

EXHIBIT 7

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE PROTECT DEMOCRACY PROJECT, INC.)	
)	
<i>Plaintiff,</i>)	No. 17-CV-0842-CRC
)	
v.)	
)	
U.S. DEPARTMENT OF DEFENSE, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
_____)	

DECLARATION OF PATRICIA GAVIRIA,
DIRECTOR, INFORMATION MANAGEMENT DIVISION,
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

I, Patricia Gaviria, hereby declare and state:

1. I am the Director of the Information Management Division (IMD), Office of Policy and Strategy, for the Office of the Director of National Intelligence (ODNI). I have held this position since June 12, 2017. Prior to my current position, I held various senior and supervisory roles in the ODNI, including as a Senior Privacy Officer in the Civil Liberties, Privacy, and Transparency Office, serving additionally as the Privacy Representative in the National Counterintelligence and Security Center, as a Senior Advisor to the ODNI Partner Engagement Office, and as a team Chief at the National Counterterrorism Center. As part of my current duties I develop, implement, and manage programs to provide guidance to ODNI regarding records, classification, declassification, and the Freedom of Information Act.

2. Under a written delegation of authority by the Director of National Intelligence (DNI) pursuant to section 1.3(c) of Executive Order 13526, I hold original classification authority at the TOP SECRET level. I am authorized to make original classification and declassification decisions for intelligence information up to and including the TOP SECRET level. In my current

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position, I am the final decision-making authority regarding Freedom of Information Act (FOIA) and Privacy Act processing for the ODNI's IMD.

3. Through the exercise of my official duties, I have become familiar with the civil action *Protect Democracy Project v. Dep't of Defense*, No. 17-842 (D.D.C.) and the underlying FOIA request submitted by plaintiff the Protect Democracy Project. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

I. THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

4. Congress created the position of the DNI in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1101(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (IRTPA) (amending Sections 102 through 104 of Title 1 of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the DNI serves as the head of the U.S. Intelligence Community (IC), and as the principal adviser to the President and the National Security Council for intelligence matters related to the national security. 50 U.S.C. §§ 3023(b)(1), (2).

5. The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. These responsibilities include ensuring that national intelligence is provided to the President, heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C. § 3024(a)(1). The DNI is charged with establishing the objectives of; determining the requirements and priorities for; and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the IC. 50 U.S.C. §§ 3024(f)(1)(A)(i) and (ii).

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6. In addition, the National Security Act of 1947, as amended, provides that the DNI “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Consistent with this responsibility, the DNI establishes and implements guidelines for the IC for the classification of information under applicable law, Executive orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(2)(A), (B).

7. Finally, the National Security Act of 1947, as amended, created the ODNI. The function of the ODNI is to assist the DNI in carrying out his duties and responsibilities under the Act and other applicable provisions of law, and to carry out such other duties as may be prescribed by the President or by law.

II. ODNI’S INFORMATION MANAGEMENT DIVISION

8. ODNI’s IMD falls under the purview of ODNI’s Policy and Strategy Office. IMD’s mission, among others, is to manage mandatory information management programs for the ODNI and to provide guidance on consistent information management practices across the IC. In this regard, IMD’s focus includes the disciplines of records management, classification management, and information review and release, including declassification and controlled unclassified information. One of IMD’s responsibilities, includes the facilitation and implementation of information management-related Executive orders, laws, regulations, and ODNI policy. This function entails controlling information throughout its life cycle and includes the areas of records management, classification management and declassification, pre-publication reviews, and responding to requests under the FOIA and the Privacy Act.

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9. I submit this declaration in support of the Defendant's Motion for Summary Judgment in this proceeding. The purpose of this declaration is to explain and justify, to the extent possible on the public record, the actions taken by the IC in response to plaintiff's request for information under the FOIA, 5 U.S.C. § 552, specifically, the bases for the IC's withholdings within three copies of a US Government document collectively referred to hereafter as "the legal memorandum."

