

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

AMNESTY INTERNATIONAL USA,
CENTER FOR CONSTITUTIONAL RIGHTS, INC.,
AND WASHINGTON LEGAL SERVICES, INC.,

Plaintiffs,

v.

Civil Action No. 07 CV 5435 (LAP)

CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE, DEPARTMENT
OF HOMELAND SECURITY, DEPARTMENT
OF JUSTICE, DEPARTMENT OF STATE, AND
THEIR COMPONENTS,

Defendants.

**DECLARATION OF
WILLIAM T. KAMMER**

I, William T. Kammer, hereby declare and state as follows:

1. I am the Chief, Office of Freedom of Information, Executive Services Directorate, Washington Headquarters Service, a Component of the Department of Defense (DoD), and have held that position since August 2005. As Chief, I am responsible for implementation of the DoD Freedom of Information Act (FOIA) Program and issuance of agency-wide policy guidance and instruction on FOIA matters. See 32 CFR 286. Additionally, I supervise the processing of initial FOIA and Privacy Act (PA) requests for documents within the possession and control of the Office of the Secretary of Defense (OSD) and the Office of the Chairman of the Joint Chiefs of Staff (Joint Staff). I also supervise the processing of FOIA/PA appeals for the OSD and the Joint Staff. I am familiar with the subject litigation and the FOIA request submitted by the plaintiffs. The statements I make in this declaration are made on the basis of personal knowledge and information I have received in the performance of my official duties.

2. Attached as Exhibit A to this Declaration is a true and correct copy of the Declaration of Michael B. Donley, dated June 6, 2006, which was submitted to the United States District Court of the Northern District of New York in the case of Long v. Office of Personnel Management, No. 5:05-cv-1522 (NAM/DEP) (“First Donley Declaration”). Attached as Exhibit B to this Declaration is a true and correct copy of the Second Declaration of Michael B. Donley, dated November 2, 2006, which was also submitted to the United States District Court of the Northern District of New York in the case of Long v. Office of Personnel Management, No. 5:05-cv-1522 (NAM/DEP) (“Second Donley Declaration”).

3. The policy described in paragraphs 9-16 of the First Donley Declaration and in paragraphs 3-6 of the Second Donley Declaration remains the current policy of the Department of Defense. Accordingly, it is the policy of the Department of Defense that it will not release, nor authorize any other federal agency to release, lists of names or other personal identifying information of DoD personnel for the reasons stated therein.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 4th day of February, 2008.

William T. Kammer
WILLIAM T. KAMMER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SUSAN B. LONG)
)
 and)
)
 DAVID BURNHAM)
)
 Plaintiffs)
)
 v.) C.A. No. 5:5cv1522 (NAM/DEP)
)
 OFFICE OF PERSONNEL)
 MANAGEMENT)
)
 Defendant)

DECLARATION OF MICHAEL B. DONLEY

I, Michael B. Donley, declare under penalty of perjury that the following information is true and correct to the best of my knowledge.

1. I am the Director, Administration and Management ("DA&M"), Office of the Secretary of Defense, and have held that position since May, 2005. As DA&M, I am the principal staff assistant to the Secretary of Defense for Department of Defense ("DoD") organizational and management planning. I also serve as the DoD Chief Freedom of Information Act ("FOIA") Officer responsible to oversee the Defense Freedom of Information Policy Office, which is responsible for implementation of the DoD FOIA Program to include issuance of agency wide policy guidance on FOIA matters. Additionally, my security responsibilities include oversight of the Pentagon Force Protection Agency, which is responsible for the antiterrorism, security, and law enforcement programs concerning DoD facilities within the National Capital Region.

Other positions I have held in the government include Deputy Executive Secretary and Director of Defense Programs on the National Security Council, Assistant Secretary of the Air Force (Financial Management and Comptroller), and Acting Secretary of the Air Force.

2. I am familiar with the procedures followed in responding to FOIA requests received by the DoD FOIA Office. I am also familiar with the subject litigation and the FOIA requests submitted by plaintiffs in this case. The statements in this declaration are based upon my personal knowledge, upon my review of information available to me in my official capacity, and upon my conclusions.

