version of the Office of the Inspector General of the Department of Defense Report *Requirements for the TRAILBLAZER and THINTHREAD Systems* (Dec. 15, 2004) released in 2011 by the Department of Defense, in coordination with NSA, in response to a FOIA request.

Furthermore, Plaintiff cannot substitute her own judgment about the classification of documents for that of the executive branch official who has been designated and trained as an original classification authority (“OCA”), in accordance with E.O. 13526. Nor, for that matter, can she overcome the government’s classification designation by submitting documents to her Maryland colleagues – all former government employees who no longer have access to classified information – for “classification reviews.” (Dkt # 87 at p. 14.) The executive branch is vested with the sole authority to classify documents. *See United States v. Marchetti*, 469 F.2d 1309, 1317 (4th Cir. 1972) (“[T]he process of classification is part of the executive function beyond the scope of judicial review.”); *United States v. Collins*, 720 F.2d 1195, 1198 n.2 (11th Cir. 1983) (“It is an Executive function to classify information, not a judicial one.”).

Of course, the government must still meet its burden to establish that a document is classified. But in this case it has done exactly that. Miriam P. – an OCA with the NSA – has reviewed the three copies of the draft op-ed and verified that the documents contain information classified at the SECRET level that contain Communications Intelligence (COMINT) information, which is technical and intelligence information derived from foreign communications signals and data.⁴ (Dkt # 80, ¶¶ 12-13.)

2. The documents containing NSAA Information are Protected From Disclosure.

Contrary to Plaintiff’s allegations, the NSA does not contend that the National Security Agency Act of 1959 “empower[s] NSA to withhold any and all unclassified documents” or “that the NSA Act gave the Agency unique freedom to designate as FOUO [For Official Use Only]

⁴ Notably, the evidence provided by the government in this case describing the content of the withheld documents and the basis for not returning them is even more detailed than that provided in the parallel Maryland return of property litigation in which the court granted the government’s motion for summary judgment regarding possession of the classified and NSAA information. (Exhibit 2 (Declaration of Steven T. from Maryland litigation) at ¶¶ 8-12.)

anything it d[oes] not wish to release.” (Dkt. # 87 at pp. 11. 15.) The NSA has, in fact, returned a number of documents that – although generally referencing NSA activities – did not include information protected by the NSAA. (See, e.g., HC8, HC15, HC17, HC18.)

Nonetheless, Plaintiff has not and cannot dispute that section 6 of the NSAA constitutes a statutory privilege which allows the NSA to protect sensitive unclassified information “with respect to the activities” or “of the persons employed” by the NSA. (Dkt. # 79 at p. 6.); *see also Lahr v. Nat’l Transpo. Safety Bd.*, 569 F.3d 964, 984-85 (9th Cir. 2009) (holding that NSAA information is information “specifically exempted from disclosure by statute” under FOIA Exemption 3). This privilege was most recently recognized in the parallel Maryland return of property case when the court held that “the Government has established a continuing interest in the NSAA information, and the Court cannot require the Government to disclose the NSAA information sought by the Petitioners.” *See Wiebe v. National Sec. Agency*, Civil Action No. RDB–11–3245, 2012 WL 1670046, *6 (D. Md. May 11, 2012).

Moreover, the government has met its burden to show that the NSAA applies to the 19 documents and notebooks retained by the government. The Declaration of Miriam P. establishes that these documents “each reference the name(s) of NSA employees in non-public positions with the Agency.” (Dkt # 80 at ¶¶ 15, 16.) Employee names is a category of information explicitly mentioned in 50 U.S.C. § 3605, so this is not a situation where the NSA is expanding application of the statute beyond its intended purpose, as Plaintiff seems to argue. Further, the one case cited by Plaintiff on this point, *Founding Church of Scientology of Wash. D.C., Inc. v. Nat’l Sec. Agency*, 610 F.2d 824, 831 (D.C. Cir. 1979), is distinguishable for that reason.

Plaintiff’s argument that the names of NSA employees do not constitute protected NSAA information also fails even if some of the employees named in Plaintiff’s appointment logs are

no longer employed by the agency. The names of former NSA employees are protected under the NSAA. *See Minier v. C.I.A.*, 88 F.3d 796, 800 (9th Cir. 1996) (upholding CIA's refusal to reveal whether it had formerly employed an individual who was no longer alive at the time of the request). And the fact that the identity of some former NSA employees is public knowledge hardly shows that the NSA has broadly waived any claim to protect information regarding the identities of former employees. Under NSA policy, the names of retirees are not automatically released under a FOIA or declassification review request. While the NSAA does not limit the length of time such protection applies to the names of current and former NSA employees whose names have not been officially acknowledged by the government in association with NSA, NSA has made the discretionary decision to release such names in documents that are at least 45 years old.

Finally, Plaintiff requests that the Court order the documents be returned with the NSAA information redacted. (Dkt # 87 at p. 31.) But Plaintiff provides no evidence to support her mere assertion that "NSA practices from her retirement and thereafter permit Plaintiff to retain FOUO at home, including that covered by the NSA Act." (Dkt # 87 at p. 31.) In fact that is not the case, and it is not reasonable to require NSA to redact NSAA information when Plaintiff had no right to possess documents with such protected information.

Plaintiff also does not provide any reason why the fact that she authored the documents makes a legal difference -- and that fact did not alter the analysis of the Maryland court. It is worth noting that the majority of the documents are appointment logs from Plaintiff's time as a government employee, not from her post-government career. There is nothing inequitable about prohibiting employees in sensitive positions from taking such information with them after they leave government employment -- even if the documents were authored by the employee.

3. Plaintiff’s HPSCI NDA entitles HPSCI to retain protected information.

In moving for summary judgment, the government also provided evidence that 15 of the paper documents in the government’s possession contained information governed by Plaintiff’s NDA with her employer, HPSCI. (Dkt # 81.) Plaintiff’s HPSCI NDA governed testimony given before the HPSCI in executive session as well as information protected by statute (such as classified information and NSAA information). (Dkt # 81, Ex, 4.)

Plaintiff does not dispute the authenticity of her HPSCI NDA, but she claims that there is a more recent “pre-publication agreement” that “did not restrict publication of unclassified information.” (Dkt. # 87 at p. 33.) Plaintiff may be referring to the Secure Compartmented Information (“SCI”) NDA that she signed on July 24, 2001. (Dkt # 79, Ex. 1.) The SCI NDA is indeed narrower than the HPSCI NDA in that it only governs SCI. But Plaintiff’s SCI NDA does not supersede her HPSCI NDA. The SCI NDA is an agreement Plaintiff signed with the executive branch of the government as a condition of obtaining access to SCI. (*Id.*) Plaintiff’s HPSCI NDA, on the other hand, is an agreement with her employer – HPSCI – in which she accepted obligations “as conditions precedent” for her “continuing employment or engagement with the HPSCI.” (Dkt # 81, Ex. 4 at p. 1.)

These conditions precedent include an agreement to be bound by the rules of the House and the HPSCI Rules of Procedure, to “never divulge, publish, or reveal by writing, word, conduct, or otherwise, either during [her] tenure with the HPSCI or anytime thereafter” classified information or information protected from disclosure by statute, and to “surrender to the HPSCI . . . upon [her] separation from the HPSCI staff” all “information, material, or restricted data” in the foregoing categories. (*Id.* at ¶¶ 2, 7, 13.)

Plaintiff further argues that the applicable HPSCI Rules of Procedure that should apply here are the rules from the 107th Congress, not the 106th Congress. (Dkt. # 87 at p. 33.) But the relevant sections of the HPSCI rules from the 107th Congress are identical to those of the 106th Congress. (*See* Exhibit 3, attached hereto.) And Plaintiff seems to concede the broad scope of those rules.

