

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

|  |   |                                   |
|--|---|-----------------------------------|
| American Civil Liberties Union and         | ) |                                   |
| American Civil Liberties Union Federation, | ) |                                   |
|  | ) |                                   |
| Plaintiffs,                                | ) |                                   |
|  | ) |                                   |
| v.   | ) | Civil Action No. 13-CV-09198 (AT) |
|  | ) |                                   |
| National Security Agency, et al.,          | ) |                                   |
|  | ) |                                   |
| Defendants.                                | ) |                                   |

**DECLARATION OF JOHN F. HACKETT**

Pursuant to 28 U.S.C. § 1746, I, John F. Hackett, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services (“IPS”) of the United States Department of State (the “Department”). In this capacity, I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (the “FOIA”), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other applicable records access provisions. I have been employed by the Department in this capacity since June 2015. Prior to assuming this role, I served as the Acting Director of IPS since April 2014 and the Deputy Director since April 2013. As the IPS Director, I have original classification authority and am authorized to classify and declassify national security information. I make the following statements based upon my personal knowledge, which in turn is based on a personal review of the records in the case file established for processing the request at issue in this litigation (the “subject request”) and upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process

the subject request, and I am in charge of coordinating the agency's search efforts with respect to that request.

2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the FOIA, the Privacy Act, and the mandatory declassification review requirements of the Executive Order governing classified national security information), by members of Congress, and by other government agencies, and those made pursuant to judicial process such as subpoenas, court orders and discovery requests; (2) records management; (3) privacy protection; (4) national security classification management and declassification review; (5) corporate records archives management; (6) research; (7) operation and management of the Department's library; and (8) technology applications that support these activities.

3. This declaration explains the Department's search for records responsive to Plaintiff's FOIA request. That search located no responsive documents.

#### **I. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST**

4. By letter dated May 13, 2013 (Exhibit 1) the American Civil Liberties Union and the American Civil Liberties Union Foundation ("Plaintiffs") submitted a FOIA request to the Department. The request sought:

"any records construing or interpreting the authority of the United States Department of State under Executive Order 12,333 or any regulations issued thereunder; any records describing the minimization procedures used by the Department with regard to both intelligence collection and intelligence interception conducted pursuant to the Department's authority under EO 12,333 or any regulations thereunder; and any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Department defines these terms, pursuant to the Department's authority under EO 12,333 or any regulations issued thereunder."

5. By letter dated June 5, 2013 (Exhibit 2), IPS acknowledged receipt of Plaintiffs' FOIA request and assigned it Case Control Number F-2013-09022.

6. By letter dated November 8, 2013 (Exhibit 3), Plaintiffs submitted an appeal to IPS because the twenty-day statutory time limit had elapsed.

7. By letter dated November 19, 2013 (Exhibit 4), IPS explained to Plaintiffs that their FOIA request was not subject to administrative appeal because no specific material had been denied in response to the request. IPS informed Plaintiffs that their request was still being processed.

8. By Stipulation and Order, filed on May 9, 2014 (Exhibit 5), the Plaintiff clarified the scope of searches to be conducted by the Department in response to the request.

9. By letter dated June 30, 2013 (Exhibit 6), IPS informed the Plaintiffs that it had conducted thorough searches of the only two Department components that were likely to possess responsive materials, if any, possessed by the Department, namely the Department's Bureau of Intelligence and Research and the Office of the Legal Adviser. IPS further informed Plaintiffs that those searches located no records responsive to the subject request.

## **II. THE SEARCH PROCESS**

10. When the Department receives a FOIA request, IPS evaluates the request to determine which offices, overseas posts, or other records systems within the Department may reasonably be expected to contain the records requested. This determination is based on the description of the records requested and requires a familiarity with the holdings of the Department's records systems, applicable records disposition schedules, and the substantive and functional mandates of numerous Department offices and Foreign Service posts and missions.



11. Each office within the Department, as well as each Foreign Service post and mission, maintains files concerning foreign policy and other functional matters related to the daily operations of that office, post, or mission. These files consist generally of working copies of documents, information copies of documents maintained in the Central Foreign Policy Records collection, and other documents prepared by or furnished to the office in connection with the performance of its official duties, as well as electronic copies of documents and e-mail messages.

12. After reviewing Plaintiffs' request, IPS determined that the only Department offices or records systems, if any, reasonably likely to have documents responsive to Plaintiff's request were the Bureau of Intelligence and Research and the Office of the Legal Adviser.

13. When conducting a search in response to a FOIA request, the Department relies on the knowledge and expertise of the employees of each bureau/office/post to determine the files and locations reasonably likely to house responsive records and the best means of locating such records, as these employees are in the best position to know how their files are organized. Likewise, those employees are in the best position to determine which search terms would yield potentially responsive records, because they are most knowledgeable about the organization of the records systems in use.

#### **Bureau of Intelligence and Research**

14. The Bureau of Intelligence and Research's ("INR") primary mission is to harness intelligence to serve U.S. diplomacy. Drawing on all-source intelligence, INR provides value-added independent analysis of events to Department policymakers; ensures that intelligence activities support foreign policy and national security purposes; and serves as the focal point in the Department for ensuring policy review of sensitive counterintelligence and law enforcement

activities around the world. The bureau also analyzes geographical and international boundary issues.

