BEFORE THE MILITARY COMMISSION
GUANTANAMO BAY, CUBA
4 MARCH 2009

UNITED STATES OF AMERICA	)	
	)	
v.	)	PROTECTIVE ORDER # 5
	)	
AHMED KHALFAN GHAILANI	)	Protection of Protected But
a.k.a. "Fupi",	)	Unclassified Information Throughout
"Haytham",	)	All Stages of Proceedings
"Abubakar Khalfan Ahmed",	)	
"Sharif Omar"	)	

1. This protective order is issued pursuant to the authority under the Military Commissions Act (MCA) of 2006 (10 U.S.C. §§ 948a, *et seq.*), the Manual for Military Commissions (MMC), and the Regulation for Trial by Military Commission.

2. I find that this case will involve "protected information" that is unclassified but which remains sensitive and should be protected from dissemination outside the defense. Unless otherwise directed, this Order does not preclude the use of such documents or information during open sessions of this Military Commission.

3. This Order establishes procedures that must be followed by all counsel, the accused, all interpreters and all other persons who assist Counsel in this case, any commission personnel, and all other individuals who receive access to protected information in connection with this case. For purposes of this Order the term "Defense" includes all defense counsel of record, defense paralegals, defense translators and all other persons assisting the Defense.

4. This Order pertains to protected but unclassified information, in any form, provided or disclosed to the Defense in their capacity as legal representatives of the accused before this military commission. Protected information provided pursuant to the terms of this Order may be used for purposes of Military Commissions only and may not be shared or otherwise utilized outside the Military Commissions process.

5. IT IS HEREBY ORDERED:

a. That documents marked "For Official Use Only (FOUO)" or "Law Enforcement Sensitive (LES)" and the information contained therein shall be handled strictly in accordance with and disseminated only pursuant to the limitations contained in Appendix 3 of the Memorandum of the Under Secretary of Defense ("Interim Information Security Guidance") dated April 16, 2004. If either party disagrees with the marking of a document, that party must continue to handle that document as marked unless and until proper authority removes such marking.

b. That Criminal Investigation Task Force Forms 40 and Federal Bureau of Investigation FD-302s provided to the Defense shall, unless classified (marked "CONFIDENTIAL," "SECRET," or "TOP SECRET"), shall be handled and disseminated as "For Official Use Only" and/or "Law Enforcement Sensitive."

6. Either party may file a motion for appropriate relief to obtain an exception to this Order should they consider it warranted.

7. Any breach of this Protective Order may result in disciplinary action or other sanctions.

Bruce W. MacKenzie
Captain, U.S. Navy
Military Judge

UNDER SECRETARY OF DEFENSE
5000 DEFENSE PENTAGON
WASHINGTON, DC 20301-5000

INTELLIGENCE

APR 16 2004

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
COMMANDERS OF THE COMBATANT COMMANDS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DOD FIELD ACTIVITIES
DIRECTOR, ADMINISTRATION AND MANAGEMENT

SUBJECT: Interim Information Security Guidance

This directive-type memorandum provides interim guidance on changes to DoD Regulation 5200.1, "Information Security Program," dated January 1997. Attachment 1 implements changes required by Executive Order (EO) 12958, as amended, "Classified National Security Information," and the Information Security Oversight Office (ISOO) "Classified National Security Information Directive No. 1." Attachment 2 provides interim guidance on security containers, classified conferences, and controlled unclassified information requirements.

The attached interim guidance is effective immediately. Please ensure widest dissemination. DoD 5200.1-R will be updated within 180 days to reflect these changes.

Our point of contact is Mrs. Deborah Ross at 703-695-2686 or e-mail: deborah.ross@osd.mil.

Stephen A. Cambone
for Stephen A. Cambone

Attachments
As stated

APPENDIX 3: CONTROLLED UNCLASSIFIED INFORMATION

1. FOR OFFICIAL USE ONLY (FOUO).

(a) General. Information that is currently and properly classified shall be withheld from mandatory release under the first exemption of the Freedom of Information Act FOIA (reference (l)). "FOR OFFICIAL USE ONLY" (FOUO) is applied to information that may be exempt under one or more of the other eight exemptions. So, by definition, information shall be unclassified in order to be designated FOUO. If an item of classified information is declassified, it may be designated FOUO if it qualifies under one of the other exemptions of the FOIA (reference (l)). This means that:

(1) Information cannot be classified and FOUO at the same time. Therefore, classified documents containing FOUO information cannot bear an overall document marking of FOUO. However, portions or pages of a classified document, that contain only FOUO information will be marked as FOUO.

(2) Information that is declassified may be designated FOUO, only if it is believed to fit into one or more of the last eight exemptions (exemptions 2 through 9).

(b) Marking.

