

~~TOP SECRET//SI//W//S [REDACTED] //ORCON//NOFORN~~

1 STUART F. DELERY
Acting Assistant Attorney General
JOSEPH H. HUNT
2 Director, Federal Programs Branch
ANTHONY J. COPPOLINO
3 Deputy Branch Director
JAMES J. GILLIGAN
4 Special Litigation Counsel
MARCIA BERMAN
5 Senior Trial Counsel
BRYAN DEARINGER
6 RODNEY PATTON
JULIA BERMAN
7 Trial Attorneys
U.S. Department of Justice
8 Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
9 Washington, D.C. 20001
Phone: (202) 514-4782
10 Fax: (202) 616-8460

11 *Attorneys for the United States and*
12 *Government Defendants Sued in their*
Official Capacities

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

15 CAROLYN JEWEL, *et al.*

16 Plaintiffs.

17 v.

18 NATIONAL SECURITY AGENCY, *et al.*

19 Defendants.

Case No. 08-cv-4373-JSW

20 VIRGINIA SHUBERT, *et al.*

21 Plaintiffs.

22 v.

23 BARACK OBAMA, President of the
24 United States, *et al.*

25 Defendants.

Case No. C-07-0693-JSW

26 CLASSIFIED DECLARATION
27 OF MIRIAM P., NATIONAL
SECURITY AGENCY
EX PARTE, IN CAMERA
SUBMISSION

~~TOP SECRET//SI//W//S [REDACTED] //ORCON//NOFORN~~

~~TOP SECRET//SI//NF [REDACTED] ORCON/NOFORN~~

1 (U) I, Miriam P., do hereby state and declare as follows:

2 (U) **INTRODUCTION** 1. (U) I am the Deputy Chief of Staff for the Signals Intelligence
3 Directorate (SID) at the National Security Agency (NSA), an intelligence agency within the
4 Department of Defense (DoD). I am responsible for, among other things, protecting NSA
5 Signals Intelligence activities, sources, and methods against unauthorized disclosures. Under
6 Executive Order No. 12333, 46 Fed. Reg. 59941 (1981), as amended on January 23, 2003, 68
7 Fed. Reg. 4075 (2003), and August 27, 2004, 69 Fed. Reg. 53593 (2004), and August 4, 2008, 73
8 Fed. Reg. 45325, the NSA is responsible for the collection, processing, and dissemination of
9 Signals Intelligence (SIGINT) information for the foreign intelligence purposes of the United
10 States. I have been designated an original TOP SECRET classification authority under
11 Executive Order (E.O.) 13526, 75 Fed. Reg. 707 (Jan. 5, 2010), and Department of Defense
12 Directive No. 5200.1-R, Information Security Program (Feb. 24, 2012).

13 2. (U) My statements herein are based upon my personal knowledge of SIGINT
14 collection and NSA operations, the information available to me in my capacity as the Deputy
15 Chief of Staff for SID, and the advice of counsel. My statements in this declaration are based on
16 my personal knowledge of the NSA activities as well as information provided to me in the course
17 of discharging my official duties. I have become familiar with the subject matter of the lawsuits
18 before the court in this action and the Court's March 19, 2014 order. In particular, I have read the
19 classified declaration of an NSA Official, signed on October 25, 2007, which was submitted to
20 the Court and the Court's November 6, 2007 and November 16, 2009 preservation orders. *See*
21 *infra* ¶ 10.

22 (U) **CLASSIFICATION OF DECLARATION**

23 3. ~~(S//SI//NF)~~ This declaration is classified TOP SECRET//SI//NF [REDACTED]
24 [REDACTED] ORCON/NOFORN pursuant to the standards in Executive Order 13526, 3 C.F.R. 298
25 (2009). *See* 75 Fed. Reg. 707 (Dec. 29, 2009).