15. A Department employee who was knowledgeable about both the FOIA request at issue and INR's records systems determined that the only INR components (if any) reasonably likely to maintain responsive records were the Front Office ("INR/FO") and the Office of Intelligence Operations ("INR/OPS").

16. A staff assistant in INR/FO conducted a search of the office's paper and electronic records. The INR/FO paper records are organized chronologically. The staff assistant manually searched all paper files in INR/FO for any records responsive to the subject FOIA request. The INR/FO electronic records consist of the INR Production Database, which is organized chronologically and is designed to capture the Assistant Secretary's chronological memoranda. All electronic files, classified and unclassified, are text-searchable and were searched using the terms "Executive Order," "12333," and "12,333." The staff assistant applied the timeframe of April 1, 2007 to June 2, 2014, the date the search was conducted, to the search of both paper and electronic records.

17. INR/OPS coordinates the Department's review of sensitive civilian and military intelligence operations and programs; it also coordinates Intelligence Community briefings for ambassadors and ambassadorial nominees. This office works with the Office of Director of National Intelligence on a variety of intelligence issues, including human intelligence collection policies and programs. It acts as the Bureau's focal point for liaison with the Central Intelligence Agency and the Defense Intelligence Agency, including Defense Attachés abroad.

18. An Intelligence Operations Officer in INR/OPS coordinated a search of the office's paper and electronic records. INR/OPS's paper files are organized by date and subject.

The files searched encompassed the time frame of September 11, 2001 to June 2, 2014. The Intelligence Operations Specialist manually searched all INR/OPS paper files for any records responsive to the subject FOIA request. The search of INR/OPS's electronic records included electronic documents, all e-mails and archived e-mails for all employees in INR/OPS, as well as shared databases, for the unclassified, classified, and Joint Worldwide Intelligence Communications System ("JWICS") networks. All electronic files are text-searchable and were searched using the following terms: "E.O. 12333," "electronic surveillance," "E.O. 12333 + U.S. persons," "12333," and "12,333." All electronic e-mail files accessible to INR/OPS date back to 2009, and were searched up through June 2, 2014, the date the search was conducted.

19. INR located no responsive records as a result of these searches.

**The Office of the Legal Adviser**

20. The Office of the Legal Adviser ("L") furnishes advice on all legal issues, domestic and international, arising in the course of the Department's work. This includes assisting Department principals and policy officers in formulating and implementing the foreign policies of the United States and promoting the development of international law and its institutions as a fundamental element of those policies. The Office is organized to provide direct legal support to the Department's various bureaus, including both regional and geographic offices (those which focus on specific areas of the world) and functional offices (those which deal with specific subject matters such as economics and business, international environmental and scientific issues, or internal management).

21. A Department employee who was knowledgeable about both the FOIA request at issue and L's records systems determined that the only L components reasonably likely to



maintain responsive records were the Office of Law Enforcement and Intelligence (“L/LEI”) and the Office of Political-Military Affairs (“L/PM”).

22. L/LEI coordinates international extradition for the Department, handles a variety of other law enforcement and intelligence matters, and provides legal advice on proposed legislative initiatives, international agreements, and U.S. intelligence activities.

23. An assistant legal adviser in L/LEI conducted a search of the office’s paper and electronic records. L/LEI paper records are organized by subject matter. The assistant legal adviser manually searched paper files in L/LEI for any documents responsive to the subject FOIA request. The assistant legal adviser also searched L/LEI’s electronic records, including unclassified and classified office shared drives, Word files, and e-mail records, using search terms that included, but were not limited to, “12333,” “electronic surveillance,” and “12,333.” No date limitations were applied to these searches.

24. L/PM provides legal assistance in matters relating to global military and political-military activity, base rights and status of forces agreements; foreign military claims and suits against U.S. Armed Forces; munitions control; use of force and war powers; and laws of war.

25. Attorneys in L/PM conducted a search of the office’s electronic and paper records. L/PM’s paper files are organized by subject matter and by country. The attorneys manually searched and reviewed each individual paper file that pertained to subjects reasonably likely to include information pertaining to intelligence activities for any documents responsive to the subject FOIA request. The search of L/PM’s electronic records included current and archived e-mail records on both the unclassified and classified systems. All electronic files are text-searchable and were searched using terms that included, but were not limited to, “12333,”

“E.O. 12333,” “Executive Order 12333,” and “12,333.” No date limitations were applied to these searches.

26. L located no responsive records as a result of these searches.

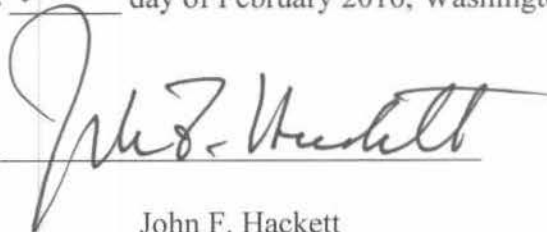
### III. CONCLUSION

27. In summary, the Department conducted thorough searches of all Department offices and bureaus that are reasonably likely to maintain records responsive to Plaintiffs’ request and located no responsive records.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 26<sup>th</sup> day of February 2016, Washington, D.C.



John F. Hackett