

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE
COURT OF REVIEW
WASHINGTON, D.C.

IN RE DIRECTIVES PURSUANT TO SECTION)
105B OF THE FOREIGN INTELLIGENCE)
SURVEILLANCE ACT.)

Docket No. 08-01

ORDER

This matter is before the Court on the Motion of the Provider to “Publish Additional Portions of the Court’s Decision” in In re Directives Pursuant to Section 105B of the Foreign Intelligence Surveillance Act, 551 F.3d 1004 (Foreign Intel. Surv. Ct. of Rev. 2008), which was submitted on June 14, 2013.¹ The U.S. Department of Justice filed a response to the motion on June 25, 2013, and the Provider waived its right to reply on June 26, 2013.

The Provider moves this Court to issue an order stating: “(1) that it does not object to the Government’s release of additional portions of its opinion in this case and (2) directing the Government to revisit its classification decisions under Executive Order 13,526 to determine if classification remains appropriate in light of recent disclosures.” Mot. at 8 (footnote omitted). Earlier in its filing, the Provider requested that this Court “publish additional information including, but not limited to, the identity of the Provider and its counsel and the arguments made

¹ Provider styles its pleading as request for relief under Foreign Intelligence Surveillance Court (FISC) Rule 62. As a matter of clarification, Rule 62 applies to the FISC only, and not this Court.

in the briefs.” Id. at 1. The government, in its response, does not oppose the relief sought or object to the Provider’s requests. Resp. at 1-2. With respect to the Provider’s request that this Court state that it does not object to the government’s release of additional portions of its August 22, 2008, opinion in this case, the government takes no position. With respect to the identity of the Provider and the contents of the present motion and response, the government states that “the identity of the petitioner in the 2008 litigation can now be declassified” and that it had no objection to the Motion being made publicly available. Id. at 2-3. With respect to the request for a new classification review, the government states that it does not object to the request, although it contends that it is not necessary for the Court to direct that relief, which could be triggered by a request under the Freedom of Information Act.

This Court’s January 12, 2009, Order places under seal all classified information in this matter. 551 F.3d at 1017. That Order defines “classified information” as “any information, document, or portion of a document, not included in the published, redacted opinion, that has been and remains classified by an Executive Branch agency or official pursuant to applicable Executive Orders....” Id. In light of the government’s Response, this Court no longer considers the identities of the Provider or its counsel to be covered by this Court’s sealing order.

This Court stated in its January 12, 2009, Order that “[i]t would serve the public interest and the orderly administration of justice to publish” the August 22, 2008, Opinion, but that “an unredacted opinion would disclose materials that have been properly classified by the Executive Branch.” 551 F.3d at 1016. As a result, redactions were made to the Court’s opinion in consultation with the Executive Branch prior to publication. Since that time, more than four years have passed, and recent events suggest that there may have been a change in the

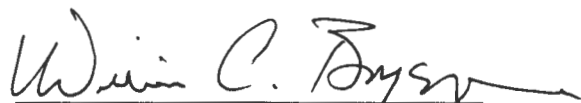
government's position as to what it considers classified in this matter. In recognition of this Court's authority over its own records and files, the Court concludes that it is appropriate for this Court to order the requested relief and not to require the Provider to initiate a separate proceeding under the Freedom of Information Act.

For the reasons discussed above, this Court rules that it does not object to the government's release of additional portions of the Court's August 22, 2008, Opinion in this case to the extent that the government concludes that those matters may be declassified. In addition, IT IS HEREBY ORDERED that the government is to conduct a new classification review of the following:

1. This Court's August 22, 2008, Opinion in this matter.
2. The Parties' Legal Briefs in this matter.

The government is to report back to the Court by July 12, 2013, with estimated dates by which it will be able to complete its review of the two categories of information indicated above.

SO ORDERED, this 28th day of June, 2013.



WILLIAM C. BRYSON
Judge, United States Foreign
Intelligence Surveillance
Court of Review