

EXHIBIT 2

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

THE PROTECT DEMOCRACY
PROJECT, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF DEFENSE, *et al.*,

Defendants.

No. 17-cv-0842-CRC

SECOND DECLARATION OF PAUL P. COLBORN

I, Paul P. Colborn, declare as follows:

1. I am a Special Counsel in the Office of Legal Counsel (“OLC”) of the United States Department of Justice (the “Department”) and a career member of the Senior Executive Service. I joined OLC in 1986, and since 1987 I have had the responsibility, among other things, of supervising OLC’s responses to requests it receives under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I submit this declaration in support of the Department’s Motion for Summary Judgment in this case, and to clarify certain statements made in a prior declaration filed in this case, *Declaration of Paul P. Colborn* (Nov. 17, 2017) (“*Colborn Declaration*”), regarding the two documents withheld by OLC in this case. The statements that follow are based on my personal knowledge, as well as on information provided to me by OLC attorneys and staff working under my direction, and by others with knowledge of the documents at issue in this case.

CLARIFICATION REGARDING OLC 1

2. In the *Colborn Declaration*, I stated that the document identified as OLC 2 “was intended to be confidential and to my knowledge has maintained its confidentiality.” *Colborn Declaration* ¶ 25. I also stated, regarding both documents withheld by OLC, that “[t]o my knowledge, the documents have not been previously disclosed publicly.” *Id.* ¶ 31. I have been informed that Plaintiff has argued—despite this latter statement—that the inclusion of the sentence specifically regarding OLC 2 without including the same sentence regarding OLC 1 constitutes “an omission that strongly suggests that the confidentiality of this document was *not* maintained.” *Plaintiff’s Memorandum of Law in Support of Plaintiff’s Cross-Motion for Summary Judgment and in Opposition to Defendants’ Motion for Summary Judgment*, ECF No. 26-2 (Dec. 8, 2017) (“*Plaintiff’s Opposition*”), at 17. Although I do not believe that this inference is reasonably drawn from the *Colborn Declaration*, I have spoken to one of the attorneys involved in the document’s creation and I write to clarify that OLC 1, like OLC 2, was intended to be confidential, and to our knowledge, the confidentiality of the document has been maintained.

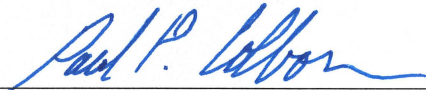
CLARIFICATION REGARDING OLC 2

3. With respect to OLC 2, the outline prepared by OLC attorneys for use by the Acting Assistant Attorney General (“AAG”) of OLC to provide oral legal advice to the Attorney General, I have been informed that Plaintiff has questioned the decisions to which the document was predecisional, in light of its presumed date of April 7, 2017. *Plaintiff’s Opposition* at 26-27. As stated previously, that document is “predecisional and deliberative as to what the Acting AAG would choose to say in that briefing.” *Colborn Declaration* ¶ 19. Moreover, the actual communication to the Attorney General “was predecisional to any ultimate decision the Attorney

General would then make in advising the President.” *Id.* ¶ 24. As stated previously, although that briefing took place after one particular military action, this legal advice was provided “to the Attorney General for use in his deliberations over how to advise the President on *future* military actions.” *Id.* (emphasis added). Finally, in addition to identifying considerations that could be relevant to potential future actions, the outline also restated aspects of the predecisional legal advice provided on April 6 by OLC and other government lawyers to the NSC Legal Adviser in the document identified as OLC 1. That information was included so that the Attorney General could, if necessary, be reminded about the advice that had been provided. That material too is predecisional, because merely recounting predecisional deliberative advice after it was provided does not change the predecisional nature of the advice being recounted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: January 9, 2018, Washington, D.C.



PAUL P. COLBORN