26 4. (U) Under Executive Order 13526 information is classified "TOP SECRET" if
27 disclosure of the information reasonably could be expected to cause exceptionally grave damage
28 to national security. "SECRET" if disclosure of the information reasonably could be expected to

~~TOP SECRET//SI//NF [REDACTED] ORCON/NOFORN~~

~~TOP SECRET//STLW//SI [REDACTED]//ORCON/NOFORN~~

1 cause serious damage to national security, and "CONFIDENTIAL" if disclosure of the
2 information reasonably could be expected to cause identifiable damage to national security. In
3 addition to classified information, this declaration also references Special Intelligence (SI),
4 which is a subcategory of Sensitive Compartmented Information (SCI), for which the Director of
5 National Intelligence (DNI) imposes additional safeguards and access requirements. At the
6 beginning of each paragraph of this declaration, the letter or letters in parentheses designate(s)
7 the level of classification of the information contained in the paragraph. When used for this
8 purpose, letters "U," "C," "S," and "TS" indicate, that the information is UNCLASSIFIED, or is
9 classified CONFIDENTIAL, SECRET, or TOP SECRET, respectively.

10 5. (U) Additionally, this declaration contains Sensitive Compartmented Information
11 ("SCI"), which is "information that not only is classified for national security reasons as Top
12 Secret, Secret, or Confidential, but also is subject to special access and handling requirements
13 because it involves or derives from particularly sensitive intelligence sources and methods." 28
14 C.F.R. § 17.18(a). Because of the exceptional sensitivity and vulnerability of such information,
15 these safeguards and access requirements exceed the access standards that are normally required
16 for information of the same classification level. Specifically, this declaration references
17 communications intelligence ("COMINT"), also referred to as special intelligence ("SI"), which
18 is a subcategory of SCI. COMINT or SI identifies SCI that was derived from exploiting
19 cryptographic systems or other protected sources by applying methods or techniques, or from
20 foreign communications. Where "SI" information is at issue in the paragraph, these letters will
21 follow after the classification letters.

22 6. (U) This declaration also contains information related to or derived from the
23 STELLARWIND program, a controlled access signals intelligence program under Presidential
24 authorization created in response to the attacks of September 11, 2001. In this declaration,
25 information pertaining to the STELLARWIND program is denoted with the special marking
26 "STLW" and requires more restrictive handling. Despite the December 2005 public
27 acknowledgment of the Terrorist Surveillance Program ("TSP"), and the recent public
28 acknowledgment by the U.S. Government of NSA telephony and Internet metadata collection

~~TOP SECRET//STLW//SI [REDACTED]//ORCON/NOFORN~~

3

~~TOP SECRET//SI//NF~~ [REDACTED] ~~//ORCON//NOFORN~~

1 activities that were also part of the STELLARWIND program, certain details about the
2 STELLARWIND program (including the TSP) remain highly classified and strictly
3 compartmented.

4 7. ~~(TS//SI//OC/NF)~~ [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 8. (U) Finally, and in addition to the separate levels of classification markings defined
12 by Exec. Order 13526, there are also dissemination controls appropriately associated with
13 classified information. Dissemination control markings identify the expansion or limitation on
14 the distribution of the information. The "ORCON" designator means that the originator of the
15 information controls to whom it is released. In addition to the fact that classified information
16 contained herein may not be revealed to any person without authorization pursuant to Executive
17 order 13526, this declaration contains information that may not be released in any form to
18 foreign governments, foreign nationals, foreign organizations, or non-US citizens without
19 permission of the originator of the information and in accordance with DNI policy. This
20 information is labeled "NOFORN."

21 9. (U) Accordingly, none of the information in this declaration can be removed from
22 classified channels without prior classification review by NSA and cannot appear in the public
23 record, including the docket reflecting these proceedings.

24
25 ~~(U//FOUO)~~ [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

~~TOP SECRET//SI//NF~~ [REDACTED] ~~//ORCON//NOFORN~~

~~TOP SECRET//SI//W//SI [REDACTED]//ORCON//NOFORN~~**(U) BACKGROUND**

10. (U) I submit this declaration in response to the Court's March 19, 2014, order requiring the Government to provide an explanation of its compliance with the Court's prior preservation orders in the above-captioned matters.

