

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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AMERICAN CIVIL LIBERTIES UNION and	)	
AMERICAN CIVIL LIBERTIES UNION	)	
FOUNDATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 13-CV-9198 (AT)
	)	
NATIONAL SECURITY AGENCY,	)	
CENTRAL INTELLIGENCE AGENCY,	)	
DEPARTMENT OF DEFENSE,	)	
DEPARTMENT OF JUSTICE,	)	
DEPARTMENT OF STATE,	)	
	)	
Defendants.	)	
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**DECLARATION OF ALESIA Y. WILLIAMS**

I, Alesia Williams, do hereby declare the following to be true and correct:

1. I am the Chief of the Freedom of Information Act (“FOIA”) and Declassification Services Office (FAC2A) for the Defense Intelligence Agency (“DIA” or “Agency”), which is part of the Department of Defense (“DOD”). I have served as the Chief of the FOIA and Declassification Services Office since June 2014. I previously served as the Chief, FOIA Services Section, from January 2008 to June 2014. Prior to that I was an administrative officer processing FOIA requests at DIA from November 2006 to December 2007, and I was a contractor assigned to DIA as a FOIA Senior Document Reviewer from January to November 2006. Prior to coming to DIA, throughout my career in the United States Air Force (“USAF”), one of my duties was to process FOIA requests. I also spent over five years supervising two USAF FOIA offices.

2. As Chief of the FOIA and Declassification Services Office, I have been designated by the DIA Director as a declassification authority pursuant to Executive Order 13526 § 3.1. This authority extends to all information that is classified by, originated by, or that is otherwise under the declassification purview of DIA. I have also been designated by the Director as the initial denial authority for responses to FOIA requests. My administrative duties include the management of day-to-day operations of DIA's FOIA program. The FOIA office receives, processes, and responds to requests for DIA records under the FOIA and the Privacy Act. At my direction, DIA personnel are tasked to search Agency records systems under their control to identify documents and other information which may be responsive to individual requests. They forward any potentially responsive records that are located to my office, which in turn determines whether responsive records should be withheld in whole or in part under any applicable statutory FOIA or Privacy Act exemptions. The activities of my staff are governed by the "DOD Freedom of Information Act Program Regulation," found at 32 C.F.R. Part 286, as supplemented by the "Defense Intelligence Agency (DIA) Freedom of Information Act" regulation, found at 32 C.F.R. Part 292.

3. In the course of my official duties at DIA, I have become personally familiar with the FOIA request submitted by Alexander Abdo of the American Civil Liberties Union ("ACLU"). The statements made herein are based upon my personal knowledge, upon information made available to me in my official capacity, and upon determinations made by me in accordance therewith.

4. DIA's mission is to collect, analyze, and provide intelligence on the military capabilities of foreign military forces to the Secretary of Defense, the Joint Chiefs of Staff, and other DOD components. DIA also manages the Defense Attaché System for DOD. The DIA's

organization and mission are more fully set out at 32 C.F.R. Part 385, “Defense Intelligence Agency.” Because of its mission to collect, analyze, and provide foreign intelligence, the vast majority of Agency records are classified in the interests of national security in accordance with Executive Order 13,526, “Classified National Security Information.”

5. By letter dated May 13, 2013, Mr. Abdo submitted a FOIA request to DIA for records pertaining to Executive Order 12,333, C.F.R 200 (1981 Comp.) (“E.O. 12,333”) (Exhibit A).

6. On June 6, 2013, DIA’s FOIA Office sent a letter to Mr. Abdo confirming receipt of his FOIA request and informing Mr. Abdo that his request had been placed in DIA’s queue and would be worked in the order the request was received (Exhibit B). DIA also informed Mr. Abdo of a substantial delay in processing FOIA requests due to DIA’s then-current administrative workload in excess of 1,139 requests.

