

# EXHIBIT 3

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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<b>ELECTRONIC FRONTIER FOUNDATION,</b>		)	
		)	
Plaintiff,		)	
		)	
v.		)	Case No. 10-CV-10-04892-RS
		)	
<b>U.S. DEPARTMENT OF JUSTICE,</b>		)	
		)	
		)	
Defendant.		)	
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**SECOND DECLARATION OF JOHN E. CUNNINGHAM III**

I, John E. Cunningham III, declare the following to be a true and correct statement of facts:

1. I am a Trial Attorney in the U.S. Department of Justice (DOJ or Department), Criminal Division (CRM), and am currently assigned to the Office of Enforcement Operations, Freedom of Information Act/Privacy Act (FOIA/PA) Unit, where I have worked since November 2011. I have been employed as a Trial Attorney with the DOJ since October 1998. From October 1998 to November 2011, I was employed by the Fraud Section of CRM. In November, 2011, I became a Trial Attorney with the Criminal Division, Office of Enforcement Operations (OEO) FOIA/PA Unit.

2. In such capacity, my present duties include reviewing complaints of lawsuits filed under both the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and the Privacy Act (“Privacy Act” or “PA”), 5 U.S.C. § 552a *et seq.*, and to provide litigation support and assistance to DOJ Assistant United States Attorneys and to Department of Justice, Civil Division, Federal

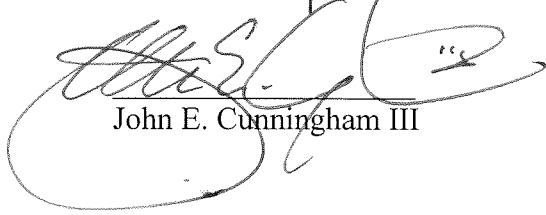
Programs Trial Attorneys litigating these cases in district courts. In conjunction with these duties, I review CRM's processed FOIA request files compiled by the paralegal processors (FOIA Specialists), reviewed by supervisory paralegals (Supervisory FOIA Specialists), and/or by the CRM FOIA/PA Unit Chief and/or Deputy Chief in response to FOIA/PA requests received by the FOIA/PA Unit. I also consult with officials and employees in CRM Sections where responsive records are located, and with officials and employees in other DOJ Components and/or Federal agencies that have equities in responsive records. I also consult with the Unit Chief and the Deputy Chief, who supervise the processing of FOIA/PA requests, and with the supervisory paralegals (Supervisory FOIA Specialists) to confirm that determinations to withhold or to release CRM records have been made in accordance with both the FOIA and the PA, and with DOJ regulations at 28 C.F.R. §§ 16.1 *et seq.* and §§ 16.40 *et seq.*

3. Due to the nature of my official duties, I am familiar with the processing of Plaintiff's request. The statements that follow are made on the basis of my review of CRM's official files and records, my own personal knowledge, and information I acquired in performing my official duties. This Second Cunningham Declaration hereby incorporates by reference my First Cunningham Declaration of April 27, 2012.

4. This declaration is in response to the Court's Order dated October 30, 2012, directing the Criminal Division to conduct a further review of the materials previously withheld as non-responsive. In accordance with the Court Order, the Criminal Division re-reviewed material previously withheld as non-responsive, and confirmed that the information was outside the scope of plaintiff's FOIA request. Accordingly, no additional information was released to the plaintiff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29<sup>TH</sup> day of January, 2013.



John E. Cunningham III