

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

Civil Action Number  
75-1996

DEPARTMENT OF JUSTICE,

Defendant.

SECOND  
AFFIDAVIT OF  
DONALD R. MACDONALD

I, Donald R. Macdonald, hereby depose and say as follows:

(I) (A) I have been a Special Agent of the Federal Bureau of Investigation (FBI) for seven years. I am presently assigned in a supervisory capacity at FBI Headquarters, Washington, D. C., with responsibility for review of the classification status of FBI information under current Executive Order (EO) 12065.<sup>1</sup> Part of my responsibility is to make the necessary classification reviews of material being sought through litigation pursuant to the Freedom of Information Act (FOIA).<sup>2</sup> I have been designated by the Attorney General, United States Department of Justice, as an original Top Secret classification authority<sup>3</sup> and a declassification authority.<sup>4</sup>

(I) (B) This is a supplemental affidavit to my affidavit of September 26, 1980, and it is executed in order to

---

<sup>1</sup> 43 Federal Register 28949, June 28, 1978, effective December 1, 1978.

<sup>2</sup> 5 U.S.C. § 522, 1976, as amended.

<sup>3</sup> Executive Order (EO) 12065, §§ 1-201 and 1-204.

<sup>4</sup> Id., § 3-103.

clarify the classification markings on documents numbered 30A, 34A and 39A, as well as the declassification of a portion of document 34A. These three documents, among others, were classified and withheld from disclosure pursuant to 5 U.S.C. § 552 (b)(1)<sup>5</sup> during the administrative processing of plaintiff's FOIA request.

(II) Each of the three documents (30A, 34A and 39A) was classified in accordance with EO 12065, § 1-606, which reads as follows:

1-606. No document originated on or after the effective date of this Order may be classified after an agency has received a request for the document under the Freedom of Information Act of Mandatory Review provisions of this Order (§ 3-5), unless such classification is consistent with this Order and is authorized by the agency head or deputy agency head. Documents originated before the effective date of this Order, and subject to such a request, may not be classified unless such classification is consistent with this Order and is authorized by the senior official designated to oversee the agency information security program, or by an official with Top Secret classification authority. Classification authority under the provision shall be exercised personally, on a document-by-document basis.

(III) (A) Document 30A was addressed in my previous affidavit on page 13. It was originally not marked when received, but the procedure was acceptable under EO 10501, as

---

<sup>5</sup> 5 U.S.C. § 522 (b) (1) provides: "(The) section (compelling disclosure) does not apply to matters that are--(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and (B) are in fact properly classified pursuant to such Executive Order."

documents were marked for classification only when they were disseminated outside the FBI. Since this was a document which originated from a foreign government, it was not intended for outside dissemination.

(III) (B) When the request was originally made for document 30A pursuant to the FOIA, the material was withheld under exemption (b)(7)(D). When I reviewed this document pursuant to the provision of EO 12065, I determined that the information is properly classified. Accordingly, this document was marked in accordance with the appropriate provision of EO 12065.

(IV) (A) Document number 34A was addressed in my previous affidavit on page 14. When document number 34A was originated, it was classified on September 30, 1976, according to EO 11652. FBI records also indicate that this document was reviewed for classification on September 20, 1977, and no declassification action was appropriate at that time.

(IV) (B) A review of document 34A was made by me pursuant to EO 12065, and, as a result of this review, I determined that certain information in this document was no longer classifiable by the FBI. Therefore, a portion of this document was declassified and appropriately marked pursuant to EO 12065. This decision to declassify is consistent with EO 12065, § 3-301, which reads as follows:

3-301. Declassification of classified information shall be given emphasis comparable to that accorded classification. Information classified pursuant to this and prior Orders shall be declassified as early as national security consideration permits. Decisions concerning declassification shall be based on the loss of the

information's sensitivity with the passage of time,  
or on the occurrence of a declassification event.

All other portions continue to meet the requirements of  
EO 12065.<sup>6</sup>

(V) (A) Document number 39A was addressed by me on  
page 15 in my previous affidavit. EO 10501 was the authority for  
classification of documents when this document originated and,  
as was the case in document 30A, no classification markings were  
necessary on the documents if the document was not to be  
disseminated outside the FBI.

(V) (B) FBI records indicate that document 39A was  
examined for classification on June 10, 1977.

(V) (C) At the time I examined document 39A pursuant  
to EO 12065, I found "Confidential" markings and paragraph  
markings present on the document, but I did not see an original  
classification authority stamp. Therefore, when I examined  
the document, I also concurred with the previous classification  
of the document and determined that a paragraph on page 2 met  
the substantive criteria for classification under EO 12065.  
I therefore added the proper original classification authority  
stamp on document 39A as required under the marking provisions  
of EO 12065.

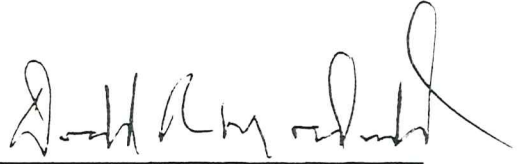
---

<sup>6</sup>The portions of this document which were declassified  
are confined to three paragraphs containing information recently  
deemed to be within the public sector, thus requiring the afore  
described declassification action. Prior to this determination  
by the FBI, document 34A was properly classified pursuant to  
the provision of EO 12065 and preceding Executive Orders.



This completes the itemization, indexing and description of withheld classified information.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 25, 1980.



Donald R. Macdonald  
Special Agent  
Federal Bureau of Investigation  
Washington, D. C.