

April 13, 2015

Department of Defense
Office of Inspector General
ATTN: FOIA Appellate Authority
Suite 17F18
4800 Mark Center Drive
Alexandria, VA 22350-1500

VIA FACSIMILIE

Ref: FOIA-2015-00466 Freedom of Information Act Appeal

To the responsible official,

I hereby appeal the denial of expedited process for the above referenced FOIA case.

Please review all withheld information for release, including a declassification review to ensure that all withheld information is currently and properly classified.

When considering this appeal, please note that while this document was ostensibly withheld to prevent damage to national security, the citation of its information has been publicly available for over a decade, including multiple direct references in public documents¹, thus making it highly unlikely that full disclosure would cause genuine, articulable and documentable harm. Indeed, in preparing its court case against former NSA Senior Executive Service member and national security whistleblower Thomas Drake, the Department of Defense compiled and provided to the Department of Justice multiple responsive documents dealing with the THINTHREAD/TRAILBLAZER controversy. Moreover, as the DoD IG investigated Mr. Drake's own whistleblower complaint², the DoD IG itself has multiple responsive documents that could easily be provided on an expedited basis.

Further, I take direct issue with the DoD IG's refusal to acknowledge the June 1, 2015 expiration date of three key PATRIOT Act surveillance authorities, and the pending vote in Congress on this subject, as "a breaking news story" or otherwise being worthy of expedited processing.

During my tenure as Rep. Rush Holt's staff detailee to the National Commission on Research and Development in the United States Intelligence Community, I personally requested and subsequently reviewed the full classified version of the 2004 DoD IG THINTHREAD/TRAILBLAZER report which I am seeking through this FOIA request and appeal. Accordingly, I know that the withheld portions of the report contain further corroborating evidence of the charges of waste, fraud, abuse and threatened retaliation against those NSA employees who first made those charges to the DoD IG over a decade ago. The DoD IG's continued refusal to fully declassify and make public all reports and related internal correspondence on the THINTHREAD/TRAILBLAZER programs seems designed not to protect legitimately classified sources and methods, but instead to protect NSA, the DoD IG and the Defense Department

¹ <http://en.m.wikipedia.org/wiki/ThinThread>

² Thomas A. Drake, Whistleblower Reprisal Investigation, Case 20121205-001567, March 19, 2014.

from public embarrassment.

Additionally, as much of the technology developed during the THINTHREAD demonstration project was subsequently incorporated³ into the mass surveillance programs such as the PATRIOT Act Sec. 215 telephony metadata program set to expire June 1, 2015 absent Congressional reauthorization, failure to make fully public the documents and history associated with these programs will deny the public and Members of Congress critical information they need in order to make a fully informed decision about what PATRIOT Act-related surveillance programs should be continued, modified, or terminated prior to any vote in Congress on this matter, which must take place before the Memorial Day Congressional District Work Period begins on May 21, 2015.

Executive Order 13526 states that "no information may remain classified indefinitely." This has previously led to the declassification of a host of important documents, once tightly held.

Director of National Intelligence, James Clapper, recently stated, citing E.O. 13526 3.1(d), that documents may be declassified when "the harm to national security [] is outweighed by the public interest."⁴ Director of National Intelligence General Counsel, Robert S. Litt, recently cited the importance of that same "harm versus public interest" test provision when he argued that classifiers and declassifiers must now "focus not on whether we can protect information, but whether we should."⁵

With this in mind, I ask that you conduct a line by line review and release all reasonably segregable portions of this material which no longer merits protection because it could harm US national security.

For all of the aforementioned reasons, I appeal the denial of expedited processing and ask that the responsive documents be supplied to me forthwith so I can disseminate them to the public and Members of Congress prior to any vote on the above referenced soon-to-expire PATRIOT Act provisions.

Sincerely,



Patrick G. Eddington
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³ <http://www.newyorker.com/magazine/2011/05/23/the-secret-sharer>

⁴ <http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/927-draft-document>

⁵ <http://www.fas.org/sgp/eprint/litt.pdf>

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