

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GRANT F. SMITH,)	
)	
Plaintiff,)	
)	
v.)	Civ. A. No. 18-cv-00777 (TSC)
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants.)	
)	

SUPPLEMENTAL DECLARATION OF ERIC F. STEIN

Pursuant to 28 U.S.C. § 1746, I, Eric F. Stein, 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” or “State”) and have served in this capacity since January 22, 2017. Previously, I served as the Acting Director since October 16, 2016, and as the Acting Co-Director since March 21, 2016. In my current 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 records access provisions. Prior to serving in this capacity, I worked directly for the Department’s Deputy Assistant Secretary (“DAS”) for Global Information Services (“GIS”) and served as a senior advisor and deputy to the DAS on all issues related to GIS offices and programs, which include IPS. As the Director of IPS, I have original classification authority at the TOP SECRET level under written delegation of authority pursuant to Executive Order No.

13526 of December 29, 2009, and am authorized to classify and declassify national security information.

2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the Freedom of Information Act, the Privacy Act, and the mandatory declassification review requirements of E.O. 13526, governing classified national security information), by members of Congress, 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. I make the following statements based upon my personal knowledge, which in turn is based 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.

4. This supplemental declaration provides additional facts supporting State's motion to dismiss and the motion for summary judgment by the Department of Energy (DOE) – specifically, information about State's processing of Plaintiff's FOIA request to State dated August 2, 2018, and information supporting the withholding by DOE under Exemption 1 of one sentence in a 2012 DOE classification bulletin at State's request.

I. PROCESSING OF PLAINTIFF'S AUGUST 2, 2018 FOIA REQUEST

5. On August 7, 2018, IPS received a FOIA request from Plaintiff dated August 2, 2018, requesting release of the sentence at issue in this case that DOE redacted on Exemption 1 at State's request. See Ex. A.

6. By letter dated August 28, 2018, the Department responded to Plaintiff's August 2, 2018, FOIA request, stating that the sentence is exempt from disclosure pursuant to Exemption 1. See Ex. B.

II. FOIA EXEMPTION 1 – CLASSIFIED INFORMATION

7. Exemption 1, 5 U.S.C. § 552(b)(1), states that the FOIA does not apply to matters that are:

(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

8. I have reviewed three of the documents cited in Plaintiff's Memorandum of Law in Support of Plaintiff's Cross Motion for Summary Judgment in Opposition to Defendants' Motion for Summary Judgment (Dkt. 15) in support of Plaintiff's argument that the information withheld under Exemption 1 has already been officially disclosed, and in my capacity as an original classification authority I have concluded that the information contained in those documents is not identical to the information withheld under Exemption 1 and does not constitute an official acknowledgement of the information withheld under Exemption 1.

9. Specifically, I have reviewed the two versions of a 1974 Central Intelligence Agency (CIA) Special National Intelligence Estimate (SNIE) that Plaintiff cites (Dkt. 15 at 16-17) and represents as having been previously released under the FOIA, as well as one document cited and described by Plaintiff as "testimony given by [CIA Director of Science and Technology Carl] Duckett to the U.S. Nuclear Regulatory Commission and released under FOIA" (Dkt. 15 at 18).

10. The 1974 CIA SNIE addresses prospects for further proliferation of nuclear weapons. In declassified portions released under the FOIA, the SNIE assesses the likelihood that Israel has produced nuclear weapons. I have compared this information in the SNIE to the one sentence DOE withheld at State's request under Exemption 1, and the information is not identical. One major difference is the time period. The SNIE contains an assessment made in 1974; in contrast, the information withheld under Exemption 1 in the 2012 DOE classification bulletin is substantially more recent. Another major difference is the agency making the assessment. The SNIE contains a CIA assessment; in contrast, the 2012 classification bulletin is a DOE document, and State requested the Exemption 1 withholding. In addition, the information in the 1974 CIE SNIE and the information withheld under Exemption 1 in the 2012 DOE bulletin are not identical in substance.

