

P.O. Box 2355  
Leonardtown, MD 20650

July 30, 2011

VIA EMAIL

Mr. John P. Fitzpatrick  
Director  
Information Security Oversight Office  
700 Pennsylvania Avenue, NW  
Washington, DC 20408-0001

Dear Mr. Fitzpatrick:

I am writing to you pursuant to Section 5.2(b)(6) of Executive Order 13526, "Classified National Security Information" (the Order) which assigns to you the responsibility to "consider and take action on complaints ... from persons within or outside the Government with respect to the administration of the program established under this order." Specifically, in the matter of United States v. Thomas Andrews Drake (Case No. 10 CR 00181 RDB) I am requesting you to ascertain if employees of the United States Government, to include the National Security Agency (NSA) and the Department of Justice (DoJ), have willfully classified or continued the classification of information in violation of the Order and its implementing directive and thus should be subject to appropriate sanctions in accordance with Section 5.5(b)(2) of the Order.

In count one of an indictment dated April 14, 2010, the United States Government charged that Mr. Drake, "having unauthorized possession of a document relating to the national defense, namely, a classified e-mail (attachment 1) entitled 'What a Success', did willfully retain the document and fail to deliver the document to the officer and employee of the United States entitled to receive it." In a letter dated November 29, 2010, (attachment 2) the DoJ informed Mr. Drake's counsel that this document is classified overall as SECRET because the information contained therein "reveals classified technical details" of NSA capabilities. As a plain text reading of the "What a Success" document reveals, this explanation is factually incorrect -- it contains absolutely no technical details whatsoever. The aforementioned DoJ letter went on to state that the document also revealed "a specific level of effort and commitment by NSA...". Notwithstanding that as a basis for classification this notion is exceedingly vague, it is also factually incorrect in view of the fact the the document is absolutely devoid of any specificity. All that is revealed in this otherwise innocuous "rally the workforce" missive is multiple unclassified nicknames with absolutely no reference to the classified purposes, capabilities, or methods associated with the programs or other classified events or initiatives represented by the unclassified nicknames.

In a letter dated March 7, 2011, (attachment 3) the DoJ provided supplemental information to Mr. Drake's counsel. In this letter, the government belatedly informed

counsel that the “What a Success” document “no longer required the protection of classification,” ostensibly because the classification guide for this information was updated on July 30, 2010. This letter went on to qualify but not retract the original justification for classification by adding an inherently contradictory clarification to the effect that the “What a Success” document was classified both because the “information contained therein **reveals ... a specific level** (emphasis added) of effort and commitment...” and because the document “**implied a level** (emphasis added) of effort ...” (the latter reason being even more vague than the former). Furthermore, the government’s supplemental expert summary stated that one of the unclassified nicknames revealed in the document related to a malicious attack on a U.S. government computer system. The letter goes on to rightfully state the reasons why specific information associated with a malicious attack on a U.S. government computer system could be classified; however, as supported by a plain text reading of the document, no such information is contained therein. Obviously, if it did contain such information, it should rightfully continue to be classified to this day and its difficult to understand how the update of a classification guide would change this.

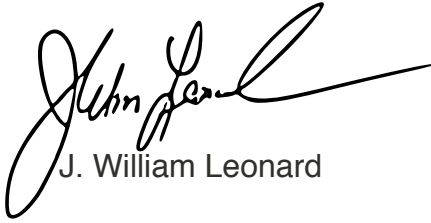
Various government officials affiliated with this case have publicly stated that cleared individuals do not get to choose whether classified information they access should be classified, the government does. Nonetheless, when deciding to apply the controls of the classification system to information, government officials are in-turn obligated to follow the standards set forth by the President in the governing executive order and not exceed it’s prohibitions and limitations. Failure to do so undermines the very integrity of the classification system and can be just as harmful, if not more so, than unauthorized disclosures of appropriately classified information. It is for that reason that Section 5.5 of the Order treats unauthorized disclosures of classified information and inappropriate classification of information as equal violations of the Order subjecting perpetrators to comparable sanctions, to include “reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.”

I have devoted over 34 years to Federal service in the national security arena, to include the last 5 years of my service being responsible for Executive branch-wide oversight of the classification system. During that time, I have seen many equally egregious examples of the inappropriate assignment of classification controls to information that does not meet the standards for classification; however, I have never seen a more willful example. Failure to subject the responsible officials at both the NSA and DoJ involved in the inappropriate classification and continuation of classification of the “What a Success” document to appropriate sanctions in accordance with Section 5.5(b)(2) of the Order will render this provision of the Order utterly feckless.

I should note that whereas my access to attachments 1-3 of this letter and the information contained therein is covered by a Protective Order associated with the aforementioned criminal case, I have been granted relief from this order by the court in order to file this complaint with you.

I look forward being informed of the results of your inquiry into this matter and any action you take in response to this formal complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "J. William Leonard". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

J. William Leonard

cc:

Honorable Eric H. Holder, Jr.  
Attorney General of the United States

General Keith B. Alexander, USA  
Director, National Security Agency