

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

U.S. FOREIGN INTELLIGENCE COURT
2013 JUN 25 PM 5:00
LEAH FLYNN HALL
CLERK OF COURT

In Re: Directives [redacted text])
Pursuant to Section 105B of the) No. 105B(g) 07-01
Foreign Intelligence Surveillance Act)
_____)

**THE UNITED STATES' REPOSE TO PROVIDER'S
MOTION UNDER FISC RULE 62 FOR PUBLICATION
OF THIS COURT'S DECISION AND OTHER RECORDS**

JOHN P. CARLIN
Acting Assistant Attorney General
for National Security

J. BRADFORD WIEGMANN
Deputy Assistant Attorney General

TASHINA GAUHAR
Deputy Assistant Attorney General

JEFFREY M. SMITH
NICHOLAS J. PATTERSON
U.S. Department of Justice
National Security Division
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Phone: (202) 514-5600
Fax: (202) 514-8053

Attorneys for the United States of America

Pursuant to FISC Rule 62(a), Movant asks this Court to order publication of its opinion in this case. *See* Motion at 1.¹ Movant correctly notes that any such publication would be subject to FISC Rules 3 and 62(b), and would require a review by the Government to allow for properly classified information to be redacted before publication. *See id.* at 2.²

The United States takes no position on this request, and submits that it is within the discretion of this Court to determine, acting pursuant to the procedure set forth in Rule 62(a), whether to publish the Court opinion at issue. Additionally, because Movant is a party to that underlying decision, it has standing pursuant to Rule 62(a) to make this Motion. Rule 62(a) also authorizes the Court, if it decides to order publication of the opinion, to direct the Government to undertake a classification review of the opinion as is “necessary to ensure that properly classified information is appropriately protected pursuant to Executive Order 13526.” FISC Rule 62(a). Of course, the Government would conduct such a review upon the Court’s request.

The Government has already determined that, pursuant to EO 13526 section 3.1(d) and the public interest in disclosure of the information in the Motion and due to specific facts related to Movant and to statements that the Government has made in response to recent unauthorized

¹ Pursuant to Rule 62(a), if the judge who authored the opinion at issue determines that it should be published, then that judge may make a request to the Presiding Judge who would then consult with the other judges of the Court and decide whether or not to direct the publication of the opinion at issue. *See* FISC Rule 62(a).

² Rule 62(b) provides that releases of court records, including opinions, can only be released pursuant to Rule 3. Rule 3 provides that “[i]n all matters, the Court and its staff shall comply with the security measures established pursuant to [Congressional mandate], as well as Executive Order 13526.” FISC Rule 3. Executive Order No. 13,526 “prescribes a uniform system for classifying, safeguarding, and declassifying national security information” and prohibits the release of any material that is properly classified. E.O. 13,526, 75 Fed. Reg. 707 (Dec. 29, 2009); *see also In re Mot. for Release of Ct. Records*, 526 F. Supp. 2d 484, 491 (Foreign Intel. Surv. Ct. 2007) (“[I]f the FISC were to assume the role of independently making declassification and release decisions . . . there would be a real risk of harm to national security interests and ultimately to the FISA process itself.”).

disclosures, the identity of Movant and its association with this case can now be declassified. The Government thus has no objection to the Court making the Motion and this Response publicly available.³

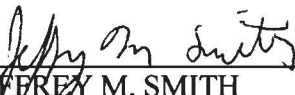
June 25, 2013

Respectfully submitted,

JOHN P. CARLIN
Acting Assistant Attorney General
for National Security

J. BRADFORD WIEGMANN
Deputy Assistant Attorney General

TASHINA GAUHAR
Deputy Assistant Attorney General



JEFFREY M. SMITH
NICHOLAS J. PATTERSON
U.S. Department of Justice
National Security Division
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Phone: (202) 514-5600
Fax: (202) 514-8053


Attorneys for the United States of America

³ The Motion does not explicitly identify Movant. It does, however, contain information that could allow someone familiar with certain publicly available information to determine the identity of Movant.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the United States' Response to Provider's Motion under FISC Rule 62 for Publication of this Court's Decision and Other Records was served via Federal Express overnight delivery on this 25th day of June, 2013, addressed to:

Marc J. Zwillinger
Jacob A. Sommer
ZwillGen PLLC
1705 N Street, NW
Washington, DC 20036



Jeffrey M. Smith