

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

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<b>ELOUISE PEPION COBELL, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	
	)	<b>Civil Action No. 1:96 CV 01285 (JR)</b>
<b>KEN SALAZAR, Secretary of the Interior, et al.,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	
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**PLAINTIFFS' SECOND NOTICE REGARDING THE MAY 2008 IG REPORT**

On April 1, 2009, plaintiffs filed with this Court a notice of Inspector General Report: *Compilation of Information Technology Challenges at DOI* (Report No. ISD-EV-OSS-0017-2008), dated May 2008 (“Report”), Dkt. No. 3602, that found “the [Interior] Department[’s] [IT security program] is failing.” Report at 2 (quoting Interior’s Chief Information Officer). With respect to this Report, former Secretary of the Interior Dirk Kempthorne (“Kempthorne”) has admitted publicly that he: (1) received the Report on May 1, 2008 and (2) “personally chaired the first meeting to demonstrate this [systemic IT security failure] was a priority . . . .” Brian Krebs, “Report Says Interior Dept. Failed to Secure Network,” *The Washington Post*, April 5, 2009, Page A04.<sup>1</sup>

This information is material inasmuch as the government in the name, and for the benefit, of Kempthorne was making representations under oath to this Court – e.g., that Interior’s

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<sup>1</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/04/AR2009040403162.html>.

information technology systems were secure – at the same time Kempthorne and his staff knew they were false.

On August 1, 2008, Kempthorne filed Interior’s thirty-third quarterly status report covering the period April 1, 2008 through June 30, 2008, Dkt. No. 3562, attesting to this Court that he has been assured “that the information contained [in the quarterly report] is accurate.” Dkt. No. 3562-2 at 1. Kempthorne represented further that “Interior continues to make progress in enhancing IT security through improvements to security monitoring processes and the re-Certification & Accreditation of systems,” Dkt. No. 3562-2 at 43, citing “[p]revention and [m]onitoring” as a “most noteworthy accomplishment[]” during the period. *Id.* Kempthorne’s quarterly report omits mention of both the Inspector General Report that he received May 1, 2008 and his “first meeting [in response thereto] to demonstrate [IT security] was a priority . . . .” Brian Krebs, “Report Says Interior Dept. Failed to Secure Network,” *The Washington Post*, April 5, 2009, Page A04.

Notably, Kempthorne represented to this Court that Interior “successfully blocked over one million network attacks during the reporting period,” Dkt. No. 3562-2 at 43, but concealed from plaintiffs and this Court the existence of “highly suspicious network traffic leaving the Department’s network,” Report at 2; that “traffic patterns were so anomalous the Department retained outside expertise to investigate,” Report at 2; and, most importantly, that he and his staff knew that “it is unfathomable anyone could give assurance the Department’s network is secure.” Report at 2. Indeed, Kempthorne’s “own analysis” disclosed that for a single Internet gateway, “nearly 70% of the network traffic leaving the Department . . . during the month of January was bound for known-hostile countries and the Department lacked the capability to even determine what the traffic was.” Report at 7.

Contemporaneously, and unbeknownst to this Court, the Inspector General took exception to Kempthorne's averment of "progress," instead finding that "early results of FY2008 evaluations – yet again – indicate *no material improvements.*" Report at 16 (emphasis added). It is not possible to reconcile Kempthorne's personal knowledge of the Report's disturbing findings on May 1, 2008 and the "priority" that he says he had assigned to it, with contemporaneous representations filed by the Justice Department in his behalf.

Kempthorne filed with this Court an additional quarterly report in 2008 repeating substantially the same baseless claim of "progress" and "noteworthy accomplishments." Dkt. No. 3589-2 at 43. However, it, too, conceals the existence of the IG Report as well as serious systemic vulnerabilities detailed therein, vulnerabilities that he and his staff knew about when this quarterly report was filed. Secretary Salazar's first quarterly report is due to be filed April 30, 2009.

Respectfully submitted this 6<sup>th</sup> day of April 2009.

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April 6, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing PLAINTIFFS' SECOND NOTICE REGARDING THE MAY 2008 IG REPORT was served on the following via facsimile, pursuant to agreement, on this day, April 6, 2009.

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