

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRANZ BOENING,)
)
Plaintiff,)
)
v.) Civil Action No.
) 1:07CV00430 (EGS)
CENTRAL INTELLIGENCE AGENCY,)
)
Defendant.)
_____)

**DECLARATION OF RALPH S. DIMAIO
INFORMATION REVIEW OFFICER, NATIONAL CLANDESTINE SERVICE
CENTRAL INTELLIGENCE AGENCY**

INTRODUCTION

I, RALPH S. DIMAIO, hereby declare:

1. I am the Information Review Officer (IRO) for the National Clandestine Service (NCS) of the Central Intelligence Agency (CIA). I was appointed to this position on 11 June 2007. I have held several senior level, operational, and administrative positions in the CIA since 1983. I am responsible for the review of documents originated by the NCS, or otherwise implicating NCS interests, that may become the subject of litigation.

2. The NCS is the organization within the CIA responsible for the conduct of foreign intelligence collection activities through the clandestine use of human sources. The NCS is responsible for conducting the CIA's foreign intelligence and counterintelligence activities,

and covert action; coordinating liaison activities with foreign intelligence and security services; serving as the repository for foreign counterintelligence information; supporting clandestine technical collection; and coordinating CIA support to the Department of Defense. Specifically, the NCS is responsible for the conduct of foreign intelligence collection activities through the clandestine use of human sources.

3. As the NCS/IRO, I am responsible for the protection of information originated by the NCS, or otherwise implicating NCS interests, which may be the subject of court proceedings. As part of my official duties, I ensure that any determinations as to the release or withholding of such information are proper and do not jeopardize NCS interests or endanger NCS personnel or facilities. As a senior CIA official under a written delegation of authority pursuant to Section 1.3(c) of Executive Order 12958, as amended, I hold original classification authority at the TOP SECRET level.¹

Therefore, I am authorized to make original classification and declassification decisions.

¹ Executive Order 12958 was amended by Executive Order 13292. See Exec. Order No. 13292, 68 Fed. Reg. 15,315 (Mar. 28, 2003). All citations to Executive Order No. 12958 are to the Order as amended by Executive Order No. 13292. See Exec. Order No. 12958, 3 C.F.R. 333 (1995), reprinted as amended in 50 U.S.C.A. § 435 note at 180 (West Supp. 2007).

4. I am familiar with the above-captioned litigation and plaintiff's request to the PRB for approval to publish the memorandum that is the subject of this case. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

5. As set forth more fully in my classified *in camera, ex parte* declaration, I have determined that public disclosure of certain information in plaintiff's memorandum reasonably could be expected to cause serious damage to national security. Accordingly, the information that the Agency has required plaintiff to delete from his memorandum is classified at the SECRET level and plaintiff may not, consistent with the terms of his Secrecy Agreement, publish this memorandum unless he removes this information.

6. This declaration provides the Court with relevant statutory and Executive Order authorities. My classified *in camera, ex parte* declaration sets forth a brief summary of the background of plaintiff's submission, and a detailed discussion of the categories of classified information that have been revealed in the memorandum, and outlines the damage to national security that reasonably could be expected if this information is publicly disclosed.

I. Statutory and Executive Order Authorities

A. The National Security Act of 1947

7. Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 403-1(i)(1) (West Supp. 2006), requires the Director of National Intelligence (DNI) to protect intelligence sources and methods from unauthorized disclosure. As IRO, I assist the DNI in implementing these statutory responsibilities.

B. The Central Intelligence Agency Act of 1949

8. Section 6 of the Central Intelligence Agency Act of 1949, as amended, codified at 50 U.S.C. § 403g, exempts the CIA from the provision of any other law that requires the publication or disclosure of the organization, functions, names, official titles, salaries or numbers of personnel the CIA employs.

C. Executive Order 12958

9. Executive Order 12958, as amended in March 2003 by Executive Order 13292, prescribes a uniform system for classifying and protecting national security information. Executive Order 12958 defines "national security" as "national defense or foreign relations of the United States" and defines "information" as "any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by,

produced by or for, or is under the control of the United States Government." Information may be originally classified under the Executive Order only if it (a) is owned by, produced by or for, or is under the control of the U.S. Government; (b) falls within one or more of the categories of information set forth in section 1.4 of the Executive Order; and (c) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security that the original classification authority can identify or describe. E.O. 12958, § 1.1. The anticipated severity of the damage determines which of three classification levels is applied to the information. Thus, if an unauthorized disclosure of information reasonably could be expected to cause *damage* to the national security, that information is classified as CONFIDENTIAL; *serious damage* is classified as SECRET; and *exceptionally grave damage* is classified as TOP SECRET. E.O. 12958, § 1.2.

10. In this case, I have determined that certain information contained in plaintiff's memorandum is properly classified under the above guidelines. Under § 6.1(s) of Executive Order 12958, "control" refers to the "authority of the agency that originates information, or its successor

in function, to regulate access to the information." In this case, plaintiff signed a Secrecy Agreement in which he agreed to submit for prepublication review any written material he prepared that contained any mention of intelligence data or activities or information or contained data that may be based upon information classified pursuant to the Executive Order. Plaintiff also agreed that any classified information he learned in the course of his CIA employment is and will remain the property of the United States Government and the CIA.