III. BACKGROUND DISCUSSION

a. Legal Memorandum

10. I understand that this legal memorandum assessed the legal authority for the US Government's potential use of force against the Government of Syria after the Syrian Government's use of chemical weapons on April 4, 2017. The legal memorandum contains a "factual background" section, which contains certain currently and properly classified IC equities. The IC information formed a part of the factual background relied upon by the authors of the legal memorandum. IC entities have requested, pursuant to exemptions available under the FOIA, that the Departments of Justice, Defense, and State withhold certain of the information contained within or referring to the factual background section in this litigation. To the extent that the Court requires additional information regarding particular withholdings, the government will submit an *in camera, ex parte* classified declaration upon request to provide further explanation of the harm to the national security that could reasonably be expected to occur if the withheld information were publicly disclosed.

b. The Importance of Intelligence to National Security

11. There are two primary reasons for gathering and analyzing intelligence information. The first, and most important, is to gain the information required to direct U.S.

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resources as necessary to counter threats to the nation and its allies. The second reason is to obtain the information necessary to direct the foreign policy of the United States. Foreign intelligence information provided by the IC is routinely distributed to a wide variety of senior Government officials, including the President; the President's National Security Advisor; the Director of National Intelligence; the Secretaries of Defense, State, Treasury, and Commerce; U.S. ambassadors serving in posts abroad; the Joint Chiefs of Staff; and the Unified and Specified Commanders. More specifically, Signals Intelligence information is disseminated to numerous agencies and departments and is relevant to a wide range of important issues, including, but not limited to, military order of battle, threat warnings and readiness, arms proliferation, terrorism, and foreign aspects of international narcotics trafficking. This information is often critical to the formulation of U.S. foreign policy and the support of U.S. military operations around the world. Moreover, intelligence produced by the IC is often unobtainable by other means.

IV. CATEGORIES OF INFORMATION WITHHELD

12. The purpose of this declaration is to advise the Court that the IC has marked for withholding certain information, as set forth below, because it is properly exempt from disclosure under the FOIA based upon Exemptions 1 and 3, 5 U.S.C. §§ 552(b)(1), (3), respectively. This is so because the information remains currently and properly classified in accordance with E.O. 13526 and protected from release by statutes, specifically 50 U.S.C. § 3024, 50 U.S.C. § 3605, and 18 U.S.C. § 798.

13. Defendant agencies Justice, State, and Defense have provided the IC with three copies of a legal memorandum drafted by a group of interagency attorneys in conjunction with staff of the National Security Council. The memo concerns the President's legal authority to conduct a contemplated military action. Each copy of the memo is substantively similar and, of particular interest in this litigation, the "factual background" portions are identical. IC entities

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have identified a limited number of discrete words and phrases (hereafter “these phrases”) within or referring to the factual background section on page one of the legal memorandum that are exempt from disclosure under the FOIA based upon Exemptions 1 and 3. These phrases form the underlying factual basis for the US Government’s intelligence assessment that Syrian Governmental forces carried out the chemical weapons attack at Khan Shaykhun, Syria on April 4, 2017. These phrases further identify and describe certain of the Signals Intelligence in the US Government’s possession relating to this attack, and they describe the US Government’s confidence level with regard to the accuracy of intelligence information in its possession, to include the relevant Signals Intelligence.

14. Taken together, these phrases reveal specific IC, including National Security Agency (“NSA”), sources, methods, and targets as well as the analytic tradecraft that the IC utilizes in preparing intelligence products and informing US Government policymakers. For the reasons that follow, such information is currently and properly classified and protected from release by law. Public disclosure of these phrases would reveal the following categories of information. First, specific identified Signals Intelligence targets would be disclosed. Such information is classified at the TOP SECRET level, and the public disclosure of such information reasonably could be expected to cause exceptionally grave damage to the national security. A portion of the words contain the identities of specific targets the public disclosure of which would reveal to these targets that they are a target of interest to the IC. It would further reveal IC capabilities to collect information about these targets and alert the targets that their communications are susceptible to interception, because these phrases reveal that the IC was successful in targeting these entities’ communications. Such disclosures would impair the IC’s collection efforts because the targets, having confirmation that their communications are

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susceptible to interception, would take steps to preclude IC access to their communications, thereby denying the United States information crucial to the national security.