Lastly, Plaintiff challenges HPSCI's determination that certain documents contain information received in executive session (i.e., closed session). Plaintiff argues that Darren Dick, the declarant from HPSCI, does not provide a sufficient foundation for his assertion that the documents include executive session information. (Dkt. # 87 at p. 37.) But the foundation for Mr. Dick's assertion is not only that he is "familiar with the subject matter and testimony that HPSCI routinely receives in executive session." (Dkt # 81 at ¶ 3.) He also asserted that the documents included "HPSCI budget information the classified annex to an intelligence authorization act that the HPSCI adopted in executive session." (*Id.* at ¶ 8.)

Plaintiff also argues that it is "unworkable" and not "feasible" to treat HPSCI budget information as executive session material because HPSCI staffers have to be well-informed on the topic beforehand and prepare committee members for sessions and witnesses. (Dkt # 87, Att. 7.) This argument misses the point. HPSCI rules allow current employees to discuss and disclose executive session material to perform their jobs. (Dkt # 81, Ex. 1 at pp. 8-9.) The documents at issue here that involve HPSCI budget information are correspondence by Plaintiff after she left HPSCI employment, so it does not fall within any of these exceptions to non-disclosure. (Dkt # 81 at ¶ 8.)

C. The Government Is Entitled to Retain the Computer Hard Drive, But Is Prepared to Return Unclassified, Unprotected Information on It.

1. Plaintiff has failed to raise a dispute of material fact regarding the presence of classified information on the computer.

In moving for summary judgment, the government also presented evidence that four files on Plaintiff's computer contained information classified at the TOP SECRET/SI level. (Dkt # 80, ¶¶ 17, 18.) The files included information that involves intelligence activities (including covert action), intelligence sources and methods, or cryptology. (*Id.*)

In response, Plaintiff contends that the government has been inconsistent in classification of these files – documents regarding the NSA's THINTHREAD data collection program. As noted earlier, though, Plaintiff is wrong to assume that all sources of information about an NSA program or activity must have the same classification level.

Plaintiff and the four plaintiffs in the Maryland case sent many emails to one another about different issues related to NSA. This includes dozens, if not hundreds, of email exchanges about THINTHREAD in general and specifically about the THINTHREAD paper that the parties were drafting. Some versions of the paper and related email exchanges contain classified information while others do not, depending on which details were included in each specific version of the paper/e-mail exchange. Not all details about THINTHREAD are classified.

As noted by Plaintiff, NSA approved the release of unclassified and unprotected information about the THINTHREAD program in the manuscript subsequently published by Mr. Loomis as an e-book. Conversely, the logs of files/documents/objects provided to Thomas Drake lists approximately 100 copies of the THINTHREAD paper and/or related documents

withheld by the Government on the basis of containing information that was classified and/or exempt from release by statute.⁵

Thus, Plaintiff has failed to create a dispute of material fact regarding the classification of the electronic files from the computer. Plaintiff acknowledged in her SCI NDA (and appears to acknowledge in her brief) that such information is the property of the government and that she does not “possess any right, interest, title, or claim whatsoever to such information.” (Dkt. # 79, Ex. 1 at ¶ 8.)

2. The government is willing to return unclassified, unprotected information on the computer.

Plaintiff also challenges the government’s assertion that it has returned all property that does not contain classified or protected information. (Dkt. # 87 at p. 8.) Plaintiff argues this assertion is misleading because “the government has returned none of the requested electronic documents from her personal account on her computer hard drive.” (*Id.*) The government never suggested that every file on Plaintiff’s computer contained classified or protected information, nor has it suggested that it was not willing or lacked the resources to return files that do not contain government information to Plaintiff.

The government is willing and able to return such files to Plaintiff. The reason it has not done so to date is because the parties have not reached an agreement to conduct that review. In fact, when the government began to conduct such a review (based on the parties’ agreement to have the electronic files reviewed and returned before briefing the court on the legal issues, see

⁵ Plaintiff is also incorrect in claiming that the government labelled all THINTHREAD documents as unclassified in the government logs of documents withheld from return to the Maryland plaintiffs. (Dkt # 87 at p. 17.) Many of these documents were deemed classified, but the government’s log of withheld documents did not distinguish between classified information and unclassified NSAA information. Rather, both the classified and unclassified retained documents were labeled as “NSA protected information” in the logs.

Dkt # 57), Plaintiff objected to the review because it included a review for information protected under HPSCI's NDA with Plaintiff (and not solely for information belonging to executive branch agencies). (Dkt # 87 at p. 35.) Thus, it is not a lack of willingness or resources that has prevented this review from occurring to date.⁶

III. CONCLUSION

For the foregoing reasons, Plaintiff is not entitled to return of the property retained by the government. Thus, Defendant respectfully requests that the Court grant Defendant's motion for summary judgment, deny Plaintiff's motion for return of property, and dismiss this action with prejudice.

DATED this 31st day of December 2014.

Respectfully submitted,

S. AMANDA MARSHALL
United States Attorney
District of Oregon

/s/ James E. Cox, Jr.
JAMES E. COX, JR.
Assistant United States Attorney
Attorneys for Defendant

⁶ Additionally, there is no basis for a court order requiring the government to use Martin Peck's technology for any review of Plaintiff's computer. (Dkt # 87, at pp. 10-11, Dkt # 89.) The NSA is fully capable of conducting such a review. Furthermore, Plaintiff appears to be proposing a process wherein Mr. Peck's search technology determines whether a file is classified (rather than the government's method in which an executive branch OCA reviews the content of files which may be classified based on the presence of key term(s) in the files). Thus, Plaintiff's proposed process is also unacceptable because only the executive branch can make classification determinations. *See supra* part II.B.1.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply Brief in Support of Defendant's Motion for Summary Judgment** was placed in a postage prepaid envelope and deposited in the United States Mail at Portland, Oregon on December 31, 2014, addressed to:

Diane Roark
2000 N. Scenic View Dr.
Stayton, OR 97383

And was sent via email to the following email address:

gardenofeden@wvi.com

/s/ James E. Cox, Jr.
JAMES E. COX, JR.

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NATIONAL SECURITY AGENCY

FORT GEORGE G. MEADE, MARYLAND 20755-6000

24 October 2006

Mr. [REDACTED]
Publications Review Board
Central Intelligence Agency
Washington, DC 20505

Dear Mr. [REDACTED]

(U) This replies to your pre-publication appeal (PRB 13925-06), submitted on behalf of Diane Roark, a former Staff Director for the House Permanent Select Committee on Intelligence who had been granted access to Sensitive Compartmented Information by the Central Intelligence Agency. Ms. Roark is appealing the National Security Agency's (NSA) decision (PP-06-0750) to deny the release of certain information in Ms. Roark's document entitled "NSA Counter-Terrorism: Liberty and Security." NSA withheld the release of certain information in Ms. Roark's document because it contained classified and/or For Official Use Only (FOUO) information and Ms. Roark intended to publicly disseminate this document in her personal capacity.

(~~U//FOUO~~) I reviewed Ms. Roark's document, the Director of Policy's decision to deny the release of certain information he determined was classified and/or FOUO as highlighted and marked in his response to the pre-publication request, and Ms. Roark's appeal of the Director of Policy's decision. Additionally, NSA had its Original Classification Authority for the Terrorist Surveillance Program review Ms. Roark's document. Based on my review of all of this information, I have determined that the Director of Policy's determination that certain information, as highlighted in his letter to you, was classified SECRET//COMINT and TOP SECRET//COMINT//NOFORN and/or protected from public disclosure (i.e., FOUO) was appropriate. Accordingly, Ms. Roark's document cannot be publicly released unless the highlighted information is removed.

(U) The highlighted information containing a classification marking of SECRET//COMINT or TOP SECRET//COMINT//NOFORN is currently and properly classified as marked and for the reasons set forth in the Director of Policy's letter. This letter clearly explains why the information is classified, and no additional explanation is necessary.

