

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELECTRONIC FRONTIER,
FOUNDATION

Plaintiff,

v.

DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF
INVESTIGATION, AND DRUG
ENFORCEMENT ADMINISTRATION,

Defendants.

Civil Action No. C 10cv04892 (SI)

SECOND DECLARATION OF
DAVID M. HARDY, SECTION CHIEF,
FBI RECORD MANAGEMENT
DIVISION, RECORDS/INFORMATION
DISSEMINATION SECTION

1. I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and currently relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

2. In my official capacity as Section Chief of RIDS, I supervise approximately 277 employees who staff a total of ten (10) FBIHQ units and two field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA as amended by the OPEN Government Act of 2007 and the OPEN FOIA Act of 2009; Privacy Act; Executive Order

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2 13526, Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and
3 Presidential and Congressional directives. The statements contained in this declaration are based
4 upon my personal knowledge, upon information provided to me in my official capacity, and upon
5 conclusions and determinations reached and made in accordance therewith. My responsibilities
6 also include the review of FBI information for classification purposes as mandated by Executive
7 Order ("E.O.") 13526,¹ and the preparation of declarations in support of Exemption 1 claims
8 under the FOIA.² I have been designated by the Attorney General of the United States as an
9 original classification authority and a declassification authority pursuant to E.O. Order 13526, §§
10 1.3 and 3.1.

11 3. Due to the nature of my official duties, I am familiar with the procedures followed by the
12 FBI in responding to requests for information from its files pursuant to the provisions of the
13 FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am am
14 familiar with the Complaint in the above titled action, the pleadings regarding plaintiff's Motion
15 for Partial Summary Judgment filed January 6, 2011, and this Court's March 3, 2011 Order
16 establishing a rolling processing schedule for plaintiff's "Lynch request." The statements I make
17 hereinafter are made on the basis of my own personal knowledge, review of FBI records and the
18 seven (7) interim releases made by FBI in this case, and information acquired by me in the
19 performance of my official duties as Section Chief of RIDS.

20 4. This declaration supplements information previously provided in my 1st Hardy
21 declaration, dated January 25, 2011, submitted in response to plaintiff's Motion for Partial
22 Summary Judgement, wherein plaintiff sought an Order from the Court directing the FBI to
23 expedite processing of its "Lynch request," as well as to process and disclose records in response
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25 ¹ The classified information in this case was reviewed in accordance with E.O. 13526 of December 29,
26 2009.

27 ² 5 U.S.C. § 552 (b)(1).
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2 to its "Cardozo request." The First Hardy declaration provided the Court and plaintiff with an
3 explanation of the FBI's record-keeping system and the procedures used to expeditiously search
4 for, collect, and process records potentially responsive to both of plaintiff's FOIA requests, up
5 through the date it was signed, January 25, 2011. The FBI submits this declaration in support of
6 its Motion for Summary Judgement, and to provide the Court and plaintiff with justification for
7 the withholding of information from its FOIA/PA releases to plaintiff, in accordance with
8 Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), and pursuant to FOIA Exemptions 1, 2, 3, 4, 5,
9 6, 7(C), 7(A), 7(D) and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6),
10 (b)(7)(C), (b)(7)(A), (b)(7)(D), and (b)(7)(E).

11 **HISTORY OF PLAINTIFF'S FOIA REQUESTS**

12 5. By faxed letter dated May 21, 2009, hereafter "Cardozo request," plaintiff requested all
13 agency records from 2007 to date that describe the Going Dark Program, all Privacy Impact
14 Assessments prepared for the Going Dark Program, and all System of Records Notices
15 ("SORNs") that discuss or describe the Going Dark Program. See Exhibit A, First Hardy
16 declaration, for a true and correct copy of the Cardozo request.

17 6. By faxed letter dated September 28, 2010, hereafter "Lynch request," plaintiff made a
18 broad, six-item request generally seeking information about FBI's problems and limitations
19 encountered in the surveillance of communications systems or networks. See Exhibit K, First
20 Hardy declaration, for a true and correct copy of the Lynch request.

21 **SUPPLEMENTAL PROCEDURAL HISTORY**³

22 7. By letter dated January 18, 2011, the FBI advised plaintiff that material responsive to the
23 Cardozo request was being reviewed by a FOIA analyst, that sensitive national security
24 information contained therein was undergoing review, and that exemptions allowed by the
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26 ³ See First Hardy declaration for administrative trail for both FOIA requests as of January 25, 2011, filing
27 date.

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2 FOIA/PA would then be applied. (See Exhibit A.)⁴

3 8. In a letter dated February 7, 2011, plaintiff was provided with the first interim release
4 response to the Cardozo request. (See Exhibit B.) The FBI processed a total of 474 pages, and
5 released 18 pages in full, 315 pages in part, and withheld 141 pages in full. See Exhibit M,
6 Bates pages 1-474. The FBI inserted deleted page sheets as a substitute for the 141 pages
7 withheld in full in order to provide further explanation and detail concerning those pages. Each
8 page of Exhibit M, Bates pages 1-474, is consecutively Bates-stamped at the bottom center of
9 each page and labeled "EFF/Cardozo-1" through "EFF/Cardozo-474." The exemptions asserted
10 by the FBI as grounds for non-disclosure of portions of , or in some instances, entire documents
11 are FOIA Exemptions 2, 5, 6, 7(C), 7(D) and 7(E), 5 U.S.C. §§ 552 (b)(2), (b)(5), (b)(6),
12 (b)(7)(C), (b)(7)(D), and (b)(7)(E).

13 9. Defendant Drug Enforcement Administration ("DEA") located 192 pages of FBI
14 information in it records while processing the Lynch request and forwarded it to the FBI for
15 direct response to plaintiff. In a letter dated March 11, 2011, plaintiff was provided the first
16 direct-referral response to the Lynch request. (See Exhibit C.) The FBI processed the 192 pages
17 of referred documents, and withheld all 192 pages in full. See Exhibit N, Bates pages 1241-
18 1432. The FBI inserted deleted page sheets as a substitute for the 192 pages withheld in full in
19 order to provide further explanation and detail concerning those pages. Each page of Exhibit N,
20 Bates pages 1241-1432, is consecutively Bates-stamped at the bottom center of each page and
21 labeled "EFF/Lynch-1241" through "EFF/Lynch-1432." The exemptions asserted by the FBI as
22 grounds for non-disclosure of the entire 192 referred pages were FOIA Exemptions 2, 5, 6, 7(C),
23 and 7(E), 5 U.S.C. §§ 552 (b)(2), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

24 10. In a letter dated March 16, 2011, plaintiff was provided the second interim release
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26 ⁴ The January 18, 2011, status update was inadvertently left out of the Exhibit's to the First Hardy
27 declaration, which covered correspondence up through January 25, 2011.

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2 response to the Cardozo request. (See Exhibit D.) The FBI processed a total of 479 pages, and
3 released 17 pages in full, 125 pages in part, and withheld 337 pages in full. See Exhibit M,
4 Bates pages 475-953. The FBI inserted deleted page sheets as a substitute for the 337 pages
5 withheld in full in order to provide further explanation and detail concerning those pages. Each
6 page of Exhibit M, Bates pages 475-953, is consecutively Bates-stamped at the bottom center of
7 each page and labeled "EFF/Cardozo-475" through "EFF/Cardozo-953." The exemptions
8 asserted by the FBI as grounds for non-disclosure of portions of, or in some instances, entire
9 documents are FOIA Exemptions 1, 2, 4, 5, 6, 7(C), 7(D) and 7(E), 5 U.S.C. §§ 552 (b)(1),
10 (b)(2), (b)(4), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

11 11. In a letter dated April 1, 2011, plaintiff was provided the first interim release response to
12 the Lynch request. (See Exhibit E.) The FBI processed a total of 289 pages, and released 161
13 pages in full, or in part, and withheld 128 pages in full. See Exhibit N, Bates pages 1-289.⁵ The
14 FBI inserted deleted page sheets as a substitute for the 128 pages withheld in full in order to
15 provide further explanation and detail concerning those pages. Each page of Exhibit N, Bates
16 pages 1-289, is consecutively Bates-stamped at the bottom center of each page and labeled
17 "EFF/Lynch-1" through "EFF/Lynch-289." The exemptions asserted by the FBI as grounds for
18 non-disclosure of portions of, or in some instances, entire documents are FOIA Exemptions 1, 2,
19 3, 5, 6, 7(C), 7(A), 7(D) and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (b)(7)(C),
20 (b)(7)(A), (b)(7)(D), and (b)(7)(E).

21 12. Defendant DEA subsequently located another 21 pages of FBI information in its records
22 while processing the Lynch request and forwarded it to the FBI for direct response to plaintiff. In
23 a letter dated April 1, 2011, plaintiff was provided the second direct-referral response to the
24 Lynch request. (See Exhibit F.) The FBI processed the 21 pages of referred documents, and
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27 ⁵ In preparing Exhibit N the FBI noticed that the second page of a 12 page EC was inadvertently missing
28 from the original FOIA release. The FBI is releasing this page, in part, as Bates page EFF/Lynch 275a.

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2 withheld all 21 pages in full. See Exhibit N, Bates pages 1433-1453. The FBI inserted deleted
3 page sheets as a substitute for the 21 pages withheld in full in order to provide further
4 explanation and detail concerning those pages. Each page of Exhibit N, Bates pages 1433-1453,
5 is consecutively Bates-stamped at the bottom center of each page and labeled "EFF/Lynch-1433"
6 through "EFF/Lynch-1453." The exemptions asserted by the FBI as grounds for non-disclosure
7 of the entire 21 referred documents were FOIA Exemptions 2, 5, and 7(E), 5 U.S.C. §§ 552
8 (b)(2), (b)(5), and (b)(7)(E).

9 13. The Criminal Division of the Department of Justice ("DOJ/CRM") located 8 pages of FBI
10 information in its records while processing the Lynch request and forwarded it to the FBI for
11 direct response to plaintiff. In a letter dated April 22, 2011, plaintiff was provided the third
12 direct-referral response to the Lynch request. (See Exhibit G.) The FBI processed the 8 pages of
13 referred documents, and withheld 4 pages in full, and released 4 pages in part. See Exhibit N,
14 Bates pages 1500-1507. The FBI inserted deleted page sheets as a substitute for the 4 pages
15 withheld in full in order to provide further explanation and detail concerning those pages. Each
16 page of Exhibit N, Bates pages 1500-1507, is consecutively Bates-stamped at the bottom center
17 of each page and labeled "EFF/Lynch-1500" through "EFF/Lynch-1507." The exemptions
18 asserted by the FBI as grounds for non-disclosure of portions of, or in some instances, entire
19 documents are FOIA Exemptions 5, 6, and 7(C), 5 U.S.C. §§ 552 (b)(5),(b)(6) and (b)(7)(C).

20 14. Defendant DEA subsequently located yet another 19 pages of FBI information in its
21 records while processing the Lynch request and forwarded the material to the FBI for direct
22 response to plaintiff. In a letter dated April 22, 2011, plaintiff was provided the fourth direct-
23 referral response to the Lynch request. (See Exhibit G.) The FBI processed the 19 pages of
24 referred documents, and withheld 6 pages in full, and released 13 pages in full or in part. See
25 Exhibit N, Bates pages 1454-1472. The FBI inserted deleted page sheets as a substitute for the 6
26 pages withheld in full in order to provide further explanation and detail concerning those pages.

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2 Each page of Exhibit N, Bates pages 1454-1472, is consecutively Bates-stamped at the bottom
3 center of each page and labeled "EFF/Lynch-1454" through "EFF/Lynch-1472." The exemptions
4 asserted by the FBI as grounds for non-disclosure of portions of, or in some instances, entire
5 documents are FOIA Exemptions 5, 6, and 7(C), 5 U.S.C. §§ 552 (b)(5),(b)(6) and (b)(7)(C).

6 15. In a letter dated April 29, 2011, plaintiff was provided the second interim release response
7 to the Lynch request. (See Exhibit H.) The FBI processed a total of 77 pages, and released 7
8 pages in full, or in part, and withheld 70 pages in full. See Exhibit N, Bates pages 290-366. The
9 FBI inserted deleted page sheets as a substitute for the 70 pages withheld in full in order to
10 provide further explanation and detail concerning those pages. Each page of Exhibit N, Bates
11 pages 290-366, is consecutively Bates-stamped at the bottom center of each page and labeled
12 "EFF/Lynch-290" through "EFF/Lynch-366." The exemptions asserted by the FBI as grounds for
13 non-disclosure of portions of, or in some instances, entire documents are FOIA Exemptions 1, 5,
14 6, 7(C), and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

15 16. In a letter dated May 31, 2011, Plaintiff was provided the third interim release response to
16 the Lynch request. (See Exhibit I.) The FBI processed a total of 437 pages, and released 15
17 pages in full, or in part, and withheld 422 pages in full. See Exhibit N, Bates pages 367-802.
18 The FBI inserted deleted page sheets as a substitute for the 422 pages withheld in full in order to
19 provide further explanation and detail concerning those pages. Each page of Exhibit N, Bates
20 pages 367-802, is consecutively Bates-stamped at the bottom center of each page and labeled
21 "EFF/Lynch-367" through "EFF/Lynch-802." The exemptions asserted by the FBI as grounds for
22 non-disclosure of portions of, or in some instances, entire documents are FOIA Exemptions 5, 6,
23 7(C), and 7(E), 5 U.S.C. §§ 552 (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

24 17. In a letter dated June 30, 2011, Plaintiff was provided the fourth interim release response
25 to the Lynch request. (See Exhibit J.) The FBI processed a total of 440 pages, and has released
26 9 pages in full, or in part, and withheld 431 pages in full. See Exhibit N, Bates pages 803-1240.
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2 The FBI inserted deleted page sheets as a substitute for the 431 pages withheld in full in order to
3 provide further explanation and detail concerning those pages. Each page of Exhibit N, Bates
4 pages 803-1240, is consecutively Bates-stamped at the bottom center of each page and labeled
5 "EFF/Lynch-803" through "EFF/Lynch-1240." The exemptions asserted by the FBI as grounds
6 for non-disclosure of portions of, or in some instances, entire documents are FOIA Exemptions
7 1, 3, 5, 6, 7(C), 7(A), 7(D), and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(C),
8 (b)(7)(A), (b)(7)(D), and (b)(7)(E).

9 18. In a series of five separate letters to plaintiff, each dated July 6, 2011, and consisting of
10 direct-referral responses fifth through the ninth to the Lynch request, the FBI provided additional
11 material referred to it from defendants DEA and DOJ/CRM for direct response to plaintiff. (See
12 **Exhibit K.**) This material was received serially by FBI, but all released to plaintiff by letter on
13 July 6, 2011. DEA initially located 11 pages of FBI information in its records while processing
14 the Lynch request. In its letter, FBI advised plaintiff that these 11 pages were exempt from
15 disclosure in their entirety under FOIA Exemptions 5, and 7(E), 5 U.S.C. §§ 552 (b)(5), and
16 (b)(7)(E). Defendant DEA subsequently located 16 additional pages of FBI information in its
17 records while processing the Lynch request. In its letter, FBI advised plaintiff that these 16 pages
18 were exempt from disclosure in their entirety under FOIA Exemptions 5, and 7(E), 5 U.S.C. §§
19 552 (b)(5), and (b)(7)(E). Defendant DOJ/CRM initially located 21 pages of FBI information in
20 its records while processing the Lynch request. In its letter, FBI advised plaintiff that 2 of these
21 21 pages were being released in full or in part. Deletions made in the 2 released pages, and the
22 remaining 19 pages withheld in full, were exempt from disclosure in there entirety under FOIA
23 Exemptions 5, 6, 7(C), and 7(E), 5 U.S.C. §§ 552 (b)(5),(b)(6), (b)(7)(C), and (b)(7)(E).

24 Defendant DOJ/CRM subsequently located 1 additional page of FBI information in its records
25 while processing the Lynch request. In its letter, FBI advised plaintiff that the 1 page was being
26 released in part. Deletions made in the 1 released page were exempt from disclosure under FOIA
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2 Exemptions 5, 6, 7(C), and 7(D), 5 U.S.C. §§ 552 (b)(5),(b)(6), (b)(7)(C), and (b)(7)(D). Finally,
3 Defendant DOJ/CRM located 44 additional pages of FBI information in its records while
4 processing the Lynch request. FBI advised plaintiff that the 44 pages of referred material were
5 exempt from disclosure in there entirety under FOIA Exemptions 1, 5, 6, 7(A), 7(C), and 7(E), 5
6 U.S.C. §§ 552 (b)(1), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E). **See Exhibit N**, Bates
7 pages 1473-1499, and 1508-1573. The FBI inserted deleted page sheets as a substitute for the 90
8 pages withheld in full in order to provide further explanation and detail concerning those pages.
9 Each page of Exhibit N, Bates pages 1473-1499, and 1508-1573, is consecutively Bates-stamped
10 at the bottom center of each page and labeled "EFF/Lynch-1473" through "EFF/Lynch-1499, and
11 "EFF/Lynch-1508" through "EFF/Lynch-1573."

12 19. In a letter dated November 21, 2011, plaintiff was provided the third interim release
13 response to the Cardozo request.⁶ (**See Exhibit L.**) The FBI processed a total of 135 pages, and
14 released 4 pages in full, 15 pages in part, and withheld 116 pages in full. **See Exhibit M**, Bates
15 pages 954-1088. The FBI inserted deleted page sheets as a substitute for the 116 pages withheld
16 in full in order to provide further explanation and detail concerning those pages. Each page of
17 Exhibit M, Bates pages 954-1088, is consecutively Bates-stamped at the bottom center of each
18 page and labeled "EFF/Cardozo-954" through "EFF/Cardozo-1088." The exemptions asserted by
19 the FBI as grounds for non-disclosure of portions of, or in some instances, entire documents are
20 FOIA Exemptions 1, 5, 6, 7(C), and 7(E), 5 U.S.C. §§ 552 (b)(1), (b)(5), (b)(6), (b)(7)(C), and
21 (b)(7)(E).

22 **ADDITIONAL SEARCH - LYNCH REQUEST**

23 20. Because the subject of the Lynch request did not readily lend itself to a Central Records
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26 ⁶ In preparing Exhibit M the FBI noticed that certain attachments from OTD's Response, Sections 1-3,
27 either could not be properly 'married' up with a corresponding e-mail, or were inadvertently overlooked during the
28 original FOIA processing. This November 21, 2011, supplemental FOIA release for the Cardozo request, was made
to rectify this situation.

