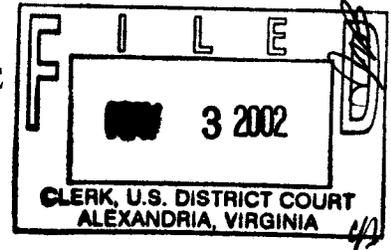


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA)
)
 v.)
)
 JOHN PHILLIP WALKER LINDH)

Criminal No. 02-37-A

ORDER

The matter is before the Court on the Government's April 19, 2002 Motion for a Protective Order Related Primarily to Defense Discovery Request Number Four.

In its motion, the government requests the entry of an order protecting from disclosure to the defense various classified documents filed by the government under seal, for an *ex parte* and *in camera* review. Specifically, the government contends that the classified documents filed as Attachments 2 through 5 to its April 19, 2002 motion,¹ as well as a Supplemental Classified Attachment filed on April 22, 2002 and Two Additional Classified Documents filed on April 23, 2002, do not contain any material required to be disclosed to the defense under either Rule 16, Fed. R. Crim. P. or *Brady v. Maryland*, 373 U.S. 83 (1963). By Order dated April 30, 2002, the government's motion for a protective order was granted as to Attachment 2, as well as the Two Additional Classified Documents. *See United States v. Lindh*, Criminal No. 02-37-A (E.D. Va. Apr. 30, 2002) (Order). Thereafter, on May 1, 2002, the government's motion for a protective order was granted as to the Supplemental Classified Attachment and Attachment 3. *See United States v. Lindh*, Criminal No. 02-37-A (E.D. Va. May 1, 2002) (Orders).

¹ The government has disclosed to the defense the classified documents filed as Attachments 1A and 1B.

Now, based on an independent, *ex parte* and *in camera* review of the classified documents filed as Attachments 4 and 5 to the government's April 19, 2002 motion,² it is clear that none of the classified documents filed as Attachment 4 contain any information that can reasonably be construed as either exculpatory under *Brady* or discoverable under Rule 16(a)(1), Fed. R. Crim. P. Additionally, although the classified documents filed as Attachment 5 contain some amount of information subject to disclosure under *Brady*, such information has been adequately disclosed to the defense in the government's Discovery Letter #27. Moreover, the actual classified documents contained in Attachment 5 are protected from disclosure under Rule 16(a)(2), Fed. R. Crim. P.

Accordingly, for these reasons, and for good cause shown, it is hereby **ORDERED** that the government's Motion for a Protective Order Related Primarily to Defense Discovery Request Number Four is **GRANTED** as to Attachments 4 and 5 to the April 19, 2002 motion.

Therefore, it is further **ORDERED** that the government is not required to disclose to the defense the documents contained in Attachments 4 and 5.

It is further **ORDERED** that the subject classified documents be (i) placed in separate envelopes, one marked as "Attachment 4 to the Government's Motion for a Protective Order Related Primarily to Defense Discovery Request Number Four" and the other marked as "Attachment 5 to the Government's Motion for a Protective Order Related Primarily to Defense Discovery Request Number Four," (ii) maintained as classified documents in accordance with the procedures set forth in the Classified Information Procedures Act, (CIPA), Title 18 U.S.C., Appendix 3, and in the Protective Order entered in this case on February 27, 2002, *see United States v. Lindh*, Criminal No.

² The documents contained in Attachments 4 and 5, as well as those in Attachment 3, are designated by the government as "for the Court's eyes only."

02-37-A (E.D. Va. Feb. 27, 2002) (Protective Order) and (ii) maintained *ex parte* and under seal for appellate review, if necessary.

The Clerk is directed to send a copy of this Order to all counsel of record.

/S/

Alexandria, VA
May 3, 2002

T.S. Ellis, III
United States District Judge