(U) The remaining highlighted information that must be withheld is UNCLASSIFIED but marked FOR OFFICIAL USE ONLY, which means that it may be exempt from release to the public under the Freedom of Information Act (FOIA) provided one of the nine FOIA exemptions is applicable. Information that would be exempt from public information under the FOIA would also be withheld from release to the public if such release was sought through other means to include a pre-publication review.

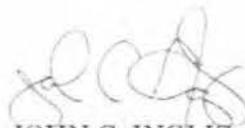
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~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

(U) In Ms. Roark's document, the highlighted information is FOUO because it reveals certain functions and activities of NSA, which are protected from public release pursuant to section 6 of the National Security Agency Act of 1959, Public Law 86-36 (50 U.S.C. § 402 note). Accordingly, this information, if requested under the FOIA, would be exempt from release pursuant to FOIA Exemption Three.

(U) Section 6 of the National Security Agency Act provides that “[n]othing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency, of any information with respect to the activities thereof, . . .” (emphasis added). By this language Congress expressed its finding that disclosure of any information relating to NSA activities is potentially harmful. The courts, when addressing requests for FOUO information under FOIA, have held that the protection provided by this statutory privilege is, by its very terms, absolute. *See, e.g., Linder v. NSA*, 94 F.3d 693 (D.C. Cir. 1996). Section 6 states unequivocally that, notwithstanding any other law, including the FOIA, NSA cannot be compelled to disclose any information with respect to its activities. *See Hayden v. NSA*, 608 F.2d 1381 (D.C. Cir. 1979). Further, NSA is not required to demonstrate specific harm to national security when invoking this statutory privilege, but only to show that the information relates to its activities. *Id.* To invoke this privilege, NSA must demonstrate only that the information sought to be protected falls within the scope of section 6. NSA's functions and activities are therefore protected from disclosure even though the information is unclassified.

(U) In her appeal, Ms. Roark had questions and concerns about unclassified information that is marked FOUO. Simply put, an individual can only have access to information designated as FOUO if a determination has been made that she has a valid need for such information in connection with the accomplishment of a lawful and authorized Government purpose. Given Ms. Roark's stated reasons for seeking FOUO information, which is public dissemination, she does not satisfy the criteria for access to such FOUO information. Should Ms. Roark seek additional information about the handling restrictions of information marked FOUO, she should refer to Appendix 3 to DoD 5200.1-R and the Under Secretary of Defense for Intelligence's memorandum entitled “Interim Information Security Guidance,” dated April 16, 2004, both of which are enclosed for Ms. Roark's review.


JOHN C. INGLIS
Deputy Director

2 Encls
a/s

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MARYLAND**

John K. Wiebe, et al.)	
)	
Plaintiff,)	
)	Civil No. 0011CV3245
v.)	
)	Judge Richard D. Bennett
National Security Agency, et al.)	
)	
Defendants)	
)	
)	
)	

**DECLARATION OF STEVEN T.¹,
SID DEPUTY CHIEF OF STAFF FOR SIGINT POLICY
AND CORPORATE ISSUES, NATIONAL SECURITY AGENCY**

I, Steven T., do hereby state and declare as follows:

Introduction and Summary

1. I am the Deputy Chief of Staff for SIGINT Policy and Corporate Issues for the Signals Intelligence Directorate (SID) of the National Security Agency (NSA), an intelligence agency within the Department of Defense. I am responsible for, among other things, protecting NSA Signals Intelligence (SIGINT) activities, sources, and methods against unauthorized disclosures. Under Executive Order No. 12333, 46 Fed. Reg. 59941 (1981), as amended on January 23, 2003, 68 Fed. Reg. 4075 (2003), and August 27, 2004, 69 Fed. Reg. 53593 (2004), and August 4, 2008, 73 Fed. Reg. 45325, SID is responsible for the collection, processing, and dissemination of SIGINT information for the foreign intelligence purposes of the United States. I have been

¹ Section 6 of the National Security Agency Act of 1959, 50 U.S.C. §402 note (Pub. L. No. 86-36) authorizes the National Security Agency to protect from public disclosure, among other categories of information, the names of its employees. Thus, the names of NSA employees will be referred to by first name, last initial. The Agency will provide the full name of any employee should the Court so require.

designated an original TOP SECRET classification authority under Executive Order (E.O.) 13,526, 75 Fed. Reg. 707 (Jan. 5, 2010), and Department of Defense Directive No. 5200.1-R, Information Security Program Regulation, 32 C.F.R. 159a.12 (2000).

2. My statements herein are based upon my personal knowledge of SIGINT collection and NSA operations, a review of the NSA information at issue, the information available to me in my capacity as the Deputy Chief of Staff for SID, and the advice of counsel.

3. In order to provide the necessary context for the discussion that follows, I will first describe NSA's origin and mission. The NSA was established by Presidential Directive in 1952 as a separately organized agency within the Department of Defense under the direction, authority, and control of the Secretary of Defense. NSA's foreign intelligence mission includes the responsibility to collect, process, analyze, produce, and disseminate SIGINT information for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c) the support of military operations (*See* E.O. 12333, section 1.7 (c), as amended).

4. In performing its SIGINT mission, NSA exploits foreign electromagnetic signals to obtain intelligence information necessary to the national defense, national security, or the conduct of foreign affairs. NSA has developed a sophisticated worldwide SIGINT collection network that acquires, among other things, foreign and international electronic communications. The technological infrastructure that supports the NSA's foreign intelligence information collection network has taken years to develop at a cost of billions of dollars and untold human effort. It relies on sophisticated collection and processing technology.

5. In order to allow NSA to successfully perform its SIGINT mission, its activities must be done in secrecy. Original classification is the initial determination that NSA information requires, in the interest of national security, protection against unauthorized disclosure. There

are three levels of classification that are based on the damage to national security that could be expected if the information were subject to unauthorized disclosure.

a. "TOP SECRET" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security;

b. "SECRET" shall be applied to information, the authorized disclosure of which reasonably could be expected to cause serious damage to the national security; and

c. "CONFIDENTIAL" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

6. In addition to classification, NSA information may also be Sensitive Compartmented Information (SCI), which is "information that not only is classified for national security reasons as Top Secret, Secret, or Confidential, but also is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods." 28 C.F.R. § 17.18(a). Because of the exceptional sensitivity and vulnerability of such information, these safeguards and access requirements exceed the access standards that are normally required for information of the same classification level. Specifically, this declaration references special intelligence (SI) also known as Communications Intelligence (COMINT), which is a subcategory of SCI. SI identifies SCI that was derived from exploiting cryptographic systems or other protected sources by applying methods or techniques, or from intercepted foreign communications.

7. As a TOP SECRET original classification authority pursuant to section 1.3 of Executive Order (E.O.) 13526 dated December 29, 2009 (75 Fed. Reg. 707) it is one of my responsibilities to confirm the classification of NSA SIGINT information and/or information impacting NSA equities. Through the exercise of my official duties, I have become familiar with

the current litigation arising out of a request by the plaintiffs for the return of their personal computers/hard disk drives (HDD), portable media, and hard copy documents that I have been informed were seized by the Federal Bureau of Investigation (FBI). I am aware that a forensic analysis has been conducted by Tony T., Special Agent, Associate Directorate for Security and Counterintelligence, NSA, on the content of the HDDs and portable media.

8. It is my understanding that following his forensic analysis, to include a key word search of each of the HDD's, Tony T. created a "document"² containing the results of the search for each HDD. I have reviewed each of the eleven (11) documents listed in the chart below, and based on my authority as a TOP SECRET classification authority have determined that each document contains information that is currently and properly classified, as reflected in the chart below, in accordance with E.O. 13526, and protected from release by statutes, specifically Section 6 of the National Security Agency Act of 1959, 50 U.S.C. §402 note (Pub. L. No. 86-36); 18 U.S.C. §798; and Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 30 U.S.C. §403-1(i)(1).