15. Second, these phrases reveal specific Signals Intelligence collection and technical capabilities of the NSA, as the fact that they are directed against these identified targets would be revealed. Such information is classified at the TOP SECRET level, and the public disclosure of such information reasonably could be expected to cause exceptionally grave damage to the national security. Disclosure of this information would also reveal the scope and limitations of NSA's collection against these specific, identified targets. Public disclosure of NSA's capabilities to acquire specific types of communications, the technical means and methods by which such acquisitions are effected, and the analytical insights drawn by NSA's intelligence professionals in relation to such acquisitions would alert targets to the vulnerabilities of their communications (and conversely, which of their communications are not vulnerable). Such disclosures would also alert adversaries to the Government's awareness of adversaries' use of specific tradecraft. Once alerted, adversaries would have insights into which of their communications are most vulnerable such that they could focus resources on developing countermeasures to thwart NSA's collection of their electronic communications. The result could be a denial of NSA's access to its targets' communications, causing a loss of information critical to the national security and defense of the United States.

16. Finally, public disclosure of these phrases would reveal the IC's analytic tradecraft. Such information is classified at the SECRET level, and the public disclosure of such information reasonably could be expected to cause serious damage to the national security. Using their training and experience, the IC's intelligence professionals turn Signals Intelligence reporting into intelligence analysis that is distributed throughout the IC and used by US policymakers, among others, to counter threats to the nation and its allies and direct the foreign

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policy of the United States. The factual background section of the legal memorandum contains an assessment of the IC's confidence assessment of the information available to it regarding the events of April 4, 2017, and this confidence assessment is based – in part – on Signals Intelligence reporting disseminated by NSA. Public disclosure of this information would provide foreign intelligence services information into the specific weight and value that the IC places into the Signals Intelligence available to NSA. Accordingly, adversaries would have unique insights into which sources of Signals Intelligence that the IC finds most valuable and would allow these adversaries to prioritize the development of countermeasures to its communications vulnerabilities. As a result, NSA's Signals Intelligence collection capabilities would be hindered, causing serious damage to the national security of the United States. Moreover, as a general matter, disclosure of this information could negatively impact future efforts by the IC to perform certain intelligence collection activities. Foreign adversaries continually seek to ascertain details about the IC's collection efforts, even beyond the content of any underlying intelligence, such as the fact of an intelligence interest in a particular person, entity or subject matter. Disclosure of such information could be used against the IC to impede future intelligence operations and compromise critical sources and methods.

17. I make the above assertions notwithstanding what I understand is the public issuance by the US Government of two documents that generally describe the information in the US Government's possession with regard to the Syrian chemical weapons attack. The first document, entitled "Background Press Briefing on Syria, 4/11/2017," is available on the White House's public web site. (See, <https://www.whitehouse.gov/the-press-office/2017/04/11/background-press-briefing-Syria-4112017>.) This document appears to be a transcript of a press briefing held by senior Administration officials on April 11, 2017. The second document, entitled "Expanded U.S. Government Summary of Syria's Chemical Weapons

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Attack on April 4,” was provided as a “backgrounder” to members of the press that attended the April 11, 2017 press briefing. Within these two documents, the US Government acknowledged the following. First, the US Government acknowledged that it possessed and relied upon certain intelligence information for its determination that the Syrian regime conducted a chemical weapons attack in southern Idlib Province on April 4, 2017. Next, the US Government publicly acknowledged that it has confidence in its assessment overall because it possessed intelligence, to include Signals Intelligence, relevant to the assessment. Finally, the US Government publicly acknowledged that it composed a classified factual summary of the information that it relied upon in formulating its assessment of the April 4, 2017 attack.