(1) Marking information FOUO does not automatically qualify it for exemption. If a request for a record is received, the information shall be reviewed to determine if it actually qualifies for exemption. Similarly, the absence of the FOUO marking does not automatically mean the information shall be released. Some types of records (for example, personnel records) are not normally marked FOUO, but may still be withheld under the FOIA (reference (l)). All DoD unclassified information must be reviewed before it is released to the public or to foreign governments and international organizations.

(2) Portion Marking FOUO Information. Subjects, titles and each section, part, paragraph, and similar portion of an FOUO document shall be marked to show that they contain information requiring protection. Use the

parenthetical notation "(FOUO)" to identify information as For Official Use Only for this purpose. Place this notation immediately before the text.

(c) Access to FOUO Information.

(1) No person may have access to information designated as FOUO unless that person has been determined to have a valid need for such access in connection with the accomplishment of a lawful and authorized Government purpose.

(2) The final responsibility for determining whether an individual has a valid need for access to information designated as FOUO rests with the individual who has authorized possession, knowledge or control of the information and not on the prospective recipient.

(3) Information designated as FOUO may be disseminated within the DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense, provided that dissemination is not further controlled by a Distribution Statement.

(4) DoD holders of information designated as FOUO are authorized to convey such information to officials in other Departments and Agencies of the Executive and Judicial Branches to fulfill a government function. If the information is covered by the Privacy Act (reference (o)), disclosure is only authorized if the requirements of DoD 5400.11-R (reference (s)) are satisfied.

(5) Release of FOUO information to Congress is governed by DoD Directive 5400.4 (reference (t)). If the information is covered by the Privacy Act (reference (o)), disclosure is authorized if the requirements of DoD 5400.11-R (reference (s)) are also satisfied.

(6) DoD Directive 7650.1 (reference (u)) governs release of FOUO information to the General Accounting Office (GAO). If the information is covered by the Privacy Act (reference (o)), disclosure is authorized if the requirements of DoD 5400.11-R (reference (u)) are also satisfied.

(d) Protection of FOUO Information

(1) During working hours, reasonable steps shall be taken to minimize risk of access by unauthorized personnel. After working hours, store FOUO information in unlocked containers, desks or cabinets if Government or Government-contract building security is provided. If such building security is not provided, store the information in locked desks, file cabinets, bookcases, locked rooms, etc.

(2) FOUO information and material may be transmitted via first class mail, parcel post or, for bulk shipments, via fourth class mail. Electronic transmission of FOUO information, e.g., voice, data or facsimile, e-mail, shall be by approved secure communications systems or systems utilizing other protective measures such as Public Key Infrastructure (PKI), whenever practical.

(3) FOUO information may only be posted to DoD Web sites consistent with security and access requirements specified in Deputy Secretary of Defense Memorandum dated December 1998, Subject: "Web Site Administration" (reference (v)).

(4) Record copies of FOUO documents shall be disposed of according to the Federal Records Act (reference (w)) and the DoD Component records management directives. Non-record FOUO documents may be destroyed by any of the means approved for the destruction of classified information, or by any other means that would make it difficult to recognize or reconstruct the information.

(e) Unauthorized Disclosure. The unauthorized disclosure of FOUO does not constitute an unauthorized disclosure of DoD information classified for security purposes. However, appropriate administrative action shall be taken to fix responsibility for unauthorized disclosure of FOUO whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act (reference (o)) may also result in civil and criminal sanctions against responsible persons. The Military Department or other DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

2. FOR OFFICIAL USE ONLY Law Enforcement Sensitive

(a) Description. Law Enforcement Sensitive is a marking sometimes applied, in addition to/conjunction with the marking FOR OFFICIAL USE ONLY, by the Department of Justice and other activities in the law enforcement community. It is intended to denote that the information was compiled for law enforcement purposes and should be afforded appropriate security in order to protect certain legitimate government interests, including the protection of: enforcement proceedings; the right of a person to a fair trial or an impartial adjudication; grand jury information; personal privacy including records about individuals requiring protection under the Privacy Act (reference (o)); the identity of a confidential source, including a State, Local, or foreign agency or authority or any private institution which furnished information on a confidential basis; information furnished by a confidential source; proprietary information; techniques and procedures for law enforcement investigations or prosecutions; guidelines for law enforcement investigations when disclosure of such guidelines could reasonably be expected to risk circumvention of the law, or jeopardize the life or physical safety of any individual, including the lives and safety of law enforcement personnel.

(b) Markings.

(1) In unclassified documents containing Law Enforcement Sensitive information, the words "Law Enforcement Sensitive" shall accompany the words "FOR OFFICIAL USE ONLY" at the top and bottom of the front cover (if there is one), the title page (if there is one), and the outside of the back cover (if there is one).