11. The document cited and described by Plaintiff as "testimony given by [CIA Director of Science and Technology Carl] Duckett to the U.S. Nuclear Regulatory Commission and released under FOIA" contains a statement purporting to describe a conclusion of a 1968 CIA National Intelligence Estimate assessing Israel's nuclear capability. I have compared this information to the one sentence DOE withheld at State's request under Exemption 1, and the information is not identical. One major difference is the time period. The document cited and described by Plaintiff is dated February 1978, and the relevant statement refers to a purported 1968 CIA assessment; in contrast, the information withheld under Exemption 1 in the 2012 DOE classification bulletin is substantially more recent. Another major difference is the agency making the assessment. The document cited and described by Plaintiff appears to be a NRC document containing comments made by an individual alleged to be the "CIA Director of Science and Technology" referencing a purported CIA assessment; in contrast, the 2012

classification bulletin is a DOE document, and State requested the Exemption 1 withholding. In addition, the information in the document cited and described by Plaintiff and the information withheld under Exemption 1 in the 2012 DOE bulletin are not identical in substance.

12. I have not reviewed certain other documents cited in Plaintiff's Memorandum of Law in Support of Plaintiff's Cross Motion for Summary Judgment in Opposition to Defendants' Motion for Summary Judgment (Dkt. 15) in support of Plaintiff's argument that the information withheld under Exemption 1 has already been officially disclosed, because those documents are not attributable to the U.S. Government. Specifically, I have not reviewed a 1978 New York Times article cited by Plaintiff (Dkt. 15 at 17); a 2010 Guardian article cited by Plaintiff (Dkt. 15 at 17-18); a 1979 article in The Washington Monthly cited by Plaintiff (Dkt. 15 at 18); a 1999 paper by a U.S. military officer (which contains a disclaimer stating that the views expressed in it are those solely of the author and are not a statement of official policy or position of the U.S. Government, the Department of Defense, the U.S. Army, or the USAF Counterproliferation Center) cited by Plaintiff (Dkt. 15 at 18-19); a 1987 report described by Plaintiff as a "U.S. Department of Defense report," although the report was produced by the "Institute for Defense Analyses" under contract to the Department of Defense and states that its publication does not indicate endorsement by the Department of Defense and its contents should not be construed as reflecting the official position of that agency (Dkt. 15 at 19-20); a 2015 article in The Nation (Dkt. 15 at 20-21); and a 2008 Reuters article (Dkt. 15 at 21). None of these documents are attributable to the Department of State or to the U.S. Government.

13. I have also reviewed the section of the State Department's January 2005 Classification Guide pertaining to foreign relations or foreign activities of the United States including confidential sources, which was cited as the original authority from which the

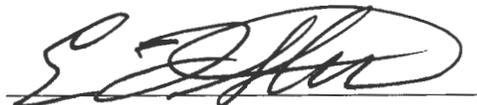
classification of the relevant portion of the DOE bulletin was derived, as well as the analogous section of the State Department's current Classification Guide. The classification of the sentence in the DOE bulletin withheld under Exemption 1 was proper under the State Department's 2005 Classification Guide and remains proper under the State Department's current Classification Guide. Among the reasons for this is that the subject matter withheld under Exemption 1 is sensitive, not routine, and not already in the public domain.

III. CONCLUSION

14. In summary, the Department received and responded to Plaintiff's FOIA request dated August 2, 2018. I reviewed three documents provided by Plaintiff purporting to constitute official acknowledgment of the information withheld under Exemption 1, and I determined that the information in those documents is not identical to the information withheld under Exemption 1. I also reviewed the relevant section of the State Department's 2005 Classification Guide and the analogous section of the State Department's current Classification Guide, and I determined that the classification of the information withheld under Exemption 1 was and remains proper.

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

Executed this 5th day of September 2018, Washington, D.C.



Eric F. Stein