Item #	Description of Image	Plaintiff	Classification of Document
1	QWF2651B	Wiebe	TOP SECRET//SI
2	QWF26_52	Wiebe	TOP SECRET//SI
3	LL	Binney	TOP SECRET//SI
4	XXX	Loomis	TOP SECRET//SI
5	QHQB3	Drake	TOP SECRET//SI
6	QHQB4	Drake	TOP SECRET//SI
7	QHQB8_1	Drake	SECRET
8	QHQB10	Drake	SECRET
9	QHQB13	Drake	TOP SECRET//SI
10	QHQB14_1	Drake	TOP SECRET//SI
11	IBM VC009393	Drake	U//FOUO ³

² The information provided to me was identified by plaintiff and image name. Although described as a "document," some of the information I reviewed was an email, email attachment or a series of paragraphs that appear to be part of a longer paper or essay.

³ Information on this HDD is protected from release pursuant to the National Security Agency Act of 1959.

9. Each HDD referenced above is an Information System (IS) (i.e., any telecommunications and/or computer-related equipment) and must be protected at the classification level of the information stored on the IS. For instance, if TOP SECRET information is introduced to an UNCLASSIFIED IS, the IS must be considered TOP SECRET. Similarly, Information Storage Media (ISM) (e.g., diskettes, CD/DVD ROM discs) must be protected at the classification level of the information stored on the media, or the classification of the most restrictive data that can be accessed on the IS security domain in which the ISM has been used. (NSA Policy 6-22, "Label, Declassification, and Release of NSA/CSS Information Storage Media.") Therefore, each HDD is classified at the level indicated in the column on the far right of the above referenced chart.

10. It is my understanding that the FBI seized various documents/papers/Rolodex and index cards from plaintiffs Binney and Drake. Due to the volume of material seized, and pending the Court's rulings on certain legal issues, I have not conducted a full classification review of each and every piece of paper but can confirm the following:

Plaintiff	Information Protected by the NSA Act of 1959⁴	Classified Information	OGA Equity⁵
Binney	14 pages	39 pages	31
Drake	4510 pages	16 pages	0

11. I have been informed that the FBI seized a number of diskettes from the residence of plaintiff Drake. I have reviewed material printed from each, and confirm that each contains information protected by the National Security Agency Act of 1959.

⁴ The National Security Agency Act of 1959 protects from disclosure any information related to the organization or function of the Agency, to include information with respect to the activities thereof, or the names, title, salaries or number of persons. The pages referenced in this column include this type of information, as well as the possibility of classified information.

⁵ Some of the information presented to me for review clearly originated from another federal Agency or Department and is referred to herein as an "OGA" (other government agency). The NSA does not have the authority to agree to the release of this information absent the consent of the originator. I have been informed by the originator that this information has not been released to the general public.

Brand of Diskette	Document Title
Universal	<ul style="list-style-type: none"> • Drake_SID change
Memorex	<ul style="list-style-type: none"> • Comms Plan 7 May 2002.doc • Comms.contract • Basis_comms Plan 7 May 2002
Sony	<ul style="list-style-type: none"> • [Locaton]_Report.txt • JAVATIME drake_sqo_report.ppt

12. I have been informed that the FBI seized a number of disks/CD ROMS from the residence of plaintiff Binney. I have reviewed material printed from seven (7), and confirm that one contains TOP SECRET//SI information, one contains information protected by the National Security Agency Act of 1959, and one contains OGA information.

	Description of Media	Document Title
1	TDK IBM Floppy C3H15F2F2E2	[Title redacted] TOP SECRET//SI
2	Memorex CDRW S/N 0606051422954134	Contact List.csv, NSA Act of 1959
3	Memorex CDR 6143FI15191113LHA3	Info Superiority - Alberts & Garstka Dec 1999.ppt; OGA equity

13. All of the classified information described herein must be maintained in a facility designed to store classified information until such time as it is destroyed, in accordance with Executive Order 13526, NSA Policy 1-30, "Review of NSA/CSS Information for Public Dissemination," and Intelligence Community Directive Number 705, "Sensitive Compartmented Information Facilities."

14. In addition, the information described as protected by the National Security Agency Act of 1959 must be maintained in accordance with Agency regulations for the storage of protected information, until such time as the Agency agrees that it may be disclosed publicly or is destroyed.

15. Pursuant to the National Security Agency Act of 1959, as well as other authorities, NSA has the right to protect from disclosure classified as well as certain other categories of protected information. The intentional public release of properly classified information is in violation of federal criminal law.

16. There are four statutory/policy based procedures to request the release of Agency information, which include the following: a Freedom of Information Act (FOIA) request (5 USC §552), a Mandatory Declassification Request (MDR) (based on E.O. 13526), a Privacy Act (PA) Request (5 USC §552a), or a request through the Agency's Prepublication Review office (Agency Policy 1-30). Current and former Agency employees are required to submit a pre-publication request whenever disclosing official NSA/CSS information intended for publication, to include references to work responsibilities and/or job descriptions on resumes.

17. I have caused a check to be conducted in the Agency offices that would routinely respond to FOIA, MDR, PA and pre-publication requests, and none of the plaintiffs, except plaintiff Loomis have submitted a request for any of the classified information found in their residences. Mr. Loomis has a pending pre-publication request for a book that is currently being processed by the Agency.

18. Each NSA employee is required to sign a Security Agreement upon hiring and an Access Termination Agreement upon retirement or resignation. These documents impose upon each employee three lifetime obligations to (1) safeguard all protected information; (2) submit all information intended for publication and/or public dissemination for classification and prepublication review; and (3) to report any unauthorized disclosures of protected information. I have been advised that each of the plaintiffs have executed a Security Agreement.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: May 11, 2012 _____ Steven T.
Steven T.
Deputy Chief of Staff for
SIGINT Policy and Corporate Issues,
Signals Intelligence Directorate

147 Cong. Rec. H990-03, 2001 WL 273359 (Cong.Rec.)

Congressional Record --- House of Representatives
Proceedings and Debates of the 107th Congress, First Session
Tuesday, March 20, 2001

***H990** The SPEAKER pro tempore.

Under a previous order of the House, the gentlewoman from Hawaii (Mrs. MINK) is recognized for 5 minutes. (Mrs. MINK of Hawaii addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

PUBLICATION OF THE RULES OF THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE
107TH CONGRESS

The SPEAKER pro tempore.

Under a previous order of the House, the gentleman from Florida (Mr. GOSS) is recognized for 5 minutes.
Mr. GOSS.

Mr. Speaker, I am pleased to transmit herewith the Rules of Procedure for the Permanent Select Committee on Intelligence for the 107th Congress. The enclosed rules were adopted by the Committee, Thursday, March 1, 2001.

Pursuant to rule XI, clause 2(a)(2) of the Rules of the House of Representatives, I request that the enclosed Rules of Procedure be printed in the CONGRESSIONAL RECORD.

RULES OF PROCEDURE FOR THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

1. SUBCOMMITTEES

(a) Generally

(1) Creation of subcommittees and the working group shall be by majority vote of the Committee.

(2) Subcommittees and the working group shall deal with such legislation and oversight of programs and policies as the Committee may direct.

(3) Subcommittees and the working group shall be governed by these rules.

For purposes of these rules, any reference herein to the "Committee" shall be interpreted to include subcommittees and the working group, unless otherwise specifically provided.

(b) Establishment of Subcommittees

The Committee establishes the following subcommittees:

(1) Subcommittee on Human Intelligence, Analysis, and Counterintelligence;

(2) Subcommittee on Technical and Tactical Intelligence; and

(3) Subcommittee on Intelligence Policy and National Security.

For purposes of these rules, any reference herein to the "Committee" shall be interpreted to include subcommittees, unless otherwise specifically provided.

(c) Establishment of Working Group

(1) The Committee establishes the Working Group on Terrorism and Homeland Security (hereinafter referred to as the "working group"). For purposes of these rules, any reference to the "Committee" shall be interpreted to include the Working Group, unless otherwise specifically provided.