11. (U) The steps taken by the Government to identify and to preserve documents and information related to the particular intelligence activities authorized by the President in the wake of the September 11 attacks are described in the Government's Classified Supplemental Memorandum in Opposition to the Plaintiff's Motion for Order to Preserve Evidence dated October 25, 2007. The Government supported its Memorandum with a Classified *In Camera, Ex Parte* Declaration of the Deputy Chief of Staff for Operations and Support, Signals Intelligence Directorate, National Security Agency ("Preservation Declaration"). This Preservation Declaration summarized the intelligence activities implicated by the lawsuits (and which were subject to the Government's state secrets privilege assertion), identified categories of documents and information that may be related to the summarized intelligence activities for and apprised the Court of the specific preservation efforts that the Government had undertaken. A version of the Preservation Declaration that has been redacted to unclassified was prepared for public filing in this litigation and submitted to the Court on March 17, 2014. As explained in the Preservation Declaration, the NSA had preserved, among other things, all Internet and telephony metadata collected and the content of all communications intercepted under Presidential authority in its possession at that time. Shortly after NSA filed the Preservation Declaration in these actions, the Court formally ordered all parties to preserve all evidence that may be relevant to the litigation. *See* Nov. 6, 2007 Preservation Order; *see also* Nov. 16, 2009 Preservation Order.

12. (U) In this declaration, I will explain NSA's preservation efforts since 2007 in the following manner: First, I will briefly summarize the intelligence activities implicated by this lawsuit (as set forth in the Preservation Declaration). Second, I will set forth the categories of documents and information that were identified in the Preservation Declaration as being related to the intelligence activities implicated in the lawsuit and that need to be preserved. Third, I will explain the steps that NSA has taken since the Preservation Declaration was filed with the Court

~~TOP SECRET//SI//W//SI [REDACTED]//ORCON//NOFORN~~

5

~~TOP SECRET//SI//NF [REDACTED]//ORCON/NOFORN~~

1 to preserve this information—focusing first on NSA’s description of the status of these
 2 documents in 2007, and then providing an update on the current preservation status of these
 3 documents. Fourth and finally, I will discuss whether NSA has generated any additional relevant
 4 information since 2007 and explain the preservation status of such information.

5 **(U) SUMMARY OF RELEVANT ACTIVITIES**

6 13. (U) I understand that Plaintiffs allege that the NSA, with the assistance of major
 7 telecommunications companies, conducted widespread warrantless dragnet communications
 8 surveillance (content and transactional records) of millions of United States citizens—without
 9 judicial authorization—following the attacks of September 11, 2001 as explained by the NSA in
 10 prior submissions. These allegations put at issue the following Presidentially authorized
 11 intelligence-gathering activities: (1) the interception of the content of certain communications
 12 reasonably believed to involve a member or agent of al Qaeda or an affiliated terrorist
 13 organization under the President’s Terrorist Surveillance Program (“TSP”); (2) the bulk
 14 collection of non-content data concerning Internet communications authorized by the President
 15 (“Internet metadata”); and (3) the bulk collection of telephone calling record information
 16 (“telephony metadata”) authorized by the President.

17 14. (U) The above described activities were conducted pursuant to Presidential
 18 authorization following the terrorist attacks of September 11, 2001. Over time, the presidentially-
 19 authorized activities transitioned to the authority of the FISA.

20 15. (U) The collection of communications content pursuant to Presidential authorization
 21 ended in January 2007 when the Government transitioned the TSP to the authority of the FISA
 22 and under the orders of the Foreign Intelligence Surveillance Court (“FISC”).

23 16. ~~(TS//SI//NF)~~ On January 10, 2007, the FISC issued orders (known as the “Foreign
 24 Telephone and Email Order” and [REDACTED] authorizing the Government
 25 to conduct certain electronic surveillance that had been occurring under Presidential authority.

26 17. (U) Thereafter, any electronic surveillance, as that term is defined in the FISA (see 50
 27 U.S.C. § 1801(f)), that was ongoing under the TSP became subject to the approval of the FISC.
 28

~~TOP SECRET//SI//NF [REDACTED]//ORCON/NOFORN~~

6

~~TOP SECRET//SI//AW//SI [REDACTED] ORCON//NOFORN~~

1 and the TSP was not reauthorized. The FISC orders authorizing the electronic surveillance
2 required that communications acquired under those authorities be destroyed no later than five
3 years after their collection. All NSA intelligence reports utilizing content intercepts obtained via
4 these orders are preserved permanently.

