

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

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

**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 declaration explains the withholdings that State requested that the Department of Energy ("DOE") make on its behalf with respect to one (1) document that the DOE sent to State for consultation and review of its equities therein. A description of the Department's administrative processing of the consultation request, the information withheld in the document referred, and the applicable exemptions applied to the withholdings are provided below.

#### **I. ADMINISTRATIVE PROCESSING OF DOE CONSULTATION REQUEST**

5. The Department has not received a FOIA request from Plaintiff for the document at issue in this case.

6. By letter dated March 20, 2015, the DOE referred the document at issue to the Department for review and response to the DOE. The Department assigned this consultation Case Control Number P-2015-07312.

7. The Department reviewed the document referred by the DOE and requested certain withholdings under Exemption 1, as described below. The Department returned the pages to the DOE by memorandum dated May 8, 2015.

## **II. FOIA EXEMPTION CLAIMED**

### **FOIA Exemption 1 – Classified Information**

8. 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;

9. Based upon my personal review of the document and information furnished to me in the course of my official duties, I have determined that the information withheld under Exemption 1 continues to be properly classified under E.O. 13526 and that the Department has not previously authorized or officially acknowledged the public release of this information.

10. For information to be properly originally classified and withheld from disclosure pursuant to Exemption 1, the information must meet all of the following requirements set forth in Section 1.1(a) of E.O. 13526:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.4 of [E.O. 13526]; and

(4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

11. The information withheld in this case under Exemption 1, 5 U.S.C. § 552(b)(1), is properly classified pursuant to section 1.4(d) E.O. 13526, which provides that:

Information shall not be considered for classification unless . . . it pertains to one or more of the following: . . . (d) foreign relations or foreign activities of the United States, including confidential sources;

12. The information withheld under Exemption 1 is classified at the SECRET level.

Section 1.2 of E.O. 13526 states:

“Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

13. Section 6.1(l) of E.O. 13526 defines “damage to the national security” as follows:

“Damage to the national security” means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

14. In my role as an original classification authority, I have determined that the information withheld pursuant to Exemption 1 is under the control of the United States Government, falls within one of the categories in section 1.4 of E.O. 13526, and is properly classified at the SECRET level because its unauthorized disclosure reasonably could be expected to cause serious damage to the national security.

15. The Department requested that DOE withhold certain information under Exemption 1 pursuant to E.O. 13526 section 1.4 (d). Section 1.4(d) protects information

pertaining to foreign relations or foreign activities of the United States, including confidential sources.

### **III. VAUGHN INDEX**

16. The document at issue is a two-page DOE classification bulletin dated September 6, 2012, and titled “Guidance on Release of Information Relating to the Potential for an Israeli Nuclear Capability.” The portion of the document that the Department requested the DOE withhold was marked as SECRET in the original and remains currently classified SECRET.

17. The Department requested that the DOE withhold one sentence under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 section 1.4(d). The withheld sentence contains information relating to the potential for an Israeli nuclear capability. Release of this information reasonably could be expected to cause serious damage to the national security of the United States, both by harming diplomatic relations between the United States and Israel through the release of information that has substantial implications for Israel’s security, and by upsetting the geopolitical security situation in the Middle East region, which represents a longstanding security interest of the United States.

18. The Department conducted a line-by-line review of the withheld portion and determined that there is no additional meaningful, non-exempt information that can be reasonably segregated and released.

### **IV. CONCLUSION**

19. In summary, the Department reviewed one document sent for consultation by the DOE and requested certain withholdings based on FOIA Exemption 1. The Department conducted a thorough review of the information in the document withheld pursuant to these

exemptions and determined that there is no additional non-exempt information that may be reasonably segregated and released.

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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 25<sup>th</sup> day of July 2018, Washington, D.C.

A handwritten signature in black ink, appearing to read "Eric F. Stein", is written over a horizontal line.

Eric F. Stein