

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|  |   |                                      |
|--|---|--------------------------------------|
| ANTHONY SHAFFER,                       | ) |                                      |
|  | ) |                                      |
| Plaintiff,                             | ) |                                      |
|  | ) |                                      |
| v.                                     | ) | Civil Action No. 1:10-cv-02119 (RMC) |
|  | ) |                                      |
| DEFENSE INTELLIGENCE AGENCY, <i>et</i> | ) |                                      |
| <i>al.</i> ,                           | ) |                                      |
|  | ) |                                      |
| Defendants.                            | ) |                                      |
|  | ) |                                      |

**DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Local Civil Rule 7(h), Defendants submit this statement of material facts as to which Defendants contend there is no genuine dispute:

1. Plaintiff Anthony Shaffer was employed by the Defense Intelligence Agency (DIA) from 1995 to 2006, during which time he served as an officer in the U.S. Army Reserve. Am. Compl. ¶ 3.

2. Plaintiff voluntarily, willingly, and knowingly entered into numerous secrecy agreement with the Department of Defense as a condition of employment in a position of special confidence and trust relating to the national security, and in consideration of being given access to classified information and other information which, if disclosed in an unauthorized manner, would jeopardize foreign intelligence activities of the United States Government. *See* Scheller Decl. (Ex. A), Exs. A-G (Pl.'s Secrecy Agreements).

3. Plaintiff agreed never to disclose certain information or material obtained in the course of employment to anyone not authorized to receive it without prior written authorization. *See, e.g., id.*, Ex. C, ¶ 3 ("I hereby agree that I will never divulge such information unless I have

officially verified that the recipient has been properly authorized by the United States Government to receive it or I have been given prior written notice of authorization from the United States Government Department or Agency . . . last granting me a security clearance that such disclosure is permitted.”).

4. Plaintiff also agreed that he would submit proposed written material to the Department of Defense for review and receive written permission from the Department before taking any steps toward public disclosure. *See, e.g., id.*, Ex. A, ¶ 4; *id.*, Ex. C, ¶ 3; Am. Compl. ¶ 3 (Plaintiff states that he “is required by virtue of several secrecy agreements to submit all of his writings for prepublication review”).

5. Plaintiff remains subject to the conditions and obligations of his many non-disclosure and secrecy agreements with the Government. *See, e.g., Scheller Decl.* (Ex. A), Ex. C, ¶ 8 (“Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, *and at all times thereafter.*”) (emphasis added).

6. After his employment with DIA ended, Plaintiff wrote a manuscript based largely on his experiences in Afghanistan, where he was stationed in the course of his employment with DIA. Am. Compl. ¶¶ 3, 11.

7. In 2009, Plaintiff submitted a draft manuscript to his Army Reserve chain-of-command, but did not submit the text to other components of the Department of Defense, including the Office of Security Review or DIA. *Id.* ¶ 13. The United States Army informed Plaintiff on August 6, 2010, that he was not authorized to publish the manuscript. *Id.* ¶¶ 26, 27.

Plaintiff was then informed in writing that the manuscript must be submitted for prepublication review. *Id.* ¶ 28.

8. The Government determined that Plaintiff's manuscript contained a significant amount of classified information. *Id.* ¶ 24. The Government informed the publisher that the book's publication could cause damage to the national security of the United States, and the publisher agreed to delay publication. *Id.* ¶ 30.

9. Plaintiff's manuscript was published with redactions on September 24, 2010, under the title, *Operation Dark Heart: Spycraft and Special Ops on the Frontlines of Afghanistan and the Path to Victory*. *Id.* ¶ 41.

10. By letter dated August 3, 2012, Plaintiff asked the Department of Defense's Office of Security Review (OSR) to conduct a classification review of the manuscript so that he could publish a new edition of the book. *See* Unclassified OSR Decl. (Ex. D) ¶ 2; *id.*, Ex. 1 (request from Plaintiff).

11. During the administrative security review process, Plaintiff met with OSR personnel, and was afforded the opportunity to submit materials in support of his contention that information redacted from the book was not properly classified because it had been officially disclosed by the Government. *Id.* ¶ 3.

12. By letter dated January 18, 2013, OSR informed Plaintiff that the Government had completed the security review and determined that the information contained in approximately 200 of the redacted passages was no longer classified. *Id.* ¶ 10; *id.*, Ex. 6 (Langerman letter). OSR provided a table identifying each redacted passage and indicating its current classification status. *Id.*

13. Plaintiff now challenges the classification determinations regarding the remaining redacted passages.

14. The Government has conducted an updated assessment of the pertinent portions of Plaintiff's manuscript and determined that certain information in the manuscript is currently and properly classified pursuant to Executive Order 13526, as its disclosure reasonably could be expected to cause serious or grave damage to the national security. *See generally* Unclassified DIA Decl. (Ex. E); Classified DIA Decl. (Ex. F); First Classified CIA Decl. (Ex. G); Second Classified CIA Decl. (Ex. G); Classified Decl. (Ex. H).

15. Additional relevant, detailed facts in this case, including the bases for the classification of specific passages contained in Plaintiff's manuscript, are classified and, as such, are set forth in the classified declarations that are being submitted for this Court's *ex parte, in camera* review.

Dated: April 26, 2013.

Respectfully submitted,

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