(2) In unclassified documents, each page containing FOR OFFICIAL USE ONLY Law Enforcement Sensitive information shall be marked "FOR OFFICIAL USE ONLY Law Enforcement Sensitive" at the top and bottom. Classified documents containing such information shall be marked as required by Chapter 5, DoD 5200.1-R except that pages containing Law Enforcement Sensitive information but no classified information will be marked "FOR OFFICIAL USE ONLY Law Enforcement Sensitive" top and bottom.

(c) Portions of DoD classified or unclassified documents that contain FOR OFFICIAL USE ONLY Law Enforcement Sensitive information shall be marked "(FOUO-LES)" at the beginning of the portion. If a portion of a classified document contains both classified and FOR OFFICIAL USE ONLY Law Enforcement Sensitive information, the appropriate classification designation is sufficient to protect the information.

(d) Access to FOR OFFICIAL USE ONLY Law Enforcement Sensitive. The criteria for allowing access to FOR OFFICIAL USE ONLY Law Enforcement Sensitive are the same as those used for FOUO information.

(e) Protection of FOR OFFICIAL USE ONLY Law Enforcement Sensitive. Within the Department of Defense, FOR OFFICIAL USE ONLY Law Enforcement Sensitive shall be protected as required for FOUO information.

3. **Sensitive But Unclassified and Limited Official Use Only**

(a) Access. Within the Department of Defense, the criteria for allowing access to SBU information are the same as those used for FOUO information, except that information received from the Department of State marked SBU shall not be provided to any person who is not a U.S. citizen without the approval of the Department of State activity that originated the information.

4. **LIMITED DISTRIBUTION Information**

(a) Description. LIMITED DISTRIBUTION is a caveat used by the National Geospatial-Intelligence Agency (NGA) to identify a select group of sensitive but unclassified imagery or geospatial information and data created or distributed by NGA or information, data, and products derived from such information. DoD Directive 5030.59 (reference (aa)) contains details of policies and procedures regarding use of the LIMITED DISTRIBUTION caveat. These policies and procedures are summarized below.

(b) Marking. Information or material designated as LIMITED DISTRIBUTION, or derived from such information or material shall, unless otherwise approved by the Director, NGA, be marked as follows:

LIMITED DISTRIBUTION Notation

UNCLASSIFIED/LIMITED DISTRIBUTION Distribution authorized to DoD, IAW 10 U.S.C. §§ 130 and 455. Release authorized to U.S. DoD Contractors IAW 48 C.F.R. §252.245-7000. Refer other requests to Headquarters, NGA, ATTN: Release Officer, Stop D-136. Destroy as "For Official Use Only." Removal of this caveat is prohibited.

(c) Access to LIMITED DISTRIBUTION Information or Material

(1) Information bearing the LIMITED DISTRIBUTION caveat shall be disseminated by NGA to Military Departments or other DoD Components, and to authorized grantees for the conduct of official DoD business.

(2) DoD civilian, military and contractor personnel of a recipient DoD Component, contractor or grantee may be granted access to information bearing the LIMITED DISTRIBUTION caveat provided they have been determined to have a valid need to know for such information in connection with the accomplishment of official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means to preclude unauthorized disclosure or release. Further dissemination of information bearing the LIMITED DISTRIBUTION caveat by receiving contractors or grantees to another Military Department, other DoD Component, contractor or grantee, or dissemination by any recipient Component, contractor, or grantee to any person, agency or activity outside DoD, requires the express written approval of the Director, NGA.

(3) Information bearing the LIMITED DISTRIBUTION caveat, or derivative information, shall not be released, made accessible to or sold to foreign governments or international organizations, to include through Foreign Security Assistance transactions or arrangements, or transfer or loan of any weapon or weapon system that uses such information, or intended to

be used in mission planning systems, or through the Foreign Military Sales process, without the express, written approval of the Director, NGA.

(4) All Freedom of Information Act requests for information bearing the LIMITED DISTRIBUTION caveat or derived therefrom, shall be referred to NGA consistent with DoD Directive 5030.59 (reference (aa)).

(d) Protection of LIMITED DISTRIBUTION Information.

(1) Information bearing the LIMITED DISTRIBUTION caveat, or derivative information, shall not be stored on systems accessible by contractors, individuals who are not directly working on a DoD contract, or those who do not require access to such information in connection with the conduct of official Department of Defense business.

(2) LIMITED DISTRIBUTION information or derivative information, may only be posted to DoD Web sites consistent with security and access requirements specified in Deputy Secretary of Defense Memorandum dated December 1998 (reference (v)). Such information shall not be transmitted over the World Wide Web or over other publicly accessible and unsecured systems. Electronic transmission of such information, e.g., voice, data or facsimile, shall be by approved secure communications systems or systems utilizing other protective measures such as Public Key Infrastructure.

(3) Store LIMITED DISTRIBUTION information in the same manner approved for FOUO.

(4) When no longer required, all LIMITED DISTRIBUTION information and copies, shall be returned to NGA or destroyed in a manner sufficient to prevent its reconstruction.