3. On October 8, 2004, February 4, 2005, June 13, 2005, and January 25, 2006, plaintiffs submitted five FOIA request to the Office of Management and Personnel ("OPM"), asking for the status and dynamics files contained within OPM's Civilian Personnel Data File ("CPDF"). These requests asked for six CPDF files: the March, June, and September 2004 and March, June, and September 2005 CPDF files. See Declaration of Gary Lukowski ("Lukowski Declaration"). OPM conducted a reasonable search of the CPDF files and withheld from release all information from these files with regard to DoD employees.¹ See Lukowski Declaration. OPM also forwarded copies of these requests to DoD for consultation, in accordance with DoD's specific request to OPM that OPM work with DoD on all FOIA requests seeking information pertaining to DoD employees. See Id.

¹ DoD has acted in a consulting capacity with OPM in regards to these FOIA requests and OPM, rather than DoD, conducted the search for the DoD records. OPM's thorough and reasonable search for these files is fully addressed in the Declaration of Gary Lukowski.

4. After reviewing these FOIA requests, the Department of Defense determined that it did not object to OPM releasing forty two separate data elements within the requested files.² However, DoD asked that OPM deny to plaintiffs the names, duty stations, and bargaining unit data elements from the CPDF database.

5. Prior to the events of September 11, 2001, personally identifying information of DoD personnel, except for those assigned to overseas, sensitive, and routinely deployable units, was routinely released by both OPM and DoD. Release of names and identifying information of personnel assigned to these types of units was, and continues to be, denied. Due to the national emergency declared by the President after the events of September 11, DoD reevaluated its policy of releasing personally identifying information of its employees, and no longer does so.

Withholdings Pursuant to Exemption 3

6. Some of the names, duty stations, and bargaining units are denied pursuant to 5 U.S.C. § 552 (b)(3), which allows for the withholding of information “specially exempted from disclosure by statute.” In this case, the applicable statute is 10 U.S.C. § 130b, which allows for the withholding of personally identifying information of DoD employees assigned to overseas, sensitive, or routinely deployable units. The statute defines personally identifying information as, among other items, the person’s name and duty address. Even though 10 U.S.C. § 130b does not specifically address the bargaining unit code element as qualifying for withholding, DoD also requested that OPM withhold this element when it is attached to the name of a DoD employee covered by this statute. These bargaining unit codes are in the public domain, and some of

² Forty two data files containing data elements have been provided to plaintiffs. These files are listed in the attached Vaughn Index.

them even can be obtained from the OPM internet website. A person in possession of these codes would then be able to identify specific duty locations and be in possession of information specifically exempt from release under Exemption 3.

Withholding of DoD Personnel Information for Individuals in Sensitive Occupations by OPM under Exemption 6.

7. In accordance with its data release policy, OPM has denied release of some DoD employee information within the CPDF; specifically, the names and duty stations of personnel within sensitive career fields, pursuant to 5 U.S.C. § 552 (b)(6). See Declaration of Gary Lukowski.

Withholding of DoD Personnel Information Pursuant to Exemption 6.

8. In addition to withholding names and duty stations for some personnel pursuant to Exemption 3 and under the OPM data release policy pursuant to Exemption 6, DoD asked OPM to withhold the names, duty stations, and bargaining unit data elements for all DoD personnel pursuant to 5 U.S.C. § 552 (b)(6).

9. Prior to the events of September 11, 2001, and the subsequent war on terrorism, the standing policy within DoD was to release lists of names of all DoD personnel who were not assigned to overseas, sensitive, or routinely deployable units. As stated above, release of names and identifying information of personnel assigned to these types of units was, and continues to be, denied in accordance with 10 U.S.C. § 130b.

