IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,   *

      v.   *   Criminal Action No. RDB 10-00181

THOMAS ANDREWS DRAKE,   *

    Defendant.   *

*   *   *   *   *   *   *   *   *   *   *   *   *

MEMORANDUM ORDER

Presently pending before this Court is Defendant Thomas Andrews Drake's Motion

for Relief from Protective Order (ECF No. 180). This motion requests that permission be

given to the defense's expert witness, J. William Leonard, the former Director of the

Information Security Oversight Office (ISOO), to disclose and discuss three unclassified

documents which are subject to this Court's Protective Order (ECF No. 13) governing

unclassified discovery. The three unclassified documents at issue are (a) the document

charged in Count One of the Indictment, entitled "What a Success," (b) the government's

November 29, 2010 expert witness disclosure, and (c) the government's March 7, 2011

expert witness disclosure. Mr. Leonard has indicated that he seeks to use these documents

to have an open discussion about the government's actions in this case as they pertain to the

Executive Branch's national security information classification system.

The government has opposed this motion on the grounds that both Defendant

Drake and Mr. Leonard lack standing to bring this motion. Additionally, the government

contends that Mr. Leonard should elect to obtain these documents by filing a Freedom of

Information Act ("FOIA") request with the National Security Agency ("NSA"). Moreover,

on July 26, 2012, the government notified this Court that similar FOIA requests had been approved for six other individuals, that Mr. Leonard's request, once filed, would be immediately approved and that he would be able to "use the documents as he pleases." Notice to the Court at 2, ECF No. 193. Despite the government's willingness to provide these documents to Mr. Leonard, it continues to request that this Court deny Defendant's Motion for Relief from Protective Order (ECF No. 180).

Nevertheless, the government's arguments in this case are inapposite. As is aptly stated in the Defendant's Reply (ECF No. 192), Mr. Leonard is bound by the terms of the Protective Order and is therefore required to seek relief from the order to discuss unclassified information. The explicit language of the Order provides that it applies to "experts or consultants assisting in the preparation, trial and appeal of this matter" and that "[t]he contents of the Protected Material . . . *shall not be disclosed to any other individual or entity* in any manner except to a photocopy service as agreed by the parties or *by further order of this Court.*" Protective Order, ECF No. 13 (emphasis added). Moreover, the government has repeatedly insisted that this Protective Order remains in force despite the resolution of this case. Additionally, a FOIA request would not have been sufficient to permit Mr. Leonard's public use of these documents. In fact, while a FOIA request would have permitted him to receive the documents in question, he would not have been permitted to discuss them as he would remain bound by this Court's Protective Order.

In light of the foregoing and adopting the Defendant's reasoning in its Reply (ECF No. 192), it is this 10th day of September 2012, ORDERED that Defendant Thomas Andrews Drake's Motion for Relief from Protective Order (ECF No. 180) is GRANTED.

Specifically, Defense expert witness, J. William Leonard, may disclose and discuss with the public the following unclassified documents: (a) the document charged in Count One of the Indictment, entitled "What a Success," except for NSA employees' names identified in the document, which shall be redacted and shall not be disclosed; (b) the government's November 29, 2010, expert witness disclosure; and (c) the government's March 7, 2011 expert witness disclosure. Additionally, Mr. Leonard is permitted to discuss his July 30, 2011 letter complaint to John P. Fitzgerald, Director of ISOO.

The Clerk of the Court transmit copies of this Memorandum Order to Counsel.

/s/ _____

Richard D. Bennett
United States District Judge