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2 System ("CRS") search (See First Hardy Decl. ¶ 5-10 for CRS definition) the FBI determined
3 that a more individualized inquiry (outside the CRS system) of certain FBI divisions and FBI
4 offices reasonably likely to have potentially responsive records was appropriate. RIDS circulated
5 an initial Electronic Communication ("EC") on November 8, 2010 to FBIHQ divisions and
6 offices most likely to possess responsive records, asking that they search for records. After
7 additional FBI offices were subsequently identified as also likely to have potentially responsive
8 material, a second search EC was circulated on January 10, 2011, and a third search EC was
9 circulated on March 2, 2011. Each EC requested that the recipients conduct a thorough search
10 for any potentially responsive documents in response to the Lynch request.⁷

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12 **RELEASE OF MATERIAL AND JUSTIFICATION OF DELETED MATERIAL -**
DOCUMENT CATEGORY GROUPS

13 21. This declaration is accompanied by, and incorporates by reference, two Vaughn Indices
14 (*hereinafter "Cardozo Index or Lynch Index"*), each providing a detailed description of the
15 withheld material within each document category group, further broken-down into sub-groupings
16 where necessary. Each *Index* specifies the relevant page ranges, dates of records (if any),
17 applicable exemptions applied to the pages within the groupings, and describes the action taken
18 with respect to each responsive page: withheld in full (WIF) or released in part (RIP). The
19 balance of any pages not described in an *Index* were released in full. The *Cardozo Index* is
20 attached hereto as **Exhibit O** and the *Lynch Index* is attached hereto as **Exhibit P**. The
21 document categories and sub-categories groupings were created for the ease of the court and the
22 plaintiff, and the documents are indexed and categorized by the Division/Office from which they
23 were received. There is no substantive reason for the categorization. The document categories
24 and sub-categories groups are:

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27 ⁷ A copy of Plaintiff's September 28, 2010, FOIA request was incorporated into the text of all three EC's to
28 insure accuracy of the search.

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Category	General Description
1A	FBI Office of Public Affairs (OPA) Response (Cardozo Request).
1B	FBI Office of Congressional Affairs (OCA) Response (Cardozo Request).
1C	FBI Operational Technology Division (OTD) Response, Section 1 and 3 (Cardozo Request).
1D	FBI Office of General Counsel (OGC) Response (Cardozo Request).
1E	FBI Operational Technology Division (OTD) Response, Section 2 (Cardozo Request).
1F	FBI Operational Technology Division (OTD) Response, Section 4 (Cardozo Request).
2A	FBI Operational Technology Division (OTD) Response, Sections 1-3 (Lynch Request).
2B	FBI Cyber Division (CD) Response (Lynch Request).
2C	FBI Counter Terrorism Division (CTD) Response on (Lynch Request).
2D	FBI Office of the General Counsel (OGC) Response (Lynch Request).
2E	FBI Counter-Intelligence Division (CI) Response (Lynch Request).
2F	FBI Office of Congressional Affairs (OCA) Response (Lynch Request).
2G	FBI Director's Office (DO) Un-classified CD Response (Lynch Request).
2H	FBI Director's Office (DO) Classified CD Response (Lynch Request).
2I	FBI Direct-Referral Responses to plaintiff - DEA referrals (Lynch Request)
2J	FBI Direct-Referral Responses to plaintiff - DOJ/CRM referrals (Lynch Request)

22. The FBI has made every effort to provide plaintiff with all material in the public domain and with all reasonably segregable portions of releasable material. Moreover, the FBI has taken all reasonable efforts to ensure that no segregable, nonexempt portions were withheld from plaintiff.

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2 **WITHHELD MATERIAL: OVERVIEW OF EXEMPTIONS APPLIED**

3 23. To avoid repetition in the explanation, justification, and harm analysis of the withheld
4 material in discussion of the document categories and sub-categories which follow, the FBI will
5 first address certain threshold matters and several types of information or documents that were
6 uniformly withheld under the same exemption(s) and/or justifications throughout all processing
7 categories. Where necessary to explain withholdings, more particularized justifications are
8 contained in the category-by-category discussion which follows. The commonly applied
9 exemptions and matters throughout the categories are as follows:

10 **EXEMPTION (b)(1) - CLASSIFIED INFORMATION**

11 24. The FBI's analysis of the withholding of classified information contained in these
12 documents is based on the standards articulated in the FOIA statute, 5 U.S.C. § 552 (b)(1).
13 Exemption (b)(1) protects from disclosure those records that are: "(a) specifically authorized
14 under criteria established by an Executive Order to be kept secret in the interest of national
15 defense or foreign policy; and (b) are in fact properly classified pursuant to Executive Order." In
16 this case the FBI has asserted Exemption (b)(1) to protect information whose release would
17 reveal intelligence activities or sources and could be expected to cause serious damage to
18 national security; or reveal foreign relations or foreign activities of the United States, including
19 confidential sources, which could be expected to cause serious damage to national security.

20 25. The information withheld in this case pursuant to Exemption (b)(1) was examined in light
21 of the body of information available to me concerning the national security defense of the United
22 States. This information was not examined in isolation. Instead, each piece of information was
23 evaluated with careful consideration given to the impact that disclosure of this information will
24 have on other sensitive information contained elsewhere in the United States intelligence
25 community's files, including the secrecy of that other information. Equal consideration was
26 given to the impact that other information either in the public domain or likely known or
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2 suspected by present or potential adversaries of the United States, would have upon the
3 information I examined, and upon attempts by a hostile entity to analyze such information.

4 26. In those instances where, in my judgment, the disclosure of this information could
5 reasonably be expected to cause serious damage to the national security, and its withholding
6 outweighed the benefit of disclosure, I exercised my prerogative as an original classification
7 authority and designated that information as classified in the interest of national security at the
8 "Secret" level, and invoked Exemption (b)(1) to prevent disclosure. Likewise, the justifications
9 for the withheld classified information were prepared with the intent that they be read with
10 consideration given to the context in which the classified information is found. This context
11 includes not only the surrounding unclassified information, but also other information already in
12 the public domain, as well as information likely known or suspected by hostile intelligence
13 entities. It is my judgment that any greater specificity in the descriptions and justifications set
14 forth with respect to the intelligence activities (including special activities), intelligence sources
15 or methods, or foreign relations and activities of the United States, to include confidential
16 sources, could reasonably be expected to jeopardize the national security of the United States,
17 and as a result, all information appearing in these documents has been appropriately classified
18 pursuant to E.O. 13526, and withheld pursuant to Exemption (b)(1).⁸

19 27. Before I consider an Exemption (b)(1) claim for withholding agency records, I determine
20 whether the information in those records is information that satisfies the requirements of E.O.
21 13526. For information to be properly classified, and thus properly withheld from disclosure
22 pursuant to Exemption (b)(1), the information must meet the requirements set forth in E.O.
23 13526, § 1.1 (a):

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25 (1) an original classification authority is classifying the information;

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27 ⁸ Section 6.1 (cc) of E.O. 13526, defines "National Security" as "the national defense or foreign relations
of the United States."

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2 (2) the information is owned by, produced by or for, or is under the control of the
3 United States Government;

4 (3) the information falls within one or more of the categories of information listed
5 in § 1.4 of this order;

6 (4) the original classification authority determines that the unauthorized disclosure
7 of the information reasonably could be expected to result in damage to the
8 national security, which includes defense against transnational terrorism, and the
9 original classification authority is able to identify or describe the damage.

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11 28. As I will explain in further detail below, in my role as an original classification authority,
12 I have determined that the information withheld in this case pursuant to Exemption (b)(1) is
13 under the control of the United States Government, is classified, and requires classification
14 marking at the "Secret" level, since the unauthorized disclosure of this information reasonably
15 could be expected to cause serious damage ("Secret") to national security. See E.O. 13526, § 1.2
16 (a)(2). In addition to these substantive requirements, certain procedural and administrative
17 requirements of E.O. 13526 must be followed before information can be considered to be
18 properly classified, such as proper identification and marking of documents. I made certain that
19 all procedural requirements of E.O. 13526, were followed in order to ensure that the information
20 was properly classified. I made certain that:

21 (a) each document was marked as required and stamped with the proper classification
22 designation;

23 (b) each document was marked to indicate clearly which portions are classified and which
24 portions are exempt from declassification as set forth in E.O. 135269, § 1.5 (b);

25 (c) the prohibitions and limitations on classification specified in E.O. 135269, § 1.7, were
26 adhered to;

27 (d) the declassification policies set forth in E.O. 13526, §§ 3.1 and 3.3 were followed; and

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2 (e) any reasonably segregable portion of these classified documents that did not meet the
3 standards for classification under E.O. 13526, were declassified and marked for release,
4 unless withholding was otherwise warranted under applicable law.

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6 29. With the above requirements in mind, I personally and independently examined the
7 information withheld from plaintiff in this case pursuant to FOIA Exemption (b)(1). I
8 determined that the classified information continues to warrant classification at the "Secret"
9 level, respectively, and is exempt from disclosure pursuant to E.O. 13526, § 1.4, category (c)
10 intelligence activities (including covert action), intelligence sources or methods; and category (d)
11 foreign relations, or foreign activities of the United States, including confidential sources.

12 30. E.O. 13526, § 1.4 (c), exempts "intelligence activities (including special activities),
13 intelligence sources or methods, or cryptology from disclosure." The information withheld
14 pursuant to Exemption (b)(1) consists of classified procedures and methods of intelligence-
15 gathering utilized by the FBI to gather intelligence information. An intelligence activity or
16 method has two characteristics. First, the intelligence activity and information generated by it is
17 needed by U.S. Intelligence/Counterintelligence agencies to carry out their missions. Second,
18 confidentiality must be maintained with respect to the activity if the viability, productivity, and
19 usefulness of that information is to be preserved. The classification redactions have been
20 asserted to protect from disclosure information that would reveal the actual intelligence activities
21 utilized by the FBI against specific targets of foreign counterintelligence investigations or
22 operations; or disclosure of intelligence gathering capabilities of the activities directed at specific
23 targets. The intelligence activities detailed in the withheld information are effective means for
24 the FBI to gather, store, or disseminate intelligence information. The criteria applied and
25 priorities assigned in these records are used in the FBI's present intelligence or
26 counterintelligence investigations in accordance with the Attorney General's guidelines on FBI
27 intelligence or counterintelligence investigations.

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2 31. The information in these documents concerning intelligence activities is very specific in
3 nature and known to very few individuals. Disclosure of the specific information which
4 describes these intelligence activities would reveal that they are still used by the FBI today to
5 gather intelligence information, and could reasonably be expected to cause serious damage to the
6 national security for the following reasons: (1) disclosure would allow hostile entities to discover
7 the current intelligence activities used; (2) disclosure would reveal or determine the criteria used
8 --and priorities assigned to--current intelligence or counterintelligence investigations, (3)
9 disclosure would reveal the Intelligence Community's (IC's) ongoing, sensitive work towards
10 creating a decentralized communication medium which will facilitate the sharing of information
11 and enhance collaboration efforts across the IC; and (4) disclosure will highlight the exact data
12 collection and ELSUR capabilities shortfalls that the IC are encountering during National
13 Security investigations due to technology advancements in communication system platforms, and
14 encryption applications. Hostile entities could then develop countermeasures which could
15 severely disrupt the FBI and the IC's intelligence-gathering capabilities. This would severely
16 damage the FBI's efforts to detect and apprehend violators of the United States' national security
17 and criminal laws. The FBI protected the identity of intelligence sources or methods specific to
18 intelligence activities because disclosure reasonably could be expected to cause serious damage
19 to the national security.

20 32. Section 1.4 (d) of E.O. 13526, protects information from disclosure if its release would
21 reveal foreign relations or foreign activities of the United States, including confidential sources.
22 Information that affects the foreign relations of the United States, much like foreign government
23 information, does not lose its sensitivity with the passage of time. The delicate liaisons
24 established between and among the United States and foreign governments could be severely
25 damaged should the United States disclose such information from these investigations. As a
26 result, such information must be handled with care so as to not jeopardize the fragile
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2 relationships which exist among the United States and certain foreign governments. The
3 unauthorized disclosure of information concerning foreign relations or foreign activities of the
4 United States can reasonably be expected to lead to diplomatic or economic retaliation against
5 the United States; identify the target, scope or time frame of intelligence activities of the United
6 States in or about a foreign country, which may result in the curtailment or cessation of these
7 activities; enable hostile entities to assess United States intelligence-gathering activities in or
8 about a foreign country and devise countermeasures against these activities; or compromise
9 cooperative foreign sources which may jeopardize their safety and curtail the flow of information
10 from these sources. As a result, I have determined that this information is properly classified at
11 the "Secret" level, properly withheld pursuant to E.O. 13526, §1.4 (d), and exempt from
12 disclosure pursuant to Exemption (b)(1).

13 **EXEMPTION (b)(2) - INFORMATION RELATED SOLELY TO THE INTERNAL**
14 **PERSONNEL RULES AND PRACTICES OF AN AGENCY**

15 33. 5 U.S.C. § 552 (b)(2) exempts from disclosure information "related solely to the
16 internal personnel rules and practices of an agency." Until March 6, 2011, Exemption 2
17 encompassed two distinct categories of internal agency records: those involving trivial
18 administrative matters of no public interest ("Low 2"), and those more substantial in nature, the
19 disclosure of which would risk circumvention of a statute or regulation ("High 2"). The U.S.
20 Supreme Court's March 7, 2011, decision in Milner v. Department of the Navy, 131 S.Ct. 1259
21 (2011), eliminated the distinction between Low 2 and High 2, and narrowed the application of
22 Exemption 2 to those records which relate to employee relations and human resource issues.

23 34. As a result of the Milner decision the FBI has determined that, in this case, it will
24 continue to assert Exemption (b)(2), at times in conjunction with Exemptions (b)(6) and
25 (b)(7)(C), for internal, non-public telephone numbers associated with particular FBI personnel.
26 In addition, the FBI originally asserted Exemption 2 ("High"), in conjunction with Exemption
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2 (b)(7)(E), to protect investigative techniques and procedures. With the narrowing of the
3 application of Exemption (b)(2) to those records which relate to employee relations and human
4 resource issues, the FBI has determined that, in those instances where Exemption (b)(2) has been
5 asserted in conjunction with Exemption (b)(7)(E), the use of Exemption (b)(2) is now withdrawn.

6 **EXEMPTION (b)(3) - INFORMATION PROTECTED BY STATUTE**

7 35. Through the application of Exemption (b)(3) the FBI has withheld information pertaining
8 to the authorization of interception of wire, oral, or electronic communications, information that
9 would reveal the installation and/or investigation and use of a pen register or trap and trace
10 device, information pertaining to the use of FISA information acquired from electronic
11 surveillance, and information pertaining to wiretap requests and the contents of any wire, oral, or
12 electronic communication obtained through wiretaps.

13 36. 5 U.S.C. § 552 (b)(3) exempts from disclosure information from the following types of
14 records:

15 information specifically exempted from disclosure by statute ...
16 provided that such statute (A) requires that the matters be withheld
17 from the public in such a manner as to leave no discretion on the
18 issue, or (B) establishes particular criteria for withholding or refers
19 to particular type of matters to be withheld.

20 37. In this case the FBI has asserted Exemption (b)(3), at times in conjunction with
21 Exemption (b)(1), to withhold information pursuant to 18 U.S.C. § 2516, which protects from
22 disclosure information pertaining to the authorization of interception of wire, oral, or electronic
23 communications. The Attorney General may authorize an application to a Federal Judge,
24 requesting to intercept wire or oral communications by the FBI when such interception may
25 provide or has provided evidence of a crime, e.g., Charter 37 (Espionage); Charter 90 (Protection
26 of Trade Secrets); and Chapter 105 (Sabotage). Where documents at issue contain information,
27 that, if disclosed, would reveal information pertaining to the authorization of interception of wire,
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2 oral, or electronic communications, that information is protected from disclosure by Exemption
3 (b)(3), at times in conjunction with Exemption (b)(1).

4 38. The FBI has also asserted Exemption (b)(3), at times in conjunction with Exemption
5 (b)(1), to withhold information pursuant to 18 U.S.C. § 3123(d), the Pen Register Act, which
6 protects from disclosure information pertaining to certain court "order(s) authorizing or
7 approving the installation and use of a pen register or a trap and trace device," and information
8 pertaining to "the existence of the pen register or trap and trace device or the existence of the
9 investigation." Where documents at issue contain information, that, if disclosed, would reveal
10 the existence or use of a pen register or trap and trace device, or reveal the existence of an
11 investigation involving a pen register or trap and trace device, that information is protected from
12 disclosure by Exemption (b)(3), at times in conjunction with Exemption (b)(1).

13 39. In addition, the FBI has asserted Exemption (b)(3), at times in conjunction with (b)(1), to
14 withhold information pursuant to 50 U.S.C. § 1806, which protects from disclosure information
15 pertaining to the use of FISA information acquired from electronic surveillance. Where
16 documents at issue contain information, that, if disclosed, would reveal the use of FISA
17 information acquired from electronic surveillance, that information is protected from disclosure
18 by both Exemption (b)(3), at times in conjunction with Exemption (b)(1).

19 40. Finally, the FBI has asserted Exemption (b)(3), at times in conjunction with Exemption
20 (b)(1), to withhold information pursuant to 18 U.S.C. § 2510, et. seq., Title III of the Omnibus
21 Crime Control and Safe Streets Act, which protects from disclosure information pertaining to
22 wiretap requests and the contents of any wire, oral, or electronic communication obtained
23 through wiretaps. Where documents at issue contain information, that, if disclosed, would
24 reveal, information pertaining to wiretap requests and the contents of any wire, oral, or electronic
25 communication obtained through wiretaps, that information is protected from disclosure by both
26 Exemption (b)(3), at times in conjunction with Exemption (b)(1).

