

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

CLEAR; American Civil Liberties
Union; and American Civil Liberties
Union Foundation,

Plaintiffs,

v.

United States Customs and Border
Protection,

Defendant.

Case No. 19-cv-07079

**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 serving as Chief of Classification Management at the Central Intelligence Agency, 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 supplemental filing regarding the Government's Motion for Summary Judgment. The purpose of this declaration is to explain and justify ODNI's withholdings under FOIA Exemption 3. *See* 5 U.S.C. §§ 552(b)(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. 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.

10. 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).

11. Defendant, United States Customs and Border Protection (“CBP”), sent one document for consultation to IMO on April 16, 2020.

12. IMO responded to the consultation on May 12, 2020, informing DHS of what information in the document had been determined to be an ODNI equity which was exempt from disclosure under the FOIA pursuant to Exemption (b)(3).

IV. WITHHOLDINGS

13. As noted above, ODNI reviewed one document, consisting of eight pages responsive to Plaintiff’s request. The document, titled Watchlisting Reference Guide, was published by the Department of Homeland Security. The document is marked UNCLASSIFIED//FOR OFFICIAL USE ONLY. The information ODNI is withholding reveals intelligence methods used in maintaining the U.S. Government’s classified knowledge bank on terrorist identities, known as the Terrorist Identities Datamart Environment (TIDE), and its relation to the federal government’s watchlisting process. This information is properly withheld under FOIA Exemptions 3.

Exemption 3

14. 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 manner 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). The information

withheld under Exemption 3 in this case is intelligence methods which are protected under the National Security Act. *See* 50 U.S.C. § 3024(i)(1).

15. 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. I can confirm that the redactions in this case cover intelligence methods used for nominating, reviewing, and validating terrorist identity information to TIDE, maintained by the National Counterterrorism Center as the U.S. Government’s central and shared knowledge bank on known and suspected terrorists and international terror groups pursuant to Section 119(d)(6) of the National Security Act. They also include the methods used for exporting eligible information to the Federal Bureau of Investigation-administered watchlist. These methods include the U.S. Government criteria used for categorizing terrorist identities based on their relationship to terrorism and how that information is shared for use in the screening and watch listing process. While information is not classified (and therefore not covered by Exemption 1), it is still sensitive information from a national security perspective and properly marked FOR OFFICIAL USE ONLY. Alerting United States’ adversaries of the existence of these intelligence methods would provide them the opportunity to alter their conduct to adapt to this new information, potentially allowing them to avoid proper screening or otherwise avoid detection before entering the country.

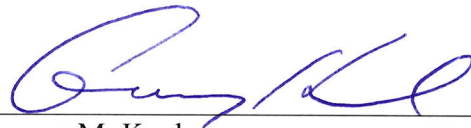
16. Based on my personal review, I have determined that the information in this document withheld under Exemption 3 constitutes intelligence methods, and therefore was properly withheld under Exemption 3 pursuant to 50 U.S.C § 3024.

V. SEGREGABILITY

17. 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 9th day of January 2023.



Gregory M. Koch
Chief, Information Management Office