



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

June 5, 2011

Hon. Richard Bennett
United States District Judge
United States District Court for the District of Maryland
101 West Lombard Street
Baltimore, Maryland 21201

VIA ECF & ELECTRONIC MAIL

Re: United States of America v. Thomas A. Drake, Case No. 10-181 (RDB)

Dear Judge Bennett:

On June 3, 2011, this Court ruled that under the Classified Information Procedures Act, 18 U.S.C. App. §§ 1–16 (CIPA), substitutions for information related to the NSA’s targeting of a particular telecommunications technology would not provide the defendant substantially the same ability to make his defense as would disclosure of the classified information. As a result of this ruling, the government has decided to excise all reference to that technology from its case. The government will not rely on the classified information related to that technology as part of its proof, nor will it indicate to the jury that the documents found in the defendant’s home relate to the NSA’s targeting of that technology. In short, no reference to the technology will be made. This will allow continued protection of the details of the NSA’s efforts in this area, while simultaneously protecting the defendant’s constitutional ability to present his defense.

The practical result of this decision is as follows:

- **Government Exhibit 41** will be redacted to remove any reference to the technology;
- **Government Exhibit 42** will be withdrawn in its entirety;
- **Government Exhibit 43** will be withdrawn in its entirety;
- **Government Exhibit 48** will be redacted to remove any reference to the technology;
- **Government Exhibit 55** will be withdrawn in its entirety; and
- **Government Exhibit 57** will be withdrawn in its entirety.

The government will also redact corresponding references to the technology in the “source” documents of exhibits 41 and 48, and it will withdraw the “source” documents for exhibits 42, 43, 55, and 57.

The government will provide hard copies of these exhibits for the Court and the defendant at the status hearing scheduled for tomorrow, June 6, 2011. If you have any questions about the above, please do not hesitate to contact either of the undersigned attorneys.

Sincerely,

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