



**DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

JUL 10 2018

Ref: 18-LR-0037
Case: DOS F-2016-17168
Case: 1:17-cv-01324-APM

Scarlet Kim
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Dear Ms. Kim:

The Department of Defense (DoD), Freedom of Information Division/Office of Litigation Support, is responding to one document - totaling six pages referred to our office pertaining to your December 13, 2016 Freedom of Information Act request for records directed to the Department of State, Case No. F-2016-17168. Your request pertained to the British-United States Communication Intelligence Agreement (now known as the "UKUSA Agreement").

The appropriate DoD Components concur with the Department of State and other government agencies to release the document in part pursuant to Title 5, U.S.C. § 552 under the following Exemptions:

Exemption (b)(1) - pertains to information that is currently and properly classified in the interest of national security pursuant to Executive Order 13526, as amended, applying Section 1.4(c) concerning the protection of intelligence activities (including covert action), intelligence sources or methods, or cryptology.

Exemption (b)(3) applying 50 U.S.C. § 403-1(i)(1) (currently at 50 U.S.C. § 3024(i)(1)) (National Security Act of 1947) - which allows for the protection of Intelligence sources and methods.

Appellate rights are moot as your request is currently in litigation.

Sincerely,

Paul J. Jacobsmeyer
Chief

Encl



INSTRUCTIONS FOR SHARING CLASSIFIED DEFENSE
INFORMATION AND INTELLIGENCE INFORMATION
WITH THE UNITED KINGDOM AND AUSTRALIA



1. ~~(S//NF)~~ Pursuant to the direction of the President, the Secretary of Defense and Director of Central Intelligence are issuing the following joint instructions for sharing classified military information and intelligence information with the Governments of the United Kingdom and Australia. The President has emphasized the need for maximum sharing of classified defense information and intelligence information with the United Kingdom and Australia in the areas of planning, supporting or executing military and counterterrorism exercises and operations. While there has been substantial progress in expanding the sharing of this information on the national security challenges we all confront, more needs to be done to promote the timely, efficient flow of this information.

2. ~~(S//NF)~~ In this regard, the United Kingdom and Australia must rank first in consideration of a more robust and complete partnership. At the President's direction, these instructions are intended to modify National Security Decision Memorandum 119, "Disclosure of Classified U.S. Military Information to Foreign Governments and International Organizations;" the National Policy and Procedures for the Disclosure of Classified Military Information to Foreign Governments and International Organizations (NDP-1); the Director of Central Intelligence Directive, Intelligence Disclosure Policy (DCID 6/7); use of the caveat "Not Releasable to Foreign Nationals" ("NOFORN") and other Departmental and Intelligence Community security and national disclosure-related policies, directives, guidelines, and instructions. Henceforth, the use of restrictive caveats shall be the rare exception rather than the rule, and the presumption of disclosure and release should be the primary consideration in the preparation and dissemination of classified defense information and intelligence information relating to the circumstances set forth in paragraph 3.b.

3. ~~(S//NF)~~ Disclosure of Classified Defense Information and Intelligence Information.
 - a. For purposes of this instruction, classified defense information and intelligence information includes:
 - (1) Classified information on defense or intelligence matters that already is shared with the United Kingdom and



~~SECRET//NOFORN~~

Australian Governments under longstanding information sharing arrangements;

(2) Department of Defense information applicable to combined military operational plans and planning, including relevant information about systems or capabilities to be employed by the U.S. in the execution of those combined plans at all classification levels, including such information controlled as special access, sensitive compartmented information, and/or otherwise compartmented; and

(3) Intelligence information relevant to, or supporting the defense activities described in paragraph 3.b. below, including intelligence analyses and analytic techniques, capabilities, and products at all levels of classification, including those controlled as special access, sensitive compartmented information, and/or otherwise compartmented.

b. ~~(S//NF)~~ In addition to longstanding defense and intelligence sharing arrangements, which these instructions are not intended to limit, the President has directed that there are three circumstances in which the broadest possible sharing of classified defense information and intelligence information with the United Kingdom and Australian Governments shall be accomplished unless otherwise precluded from release by law or explicit direction of the Secretary of Defense or the Director of Central Intelligence. The three circumstances are the following:

(1) Planning, supporting, staging, and/or executing combined military operations or exercises;

(2) Planning, supporting, staging, and/or executing combined counterterrorism operations or exercises; and

(3) Intelligence collection, collaborative and/or joint analysis, development of analytic techniques and/or products that include, but are not limited to human, signals, imagery, and/or measurement and signatures data supporting or related to: (i) combined military planning, staging, operations, and/or exercises; and (ii) counterterrorism planning, staging, operations, and/or exercises.

c. ~~(S//NF)~~ The disclosure procedures and other guidance set forth in NDP-1, DCID 6/7, and all applicable Department of Defense and Intelligence Community policies, directives, guidelines, and instructions shall be modified to ensure that

these documents are consistent with, and reflect the President's intent. Officials determining original classification shall operate with a presumption of release to United Kingdom and Australian Government personnel with regard to classified defense information and intelligence information in the three circumstances specified in paragraph 3.b. above. To the degree that classified defense information and intelligence information continues to be not releasable to the United Kingdom and Australia, the Director of Central Intelligence shall appoint Designated Intelligence Disclosure Officials, as necessary,

(b)(1),(b)(3):50 U.S.C. § 403-1(i)(1)

(b)(1),(b)(3):50 U.S.C. § 403-1 who will be authorized to release caveated intelligence information, e.g., NOFORN and Originator Controlled (ORCON), on an expedited basis whenever required by the exigencies of the situation. Similarly, the Secretary of Defense shall appoint or sub-delegate Foreign Disclosure Officers, as necessary, e.g., at forward deployed locations, commands, Joint Task Forces, or Embassies, who will be authorized to release caveated classified defense information whenever required by the exigencies of the situation.