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3 **EXEMPTION (b)(4) - TRADE SECRETS AND COMMERCIAL OR FINANCIAL**
4 **INFORMATION**

5 41. Exemption 4 protects “trade secrets and commercial or financial information obtained
6 from a corporation or electronic communication service providers [that are] privileged or
7 confidential.” See 5 U.S.C. § 552(b)(4). This exemption is intended to protect the interests of
8 both the government and submitters of information. Its very existence encourages submitters to
9 voluntarily furnish useful commercial or financial information to the government and provides
10 the government with an assurance that required submissions will be reliable. The exemption also
11 affords protection to those submitters who are required to furnish commercial or financial
12 information to the government by safeguarding them from the competitive disadvantages that
13 could result from disclosure. In this case, Exemption (b)(4) has been asserted to protect
14 proprietary contractual information provided to the FBI by an contractor. The release of
15 proprietary contractual information would impair the FBI's ability to obtain similar products or
16 services from this, and other contractors in the future.

17 **EXEMPTION (b)(5) PRIVILEGED INFORMATION**

18 42. Exemption 5 allows the FBI to protect information contained in “inter-agency or intra-
19 agency memorandums or letters which would not be available by law to a party other than an
20 agency in litigation with the agency.” This exemption has been construed to exempt those
21 documents or information normally privileged in the civil discovery context, including, as is the
22 case here, the attorney-client privilege and the deliberative process privilege. Generally, the
23 attorney-client privilege protects confidential communications between an attorney and his client
24 relating to a legal matter for which the client has sought professional advice. This privilege
25 encompasses any opinions given by an attorney to his client based upon and reflecting those
26 facts, as well as communications between attorneys that reflect client-supplied information. The
27 deliberative process privilege protects the internal deliberations of the government by exempting
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2 material that contains opinions, advice, evaluations, deliberations, policy formulation, proposals,
3 conclusions or recommendations.

4 43. The deliberative process privilege protects the internal deliberations of an agency by
5 exempting from release recommendations, drafts, analyses, speculation and other non-factual
6 information prepared in anticipation of agency decision-making. The general purpose of the
7 deliberative process privilege is to prevent injury to the quality of agency decisions. Thus,
8 material that contains or was prepared in connection with the formulation of opinions, advice,
9 evaluations, deliberations, policy formulation, proposals, conclusions or recommendations may
10 properly be withheld. Release of this type of information would have an inhibitive effect upon
11 the development of policy and administrative direction of an agency because it would chill the
12 full and frank discussion between agency personnel regarding a decision. If agency personnel
13 knew that their preliminary opinions, evaluations and comments would be released for public
14 consumption, they might be more circumspect in what they put in writing, and thereby, impede a
15 candid discussion of the issues surrounding a decision.

16 44. Exemption 5 protects certain inter-agency, and intra-agency documents under the
17 deliberative process privilege to prevent the premature disclosure of proposed policies, avoid
18 public confusion generated by unadopted rationales/decisions, and to maintain the integrity of the
19 agency decision-making process by encouraging open, candid discussions. By their very nature
20 as draft documents, the documents are pre-decisional, preliminary versions of what may later
21 become a final document in whole or in part, or they remain drafts that never mature into final
22 form as the material may be withdrawn or discarded during the decision-making process. In fact,
23 the process by which a draft evolves into a final document is itself a deliberative process.

24 45. By way of illustration, in this case, there are 1,809 responsive Bates pages consisting of
25 draft documents, presentations, talking points, discussion papers and/or e-mails that function as
26 drafts. The draft material within the document processing categories is replete with edits, strike-

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2 through and other formatting changes, marginal suggestions and comments, and/or embedded
3 questions regarding content. Drafts are specifically identified in the category-by-category
4 discussion below and the attached *Cardozo and Lynch Indices* as the drafts relate to different
5 policy formulation or decision-making processes. Except where factual, final product, or public
6 source information could be segregated for release, the deliberative process privilege was
7 commonly applied to the remaining draft documents, presentations, talking points, discussion
8 papers, and/or emails that functioned as drafts, as the release of such would seriously impede
9 FBI's ability to foster candid discussions, proposals, and debate both internally within FBI, and
10 between FBI and DOJ as needed for efficient and proper policy formulation and decision making.
11 Disclosure would have a profound chilling effect across all FBI decision-making processes as
12 agency personnel would be less inclined to produce and circulate drafts for consideration and
13 comment.

14 46. Talking points or discussion papers are routinely used within FBI as preparatory tools for
15 executives, management, and designated agency representatives in multiple decision-making
16 processes and forums both internally and to prepare FBI personnel for interaction with Congress,
17 local, state, and federal law enforcement agencies, other agencies, and private individuals or
18 companies. In terms of function, these papers are inherently predecisional and deliberative as
19 they are preparatory in nature and do not reflect final agency actions as the officials or working
20 groups relying on the papers may disregard or modify these advisory papers in full or in part. In
21 terms of content, the papers reflect what the author has determined, in his or her judgement, are
22 issues worthy of discussion or consideration by the superior, or in the working group context, by
23 the other working group participants. In this regard, the papers contain the opinions, suggestions,
24 recommendations, and analysis of the subordinate employees or working group participants who
25 draft them. As such, the release of these papers would adversely impact the quality of policy
26 decision-making within the FBI as well as the development of FBI positions, recommendations,
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2 and advice to be presented externally, since disclosure would discourage the use of, and chill
3 candid discussion within, such talking points or discussion papers. Moreover, release of such
4 preparatory materials would only confuse the public as they do not reflect final agency action or
5 decision. This justification applies to all FBI talking point or discussion issue papers identified
6 herein; and to the extent more particularized descriptions of function, content, or harm are
7 necessary; they are included in the category-by-category discussion, below.

8 47. As a whole, the redactions taken pursuant to Exemption (b)(5), the deliberative process
9 privilege, reflect an internal, on-going dialogue among and between FBI and DOJ personnel with
10 regard to the FBI's development of the "Going Dark Initiative," which entails a five-prong
11 strategic approach to address the identified lawful intercept capability gap (Cardozo request), and
12 limitations to FBI's ability to conduct lawful surveillance on communications systems or
13 networks, and proposed amendments to the Communications for Law Enforcement Act
14 ("CALEA") (Lynch request). This dialogue is both (a) "predecisional" - antecedent to the
15 adoption of agency policy, and (b) "deliberative" - the numerous talking points, discussion
16 papers, presentations, and/or e-mail trails and exchanges reflect a continuous set of deliberations,
17 including the give and take of the consultative process, with regard to the shaping and evaluation
18 of the FBI's policies and program development.

19 48. The FBI has appropriately asserted Exemption (b)(5), the deliberative process privilege,
20 to protect these candid internal discussions concerning these evolving policies and procedures.
21 The release of the redacted information is likely to chill full, frank, and open internal discussions
22 -- a chilling effect which is all the more dangerous given the important national security interest
23 at stake -- the prevention of the FBI from "Going Dark" on its lawful use of intercept capabilities
24 in both counterterrorism and counterintelligence investigations. As a result, the FBI has
25 appropriately withheld information pursuant to Exemption (b)(5), deliberative process.
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2 49. Exemption (b)(5) has also been asserted, at times, to protect material covered by the
3 attorney-client privilege. The attorney-client privilege is appropriately asserted when legal
4 advice of any kind is sought from a professional legal adviser in his or her capacity as such, and
5 the communications relating to that purpose are made in confidence by the client. The
6 communications are permanently protected from disclosure by the client or by the legal adviser
7 unless the attorney-client protection is waived. This privilege encompasses confidential
8 communications made to the attorney not only by decision-making personnel but also by lower-
9 echelon employees who possess information relevant to an attorney's advice-rendering function.
10 Disclosure of the two-way communications between FBI attorneys and their clients would
11 impede the full disclosure of all of the information that relates to the client's reasons for seeking
12 legal advice, which is necessary if the professional mission is to be accomplished.

13 **EXEMPTION (b)(7) THRESHOLD**

14 50. Exemption (b)(7) of the FOIA protects from mandatory disclosure records or information
15 compiled for law enforcement purposes, but only to the extent that disclosure could reasonably
16 be expected to cause one of the harms enumerated in the subpart of the exemption. See 5 U.S.C.
17 § 552 (b)(7). In this case, the harm that could reasonably be expected to result from disclosure
18 concerns invasion of personal privacy, and revealing the identity of confidential sources.

19 51. Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must
20 first demonstrate that the records or information at issue were compiled for law enforcement
21 purposes. Law enforcement agencies such as the FBI must demonstrate that the records at issue
22 are related to the enforcement of federal laws and that the enforcement activity is within the law
23 enforcement duty of that agency.

24 52. The FBI is a law enforcement agency whose mission is to protect and defend the United
25 States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of
26 the United States, and to provide leadership and criminal justice services to federal, state,
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2 municipal, and international agencies and partners. The FBI focuses on threats that challenge the
3 foundations of American society or involve dangers too large or complex for any local or state
4 authority to handle alone. In executing its priorities, the FBI produces and uses intelligence to
5 protect the nation from threats and to bring to justice those who violate the law.

6 53. The FBI collects intelligence to further case investigations, to follow threat leads, to help
7 respond to requests from Law Enforcement (LE), and members of the IC, or to improve its
8 understanding of a particular issue. These activities must have a proper purpose, and may not be
9 initiated based solely on activities protected by the First Amendment, including speech and
10 affiliation with a particular religion. Intelligence is collected through activities such as
11 interviews, physical surveillance, wiretaps, searches, and undercover operations. Which
12 techniques can be used in a particular situation depends on the type of investigation, available
13 information justifying the investigation, and specific authorizations. This is determined by the
14 Constitution, federal laws and regulations, Attorney General Guidelines, and internal FBI policy.

15 54. While identifying, analyzing, and reviewing technical, legal, policy, and resource
16 impediments to the FBI's electronic intercept operations, and its development of a five-prong
17 strategic approach to address an identified lawful intercept capability gap, the FBI reviewed on-
18 going classified national security investigations, involving material exempted by statute, to see
19 where ELSUR capability limitations adversely affected the effectiveness of an investigation
20 overall. The intelligence information discussed in these documents, as well as the investigation
21 of potential violations of federal law, fall squarely within the law enforcement duties of the FBI.
22 Developmental projects such as the "Going Dark Initiative," and the FBI's five-prong strategic
23 approach to enhance its lawful intercept ELSUR capabilities, which include 1)
24 modernization/amending existing laws (e.g. CALEA), regulations, and assistance mandates, 2)
25 enhancing authorities to protect industry proprietary and LE sensitive lawful intercept
26 information, equipment and techniques, 3) enhancing LE agencies coordination leveraging
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2 technical expertise of FBI with other LE entities, 4) enhancing lawful intercept cooperation
3 between communications industries, and LEA's with a "One Voice" approach, and 5) seeking
4 new federal funding to bolster lawful intercept capabilities, all are efforts that readily meets the
5 threshold requirement of Exemption (b)(7).

6 **EXEMPTIONS (b)(6) and (b)(7)(C)**

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8 55. 5 U.S.C. § 552 (b)(6) exempts from disclosure:

9 personnel and medical files and similar files when the disclosure of such
10 information would constitute a clearly unwarranted invasion of personal privacy

11 Similarly, 5 U.S.C. § 552 (b)(7)(C) exempts from disclosure:

12 records or information compiled for law enforcement purposes, but only to the extent that
13 the production of such law enforcement records or information...could reasonably be
14 expected to constitute an unwarranted invasion of personal privacy.¹

15 56. In this case, the FBI has asserted Exemptions (b)(6) and (b)(7)(C), which protect against
16 clearly unwarranted and unwarranted invasions of personal privacy, for names and/or identifying
17 information pertaining to FBI Special Agents (SAs) and Professional Support Personnel; names
18 and/or identifying information of third parties merely mentioned; names and/or identifying
19 information of non-FBI Federal government personnel and/or FBI contractors; names and/or
20 identifying information of third parties who were of investigative interest; names and/or
21 identifying information of third parties who provided information to the FBI; names and/or
22 identifying information of corporate officers in the communication industry; names and/or
23 identifying information of intelligence officers of a Foreign Intelligence Agency who provided

24 _____
25 ¹ The practice of the FBI to assert Exemption (b)(6) in conjunction with (b)(7)(C). Although the balancing
26 test for (b)(6) uses a "would constitute a clearly unwarranted invasion of personal privacy" and the test for (b)(7)(C)
27 uses the lower standard of "could reasonably be expected to constitute an unwarranted invasion of personal privacy,"
28 the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion.
The privacy interests are balanced against the public's interest in disclosure under the analysis of both exemptions.

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2 tactical advice and intelligence concerning on-going investigations; and to withhold the names
3 and/or identifying information of local and state law enforcement employees.

4 57. When withholding information pursuant to these exemptions, the FBI is required to
5 balance the privacy interests of the individuals mentioned in these records against any public
6 interest in disclosure. In asserting these exemptions, each item of information has been
7 scrutinized to determine the nature and strength of the privacy interest in every individual whose
8 name and/or identifying information appears in the documents at issue. In conducting this
9 analysis, the public interest in disclosure of this information is determined by whether the
10 information in question would shed light on the FBI's performance of its mission to protect and
11 defend the United States against terrorist and foreign intelligence threats, to uphold and enforce
12 the criminal laws of the United States, and to provide leadership and criminal justice services to
13 federal, state, municipal, and international agencies and partners. In this case, the FBI concluded
14 that the information should be withheld under Exemptions (b)(6) and (b)(7), and determined that
15 the individuals' privacy interests were not outweighed by any public interest in disclosure.
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17 58. Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2), have been asserted
18 to protect the names, and identifying information of FBI Special Agents (SAs) who were
19 responsible for conducting, supervising, and/or maintaining the investigative activities reported
20 in these records. In addition, at times they may have been tasked to consult, using their extensive
21 knowledge of investigative techniques and procedures, on internal FBI strategic developmental
22 projects (e.g., National Electronic Surveillance Strategy). The SAs mentioned did not choose
23 their assignments. Publicity, adverse or otherwise, regarding any particular investigation, or
24 special projects involving SAs may seriously impair the SAs' effectiveness in conducting future
25 investigations, or consultations. This privacy consideration also protects SAs from unnecessary,
26 unofficial questioning as to the conduct of an investigation, whether or not they are currently
27 employed by the FBI.
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2 59. FBI SAs conduct official inquiries into violations of various criminal statutes and
3 national security cases, and may consult on developmental projects. They come into contact with
4 all strata of society, conducting searches and making arrests, all of which result in reasonable but
5 nonetheless serious disturbances to individuals and their lives. It is possible for an individual
6 targeted by such law enforcement actions to carry a grudge which may last for years, and to seek
7 revenge on the agents and other federal employees involved in the investigation. The publicity
8 associated with the release of these SAs identities, in connection with a particular investigation,
9 or internal strategic developmental project, could trigger hostility toward a particular employee,
10 or pressure of attempted bribery, to obtain intelligence. There is no public interest to be served
11 by disclosing the identities of these employees, and/or contractors, to the public. Accordingly,
12 the FBI determined that SAs whose names and identifying information appear in these
13 documents, maintain a substantial privacy interest in not having their identities disclosed.

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15 60. The names, and identifying information of FBI Professional Support personnel are also
16 withheld pursuant to Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2).
17 Professional Support personnel are assigned to handle tasks related to official criminal
18 investigations, and/or internal strategic developmental projects (e.g., National Electronic
19 Surveillance Strategy), as reflected in the documents responsive to Plaintiff's request. They
20 were, and possibly are, in positions of access to information regarding official law enforcement
21 investigations, and special internal strategic developmental projects, and therefore could become
22 targets of harassing inquiries for unauthorized access to investigations, or internal developmental
23 projects (e.g., National Electronic Surveillance Strategy), if their identities were released, similar
24 to those harms articulated previously for SAs. These Professional Support personnel maintain
25 substantial privacy interests in not having their identities disclosed.

26 61. The FBI next examined the records at issue to determine whether there was any
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2 public interest that outweighed the substantial privacy interests of the FBI SAs and Professional
3 Support personnel. The FBI could not identify any discernible public interest. The disclosure of
4 the names of FBI SAs and Professional Support personnel would not demonstrate how the FBI
5 performs its mission to protect and defend the United States against terrorist and foreign
6 intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide
7 leadership and criminal justice services to federal, state, municipal, and international agencies
8 and partners. Thus, disclosure of the names, and identifying information of these employees
9 would constitute a "clearly unwarranted and an unwarranted invasion of their personal privacy;"¹²
10 therefore, the FBI has properly asserted Exemptions (b)(6) and (b)(7)(C), at times in conjunction
11 with (b)(2).

12 62. Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and identifying
13 information of third parties that were merely mentioned in the documents responsive to plaintiff's
14 request. These individuals are not of investigative interest to the FBI. Release of this type of
15 information about private citizens, without notarized authorizations permitting such a release
16 violates individuals legitimate privacy interests. If the FBI disclosed their names and/or other
17 personal information, the disclosure would reveal that these third parties were at one time
18 connected with an FBI investigation, or developmental project, in some way. Disclosure of their
19 identities could subject these individuals to possible harassment or criticism and focus derogatory
20 inferences and suspicion on them.

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22 63. The FBI also examined the records at issue to determine whether there was any public
23 interest that outweighed the substantial privacy interests of the third parties merely mentioned in
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25 ² For the convenience of the Court, rather than repeat the phrase "clearly unwarranted invasion of personal
26 privacy under the standard of Exemption 6 and an unwarranted invasion of personal privacy under the standard of
27 Exemption 7C" every time we assert these two Privacy Exemptions we will simply use the phrase "clearly
28 unwarranted and unwarranted invasion of personal privacy" to refer to both standards.

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2 the responsive records. The FBI could not identify any discernible public interest. In particular,
3 the FBI could not determine how the disclosure of such names, and/or identifying information of
4 these individuals would shed any light on the operations and activities of the FBI. Thus, the FBI
5 determined that these individuals' privacy interests outweighed any public interest in disclosure,
6 and that disclosure of the names and/or identifying information of the third parties merely
7 mentioned would constitute a "clearly unwarranted and unwarranted invasion of personal
8 privacy." The FBI properly withheld this information pursuant to Exemptions (b)(6) and
9 (b)(7)(C).

