

DOJ CONTINUES ITS “MULTI-SUBJECT” INVESTIGATION OF WIKILEAKS

As I noted some weeks ago, the judge in EPIC’s FOIA for materials on the investigation into supporters of WikiLeaks asked for an update. The government provided that update last night.

It said it still must withhold all documents responsive to EPIC’s FOIA because two investigations pertaining to WikiLeaks are ongoing: Chelsea Manning’s appeal, and the investigation into WikiLeaks proper.

There are at least two separate categories of “enforcement proceedings” relevant to defendants’ Exemption 7(A) analysis, and those two separate categories of law enforcement proceedings are progressing on different tracks. One set consists of those enforcement proceedings directly related to the military prosecution of Army Pfc. Manning, which falls within the jurisdiction of the Department of Defense (“DoD”). Since this case was originally briefed, Manning was tried and convicted by a military court, as noted above. The court-martial remains ongoing, in the appellate phase.

The second type of enforcement proceeding, generally, is the DOJ’s civilian criminal/national security investigation(s) into the unauthorized disclosure of classified information that was published on the WikiLeaks website. The investigation of the unauthorized disclosure is a multi-subject investigation and is still active and ongoing. While there have been developments in the investigation

over the last year, the investigation generally remains at the investigative stage. It is this second category of enforcement proceeding that is actually more central to defendants' Exemption 7(A) withholdings in this case.

Note, DOJ says the investigation is "multi-subject." Further, it describes it as an "civilian criminal/national security" investigation. ~~It's worth noting that the sealed declaration providing more detail on the investigation comes from Mark Bradley, in DOJ's National Security Division, not from FBI.~~ (I take my observation that the sealed declaration is from Bradley back: the motion is inconsistent on whom the sealed declaration is from. While the table on page 4 lists Bradley, it says the declaration is from FBI. The reference to a fourth declaration from David Hardy on page 9 suggests the declaration is from him.)

I'll have a bit more to say about this later.

Update: One more observation: the description says there are "at least two" separate categories, suggesting there may be still another investigative matter.