

12958, as amended; Presidential, Attorney General and FBI policies and procedures; judicial decisions and other Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order 12958, as amended,¹ and the preparation of affidavits/declarations in support of Exemption 1 claims asserted under the FOIA.² I have been designated by the Attorney General of the United States as an original Classification Authority and a Declassification Authority pursuant to Executive Order 12958, as amended, §§ 1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the treatment which has been afforded the March 12, 2007 FOIA request of plaintiff Electronic Frontier Foundation (“EFF”), which seeks access to records concerning the FBI’s use of National Security Letters (“NSLs”) in connection with the March 2007 report of the Office of the Inspector General, United States Department of Justice, entitled “A Review of the Federal Bureau of Investigation’s Use of National Security Letters” (“OIG Report”); and, more generally, internal FBI policies governing the use of NSLs. See <http://www.usdoj.gov/oig/reports/FBI/index.htm>.

(4) This declaration is submitted in support of defendant’s motion for clarification, or in the alternative, amendment of the Order issued by the Court on June 15, 2007 (“June 15, 2007

¹ 60 Fed. Reg. 19825 (1995) and 69 Fed. Reg. 15315 (2003).

² 5 U.S.C. § 552(b)(1).

Order”).

(5) In my Second Declaration, dated May 25, 2007 (“Second Hardy Declaration”), I outlined seven steps necessary for the FBI to process documents potentially responsive to plaintiff’s FOIA request. See Second Hardy Declaration, ¶ 5. At that time, I estimated that by assigning five full-time employees in the Classification Unit, and five full-time employees in the FOIPA Disclosure Unit, the FBI would be able to process approximately 2,000 pages for the initial release in 45 days. See Second Hardy Declaration, ¶ 11.

(6) I have reviewed the June 15, 2007 Order, which requires the FBI to process documents on a “rolling basis,” with the first processing/release date occurring not later than July 5, 2007. See June 15, 2007 Order, ¶ 4(a) & (b). The Order further instructs that the FBI must process 2,500 pages every 30 days thereafter. See June 15, 2007 Order, ¶ 4(c) & (d).

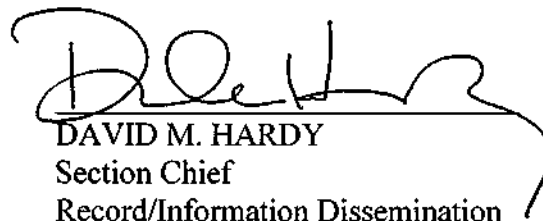
(7) Since the submission of my Second Declaration, the FBI has continued to work diligently to search, scope, review and process documents potentially responsive to plaintiff’s FOIA request. However, certain unforeseen start-up delays have arisen during the first wave of processing for the July 5, 2007 release. As explained in my Second Declaration, approximately 1,931 pages involving Intelligence Oversight Board (“IOB”) violations have been scanned, processed through the Optical Character Recognition (“OCR”) system and have now been reviewed by the Classification Unit. See Second Hardy Declaration, ¶ 8. However, in light of certain information made public by the OIG Report, the FBI unexpectedly has had to revisit classification decisions with regard to numerous pages within this approximately 1,900-page collection. This re-review is likely to result in the release of some pages and portions of pages that were previously considered entirely classified and would have been withheld altogether. The

Classification Unit's re-review of this material has been closely followed by the Disclosure Unit's review for other applicable FOIA exemptions. In order to comply with the Court's July 5, 2007 deadline, the FBI assigned overtime work to ten employees in the Classification Unit and six employees in the Disclosure Unit, which will enable the FBI to process approximately 1,500 pages for the first response/release deadline on July 5, 2007.

(8) Having successfully overcome start-up delays, the FBI does not anticipate any practical difficulties in complying with the order in time for the August 5 deadline and subsequent deadlines. The FBI therefore anticipates processing 2,500 pages on a "rolling basis" by August 5, 2007, and releasing to plaintiff any non-exempt documents on that date, and repeating this rolling response process within each subsequent 30-day period.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of June, 2007.


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