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11 64. Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names of non-FBI
12 federal government employees, such as employee's working with the Drug Enforcement Agency
13 (DEA), Office of Deputy Attorney General (ODAG), Assistant United States Attorneys (AUSA),
14 Executive Office for United States Attorney (USAEO), Justice Management Division (JMD),
15 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), National Security Division (NSD),
16 Criminal Division (CRM), Office of Legal Policy (OLP), Immigration and Customs Enforcement
17 (ICE), United States Secret Service (USSS), United States Marshals Service (USMS), and
18 Congressional Staffers, or contractors employed by the FBI. Publicity (adverse or otherwise)
19 regarding any particular investigation they have been assigned, or internal FBI strategic
20 developmental project (e.g., National Electronic Surveillance Strategy) they may be contracted to
21 help develop, may seriously prejudice their effectiveness in conducting other investigations, or
22 internal developmental projects. The privacy consideration is also to protect these federal
23 employees, and/or contractors, as individuals, from unnecessary, unofficial questioning as to the
24 course of an investigation or internal developmental project, whether or not they are currently
25 employed by the FBI as contractors, or with Other Government Agencies (OGA's). These
26 employees may have to conduct official inquiries into violations of National Security, or help
27 develop strategic plans, like developing ways to enhance ELSUR capabilities. They come into
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2 contact with all strata of society, conducting searches, research, and making inquiries, all of which
3 result in reasonable but nonetheless serious disturbances to people and their lives. It is possible
4 for an individual targeted by these OGA's to carry a grudge which may last for years, and to seek
5 revenge on the investigators and other federal employees involved in a particular investigation.
6 Foreign governments, or criminal enterprises may threaten, or pressure FBI contractors with
7 bribery, searching for intelligence that may benefit their countries or criminal enterprises. The
8 publicity associated with the release of these OGA employee's, and/or contractors identities, in
9 connection with a particular investigation, or internal FBI strategic developmental project, could
10 trigger hostility toward a particular employee, or pressure of bribery, to obtain intelligence.
11 There is no public interest to be served by disclosing the identities of these employees, and/or
12 contractors, to the public. Thus, disclosure of this information would constitute a "clearly
13 unwarranted and unwarranted invasion of their personal privacy."

14 65. The FBI examined the records at issue to determine whether there was any public interest
15 that outweighed the substantial privacy interests of these OGA employees, and/or contractors,
16 referenced in the responsive records. The FBI could not identify any discernible public interest.
17 In particular, the FBI could not determine how the disclosure of the names, and/or identifying
18 information of these individuals would shed light on the operations and activities of the FBI.
19 Thus, the FBI determined that the OGA employees, and/or FBI contractors, privacy interests
20 outweighed any public interest in disclosure, and that disclosure of the names and identifying
21 information of the OGA employees, and/or FBI contractors, would constitute a clearly
22 unwarranted and unwarranted invasion of privacy. There is no public interest to be served in
23 releasing the identities of these individuals. Accordingly, the FBI has properly withheld this
24 information pursuant to Exemptions (b)(6) and (b)(7)(C).

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26 66. Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and/or
27 identifying information of third-party individuals who were of investigative interest to the FBI
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2 and/or other law enforcement agencies. Identifying information withheld concerning these third
3 parties includes addresses, dates of birth, social security numbers, and other personal
4 information. Any link to a law enforcement investigation carries a strong negative connotation
5 and a stigma. Release of the identities of these individuals to the public could subject them to
6 harassment or embarrassment, as well as undue public attention. Accordingly, the FBI has
7 determined that these individuals maintain a substantial privacy interest in not having their
8 identities disclosed. In making a determination whether to release the names and personal
9 information concerning these third parties, the public's interest in disclosure was balanced against
10 the individual's right to privacy. The FBI determined that this information would not enlighten
11 the public on how the FBI conducts its internal operations and investigations. Accordingly, the
12 FBI concluded that the disclosure of this information would constitute a "clearly unwarranted and
13 unwarranted invasion of their personal privacy." The FBI properly withheld this information
14 pursuant to Exemptions (b)(6) and (b)(7)(C).

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16 67. Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and identifying
17 information (investigation intelligence) of third parties who provided information to the FBI.
18 Disclosure of the identity of these third parties would have a detrimental effect on the current and
19 future cooperation of other individuals willing to provide information to the FBI inasmuch as
20 they would have little or no faith in the FBI's ability to maintain their information in confidence.
21 Thus, the names and any specific information provided by these third parties, which could
22 ultimately identify them, has been protected.

23 68. The FBI examined the records at issue to determine whether there is any public interest
24 that outweighed the substantial privacy interests of the individuals who provided information to
25 the FBI referenced in the responsive records. The FBI could not identify any discernible public
26 interest. In particular, the FBI determined that disclosure of the names of these individuals
27 would shed no light on the internal operations and activities of the FBI. Thus, the FBI
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2 outweighed any public interest in disclosure, and that disclosure of the names and/or identifying
3 information of these individuals would constitute a "clearly unwarranted and unwarranted
4 invasion of personal privacy." The FBI properly withheld this information pursuant to
5 Exemptions (b)(6) and (b)(7)(C).

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7 69. Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and identifying
8 information of corporate officers in the communication industry that were merely mentioned in
9 the documents responsive to plaintiff's request, or mentioned in possible connection to a future
10 FBI investigation. These individuals are not of investigative interest to the FBI, but were
11 identified in connection with a sensitive internal FBI development project (e.g., National
12 Electronic Surveillance Strategy), or mentioned in possible connection to a future investigation.
13 Release of this type of information about private citizens, without notarized authorizations
14 permitting such a release violates individuals legitimate privacy interests. If the FBI disclosed
15 their names and/or other personal information, the disclosure would reveal that these third parties
16 were at one time connected with an FBI investigation, or internal developmental project, in some
17 way. Disclosure of their identities could subject these individuals to possible harassment or
18 criticism and focus derogatory inferences and suspicion on them.

19 70. The FBI also examined the records at issue to determine whether there was any public
20 interest that outweighed the substantial privacy interests of the corporate employees merely
21 mentioned in the responsive records. The FBI could not identify any discernible public interest.
22 In particular, the FBI could not determine how the disclosure of such names, and/or identifying
23 information of these individuals would shed any light on the operations and activities of the FBI.
24 Thus, the FBI determined that these individuals' privacy interests outweighed any public interest
25 in disclosure, and that disclosure of the names and/or identifying information of the third parties
26 merely mentioned would constitute a "clearly unwarranted and unwarranted invasion of personal
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2 privacy." The FBI properly withheld this information pursuant to Exemptions (b)(6) and
3 (b)(7)(C).

4 71. Exemptions (b)(6), and (b)(7)(C), in conjunction with (b)(7)(D), and (b)(1), have also
5 been asserted to withhold the names and identifying information of intelligence officers of a
6 Foreign Intelligence Agency who provided tactical advice and intelligence concerning on-going
7 investigations. The confidentiality of the identities of these foreign intelligence officers is given
8 under an express assurance of confidentiality according to the Foreign Government Information
9 Classification Guide #1 (G-1 Guide), issued in accordance with E.O. 13526, Information Security
10 Oversight Office (ISOO), the FBI Security Policy Manual, and the designated Original
11 Classification Authority (OCA) of the Executive Assistant Director, National Security Branch.
12 During the course of the FBI's intelligence investigations it received information from
13 intelligence officers of a foreign government regarding on-going investigations. The FBI has
14 many agreements with foreign governments under which security and/or criminal law
15 enforcement information is exchanged. The agreements specify the extent of confidentiality
16 requested by the respective foreign government entity. In this case, the FBI has express
17 confidentiality agreements with this foreign government and/or foreign law enforcement entity
18 which provided information to the FBI during the conduct of intelligence investigations, to
19 protect the identity of its intelligence officers. The FBI's agreements with this law enforcement
20 entity provides express assurance that the FBI will not disclose their identity, the identity of their
21 intelligence officers, as well as the information that they provided to the FBI. If the FBI were to
22 disclose the identities of these foreign governments, the names of their intelligence officers, and
23 the information provided by foreign law enforcement entities under an express assurance of
24 confidentiality, such a disclosure would have a chilling effect on the FBI's relationship with
25 these entities. Furthermore, the disclosure would have a chilling effect on the FBI's relationship
26 with other foreign law enforcement agencies which have entered into similar agreements with the
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2 FBI. Accordingly, the FBI has properly withheld this information pursuant to Exemption (b)(6),
3 and (b)(7)(C), in conjunction with (b)(7)(D), and (b)(1).

4 72. In addition, Exemptions (b)(6) and (b)(7)(C) have been asserted to withhold the names
5 and identifying information of local law and state law enforcement employees, such as
6 employee's working with the Jefferson County Sheriff's Office Louisville, KY, National Sheriff's
7 Association (NSA), San Jose Police Department, New York State Police, New Jersey State
8 Police, San Bernardino Sherries Department, Las Vegas, Metro Police Department, International
9 Association of Chefs of Police (IACP), Major Cities Chiefs (MCC), Fairfax County Police
10 Department, Virginia, and DuPage County Sheriffs Office, Wheaton, IL. These employees were
11 acting in their official capacity, and attended the Law Enforcement Executive Forum, June 25,
12 2009, to discuss state and local law enforcement challenges relating to lawful intercepts, and
13 technological advancements in the communication industry that are out-pacing LE intercept
14 capabilities. The rationale for protecting the identities of FBI SAs discussed in ¶¶58-59, supra,
15 applies with equal force to the names of these local and state law enforcement employees.
16 Release of the identity of these law enforcement employees could subject these individuals to
17 unnecessary and unwelcome harassment, and inquires into LE challenges, which would
18 constitute an unwarranted invasion of privacy. The FBI could identify no discernible public
19 interest in the disclosure of this information because the disclosure of the names of local and
20 state law enforcement employees would not shed light on the operations and activities of the FBI.
21 Accordingly, the FBI concluded that the disclosure of this information would constitute a clearly
22 unwarranted and an unwarranted invasion of their personal privacy. The FBI properly withheld
23 this information pursuant to Exemptions (b)(6) and (b)(7)(C).

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25 **EXEMPTION (b)(7)(A) PENDING LAW ENFORCEMENT PROCEEDINGS**

26 73. 5 U.S.C. § 552 (b)(7)(A) exempts from disclosure:
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2 records or information compiled for law enforcement purposes, but
3 only to the extent that the production of such law enforcement
4 records or information . . . could reasonably be expected to
interfere with enforcement proceedings.

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6 74. Application of this exemption requires: the existence of law enforcement records
7 (discussed ¶¶51-54, supra); a pending or prospective law enforcement proceeding; and a
8 determination that release of the information could reasonably be expected to interfere with the
9 enforcement proceeding. The nature of plaintiff's request resulted in the identification of a
10 significant amount of information about, or related to, FBI criminal cases. FBI routinely
11 gathered, cited to, and summarized examples of surveillance difficulties or limitations derived
12 from actual FBI cases for myriad purposes; including the formulation of policy, legislative
13 proposals, changes to operational techniques, development of criminal intelligence, and training
14 of law enforcement personnel. Exemption (b)(7)(A), at times in conjunction with (b)(1), was
15 uniformly applied to withhold information contained throughout the processing categories where
16 pages either summarize, discuss, or relate to FBI criminal cases which remain in an open or
17 active status. The release of such information would reveal the scope, direction, nature and pace
18 of the investigations as well as reveal information that could harm prospective and/or ongoing
19 government prosecutions in these matters. If the information is released, the individuals and/or
20 entities, who are of investigative interest in the cases could use the information to develop alibis,
21 take steps to circumvent the law, create factitious defenses or intimidate, harass or harm potential
22 witnesses. The FBI properly withheld this information pursuant to Exemption (b)(7)(A).

23 **EXEMPTION (b)(7)(D) CONFIDENTIAL SOURCE INFORMATION**

24 75. 5 U.S.C. § 552 (b)(7)(D) provides protection for:

25 records or information compiled for law enforcement purposes, but
26 only to the extent that the production of such law enforcement
27 records or information ... could reasonably be expected to disclose
28 the identity of a confidential source, included a State, local or

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2 foreign agency or authority or any private institution which
3 furnished information on a confidential basis, and, in the case of a
4 record or information compiled by a criminal law enforcement
5 authority in the course of a criminal investigation or by an agency
6 conducting a lawful national security intelligence investigation,
7 information furnished by a confidential source.

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9 76. In this case, Exemption (b)(7)(D), at times in conjunction with (b)(1), has been asserted
10 to withhold information provided to the FBI by commercial/private companies and other non-
11 government entities under circumstances from which an assurance of confidentiality may be
12 implied, and to protect the names and identifying information pertaining to a foreign government
13 and/or foreign law enforcement entities which provided information to the FBI.

14 77. During the course of the FBI's intelligence investigations, mentioned at times throughout
15 the responsive documents, certain commercial/private companies provided information to the
16 FBI relating to the subjects of these investigations. To disclose the fact that these companies
17 provided information to the FBI during the course of an investigation could harm the commercial
18 interests of these enterprises by deterring the public from employing their services. In addition,
19 such a disclosure has wider implications. If the FBI disclosed the identities of confidential
20 sources that provide information to the FBI on a continuing basis, that revelation would have a
21 chilling effect on the activities and cooperation of other current or potential future FBI
22 confidential sources.

23 78. Although these companies were under a legal obligation to provide information to the
24 FBI in connection with ongoing investigations, an implied assurance of confidentiality was
25 nevertheless critical to ensuring that these companies did not unnecessarily resist that obligation,
26 thereby increasing the FBI's burden of obtaining important lawfully-available investigative
27 material. For instance, given that these companies would pay a high price if it were known that
28 they were providing information about their customers to the FBI, it is likely that companies,
though lacking grounds to do so, would nevertheless avail themselves of legal options to resist

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2 cooperation if their confidentiality could not otherwise be assured. It is only with the
3 understanding of complete confidentiality that full cooperation of such sources can be enlisted,
4 and only through this confidence that these sources can be persuaded to continue to fully
5 cooperate in providing valuable assistance in the future. Fairness dictates that when cooperation
6 is compelled that every effort is made to protect the confidentiality of the source when severe
7 economic consequences may result. The information pertaining to some of these on-going
8 investigations is at times classified, and to provide more detail regarding these sources may
9 reveal the very information that the FBI is attempting to protect. The FBI has released as much
10 segregable information as possible without disclosing these sources' identities.

11 79. In addition, as part of the FBI's Going Dark Initiative, also known as the National
12 Electronic Surveillance Strategy, the FBI worked to enhance its lawful intercept cooperation
13 between the communications industry and LEA's with a "One Voice" approach. The FBI's goal
14 was to establish a relationship and commitment for ongoing cooperation on legal and technical
15 discussions in anticipation of future investigation requirements for the use of lawful intercepts.
16 Technical advancements in the wireless communications industry are developing faster than law
17 enforcement can develop lawful technical intercept solutions. Legal issues concerning the
18 communications industry compliance requirements to CALEA, and Foreign Intelligence
19 Surveillance Act ("FISA") orders, have led to the need to amend, or offer new legislation, in
20 order to make this compliance easier. The discussion of these issues, and shortfalls encountered
21 in the collection, retention, and use of the intelligence data provided by Internet Service
22 Provider's ("ISP's") in response to FISA orders must require confidentiality. The FBI has
23 properly withheld this information pursuant to Exemption (b)(7)(D), at times in conjunction with
24 (b)(1).

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26 80. In addition, Exemption (b)(7)(D), at times in conjunction with (b)(1), has been asserted to
27 withhold information provided to the FBI by a foreign government and/or foreign law
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2 enforcement entity under an express assurance of confidentiality according to the Foreign
3 Government Information Classification Guide #1 (G-1 Guide), issued in accordance with E.O.
4 13526, Information Security Oversight Office (ISOO), the FBI Security Policy Manual, and the
5 designated Original Classification Authority (OCA) of the Executive Assistant Director, National
6 Security Branch. During the course of the FBI's intelligence investigations it received
7 information from a foreign government regarding on-going investigations. The FBI has many
8 agreements with foreign governments under which security and/or criminal law enforcement
9 information is exchanged. The agreements specify the extent of confidentiality requested by the
10 respective foreign government entity. In some circumstances, a foreign government or entity
11 may request confidentiality for its identity and information provided, while in other
12 circumstances, a foreign government or entity might request classification for both its identity
13 and information provided, and yet a third foreign government or entity may request that its
14 information be protected while it does not object to the disclosure of its relationship and
15 interaction with the FBI.

16 81. In this case, the FBI has express confidentiality agreements with these foreign
17 governments and/or foreign law enforcement entities which provided information to the FBI
18 during the conduct of intelligence investigations. The FBI's agreements with these law
19 enforcement entities provides express assurance that the FBI will not disclose their identities, as
20 well as the information that they provided to the FBI. If the FBI were to disclose the identities
21 and the information provided by these foreign law enforcement entities under an express
22 assurance of confidentiality, such a disclosure would have a chilling effect on the FBI's
23 relationship with these entities. Furthermore, the disclosure would have a chilling effect on the
24 FBI's relationship with other foreign law enforcement agencies which have entered into similar
25 agreements with the FBI. The FBI has properly withheld this information pursuant to Exemption
26 (b)(7)(D), at times in conjunction with (b)(1).
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2 **EXEMPTION (b)(7)(E) INVESTIGATIVE TECHNIQUES AND PROCEDURES**

3 82. 5 U.S.C. § 552 (b)(7)(E) provides for the withholding of:
4 law enforcement records which would disclose techniques and
5 procedures for law enforcement investigations or prosecutions,
6 or would disclose guidelines for law enforcement investigations
7 or prosecutions if such disclosure could reasonably be expected
8 to risk circumvention of the law.

9 83. Given the nature of both request, it is not surprising that Exemption 7E applies in full or
10 in part to 1,650 responsive Bates pages of the over-all 2,662 pages as indicated in the attached
11 *Cardozo and Lynch Indices*. Specifically, plaintiffs' requests seek information concerning the
12 law enforcement technique(s) of electronic or communications surveillance focused on problems
13 which hamper FBI's ability to successfully intercept communications systems and networks. The
14 material details possible operational, legal, and procedural changes to the use, or enhancement of,
15 investigative techniques that would the ensure ELSUR capabilities are effective and productive.
16 As such, the responsive pages are replete with detailed information regarding the employment of
17 specific surveillance techniques, the procedures employed by FBI, DOJ, and other law
18 enforcement agencies for the conduct of such surveillance; the difficulties, vulnerabilities, and
19 /or limitations of conducting such surveillance in technical and specific carrier/service-provider
20 contexts; and the exploitation of such vulnerabilities or limitations by criminal and terrorists
21 elements, and child pornography predators. The responsive pages also include guidance on how
22 to conduct investigations of communications systems or networks to work around intercept
23 difficulties and/or how to employ countermeasures to intercept evasion practices employed by
24 criminal and terrorist elements, and child pornography predators.