11. Under Section 1.4 of Executive Order 12958, information can be considered for classification if it concerns one of eight categories. The information at issue here falls within at least three of the eight categories: foreign government information (§ 1.4(b)); intelligence activities (including special activities), intelligence sources or methods, or cryptology (§ 1.4(c)); and/or foreign relations or foreign activities of the United States, including confidential sources (§ 1.4(d)).

12. Finally, as IRO, I have assessed the information at issue in this case, and I have determined that the unauthorized disclosure of certain information in plaintiff's memorandum reasonably could be expected to cause *serious* damage to national security as described in

Part II below. Therefore, I have determined that the information is properly classified at the SECRET level.

II. INFORMATION CLASSIFIED

13. The history of the submission of Mr. Boening's May 10, 2001 memorandum is detailed in the Declaration of Scott Koch, and will not be repeated here. See Declaration of Scott Koch, ¶¶ 19-38. The May 10, 2001 memorandum was submitted twice to the CIA for classification review, once in May 2001 and once in November 2004, and was substantively reviewed at least five separate times inside the Agency, and at least once outside; all of those who reviewed it agreed that information within was properly classified at the SECRET level. An unredacted copy of the memorandum is attached as an exhibit to my classified *in camera, ex parte* declaration.

A. Classified Information

14. I have determined that the information in plaintiff's memorandum contains CIA information concerning intelligence activities, intelligence sources, intelligence methods, foreign relations, and foreign government information, and is properly classified pursuant to Sections 1.4(b), 1.4(c) and 1.4(d) of Executive Order 12958, as amended. As discussed in greater detail in my classified *in camera, ex parte* Declaration, disclosure of

the classified information in plaintiff's memorandum reasonably could be expected to cause serious damage to national security.

B. Harm From Disclosure.

15. The primary mission of the CIA is to collect and analyze, for the President and other U.S. Government policymakers, otherwise unavailable information about foreign governments, foreign individuals, and entities such as terrorist organizations whose actions and interests may impact the foreign policy and national security interests of the United States. It is critical that the CIA succeed in this mission if the President and his senior advisors are to make well-informed decisions on matters of vital importance to the nation's security. As IRO, I am responsible for ensuring that the release of NCS information does not jeopardize this flow of intelligence information to policy-makers, or endanger other CIA intelligence sources and methods, personnel, or facilities.

16. Often, it is not obvious from the face of a document why the disclosure of certain information could cause damage to the national security. The potential damage from disclosure can only be assessed in a broader context, with an understanding of the origin of the information, information that has previously been released,

and current circumstances. Each piece of data that the CIA obtains makes up a piece of a mosaic of intelligence information that informs the conduct of U.S. national security policy. Sometimes, the release of even small bits of information, when combined with other leaked, stolen, or publicly available information, can provide our adversaries with valuable insights into CIA intelligence activities. Even disclosure of pieces of the intelligence puzzle that seem innocuous on their own may together provide a damaging framework within which to assemble other pieces and gain a picture of the whole. Putting together the pieces of intelligence is one of the primary methods employed by all intelligence services to discern the activities in which a hostile government or group is engaged, what interests it has, and its possible future objectives. Indeed, the CIA has an entire component -- the Directorate of Intelligence -- dedicated to the mission of collecting seemingly disparate pieces of information and assembling them into a coherent picture of a foreign intelligence target's activities and intentions.

17. Assessing the harm that could result from disclosure of information is also not an intuitive process. The harm from unauthorized disclosures may be swift and obvious: foreign partners terminate their relationship

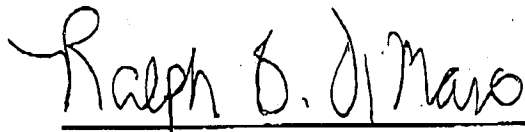
with the CIA, sources are captured or killed, foreign countries remove CIA officers from the country, or covert operations are discovered and consequently abandoned. The harm may also be more subtle: foreign partners may not provide their most sensitive and useful information to the United States, possible sources may choose not to cooperate with the CIA, or hostile intelligence services or terrorist groups may thwart CIA's collection efforts or provide misinformation. Often, the CIA does not know, and will never know, the intelligence and opportunities that were lost due to unauthorized disclosures. Thus, the CIA must do its best to prevent unauthorized disclosures to avoid this harm to the national security.

18. As part of the prepublication review of plaintiff's memorandum and in preparing this declaration, I carefully reviewed plaintiff's entire memorandum. This review process required careful scrutiny not only of each word or phrase but also of the context in which statements are made; the review is more art than science. As the individual responsible for protecting information originating within the NCS, I must endeavor to safeguard classified information that can be inferred or deduced from other, seemingly innocuous information in the memorandum. Further details of the classified information at issue

cannot be discussed on the public record, but are contained in my classified in camera, ex parte declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of July, 2007.



Ralph S. DiMaio
Information Review Officer
National Clandestine Service
Central Intelligence Agency