

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PAUL HOCH)
)
 Plaintiff,)
)
 v.) Civil Action No.
) 82-0754
)
 CENTRAL INTELLIGENCE AGENCY,)
)
 Defendant.)
)

AFFIDAVIT OF WENDELL B. WHITE

State of Maryland)
) SS:
 County of Anne Arundel)

Wendell B. White, being duly sworn, deposes and says:

1. I am the Acting Director of Policy of the National Security Agency (NSA). As Acting Director of Policy, I am a classification authority, and I am responsible for processing all initial requests made pursuant to the Freedom of Information Act (FOIA) for NSA records. The statements made herein are based upon my personal knowledge, upon my personal review of the information available to me in my official capacity, and upon conclusions reached in accordance therewith.

2. On 15 December 1981, this Agency received from the Central Intelligence Agency (CIA), a referral of documents believed by the CIA to contain NSA originated information and to be within the scope of a Freedom of Information (FOIA) Act request, signed by one David W. Belin, for any materials in the possession of the CIA, at the time of the Warren Commission hearings, relating to the assassination of President Kennedy and the investigation of that assassination by the Warren

Commission. Portions of some of the pages of the documents for which this Court requires an affidavit from an authorized representative of NSA, i.e. documents 1474-492-BL, 1475-492-BM, and 1476-492-BN, contain data originally supplied by NSA. By memorandum dated 30 December 1981 the CIA was requested to delete this information, citing applicable FOIA exemptions, from the documents at issue prior to releasing the documents in response to the aforementioned FOIA request.

3. The National Security Agency was established by Presidential Directive in October 1952 as a separately organized Agency within the Department of Defense under the direction, authority and control of the Secretary of Defense, who was designated by the President as Executive Agent of the Government for conducting the communications security and signals intelligence activities of the United States.

4. NSA's signals intelligence mission is to obtain information from foreign electromagnetic signals and to provide reports derived from such information or data on a rapid response basis to national policymakers and the intelligence community of the United States Government. The intelligence collection mission of NSA provides this community with currently, nearly instantaneous, and highly reliable foreign intelligence information. The preservation of communications intelligence (a portion of signals intelligence) sources is a fundamental and continuing requirement. The need to protect these sources derives from a premise, which experience has shown to be sound, that disclosure of information confirming

the identity of individuals or organizations whose foreign communications were acquired by NSA, disclosing the dates or contents of such communications, or divulging the methods and techniques by which the communications were acquired by NSA, would severely jeopardize the intelligence collection mission of NSA by identifying present communications collection and analysis capabilities.

5. I have personally reviewed the documents and have found the following facts to be true:

a. The three paragraphs deleted on the unnumbered page directly after the title pages of each of the documents at issue were incorrectly deleted. Unredacted versions of these paragraphs have been attached to this affidavit--a copy of which will be served on the plaintiff.

b. All of the remaining information required by NSA to be withheld by the CIA is intelligence product derived from the intercept of foreign electromagnetic transmissions.

c. When it was originated, the information was classified Top Secret in the established classification category of the Executive Order then applicable (Executive Order 10501, Section 1), was appropriately marked, and was exempt from automatic declassification or downgrading as authorized by that order.

d. The NSA originated information in the CIA documents is totally integrated intelligence product currently and properly classified in its entirety, meeting the established criteria for the indicated classifications as

currently provided in Section 1 of Executive Order 12356. The NSA information in the CIA documents continues to be properly excluded from automatic downgrading and declassification according to guidance provided in Section 3 of Executive Order 12356 as declassification and disclosure could reasonably be expected to cause damage to the communications intelligence activities of the United States Government. I have therefore determined that this information is exempt under 5 U.S.C. §552(b) (1) from release under the Freedom of Information Act.

e. 18 U.S.C. §798 prohibits the unauthorized disclosure of classified information concerning communications intelligence; 50 U.S.C. §403(d) (3) protects intelligence sources and methods; and Section 6 of the National Security Agency Act of 1959 (Public Law 86-36) provides that no law shall be construed to require the disclosure of information pertaining to the organization, or any function or any information with respect to the activities of the NSA. Each of these statutes is specifically and directly applicable to the NSA portions of each of the documents withheld. I have therefore determined that this information is also exempt from disclosure pursuant to 5 U.S.C. §552(b) (3).

6. In order to illustrate the application of these statutes to the information withheld, as well as the significance of those statutes in protecting information such as is at issue in this case, it is appropriate to amplify the nature and scope of the NSA mission. Foreign governments utilize two principal means for sending and receiving inter-

national radio communications. (This term as used here includes communications passed in part by wire.)

a. The first involves the use of a foreign government's own radio transmitter and receiver facilities not available for public use. Such communications links are known as "government net" communications.

b. The second involves the use of facilities of an international communications common carrier also available for use by the public. Such common-access carriers supply the means by which more than half the encrypted and plaintext radio communications of foreign governments, foreign organizations, and their representatives are carried.