25 84. Accordingly, the release of this detailed information about surveillance techniques and
26 associated problems or vulnerabilities would provide violators a road map for successful law
27 enforcement circumvention. Criminal and terrorist elements would gain valuable insight about

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2 the conduct of law enforcement surveillance operations and the exploitation of capability
3 weaknesses that would enable them to structure their criminal enterprise and terrorist formulating
4 communications in a manner to evade lawful intercept and/or thwart investigative efforts. This
5 harm justification applies to all 7E designated information herein which is supplemented where
6 necessary in the below category-by-category section. The FBI has properly withheld this
7 information pursuant to Exemption (b)(7)(E).

8 **EXPLANATION OF WITHHELD MATERIAL FOR EACH DOCUMENT CATEGORY**
9 **GROUPING**

10 **CATEGORY 1A - OFFICE OF PUBLIC AFFAIRS RESPONSE (CARDOZO)**

11 85. Category 1A contains 66 responsive pages, consisting of internal e-mail chains between
12 FBI divisions in response to a request from a media outlet for a definition of "Going Dark." Of
13 these 66 pages, 65 have been released in part and 1 has been released in full. The FBI's Office of
14 Technology Division (OTD) went on record as defining "Going Dark" as the program name
15 given to the FBI's efforts to utilize innovative technology; foster cooperation with industry; and
16 assist our state, local, and tribal law enforcement partners in a collaborative effort to close the
17 growing gap between lawful interception requirements and our capabilities. The term applies to
18 the research and development of new tools, technical support and training initiatives.

19 86. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
20 has been asserted in Category 1A documents to protect internal, non-public telephone numbers
21 associated with particular FBI personnel. These internal, non-public telephone numbers are used
22 by FBI personnel while they are working on significant national security and criminal
23 investigations. Disclosure of these internal, non-public telephone numbers could subject these
24 individuals to harassing telephone calls, which could disrupt official business (including
25 impeding the ability of Special Agents to conduct and conclude functions related to the law
26 enforcement investigations in a timely manner). With the narrowing of the application of
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2 Exemption (b)(2) to those records which relate to employee relations and human resource issues,
3 the FBI has determined that, in those instances where Exemption (b)(2) has been asserted in
4 conjunction with Exemption (b)(7)(E), the use of Exemption (b)(2) is now withdrawn.

5 Accordingly, because disclosure of these internal, non-public telephone numbers could impede
6 the FBI's effectiveness and may risk circumvention of the law, the FBI has properly withheld this
7 information pursuant to Exemption (b)(2), at times in conjunction with (b)(6) and (b)(7)(C).

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9 87. Exemption (b)(5). Exemption (b)(5) has been asserted in Category 1A documents to
10 protect the deliberative process privilege. The deliberative process privilege protects the internal
11 deliberations of an agency by exempting from release recommendations, drafts, analyses,
12 speculation and other non-factual information prepared in anticipation of agency decision-
13 making. The general purpose of the deliberative process privilege is to prevent injury to the
14 quality of agency decisions. Thus, material that contains or was prepared in connection with the
15 formulation of opinions, advice, evaluations, deliberations, policy formulation, proposals,
16 conclusions or recommendations may properly be withheld. If agency personnel knew that their
17 preliminary opinions, evaluations and comments would be released for public consumption, they
18 might be more circumspect in what they put in writing, and thereby, impede a candid discussion
19 of the issues surrounding a decision. The protected material involved a back-and-forth
20 discussion about how to respond to a media outlet for a definition of "Going Dark." Because
21 disclosure of these deliberative, pre-decisional discussions would have an inhibiting effect upon
22 the development of policy and the administrative direction of the FBI, the FBI has properly
23 withheld this information pursuant to Exemption (b)(5).

24 88. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6)
25 and (b)(7)(C) have been asserted in Category 1A documents to protect the names, and identifying
26 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
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2 and/or maintaining the investigative activities reported in these records, or who were consulted
3 on sensitive internal FBI strategic developmental projects (e.g., National Electronic Surveillance
4 Strategy). The SAs mentioned did not choose their assignments. The publicity associated with
5 the release of these SAs' identities, in connection with a particular investigation, or internal
6 developmental project, could trigger hostility toward a particular employee, or pressure of
7 attempted bribery, to obtain intelligence. Publicity, adverse or otherwise, regarding any
8 particular investigation conducted by SAs may seriously impair the SAs effectiveness in
9 conducting future investigations, or consultations. This privacy consideration also protects SAs
10 from unnecessary, unofficial questioning as to the conduct of an investigation, or internal
11 developmental project, whether or not they are currently employed by the FBI. The names of
12 FBI Professional Support personnel are also withheld in Category 1A documents pursuant to
13 Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2). Professional Support
14 personnel are assigned to handle tasks related to official criminal investigations, and/or internal
15 developmental projects (e.g., National Electronic Surveillance Strategy), as reflected in the
16 documents responsive to plaintiff's request. They were, and possibly are, in positions of access
17 to information regarding official law enforcement investigations, and special internal
18 developmental projects, and therefore could become targets of harassing inquiries for
19 unauthorized access to investigations, or internal developmental projects, if their identities were
20 released, similar to those harms articulated previously for SAs. These Professional Support
21 personnel maintain substantial privacy interests in not having their identities disclosed.
22 Accordingly, the FBI has properly withheld this information pursuant to Exemptions (b)(6) and
23 (b)(7)(C), at times in conjunction with (b)(2).

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25 89. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
26 been asserted in Category 1A documents to protect the names and identifying information of
27 third parties that were merely mentioned in the documents responsive to plaintiff's request.

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2 These individuals are not of investigative interest to the FBI. Release of this type of information
3 about private citizens, without notarized authorizations permitting such a release violates
4 individuals legitimate privacy interests. If the FBI disclosed their names and/or other personal
5 information, the disclosure would reveal that these third parties were at one time connected with
6 an FBI investigation, or FBI internal strategic developmental project (e.g., National Electronic
7 Surveillance Strategy), in some way. Disclosure of their identities could subject these
8 individuals to possible harassment or criticism and focus derogatory inferences and suspicion on
9 them. Thus, the FBI determined that these individuals' privacy interests outweighed any public
10 interest in disclosure, and that disclosure of the names and/or identifying information of the third
11 parties merely mentioned would constitute a "clearly unwarranted and unwarranted invasion of
12 personal privacy." Accordingly, the FBI has properly withheld this information pursuant to
13 Exemptions (b)(6) and (b)(7)(C).

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15 90. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 1A documents
16 to protect law enforcement records that would disclose techniques and procedures for law
17 enforcement investigations or prosecutions, and that would disclose guidelines for law
18 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
19 the law enforcement technique(s) of electronic or communications surveillance focused on
20 problems which hamper FBI's ability to successfully intercept communications systems and
21 networks, and details on preventing the FBI from "Going Dark." The responsive material details
22 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
23 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
24 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
25 release of this detailed information about surveillance techniques and associated problems or
26 vulnerabilities would provide violators a road map for successful law enforcement
27 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
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2 law enforcement surveillance operations and the exploitation of capability weaknesses that would
3 enable them to structure their criminal enterprise and terrorist formulating communications in a
4 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
5 properly withheld this information pursuant to Exemption (b)(7)(E).

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7 **CATEGORY 1B - FBI OFFICE OF CONGRESSIONAL AFFAIRS (OCA) RESPONSE**
8 **(CARDOZO)**

9 91. Category 1B contains 179 responsive Bates pages consisting of internal deliberative e-
10 mail chains w/attachments, talking points, and discussion papers concerning the FBI's strategic
11 policy development process relating to surveillance challenges posed by emerging technologies.
12 This material also includes assessments and opinions concerning surveillance challenges faced
13 by the FBI and the law enforcement community, as well as various recommendations, proposals,
14 and advice on multi-point strategies or actions FBI should, or could, adopt, pursue, or consider in
15 order to resolve these challenges. The material includes internal discussions between FBI and
16 DOJ on proposals to change policy, legislation, resources, and FBI operational
17 techniques/procedures as well as detailed identification, analysis, and discussion of technical,
18 legal, policy, and resource impediments to FBI electronic intercept operations. Some of the
19 material is edited "redline" versions of proposed legislation, and internal discussion of proposals
20 for amending CALEA to enhance ELSUR capabilities. A few pages of the material contain
21 summary briefings prepared by OCA staff members after meetings with Congressman, Senators,
22 and/or congressional staffers concerning budget discussions and sharing updates on topics such
23 as "Going Dark Initiative." Of these 179 Bates pages, 141 pages have been withheld in full, 23
24 pages released in part, and 15 released in full.

25 92. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
26 has been asserted in Category 1B documents to protect internal, non-public telephone numbers
27 associated with particular FBI personnel. These internal, non-public telephone numbers are used
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2 by FBI personnel while they are working on significant national security and criminal
3 investigations. Disclosure of these internal, non-public telephone numbers could subject these
4 individuals to harassing telephone calls, which could disrupt official business (including
5 impeding the ability of Special Agents to conduct and conclude functions related to the law
6 enforcement investigations in a timely manner). With the narrowing of the application of
7 Exemption (b)(2) to those records which relate to employee relations and human resource issues,
8 the FBI has determined that, in those instances where Exemption (b)(2) has been asserted in
9 conjunction with Exemption (b)(7)(E), the use of Exemption (b)(2) is now withdrawn.
10 Accordingly, because disclosure of these internal, non-public telephone numbers could impede
11 the FBI's effectiveness and may risk circumvention of the law, the FBI has properly withheld this
12 information pursuant to Exemption (b)(2), at times in conjunction with (b)(6) and (b)(7)(C).

13
14 93. Exemption (b)(5). Exemption (b)(5) has been asserted in 143 of the 179 Category 1B
15 documents to protect the deliberative process privilege. The deliberative process privilege
16 protects the internal deliberations of an agency by exempting from release recommendations,
17 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
18 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
19 the quality of agency decisions. The protected material contained draft deliberative talking
20 points and discussion papers, and internal e-mail chains w/attachments, concerning the FBI's
21 development of a strategic policy relating to surveillance challenges posed by emerging
22 technologies. This material also includes assessments and opinions concerning surveillance
23 challenges faced by the FBI and the law enforcement community, as well as various
24 recommendations, proposals, and advice on multi-point strategies or actions FBI should, or
25 could, adopt, pursue, or consider in order to resolve these challenges.
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2 94. The material includes internal discussions between FBI and DOJ on proposals to change
3 policy, legislation, resources, and FBI operational techniques/procedures as well as detailed
4 identification, analysis, and discussion of technical, legal, policy, and resource impediments to
5 FBI electronic intercept operations. Thus, material that contains or was prepared in connection
6 with the formulation of opinions, advice, evaluations, deliberations, policy formulation,
7 proposals, conclusions or recommendations may properly be withheld. Release of this type of
8 information would have an inhibitive effect upon the development of policy and administrative
9 direction of an agency because it would chill the full and frank discussion between agency
10 personnel regarding a decision. If agency personnel knew that their preliminary opinions,
11 evaluations and comments would be released for public consumption, they might be more
12 circumspect in what they put in writing, and thereby, impede a candid discussion of the issues
13 surrounding a decision. Accordingly, the FBI has properly withheld this information pursuant to
14 Exemption (b)(5).

15 95. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions
16 (b)(6), and (b)(7)(C) have been asserted in Category 1B documents to protect the names, and
17 identifying information of FBI Special Agents (SAs) who were responsible for conducting,
18 supervising, and/or maintaining the investigative activities reported in these records, or who were
19 consulted on sensitive internal FBI strategic developmental projects (e.g., National Electronic
20 Surveillance Strategy). The SAs mentioned did not choose their assignments. The publicity
21 associated with the release of these SAs' identities, in connection with a particular investigation,
22 or internal developmental project, could trigger hostility toward a particular employee, or
23 pressure of attempted bribery, to obtain intelligence. Publicity, adverse or otherwise, regarding
24 any particular investigation conducted by SAs may seriously impair the SAs effectiveness in
25 conducting future investigations, or consultations. This privacy consideration also protects SAs
26 from unnecessary, unofficial questioning as to the conduct of an investigation, or internal
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2 developmental project, whether or not they are currently employed by the FBI. The names, and
3 identifying information of FBI Professional Support personnel are also withheld in Category 1B
4 documents pursuant to Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2).
5 Professional Support personnel are assigned to handle tasks related to official criminal
6 investigations, and/or internal developmental projects (e.g., National Electronic Surveillance
7 Strategy), as reflected in the documents responsive to Plaintiff's request. They were, and
8 possibly are, in positions of access to information regarding official law enforcement
9 investigations, and special developmental projects, and therefore could become targets of
10 harassing inquiries for unauthorized access to investigations, or developmental projects, if their
11 identities were released, similar to those harms articulated previously for SAs. These
12 Professional Support personnel maintain substantial privacy interests in not having their
13 identities disclosed. Accordingly, the FBI has properly withheld this information pursuant to
14 Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2).

15 96. Exemptions (b)(6) and (b)(7)(C). At times Exemption (b)(6), and (b)(7)(C) have been
16 asserted in Category 1B documents to protect the names of Congressional staff members.
17 Summary briefings prepared by OCA staff members after meetings with Congressman, Senators,
18 and/or their congressional staff representative, list congressional staffers that were involved with
19 discussions concerning FBI budget requests and the sharing of information on topics such as
20 "Going Dark Initiative." Publicity (adverse or otherwise) regarding any internal FBI strategic
21 developmental projects (e.g., National Electronic Surveillance Strategy) that these congressional
22 staffers may be requested to provide input on, may seriously prejudice their effectiveness in
23 helping on other developmental projects. The privacy consideration is also to protect these
24 federal employees as individuals, from unnecessary, unofficial questioning as to the course, and
25 their knowledge, of national security developmental projects, whether or not they are currently
26 employed by the Congress. These employees may have to give input on the development of
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2 strategic plans, like developing ways to enhance ELSUR capabilities through legislative
3 amendments. They come into contact with all strata of society. The publicity associated with the
4 release of these congressional staffers involved with an internal FBI strategic developmental
5 project, could trigger hostility toward a particular employee to obtain intelligence. There is no
6 public interest to be served by disclosing the identities of these employees, and/or contractors, to
7 the public. Thus, disclosure of this information would constitute a "clearly unwarranted and
8 unwarranted invasion of their personal privacy." Accordingly, the FBI has properly withheld this
9 information pursuant to Exemptions (b)(6) and (b)(7)(C).

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11 97. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 1B documents
12 to protect law enforcement records that would disclose techniques and procedures for law
13 enforcement investigations or prosecutions, and that would disclose guidelines for law
14 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
15 the law enforcement technique(s) of electronic or communications surveillance focused on
16 problems which hamper FBI's ability to successfully intercept communications systems and
17 networks, and details on preventing the FBI from "Going Dark." The responsive material details
18 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
19 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
20 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
21 release of this detailed information about surveillance techniques and associated problems or
22 vulnerabilities would provide violators a road map for successful law enforcement
23 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
24 law enforcement surveillance operations and the exploitation of capability weaknesses that would
25 enable them to structure their criminal enterprise and terrorist formulating communications in a
26 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
27 properly withheld this information pursuant to Exemption (b)(7)(E).

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2 **CATEGORY 1C - FBI OPERATIONAL TECHNOLOGY DIVISION (OTD) RESPONSE,**
3 **SECTIONS 1 AND 3 (CARDOZO)**

4 98. Category 1C contains 229 responsive Bates pages consisting of mostly internal FBI e-
5 mail chains w/attachments, and a few FBI talking points/discussion papers related to defining
6 “Going Dark” and the need to preserve lawful intercept capabilities. These e-mails chains
7 w/attachments discuss the background development of various talking points, discussion papers,
8 and slide presentations on the FBI’s Science and Technology Branch’s “Going Dark Initiative”
9 (also referred to as the National Electronic Surveillance Strategy) to highlight to various internal
10 and external audiences the surveillance challenges faced by the FBI and the Law Enforcement
11 community. In addition, the e-mail participant's were tasked to search for a variety of
12 recommendations, proposals, and advice on multi-point strategies, or actions FBI should, or
13 could, adopt, pursue, or consider to resolve such challenges. Of these 229 Bates pages, 227
14 pages released in part, and 2 released in full.

15 99. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
16 has been asserted in Category 1C documents to protect internal, non-public telephone numbers
17 associated with particular FBI personnel. These internal, non-public telephone numbers are used
18 by FBI personnel while they are working on significant national security and criminal
19 investigations. Disclosure of these internal, non-public telephone numbers could subject these
20 individuals to harassing telephone calls, which could disrupt official business (including
21 impeding the ability of Special Agents to conduct and conclude functions related to the law
22 enforcement investigations in a timely manner). With the narrowing of the application of
23 Exemption (b)(2) to those records which relate to employee relations and human resource issues,
24 the FBI has determined that, in those instances where Exemption (b)(2) has been asserted in
25 conjunction with Exemption (b)(7)(E), the use of Exemption (b)(2) is now withdrawn.
26 Accordingly, because disclosure of these internal, non-public telephone numbers could impede
27 the FBI's effectiveness and may risk circumvention of the law, the FBI has properly withheld this
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2 information pursuant to Exemption (b)(2), at times in conjunction with (b)(6) and (b)(7)(C).

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4 100. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
5 and (b)(7)(C) have been asserted in Category 1C documents to protect the names and identifying
6 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
7 and/or maintaining the investigative activities reported in these records, or who were consulted
8 on sensitive internal FBI strategic developmental projects (e.g., National Electronic Surveillance
9 Strategy). The SAs mentioned did not choose their assignments. The publicity associated with
10 the release of these SAs' identities, in connection with a particular investigation, or internal
11 developmental project, could trigger hostility toward a particular employee, or pressure of
12 attempted bribery, to obtain intelligence. Publicity, adverse or otherwise, regarding any
13 particular investigation conducted by SAs may seriously impair the SAs effectiveness in
14 conducting future investigations, or consultations. This privacy consideration also protects SAs
15 from unnecessary, unofficial questioning as to the conduct of an investigation, or internal
16 developmental project, whether or not they are currently employed by the FBI. The names of
17 FBI Professional Support personnel are also withheld in Category 1C documents pursuant to
18 Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2). Professional Support
19 personnel are assigned to handle tasks related to official criminal investigations, and/or internal
20 developmental projects (e.g., National Electronic Surveillance Strategy), as reflected in the
21 documents responsive to Plaintiff's request. They were, and possibly are, in positions of access
22 to information regarding official law enforcement investigations, and special internal strategic
23 developmental projects, and therefore could become targets of harassing inquiries for
24 unauthorized access to investigations, or internal developmental projects, if their identities were
25 released, similar to those harms articulated previously for SAs. These Professional Support
26 personnel maintain substantial privacy interests in not having their identities disclosed.

