

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE

COURT OF REVIEW
WASHINGTON, D.C.

FILED
LEEANN FLYNN HALL, CLERK

SEP 11 2014

U.S. Foreign Intelligence
Surveillance Court of Review

_____)
IN RE DIRECTIVES PURSUANT TO SECTION)
105B OF THE FOREIGN INTELLIGENCE)
SURVEILLANCE ACT.)
_____)

Docket No. 08-01

ORDER

Before BRYSON, Presiding Judge, CABRANES and TALLMAN, Judges.

In 2008, this court issued an opinion in an appeal styled In re Directives Pursuant to Section 105B of the Foreign Intelligence Surveillance Act, 551 F.3d 1004 (Foreign Intel. Surv. Ct. Rev. 2008). That appeal arose from a challenge by Yahoo! to a directive compelling it to assist in the warrantless surveillance of certain of its customers. The Foreign Intelligence Surveillance Court had granted a motion to compel Yahoo! to comply with the order, and in the 2008 opinion, this court upheld that ruling. The opinion in that case was heavily redacted because much of the material discussed in the opinion was classified.

On June 14, 2013, Yahoo! filed a motion requesting that this court “publish additional portions” of the 2008 opinion. Yahoo! also asked that the court “publish additional information including, but not limited to, the identity of the Provider and its counsel and the arguments made in the briefs.” In response to the motion, the court issued an order on June 28, 2013, directing the government to conduct a new classification review of the 2008 opinion and the parties’ legal briefs in the case.

Since this court's order of June 28, 2013, there have been delays in the government's declassification review of the materials at issue, at least in part because of the volume of the documents (which included lengthy appendices) and the recent increased burden on the government from the need to conduct other declassification reviews. The government ultimately completed its initial declassification review and produced the results of that review to the court on February 3, 2014.

Pursuant to the parties' agreement, the court established a process whereby the court would engage with the government with respect to its proposed declassification decisions, after which the government would formally declassify the non-sensitive portions of the materials at issue and deliver the declassified portions of the documents to Yahoo! for its review. On May 6, 2014, the court staff met with the government to review the declassification decisions and to raise questions about those decisions. On May 16, 2014, the court ordered the government to submit its responses to the court's questions by June 2, 2014. After the government filed its responses, the court posed an additional question to the government on June 27, 2014, to which the government responded the following month. On July 28, 2014, this court issued an order establishing a schedule for the production of the declassified documents to the court and to Yahoo!, and for Yahoo! to file any further motions or responses in light of the production. The court ordered that the declassified documents remain sealed and not be made publicly available until further order from the court.


On August 22, 2014, the government filed with the court and delivered to Yahoo! the redacted, unclassified copies of the documents at issue. A week later, the government filed a "Second Submission of the United States in Response to the Court's July 28, 2014 Order," which

produced revised redacted versions of three pages as substitutes to the corresponding pages filed on August 22. The government's filing indicated that the revisions contained in the substituted pages were based on discussions with counsel for Yahoo! Yahoo! has filed no further motions with the court relating to the disclosure of the redactions to the briefs and appendix materials.¹

In light of the government's declassification review of this court's opinion and the record materials in this case, the court sees no reason to continue to treat the declassified portions of the opinion and record as sealed. The court therefore orders the declassified portions of those documents to be unsealed.

SO ORDERED, this 11th day of September, 2014.

For the Court,



WILLIAM C. BRYSON
Presiding Judge
United States Foreign Intelligence
Surveillance Court of Review

¹ When it came to Yahoo!'s attention that the transcript of the oral argument before the court in 2008 was not included in the declassification review, Yahoo! filed a motion seeking declassification of the transcript. The government produced to the court a proposed redacted version of the transcript on August 22, 2014. The matter of the transcript is being addressed separately.