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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Filed with the Classified
Information Security Officer
CISO *W. B. [Signature]*
Date 10/15/2013

UNITED STATES OF AMERICA,)
)
) Case No. CR-10-225 (CKK)
v.)
)
STEPHEN JIN-WOO KIM,)
)
Defendant.)

DEFENDANT STEPHEN KIM'S SECOND CIPA § 5 NOTICE

Defendant Stephen Kim, by and through his undersigned counsel, respectfully submits his second notice pursuant to Section Five of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3 § 5. Pursuant to this Court's prior orders, this notice addresses several, but not all, of the core classified documents and information that defendant reasonably expects to disclose at trial as part of his defense. Defendant anticipates filing additional CIPA § 5 notices that will address classified information that has not been included in his first two notices, particularly in light of the fact that the defense awaits review of the remaining "treat as classified" documents and classified discovery remains ongoing in this case.

CIPA § 5 provides that if the defendant "reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with any trial or pretrial proceeding," the defendant shall "notify the attorney for the United States and the court in writing." 18 U.S.C. App. 3 § 5(a). The notice shall include a "brief description" of the classified information the defendant reasonably expects to disclose.

If the government objects to the disclosure, it may ask the Court to conduct a hearing under CIPA § 6(a) regarding "the use, relevance, or admissibility" of the classified information. 18 U.S.C. App. 3 § 6(a). Prior to that hearing, the government must provide the defendant with

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notice of the classified information at issue. 18 U.S.C. App. 3 § 6(b). That notice must “identify the specific classified information at issue whenever that information previously has been made available to the defendant by the United States.” Id.

If the Court determines that disclosure of the classified information identified by the defendant is warranted, the government may file a motion to permit “a statement admitting relevant facts that the specific classified information would tend to prove” or “a summary of the specific classified information” as a substitute for disclosure of the information. 18 U.S.C. App. 3 § 6(c).

The defense reasonably expects to disclose the following classified documents and information at trial:

1. Investigative questionnaires completed by [REDACTED] on the “List of 118”¹ who accessed the intelligence report at issue, as well as accompanying FBI cover memoranda and notes. (CLASS_334-39, 346-69, 375-553, 566-76, 580-600, 604-07, 612-17, 621-32, 636-63, 673-760, 1394-99)
2. Badge records for [REDACTED] on the “List of 118” who accessed the intelligence report at issue. (CLASS_1412, 1419, 1422, 1424, 1428, 1430, 1454, 1463, 1468, 1473, 1475, 1479, 1482, 1489, 1493, 1508, 1512, 1518, 1524, 1529, 1533, 1537, 1540, 1551, 1554, 1558, 1560, 1564, 1569, 1573, 1586, 1603, 1610, 1618, 1629, 1639, 1645, 1649, 1657, 1660, 1666, 1673, 1682, 1692)
3. Electronic document access records, including “drafting emails,” for [REDACTED] on the “List of 118” who accessed the intelligence report at issue. (CLASS_1413-15, 1420-21, 1423, 1425-27, 1429, 1431-53, 1455-62, 1464-67, 1469-72, 1474, 1476-78, 1480-81, 1483-88, 1490-92, 1494-1507, 1509-11, 1513-17, 1519-23, 1525-28, 1530-32, 1534-36, 1538, 1539, 1541-50, 1552-53, 1555-57, 1559, 1561-63, 1565-68, 1570-72, 1574-85,

¹ During the course of classified discovery in this case, the list of individuals who accessed the alleged intelligence at issue has expanded to 170 individuals.

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1587-89, 1604-09, 1611-17, 1619-1626, 1627, 1628, 1630-38, 1640-44, 1646-48, 1650-56, 1658-59, 1661-65, 1667-72,² 1674-81, 1683-91, 1693-96, 2884-88)

4. Phone records for [REDACTED] on the "List of 118" who access the intelligence report at issue. (CLASS_1385-87, 2878-81, 2920)
5. FBI 302s reflecting interviews of [REDACTED] on the "List of 118" who accessed the intelligence report at issue. (CLASS_370-74A, 577-79, 601-03, 608A-11, 618-20, 633-35, 1377-84, 1388-93, 2839-54, 2869-77, 2882-83, 2910-11, 2912-17)
6. The "List of 78" shown to [REDACTED] during an FBI interview. (CLASS_2893-2909)
7. Information relating to the existence and contents of [REDACTED] being drafted on June 11, 2009, including:
 - a. The [REDACTED] provided in discovery and email correspondence relating to the [REDACTED] (CLASS_3085-3125, 3205-18);³
 - b. [REDACTED] classified statements to the FBI on July 12, 2012 (CLASS_3077-81);
 - c. Sources of information relied upon by [REDACTED] for the statement in his 8:51 a.m. email on June 11, 2009, that he was aware that [REDACTED] "should be out in minutes";

² Two pages from this Bates range (CLASS_1668-69) were included in defendant's first CIPA § 5 notice as "drafting emails" or predecessor documents for the intelligence report at issue. See First CIPA § 5 Notice, Item 1. These pages have been included in defendant's second notice for consistency purposes, as CLASS_1667-72 also comprise the electronic document access records for [REDACTED]

³ Throughout classified discovery, the government has produced revised or corrected versions of some documents bearing an "A" suffix at the end of the Bates number (e.g., CLASS_3210A is the corrected, operative version of CLASS_3210). When the defendant cites a Bates range in his CIPA § 5 notices, he intends to cite the operative versions of those documents.