7. On November 6, 2013, DIA’s FOIA Office sent another letter to Mr. Abdo updating him on the status of his FOIA request and informing Mr. Abdo that his request fell within DIA’s “Complex Track” for FOIA processing and the records requested required significant review within the agency (Exhibit C). DIA further explained that Mr. Abdo’s request was currently number 214 out of 265 total FOIA requests waiting to be tasked within the agency for subject matter expert search and/or review of the responsive records. DIA informed Mr. Abdo that his request would be processed as soon as possible and solicited his understanding as DIA continued its efforts to eliminate its backlog of pending FOIA requests.

8. By letter dated November 8, 2013, Mr. Abdo informed DIA that the twenty-day statutory time period had elapsed without DIA’s production of responsive records (Exhibit D). Mr. Abdo requested an appeal of his FOIA request and asked that DIA disclose all records

responsive to the request in a timely manner.

9. On December 30, 2013, the ACLU filed a complaint in the United States District Court for the Southern District of New York claiming that Mr. Abdo had not received any substantive response from DIA regarding his May 13, 2013, FOIA request. On May 9, 2014, the Court entered a stipulation that narrowed and clarified the FOIA request.

10. In response to Mr. Abdo's FOIA request, the DIA FOIA Office consulted with the DIA Office of the General Counsel (DIA OGC) to determine which DIA offices or elements were likely to maintain documents responsive to his request. As a result of this consultation, the DIA OGC determined that all DIA records related to Mr. Abdo's request would have originated with DIA OGC. As a result, it was decided that DIA OGC would take on the task of conducting a search for responsive records, with responsibility for coordinating the search assigned to the Deputy General Counsel for Mission Services. The DIA OGC tasked each member of the OGC office, including all administrative staff, to search for any records construing or interpreting DIA's authority under E.O. 12,333, any records describing the minimization procedures used by DIA pursuant to E.O. 12,333, and any records describing the standards that must be satisfied for the collection, acquisition, or interception of communications pursuant to E.O. 12,333. The Deputy General Counsel for Mission Services collected each response from the individual members of the DIA OGC. Through this process, DIA identified ten documents responsive to Mr. Abdo's request. Each document was forwarded to the DIA FOIA Office for review and response to the requester.

11. On September 22, 2014, DIA released, through counsel, ten documents to plaintiff, which were numbered V-1 through V-10. As indicated in the response letter (Exhibit E) accompanying the documents, four documents were released in part and the remaining six



documents were released in full. No responsive documents were withheld in full. I understand that the ACLU is challenging the exemptions asserted as to only one of these documents, referred to as document V-4 (Exhibit F). Accordingly, I will address the exemptions claimed by DIA only as they apply to this document specifically. Document V-4 is a 25-page, undated DIA OGC legal guidance presentation entitled “Fundamentals of HUMINT Targeting”, the purpose of which was to provide an overview of legal restrictions on collecting intelligence on U.S. persons and the rules for collecting intelligence on members of sensitive source categories.

#### FOIA EXEMPTIONS CLAIMED BY DIA

##### Portions of Document V-4 Withheld Under 5 U.S.C. § 552 (b)(1)

12. The current basis for classification of national security information is found in Executive Order 13,526. Section 1.1 of E.O. 13,526 authorizes an Original Classification Authority (OCA) to classify information owned, produced, or controlled by the United States government if it falls within one of the classification categories specified in Section 1.4 of E.O. 13,526, including, as relevant here, “(c) intelligence activities (including covert action), intelligence sources or methods, or cryptology.”

13. Section 1.2 of E.O. 13,526 provides that information covered by one or more of these classification categories may be classified at one of three classification levels — Top Secret (TS), Secret (S) or Confidential (C) — depending on the degree of harm that would result from the unauthorized disclosure of such information. Information is classified at the Confidential level if unauthorized disclosure could reasonably be expected to cause damage to national security. Information is classified at the Secret level if its release could reasonably be expected to cause serious damage to the national security. Classification at the Top Secret level is maintained if its release could reasonably be expected to cause exceptionally grave damage to

national security.