(2) The working group may not authorize or issue a subpoena.

(d) Subcommittee Membership

(1) Generally. Each Member of the Committee may be assigned to at least one of the three subcommittees and the working group.

(2) Ex Officio Membership. In the event that the Chairman and Ranking Minority Member of the full Committee do not choose to sit as regular voting members of one or more of the subcommittees, each is authorized to sit as an ex officio Member of the subcommittees or the working group and participate in the work of the subcommittees or the working group. When sitting ex officio, however, they-

- (A) shall not have a vote in the subcommittee or in the working group; and
- (B) shall not be counted for purposes of determining a quorum.

2. MEETING DAY

(a) Regular Meeting Day for the Full Committee

(1) Generally. The regular meeting day of the Committee for the transaction of Committee business shall be the first Wednesday of each month, unless otherwise directed by the Chairman.

(2) Notice Required. Such regular business meetings shall not occur, unless Members are provided reasonable notice under these rules.

(a) Regular Meeting Day for Subcommittees or Working Group

There is no regular meeting day for subcommittees or the working group.

3. NOTICE FOR MEETINGS

(a) Generally

In the case of any meeting of the Committee, the Chief Clerk of the Committee shall provide reasonable notice to every Member of the Committee. Such notice shall provide the time and place of the meeting.

(b) Definition

For purposes of this rule, "reasonable notice" means:

- (1) written notification;
- (2) delivered by facsimile transmission or regular mail, which is
 - (A) delivered no less than 24 hours prior to the event for which notice is being given, if the event is to be held in Washington, DC; or
 - (B) delivered no less than 48 hours prior to the event for which notice is being given, if the event is to be held outside Washington, DC.

(c) Exception

In extraordinary circumstances only, the Chairman may, after consulting with the Ranking Minority Member, call a meeting of the committee without providing notice, as defined in subparagraph (b), to Members of the Committee.

4. PREPARATIONS FOR COMMITTEE MEETINGS

(a) Generally

Designated Committee Staff, as directed by the Chairman, shall brief Members of the Committee at a time sufficiently prior to any Committee meeting in order to:

- (1) assist Committee Members in preparation for such meeting; and
- (2) determine which matters Members wish considered during any meeting.

(b) Briefing Materials

(1) Such a briefing shall, at the request of a Member, include a list of all pertinent papers, and such other materials, that have been obtained by the Committee that bear on matters to be considered at the meeting; and

(2) The staff director shall also recommend to the Chairman any testimony, papers, or other materials to be presented to the Committee at any meetings of the Committee.

5. OPEN MEETINGS

(a) Generally

Pursuant to Rule XI of the House, but subject to the limitations of subsection (b), Committee meetings held for the transaction of business, and Committee hearings, shall be open to the public.

(b) Exceptions

Any meeting or portion thereof, for the transaction of business, including the markup of legislation, or any hearing or portion thereof, shall be closed to the public, if:

(1) the Committee determines by record vote, in open session with a majority of the Committee present, that disclosure of the matters to be discussed may:

- (A) endanger national security;
- (B) compromise sensitive law enforcement information;
- (C) tend to defame, degrade, or incriminate any person; or
- (D) otherwise violate any law or Rule of the House.

(2) Notwithstanding paragraph (1), a vote to close a Committee hearing, pursuant to this subsection and House Rule XI shall be taken in open session-

- (A) with a majority of the Committee being present; or
- (B) pursuant to House Rule X, clause 11(d)(2), regardless of whether a majority is present, so long as at least two Members of the Committee are present, one of whom is a member of the Minority, and votes upon the motion.

(c) Briefings

All Committee briefings shall be closed to the public.

6. QUORUM

(a) Hearings

For purposes of taking testimony, or receiving evidence, a quorum shall consist of two Committee Members.

(b) Other Committee Proceedings

For purposes of the transaction of all other Committee business, other than the consideration of a motion to close a hearing as described in rule 5(b)(2)(B), a quorum shall consist of a majority of Members.

7. REPORTING RECORD VOTES

Whenever the Committee reports any measure or matter by record vote, the report of the Committee upon such measure or matter shall include a tabulation of the votes cast in favor of, and the votes cast in opposition to, such measure or matter.

8. PROCEDURES FOR TAKING TESTIMONY OR RECEIVING EVIDENCE

(a) Notice

Adequate notice shall be given to all witnesses appearing before the Committee.

(b) Oath or Affirmation

The Chairman may require testimony of witnesses to be given under oath or affirmation.

(c) Administration of Oath or Affirmation

Upon the determination that a witness shall testify under oath or affirmation, any Member of the Committee designated by the Chairman may administer the oath or affirmation.

(d) Interrogation of Witnesses

(1) Generally. Interrogation of witnesses before the Committee shall be conducted by Members of the Committee.***H991**

(2) Exceptions.

(A) The Chairman, in consultation with the Ranking Minority Member, may determine that Committee Staff will be authorized to question witnesses at a hearing in accordance with clause (2)(j) of House Rule XI.

(B) The Chairman and Ranking Minority Member are each authorized to designate Committee Staff to conduct such questioning.

(e) Counsel for the Witness

(1) Generally. Witnesses before the Committee may be accompanied by counsel, subject to the requirements of paragraph (2).

(2) Counsel Clearances Required. In the event that a meeting of the Committee has been closed because the subject to be discussed deals with classified information, counsel accompanying a witness before the Committee must possess the requisite security clearance and provide proof of such clearance to the Committee at least 24 hours prior to the meeting at which the counsel intends to be present.

(3) Failure to Obtain Counsel. Any witness who is unable to obtain counsel should notify the Committee. If such notification occurs at least 24 hours prior to the witness' appearance before the Committee, the Committee shall then endeavor to obtain voluntary counsel for the witness. Failure to obtain counsel, however, will not excuse the witness from appearing and testifying.

(4) Conduct of Counsel for Witnesses. Counsel for witnesses appearing before the Committee shall conduct themselves ethically and professionally at all times in their dealings with the Committee.

(A) A majority of Members of the Committee may, should circumstances warrant, find that counsel for a witness before the Committee failed to conduct himself or herself in an ethical or professional manner.

(B) Upon such finding, counsel may be subject to appropriate disciplinary action.

(5) Temporary Removal of Counsel. The Chairman may remove counsel during any proceeding before the Committee for failure to act in an ethical and professional manner.

(6) Committee Reversal. A majority of the members of the Committee may vote to overturn the decision of the Chairman to remove counsel for a witness.

(7) Role of Counsel for Witness.

(A) Counsel for a witness:

(i) shall not be allowed to examine witnesses before the Committee, either directly or through cross-examination; but

(ii) may submit questions in writing to the Committee that counsel wishes propounded to a witness; or

(iii) may suggest, in writing to the Committee, the presentation of other evidence or the calling of other witnesses.

(B) The Committee may make such use of any such questions, or suggestions, as the Committee deems appropriate.

(f) Statements by Witnesses

(1) Generally. A witness may make a statement, which shall be brief and relevant, at the beginning and at the conclusion of the witness' testimony.

(2) Length. Each such statements shall not exceed five minutes in length, unless otherwise determined by the

Chairman.

(3) Submission to the Committee. Any witness desiring to submit a written statement for the record of the proceedings shall submit a copy of the statement to the Chief Clerk of the Committee.

(A) Such statements shall ordinarily be submitted no less than 48 hours in advance of the witness' appearance before the Committee.

(B) In the event that the hearing was called with less than 24 hours notice, written statements should be submitted as soon as practicable prior to the hearing.

(g) Objections and Ruling

(1) Generally. Any objection raised by a witness, or counsel for the witness, shall be ruled upon by the Chairman, and such ruling shall be the ruling of the Committee.

(2) Committee Action. A ruling by the Chairman may be overturned upon a majority vote of the Committee.