d. ~~SECRET~~ Those individuals who meet the following criteria shall have access to classified defense information and intelligence information:

(1) United Kingdom and Australian Government personnel who will be recipients of classified defense information and intelligence information must be United Kingdom or Australian citizens;

(2) Such recipients must be United Kingdom or Australian Government personnel currently assigned to or working in collaboration with the U.S. Government and engaged in the activities defined in paragraph 3.b. above, or individuals in the chain of command for such personnel who meet the criteria of this sub-section;

(3) Such Recipients must hold the appropriate United Kingdom or Australian security clearance to match the level of classification and compartmented access of the classified defense information and intelligence to be disclosed or released, and have a need to know the specific information/intelligence being disclosed;

(4) Such recipients must be willing and able to afford the classified defense information or intelligence protection from unauthorized disclosure; and

(5) Such recipients must be advised that U.S. classified defense information and intelligence information shall not be further disseminated except to individuals who meet the criteria of this sub-section.

e. ~~4.4~~ Marking Information and Training.

(1) Classified defense information and intelligence information related to the three situations noted in paragraph 3.b. that is releasable to the United Kingdom or Australia will be marked as REL TO USA and GBR, or REL to USA and AUS, or REL to USA, AUS, and GBR and will not be marked NOFORN.

(2) REL TO USA and GBR, or REL to USA and AUS, or REL to USA, AUS, and GBR tearline reporting will be produced as a priority and on an urgent basis for that reporting requiring the use of a restrictive caveat for circumstances identified in paragraph 3.b. above.

(3) All U.S. personnel, including but not limited to analysts, producers, and foreign disclosure officials who work with United Kingdom and Australian Government personnel in any of the three circumstances described in paragraph 3.b. above, and U.S. producers of intelligence products, must receive training to ensure awareness and consistent implementation of this guidance. Training analysts and producers of classified defense information and intelligence information to ensure awareness of and consistent implementation of this guidance and any other policies regarding access to classified information by foreign government personnel is critical to the success of achieving increased sharing with the United Kingdom and Australia. The training must cover, among other things, the specific intent and scope of this guidance, and the proper use of restrictive caveats and tearline reporting.

4. ~~4.4.4~~ Transparency of sharing is also key to ensuring U.S. defense and civilian consumers have knowledge of what has been shared. Where U.S. classified defense information or intelligence information has been shared with the United Kingdom or Australia, U.S. dissemination of the same defense information and/or intelligence information to U.S. defense and civilian consumers shall bear the REL TO USA and GBR, or REL to USA and AUS, or REL to USA, AUS, and GBR marking, as appropriate. This marking will leave no doubt that the classified defense information and/or intelligence information can be shared with the United Kingdom or Australian Governments, but may not be

shared with representatives of other countries without disclosure officer approval. REL UK is not a valid release marking. Legacy material marked REL UK will be treated in accordance with these instructions.

5. ~~(S)~~ Electronic Dissemination. Any access by United Kingdom and Australian personnel to Department of Defense or Intelligence Community systems shall be in accordance with the respective security regulations governing information systems. The Department of Defense shall take immediate steps to ensure that United Kingdom and Australian personnel, consistent with subparagraphs 3.b. and 3.d. of these Instructions, shall have access to the Department of Defense Secure Internet Protocol Network (SIPRNET). Specifically:

a. Access to SIPRNET shall be granted as soon as possible, and not later than 60 days from the date of signature of this instruction, to United Kingdom and Australian personnel, consistent with subparagraphs 3.b. and 3.d. of these instructions, located in U.S. controlled areas at operational levels, i.e., forward deployed locations, commands, and Joint Task Forces;

b. Access to SIPRNET shall be extended as rapidly as practical to United Kingdom and Australian personnel, as defined in subparagraphs 3.b. and 3.d. of these instructions, including initial installation and operational capability by not later than 1 March, 2005, to a limited number of mutually agreed upon SCIF or SCIF-like locations in United Kingdom or Australian controlled areas;

c. Policies and/or system modifications shall be in place to ensure that sufficient safeguards exist to block United Kingdom or Australian access to unauthorized SIPRNET websites and/or materials. These shall be in place not later than 60 days from the date of signature of this instruction, for United Kingdom and Australian access in U.S. controlled areas, and by not later than 1 March, 2005 for locations in United Kingdom or Australian controlled areas; and

d. To ensure that the objectives of these instructions are implemented fully, it is critical that the maximum amount of existing and new classified defense information and/or intelligence information controlled by the Department of Defense and the Intelligence Community continue to be posted and remain available on the SIPRNET. Therefore, in the context of this instruction, classified defense information and/or intelligence

information may be removed from the SIPRNET only in accordance with procedures mutually agreed to by the Secretary of Defense and the Director of Central Intelligence.

6. ~~(S//NF)~~ Nothing in these instructions shall be construed to authorize the disclosure of classified defense information or intelligence information related to economic intelligence, U.S. law enforcement information, information obtained or activities conducted pursuant to the Foreign Intelligence Surveillance Act, U.S. Restricted Data and Formerly Restricted Data, foreign government information restricted by international or bilateral arrangements, agreements, or treaties, or contrary to the provisions of any U.S. Federal law, to include the Arms Export Control Act as well as the International Traffic in Arms Regulations.

7. (U) The Secretary of Defense and the Director of Central Intelligence in consultation with the Secretaries of State and Energy and other Departments and Agencies as appropriate shall be able to review implementation of these instructions at any time and recommend changes as needed. A comprehensive joint review of these instructions shall occur no later than three years from the date of the last signature to this instruction.