27 Accordingly, the FBI has properly withheld this information pursuant to Exemptions (b)(6) and
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2 (b)(7)(C), at times in conjunction with (b)(2).

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4 101. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
5 been asserted in Category 1C documents to protect the names of personnel from the Department
6 of Justice (DOJ), Assistant United States Attorneys (AUSA), and contractors working for the
7 FBI. Publicity (adverse or otherwise) regarding any particular investigation they have been
8 assigned, or internal FBI developmental project (e.g., National Electronic Surveillance Strategy)
9 they may be contracted to help develop, may seriously prejudice their effectiveness in conducting
10 other investigations, or developmental projects. The privacy consideration is also to protect these
11 federal employees, and/or contractors, as individuals, from unnecessary, unofficial questioning as
12 to the course of an investigation or internal developmental project, whether or not they are
13 currently employed by the FBI as contractors, or with Other Government Agencies (OGA's).
14 These employees may have to conduct official inquiries into violations of National Security, or
15 help develop strategic plans, like developing ways to enhance ELSUR capabilities. They come
16 into contact with all strata of society, conducting searches, research, and making inquiries, all of
17 which result in reasonable but nonetheless serious disturbances to people and their lives. It is
18 possible for an individual targeted by these OGA's to carry a grudge which may last for years,
19 and to seek revenge on the investigators and other federal employees involved in a particular
20 investigation. Foreign governments, or criminal enterprises may threaten FBI contractors
21 searching for intelligence that may benefit their countries or criminal enterprises. The publicity
22 associated with the release of these OGA employee's, and/or contractors identities, in connection
23 with a particular investigation, or developmental project, could trigger hostility toward a
24 particular employee, or future threat to obtain intelligence. There is no public interest to be
25 served by disclosing the identities of these employees, and/or contractors, to the public. Thus,
26 disclosure of this information would constitute a "clearly unwarranted and unwarranted invasion
27 of their personal privacy." Accordingly, the FBI has properly withheld this information pursuant
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2 to Exemptions (b)(6) and (b)(7)(C).

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4 102. Exemptions (b)(6) and (b)(7)(C). In addition, at times Exemption (b)(6), and (b)(7)(C)
5 have been asserted in Category 1C documents to protect the names and/or identifying
6 information of third-party individuals who were of investigative interest to the FBI and/or other
7 law enforcement agencies. Identifying information withheld concerning these third parties
8 includes addresses, dates of birth, social security numbers, and other personal information. Any
9 link to a law enforcement investigation carries a strong negative connotation and a stigma.
10 Release of the identities of these individuals to the public could subject them to harassment or
11 embarrassment, as well as undue public attention. The FBI has determined that these individuals
12 maintain a substantial privacy interest in not having their identities disclosed. In making a
13 determination whether to release the names and personal information concerning these third
14 parties, the public's interest in disclosure was balanced against the individual's right to privacy.
15 The FBI determined that this information would not enlighten the public on how the FBI
16 conducts its internal operations and investigations. Accordingly, the FBI concluded that the
17 disclosure of this information would constitute a "clearly unwarranted and unwarranted invasion
18 of their personal privacy," and has properly withheld this information pursuant to Exemptions
19 (b)(6) and (b)(7)(C).

20 103. Exemption (b)(7)(D). At times in conjunction with (b)(1), Exemption (b)(7)(D) has been
21 asserted in Category 1C documents to withhold information provided to the FBI by
22 commercial/private companies and other non-government entities under circumstances from
23 which an assurance of confidentiality may be implied. During the course of the FBI's
24 intelligence investigations, certain commercial/private companies provided information to the
25 FBI relating to the subjects of these investigations. To disclose the fact that these companies
26 provided information to the FBI during the course of an investigation could harm the commercial
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2 interests of these enterprises by deterring the public from employing their services. In addition,
3 such a disclosure has wider implications. If the FBI disclosed the identities of confidential
4 sources that provide information to the FBI on a continuing basis, that revelation would have a
5 chilling effect on the activities and cooperation of other current or potential future FBI
6 confidential sources. Accordingly, the FBI has properly withheld this information pursuant to
7 Exemption (b)(7)(D), at times in conjunction with (b)(1).

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9 104. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 1C documents
10 to protect law enforcement records that would disclose techniques and procedures for law
11 enforcement investigations or prosecutions, and that would disclose guidelines for law
12 enforcement investigations or prosecutions. Plaintiff's requests seeks information concerning the
13 law enforcement technique(s) of electronic or communications surveillance focused on problems
14 which hamper FBI's ability to successfully intercept communications systems and networks, and
15 details on preventing the FBI from "Going Dark." The responsive material details difficulties
16 encountered by law enforcement in conducting electronic surveillance and discusses possible
17 operational, legal, and procedural changes to the use, or enhancement of, investigative techniques
18 that would ensure ELSUR capabilities are effective and productive. Accordingly, the release of
19 this detailed information about surveillance techniques and associated problems or vulnerabilities
20 would provide violators a road map for successful law enforcement circumvention. Criminal and
21 terrorist elements would gain valuable insight about the conduct of law enforcement surveillance
22 operations and the exploitation of capability weaknesses that would enable them to structure their
23 criminal enterprise and terrorist formulating communications in a manner to evade lawful
24 intercept and/or thwart investigative efforts. Accordingly, the FBI has properly withheld this
25 information pursuant to Exemption (b)(7)(E).

26 **CATEGORY 1D - FBI OFFICE OF GENERAL COUNSEL (OGC) RESPONSE**
27 **(CARDOZO)**

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2 105. Category 1D contains 183 responsive Bates pages consisting of internal e-mail chains
3 between FBI personnel, and the FBI OGC staff, forwarding talking points and discussion papers
4 asking for legal review and consultation related to finalizing the National Lawful Intercept
5 Strategy Whitepaper (also known as "Going Dark Initiative"). The material also contained
6 deliberative talking points and discussion papers related to the FBI's strategic policy
7 development process concerning surveillance challenges posed by emerging technologies, and to
8 prepare FBI leadership and personnel for internal strategy meetings and/or guide discussion of
9 FBI participants in the consideration/formulation of strategies or initiatives to address emerging
10 technology issues. These pages include assessments and opinions related to the surveillance
11 challenges faced by the FBI and the law enforcement community as well as various
12 recommendations, proposals, and advice on multi-point strategies or actions FBI should, or
13 could, adopt, pursue, or consider in order to resolve these challenges. The material includes
14 internal discussions between FBI and DOJ on proposals to change policy, legislation, resources,
15 and FBI operational techniques/procedures as well as detailed identification, analysis, and
16 discussion of technical, legal, policy, and resource impediments to FBI electronic intercept
17 operations. Of these 183 Bates pages, 87 pages were withheld in full, 85 pages released in part,
18 and 11 released in full.

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20 106. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
21 has been asserted in Category 1D documents to protect internal, non-public telephone numbers of
22 FBI personnel. These internal, non-public telephone numbers are used by FBI personnel while
23 they are working on significant national security and criminal investigations. Disclosure of these
24 internal, non-public telephone numbers could subject these individuals to harassing telephone
25 calls, which could disrupt official business (including impeding the ability of Special Agents to
26 conduct and conclude functions related to the law enforcement investigations in a timely
27 manner). With the narrowing of the application of Exemption (b)(2) to those records which
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2 relate to employee relations and human resource issues, the FBI has determined that, in those
3 instances where Exemption (b)(2) has been asserted in conjunction with Exemption (b)(7)(E), the
4 use of Exemption (b)(2) is now withdrawn. Accordingly, because disclosure of these internal,
5 non-public telephone numbers could impede the FBI's effectiveness and may risk circumvention
6 of the law, the FBI has properly withheld this information pursuant to Exemption (b)(2), at times
7 in conjunction with (b)(6) and (b)(7)(C).

8 107. Exemption (b)(5). Exemption (b)(5) has been asserted in 148 of the 183 Category 1D
9 documents to protect the deliberative process privilege. The deliberative process privilege
10 protects the internal deliberations of an agency by exempting from release recommendations,
11 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
12 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
13 the quality of agency decisions. The protected material contained draft deliberative talking
14 points and discussion papers related to the FBI's strategic policy development process
15 concerning surveillance challenges posed by emerging technologies, and were being developed to
16 help prepare FBI leadership and personnel for internal strategy meetings and/or guide discussion
17 of FBI participants in the consideration/formulation of strategies or initiatives to address
18 emerging technology issues. The material also included internal discussions between FBI and
19 DOJ on proposals to change policy, legislation, resources, and FBI operational
20 techniques/procedures as well as detailed identification, analysis, and discussion of technical,
21 legal, policy, and resource impediments to FBI electronic intercept operations.

22 108. These pages also include assessments and opinions related to the surveillance challenges
23 faced by the FBI and the law enforcement community as well as various recommendations,
24 proposals, and advice on multi-point strategies or actions FBI should, or could, adopt, pursue, or
25 consider in order to resolve these challenges. Thus, material that contains or was prepared in
26 connection with the formulation of opinions, advice, evaluations, deliberations, policy
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2 formulation, proposals, conclusions or recommendations may properly be withheld. Release of
3 this type of information would have an inhibitive effect upon the development of policy and
4 administrative direction of an agency because it would chill the full and frank discussion between
5 agency personnel regarding a decision. If agency personnel knew that their preliminary opinions,
6 evaluations and comments would be released for public consumption, they might be more
7 circumspect in what they put in writing, and thereby, impede a candid discussion of the issues
8 surrounding a decision. Accordingly, the FBI has properly withheld this information pursuant to
9 Exemption (b)(5).

10 109. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
11 and (b)(7)(C) have been asserted in Category 1D documents to protect the names and identifying
12 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
13 and/or maintaining the investigative activities reported in these records, or who were consulted
14 on sensitive internal FBI strategic developmental projects (e.g., National Electronic Surveillance
15 Strategy). The SAs mentioned did not choose their assignments. The publicity associated with
16 the release of these SAs' identities, in connection with a particular investigation, or internal
17 developmental project, could trigger hostility toward a particular employee, or pressure of
18 attempted bribery, to obtain intelligence. Publicity, adverse or otherwise, regarding any
19 particular investigation conducted by SAs may seriously impair the SAs effectiveness in
20 conducting future investigations, or consultations. This privacy consideration also protects SAs
21 from unnecessary, unofficial questioning as to the conduct of an investigation, or internal
22 developmental project, whether or not they are currently employed by the FBI. The names of
23 FBI Professional Support personnel are also withheld in Category 1C documents pursuant to
24 Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2). Professional Support
25 personnel are assigned to handle tasks related to official criminal investigations, and/or internal
26 developmental projects, as reflected in the documents responsive to Plaintiff's request. They
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2 were, and possibly are, in positions of access to information regarding official law enforcement
3 investigations, and special internal strategic developmental projects (e.g., National Electronic
4 Surveillance Strategy), and therefore could become targets of harassing inquiries for
5 unauthorized access to investigations, or developmental projects, if their identities were released,
6 similar to those harms articulated previously for SAs. These Professional Support personnel
7 maintain substantial privacy interests in not having their identities disclosed. Accordingly, the
8 FBI has properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C), at times
9 in conjunction with (b)(2).

10 110. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
11 been asserted in Category 1D documents to protect the names of budgetary personnel from the
12 Department of Justice (DOJ). Publicity (adverse or otherwise) regarding any particular
13 investigation they have been assigned, or internal FBI developmental project (e.g., National
14 Electronic Surveillance Strategy) they may be instructed to help develop legal and budgetary
15 advice on, may seriously prejudice their effectiveness in conducting other investigations, or
16 internal FBI developmental projects. The privacy consideration is also to protect these federal
17 employees, as individuals, from unnecessary, unofficial questioning as to the course of an
18 investigation or internal developmental project, whether or not they are currently with another
19 government agency. The publicity associated with the release of these OGA employee's, in
20 connection with a particular investigation, or internal developmental project they are advising on,
21 could trigger hostility toward a particular employee, or future threat to obtain intelligence. There
22 is no public interest to be served by disclosing the identities of these employees to the public.
23 Thus, disclosure of this information would constitute a "clearly unwarranted and unwarranted
24 invasion of their personal privacy." Accordingly, the FBI has properly withheld this information
25 pursuant to Exemptions (b)(6), and (b)(7)(C).

26 111. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 1D documents
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2 to protect law enforcement records which that disclose techniques and procedures for law
3 enforcement investigations or prosecutions, and that would disclose guidelines for law
4 enforcement investigations or prosecutions. Plaintiff's requests seeks information concerning the
5 law enforcement technique(s) of electronic or communications surveillance focused on problems
6 which hamper FBI's ability to successfully intercept communications systems and networks, and
7 details on preventing the FBI from "Going Dark." The responsive material details difficulties
8 encountered by law enforcement in conducting electronic surveillance and discusses possible
9 operational, legal, and procedural changes to the use, or enhancement of, investigative techniques
10 that would ensure ELSUR capabilities are effective and productive. Accordingly, the release of
11 this detailed information about surveillance techniques and associated problems or vulnerabilities
12 would provide violators a road map for successful law enforcement circumvention. Criminal and
13 terrorist elements would gain valuable insight about the conduct of law enforcement surveillance
14 operations and the exploitation of capability weaknesses that would enable them to structure their
15 criminal enterprise and terrorist formulating communications in a manner to evade lawful
16 intercept and/or thwart investigative efforts. Accordingly, the FBI has properly withheld this
17 information pursuant to Exemption (b)(7)(E).

18 **CATEGORY 1E - FBI OPERATIONAL TECHNOLOGY DIVISION (OTD) RESPONSE,**
19 **SECTION 2 (CARDOZO)**

20 112. Category 1E contains 296 responsive Bates pages consisting of internal e-mail chains
21 w/attachments between FBI personnel, and deliberative talking points and discussion papers
22 concerning the FBI's strategic policy development process relating to surveillance challenges
23 posed by emerging technologies, monthly OTD accomplishment reports, status reports on the
24 'Going Dark Initiative,' and contractual paperwork with an external contractor. The deliberative
25 talking points and discussion papers related to the FBI's strategic policy development process
26 concerning surveillance challenges posed by emerging technologies. These pages include
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2 background development of talking points, discussion papers and slide presentations on the FBI's
3 Science and Technology Branch's "Going Dark Initiative" (also known as the National
4 Electronic Surveillance Strategy) to highlight to various internal and external audiences the
5 surveillance challenges faced by the FBI and the law enforcement community, as well as various
6 recommendations, proposals, and advice on multi-point strategies, or actions FBI should, or
7 could, adopt, pursue, or consider to resolve such challenges. The material includes internal
8 discussions between FBI and DOJ on proposals to change policy, legislation, resources, and FBI
9 operational techniques/procedures as well as detailed identification, analysis, and discussion of
10 technical, legal, policy, and resource impediments to FBI electronic intercept operations. Of
11 these 296 Bates pages, 250 pages have been withheld in full, 40 pages released in part, and 6
12 pages released in full.

13 113. Exemption (b)(1). At times Exemption (b)(1) has been asserted in Category 1E
14 documents to withhold information that is properly classified. The information withheld (b)(1) is
15 currently and properly classified under E.O. 13256 at the Secret level and is exempt from
16 disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert
17 action), intelligence sources or methods, and category (d) foreign relations, or foreign activities
18 of the United States, including confidential sources, as the unauthorized disclosure of this
19 information could reasonably be expected to cause serious damage to the national security of the
20 United States.

21 114. The information withheld in Category 1E documents, pursuant to Exemption (b)(1),
22 consists of classified procedures and methods of intelligence-gathering utilized by the FBI to
23 gather intelligence information. An intelligence activity or method has two characteristics. First,
24 the intelligence activity and information generated by it is needed by U.S.
25 Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality
26 must be maintained with respect to the activity if the viability, productivity, and usefulness of
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2 that information is to be preserved. The classification redactions have been asserted to protect
3 from disclosure information that would reveal the actual intelligence activities utilized by the FBI
4 against specific targets of foreign counterintelligence investigations or operations; or disclosure
5 of intelligence gathering capabilities of the activities directed at specific targets. The intelligence
6 activities detailed in the withheld information are effective means for the FBI to gather, store, or
7 disseminate intelligence information. The criteria applied and priorities assigned in these records
8 are used in the FBI's present intelligence or counterintelligence investigations in accordance with
9 the Attorney General's guidelines on FBI intelligence or counterintelligence investigations.

10 115. The information in these Category 1E documents concerning intelligence activities is very
11 specific in nature and known to very few individuals. Disclosure of the specific information
12 which describes these intelligence activities would reveal that they are still used by the FBI today
13 to gather intelligence information, and could reasonably be expected to cause serious damage to
14 the national security for the following reasons: (1) disclosure would allow hostile entities to
15 discover the current intelligence activities used; (2) disclosure would reveal or determine the
16 criteria used--and priorities assigned to--current intelligence or counterintelligence investigations;
17 (3) disclosure would reveal the Intelligence Community's (IC's) continual sensitive work creating
18 a decentralized communication medium which would aid in facilitating the sharing of
19 information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the
20 exact data collection and ELSUR capabilities shortfalls that the IC are encountering during
21 National Security investigations due to technology advancements in communication system
22 platforms, and encryption applications. Hostile entities could then develop countermeasures
23 which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely
24 damage the FBI's efforts to detect and apprehend violators of the United States' national security
25 and criminal laws. The FBI protected the identity of intelligence sources, or methods, specific to
26 intelligence activities, because disclosure reasonably could be expected to cause serious damage
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2 to the national security.