(h) Transcripts

(1) Transcript Required. A transcript shall be made of the testimony of each witness appearing before the Committee during any hearing of the Committee.

(2) Opportunity to Inspect. Any witness testifying before the Committee shall be given a reasonable opportunity to inspect the transcript of the hearing, and may be accompanied by counsel to determine whether such testimony was correctly transcribed. Such counsel:

(A) shall have the appropriate clearance necessary to review any classified aspect of the transcript; and

(B) should, to the extent possible, be the same counsel that was present for such classified testimony.

(3) Corrections.

(A) Pursuant to Rule XI of the House Rules, any corrections the witness desires to make in a transcript shall be limited to technical, grammatical, and typographical.

(B) Corrections may not be made to change the substance of the testimony.

(C) Such corrections shall be submitted in writing to the Committee within 7 days after the transcript is made available to the witness.

(D) Any questions arising with respect to such corrections shall be decided by the Chairman.

(4) Copy for the Witness. At the request of the witness, any portion of the witness' testimony given in executive session shall be made available to that witness if that testimony is subsequently quoted or intended to be made part of a public record. Such testimony shall be made available to the witness at the witness' expense.

(i) Requests to Testify

(1) Generally. The Committee will consider requests to testify on any matter or measure pending before the Committee.

(2) Recommendations for Additional Evidence. Any person who believes that testimony, other evidence, or commentary, presented at a public hearing may tend to affect adversely that person's reputation may submit to the Committee, in writing:

(A) a request to appear personally before the Committee;

(B) a sworn statement of facts relevant to the testimony, evidence, or commentary; or

(C) proposed questions for the cross-examination of other witnesses.

(3) Committee's Discretion. The Committee may take those actions it deems appropriate with respect to such requests.

(j) Contempt Procedures

Citations for contempt of Congress shall be forwarded to the House, only if:

(1) reasonable notice is provided to all Members of the Committee of a meeting to be held to consider any such contempt recommendations;

(2) the Committee has met and considered the contempt allegations;

(3) the subject of the allegations was afforded an opportunity to state, either in writing or in person, why he or she should not be held in contempt; and

(4) the Committee agreed by majority vote to forward the citation recommendations to the House.

(k) Release of Name of Witness

(1) Generally. At the request of a witness scheduled to be heard by the Committee, the name of that witness shall not be released publicly prior to, or after, the witness' appearance before the Committee.

(2) Exceptions. Notwithstanding paragraph (1), the Chairman may authorize the release to the public of the name of any witness scheduled to appear before the Committee.

9. INVESTIGATIONS

(a) Commencing Investigations

(1) Generally. The Committee shall conduct investigations only if approved by the full Committee. An investigation may be initiated either:

(A) by a vote of the full Committee;

(B) at the direction of the Chairman of the full Committee, with notice to the Ranking Minority Member; or

(C) by written request of at least five Members of the full Committee, which is submitted to the Chairman.

(2) Full Committee Ratification Required. Any investigation initiated by the Chairman pursuant to paragraphs (B) and (C) must be brought to the attention of the full Committee for approval, at the next regular meeting of the full Committee.

(b) Conducting Investigations

An authorized investigation may be conducted by Members of the Committee or Committee Staff members designated by the Chairman, in consultation with the Ranking Minority Member, to undertake any such investigation.

10. SUBPOENAS

(a) Generally

All subpoenas shall be authorized by the Chairman of the full Committee, upon consultation with the Ranking Minority Member, or by vote of the Committee.

(b) Subpoena Contents

Any subpoena authorized by the Chairman of the full Committee, or the Committee, may compel:

(1) the attendance of witnesses and testimony before the Committee; or

(2) the production of memoranda, documents, records, or any other tangible item.

(c) Signing of Subpoenas

A subpoena authorized by the Chairman of the full Committee, or the Committee, may be signed by the Chairman, or by any Member of the Committee designated to do so by the Committee.

(d) Subpoena Service

A subpoena authorized by the Chairman of the full Committee, or the Committee, may be served by any person designated to do so by the Chairman.

(e) Other Requirements

Each subpoena shall have attached thereto a copy of these rules.

(f) Limitation

(1) The working group may not authorize nor issue a subpoena.

(2) A subpoena authorized and issued by the Committee shall not compel the attendance of a witness before the working group, or the production of memoranda, documents, records, or any other tangible item to the work-

ing group.

11. COMMITTEE STAFF

(a) Definition

For the purpose of these rules, "Committee Staff" or "staff of the Committee" means:

- (1) employees of the Committee;
- (2) consultants to the Committee;
- (3) employees of other Government agencies detailed to the Committee; or
- (4) any other person engaged by contract, or otherwise, to perform services for, or at the request of, the Committee.

(b) Appointment of Committee Staff

(1) Chairman's Authority. The appointment of Committee Staff shall be by the *H992 Chairman, in consultation with the Ranking Minority Member. The Chairman shall certify Committee Staff appointments to the Clerk of the House in writing.

(2) Security Clearance Required. All offers of employment for prospective Committee Staff positions shall be contingent upon:

- (A) the result of a background investigation; and
- (B) a determination by the Chairman that requirements for the appropriate security clearances have been met.

(C) RESPONSIBILITIES OF COMMITTEE STAFF

(1) Generally. The Committee Staff works for the Committee as a whole, under the supervision and direction of the Chairman of the Committee.

(2) Authority of the Staff Director.

(A) Unless otherwise determined by the Committee, the duties of Committee Staff shall be performed under the direct supervision and control of the staff director.

(B) Committee Staff personnel affairs and day-to-day Committee Staff administrative matters, including the security and control of classified documents and material, shall be administered under the direct supervision and control of the staff director.

(3) Staff Assistance to Minority Membership. The Committee Staff shall assist the Minority as fully as the Majority of the Committee in all matters of Committee business, and in the preparation and filing of supplemental, minority, or additional views, to the end that all points of view may be fully considered by the Committee and the House.

12. LIMIT ON DISCUSSION OF CLASSIFIED WORK OF THE COMMITTEE

(a) Prohibition

(1) Generally. Except as otherwise provided by these rules and the Rules of the House of Representatives, Members and Committee Staff shall not at any time, either during that person's tenure as a Member of the Committee or as Committee Staff, or anytime thereafter, discuss or disclose:

- (A) the classified substance of the work of the Committee;
- (B) any information received by the Committee in executive session;
- (C) any classified information received by the Committee for any source; or
- (D) the substance of any hearing that was closed to the public pursuant to these rules or the Rules of the House.

(2) Non-Disclosure in Proceedings.

(A) Members of the Committee and the Committee Staff shall not discuss either the substance or procedure of the work of the Committee with any person not a Member of the Committee or the Committee Staff in connection with any proceeding, judicial or otherwise, either during the person's tenure as a Member of the Committee, or of the Committee Staff, or at any time thereafter, except as directed by the Committee in accordance with the Rules of the House and these rules.

(B) In the event of the termination of the Committee, Members and Committee Staff shall be governed in these matters in a manner determined by the House concerning discussions of the classified work of the Committee.

(3) Exceptions.

(A) Notwithstanding the provisions of subsection (a)(1), Members of the Committee and the Committee Staff may discuss and disclose those matters described in subsection (a)(1) with

(i) Members and staff of the Senate Select Committee on Intelligence designated by the chairman of that committee;

(ii) the chairmen and ranking minority members of the House and Senate Committees on Appropriations and staff of those committees designated by the chairmen of those committees; and

(iii) the chairman and ranking minority member of the Subcommittee on Defense of the House Committee on Appropriations and staff of that subcommittee as designated by the chairman of that subcommittee.

(B) Notwithstanding the provisions of subsection (a)(1), Members of the Committee and the Committee Staff may discuss and disclose only that budget-related information necessary to facilitate the enactment of the annual defense authorization bill with the chairmen and ranking minority members of the House and Senate Committees on Armed Services and the staff of those committees designated by the chairmen of those committees.

