

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

AMERICAN CIVIL LIBERTIES UNION, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 13-CV-9198 (AT)
)	
NATIONAL SECURITY AGENCY, et al.,)	
)	
Defendants.)	
)	

SUPPLEMENTAL 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 and Declassification Services Office (FOIA Office) for the Defense Intelligence Agency (DIA), which is part of the Department of Defense (DoD). I have served as the Chief of the FOIA Office since June 2014. I previously served as the Chief, FOIA Services Section (an element within the DIA FOIA Office), 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 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 Mr. 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. On February 26, 2016, I executed a declaration in support of Defendants' Motion for Partial Summary Judgment in the above-captioned action. I submit this supplemental declaration in support of that Motion and to address certain assertions made in the Plaintiffs' Cross Motion for Partial Summary Judgment and Opposition to Defendants' Motion for Partial Summary Judgment.

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

5. In their Memorandum of Law, Plaintiffs assert that Exemption 5 does not apply to DIA's document V-4 because the document is neither predecisional nor deliberative, and only sets out DIA's view of what the law is with respect to EO 12,333. In my initial declaration, I addressed this issue in paragraph 23, stating "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."

6. To elaborate on my statement in paragraph 23 of my prior declaration, this training document was prepared and presented by attorneys within DIA's Office of the General Counsel (DIA OGC) in conjunction with an open discussion on the deliberative process associated with how to apply the legal restriction on collecting information on U.S. persons when confronted with specific scenarios. The purpose of the training and discussion is to assist DIA personnel in deciding whether they are authorized to proceed with a particular HUMINT operation or intelligence activity when confronted with different scenarios. In short, the withheld portions of V-4 contain information and guidance that continually will be used by DIA personnel in developing recommendations and deciding on what action to take or refrain from in their daily activities. Document V-4 does contain some factual material and that material has been released as appropriate; but where it is integrated with deliberative material, it has been withheld appropriately under Exemption 5.

7. Notwithstanding the applicability of Exemption 5, DIA has now made the determination that it is appropriate to waive the application of this exemption to the portions of document V-4 to which it was applied.

Portions of Document V-4 Withheld Under Exemptions 1 and 3, 5 U.S.C. § 552(b)(1) and (b)(3)

8. In their Memorandum of Law, Plaintiffs assert that the Defendants have not justified their use of Exemptions 1 and 3. The only specific reference Plaintiffs make on this point regarding DIA is its use of a particular statute, 10 U.S.C. § 424, in conjunction with Exemption 3. For the sake of clarity, and in the hope that greater explanation may help to resolve a potential point of contention between the parties, I will readdress the basis for invoking both exemptions.

9. As I stated in paragraph 15 of my first declaration, I withheld certain information in document V-4 under Exemption 1 because it “contains information discussing intelligence methods, specifically the means by which DIA legally collects intelligence and the legal restrictions on collecting information on U.S. persons.” To further elaborate, this information includes guidance on processes and legal considerations/restrictions associated with specific authorized intelligence collection methods, discussion of the application of those processes and legal considerations/restrictions to various scenarios, and guidance on retention of records.

10. Regarding Exemption 3, and specifically the application of 10 U.S.C. § 424, I stated in paragraph 19 of my first declaration that I withheld portions of document V-4 “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." As I elaborated in paragraph 6 above, the purpose of the training reflected in document V-4 is to assist DIA personnel in deciding whether they are authorized to proceed with a specific HUMINT operation or intelligence activity when confronted with different scenarios. The withheld portions of document V-4 contain discussion of scenarios and circumstances that, if disclosed, would reveal specific and sensitive DIA functions.

The Adequacy of DIA's Search

11. Plaintiffs also assert that DIA conducted an incomplete search for records responsive to their request. DIA made a good faith effort to conduct a search using methods we reasonably believed would uncover all relevant documents. All files reasonably expected to contain the requested records were searched. In response to Plaintiffs' most recent filing, I have re-examined the completeness of the DIA search for responsive records and have concluded that our initial search strategy was neither flawed nor incomplete.

