

Last month, the CSO sent an e-mail to petitioners' counsel providing security guidance with regard to the presence of purported detainee assessments on the WikiLeaks website. Since that time, many of you have responded with questions and requested further instructions. While the contents of the previous message should still be considered policy, we are providing clarification and additional guidance today. Please note that this guidance is limited to potentially classified information posted on the WikiLeaks website, or on other websites that reproduce such material found on the WikiLeaks site, and does not apply to any other collection of documents.

Counsel are required to protect “potentially classified information”

As an initial matter, as individuals with security clearances, counsel are obligated to protect all classified information to which you have access. The following guidelines are intended to allow you to make responsible use of the “potentially classified information” accessible on WikiLeaks. For the purposes of this guidance, the phrase “potentially classified information” includes any material that: (1) is marked as or otherwise indicated to be classified; (2) is publically available; and (3) that the U.S. government has neither confirmed nor denied is a copy of an official government document.

Although the U.S. Government has confirmed that purported detainee assessments were leaked to WikiLeaks, it has neither confirmed nor denied that individual reports are official government documents. All purported detainee assessments posted on the WikiLeaks website, or on other sites, therefore should be treated as potentially classified information.

Access to Potentially Classified Information on WikiLeaks and Other Sites

Counsel are permitted to view on any non-U.S.-Government-issued computer, including personal and work computers, potentially classified information on the WikiLeaks website, or on other websites that reproduce such material found on the WikiLeaks site. While you may access such material from your non-U.S.-Government-issued personal and work computers, you are not permitted to download, save, print, disseminate, or otherwise reproduce, maintain, or transport potentially classified information.

Use of Purported Detainee Assessments in the Habeas Litigation

The purported detainee assessments posted on the WikiLeaks website will be made available at the Secure Facility. In making these materials available, the Government is neither confirming nor denying that any individual detainee assessment posted on WikiLeaks or any other website is an official government report.

Counsel are permitted to use information from the purported detainee assessments in your clients' habeas cases to the same extent that you are permitted to use classified information, subject to the same security procedures and restrictions provided under the Protective Order issued by Judge Hogan. In any written submission in which you refer to such information, such as a court filing or correspondence with Justice Department counsel, you must identify the source of the information as potentially classified information found on WikiLeaks or another website, to make clear that you are citing to such material and not an official government report.

Such submissions must be treated as potentially classified and handled in accordance with the security procedures and restrictions stipulated in the Protective Order.

Discovery Requests Based Upon Potentially Classified Information Found on WikiLeaks or Other Websites

If after viewing potentially classified information on the WikiLeaks site (or another website), you wish to submit a discovery request for one or more official government documents purportedly referenced on the site the request may be made by an UNCLASSIFIED letter or e-mail to Justice Department counsel assigned to the case. The subject line of the request should read: "Request for Discovery of Documents Referenced in WikiLeaks Information." The letter or e-mail should be strictly limited to a short, plain statement requesting production of the relevant document(s), including (i) the name and ISN of the petitioner on whose behalf the request is made, (ii) the case caption and civil action number, and (iii) information sufficient to identify the document(s) in question, such as the title, date, and unique identification number, as available. Your request must not discuss the contents of the requested document(s).

Alternatively, you may make a more detailed request for discovery based on potentially classified information found on WikiLeaks or other websites (*e.g.*, a request that discusses the contents of such information) at the SECRET//NOFORN level, in accordance with the procedures stipulated in the Protective Order.

All such requests for discovery based on potentially classified information posted on WikiLeaks, or other websites, will be evaluated by the Government under the terms of the Case Management Order and/or other applicable orders in your case.

Access to Secondary Reporting about WikiLeaks Information Such as News Articles, Blogs, Transcripts of Broadcasts, Etc.

The restrictions discussed above that apply to potentially classified information posted on WikiLeaks or other websites do not apply to secondary reporting such as news articles, blogs, transcripts of broadcasts, and the like. You may download, print, copy, or otherwise access, maintain, disseminate, and transport secondary reporting that discusses or refers to potentially classified information.

Public and Private Statements Regarding WikiLeaks Information

Judge Hogan's Protective Order provides instruction relevant to public and private statements by counsel concerning potentially classified information posted on WikiLeaks or other websites. Paragraph 31 states that in the event that classified information enters the public domain, you may make private or public statements about the information already in the public domain, but only to the extent that the information is in fact in the public domain. You may not make any public or private statements revealing personal knowledge from non-public sources regarding the classified status of the information or disclosing that you had personal access to classified information confirming, contradicting, or otherwise relating to the information already in the public domain.

The same provisions of Paragraph 31 of the Protective Order apply to discussion of potentially classified information posted on WikiLeaks or other websites, and to discussion of secondary reporting about such material, with your client.