

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS – CONNECTICUT and MAKE
THE ROAD NEW YORK,
Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES, U.S. CUSTOMS AND BORDER
PROTECTION, and U.S. DEPARTMENT OF
STATE,
Defendants.

Civil Action No.
3:17-cv-1061-RMS

**DECLARATION OF GREGORY M. KOCH,
CHIEF, INFORMATION MANAGEMENT OFFICE,
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**

I, Gregory M. Koch, declare as follows:

I. Introduction

1. I am the Chief of the Information Management Office (“IMO”), under the Chief Operating Officer for the Office of the Director of National Intelligence (“ODNI”). I have held this position since October 9, 2020. Prior to my current position, I held various senior and supervisory roles in the ODNI, including as Deputy Director and Acting Director of IMO, Chief of Classification Management, as well as Senior Associate General Counsel for litigation in the Office of General Counsel. In addition, I previously held other senior and supervisory roles in the Executive Branch and within the Intelligence Community (“IC”), including as Chief of Classification Management at the Central Intelligence Agency (“CIA”), as well as serving three years in the Executive Office of the President as Deputy Director (and Acting Director) of Access Management at the National Security Council (“NSC”). In total, I have spent over fifteen years in the U.S. Government handling and overseeing Freedom of Information Act (“FOIA”), classification, and declassification matters, and I am recognized as a FOIA and

classification/declassification subject matter expert. Prior to my U.S. Government experience, I was a civil litigation attorney in the State of New York. I earned a Juris Doctorate degree from St. John's University School of Law, and a Bachelor of Arts degree in Political Science from the State University of New York at Binghamton.

2. As part of my current duties, I am responsible for facilitating the implementation of information management-related Executive orders, laws, regulations, and ODNI policy. This function entails controlling information throughout its life cycle and includes the areas of records management, classification management and declassification, prepublication and disclosure, and responding to requests under the FOIA and the Privacy Act. In my current capacity, I administer and manage ODNI's Classification Management and Records Management programs, which, among other things, establish and implement ODNI's classification and markings policies through the creation of directives and security classification guides, in collaboration with subject matter experts.

3. Under a written delegation of authority by the Director of National Intelligence ("DNI") pursuant to Executive Order 13526, *Classified National Security Information*, I hold original classification authority at the "TOP SECRET" level. See Exec. Order No. 13526 § 1.3(c), 75 Fed. Reg. 707, 708 (Dec. 29, 2009) ("E.O. 13526"). I am authorized, therefore, to make original classification and declassification decisions for intelligence information up to and including the TOP SECRET level. In my current position, I am the final decision-making authority regarding the initial processing of FOIA requests for ODNI. I am also responsible for the classification review of ODNI documents and information that may be the subject of court proceedings, information provided to the Congress, or public

requests for information under the FOIA, 5 U.S.C. § 552, as amended, as well as the Privacy Act of 1974, 5 U.S.C. § 552a, as amended.

4. Through the exercise of my official duties, I have become familiar with the above-captioned civil action and the underlying FOIA request. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

5. I submit this declaration in support of the Government's Motion for Summary Judgment. The purpose of this declaration is to explain and justify withholdings under FOIA Exemptions 1 and 3. *See* 5 U.S.C. §§ 552(b)(1), (3).

II. RESPONSIBILITIES AND AUTHORITIES OF THE DIRECTOR OF NATIONAL INTELLIGENCE

6. Congress created the position of the DNI in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1011(a) and 1097, 118 Stat. 3638, 3643-62, 3698-99 (2004) (amending Sections 102 through 104 of Title 1 of the National Security Act of 1947). The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. 50 U.S.C. §§ 3001-3234. Subject to the authority, direction and control of the President, the DNI serves as the head of the IC, and as the principal adviser to the President, the NSC, and the Homeland Security Council ("HSC") for intelligence matters related to the national security. 50 U.S.C. §§ 3023(b)(1), (2). The National Security Act also created the ODNI. *Id.* § 3025(a). The function of the ODNI is to assist the DNI in carrying out her duties and responsibilities under the National Security Act and other applicable laws, and to carry out such other duties as may be prescribed by the President or by law. *Id.* § 3025(b).

7. The responsibilities and authorities of the DNI include ensuring that national intelligence is provided to the President, heads of the departments and agencies of the Executive

Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and Congress. *Id.* § 3024(a)(1). The DNI is charged with providing guidance to the IC; determining “the requirements and priorities” of the IC; and managing and directing the “tasking of, collection, analysis, production, and dissemination of national intelligence by elements of the” IC. *Id.* § 3024(f)(1)(A). The DNI’s other duties include coordination between elements of the IC and the intelligence or security services of foreign governments or international organizations on intelligence matters, and monitoring the implementation and execution of the National Intelligence Program. See, e.g., *id.* §§ 3024(c), (k), (n).