10. For DoD, however, the attack on the Pentagon of September 11, 2001, instilled a new sense of personal vulnerability and created a need for greater security for DoD personnel. An example of DoD's response to this need for greater security is the

creation of the PFPA, whose Director reports to me. Through my association with PFPA, I have become more aware not only of the threats to DoD and its personnel, but also of the prevention, preparedness, detection, and response measures employed by PFPA in response to these threats. A key to the success of these measures is denying a potential or actual enemy information that such an enemy could use against our personnel. By killing more than 120 DoD personnel, civilian, military, and contractors at their place of work and injuring an estimated 100 more, the attack on the Pentagon made clear that all DoD personnel are potential targets of terrorist violence, regardless of what they do for DoD and regardless of where they are assigned. The threat of violence that all such personnel now face creates an extremely strong privacy interest for DoD personnel in their personal information that, when weighed against the virtually non-existent public interest in the requested information, justifies the use of Exemption 6 to withhold from release any information that could be used to identify and target them, including the information that plaintiffs have requested.

11. Within the DoD, many other extensive measures have been taken both within the United States and abroad to protect military and civilian personnel and their families against the modern threat posed by terrorists and other enemies of the United States. These protection measures include publicized efforts such as the introduction within DoD facilities of escape masks for all DoD personnel within the National Capital Region. Additional measures include military bases, which prior to 9/11 had been open to the public, now operating on a very restricted security basis and the implementation of a computer emergency notification system on the desktop computers of DoD personnel within the National Capital Region. These measures illustrate the awareness

on the part of DoD of the need for additional protection against current and future threats.

12. Because of the September 11 attacks and the war against terrorism, the Deputy Secretary of Defense issued a memorandum dated October 18, 2001 (Attachment to Exhibit 1) to all DoD components advising them that “[m]uch of the information we use to conduct DOD’s operations must be withheld from the public because of its sensitivity.” In light of this guidance, it was determined by one of my predecessors, Mr. David O. Cooke, that the practice of releasing lists of names and personally identifying information of DoD personnel not protected by 10 U.S.C. § 130b would identify personnel performing specific DoD missions that could allow enemies of the United States to target these individuals with the intent to harass, stalk, or cause harm in order to degrade the individual’s or group’s performance and thus threaten national and homeland security. Therefore, on November 9, 2001, Mr. Cooke issued a specific policy addressing the withholding of lists of names of DoD employees under the FOIA. See Exhibit 1. The new disclosure policy directs all DoD Components to deny requests under the FOIA for “lists of names and other personally identifying information of personnel currently or recently assigned within a particular component, unit, organization, or office within the Department of Defense.” Id. This policy was posted on the DoD FOIA website at the time it was published and is still available at <http://www.defenselink.mil/pubs/foi/withhold.pdf>.

13. As a general matter, federal employees do not give up all privacy rights by virtue of their employment by the federal government. By virtue of their work and DoD’s mission, DoD employees and their families are particularly vulnerable to harassment

and attack and therefore there is a heightened privacy interest in their identities, duty stations, and information, such as bargaining unit data elements, that can be used to identify duty stations. These individuals are often put in harm's way directly and indirectly. This is particularly true in a post-September 11, 2001, security-conscious world, in which terrorist attacks are no longer a matter of speculation or theory, but a reality against which we must take appropriate defensive measures. Even releasing information regarding specific duty stations or that could be used to identify duty stations of DoD personnel could provide terrorists and others seeking to do harm with potentially valuable information for planning and executing an attack on certain targets important to national and homeland security. The attack on the Pentagon showed that all DoD personnel at all duty stations, both within and outside of the United States, are potential targets for attacks and unwarranted and unwanted contacts as a direct result of the work they do. For instance, hostile enemy forces and terrorists, either foreign and domestic, armed with information regarding the number of DoD personnel who work at a particular DoD duty station could plan an attack on the duty station using either conventional or biological or chemical weapons so as to maximize the number of personnel killed or wounded. If these enemy armies or terrorists knew the grades and position titles of personnel in a particular duty station, they could design a plan of attack to kill or injure specific categories of personnel.