7. It is common knowledge that the total volume of radio signals transmitted on a given day is vast. It is also generally known that radio transmissions can be received by anyone operating the proper receiving equipment in the right place at the right time. Thus, the fact that NSA can intercept radio communications is generally known. So, too, is the fact known to foreign officials that such interception of radio communications is a primary mission of the NSA. Foreign officials may be expected to know, also, that NSA cannot possibly intercept even a significant percentage of all such communications, especially taking account of the fact that NSA's activities involve worldwide communications, not solely those having a United States terminal. The number is too vast to be handled with any reasonable amount of personnel and equipment. The cost and effort of such interception would

be disproportionate to the intelligence value of the results. Instead -- as NSA's foreign intelligence targets presumably know well -- NSA must focus its interception activities on those particular lines, channels or communications links which yield the highest proportion of useful foreign intelligence information. What foreign government officials do not know is which of the vast number of radio communications channels NSA attempts to intercept, which are intercepted, and, of those communications that are intercepted, which yield to NSA processing for intelligence purposes. The continued efficacy of this method requires that the circuits actually monitored remain unidentified. If a foreign government obtains sufficient reason to suspect that NSA is able to target and process such government's radio communications, such government may take steps to secure its communications by upgrading or initiating cryptography or may deliberately use the suspect communication channels to pass misleading information. If a foreign power is successful in defeating an interception operation, all of the intelligence from that source is lost until and unless NSA can establish a new and equivalent intercept capability. Even after targeting only a small proportion of all available electromagnetic communications for interception, the number of messages intercepted is extremely large. NSA thus is faced with a considerable task in selecting out those messages that will be reviewed for possible intelligence interest. The manner in which NSA does this selection and the degree of reliability and success its

methods enjoy are subjects about which virtually no authoritative information has ever been released to the public. Information about these subjects would enable foreign observers to further assess, and thus take steps to defeat, the capabilities of NSA's intelligence gathering techniques. The risk involved is great. The information produced by NSA is of immeasurable value to the President, the Secretary of Defense, the Secretary of State and other policymakers. If a source used by the Agency becomes unavailable, policymakers must operate without the information that source produced. Sometimes it is impossible to establish a new and equivalent intercept capability and the source is lost permanently. Such losses are harmful to the national security.

8. The NSA information being withheld is derived from intercepted foreign communications. The disclosure of this information would identify the communications that had been successfully intercepted and processed for intelligence purposes. No meaningful portion of any of the information could be segregated and released without identifying the underlying communications. Also disclosed would be the communications routes targeted and intercepted and NSA's capabilities to successfully process the underlying communications. The communications targets and the processing techniques are still effective intelligence sources and methods. Disclosing them would permit foreign intelligence officials to draw inferences and make assessments about this Nation's communications intelligence collection and processing activities that would enable

them to take steps to defeat the capabilities of NSA's intelligence gathering techniques.


9. All of the NSA information being withheld from the plaintiff is communications intelligence product classified in its entirety to protect intelligence sources and methods. When originated, the information was properly classified Top Secret pursuant to Executive Order 10501, Section 1(A), providing for the application of that classification to information which could result in exceptionally grave damage to the nation, such as the "compromise of ... communications intelligence systems" or "the revelation of sensitive intelligence operations." The information was appropriately marked when it was originated. The information, in its entirety, remains properly so classified. The information meets the criteria for classification in Section 1.3 of Executive Order 12356 and is properly classified within the categories provided in Section 1.1 of the Order.

10. Release of any of the information withheld would disclose information about the nature of NSA's activities including its functions. The mission of the NSA is singular and unique. Disclosure of specific information about the documents in the context of that singular mission would reveal certain functions and activities of the NSA which are protected by Section 6 of the National Security Agency Act of 1959 (Public Law 86-36). The disclosure of this classified information, or of specific information about it, would reveal information protected by 18 U.S.C. §798 prohibiting the

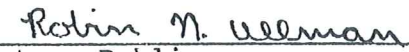
unauthorized disclosure of classified information concerning the communications intelligence activities of the United States. The disclosure of the information would compromise classified information pertaining to intelligence sources and methods protected from disclosure by Section 103(d)(3) of the National Security Act of 1947 (50 U.S.C. §403(d)(3)). Accordingly, I determined that the information is exempt under 5 U.S.C. §552(b)(3) from release under the Freedom of Information Act because each portion of the withheld information is protected from disclosure by Section 6 of the National Security Agency Act of 1959 (Public Law 86-36), 18 U.S.C. §798, and by Section 103(d)(3) of the National Security Act of 1947.

11. The information's classification and its withholding pursuant to FOIA exemptions (b)(1) and (b)(3) is based on its characteristics which identify intelligence sources and methods that would be seriously jeopardized by the disclosure plaintiff seeks. The revelation of further information about the documents would have the same consequences adverse to United States communications intelligence activities that release of the documents would have. In short, any further factual public description of the information would compromise the secret nature of the information and would compromise intelligence sources and methods. Information that would disclose or that would enable foreign officials to infer the identity of the underlying communications would disclose the channels from which they were

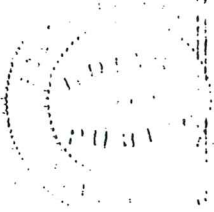
intercepted and could lead to the loss of intelligence access to those foreign government communications. If the Court requires further information about the communications underlying these documents, an in camera affidavit containing more specific identifying data can be prepared and submitted for ex parte review upon direction.


WENDELL B. WHITE
Acting Director of Policy
National Security Agency

Subscribed and sworn to before me
this 23rd day of February 1983.


Notary Public

My commission expires July 1, 1986.



This document contains classified information affecting the national security of the United States within the meaning of the espionage laws, US Code Title 18, Sections 793, 794, and 798. The law prohibits its transmission or the revelation of its contents in any manner to an unauthorized persons, as well as its use in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States.

It is to be seen only by US personnel especially indoctrinated and authorized to receive COMMUNICATIONS INTELLIGENCE information; its security must be maintained in accordance with COMMUNICATIONS INTELLIGENCE REGULATIONS.

No action is to be taken on any COMMUNICATIONS INTELLIGENCE which may be contained herein, regardless of the advantages to be gained, unless such action is first approved by the Director of Central Intelligence.