8. The DNI is statutorily required to “protect intelligence sources and methods from unauthorized disclosure.” *Id.* § 3024(i)(1). Consistent with this responsibility, the DNI establishes and implements guidelines for the IC regarding the classification of information under applicable law, Executive orders, or other Presidential directives, and for access to and dissemination of intelligence. *Id.* §§ 3024(i)(2)(A), (B). Similarly, Executive Order 12333, *United States Intelligence Activities*, as amended, mandates that the DNI “[s]hall protect, and ensure that programs are developed to protect, intelligence sources, methods, and activities from unauthorized disclosure.” Exec. Order 12333, § 1.3(b)(8), 46 Fed. Reg. 59941 (Dec. 4, 1981), as amended by Exec. Order No. 13470, 73 Fed. Reg. 45325, 453287 (July 30, 2008).

III. ADMINISTRATIVE HISTORY

9. Defendant, the U.S. Department of State (“State”), sent one document, the 60-day progress report required by Executive Order 13780, § 5(b) (“EO Report”), for consultation to ODNI, the National Security Agency (“NSA”), and the CIA.¹

¹ In order to respect the briefing schedule jointly submitted by the parties and adopted by the Court, ODNI is defending the withholdings of ODNI, CIA, and NSA. The CIA and the NSA are prepared to provide supplemental declarations if the Court requires additional justification of the withholdings of those agencies.

10. Because ODNI assists the DNI in carrying out her duties and responsibilities as the head of the IC and the principal adviser to the President, the NSC, and the HSC for intelligence matters related to the national security, many of ODNI's records include information from other agencies who contribute to the all-source intelligence often provided by the DNI to policymakers, and many of ODNI's equities are likewise included in other agency's materials.

11. When IMO receives a FOIA referral or consultation from another agency, it determines whether the documents contain information that is exempt from disclosure. 5 U.S.C. §§ 552(a)(6)(B)(iii).

12. I have determined that portions of the EO Report contain ODNI equities which are exempt from disclosure under the FOIA pursuant to Exemptions 1 and 3.

13. Subject matter experts and original classification authorities at both the CIA and the NSA have identified agency equities in the EO Report that are exempt from disclosure under the FOIA pursuant to Exemptions 1 and 3.

IV. WITHHOLDINGS

14. As noted above, ODNI, CIA, and NSA reviewed the EO Report. The information ODNI is withholding reveals descriptions of data sources, including categories of intelligence holdings and types of checks, that the IC uses to provide classified vetting support to adjudicative agencies (such as the Department of Homeland Security ("DHS") and the U.S. Department of State) as part of the national Vetting Center-facilitated process. This information is properly withheld under FOIA Exemptions 1 and 3.

15. Additionally, the CIA and the NSA have identified their agency's equities in the EO report and determined that the information is properly withheld under FOIA Exemptions 1 and 3.

Exemption 1

16. FOIA Exemption 1 provides that the FOIA does not require the production of records that are: “(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.” 5 U.S.C. § 552(b)(1). E.O. 13526 establishes such classification criteria.

17. E.O. 13526 provides that information may be originally classified if: “(1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the United States Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security ... and the original classification authority is able to identify or describe the damage.” E.O. 13526 § 1.1(a).

18. E.O. 13526 further provides that information may not be considered for classification unless it falls within one or more of eight specifically enumerated categories of information and its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security. *Id.* § 1.4.

19. I have reviewed the ODNI equities in this document and have determined that each withholding under Exemption 1 is proper and consistent with E.O. 13526. As an original classification authority, I have determined that the information withheld under Exemption 1 involves ODNI equities and is currently and properly classified at the SECRET level, and that the unauthorized disclosure of the information could reasonably be expected to result in at least serious damage to the national security. Specifically, if released, the information would reveal what type of information the IC uses, and how, to provide classified vetting support to

adjudicative agencies (such as DHS and State) involving foreign applicants for entry into the United States. This information, if released, could be used by nefarious actors to obfuscate their identity and/or intentions and avoid detection by the U.S. Government, potentially gaining unlawful entry into the United States. Additionally, I have determined that the information falls within category § 1.4(c)² of E.O. 13526 because it concerns “intelligence activities (including covert action), [or] intelligence sources and methods.”

20. I have conferred with the CIA regarding its equities in this record and have been informed that a CIA officer with properly delegated original classification authority up to the TOP SECRET level has identified classified CIA information within the record. That CIA official confirmed that the information (i) is currently and properly classified at the SECRET level pursuant to Section 1.2 of E.O. 13526, and (ii) appears within portions of the record that bear appropriate classification markings.

21. I have also been informed by the CIA that this information falls under classification category § 1.4(c) of E.O. 13526 because it concerns “intelligence activities (including covert action), [or] intelligence sources and methods.” Further, I understand that its unauthorized disclosure reasonably could be expected to cause serious damage to the national security by exposing the specific role(s) that CIA plays in the vetting program. If disclosed, this information could provide the Nation’s adversaries with insight into the means by which the CIA supports other departments and agencies under the program, which they in turn could exploit to undermine both the vetting program and the CIA’s clandestine intelligence mission.