14. Further, the release of names, duty stations, and information that reveals duty stations of DoD personnel could enable hostile enemy forces and terrorists, foreign and domestic, to identify and target the DoD personnel and their families. Hostile enemy forces and terrorists armed with names, duty stations, and information that reveals duty stations could use information available on the Internet to determine the

home addresses of DoD personnel. They could then plan and carry out attacks on DoD personnel and their families in their homes. Similarly, the disclosure of names, duty stations, and information that can identify duty stations could facilitate harassment of DoD personnel and their families. To illustrate this point, although not directly attributed to terrorist activity, spouses of military personnel engaged in Iraq have received crank casualty notification calls from individuals posing as military notification personnel, and one spouse of a U.S. servicemember was approached at her home by an individual in an Army dress uniform and told that her husband had been killed in Iraq, when in fact he was not. See Exhibit 2. Releasing the personnel information plaintiffs have requested would potentially facilitate such harassment. Given the world security climate, DoD employees are at a heightened risk of endangerment and harassment. In these ways, providing the names, duty stations, or information that can identify duty stations of DoD employees makes these individuals and their families more vulnerable to attack, harassment, and unwarranted attention, whether it be to further military or terrorist purposes or merely to vent misplaced frustrations.

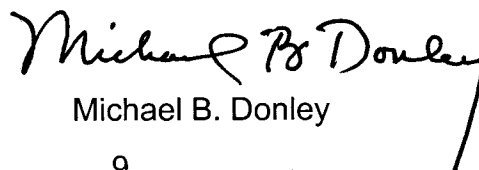
15. Mr. Cooke, the personnel within the DoD FOIA Office who helped him formulate this release policy, and another 24,000 DoD civilian and military personnel were in the Pentagon on September 11, 2001, and they realized what it means to be targeted for death simply because of the federal agency they work for and the building that they work in. In the wake of September 11, 2001, the DoD FOIA Office reevaluated the release of personally identifying information of DoD personnel, what they do, and where they can be found under the FOIA because this information can potentially aid

enemies of the United States. Therefore, the previously mentioned policy of November 11, 2001, was established.

16. The DoD applied Exemption 6's balancing analysis to this information. In making this Exemption 6 analysis, information of public interest was determined to be information which would shed light on the DoD's performance of its statutory duties. There is no discernable public interest in knowing the specific identities, duty stations, or information that can be used to identify duty stations of individuals employed by DoD. This information provides no meaningful information about government activities. In each category where information was withheld pursuant to Exemption 6 it was determined that the individual's very strong privacy interests, which were dramatically illuminated by the attacks of September 11, 2001, outweighed the virtually non-existent public interest in their identities, duty stations, and bargaining unit data elements, which shed no light on government activities. Because the national emergency declared by the President on September 14, 2001, is still in affect, the DoD policy to deny lists of names when they are requested under the FOIA is current.

I hereby declare under penalty of perjury that the matters and facts set forth in this Declaration fall within my official purview and, based upon my personal knowledge, information, and belief, are correct and true.

Dated this 6th day of June 2006, at the Pentagon, Arlington, Virginia.


Michael B. Donley

DECLARATION OF MICHAEL B. DONLEY

EXHIBIT 1



OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950



ADMINISTRATION &
MANAGEMENT

November 9, 2001

Ref: 01-CORR-101

MEMORANDUM FOR DOD FOIA OFFICES

SUBJECT: Withholding of Personally Identifying Information Under the Freedom of Information Act (FOIA)

The President has declared a national emergency by reason of the terrorist attacks on the United States. In the attached memorandum, the Deputy Secretary of Defense emphasizes the responsibilities all DoD personnel have towards operations security and the increased risks to US military and civilian personnel, DoD operational capabilities, facilities and resources. All Department of Defense personnel should have a heightened security awareness concerning their day-to-day duties and recognition that the increased security posture will remain a fact of life for an indefinite period of time.

This change in our security posture has implications for the Defense Department's policies implementing the Freedom of Information Act (FOIA). Presently all DoD components withhold, under 5 USC § 552(b)(3), the personally identifying information (name, rank, duty address, official title, and information regarding the person's pay) of military and civilian personnel who are assigned overseas, on board ship, or to sensitive or routinely deployable units. Names and other information regarding DoD personnel who did not meet these criteria have been routinely released when requested under the FOIA. Now, since DoD personnel are at increased risk regardless of their duties or assignment to such a unit, release of names and other personal information must be more carefully scrutinized and limited.