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- d. Sources of information relied upon by [REDACTED] for the statement in the email that [REDACTED]
 - e. The identity and/or contents of any documents or other information that formed the basis for [REDACTED] assertions in the email;
 - f. The existence and contents of a "planning meeting" [REDACTED] at 10:30 am on June 11, during which [REDACTED] were discussed;
 - g. The intended and actual distribution of the [REDACTED]
 - h. Electronic document access and badge records for all authors and recipients of (a) [REDACTED] or (b) the email correspondence relating to [REDACTED] (CLASS_3126-77, 3219-27).
8. Information relating to the [REDACTED] email concerning North Korean [REDACTED] including but not limited to:
- a. An [REDACTED] describing North Korean [REDACTED] (CLASS_1368-69);
 - b. Sources of information relied upon by [REDACTED] for the assertions in the [REDACTED] email.
9. Information relating to the [REDACTED] email from [REDACTED] concerning North Korea's [REDACTED] including but not limited to:
- a. [REDACTED] email (CLASS_3204);
 - b. Sources of information relied upon by [REDACTED] [REDACTED] email.
10. Information relating to Daniel Russell's June 11, 2009, email concerning [REDACTED] including but not limited to:
- a. Russel's email (CLASS_1370);

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- b. Russel's classified statements to the FBI on August 10, 2009 (CLASS_1360-65);
 - c. Electronic document access records for Russell (CLASS_1832-44);
 - d. Sources of information relied upon by Russell other than [REDACTED];
 - e. The identity and/or contents of any documents or other information that formed the basis for Russell's statement that the [REDACTED]
[REDACTED]
11. Information relating to the distribution of copies of [REDACTED] to persons within the White House, including but not limited to:
- a. The distribution of hard copies of [REDACTED] by Darlene Bartley to Matt Spence and Thomas Donilon;
 - b. Building access or badge records for June 11, 2009, for Bartley, Spence, Donilon, Russel, and Lutes (CLASS_1306);
 - c. Darlene Bartley's investigative questionnaire (CLASS_1298-1304);
 - d. Electronic document access records for Darlene Bartley (CLASS_1824-30);
 - e. A June 11, 2009, email from Daniel Russel asking that a hard copy of [REDACTED] be provided to Thomas Donilon and Matt Spence (CLASS_1305, 1371);
 - f. The existence (or lack thereof) of classified cover sheets or distribution logs reflecting the distribution of hard copies of [REDACTED] as well as the reasons why these sheets were (or were not) created;
 - g. Darlene Bartley's classified statements to the FBI during interviews on August 3, 2009, August 4, 2009, and February 3, 2011 (CLASS_1288-91, 1292-94, 1295-97);
 - h. Charles Lutes' classified statements to the FBI during an interview on January 28, 2011 (CLASS_1324-29);

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- i. Charles Lutes' emails from June 11, 2009, with Darlene Bartley and Christine Clark (CLASS_1340-43);
 - j. Charles Lutes' investigative questionnaire (CLASS_1333-39);
 - k. Matthew Spence's classified statements to the FBI during interviews on August 19, 2009, and April 3, 2012 (CLASS_1373-74, 2891-92);
 - l. Electronic document access records for Matthew Spence (CLASS_1845);
 - m. Thomas Donilon's classified statements to the FBI during interviews on September 25, 2009, and August 1, 2012 (CLASS_1307-09, 3045-49);
 - n. Electronic document access records for Thomas Donilon (CLASS_1831).
12. Information relating to all contacts between White House/NSC officials and Fox News on June 11, 2009, including but not limited to:
- a. The substance of any discussion concerning [REDACTED] the information contained in [REDACTED] or the Rosen article.
 - b. The method or means by which the government acquired the McDonough-Major Garrett emails produced in discovery. (See CLASS_1110-11)⁴
13. The "Eleven Questions" document relating to the alleged disclosure. (CLASS_27-30)
14. [REDACTED] relating to the alleged disclosure dated June 12, 2009, June 18, 2009, and November 12, 2009. (CLASS_31-39)
15. Information relating to the systems and procedures for the classification and declassification of documents and information in each government agency relevant to this case, including but not limited to [REDACTED]
16. Information relating to the practices and procedures by which an agency of the United States government (such as the State Department) prepares a public or media statement

⁴ The government has since determined that the McDonough-Garrett emails are unclassified.

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that is derived from or relates to classified information, or otherwise communicates or discusses information with the media that is derived from classified information.

Dated: October 15, 2013

Respectfully submitted,

/s/

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