

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

ELECTRONIC FRONTIER FOUNDATION,)

Plaintiff,)

v.)

DEPARTMENT OF JUSTICE,)

Defendant.)

Civil Action No. _____

DECLARATION OF MARCIA HOFMANN

I, MARCIA HOFMANN, do hereby depose and state:

1. I am counsel for Plaintiff Electronic Frontier Foundation (“EFF”).

2. Plaintiff Electronic Frontier Foundation (“EFF”) is a not-for-profit corporation established under the laws of the State of California, with offices in San Francisco, California and Washington, DC. EFF is a donor-supported membership organization that works to inform policymakers and the general public about civil liberties issues related to technology, and to act as a defender of those liberties. In support of its mission, EFF uses the Freedom of Information Act (“FOIA”) to obtain and disseminate information concerning the activities of federal agencies.

3. By letter delivered by facsimile to the Federal Bureau of Investigation (“FBI”) and dated March 12, 2007, I requested under the FOIA records concerning the Bureau’s misuse of legal authority to issue National Security Letters (“NSLs”) to collect customer account information and transactional records from third parties such as telephone companies, Internet service providers, financial institutions, and consumer credit agencies. Letter From Marcia Hofmann, Staff Attorney, Electronic Frontier Foundation

to David Hardy, Chief, Records/Information Dissemination Section, Records Management Division, FBI 1-2 (March 12, 2007) (attached hereto as Exhibit 1).

4. Specifically, I stated that EFF sought following agency records (including, but not limited to, electronic records) from January 1, 2003 to the date of the request:

- A. All records discussing or reporting violations or potential violations of statutes, Attorney General guidelines, and internal FBI policies governing the use of NSLs, including, but not limited to:
 - i. Correspondence or communications between the FBI and the Privacy and Civil Liberties Oversight Board concerning violations or potential violations of statutes, Attorney General guidelines, and internal FBI policies governing the use of NSLs; and
 - ii. Correspondence or communications between the FBI and Department of Justice Office of the Inspector General concerning violations or potential violations of statutes, Attorney General guidelines, and internal FBI policies governing the use of NSLs;
- B. Guidelines, memoranda or communications addressing or discussing the integration of NSL data into the FBI's Investigative Data Warehouse;
- C. Contracts between the FBI and three telephone companies (as referenced in page 88 of the Inspector General's report), which were intended to allow the Counterterrorism Division to obtain telephone toll billing data from the communications industry as expeditiously as possible;
- D. Any guidance, memoranda or communications discussing the FBI's legal authority to issue exigent letters to telecommunications companies, and the relationship between such exigent letters and the FBI's authority to issue NSLs under the Electronic Communications Privacy Act;
- E. Any guidance, memoranda or communications discussing the application of the Fourth Amendment to NSLs issued under the Electronic Communications Privacy Act;
- F. Any guidance, memoranda or communications interpreting "telephone toll billing information" in the context of the Electronic Communications Privacy Act;
- G. Any guidance, memoranda or communications discussing the meaning of "electronic communication" in the context of the Electronic Communications Privacy Act;

- H. Copies of sample or model exigent letters used by the FBI's Counterterrorism Division;
- I. Copies of sample or model NSL approval requests used by the FBI's Counterterrorism Division; and
- J. Records related to the Counterterrorism Division's Electronic Surveillance Operations and Sharing Unit (EOPS).

5. Also on March 12, 2007, I provided by facsimile to the Department of Justice ("DOJ") Director of Public Affairs a copy of EFF's FOIA request to the FBI, and asked that the processing of the request be expedited because it involves a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence" under 28 C.F.R. § 16.5(d)(1)(iv). Letter From Marcia Hofmann, Staff Attorney, Electronic Frontier Foundation to Tasia Scolinos, Director of Public Affairs, DOJ (March 12, 2007) (attached hereto as Exhibit 2).

6. On March 29, 2007, the FBI acknowledged that it had received EFF's March 12, 2007 FOIA request. Letter From David Hardy, Chief, Records/Information Dissemination Section, Records Management Division, FBI to Marcia Hofmann, Staff Attorney, Electronic Frontier Foundation (March 29, 2007) (attached hereto as Exhibit 3).

7. On March 30, 2007, the FBI informed me that the Director of Public Affairs had granted Plaintiff's request for expedited processing. Letter From David Hardy, Chief, Records/Information Dissemination Section, Records Management Division, FBI to Marcia Hofmann, Staff Attorney, Electronic Frontier Foundation (March 30, 2007) (attached hereto as Exhibit 4).

8. Notwithstanding the Director of Public Affairs' purported decision to expedite the processing of EFF's FOIA request, to date, the FBI has neither completed the processing of EFF's FOIA request nor informed EFF of an anticipated date for the completion of the

processing of the request.

9. Unless the FBI is ordered to process EFF's FOIA request immediately, EFF's right to expedition under the FOIA will be irretrievably lost, resulting in irreparable injury to EFF.

10. Any further delay in the processing of this FOIA request will irreparably harm EFF's ability, and that of the public, to obtain in a timely fashion information vital to the current and ongoing debate surrounding FBI's misuse of its legal authority to issue NSLs.

11. Without the expedited access to information about the FBI's abuse of investigative power to which it is legally entitled, EFF's ability to engage in an urgent and current public policy debate will be irretrievably lost.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

4/10/07
DATE

Marcia Hofmann
MARCIA HOFMANN