

UNITED STATES  
FOREIGN INTELLIGENCE SURVEILLANCE COURT  
WASHINGTON, D.C.

APR 27 2016  
LeeAnn Flynn Hall, Clerk of Court

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

**Docket Number: 105B(g) 07-01**

**ORDER**

On April 25, 2008, this Court issued an opinion in the above-captioned case finding lawful and compelling compliance with directives the United States of America (the “government”) provided to Yahoo! Inc. pursuant to now-expired amendments to the Foreign Intelligence Surveillance Act (“FISA”) of 1978, 50 U.S.C. §§ 1801-1885c (West 2016).<sup>1</sup> The directives required Yahoo! Inc. to assist in the authorized acquisition of foreign intelligence information concerning third persons reasonably believed to be located outside the United States, consistent with the terms of the FISA amendments. Yahoo! Inc. appealed the Court’s decision to the United States Foreign Intelligence Court of Review (“FISCR”), which affirmed the decision in a redacted opinion that was issued August 22, 2008 in Docket Number 08-01. *See In re Directives [redacted] Pursuant to Section 105b of the Foreign Intelligence Surveillance Act*, 551 F.3d 1004 (F.I.S.C.R. 2008).

Almost five years after the issuance of the FISC’s and FISCR’s judicial opinions, Yahoo! Inc. filed simultaneous motions before each court seeking an order requiring the government to review the classification status of each court’s respective opinion, as well as the legal arguments

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<sup>1</sup> The amendments were occasioned by enactment of the Protect America Act (“PAA”) of 2007, Pub. L. No. 110-55, 121 Stat. 552 (2007), which expired by its own terms according to a so-called “sunset” provision.

presented in briefs that were part of each court's record. In the instant case, the government conducted a declassification review and proposed redactions to this Court's April 25, 2008 opinion, the relevant legal briefs, and other documents that the government believed "provid[ed] a more complete picture of the litigation in this matter," The United States' Resp. to This Court's July 15, 2013 Order 1, Docket No. 105B(g) 07-01 (July 29, 2013). Because a substantial number of the documents at issue in this case were also part of the FISCR's appellate record, and therefore were the subject of the FISCR's parallel declassification review in Docket Number 08-01, this Court suspended its classification review proceeding pending the FISCR's decision.

On September 11, 2014, the FISCR completed its classification review proceeding in Docket Number 08-01 and issued an order unsealing redacted and declassified portions of documents in its record, with the exception of a hearing transcript that was addressed separately. After the FISCR issued its unsealing order, this Court lifted its suspension and recommenced this proceeding, albeit with a narrower focus on documents that were not reviewed in their original and unredacted form during the FISCR classification review proceeding or that otherwise were not part of the FISCR's record in Docket Number 08-01. *See Order Regarding Scope of Declassification Review*, Docket No. 105B(g) 07-01 (Dec. 23, 2014). The relevant documents were subsequently identified in the Revised Appendix A that was attached to The United States' Supplemental Response to the Court's December 24, 2014 Order, which was submitted on January 30, 2015.

After reviewing the government's proposed redactions to the documents contained in Revised Appendix A, the Court notified the parties by an order dated February 5, 2016 that it was submitting to the government, via a classified document, questions about the scope of certain proposed redactions. On March 4, 2016, the government submitted a timely response to

the Court's questions. Upon consideration of the government's proposed redactions to the documents contained in Revised Appendix A and its responses to the Court's questions, the Court issued an order on March 14, 2016 requiring the government to provide pre-publication copies of the declassified, redacted documents to Yahoo! Inc. for review. On April 11, 2016, the government complied with the Court's order by submitting The United States' Response to the Court's March 14, 2016 Order, which contained the declassified, redacted documents. Yahoo! Inc. then had the opportunity to file any motions addressing the public release of the documents as presented in the government's March 14, 2016 submission. No such motions were filed by Yahoo! Inc. and the time to do so has now passed. Accordingly, there being no reason to continue to treat the declassified documents as sealed, it hereby is

**ORDERED** that Provider's Unclassified Motion Under FISC Rule 62 for Publication of This Court's Decision and Other Records is **GRANTED** consistent with this order and the prior proceedings in this matter. It further is

**ORDERED** that the declassified, redacted documents contained in The United States' Response to the Court's March 14, 2016 Order **SHALL BE UNSEALED**. It finally is

**ORDERED** that Yahoo! Inc.'s Unclassified Motion for a Status Conference is **DENIED AS MOOT**.

**SO ORDERED** this 27<sup>TH</sup> day of April, 2016.

  
THOMAS F. HOGAN  
Presiding Judge, United States  
Foreign Intelligence Surveillance Court