

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN CIVIL LIBERTIES UNION, and AMERICAN CIVIL LIBERTIES UNION FOUNDATION,)	
)	
Plaintiffs,)	Civil Action No. 1:13-cv-01870 (JEB)
)	
v.)	
)	
CENTRAL INTELLIGENCE AGENCY, et al.)	
)	
Defendants.)	
)	

DECLARATION OF MARK H. HERRINGTON

Pursuant to 28 U.S.C. § 1746, I, Mark H. Herrington, hereby declare under penalty of perjury that the following is true and correct:

1. I am an Associate Deputy General Counsel in the Office of General Counsel (“OGC”) (Office of Litigation Counsel) of the United States Department of Defense (“DoD”). OGC provides legal advice to the Secretary of Defense and other leaders within the DoD. I am responsible for, among other things, overseeing Freedom of Information Act (“FOIA”) litigation involving DoD. I have held my current position since March 2007. My duties include coordinating searches across DoD to ensure thoroughness, reasonableness, and consistency.

2. The statements in this declaration are based upon my personal knowledge and upon my review of information available to me in my official capacity. Specifically, I am the OGC counsel assigned to this case.

Purpose of this Declaration

3. I submit this declaration to provide information regarding DoD's handling of the record that is the subject of this litigation.

Plaintiff's Request

4. On May 6, 2014, Plaintiffs requested "the updated version of the Senate Select Committee on Intelligence's report, *Study of the CIA's Detention and Interrogation Program.*" ("SSCI Report")

Status

5. At the time of Plaintiffs' request, DoD did not have a complete version of the SSCI Report. DoD had previously received a copy of the SSCI Report executive summary during the classification review conducted by the Executive Branch prior to the release of the declassified version of that executive summary. DoD first received a copy of the full version in December 2014 after the SSCI publically released the declassified Executive Summary of the SSCI Report. The SSCI report was transmitted with a letter dated December 10, 2014, from Senator Dianne Feinstein, who was then SSCI Chairman.

6. DoD has treated the SSCI Report as a congressional record and continues to do so. The Report has not been placed within a DoD system of records, it is stored in secure locations, access to it is limited to an small number of persons with proper clearance and a need to know, and access is strictly controlled by the Under Secretary of Defense for Intelligence.

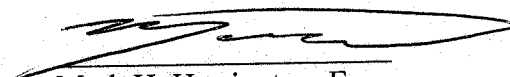
7. Through inter-agency discussions within the Executive Branch, DoD was aware that the SSCI had been adamant that the draft version of the Report could not be integrated with agency record filing systems, and that disposition and control over the records, even after the completion of the Committee's review, lay exclusively with the Committee. With those

admonishments in mind, DoD has treated the classified executive summary and this full version similarly. DoD has two copies of the full SSCI Report and both are kept in sensitive compartmented information facilities ("SCIF"s). One is kept in a safe in the SCIF office of the Under Secretary of Defense for Intelligence. The other copy is on a stand-alone, TOP SECRET laptop in the SCIF office of the Under Secretary's principal legal adviser, the DoD Deputy General Counsel (Intelligence), so that she may address/advise on litigation and other legal related matters, as necessary. Only the Deputy General Counsel has access to that copy. Further, given the highly classified nature of the report, broad dissemination throughout DoD is not possible.

8. DoD's treatment of the full SSCI Report is consistent with all previous indications from Congress about the use of the Report. DOD interpreted the December 10, 2014, letter from Senator Feinstein as consistent with these caveats, and has continued to treat the Report consistent with the understanding that the Report remains a congressional record.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 21st day of January, 2015, in Arlington, VA.



Mark H. Herrington, Esq.