I have therefore determined this policy requires revision. Effective immediately, personally identifying information (to include lists of e-mail addresses) in the categories listed below must be carefully considered and the interests supporting withholding of the information given more serious weight in the analysis. This information may be found to be exempt under 5 USC § 552(b)(6) because of the heightened interest in the personal privacy of DoD personnel that is concurrent with the increased security awareness demanded in times of national emergency.

- Lists of personally identifying information of DoD personnel: All DoD components shall ordinarily withhold lists of names and other personally identifying information of personnel currently or recently assigned within a particular component, unit, organization or office with the Department of Defense in response to requests under the FOIA. This is to include active duty military personnel, civilian employees, contractors, members of the National Guard and Reserves, military dependents, and Coast Guard personnel when the Coast Guard is operating as a service in the Navy. If a particular request does not raise

Exhibit 1

security or privacy concerns, names may be released as, for example, a list of attendees at a meeting held more than 25 years ago. Particular care shall be taken prior to any decision to release a list of names in any electronic format.

- Verification of status of named individuals: DoD components may determine that release of personal identifying information about an individual is appropriate only if the release would not raise security or privacy concerns and has been routinely released to the public.
- Names in documents that don't fall into any of the preceding categories: Ordinarily names of DoD personnel, other than lists of names, mentioned in documents that are releasable under the FOIA should not be withheld, but in special circumstances where the release of a particular name would raise substantial security or privacy concerns, such a name may be withheld.

When processing a FOIA request, a DoD component may determine that exemption (b)(6) does not fully protect the component's or an individual's interests. In this case, please contact Mr. Jim Hogan, Directorate of Freedom of Information and Security Review, at (703) 697-4026, or DSN 227-4026.

This policy does not preclude a DoD component's discretionary release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag/general officers, public affairs officers, or other personnel designated as official command spokespersons.



D. O. Cooke
Director

Attachment:
As stated



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

18 OCT 2001

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTOR OF THE DOD FIELD ACTIVITIES

SUBJECT: Operations Security Throughout the Department of Defense

On 14 September the President declared a national emergency by reason of terrorist attacks and the continuing and immediate threat of further attacks on the United States. As this Department assists wide-ranging efforts to defeat international terrorism, it is clear that US military and civilian service lives, DOD operational capabilities, facilities and resources, and the security of information critical to the national security will remain at risk for an indefinite period.

It is therefore vital that Defense Department employees, as well as persons in other organizations that support DOD, exercise *great* caution in discussing information related to DOD work, regardless of their duties. Do not conduct *any* work-related conversations in common areas, public places, while commuting, or over unsecured electronic circuits. Classified information may be discussed *only* in authorized spaces and with persons having a specific need to know and the proper security clearance. Unclassified information may likewise require protection because it can often be compiled to reveal sensitive conclusions. Much of the information we use to conduct DOD's operations must be withheld from public release because of its sensitivity. If in doubt, do not release or discuss official information except with other DoD personnel.

All major components in this Department to include the Office of the Secretary of Defense, the Military Departments, the Joint Staff, the Combatant Commands, the Defense Agencies, the DOD Field Activities and all other organizational entities within the DOD will review the Operations Security (OPSEC) Program, described in DOD Directive 5205.2, and ensure that their policies, procedures and personnel are in compliance. We must ensure that we deny our adversaries the information essential for them to plan, prepare or conduct further terrorist or related hostile operations against the United States and this Department.



U17477 /01

DECLARATION OF MICHAEL B. DONLEY

EXHIBIT 2

[BACK](#) [PRINT](#)

Army Wife Claims Cruel Hoax

SAVANNAH, Ga., Feb. 23, 2005

(AP) Military police are investigating a cruel hoax in which a man wearing an Army dress uniform falsely told the wife of a soldier that her husband had been killed in Iraq.

Investigators are trying to determine why the man delivered the false death notice and whether he was a soldier or a civilian wearing a military uniform.

"We're taking it extremely seriously. Whatever motivation was behind it, it was a sick thing to do," said Fort Stewart spokesman Lt. Col. Robert Whetstone.

Last month, 19,000 soldiers from the Fort Stewart-based 3rd Infantry Division deployed for their second tour of duty in Iraq. At least eight division soldiers have been killed since then.

