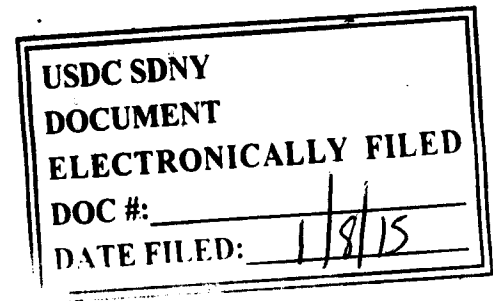


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



_____ X
AMERICAN CIVIL LIBERTIES UNION, et al.,

Plaintiffs,

-against-

12 Civ. 794 (CM)

DEPARTMENT OF JUSTICE, et al.,

Defendants.
_____ X

ORDER REQUIRING REVISED SUBMISSIONS

McMahon, J.:

The in camera submission received from the CIA and the Department of Defense on November 14, 2014, is not readily reviewable (notwithstanding the representation that it was formatted “for the convenience of the court”). It must, therefore, be redone, and promptly.

The convenience of the court will be served if the CIA – and the Defense Department, and OLC, and any other Government agency involved in this case – provides the court with a single document that, on its face, advises the court on a document by document basis of: the nature of the document, the date of the document, and the reasons why the document is exempt. The classified “Vaughn Indices” already submitted by the CIA and the DoD do not meet that standard. It is not enough to list on the Vaughn Index, under the “exemptions” heading, the statutory sections on which the agency relies. Stating in conclusory fashion that the document is subject to this or that privilege is equally insufficient.

It has heretofore been the Government’s practice to, in effect, have the court try to piece together the Government’s argument, by handing me indices with supporting classified declarations and briefs. Trying to piece together the Government’s argument in this way is both difficult (especially since the documents themselves have not been made available) and time-consuming (which it should not be). I am certain that proceeding in this manner lessens the amount of work that Government lawyers must do. It is unhelpful to me.

Furthermore, these supporting briefs and declarations all too often do not proceed on a document by document basis, but group documents together, in no particular order,

and contain general discussions of their contents, with justifications offered only for a few exemplar documents. They are difficult to follow and fail to correspond to the indices in an easily reviewable way.

Therefore, whatever else the Government gives me, I must receive a single document (which need not be tabular in form, and which can be on a piece of paper larger than 8.5 by 11, and which can feature a somewhat smaller type face than 12 point), that includes, on a document by document basis, the following information:

Document 1: Letter from X, Job Title, to Y, Job Title, dated MM/DD/YEAR, discussing Subject. A.

This document is exempt under Section (b)(1) BECAUSE

This document is exempt under Section (b)(3) BECAUSE

This document is exempt under Section (b)(5) BECAUSE (list each and every reason applicable to that document).

If the reason why a particular document qualifies for a particular exemption is not apparent from the description of the document – that is, if the description of the document does not reveal the fact that it contains classified information, or why it is covered by this or that privilege – then the Government should explain, right there in the BECAUSE section, why the exemption is being invoked. Do not simply send me to some other document, be it brief or declaration, to try to figure out why the Government is asserting the exemption. Include in the BECAUSE section a summary of the argument for withholding the document, whatever it is. And remember: sweeping arguments about groups of documents in declarations are no more helpful or persuasive than sweeping arguments about groups of documents in briefs. The only thing that will be helpful is a discussion of Document 1, followed by a discussion of Document 2, etc.

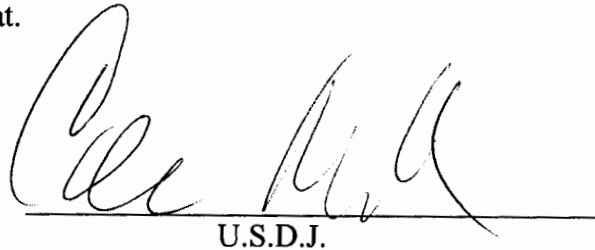
In other words, I want a single document on which I can find, neatly and cogently summarized, all of the information that I should need in order to assess whether the document is properly withheld. I can only dip into this assignment periodically, as my schedule permits; I need to be able to accomplish a lot in compressed time and to resume my review expeditiously after interruption. Therefore, I want to consider and decide whether Document 1 has been properly withheld (or whether I need to review the document in order to make that determination), then turn my attention to Document 2, and thence to Document 3, and so on. It is the only way this process is going to work.

If this format is used, I should not need a Memorandum of Law. I am familiar with the law. I do not need a brief. I need factual information about the documents that appear on the various Vaughn Indices, if they are being withheld in whole or in part. It is relatively easy to redact an informative Vaughn Index if that needs to happen once the court has reviewed it; indeed, the CIA and DoD have already filed unclassified versions of their existing, uninformative Vaughn Indices.

I understand that the Index I am requesting may be somewhat repetitive, and will likely be considerably longer than what the Government has heretofore provided. However, it will be easy for the court to follow, and will, therefore, serve the “convenience of the court.”

The CIA and the Defense Department have until January 20 to get me a document for review that conforms to the parameters I have set. For future reference, OLC and any other agency should follow the same format.

Dated: January 7, 2015



U.S.D.J.

BY ECF TO ALL COUNSEL