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VIA CM/ECF

August 14, 2012

Honorable Richard D. Bennett
United States District Court
for the District of Maryland
101 West Lombard Street
Chambers 5D
Baltimore, Maryland 21201

Re: *United States v. Thomas Drake*
Case No. RDB-10-0181

Dear Judge Bennett:

We write regarding our Motion for Relief from the Protective Order (Dkt. No. 180). The motion was fully briefed as of July 11, 2012. On July 26, the government filed a notice advising the Court that on July 20 NSA had released redacted versions of the three unclassified documents that Mr. Leonard sought to disclose. These documents were released to individuals who had previously filed FOIA requests. With the public release of the documents, the government has taken the position that the Protective Order does not apply if Mr. Leonard obtains them from the FOIA requesters or from NSA. The government therefore requested that the Court deny the motion for relief from the protective order.

We appreciate the government's public release of these unclassified documents. However, we do not believe that their release moots our motion. Nor do we believe that the government has the final word on whether the Protective Order applies. The government claims that "the terms of the Court's April 29, 2010 Protective Order apply only to material 'exchanged between the parties' and 'disclosed by the parties'" and that because the documents were publicly released, the Order no longer applies to them. That is not an unreasonable interpretation of the Protective Order. It is equally, if not more, reasonable to conclude that the Order continues to apply to the information because it was, in fact, "exchanged between" and "disclosed by the parties" during the case and the government's subsequent release of the information does not change that fact. In any event, it is the Court's Protective Order, and the Court, not the government, should decide whether it applies.

Even if the Court concludes that the Protective Order technically no longer applies

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because the documents have been publicly released, there is no harm in granting the motion. The government certainly would suffer no prejudice. The only person who conceivably might suffer harm would be Mr. Leonard, who remains bound by the Protective Order and who, out of respect for the Court, diligently honored its terms by seeking permission to discuss and disclose information he received pursuant to it. It is unclear why the government, which has conceded that Mr. Leonard may discuss the documents freely and with impunity, continues to ask the Court to deny the motion when it will suffer no prejudice or harm if the motion is granted. Although we are thankful that the government will not claim that Mr. Leonard has violated the Order if he discusses the publicly available information, we nevertheless request that the Court grant him the relief he has requested. An Order from the Court will resolve this issue with finality and will give Mr. Leonard comfort that he is in compliance with the Protective Order.

For these reasons, and the reasons stated in our filings and in Mr. Leonard's affidavit, we respectfully request that the Court grant the motion and enter the Order attached to our reply brief. Thank you for your consideration of this matter.

Very truly yours,

/S/

James Wyda
Federal Public Defender

Deborah L. Boardman
Assistant Federal Public Defender

cc: John P. Pearson, Trial Attorney