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4 116. Exemption (b)(1). In addition, information withheld pursuant to Exemption (b)(1) in
5 these Category 1E documents has also been found to affect the foreign relations of the United
6 States, and much like foreign government information, this relationship and/or activities, does
7 not lose its sensitivity with the passage of time. The delicate liaisons established between and
8 among the United States and foreign governments could be severely damaged should the United
9 States disclose such information from these investigations. As a result, such information must be
10 handled with care so as to not jeopardize the fragile relationships which exist among the United
11 States and certain foreign governments. The unauthorized disclosure of information concerning
12 foreign relations or foreign activities of the United States can reasonably be expected to lead to
13 diplomatic or economic retaliation against the United States; identify the target, scope or time
14 frame of intelligence activities of the United States in or about a foreign country, which may
15 result in the curtailment or cessation of these activities; enable hostile entities to assess United
16 States intelligence-gathering activities in or about a foreign country and devise countermeasures
17 against these activities; or compromise cooperative foreign sources which may jeopardize their
18 safety and curtail the flow of information from these sources. Accordingly, the FBI has properly
19 withheld this information pursuant to Exemption (b)(1).

20 117. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
21 has been asserted in Category 1E documents to protect internal, non-public telephone numbers of
22 FBI personnel. These internal, non-public telephone numbers are used by FBI personnel while
23 they are working on significant national security and criminal investigations. Disclosure of these
24 internal, non-public telephone numbers could subject these individuals to harassing telephone
25 calls, which could disrupt official business (including impeding the ability of Special Agents to
26 conduct and conclude functions related to the law enforcement investigations in a timely

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2 manner). With the narrowing of the application of Exemption (b)(2) to those records which
3 relate to employee relations and human resource issues, the FBI has determined that, in those
4 instances where Exemption (b)(2) has been asserted in conjunction with Exemption (b)(7)(E), the
5 use of Exemption (b)(2) is now withdrawn. Accordingly, because disclosure of these internal,
6 non-public telephone numbers could impede the FBI's effectiveness and may risk circumvention
7 of the law, the FBI has properly withheld this information pursuant to Exemption (b)(2), at times
8 in conjunction with (b)(6) and (b)(7)(C).

9 118. Exemption (b)(4). Exemption (b)(4) has been asserted in Category 1E documents to
10 protect confidential trade secrets and commercial or financial information obtained from a
11 corporation or electronic communication service provider. This exemption is intended to protect
12 the interests of both the government and submitters of information. Its very existence encourages
13 submitters to voluntarily furnish useful commercial or financial information to the government
14 and provides the government with an assurance that required submissions will be reliable. The
15 exemption also affords protection to those submitters who are required to furnish commercial or
16 financial information to the government by safeguarding them from the competitive
17 disadvantages that could result from disclosure. In this case, Exemption (b)(4) has been asserted
18 to protect proprietary contractual information provided by an FBI contractor. Specifically, the
19 contractor submitted a draft proposal describing the scope of work that it would perform on
20 behalf of the FBI's Operational Technology Division ("OTD") for its "FBI Going Dark Initiative
21 Electronic Surveillance Analyst Project." The contractual documents also contain cost
22 projections associated with implementing the project. The release of proprietary contractual
23 information would impair the FBI's ability to obtain similar products or services from this, and
24 other contractors in the future. Accordingly, the FBI has properly withheld this information
25 pursuant to Exemption (b)(4).

26 119. Exemption (b)(5). Exemption (b)(5) has been asserted in 225 of the 296 Category 1E
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2 documents to protect the deliberative process privilege. The deliberative process privilege
3 protects the internal deliberations of an agency by exempting from release recommendations,
4 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
5 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
6 the quality of agency decisions. The protected material contained draft deliberative talking
7 points and discussion papers concerning the FBI's strategic policy development process relating
8 to surveillance challenges posed by emerging technologies, and status reports on the 'Going Dark
9 Initiative.' The deliberative talking points and discussion papers pertain to the FBI's strategic
10 policy development process concerning surveillance challenges posed by emerging technologies.
11 These pages include background development of talking points, discussion papers and slide
12 presentations on the FBI's Science and Technology Branch's "Going Dark Initiative" (also
13 known as the National Electronic Surveillance Strategy) to highlight to various internal and
14 external audiences the surveillance challenges faced by the FBI and the law enforcement
15 community, as well as various recommendations, proposals, and advice on proposed multi-point
16 strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges.

17 120. The material includes internal discussions between FBI and DOJ on proposals to change
18 policy, legislation, resources, and FBI operational techniques/procedures as well as detailed
19 identification, analysis, and discussion of technical, legal, policy, and resource impediments to
20 FBI electronic intercept operations. Thus, material that contains or was prepared in connection
21 with the formulation of opinions, advice, evaluations, deliberations, policy formulation,
22 proposals, conclusions or recommendations, may properly be withheld. Release of this type of
23 information would have an inhibitive effect upon the development of policy and administrative
24 direction of an agency because it would chill the full and frank discussion between agency
25 personnel regarding a decision. If agency personnel knew that their preliminary opinions,
26 evaluations and comments would be released for public consumption, they might be more
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2 circumspect in what they put in writing, and thereby, impede a candid discussion of the issues
3 surrounding a decision. Accordingly, the FBI has properly withheld this information pursuant to
4 Exemption (b)(5).

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6 121. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions
7 (b)(6), and (b)(7)(C) have been asserted in Category 1E documents to protect the names and
8 identifying information of FBI Special Agents (SAs) who were responsible for conducting,
9 supervising, and/or maintaining the investigative activities reported in these records, or who were
10 consulted on sensitive internal strategic developmental projects (e.g., National Electronic
11 Surveillance Strategy). The SAs mentioned did not choose their assignments. The publicity
12 associated with the release of these SAs' identities, in connection with a particular investigation,
13 or internal developmental project, could trigger hostility toward a particular employee, or
14 pressure of attempted bribery, to obtain intelligence. Publicity, adverse or otherwise, regarding
15 any particular investigation conducted by SAs may seriously impair the SAs effectiveness in
16 conducting future investigations, or consultations. This privacy consideration also protects SAs
17 from unnecessary, unofficial questioning as to the conduct of an investigation, or internal
18 developmental project, whether or not they are currently employed by the FBI. The names of
19 FBI Professional Support personnel are also withheld in Category 1E documents pursuant to
20 Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2). Professional Support
21 personnel are assigned to handle tasks related to official criminal investigations, and/or internal
22 strategic developmental projects (e.g., National Electronic Surveillance Strategy), as reflected in
23 the documents responsive to plaintiff's request. They maintain substantial privacy interests in
24 not having their identities disclosed. Accordingly, the FBI has properly withheld this information
25 pursuant to Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2).

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2 122. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
3 been asserted in Category 1E documents to protect the names and identifying information of third
4 parties that were merely mentioned in the documents responsive to plaintiff's request. These
5 individuals are not of investigative interest to the FBI. Release of this type of information about
6 private citizens, without notarized authorizations permitting such a release violates individuals
7 legitimate privacy interests. If the FBI disclosed their names and/or other personal information,
8 the disclosure would reveal that these third parties were at one time connected with an FBI
9 investigation, or internal developmental project, in some way. Disclosure of their identities
10 could subject these individuals to possible harassment or criticism and focus derogatory
11 inferences and suspicion on them. Thus, the FBI determined that these individuals' privacy
12 interests outweighed any public interest in disclosure, and that disclosure of the names and/or
13 identifying information of the third parties merely mentioned would constitute a "clearly
14 unwarranted and unwarranted invasion of personal privacy." Accordingly, the FBI has properly
15 withheld this information pursuant to Exemptions (b)(6), and (b)(7)(C).

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17 123. Exemptions (b)(6) and (b)(7)(C). In addition, at times Exemptions (b)(6), and (b)(7)(C)
18 have been asserted in Category 1E documents to protect the names of auditing personnel from
19 the Defense Contract Audit Agency (DCAA), and contractors working for the FBI. Publicity
20 (adverse or otherwise) regarding any particular investigation or contract they have been assigned
21 to audit, or internal FBI developmental project (e.g., National Electronic Surveillance Strategy)
22 they may be contracted to help develop, may seriously prejudice their effectiveness in conducting
23 other investigations, audits, or developmental projects. The privacy consideration is also to
24 protect these federal employees, and/or contractors, as individuals, from unnecessary, unofficial
25 questioning as to the course of an investigation, audit, or developmental project, whether or not
26 they are currently employed by the FBI as contractors, or with another government agencies.
27 These employees may have to conduct official audits of sensitive programs, or help develop
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2 strategic plans, like developing ways to enhance ELSUR capabilities. They come into contact
3 with all strata of society, conducting searches, research, and making inquiries, all of which result
4 in reasonable but nonetheless serious disturbances to people and their lives. Foreign
5 governments, or criminal enterprises may threaten FBI contractors, or DCAA auditors, searching
6 for intelligence that may benefit their countries or criminal enterprises. The publicity associated
7 with the release of these OGA employee's, and/or contractors identities, in connection with a
8 particular investigation, audit, or developmental project, could trigger hostility toward a
9 particular employee, or future threat to obtain intelligence. There is no public interest to be
10 served by disclosing the identities of these employees, and/or contractors, to the public. Thus,
11 disclosure of this information would constitute a "clearly unwarranted and unwarranted invasion
12 of their personal privacy." Accordingly, the FBI has properly withheld this information pursuant
13 to Exemptions (b)(6), and (b)(7)(C).

14 124. Exemption (b)(7)(D). At times in conjunction with (b)(1), Exemption (b)(7)(D) has been
15 asserted in Category 1E documents to withhold information provided to the FBI by
16 commercial/private companies and other non-government entities under circumstances from
17 which an assurance of confidentiality may be implied. During the course of the FBI's
18 intelligence investigations, certain commercial/private companies provided information to the
19 FBI relating to the subjects of these investigations. To disclose the fact that these companies
20 provided information to the FBI during the course of an investigation could harm the commercial
21 interests of these enterprises by deterring the public from employing their services. In addition,
22 such a disclosure has wider implications. If the FBI disclosed the identities of confidential
23 sources that provide information to the FBI on a continuing basis, that revelation would have a
24 chilling effect on the activities and cooperation of other current or potential future FBI
25 confidential sources. Accordingly, the FBI has properly withheld this information pursuant to
26 Exemption (b)(7)(D), at times in conjunction with (b)(1).
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2 125. Exemption (b)(7)(D). In addition, at times in conjunction with (b)(1), Exemption
3 (b)(7)(D) has been asserted in Category 1E documents to withhold information provided to the
4 FBI by a foreign government and/or foreign law enforcement entity under an express assurance
5 of confidentiality according to the Foreign Government Information Classification Guide #1 (G-1
6 Guide), issued in accordance with E.O. 13526, Information Security Oversight Office (ISOO),
7 the FBI Security Policy Manual, and the designated Original Classification Authority (OCA) of
8 the Executive Assistant Director, National Security Branch. During the course of the FBI's
9 intelligence investigations it received information from a foreign government regarding on-going
10 investigations. The FBI has many agreements with foreign governments under which security
11 and/or criminal law enforcement information is exchanged. The agreements specify the extent of
12 confidentiality requested by the respective foreign government entity. In this case, the FBI has
13 express confidentiality agreements with this foreign government and/or foreign law enforcement
14 entity which provided information to the FBI during the conduct of intelligence investigations.
15 The FBI's agreements with this law enforcement entity provides express assurance that the FBI
16 will not disclose their identity, as well as the information that they provided to the FBI. If the
17 FBI were to disclose the identities and the information provided by foreign law enforcement
18 entities under an express assurance of confidentiality, such a disclosure would have a chilling
19 effect on the FBI's relationship with these entities. Furthermore, the disclosure would have a
20 chilling effect on the FBI's relationship with other foreign law enforcement agencies which have
21 entered into similar agreements with the FBI. Accordingly, the FBI has properly withheld this
22 information pursuant to Exemption (b)(7)(D), at times in conjunction with (b)(1).

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24 126. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 1E documents
25 to protect law enforcement records that would disclose techniques and procedures for law
26 enforcement investigations or prosecutions, and that would disclose guidelines for law
27 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
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2 the law enforcement technique(s) of electronic or communications surveillance focused on
3 problems which hamper FBI's ability to successfully intercept communications systems and
4 networks, and details on preventing the FBI from "Going Dark." The responsive material details
5 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
6 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
7 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
8 release of this detailed information about surveillance techniques and associated problems or
9 vulnerabilities would provide violators a road map for successful law enforcement
10 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
11 law enforcement surveillance operations and the exploitation of capability weaknesses that would
12 enable them to structure their criminal enterprise and terrorist formulating communications in a
13 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
14 properly withheld this information pursuant to Exemption (b)(7)(E).

15 **CATEGORY 1F - FBI OPERATIONAL TECHNOLOGY DIVISION (OTD) RESPONSE,**
16 **SECTION 4 (CARDOZO)**

17 127. Category 1F contains 135 responsive Bates pages consisting of internal e-mails
18 w/attachments that discuss the background development of various talking points, discussion
19 papers, and slide presentations on the FBI's Science and Technology Branch's "Going Dark
20 Initiative" (also known as the National Electronic Surveillance Strategy) to highlight to various
21 internal and external audiences the surveillance challenges faced by the FBI and the law
22 enforcement community. In addition, the e-mail participants were tasked to search for a variety
23 of recommendations, proposals, and advice on multi-point strategies, or actions FBI should, or
24 could, adopt, pursue, or consider to resolve such challenges. The e-mails show how the
25 identification, analysis, and review of technical, legal, policy, and resource impediments to the
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2 FBI's electronic intercept operations led to the development of a five-prong strategic approach to
3 address the identified lawful intercept capability gap.

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5 128. The material also includes draft talking points presentations that were developed to
6 outline this five prong strategic approach. The strategic approach includes: 1)
7 modernization/amendment of existing laws (e.g, CALEA), regulations, and assistance mandates,
8 2) enhancing authorities to protect industry proprietary and Law Enforcement (LE) sensitive
9 lawful intercept information, equipment and techniques, 3) enhancing LE agencies coordination
10 leveraging technical expertise of FBI with other LE entities, 4) enhancing lawful intercept
11 cooperation between communications industry and LEA's with a "One Voice" approach, and 5)
12 seeking new federal funding to bolster lawful intercept capabilities. The material includes a
13 discussion paper that highlighted instances where technology has, or is, still impacting the ability
14 of the FBI's DITU to perform lawful intercepts, and finally, the material includes monthly
15 accomplishment report templates that were being developed by OTD to highlight all significant
16 accomplishments of the OTD Division programs, and not just the 'Going Dark' initiative. Of
17 these 135 Bates pages, 116 pages have been withheld in full, 15 pages released in part, and 4
18 pages released in full.

19 129. Exemption (b)(1). At times Exemption (b)(1) has been asserted in Category 1F
20 documents to withhold information that is properly classified. The information withheld is
21 currently and properly classified under E.O. 13256 at the Secret level and is exempt from
22 disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert
23 action), intelligence sources or methods, as the unauthorized disclosure of this information could
24 reasonably be expected to cause serious damage to the national security of the United States.

25 130. The information withheld in Category 1F documents, pursuant to Exemption (b)(1),
26 consists of classified procedures and methods of intelligence-gathering utilized by the FBI to
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2 gather intelligence information. An intelligence activity or method has two characteristics.
3 First, the intelligence activity and information generated by it is needed by U.S.
4 Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality
5 must be maintained with respect to the activity if the viability, productivity, and usefulness of
6 that information is to be preserved. The classification redactions have been asserted to protect
7 from disclosure information that would reveal the actual intelligence activities utilized by the FBI
8 against specific targets of foreign counterintelligence investigations or operations; or disclosure
9 of intelligence gathering capabilities of the activities directed at specific targets. The intelligence
10 activities detailed in the withheld information are effective means for the FBI to gather, store, or
11 disseminate intelligence information. The criteria applied and priorities assigned in these records
12 are used in the FBI's present intelligence or counterintelligence investigations in accordance with
13 the Attorney General's guidelines on FBI intelligence or counterintelligence investigations.

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15 131. The information in these Category 1F documents concerning intelligence activities is very
16 specific in nature and known to very few individuals. Disclosure of the specific information
17 which describes these intelligence activities would reveal that they are still used by the FBI today
18 to gather intelligence information, and could reasonably be expected to cause serious damage to
19 the national security for the following reasons: (1) disclosure would allow hostile entities to
20 discover the current intelligence activities used; (2) disclosure would reveal or determine the
21 criteria used--and priorities assigned to--current intelligence or counterintelligence investigations;
22 (3) disclosure would reveal the Intelligence Community's (IC's) continual sensitive work creating
23 a decentralized communication medium which would aid in facilitating the sharing of
24 information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the
25 exact data collection and ELSUR capabilities shortfalls that the IC are encountering during
26 National Security investigations due to technology advancements in communication system
27 platforms, and encryption applications. Hostile entities could then develop countermeasures
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2 which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely
3 damage the FBI's efforts to detect and apprehend violators of the United States' national security
4 and criminal laws. The FBI protected the identity of intelligence sources, or methods, specific to
5 intelligence activities, because disclosure reasonably could be expected to cause serious damage
6 to the national security. Accordingly, the FBI has properly withheld this information pursuant to
7 Exemption (b)(1).

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9 132. Exemption (b)(5). Exemption (b)(5) has been asserted in Category 1F documents to
10 protect the deliberative process privilege. The deliberative process privilege protects the internal
11 deliberations of an agency by exempting from release recommendations, drafts, analyses,
12 speculation and other non-factual information prepared in anticipation of agency decision-
13 making. The general purpose of the deliberative process privilege is to prevent injury to the
14 quality of agency decisions. The protected material contained draft deliberative talking points
15 and discussion papers concerning the FBI's strategic policy development process relating to
16 surveillance challenges posed by emerging technologies, and status reports on the 'Going Dark
17 Initiative.' The deliberative talking points and discussion papers pertain to the FBI's strategic
18 policy development process concerning surveillance challenges posed by emerging technologies.
19 These pages include background development of talking points, discussion papers and slide
20 presentations on the FBI's Science and Technology Branch's "Going Dark Initiative" (also
21 known as the National Electronic Surveillance Strategy) to highlight to various internal and
22 external audiences the surveillance challenges faced by the FBI and the law enforcement
23 community, as well as various recommendations, proposals, and advice on proposed multi-point
24 strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges.