14. Exercising the declassification authority delegated to me by the Director of DIA and pursuant to Executive Order 13526, I have determined that certain information within document V-4 remains currently and properly classified at the SECRET level under E.O. 13,526 and that it is appropriately withheld under FOIA Exemption 1, for the reasons explained below. This determination is within my authority as a declassification review official and is further supported by the opinions of the subject matter experts with knowledge of the national security topics covered.

1.4(c) -- Intelligence Sources and Methods

15. DIA withheld certain information in document V-4 under Exemption (b)(1) because it relates to intelligence sources and methods, its disclosure could reasonably be expected to cause either serious damage to national security, and it is thus properly classified as SECRET under Section 1.4(c) of E.O. 13,526. The withheld information contains material discussing intelligence methods, specifically the means by which DIA legally collects intelligence and the legal restrictions on collecting intelligence on U.S. persons. The withheld information also contains information relating to intelligence sources, including detailed and specific discussion and guidance on the rules for legally collecting intelligence on sensitive source categories and explaining those sensitive source categories. Section 1.4(c) of E.O. 13,526 recognizes that the disclosure of intelligence sources can cause damage to the national security. Intelligence sources can include individuals, foreign or American, foreign entities, and the intelligence and security services of foreign governments. Willing intelligence sources can be expected to furnish information only when confident that they are protected from retribution by the absolute secrecy surrounding their relationship to the United States government. Sources that

are compromised become extremely vulnerable to retaliation from a variety of entities including their own governments or others having a stake in the confidentiality of the information provided by the source. In certain parts of the world, the consequences of public disclosure of the identity of an individual who has served as a U.S. source are often swift and far reaching, from economic reprisals to possible harassment, imprisonment, or even death.

16. Section 1.4(c) of E.O. 13,526 also recognizes that the release of intelligence methods can cause damage to national security. Intelligence methods are the means by which (or the manner in which) an intelligence agency collects information to support military operations, assist in national policymaking, assess military threats, or otherwise accomplish its mission. Detailed knowledge of the methods and practices of an intelligence agency must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, avoid, or damage the intelligence operations of the United States.

17. Disclosure of the sources and methods the U.S. government implements could reasonably be expected to enable persons and groups hostile to the United States to identify U.S. intelligence activities, methods or sources, and to design countermeasures to them. This would damage the ability of the U.S. government to acquire information that is often critical to the formulation of strategic plans and missions designed to safeguard the United States against our enemies. Based on the information provided to me in the course of my official duties, the information withheld in document V-4 concerns both intelligence sources and intelligence methods. Release of this information would reveal such sources and methods and impair the intelligence collection mission of the intelligence community. Particularly, release of this information would provide adversaries enough knowledge about specific collection techniques

that adversaries could develop countermeasures to resist these techniques. This, in turn, would render the intelligence sources and methods useless. This information remains currently and properly classified SECRET under E.O. 13,526, and it is appropriately withheld under FOIA exemption (b)(1).

Portions of Document V-4 Withheld Under 5 U.S.C. § 552(b)(3)

18. Subsection (b)(3) of the FOIA permits the withholding of documents that are “specifically exempted from disclosure by statute provided that such statute. . . requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue . . . .” DIA generally applies 10 U.S.C. § 424 when asserting Exemption 3, which states: “(a) Exemption from disclosure--Except as required by the President or as provided in subsection (c), no provision of law shall be construed to require the disclosure of--(1) the organization or any function of an organization of the Department of Defense named in subsection (b); or (2) the number of persons employed by or assigned or detailed to any such organization or the name, official title, occupational series, grade, or salary of any such person.” DIA is a covered organization under section 424(b).

