

# Exhibit A

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

GRANT F. SMITH,

Plaintiff,

UNITED STATES DEPARTMENT OF DEFENSE

Defendant.

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) Civil Action No. 14-cv-01611  
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**SECOND DECLARATION OF MARK H. HERRINGTON**

Pursuant to 28 U.S.C. § 1746, I, Mark H. Herrington, hereby declare under penalty of perjury that the following is true and correct:

1. I am an Associate Deputy General Counsel in the Office of General Counsel (“OGC”) (Office of Litigation Counsel) of the United States Department of Defense (“DoD”). OGC provides legal advice to the Secretary of Defense and other leaders within the DoD. I am responsible for, among other things, overseeing Freedom of Information Act (“FOIA”) litigation involving DoD. I have held my current position since March 2007. My duties include coordinating searches across DoD to ensure thoroughness, reasonableness, and consistency.

2. The statements in this declaration are based upon my personal knowledge and upon my review of information available to me in my official capacity. Specifically, I am the OGC counsel assigned to this case.

**Purpose of this Declaration**

3. I submit this declaration to provide an update on the status of the processing of the document requested by Plaintiff and provide a basis for DoD’s request for an extension of time.

**Plaintiff's Request**

4. On January 5, 2012, Plaintiff requested a report from DoD, which has been identified as a 1987 report titled "Critical Technology Assessment in Israel and NATO Nations." On June 12, 2012, DoD withheld the report in its entirety for the reasons listed in Plaintiff's complaint. Plaintiff appealed that decision and had not received a final response to his appeal when he filed the current action on September 23, 2014.

**Current Status**

5. DoD is aware of this Court's December 5, 2014, scheduling order, which required a final response to Plaintiff by today, December 19, 2014. DoD has attempted in good faith to meet this deadline, but for the following reasons is unable to do so.

6. The sole reason DoD would withhold any of the information sought by Plaintiff is exemption 3, 5 U.S.C. § 552 (b)(3). Specifically, 10 U.S.C. § 130c, which allows for the withholding of certain sensitive information of foreign government and international organizations. Due to the age of the document, the fact that the foreword of the requested report notes that non-disclosure agreements were signed by the researchers stating "that the information received was for U.S. Government use only and would not be disclosed to U.S. industry or others" is not sufficient to withhold the information.

7. Section (d)(3) of 10 U.S.C. § 130c states that information received from a foreign government more than 25 years ago may be withheld in the case of a request for disclosure only if, upon the notification of each foreign government concerned, any such government requests in writing that the information not be disclosed for an additional period stated in the request of that government.

8. Plaintiff has indicated that his interest in the document rests solely with the information provided by the Israeli Government, and has graciously agreed to exclude the portions of the report that concern information from other nations.

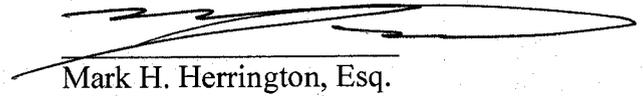
9. DoD notified Israel of Plaintiff's request and provided the relevant sections of the report for their review. DoD had contacted the Israeli Embassy in early December to determine the proper point of contact, and had done so by December 5<sup>th</sup>. However, when preparing a version of the report to send for review, it was discovered that the copy we had was missing the first 13 pages of the Israel portion. It took DoD a week to locate a complete version, rescan, and prepare for review. DoD sent Israel the relevant sections on December 12, 2014. DoD informed Israel of this Court's deadline and pleaded for an expedited review and response by December 18, 2014. I was informed yesterday that the review is not yet complete, but was informed today that the review should be finished by January 16, 2015. If we receive a response from Israel before that date, we will provide the document to Plaintiff without delay.

10. I apologize to this Court and to Plaintiff for failing to meet this deadline. I am cognizant of the patience shown by Plaintiff and his perception that DoD is playing a shell game with no end in sight. I seek to assure Plaintiff and this Court that this is not accurate. I am simply not authorized to release a document which may contain sensitive information provided by a foreign government without their review. Admittedly, the coordination with the Israeli Government should have occurred some time ago. But I ask this Court to allow Israel a reasonable amount of time to review the report and not hold them accountable for DoD's prior inadequacies.

11. DoD requests this Court to extend its scheduling order by 28 days to allow for Israel's review of the report.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 19th day of December, 2014, in Washington, DC.



Mark H. Herrington, Esq.