12. As I described in paragraph 10 of my first declaration and to elaborate further, after consultation with DIA OGC, the determination was made that all DIA records responsive to Mr. Abdo's request would have originated with DIA OGC, or if they originated elsewhere, would have been processed through DIA OGC since any discussion of the Agency's authority under EO 12,333 would require legal review. Accordingly, each member of the OGC was tasked to search all record systems in his/her control, to include personal computer files, emails, and hard copy files. In addition, the Deputy General Counsel for Mission Services conducted a search of all records in DIA OGC's shared computer files. All individuals were tasked 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.

13. Plaintiffs assert that DIA failed to search for entire categories of records. DIA excluded certain categories from its search because Plaintiffs requested records associated with Electronic Surveillance, in which DIA does not engage. As such, we determined that conducting a search of those categories would not reasonably produce responsive records. I will address each category individually.

14. Category ‘a’ of the approved stipulated search sought records “relating to the Agency’s authority under EO 12,333 to undertake Electronic Surveillance.” DIA does not undertake Electronic Surveillance and so, in consultation with DIA OGC, we determined that a specific search for this category of records would not be reasonably likely to produce responsive records. As noted in paragraph 12 above, DIA conducted a broad search in its covered record systems of records interpreting EO 12,333, which did not result in records responsive to this category.

15. Category ‘b’ of the approved stipulated search sought “[a]ny document that officially authorizes or modifies under EO 12,333 [DIA’s] use of specific programs, techniques, or types of Electronic Surveillance that implicate United States Persons, or documents that adopt or modify official rules or procedures for the [DIA’s] acquisition, retention, dissemination, or use of information or communications to, from, or about United States persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.” Again, the core of this request relates to Electronic Surveillance. To the extent that the request sought documents unrelated to Electronic Surveillance, DIA searched any

records/regulations/policies interpreting EO 12,333 and any records describing the standards for “collection,” “acquisition,” or “interpretation” of communications.

16. Category ‘c’ of the approved stipulated search sought formal legal opinions addressing DIA’s “authority under EO 12,333 to undertake ... Electronic Surveillance that implicates United States Persons.” DIA does not undertake Electronic Surveillance and so, in consultation with DIA OGC, we determined that a specific search for this category of records would not reasonably produce responsive records. As noted in paragraph 12 above, DIA conducted a broad search in its covered record systems of records interpreting EO 12,333, which did not result in records responsive to this category.

17. Category ‘d’ of the approved stipulated search sought “formal training materials or reference materials ... that expound on or explain how [DIA] implements its authority under EO 12,333 to undertake Electronic Surveillance that implicates United States Persons.” Again, this request relates specifically to Electronic Surveillance, in which DIA does not engage. Notwithstanding, DIA conducted a broad search of records interpreting EO 12,333, which resulted in general training material on EO 12,333 and which DIA produced, as reflected in document V-4.

18. Lastly, category ‘e’ of the approved stipulated search sought “formal reports relating to Electronic Surveillance under EO 12,333 implicating United States Persons” Since DIA does not engage in Electronic Surveillance, in consultation with DIA OGC, we determined that a search for this category of records would not be reasonably likely to produce responsive records. As noted in paragraph 12 above, DIA conducted a broad search in its covered record systems of records interpreting EO 12,333, which did not result in records responsive to this category.

19. Plaintiffs assert that DIA's decision to limit its search to documents within its OGC was inadequate and that DIA should have searched senior leadership records for responsive documents. Given the nature of the records sought, and the limited applicability of the search categories as explained in paragraphs 12-17 of this declaration, DIA determined that any potentially responsive records would have been generated by or processed through DIA's OGC. Accordingly, in consultation with DIA OGC, we determined that a broader search would be unreasonably burdensome and fail to produce responsive records, or duplicative records at best.

20. Finally, Plaintiffs assert that the 10 documents DIA produced in response to the approved stipulated search is implausibly low "given that EO 12333 is the central source of authority for much of the surveillance work carried out by the DIA, and that the request sought a variety of documents about EO 12333 spanning a period of 13 years." As reflected in the approved stipulated search and explained in paragraphs 12-17 of this declaration, the vast majority of the stipulated search request centered around DIA's electronic surveillance authority under EO 12,333 and related documents. Since DIA does not engage in Electronic Surveillance, the number of documents DIA identified and produced is appropriately responsive to Plaintiffs' request. I certify under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of June, 2016,



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