5 18. (U) In August 2007, Congress enacted the Protect America Act ("PAA") as a
6 temporary measure, which carved out of the FISA definition of "electronic surveillance" a
7 surveillance directed at a person reasonably believed to be located outside the United States and
8 authorized the Attorney General and the Director of National Intelligence to jointly authorize the
9 acquisition of foreign intelligence information concerning persons reasonably believed to be
10 located outside the United States. The Foreign Telephone and Email Order was not renewed after
11 the PAA was enacted. Pursuant to the FISC-approved NSA minimization procedures, NSA was
12 authorized to retain communications acquired pursuant to PAA certifications for five years only.
13 Subject to limited exceptions, communications identified as domestic communications were to
14 be promptly destroyed. All NSA intelligence reports utilizing content intercepts obtained under
15 the PAA are preserved permanently.

16 19. (U) The PAA, which expired in February 2008, was replaced with the FISA
17 Amendments Act of 2008 ("FAA"), which was enacted in July 2008 and remains in effect today.
18 Today, communications content and metadata collection is conducted pursuant to section 702 of
19 the FISA.

20 20. (U) As stated above, NSA's bulk collection of telephony and Internet-based
21 communications metadata, initially conducted pursuant to Presidential authorization, were also
22 transitioned to orders of the FISC. The bulk collection of telephony metadata transitioned to the
23 authority of the FISA in May 2006 and is collected pursuant to Section 215 of FISA.

24 21. (U) The bulk collection of Internet metadata was transitioned to the authority of the
25 FISA in July 2004 and was collected pursuant to Section 402 of the FISA. In December 2011,
26 the Government decided not to seek reauthorization of the bulk collection of Internet metadata.
27 Because the NSA did not intend thereafter to use the Internet metadata it had retained for
28 purposes of producing or disseminating foreign intelligence information, in keeping with the

~~TOP SECRET//SI//AW//SI [REDACTED] ORCON//NOFORN~~

7

~~TOP SECRET//SI//NF~~ [REDACTED] ~~//ORCON//NOFORN~~

1 principle underlying the destruction requirements imposed by the FISC, on December 7, 2011,
2 the NSA completed the destruction of all PRTT metadata collected under the authorization of the
3 FISC from the Agency's repositories.

4 **(U) CATEGORIES OF POTENTIALLY RELEVANT INFORMATION**

5 22. (U) As set forth below, the NSA has preserved documents and information
6 potentially relevant to the claims and issues in this lawsuit with respect to the three categories of
7 activities authorized by the President after the 9/11 attacks. As previously explained to the Court
8 in the 2007 Preservation Declaration, the NSA's preservation efforts in these cases have been
9 limited to preserving documents and information related to particular intelligence activities
10 authorized by the President following the 9/11 attacks that are implicated by the claims in the
11 pending lawsuit. The NSA's preservation efforts did not extend to preserving documents and
12 information related to particular intelligence activities authorized by the FISC upon the
13 expiration of the Presidential authorizations.

14 23. (U) The NSA has taken various steps to ensure that personnel in offices authorized to
15 possess information related to the Presidentially authorized activities are preserving documents
16 contained in their files and on their computer systems that relate to these activities. The 2007
17 Preservation Declaration details the steps taken in the year following the initiation of this matter.
18 *See* 2007 Decl. ¶ 13.

19 24. (U) Initially, on January 10, 2006, the NSA's Office of General Counsel instructed
20 program officials and personnel to preserve all information and documents (written or electronic)
21 that are/were related to the three Presidentially authorized activities. Since that time, the NSA
22 has continued to remind its personnel of their continuing obligation to preserve data related to
23 this matter. Among other steps, the NSA's Office of General Counsel has reminded employees
24 of this preservation obligation when consulted on matters regarding document destruction, and
25 has reached out to departing employees to ensure that they safely transfer relevant files into an
26 appropriate repository.

27 25 (U) As explained in more detail below, most or all of the documents and information
28

~~TOP SECRET//SI//NF~~ [REDACTED] ~~//ORCON//NOFORN~~

8

~~TOP SECRET//SI//SI//OC/NF~~ [REDACTED] ~~//ORCON//NOFORN~~

1 related to the three Presidentially authorized activities have been segregated from other files and
2 stored in a manner that complies with NSA's obligations under the relevant preservation orders.