Fort Stewart officials would not identify the Army wife who reported to military police that a man posing as a casualty assistance officer came to her door Feb. 10.

"Right off the bat, she noticed some things were not right," Whetstone said. "The individual's uniform wasn't correct - there were no markings or name tags. Plus, the person was alone, and she knew one person does not make (death) notifications."

Whetstone said no similar hoaxes have been reported.

When the 3rd Infantry first deployed to Iraq for the 2003 invasion, some Fort Stewart families reported receiving phone calls from pranksters saying their soldiers had been killed.

This time around, troops and their spouses got pre-deployment briefings that included detailed explanations of how death notices work. Two soldiers, including a chaplain, in dress uniform always arrive to tell the family in person. The Army never makes notifications over the telephone.

Fort Stewart spouses have been spreading news of the latest hoax, said Army wife Michelle Dombrowski, who received an e-mail more than a week ago reporting the incident.

"I can't believe that someone would do that," said Dombrowski, whose husband, Staff Sgt. Joe Dombrowski, is deployed with the 3rd Infantry. "I know the protocol, though."

Military police described the suspected hoaxer as being 6-feet, 1-inch tall and about 180 pounds with black or brown hair and a pale complexion. He was reported to be driving a blue or green pickup truck with chrome wheels, oversized tires and a Georgia license plate.

By Russ Bynum

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Exhibit 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SUSAN B. LONG)
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 and)
)
 DAVID BURNHAM)
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 Plaintiffs)
)
 v.) C.A. No. 5:5cv1522 (NAM/DEP)
)
 OFFICE OF PERSONNEL)
 MANAGEMENT)
)
 Defendant)

SECOND DECLARATION OF MICHAEL B. DONLEY

I, Michael B. Donley, declare under penalty of perjury that the following information is true and correct to the best of my knowledge.

1. This declaration supplements my prior declaration dated June 6, 2006, which was filed in the above-captioned case. I am the Director, Administration and Management ("DA&M"), Office of the Secretary of Defense ("OSD"), and have held that position since May, 2005. As DA&M, I am the principal staff assistant to the Secretary of Defense for the U.S. Department of Defense ("DoD") Organizational and Management Planning. I also serve as the Agency Chief Freedom of Information Act ("FOIA") Officer, and as such I oversee the Defense Freedom of Information Policy Office, which is responsible for implementation of the DoD FOIA Program and issuance of agency-wide policy guidance and instruction on FOIA matters. Additionally, I oversee

the Pentagon Force Protection Agency, which is responsible for the antiterrorism, security, and law enforcement programs concerning DoD facilities within the National Capital Region, including the Pentagon. Other positions I have held in the government include Deputy Executive Secretary and Director of Defense Programs on the National Security Council, Assistant Secretary of the Air Force (Financial Management and Comptroller), and Acting Secretary of the Air Force.

2. The statements made in this supplemental declaration are based upon my personal knowledge and information made available to me in the performance of my official duties. The purpose of this supplemental declaration is to address comments made by plaintiffs in their September 22, 2006, Memorandum in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Motion for Summary Judgment ("Memo").

Exemption 6: Extremely Strong Privacy Interest:

3. In their memorandum, plaintiffs speculate that releasing the names of U.S. Department of Defense ("DoD") employees would not make them more vulnerable to a terrorist attack. They mention that my previous declaration discusses the September 11, 2001, attack on the Pentagon as a reason underlying the policy of not releasing lists of names of DoD civilian employees. Plaintiffs also state that this attack was directed "at government facilities and a symbol of America itself," not at individual employees. However, plaintiffs fail to understand the relevance of the references to the events of September 11, 2001. (Brief at 10) The references in my previous declaration were made to show the Court that those events have dramatically changed the way the federal government, especially the Department of Defense, conducts the United States of

America's business. These events, and the wars the country is currently engaged in in Afghanistan and Iraq, have heightened the Defense Department's security awareness, and that in turn has caused us to look at ways to prevent future terrorist attacks and better ensure the safety of our personnel by proactive security precautions. Numerous security measures are now in place for just the purpose of preventing future attacks and protecting DoD personnel. The idea behind such security measures is that a layered response is most effective in dealing with threats that are as yet unknown. The policy to withhold the names of DoD personnel is not the "silver bullet" that will by itself prevent an attack such as the one on the Pentagon; however, it is part of a larger security system designed to enable DoD to prevent attacks directed at any and all DoD personnel. The Department of Defense, through changes in security procedures and regulations including the policy at issue here, is trying to make it as difficult as possible for adversaries to collect valuable information that will enable them to carry out attacks on DoD personnel.

