



U.S. Department of Justice

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Southern District of New York

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November 26, 2012

BY FACSIMILE

Hon. Colleen McMahon
United States District Judge
United States Courthouse
500 Pearl Street, Room 1350
New York, New York 10007

Re: ACLU v. Department of Justice
12 Civ. 794 (CM)

Dear Judge McMahon:

Plaintiffs have again submitted media reports to this Court that they characterize as establishing “the CIA’s use of armed drones to carry out targeted killings.” Letter dated November 20, 2012, at 1. Like plaintiffs’ earlier submissions, these sources do not establish official acknowledgement by the CIA.

Plaintiffs’ own letter describes numerous statements quoted in the media reports as being attributed to unidentified “‘officials,’ ‘administration officials,’ ‘high-ranking administration officials,’ and ‘senior administration officials.’” The law is clear that statements made by such unidentified sources do not constitute official disclosure. *See Wilson v. CIA*, 586 F.3d 171, 186 (2d Cir. 2009) (“the law will not infer official disclosure of information classified by the CIA from (1) widespread public discussion of a classified matter; (2) statements made by a person not authorized to speak for the Agency; or (3) release of information by another agency, or even by Congress”); *see also Halpern v. FBI*, 181 F.3d 279, 294 (2d Cir. 1999) (even information that has “entered the realm of public knowledge” remains properly classified and exempt from disclosure unless “the government has officially disclosed the specific information the requester seeks”). Similarly, plaintiffs rely on statements by former National Counterterrorism Center Director Michael Leiter, but the statements of a former agency official “cannot be deemed an ‘official’ act of the Agency.” *Wilson*, 586 F.3d at 189.

Plaintiffs also rely on press reporting of statements attributed to Deputy National Security Advisor John Brennan. In addition to the fact that Brennan is not a CIA official, plaintiffs have identified no statement by Brennan acknowledging the CIA’s use of armed drones for targeted killing. For example, although the letter suggests that Brennan was quoted discussing his “efforts to curtail the CIA’s primary responsibility for targeted killings,” the quoted language is not a direct quote from Brennan (nor, for that matter, does it mention drones). That a reporter may reach that conclusion, based in part on statements made by unidentified current and former

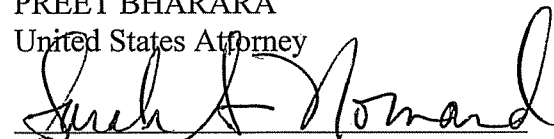
officials, *see* K. DeYoung, "A CIA veteran transforms U.S. counterterrorism policy," Wash. Post. (Oct. 24, 2012), does not meet the "strict test" for official disclosure. *Wilson*, 586 F.3d at 186. Classified information cannot be deemed officially disclosed for these purposes unless it "(1) is as specific as the information previously released, (2) matches the information previously disclosed, and (3) was made public through an official and documented disclosure." *Id.* Plaintiffs' press reports fall far short of this exacting standard.

Respectfully,

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