(C) Notwithstanding the provisions of subsection (a)(1), Members of the Committee and the Committee staff may discuss with and disclose to the chairman and ranking minority member of a subcommittee of the House Appropriations Committee with jurisdiction over an agency or program within the National Foreign Intelligence Program (NFIP), and staff of that subcommittee as designated by the chairman of that subcommittee, only that budget-related information necessary to facilitate the enactment of an appropriations bill within which is included an appropriation for an agency or program within the NFIP.

(D) The Chairman may, in consultation with the Ranking Minority Member, upon the written request to the Chairman from the Inspector General of an element of the Intelligence Community, grant access to Committee transcripts or documents that are relevant to an investigation of an allegation of possible false testimony or other inappropriate conduct before the Committee, or that are otherwise relevant to the Inspector General's investigation.

(E) Upon the written request of the head of an Intelligence Community element, the Chairman may, in consultation with the Ranking Minority Member, make available Committee briefing or hearing transcripts to that element for review by that element if a representative of that element testified, presented information to the Committee, or was present at the briefing or hearing the transcript of which is requested for review.

(F) Members and Committee Staff may discuss and disclose such matters as otherwise directed by the Committee.

(b) Non-Disclosure Agreement

(1) Generally. All Committee Staff must, before joining the Committee, agree in writing, as a condition of employment, not to divulge any classified information, which comes into such person's possession while a member of the Committee Staff, to any person not a Member of the Committee or the Committee Staff, except as authorized by the Committee in accordance with the Rules of the House and these rules.

(2) Other Requirements. In the event of the termination of the Committee, Members and Committee Staff

must follow any determination by the House of Representatives, with respect to the protection of classified information received while a Member of the Committee or as Committee Staff.

(3) Requests for Testimony of Staff.

(A) All Committee Staff must, as a condition of employment, agree in writing, to notify the Committee immediately of any request for testimony received while a member of the Committee Staff, or at any time thereafter, concerning any classified information received by such person while a member of the Committee Staff.

(B) Committee Staff shall not disclose, in response to any such request for testimony, any such classified information, except as authorized by the Committee in accordance with the Rules of the House and these rules.

(C) In the event of the termination of the Committee, Committee Staff will be subject to any determination made by the House of Representatives with respect to any requests for testimony involving classified information received while a member of the Committee Staff.

13. CLASSIFIED MATERIAL

(a) Receipt of Classified Information

(1) Generally. In the case of any information that has been classified under established security procedures and submitted to the Committee by any source, the Committee shall receive such classified information as executive session material.

(2) Staff Receipt of Classified Materials. For purposes of receiving classified information, the Committee Staff is authorized to accept information on behalf of the Committee.

(b) Non-Disclosure of Classified Information

Generally. Any classified information received by the Committee, from any source, shall not be disclosed to any person not a Member of the Committee or the Committee Staff, or otherwise released, except as authorized by the Committee in accord with the Rules of the House and these rules.

14. PROCEDURES RELATED TO HANDLING OF CLASSIFIED INFORMATION

(a) Security Measures

(1) Strict Security. The Committee's offices shall operate under strict security procedures administered by the Director of Security and Registry of the Committee under the direct supervision of the staff director.

(2) U.S. Capitol Police Presence Required. At least one U.S. Capital Police officer shall be on duty at all times outside the entrance to Committee offices to control entry of all persons to such offices.

(3) Identification Required. Before entering the Committee's offices all persons shall identify themselves to the U.S. Capitol Police officer described in paragraph (2) and to a Member of the Committee or Committee Staff.

(4) Maintenance of Classified Materials. Classified documents shall be segregated and maintained in approved security storage locations.

(5) Examination of Classified Materials. Classified documents in the Committee's possession shall be examined in an appropriately secure manner.

(6) Prohibition on Removal of Classified Materials. Removal of any classified document from the Committee's offices is strictly prohibited, except as provided by these rules.

(7) Exception. Notwithstanding the prohibition set forth in paragraph (6), as classified document, or copy thereof, may be removed from the Committee's offices in furtherance of official Committee business. Appropriate security procedures shall govern the handling of any classified documents removed from the Committee's offices.

(b) Access to Classified Information by Members

All Members of the Committee shall at all times have access to all classified papers and other material received by the Committee from any source.

(c) Need-to-know

(1) Generally. Committee Staff shall have access to any classified information provided to the Committee on a strict "need-to-know" basis, as determined by the Committee, and under the Committee's direction by the staff director.***H993**

(2) Appropriate Clearances Required. Committee Staff must have the appropriate clearances prior to any access to compartmental information.

(d) Oath

(1) Requirement. Before any Member of the Committee, or the Committee Staff, shall have access to classified information, the following oath shall be executed:

I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service on the House Permanent Select Committee on Intelligence, except when authorized to do so by the Committee or the House of Representatives.

(2) Copy. A copy of such executed oath shall be retained in the files of the Committee.

(e) Registry.

(1) Generally. The Committee shall maintain a registry that:

(A) provides a brief description of the content of all classified documents provided to the Committee by the executive branch that remain in the possession of the Committee; and

(B) lists by number all such documents.

(2) Designation by the Staff Director. The staff director shall designate a member of the Committee Staff to be responsible for the organization and daily maintenance of such registry.

(3) Availability. Such registry shall be available to all Members of the Committee and Committee Staff.

(f) Requests by Members of Other Committees

Pursuant to the Rules of the House, Members who are not Members of the Committee may be granted access to such classified transcripts, records, data, charts, or files of the Committee, and be admitted on a non-participatory basis to classified hearings of the Committee involving discussions of classified material in the following manner:

(1) Written Notification Required. Members who desire to examine classified materials in the possession of the Committee, or to attend Committee hearings or briefings on a non-participatory basis, must notify the Chief Clerk of the Committee in writing.

(2) Committee Consideration. The Committee shall consider each such request by non-Committee Members at the earliest practicable opportunity. The Committee shall determine, by roll call vote, what action it deems appropriate in light of all of the circumstances of each request. In its determination, the Committee shall consider:

(A) the sensitivity to the national defense or the confidential conduct of the foreign relations of the United States of the information sought;

(B) the likelihood of its being directly or indirectly disclosed;

(C) the jurisdictional interest of the Member making the request; and

(D) such other concerns, constitutional or otherwise, as may affect the public interest of the United States.

(3) Committee Action. After consideration of the Member's request, the Committee may take any action it may deem appropriate under the circumstances, including but not limited to:

(A) approving the request, in whole or part;

(B) denying the request; or

(C) providing the requested information or material in a different form than that sought by the Member.

(4) Requirements for Access by Non-Committee Members.

Prior to a non-Committee Member being given access to classified information pursuant to this subsection, the requesting Member shall-

(A) provide the Committee a copy of the oath executed by such Member pursuant to House Rule XXIII, clause 13; and

(B) agree in writing not to divulge any classified information provided to the Member pursuant to this subsection to any person not a Member of the Committee or the Committee Staff, except as otherwise authorized by the Committee in accordance with the Rules of the House and these rules.

(5) Consultation Authorized. When considering a Member's request, the Committee may consult the Director of Central Intelligence and such other officials it considers necessary.

(6) Finality of Committee Decision.

(A) Should the Member making such a request disagree with the Committee's determination with respect to that request, or any part thereof, that Member must notify the Committee in writing of such disagreement.

(B) The Committee shall subsequently consider the matter and decide, by record vote, what further action or recommendation, if any, the Committee will take.

(g) Advising the House or Other Committees

Pursuant to Section 501 of the National Security Act of 1947 (50 U.S.C. s413), and not the Rules of the House, the Committee shall call to the attention of the House, or to any other appropriate committee of the House, those matters requiring the attention of the House, or such other committee, on the basis of the following provisions:

(1) By Request of Committee Member. At the request of any Member of the Committee to call to the attention of the House, or any other committee, executive session material in the Committee's possession, the Committee shall meet at the earliest practicable opportunity to consider that request.

