

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

UNITED STATES OF AMERICA

v.

THOMAS ANDREWS DRAKE,

Defendant.

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Criminal No. 10 CR 00181 RDB

GOVERNMENT’S MOTION FOR LEAVE TO SEAL DOCKET NO. 72

The United States of America, by and through William M. Welch II, Senior Litigation Counsel, and John P. Pearson, Trial Attorney, Public Integrity Section, Criminal Division, United States Department of Justice, respectfully files this motion requesting that the Court order that Docket No. 72, which attaches Exhibits A and B, be sealed.

As grounds, the information contained within the exhibits derives from NSA. As the holder of the privilege for this information, NSA has classified the documents as “FOUO”, which means “For Official Use Only.” This mean that the information is not for public dissemination. Until such time as NSA downgrades the information to “Unclassified,” the exhibits should not be publicly filed.

Presently, there is no reasonable alternative to sealing. Docket No. 72 was filed last Friday night, and, after discussion with opposing counsel, the government decided to file this motion. At this time, the government does not know when the information will be reduced to “Unclassified,” but an approval process within NSA needs to be followed in order to accomplish that result. The issue clearly will need to be resolved by the time of the CIPA hearing.

Until such time, however, Exhibits A and B should be filed under seal and not for public

dissemination. A copy of a proposed order has been attached.

Respectfully submitted this 18th day of March 2011.

For the United States:

/s/ William M. Welch II
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CERTIFICATE OF SERVICE

I hereby certify that I have caused an electronic copy of the foregoing motion to be served via ECF upon James Wyda and Deborah Boardman, counsel for defendant Drake.

/s/ William M. Welch II
Senior Litigation Counsel
United States Department of Justice

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PROTECTIVE ORDER

Whereas, the United States has filed a Protective Order sealing Exhibits A and B of Docket No. 72;

Whereas, in the Motion, the United States “proposed reasons supported by specific factual representations to justify the requested sealing,” in accordance with L.R. 105.11;

Whereas, the Court has considered the motion and any opposition thereto;

Whereas, the Court has not ruled on the motion for at least fourteen (14) days after it was entered on the public Court docket to permit the filing of objections by interested parties;

Whereas, the Court has considered any objections by interested parties, pursuant to L.R. 105.11;

Whereas, the United States has stated in the motion why alternatives to sealing would not provide sufficient protection;

Whereas, the Court finds and holds that alternatives to sealing would not provide sufficient protection;

Whereas, the Court finds and holds that sealing of a portion and/or portions of the record, specified herein, is appropriate;

Accordingly, it is this ____ day of _____, by the United States District Court for the District of Maryland, ORDERED:

1. That the motion for Protective Order is GRANTED, as specifically set forth herein;
2. That Exhibits A and B to Docket 72 be, and hereby are, PLACED UNDER SEAL by the Clerk of the Court and that the Sealed Record shall be placed in an envelope or other container which is marked SEALED, SUBJECT TO ORDER OF COURT DATED _____.
3. A copy of this Order shall be mailed to all counsel of record and to any other person entitled to notice hereof, and shall be docketed in the Court file.

HONORABLE RICHARD D. BENNETT
United States District Judge