4. Moreover, I remind the Court that immediately after September 11, 2001, government officials received letters that contained anthrax, and the perpetrator or perpetrators of these anthrax attacks are not known. These officials were targeted simply because of who they were. Therefore, especially given the fact that the DoD is currently engaged in a worldwide conflict against terrorism and that international terrorist organizations have the demonstrated will and ability to carry out attacks on American soil targeting DoD personnel, it is reasonable to believe that DoD personnel have a very real privacy interest in keeping their identities and duty stations from the public. The attack on the Pentagon on September 11, 2001, and these anthrax attacks leave no doubt that ALL DoD personnel in ALL DoD locations are vulnerable to

harassment or attack, contrary to the plaintiffs' flippant reference to lifeguards, military academy professors and commissary employees.

5. The privacy interest of employees is highest when the request seeks a comprehensive list of names and identifying information in electronic format which would lend itself to searches for potential targets. The plaintiffs base their argument on speculation about who the terrorists will attack and who they will not. The Defense Department's balancing of public and privacy interests in this case, on the other hand, is not based on speculation about our adversaries' intentions, but on the real risk to personnel associated with the volume, detail and media of the information requested. Based on our strong beliefs that ALL Defense Department employees are potential targets, ALL are valuable and deserve protection from this threat and the Defense Department has a responsibility to protect ALL DoD personnel in the United States and around the world, DoD determined that the extremely strong privacy interest that ALL DoD personnel have in their names and other personal information, no matter their career field or grade level, particularly when compiled in a computerized database, heavily outweighs the virtually non-existent public interest in such information.

6. Plaintiffs also note that the DoD policy of not releasing lists of names of DoD personnel has not been incorporated into its FOIA regulation, 32 C.F.R. § 286. However, since it was believed that this would only be a temporary policy, a change to the regulation was not implemented. Even though it is still hoped that this policy is temporary, it will be incorporated into the next change to the regulation, which is currently under revision. It also should be noted that in its 2002 and 2004 editions of the Freedom of Information Act Guide and Privacy Act Overview, the Department of

Justice referenced the policy and included the web link for Mr. Cooke's November 9, 2001, memorandum.

Exemption 3:

7. In their memorandum, plaintiffs also challenge OPM's withholding of DoD personnel names and duty stations pursuant to 10 U.S.C. § 130b under Exemption 3. The individuals whose names and duty stations DoD has requested OPM to withhold pursuant to Exemption 3 all fall within 10 U.S.C. § 130b because these are individuals assigned to units which are overseas, sensitive, or routinely deployable. See 10 U.S.C. § 130b. The names and duty stations of approximately 381,041 individuals have been redacted pursuant to Exemption 3. See Exhibit 1. The Defense Manpower Data Center ("DMDC"), working with OPM arrived at this number. However, it should be noted that this is not necessarily the full number of DoD civilian personnel assigned to overseas, sensitive, and routinely deployable units. A database with this information was created and maintained after 10 U.S.C. § 130b was enacted. Each military service made the determination of which of its units qualified for protection under this statute, and identified those units and the personnel assigned to those units to the DMDC on a regular basis. However, because the release policy of the DoD was changed after the issuance of Mr. Cooke's November 9, 2001, memorandum, DMDC no longer has a requirement to maintain this database, and does not currently maintain one. To recreate one at this time would require extensive coordination throughout the DoD which would be overly burdensome. Therefore, the DMDC used a different approach to arrive at the approximate number of personnel withheld pursuant to Exemption 3.