3 26. (U) I understand that, in response to the Court's recent inquiry into whether the NSA
4 has complied with its preservation orders in these cases, the NSA's Office of General Counsel
5 both confirmed the continued retention of the files identified in the 2007 Preservation
6 Declaration and took account of the additional relevant documents that the NSA has identified
7 and stored since that declaration was filed. The categories of documents and information related
8 to the Presidentially authorized activities are described below. For each category of information,
9 I explain the continuing steps that NSA has taken to preserve this information.

10 27. ~~(TS//SI//SI//OC/NF)~~ [REDACTED]

[REDACTED]

20 ² ~~(TS//SI//SI//OC/NF)~~ [REDACTED]

[REDACTED]

~~TOP SECRET//SI//SI//OC/NF~~ [REDACTED] ~~//ORCON//NOFORN~~

~~TOP SECRET//SI//W//SI [REDACTED] //ORCON//NOFORN~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

28. ~~(TS//SI//W//SI//OC/NF)~~ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³ ~~(TS//SI//W//SI//OC/NF)~~

[REDACTED]

⁴ ~~(TS//SI//W//SI//OC/NF)~~

[REDACTED]

[REDACTED]

~~TOP SECRET//SI//W//SI [REDACTED] //ORCON//NOFORN~~

~~TOP SECRET//SI//NF~~ [REDACTED] ~~//ORCON/NOFORN~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

29. (TS//SI//NF) [REDACTED]

[REDACTED]

30. (U) *Presidential Authorizations.* NSA has continued to preserve copies of all Presidential authorizations of the TSP and metadata collection activities described herein from the inception of these activities, including the periodic reauthorization of these activities by the President. These authorizations were accompanied by a current analysis of the terrorist threat facing the United States, and these threat memoranda have also been preserved. These files were originally maintained in paper form in the offices of the NSA Director; they are currently stored in paper form in the office of the Signals Intelligence Directorate.

31. (TS//SI//NF) [REDACTED]

[REDACTED]

(U) RETENTION OF DATA RELATED TO THE TSP PROGRAM

32. (U) *Terrorist Surveillance Program Information.* The NSA continues to preserve several categories of documents related to the TSP under which the content of international, one-end foreign telephone and Internet communications reasonably believed to involve members or agents of al Qaeda or affiliated terrorist organizations were intercepted during the existence of that program. These TSP documents include the following:

~~TOP SECRET//SI//NF~~ [REDACTED] ~~//ORCON/NOFORN~~

~~TOP SECRET//SI//NF~~ [REDACTED] ~~//ORCON/NOFORN~~

1 33. (U) *TSP Tasking and Probable Cause Information.* The NSA continues to preserve
2 documentation assembled by its analysts in the process of determining whether it should, in
3 connection with the TSP, intercept the communications of a particular selector (for example, a
4 telephone number or email address). Whenever the NSA tasked a particular phone number or
5 email address under the TSP, it would preserve information related to the particular selector,
6 including its reason for tasking the selector.

7 34. ~~(TS//SI//NF)~~ [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 35. ~~(TS//SI//NF)~~ [REDACTED] the NSA has preserved
14 documentation on an electronic database of *telephony* selectors tasked. The NSA has also
15 maintained an electronic record of all *Internet* selectors tasked from approximately September
16 2005 until the end of the presidentially authorized program. As set forth in the NSA's previously
17 filed Preservation Declaration, the tasking documentation identifying foreign Internet selectors
18 for the period prior to September 2005 is not complete. However, since the initiation of this
19 lawsuit, NSA has acted to preserve all records that did exist at that time for foreign Internet
20 tasking. [REDACTED]

21 [REDACTED]

22 36. (U) *TSP Intercepted Content.* The NSA has also preserved the actual content of
23 communications intercepted under the Presidentially authorized TSP. The NSA migrated all raw
24 traffic of voice intercepts under the TSP from an electronic database to computer tape.⁵ The

25
26 ⁵ ~~(TS//SI//NF)~~ [REDACTED]
27 [REDACTED]
28 [REDACTED]

~~TOP SECRET//SI//NF~~ [REDACTED] ~~//ORCON/NOFORN~~

~~TOP SECRET//SI//NF [REDACTED]//ORCON/NOFORN~~

1 NSA is also preserving magnetic/digital⁶ tapes of the Internet content intercepted under the TSP
 2 since the inception of the program. The NSA has stored these tapes in the offices of its General
 3 Counsel.