18. Notwithstanding the US Government’s public statements into this matter, a significant body of intelligence used to formulate the US Government’s assessment of the Syrian Government’s use of chemical weapons on April 4, 2017, remains currently and properly classified. Included within that body of classified intelligence is the specific Signals Intelligence information that was relied upon by the US Government for its assessment. The US Government has not, for example, publicly divulged the specific targets from which it successfully collected relevant Signals Intelligence. The US Government also has not identified the specific collection and technical capabilities from which Signals Intelligence was collected. Finally, the US Government has in no way publicly disclosed the analytic tradecraft utilized by the IC to formulate its intelligence assessment, which partially relied on NSA’s Signals Intelligence information. For these reasons, it is my assessment that the public statements issued by the US Government on April 11, 2017, did not declassify these phrases, including the Signals Intelligence upon which they were based, and all such information within the legal memorandum remains currently and properly classified.

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V. CONCLUSION

19. In sum, I have reviewed this information and determined that it is currently and properly classified at the TOP SECRET and SECRET levels in accordance with E.O. 13526 §1.4(c), because the release of this information could reasonably be expected to cause exceptionally grave and serious damage, respectively, to the national security. As described above, the information marked for withholding pursuant to FOIA Exemptions 1 and 3, if publicly disclosed, would reveal currently and properly classified IC targets, sources, and methods. The withheld information reveals: specific Signals Intelligence targets; the IC's success in acquiring the communications of these targets; and the types of communication data the IC is able to collect and that data is collected. Finally, the disclosure of this information would reveal the analytic tradecraft utilized by NSA and the IC in reaching conclusions informed through the collection of intelligence.

20. This information is also protected from release by statute and is therefore exempt from release based on FOIA Exemption 3, 5 U.S.C. § 552(b)(3). Specifically, there are three Exemption 3 statutes that protect from public release IC targets, sources, and methods: Section 102A(i)(1) of the National Security Act ("NSA"), as amended, 50 U.S.C. § 3024(i)(1), and, with respect to NSA, section 6 of the NSA Act, 50 U.S.C. § 3605, and 18 U.S.C. § 798.

21. This information is protected from public release pursuant to Section 102A(i)(1) of the National Security Act, as amended, 50 U.S.C. § 3024(i)(1), which states that "[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure." The withheld IC targets, sources, and methods constitute the sources and methods used by the IC to carry out Signals Intelligence activities. Therefore, this information falls squarely within the protection of Section 102A(i)(1) of the National Security Act and should be afforded absolute protection from release.

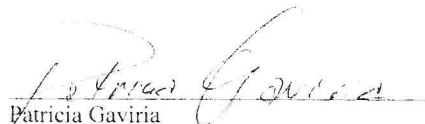
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22. Moreover, the NSA targets, sources, and methods described above relate to a “function of the National Security Agency,” 50 U.S.C. § 3605. Indeed, this information relates to one of NSA’s primary functions, its Signals Intelligence mission, *see* E.O. 12333, section 1.7(c), as amended. Any disclosure of the withheld operational details would reveal NSA’s capabilities and the tradecraft used to carry out this vital mission. Further, revealing these details would disclose “information with respect to [NSA’s] activities” in furtherance of its Signals Intelligence mission, 50 U.S.C. § 3605.

23. Finally, the information is protected from release under 18 U.S.C. § 798, which protects from disclosure information concerning the communications intelligence activities of the United States, or information obtained by communications intelligence processes. Disclosure of the withheld NSA targets, sources, and methods would reveal key information about the means through which NSA collects and processes communications intelligence, thereby falling within the scope of protection offered by this statute.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 17 day of November 2017.


Patricia Gaviria
Director, Information Management Division