First, the DMDC was able to determine those personnel stationed overseas by their duty station. That number is under the column entitled "Outside US, inc territories"

at Exhibit 1. As for sensitive units, the DMDC used the number of DoD personnel, stationed stateside, within the various sensitive occupational codes withheld by OPM. These numbers are under the column "Sensitive inside US" at Exhibit 1. Overseas personnel with sensitive occupational codes were not counted, since they were already counted in the previous column. Even though this number is not an exact reflection of the personnel that would be protected as being assigned to a "sensitive unit," because many personnel within sensitive units would also have sensitive occupational codes, it is considered a close approximation. The DMDC did not consider civilians potentially assigned to "routinely deployable" units because military personnel and not civilians are, for the most part, considered deployable and because there are no occupational codes representing such personnel. All of the names and duty stations that OPM, at DoD's request, withheld under Exemption 3, OPM also withheld under Exemption 6.

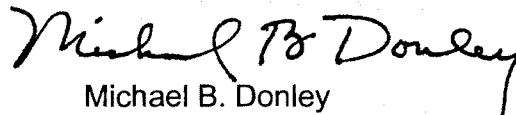
8. Plaintiffs are incorrect that 10 U.S.C. § 130b does not cover duty stations. While a duty station does not include a full duty address, a complete duty address, which is protected by 10 U.S.C. § 130b, includes the duty station. To further explain this point, a duty address is defined, inter alia, as a "postal" address. 32 C.F.R. § 286.12(f)(2). A postal address includes both the street address AND city, state, and country information. For Department of Defense personnel, the duty station within a duty address is the same as the city information within a postal address. Many times, this is a specific military installation. Plaintiffs attempt to define duty address as simply a street address makes little sense. It is like saying that a DoD employee's office address is only his or her street and does not include the town the office is in. Therefore, duty station information for DoD personnel in overseas, routinely deployable,

and sensitive units is properly protected by 10 U.S.C. § 130b.

9. Additionally, if the duty station of a unit protected by 10 U.S.C. § 130b is released, a person with that information can ascertain other duty address information. First, as mentioned in the previous paragraph, the code translation for many DoD duty stations identifies the specific military installation. For example, duty station 133443095 is "MARINE CORPS LOGISTICS BASE, ALBANY," and 134715153 is "ROBINS AF BASE." Revealing the fact that a routinely deployable or sensitive unit is stationed at a specific military installation obviously contradicts the intention of 10 U.S.C. § 130b. Second, duty stations can be used to discover specific probable street addresses that are part of duty addresses. Combining the employee's agency code and duty station code in many cases would allow someone to identify a probable street address. For example, if the duty station of "Defense Supply Center – Columbus" was released, a visit to the organization's website reveals its street address. Therefore, even if plaintiffs are correct that the duty address protection afforded by 10 U.S.C. § 130b protects only the street address, which DoD does not agree with, the release of the duty station can, with only one additional step, reveal the duty address. Thus, 10 U.S.C. § 130b does cover duty stations.

I hereby declare under penalty of perjury that the matters and facts set forth in this Declaration fall within my official purview and, based upon my personal knowledge, information, and belief, are correct and true.

Dated this 2d day of November 2006, at the Pentagon, Arlington, Virginia.


Michael B. Donley

NOV 2 2006

| | Total Actives | Outside US, inc territories | Sensitive inside US | b(3) exemptions | b(6) exemptions |
|---------|------------------|-----------------------------------|---------------------------|--------------------|--------------------|
| Mar2004 | 654,992 | 40,193 | 14,428 | 54,621 | 600,371 |
| Jun2004 | 666,644 | 43,580 | 14,697 | 58,277 | 608,367 |
| Sep2004 | 652,398 | 37,929 | 14,854 | 52,783 | 599,615 |
| Dec2004 | 659,332 | 39,352 | 15,174 | 54,526 | 604,806 |
| Mar2005 | 658,508 | 39,570 | 14,023 | 53,593 | 604,915 |
| Jun2005 | 670,557 | 40,941 | 14,323 | 55,264 | 615,293 |
| Sep2005 | 664,311 | 37,434 | 14,543 | 51,977 | 612,334 |
| | <u>4,626,742</u> | <u>278,999</u> | <u>102,042</u> | <u>381,041</u> | <u>4,245,701</u> |