4 37. (U) *Intelligence Reports.* The NSA analysts have prepared intelligence reports that
 5 use content intercepts obtained under the TSP authorization. As noted in the 2007 Preservation
 6 Declaration, the NSA intelligence reports are written assessments of intelligence on particular
 7 topics. For each of these reports, an NSA analyst is able to determine if information obtained
 8 through a TSP intercept was utilized. NSA continues to preserve these intelligence reports in
 9 paper form in compartmented archives and in electronic form with the Signals Intelligence
 10 Directorate.

11 **(U) RETENTION OF DATA RELATED TO BULK COLLECTION**
 12 **OF INTERNET AND TELEPHONY METADATA**

13 38. ~~(TS//SI//NF)~~ *Bulk Internet Metadata Collection.* As described in the
 14 2007 Preservation Declaration, the NSA collected Internet data in bulk under Presidential
 15 authorization until [REDACTED] 2004. The Preservation Declaration explains that on [REDACTED]
 16 2004, NSA took initial steps to embargo this data from access by all NSA analysts. Starting in
 17 January 2006, the NSA migrated the bulk Internet metadata collected prior to the FISC order to
 18 electronic tapes because it was no longer being used for analysis. The NSA is preserving these
 19 tapes and has stored them in the offices of its General Counsel.

20 39. ~~(TS//SI//NF)~~ *Bulk Telephony Metadata Collection.* Starting
 21 in October 2001 until approximately May 2006, the NSA, pursuant to Presidential authorization,
 22 collected telephony metadata in bulk from call detail records [REDACTED]

23 [REDACTED]⁷ As the NSA noted in the 2007
 24 Preservation Declaration, its operational policy was to migrate telephony metadata that was
 25

26 ⁶ (U) Referenced as "electronic tapes" and "computer tapes" in the 2007 Preservation
 Declaration.

27 ⁷ (U) This activity was transitioned to the authority of the FISA when the FISC
 28 Telephone Records Order was entered in May 2006.

~~TOP SECRET//SI//NF [REDACTED]//ORCON/NOFORN~~

~~TOP SECRET//SI//W//SI [REDACTED]//ORCON/NOFORN~~

1 beyond five years old to tapes for preservation. *See* 2007 Decl. ¶ 25. Like the bulk Internet
 2 metadata, the bulk telephony metadata collected under the Presidentially authorized program
 3 have been migrated to magnetic/digital tapes that are stored in the offices of the General
 4 Counsel.

5 40. (U) *Information Pertaining to Queries of bulk Metadata.* The NSA has preserved
 6 documentation of requests that it query its database of bulk Internet and telephony metadata for
 7 analysis. Since 2007, the NSA's Signals Intelligence Directorate has maintained documentation
 8 of these queries in electronic form.

9 41. ~~(TS//SI//W//SI//OC/NF)~~ *Reports of Metadata Analysis.* The NSA has preserved
 10 documentation of its analysis of bulk Internet and telephony metadata obtained under
 11 Presidential authorization and prior to the respective FISC orders for these activities. These
 12 reports include the results of any contact chaining [REDACTED] for particular selectors
 13 reasonably believed to be associated with members or agents of al Qaeda or affiliated terrorist
 14 organizations. This documentation also sets forth the NSA's assessment of a particular Internet
 15 or telephony selector's contacts [REDACTED] in order to detect other potential al
 16 Qaeda associates. Since 2007, NSA's Signals Intelligence Directorate has maintained reports
 17 containing metadata analysis in an electronic database. The NSA is preserving the paper copies
 18 of these files in compartmented archives.

19 **(U) MISCELLANEOUS NSA INFORMATION**

20 42. (U) As summarized below, the NSA has also preserved miscellaneous categories of
 21 administrative records related to the Presidentially authorized activities implicated by the above-
 22 captioned lawsuit. These categories include:

23 (i) (U) *Legal opinions.* The NSA has preserved all legal opinions and analysis relating to the
 24 lawfulness of the TSP and bulk metadata activities. The Office of General Counsel has
 25 maintained this information in electronic form, and the Signals Intelligence Directorate has
 26 maintained paper copies of this material.