22. I have consulted with the NSA regarding its equities contained within the record and have been informed that an NSA designated original classification authority has

² Though the document is marked as being classified under section 1.4(a) of E.O. 13526, a proper authority at DHS has notified me that this marking was an error and the proper justification is 1.4(c).

reviewed each of these equities and confirmed that those parts withheld under Exemption 1 remain currently and properly classified as SECRET as provided in Section 1.2 of E.O. 13526. This information is classified because its disclosure could reasonably be expected to cause serious damage to the national security. I have also been informed by the NSA that this information falls under classification category § 1.4(c) of E.O. 13526 because it concerns “intelligence activities (including covert action), [or] intelligence sources and methods.”

23. Further, I understand that its unauthorized disclosure reasonably could be expected to cause serious damage to the national security by exposing the specific role(s) that NSA plays in the vetting program. If disclosed, this information could provide the Nation’s adversaries with insight into the means by which the NSA supports other departments and agencies under the program, which they in turn could exploit to undermine both the vetting program and the NSA’s foreign signals intelligence mission.

24. Based on my personal review of the information at issue, I have determined that each invocation of Exemption 1 is proper and consistent with E.O. 13526. As an original classification authority, I have determined that the information withheld under Exemption 1 that is responsive to Plaintiffs’ Request is currently and properly classified. Additionally, this information is owned by and is under the control of the U.S. Government. Furthermore, the information withheld under Exemption 1 falls under at least one classification category listed within E.O. 13526. Finally, I have determined that the unauthorized disclosure of the information withheld under Exemption 1 could reasonably be expected to result in at least serious damage to the national security. This information was therefore properly withheld under FOIA Exemption 1.

25. I also note that none of the information withheld under Exemption 1 has been classified in order to conceal violations of law, inefficiency or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of the national security.

Exemption 3

26. FOIA Exemption 3 protects information that is specifically exempted from disclosure by statute, if that statute “requires that the matters be withheld from the public in such a matter as to leave no discretion on the issue” or “establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3).

27. The National Security Act provides that “the [DNI] shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). This provision of the National Security Act qualifies as a withholding statute under FOIA Exemption 3.

28. I can confirm that the ODNI redactions in this case cover descriptions of data sources, including categories of intelligence holdings and types of checks, that the IC uses to provide classified vetting support to adjudicative agencies (such as DHS and State) as part of the national Vetting Center-facilitated process. In addition to the classified portions of the report containing ODNI equities, ODNI withheld unclassified portions pertaining to the same topic because, while unclassified, the disclosure of the information would reveal intelligence sources or methods. Revealing these pieces of the vetting support methodology may allow adversaries to take steps to avoid detection when applying for travel and immigration benefits.

29. Based on my personal review, I have determined that the information in this document withheld by ODNI under Exemption 3 constitutes intelligence methods, and therefore was properly withheld under Exemption 3 pursuant to 50 U.S.C. § 3024.

30. In conjunction with the National Security Act, Exemption 3 applies coextensively to the CIA information in this record that is protected from disclosure by Exemption 1 because, if exposed, that information could reveal specific intelligence sources and methods. No additional CIA equities were withheld solely under Exemption 3. Specifically, the information at issue describes the specific role(s) that CIA plays in the vetting program. Although no harm rationale is required under Exemption 3, disclosure of this information could provide the Nation's adversaries with insight into the means by which the CIA supports other departments and agencies under the program, which in turn could be exploited to undermine both the vetting program and the CIA's clandestine intelligence mission.

31. The portions of the EO Report containing NSA equities were jointly withheld under Exemptions 1 and 3. No NSA equities were withheld solely under Exemption 3. NSA's statutory privilege is set forth in Section 6 of the NSA Act of 1959, 50 USC 3605. Section 6 of the NSA Act provides that "[n]othing in this chapter or any other law...shall be construed to require the disclosure of the organization or any function of the National Security Agency, or any information with response to the activities thereof" By this language, Congress has expressed its finding that disclosure of any information relating to NSA activities is potentially harmful. The protection provided by this statute is absolute and does not require a showing of harm, nor that the information is classified.

32. I have consulted with the NSA regarding its equities contained within the record withheld under the NSA Act of 1959, 50 USC 3605. An NSA subject matter expert has reviewed each of the equities withheld under Exemption 3 and has confirmed that the information would disclose information relating to NSA activities and therefore is properly withheld under Exemption 3 pursuant to the NSA Act of 1959, 50 USC 3605.

V. SEGREGABILITY

33. Based on my careful review of the record on a line-by-line and page-by-page basis to identify reasonably segregable, non-exempt information, I have determined that there is no additional meaningful, non-exempt information that may be reasonably segregated and released without disclosing information that warrants protection under a FOIA exemption, and that ODNI has released all reasonably segregable information.

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

Executed this 25 day of January 2023.



Gregory M. Koch
Chief, Information Management Office