(2) Committee Consideration of Request. The Committee shall consider the following factors, among any others it deems appropriate:

(A) the effect of the matter in question on the national defense or the foreign relations of the United States;

(B) whether the matter in question involves sensitive intelligence sources and methods;

(C) whether the matter in question otherwise raises serious questions affecting the national interest; and

(D) whether the matter in question affects matters within the jurisdiction of another Committee of the House.

(3) Views of Other Committees. In examining such factors, the Committee may seek the opinion of Members of the Committee appointed from standing committees of the House with jurisdiction over the matter in question, or submissions from such other committees.

(4) Other Advice. The Committee may, during its deliberations on such requests, seek the advice of any executive branch official.

(h) Reasonable Opportunity to Examine Materials

Before the Committee makes any decision regarding any request for access to any classified information in its possession, or a proposal to bring any matter to the attention of the House or another committee, Members of the Committee shall have a reasonable opportunity to examine all pertinent testimony, documents, or other materials in the Committee's possession that may inform their decision on the question.

(i) Notification to the House

The Committee may bring a matter to the attention of the House when, after consideration of the factors set forth in this rule, it considers the matter in question so grave that it requires the attention of all Members of the House, and time is of the essence, or for any reason the Committee finds compelling.

(j) Method of Disclosure to the House

(1) Should the Committee decide by roll call vote that a matter requires the attention of the House as described in subsection (i), it shall make arrangements to notify the House promptly.

(2) In such cases, the Committee shall consider whether:

(A) to request an immediate secret session of the House (with time equally divided between the Majority and the Minority); or

(B) to publicly disclose the matter in question pursuant to clause 11(g) of House Rule X.

(k) Requirement to Protect Sources and Methods

In bringing a matter to the attention of the House, or another committee, the Committee, with due regard for the protection of intelligence sources and methods, shall take all necessary steps to safeguard materials or information relating to the matter in question.

(l) Availability of Information to Other Committees

The Committee, having determined that a matter shall be brought to the attention of another committee, shall ensure that such matter, including all classified information related to that matter, is promptly made available to the chairman and ranking minority member of such other committee.

(m) Provision of Materials

The Director of Security and Registry for the Committee shall provide a copy of these rules, and the applicable portions of the Rules of the House of Representatives governing the handling of classified information, along with those materials determined by the Committee to be made available to such other committee of the House or Member (not a Member of the Committee)

(n) Ensuring Clearance and Secure Storage

The Director of Security and Registry shall ensure that such other committee or Member (not a Member of the Committee) receiving such classified materials may properly store classified materials in a manner consistent with all governing rules, regulations, policies, procedures, and statutes.

(o) Log

The Director of Security and Registry for the Committee shall maintain a written record identifying the particular classified document or material provided to such other committee or Member (not a Member of the Committee), the reasons agreed upon by the Committee for approving such transmission, and the name of the committee or Member (not a Member of the Committee) receiving such document or material.

(p) Miscellaneous Requirements

(1) Staff Director's Additional Authority. The staff director is further empowered to provide for such additional measures, which he or she deems necessary, to protect such classified information authorized by the Committee to be provided to such other committee or Member (not a Member of the Committee).

(2) Notice to Originating Agency. In the event that the Committee authorizes the disclosure of classified information provided to the Committee by an agency of the executive branch to a Member (not a Member of the Committee) or to another committee, the Chairman may notify the providing agency of the Committee's action prior to the transmission of such classified information.

15. LEGISLATIVE CALENDAR

(a) Generally

The Chief Clerk, under the direction of the staff director, shall maintain a printed calendar that lists:***H994**

(1) the legislative measures introduced and referred to the Committee;

(2) the status of such measures; and

(3) such other matters that the Committee may require.

(b) Revisions to the Calendar

The calendar shall be revised from time to time to show pertinent changes.

(c) Availability

A copy of each such revision shall be furnished to each Member, upon request.

(d) Consultation with Appropriate Government Entities

Unless otherwise directed by the Committee, legislative measures referred to the Committee shall be referred by the Chief Clerk to the appropriate department or agency of the Government for reports thereon.

16. COMMITTEE TRAVEL

(a) Authority

The Chairman may authorize Members and Committee Staff to travel on Committee business.

(b) Requests

(1) Member Requests. Members requesting authorization for such travel shall state the purpose and length of the trip, and shall submit such request directly to the Chairman.

(2) Committee Staff Request. Committee Staff requesting authorization for such travel shall state the purpose and length of the trip, and shall submit such request through their supervisors to the staff director and the Chairman.

(c) Notification to Members

(1) Generally. Members shall be notified of all foreign travel of Committee Staff not accompanying a Member.

(2) Content. All Members are to be advised, prior to the commencement of such travel, of its length, nature, and purpose.

(d) Trip Reports

(1) Generally. A full report of all issues discussed during any Committee travel shall be submitted to the Chief Clerk of the Committee within a reasonable period of time following the completion of such trip.

(2) Availability of Reports. Such report shall be:

(A) available for the review of any Member or Committee Staff; and

(B) considered executive session material for purposes of these rules.

(e) Limitations on Travel

(1) Generally. The Chairman is not authorized to permit travel on Committee business of Committee Staff who have not satisfied the requirements of subsection (d) of this rule.

(2) Exception. The Chairman may authorize Committee Staff to travel on Committee business, notwithstanding the requirements of subsections (d) and (e) of this rule-

(A) at the specific request of a Member of the Committee; or

(B) in the event there are circumstances beyond the control of the Committee Staff hindering compliance with such requirements.

(f) Definitions

For purposes of this rule the term "reasonable period of time" means:

(1) no later than 60 days after returning from a foreign trip; and

(2) no later than 30 days after returning from a domestic trip.

17. DISCIPLINARY ACTIONS

(a) Generally

The Committee shall immediately consider whether disciplinary action shall be taken in the case of any member of the Committee Staff alleged to have failed to conform to any Rule of the House of Representatives or to these rules.

(b) Exception

In the event the House of Representatives is:

(1) in a recess period in excess of 3 days; or

(2) has adjourned sine die; the Chairman on the full Committee, in consultation with the Ranking Minority Member, may take such immediate disciplinary actions deemed necessary.

(C) Available Actions

Such disciplinary action may include immediate dismissal from the Committee Staff.

(d) Notice to Members

All Members shall be notified as soon as practicable, either by facsimile transmission or regular mail, of any disciplinary action taken by the Chairman pursuant to subsection (b).

(e) Reconsideration of Chairman's Actions

A majority of the Members of the full Committee may vote to overturn the decision of the Chairman to take disciplinary action pursuant to subsection (b).

18. BROADCASTING COMMITTEE MEETINGS

Whenever any hearing or meeting conducted by the Committee is open to the public, a majority of the Committee may permit that hearing or meeting to be covered, in whole or in part, by television broadcast, radio broadcast, and still photography, or by any of such methods of coverage, subject to the provisions and in accordance with the spirit of the purposes enumerated in the Rules of the House.

19. COMMITTEE RECORDS TRANSFERRED TO THE NATIONAL ARCHIVES

(a) Generally

The records of the Committee at the National Archives and Records Administration shall be made available for public use in accordance with the Rules of the House of Representatives.

(b) Notice of withholding

The Chairman shall notify the Ranking Minority Member of any decision, pursuant to the Rules of the House of Representatives, to withhold a record otherwise available, and the matter shall be presented to the full Committee for a determination of the question of public availability on the written request of any Member of the Committee.

20. CHANGES IN RULES

(a) Generally

These rules may be modified, amended, or repealed by vote of the full Committee.

(b) Notice of Proposed Changes

A notice, in writing, of the proposed change shall be given to each Member at least 48 hours prior to any meeting at which action on the proposed rule change is to be taken.

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