19. Portions of document V-4 have been withheld under Exemption 3, pursuant to the authority of 10 U.S.C. § 424, because they specifically identify the names, office affiliations, contact information, and titles of DIA personnel, as well as functions of DIA that fall within the meaning of subsection (c)(1) of that provision. Release of this information would identify DIA employees, and would also reveal part of the Agency’s organizational structure, as well as sensitive DIA functions. Disclosure of that information is strictly and explicitly prohibited per 10 U.S.C. § 424. Finally, release of this information could ultimately result in the disclosure of the names and official titles of government employees working in sensitive positions, which is



also properly within the scope of 10 U.S.C. § 424.

20. A separate Exemption 3 withholding statute, 50 U.S.C. § 3024(i)(1), provides that “[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” The National Security Act, of which 50 U.S.C. § 3024(i)(1) is a provision, is an exemption (b)(3) withholding statute that refers to particular types of matters to be withheld, and “requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue.” 5 U.S.C. § 552(b)(3). DIA carries out its intelligence mission under guidance from the Director of National Intelligence and in accordance with the National Security Act. Therefore, portions of document V-4 have been withheld under Exemption 3 and 50 U.S.C. § 3024(i) because their release would reveal intelligence sources and methods.

21. The information withheld pursuant to 50 U.S.C. § 3024(i) and included in document V-4, as described in ¶ 15 above, involves intelligence sources and methods. I have determined that these withholdings are necessary to protect intelligence sources and methods and the effectiveness of these sources and methods used to gather intelligence. Although no showing of harm is required to justify the application of Exemption 3, release of the withheld information regarding intelligence sources and methods would allow adversaries to employ countermeasures, thus reducing the effectiveness of the sources and methods as intelligence collection tools. It is not possible to provide this information without compromising the sources and methods.

Portions of Document V-4 Withheld Under 5 U.S.C. § 552(b)(5)

22. Portions of document V-4 have also been withheld pursuant to exemption (b)(5), which is intended to protect from disclosure information relating to “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency,” including, as relevant here, information subject to the deliberative

process privilege. The policy considerations behind the deliberative process privilege are (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action.

23. Exemption (b)(5) has been applied to portions of document V-4 to withhold information that is subject to the deliberative process privilege. This document was created for the purpose of advising government employees on the proper application of, and legal aspects associated with, specific human intelligence (“HUMINT”) operations and intelligence oversight. The document, a DIA OGC legal guidance presentation, contains recommendations and comments of government employees regarding the legal restrictions on collecting intelligence on U.S. persons and the proper application of the rules for collecting intelligence on members of sensitive source categories. Accordingly, the document is “predecisional” because it was created prior to any decision or decisions on actions directly related to a specific HUMINT operation or intelligence oversight activity. Additionally, it is “deliberative” because, as noted, it contains discussions and recommendations pertaining to the proper application of, and legal aspects associated with, HUMINT operations and intelligence oversight. These discussions and recommendations are a foundational component to subsequent decisions on related activity. Release of this information would expose the Government’s decision making process in such a way that would discourage future discussion and undermine the United States’ ability to effectively advise government employees on the proper and legal conduct of HUMINT operations and intelligence oversight. Thus, because the withheld information was both predecisional and deliberative, I have concluded that it is within the scope of the deliberative

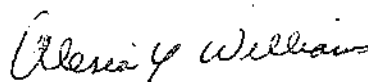
process privilege and should be exempt from disclosure pursuant to 5 U.S.C. § 552(b)(5).

Non-Segregability

24. I have carefully reviewed Attorney General Holder's memo dated 19 March 2009, which encourages agencies to make discretionary disclosures and directs agencies to segregate and release nonexempt information. The document at issue was carefully reviewed line-by-line by a subject matter expert for reasonably segregable information. I have determined that all reasonably segregable non-exempt information has been released to the plaintiffs.

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

Executed this 26<sup>th</sup> day of February, 2016



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Alesia Y. Williams  
Chief, Freedom of Information Act and  
Declassification Services Office