27 (ii) (U) *Materials related to briefings to members of Congress and the FISA Court.* The NSA
 28 has also preserved materials related to briefings to members of Congress and the FISC on the

~~TOP SECRET//SI//W//SI [REDACTED]//ORCON/NOFORN~~

14

~~TOP SECRET//SI//NF [REDACTED]//ORCON//NOFORN~~

1 TSP and metadata since the inception of both programs. These documents are being maintained
 2 and preserved in paper form by the Program Manager's Office for these NSA activities as well as
 3 with the Signals Intelligence Directorate. As mentioned in the 2007 Preservation declaration,
 4 although no briefing materials have been destroyed since the initiation of these lawsuits in 2006,
 5 it is possible that not all earlier iterations of briefings have been preserved. The NSA has also
 6 preserved briefings related to the transition from the presidentially authorized programs to the
 7 above-described successor programs.

8 (iii) (U) *NSA Internal Oversight Documents*. The NSA's General Counsel and Inspector General
 9 have maintained the NSA internal oversight documents of the Presidentially authorized TSP and
 10 metadata activities. These records include reports by the NSA General Counsel and Inspector
 11 General on these programs, and agendas and notes of meetings between the Office of General
 12 Counsel, the Office of the Inspector General, and the Signals Intelligence Directorate, which
 13 review and address legal and operational issues concerning the TSP and metadata collection
 14 activities described herein. These documents are preserved in paper form and are stored with the
 15 Signals Intelligence Directorate.

16 (iv) (U) *Classification guides*. The NSA has also preserved classification guides addressing the
 17 classification status, processing, dissemination, and reporting of intelligence traffic and
 18 information obtained under the Presidential authorization. This guidance, which the NSA
 19 intelligence analysts use in analyzing TSP traffic, includes instructions on how to designate the
 20 classification status of intelligence information, and how to implement the NSA minimization
 21 procedures in drafting reports. The NSA's Signals Intelligence Directorate has also maintained
 22 copies of this information in paper form.

23 (v) ~~(TS//SI//NF//SI-ECT//AMB//OC/NF)~~ *Technical Information*. The NSA has also preserved
 24 technical information concerning the manner in which Presidentially authorized activities were
 25 implemented, including [REDACTED]

26 [REDACTED] such as technical proposals and technical plans for undertaking
 27 particular tasks. These documents are stored in paper form by the Signals Intelligence
 28 Directorate.

~~TOP SECRET//SI//NF [REDACTED]//ORCON//NOFORN~~

~~TOP SECRET//SI//W//S [REDACTED] //RC ON/NOFORN~~**(U) Information Generated After the Initiation of this Lawsuit**

43. (U) By the time the preservation orders were first issued in November 2007, the NSA had already transitioned from the Presidentially authorized programs to programs conducted under the auspices of FISA and pursuant to FISC orders. Because Plaintiffs' allegations relate to programs that were no longer operational, NSA's preservation efforts have focused primarily on identifying and preserving existing records. NSA has not collected any communications content or metadata under these programs since it transitioned to collection under FISC authorities. To the extent that NSA has created any intelligence reports based on data under these presidentially authorized programs, NSA has preserved that reporting

44. (U) Since filing the 2007 Preservation Declaration, the NSA has continued to generate a small amount of potentially relevant information concerning the Presidentially authorized programs. Though the programs are no longer operational, NSA has continued to identify and preserve relevant information such as internal reports and oversight documents, files created from searches of data related to the programs, and legal and policy documents discussing the transition of the program to new legal authorities.

45. (U) Finally, the NSA's Office of General Counsel has not lifted the litigation hold that it imposed after the above-captioned lawsuit was filed, and it has continued to advise NSA employees that they must preserve all information and documents (written or electronic) that are related to the three Presidentially authorized activities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 9, 2014



 Miriam P.

~~TOP SECRET//SI//W//S [REDACTED] //RC ON/NOFORN~~

16