25 133. The material includes internal discussions between FBI and DOJ on proposals to change
26 policy, legislation, resources, and FBI operational techniques/procedures as well as detailed
27 identification, analysis, and discussion of technical, legal, policy, and resource impediments to
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2 FBI electronic intercept operations. Thus, material that contains or was prepared in connection
3 with the formulation of opinions, advice, evaluations, deliberations, policy formulation,
4 proposals, conclusions or recommendations, may properly be withheld. Release of this type of
5 information would have an inhibitive effect upon the development of policy and administrative
6 direction of an agency because it would chill the full and frank discussion between agency
7 personnel regarding a decision. If agency personnel knew that their preliminary opinions,
8 evaluations and comments would be released for public consumption, they might be more
9 circumspect in what they put in writing, and thereby, impede a candid discussion of the issues
10 surrounding a decision. Accordingly, the FBI has properly withheld this information pursuant to
11 Exemption (b)(5).

12 134. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
13 and (b)(7)(C) have been asserted in Category 1F documents to protect the names and identifying
14 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
15 and/or maintaining the investigative activities reported in these records, or who were consulted
16 on sensitive internal developmental projects (e.g., National Electronic Surveillance Strategy).
17 The SAs mentioned did not choose their assignments. The publicity associated with the release
18 of these SAs' identities, in connection with a particular investigation, or internal developmental
19 project, could trigger hostility toward a particular employee, or pressure of attempted bribery, to
20 obtain intelligence. Publicity, adverse or otherwise, regarding any particular investigation
21 conducted by SAs may seriously impair the SAs effectiveness in conducting future
22 investigations, or consultations. This privacy consideration also protects SAs from unnecessary,
23 unofficial questioning as to the conduct of an investigation, or internal developmental project,
24 whether or not they are currently employed by the FBI. The names of FBI Professional Support
25 personnel are also withheld in Category 1F documents pursuant to Exemptions (b)(6) and
26 (b)(7)(C), at times in conjunction with (b)(2). Professional Support personnel are assigned to
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2 handle tasks related to official criminal investigations, and/or sensitive internal developmental
3 projects (e.g., National Electronic Surveillance Strategy), as reflected in the documents
4 responsive to plaintiff's request. They were, and possibly are, in maintain substantial privacy
5 interests in not having their identities disclosed. Accordingly, the FBI has properly withheld this
6 information pursuant to Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2).

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8 135. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 1F documents
9 to protect law enforcement records that would disclose techniques and procedures for law
10 enforcement investigations or prosecutions, and that would disclose guidelines for law
11 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
12 the law enforcement technique(s) of electronic or communications surveillance focused on
13 problems which hamper FBI's ability to successfully intercept communications systems and
14 networks, and details on preventing the FBI from "Going Dark." The responsive material details
15 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
16 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
17 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
18 release of this detailed information about surveillance techniques and associated problems or
19 vulnerabilities would provide violators a road map for successful law enforcement
20 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
21 law enforcement surveillance operations and the exploitation of capability weaknesses that would
22 enable them to structure their criminal enterprise and terrorist formulating communications in a
23 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
24 properly withheld this information pursuant to Exemption (b)(7)(E).

25 **CATEGORY 2A - FBI OPERATIONAL TECHNOLOGY DIVISION (OTD) RESPONSE,**
26 **SECTIONs 1-3 (LYNCH)**

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2 136. Category 2A contains 148 responsive Bates pages consisting of internal e-mail chains
3 between FBI divisions, and talking points and discussion paper presentations related to the FBI's
4 strategic policy development process concerning surveillance challenges posed by emerging
5 technologies. The FBI talking points presentations related to defining "Going Dark" and the
6 need to preserve lawful intercept capabilities. The draft presentations were being developed for
7 multiple internal and external audiences. The main presentation under development was titled,
8 "Going Dark Initiative: Closing the National Security ELSUR Gap." The presentation defined
9 "Going Dark," showed how ELSUR gaps impacted national security, detailed CALEA shortfalls,
10 and offered possible solutions to close the ELSUR gap. The material included a discussion paper
11 titled, "Going Dark: Evolution in Mobile Technology and Potential Collection Issues." The
12 paper highlights how new services and technology advancements in the wireless communications
13 industry are developing faster than law enforcement can develop lawful technical intercept
14 solutions. The e-mails summarize meetings concerning legal, technical, legislative, and
15 communication industry challenges that are limiting the effectiveness of lawful ELSUR intercept
16 capabilities. Some of the e-mails discuss proposed legislative amendments to CALEA to
17 improve intercept capabilities, and to make industry compliance easier. One e-mail chain
18 outlines a recent article concerning cable roaming agreements between interconnecting Wi-Fi
19 services, and how this might relate to "Going Dark." Of these 148 Bates pages, 67 pages have
20 been withheld in full, 58 pages released in part, and 23 pages released in full.

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22 137. Exemption (b)(1). At times Exemption (b)(1) has been asserted in Category 2A
23 documents to withhold information that is properly classified. The information withheld (b)(1) is
24 currently and properly classified under E.O. 13256 at the SECRET level and is exempt from
25 disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert
26 action), intelligence sources or methods, and category (d) foreign relations, or foreign activities
27 of the United States, including confidential sources, as the unauthorized disclosure of this
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2 information could reasonably be expected to cause serious damage to the national security of the
3 United States.

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5 138. The information withheld pursuant to Exemption (b)(1) for Category 2A documents
6 consists of classified procedures and methods of intelligence-gathering utilized by the FBI to
7 gather intelligence information. An intelligence activity or method has two characteristics.
8 First, the intelligence activity and information generated by it is needed by U.S.
9 Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality
10 must be maintained with respect to the activity if the viability, productivity, and usefulness of
11 that information is to be preserved. The classification redactions have been asserted to protect
12 from disclosure information that would reveal the actual intelligence activities utilized by the FBI
13 against specific targets of foreign counterintelligence investigations or operations; or disclosure
14 of intelligence gathering capabilities of the activities directed at specific targets. The intelligence
15 activities detailed in the withheld information are effective means for the FBI to gather, store, or
16 disseminate intelligence information. The criteria applied and priorities assigned in these records
17 are used in the FBI's present intelligence or counterintelligence investigations in accordance with
18 the Attorney General's guidelines on FBI intelligence or counterintelligence investigations.

19 139. The information in these Category 2A documents concerning intelligence activities is
20 very specific in nature and known to very few individuals. Disclosure of the specific information
21 which describes these intelligence activities would reveal that they are still used by the FBI today
22 to gather intelligence information, and could reasonably be expected to cause serious damage to
23 the national security for the following reasons: (1) disclosure would allow hostile entities to
24 discover the current intelligence activities used; (2) disclosure would reveal or determine the
25 criteria used--and priorities assigned to--current intelligence or counterintelligence investigations;
26 (3) disclosure would reveal the Intelligence Community's (IC's) continual sensitive work creating
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2 a decentralized communication medium which would aid in facilitating the sharing of
3 information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the
4 exact data collection and ELSUR capabilities shortfalls that the IC are encountering during
5 National Security investigations due to technology advancements in communication system
6 platforms, and encryption applications. Hostile entities could then develop countermeasures
7 which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely
8 damage the FBI's efforts to detect and apprehend violators of the United States' national security
9 and criminal laws. The FBI protected the identity of intelligence sources, or methods, specific to
10 intelligence activities, because disclosure reasonably could be expected to cause serious damage
11 to the national security. Accordingly, the FBI has properly withheld this information pursuant to
12 Exemption (b)(1).

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14 140. Exemption (b)(1). In addition, information withheld pursuant to Exemption (b)(1) in
15 these Category 2A documents has also been found to affect the foreign relations of the United
16 States, and much like foreign government information, this relationship and/or activities, does
17 not lose its sensitivity with the passage of time. The delicate liaisons established between and
18 among the United States and foreign governments could be severely damaged should the United
19 States disclose such information from these investigations. As a result, such information must be
20 handled with care so as to not jeopardize the fragile relationships which exist among the United
21 States and certain foreign governments. The unauthorized disclosure of information concerning
22 foreign relations or foreign activities of the United States can reasonably be expected to lead to
23 diplomatic or economic retaliation against the United States; identify the target, scope or time
24 frame of intelligence activities of the United States in or about a foreign country, which may
25 result in the curtailment or cessation of these activities; enable hostile entities to assess United
26 States intelligence-gathering activities in or about a foreign country and devise countermeasures
27 against these activities; or compromise cooperative foreign sources which may jeopardize their
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2 safety and curtail the flow of information from these sources. Accordingly, the FBI has properly
3 withheld this information pursuant to Exemption (b)(1).

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5 141. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
6 has been asserted in Category 2A documents to protect internal, non-public telephone numbers of
7 FBI personnel. These internal, non-public telephone numbers are used by FBI personnel while
8 they are working on significant national security and criminal investigations. Disclosure of these
9 internal, non-public telephone numbers could subject these individuals to harassing telephone
10 calls, which could disrupt official business (including impeding the ability of Special Agents to
11 conduct and conclude functions related to the law enforcement investigations in a timely
12 manner). With the narrowing of the application of Exemption (b)(2) to those records which
13 relate to employee relations and human resource issues, the FBI has determined that, in those
14 instances where Exemption (b)(2) has been asserted in conjunction with Exemption (b)(7)(E), the
15 use of Exemption (b)(2) is now withdrawn. Accordingly, because disclosure of these internal,
16 non-public telephone numbers could impede the FBI's effectiveness and may risk circumvention
17 of the law, the FBI has properly withheld this information pursuant to Exemption (b)(2), at times
18 in conjunction with (b)(6) and (b)(7)(C).

19 142. Exemption (b)(3). At times in conjunction with (b)(1), Exemption (b)(3) has been
20 asserted in Category 2A documents to withhold information pursuant to 18 U.S.C. § 2516, which
21 protects from disclosure information pertaining to the authorization of interception of wire, oral,
22 or electronic communications. The Attorney General may authorize an application to a Federal
23 Judge, requesting to intercept wire or oral communications by the FBI when such interception
24 may provide or has provided evidence of a crime, e.g., Charter 37 (Espionage); Charter 90
25 (Protection of Trade Secrets); and Chapter 105 (Sabotage). Where documents at issue contain
26 information, that, if disclosed, would reveal information pertaining to the authorization of
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2 interception of wire, oral, or electronic communications, that information is protected from
3 disclosure by Exemption (b)(3), at times in conjunction with Exemption (b)(1).

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5 143. Exemption (b)(3). In addition, at times in conjunction with (b)(1), Exemption (b)(3) has
6 been asserted in Category 2A documents to withhold information pursuant to 18 U.S.C. §
7 3123(d), the Pen Register Act, which protects from disclosure information pertaining to certain
8 court "order(s) authorizing or approving the installation and use of a pen register or a trap and
9 trace device;" and information pertaining to "the existence of the pen register or trap and trace
10 device or the existence of the investigation." Where documents at issue contain information,
11 that, if disclosed, would reveal the existence or use of a pen register or trap and trace device, or
12 reveal the existence of an investigation involving a pen register or trap and trace device, that
13 information is protected from disclosure by Exemption (b)(3), at times in conjunction with
14 Exemption (b)(1).

15 144. Exemption (b)(5). Exemption (b)(5) has been asserted in Category 2A documents to
16 protect the deliberative process privilege. The deliberative process privilege protects the internal
17 deliberations of an agency by exempting from release recommendations, drafts, analyses,
18 speculation and other non-factual information prepared in anticipation of agency decision-
19 making. The general purpose of the deliberative process privilege is to prevent injury to the
20 quality of agency decisions. The protected material contained FBI talking points presentations
21 related to defining "Going Dark" and the need to preserve lawful intercept capabilities. The draft
22 presentations were being developed for multiple internal and external audiences. The main
23 presentation under development was titled, "Going Dark Initiative: Closing the National Security
24 ELSUR Gap." The presentation defined "Going Dark," showed how ELSUR gaps impacted
25 national security, detailed CALEA shortfalls, and offered possible solutions to close the ELSUR
26 gap. The e-mails summarize meetings concerning legal, technical, legislative, and
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2 communication industry challenges that are limiting the effectiveness of lawful ELSUR intercept
3 capabilities. Some of the e-mails discuss proposed legislative amendments to CALEA to
4 improve intercept capabilities, and to make industry compliance easier.

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6 145. The material in Category 2A includes internal discussions between FBI and DOJ on
7 proposals to change policy, legislation, resources, and FBI operational techniques/procedures as
8 well as detailed identification, analysis, and discussion of technical, legal, policy, and resource
9 impediments to FBI electronic intercept operations. Thus, material that contains or was
10 prepared in connection with the formulation of opinions, advice, evaluations, deliberations,
11 policy formulation, proposals, conclusions or recommendations, may properly be withheld.
12 Release of this type of information would have an inhibitive effect upon the development of
13 policy and administrative direction of an agency because it would chill the full and frank
14 discussion between agency personnel regarding a decision. If agency personnel knew that their
15 preliminary opinions, evaluations and comments would be released for public consumption, they
16 might be more circumspect in what they put in writing, and thereby, impede a candid discussion
17 of the issues surrounding a decision.

18 146. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
19 and (b)(7)(C) have been asserted in Category 1F documents to protect the names and identifying
20 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
21 and/or maintaining the investigative activities reported in these records, or who were consulted
22 on sensitive internal developmental projects (e.g., National Electronic Surveillance Strategy).
23 The SAs mentioned did not choose their assignments. The publicity associated with the release
24 of these SAs' identities, in connection with a particular investigation, or internal developmental
25 project, could trigger hostility toward a particular employee, or pressure of attempted bribery, to
26 obtain intelligence. Publicity, adverse or otherwise, regarding any particular investigation
27 conducted by SAs may seriously impair the SAs effectiveness in conducting future
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2 investigations, or consultations. This privacy consideration also protects SAs from unnecessary,
3 unofficial questioning as to the conduct of an investigation, or internal developmental project,
4 whether or not they are currently employed by the FBI. The names of FBI Professional Support
5 personnel are also withheld in Category 1F documents pursuant to Exemptions (b)(6) and
6 (b)(7)(C), at times in conjunction with (b)(2). Professional Support personnel are assigned to
7 handle tasks related to official criminal investigations, and/or sensitive internal developmental
8 projects (e.g., National Electronic Surveillance Strategy), as reflected in the documents
9 responsive to plaintiff's request. They maintain substantial privacy interests in not having their
10 identities disclosed. Accordingly, the FBI has properly withheld this information pursuant to
11 Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2).

12 147. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
13 been asserted in Category 2A documents to protect the names of personnel from the Criminal
14 Division (CRM), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Drug
15 Enforcement Administration (DEA), National Security Division (NSD), Justice Management
16 Division (JMD), Office of Deputy Attorney General (ODAG), Executive Office for United States
17 Attorney (USAEO), Assistant United States Attorneys (AUSA), and contractors working for the
18 FBI. Publicity (adverse or otherwise) regarding any particular investigation they have been
19 assigned, or internal FBI developmental project (e.g., National Electronic Surveillance Strategy)
20 they may be contracted to help develop, may seriously prejudice their effectiveness in conducting
21 other investigations, or developmental projects. The privacy consideration is also to protect these
22 federal employees, and/or contractors, as individuals, from unnecessary, unofficial questioning as
23 to the course of an investigation or internal developmental project, whether or not they are
24 currently employed by the FBI as contractors, or with Other Government Agencies (OGA's).
25 These employees may have to conduct official inquiries into violations of National Security, or
26 help develop strategic plans, like developing ways to enhance ELSUR capabilities. They come
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2 into contact with all strata of society, conducting searches, research, and making inquiries, all of
3 which result in reasonable but nonetheless serious disturbances to people and their lives. It is
4 possible for an individual targeted by these OGA's to carry a grudge which may last for years,
5 and to seek revenge on the investigators and other federal employees involved in a particular
6 investigation. Foreign governments, or criminal enterprises may threaten FBI contractors
7 searching for intelligence that may benefit their countries or criminal enterprises. The publicity
8 associated with the release of these OGA employee's, and/or contractors identities, in connection
9 with a particular investigation, or internal developmental project, could trigger hostility toward a
10 particular employee, or future threat to obtain intelligence. There is no public interest to be
11 served by disclosing the identities of these employees, and/or contractors, to the public. Thus,
12 disclosure of this information would constitute a "clearly unwarranted and unwarranted invasion
13 of their personal privacy." Accordingly, the FBI has properly withheld this information pursuant
14 to Exemptions (b)(6), and (b)(7)(C).

15 148. Exemptions (b)(6) and (b)(7)(C). In addition, at times Exemptions (b)(6), and (b)(7)(C)
16 have been asserted in Category 2A documents to protect the names and/or identifying
17 information of third-party individuals who were of investigative interest to the FBI and/or other
18 law enforcement agencies. Identifying information withheld concerning these third parties
19 includes addresses, dates of birth, social security numbers, and other personal information. Any
20 link to a law enforcement investigation carries a strong negative connotation and a stigma.
21 Release of the identities of these individuals to the public could subject them to harassment or
22 embarrassment, as well as undue public attention. The FBI has determined that these individuals
23 maintain a substantial privacy interest in not having their identities disclosed. In making a
24 determination whether to release the names and personal information concerning these third
25 parties, the public's interest in disclosure was balanced against the individual's right to privacy.
26 The FBI determined that this information would not enlighten the public on how the FBI

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2 conducts its internal operations and investigations. The FBI concluded that the disclosure of this
3 information would constitute a "clearly unwarranted and unwarranted invasion of their personal
4 privacy." Accordingly, the FBI has properly withheld this information pursuant to Exemptions
5 (b)(6), and (b)(7)(C).

6 149. Exemption (b)(7)(A). Exemption (b)(7)(A) exempts from disclosure records or
7 information compiled for law enforcement purposes, but only to the extent that the production of
8 such law enforcement records or information . . . could reasonably be expected to interfere with
9 enforcement proceedings. Exemption (b)(7)(A), at times in conjunction with (b)(1), has been
10 asserted in Category 2A documents to protect information that either summarize, discuss, or
11 relate to FBI criminal cases which remain in an open or active status. The release of such
12 information would reveal the scope, direction, nature and pace of the investigations as well as
13 reveal information that could harm prospective and/or ongoing government prosecutions in these
14 matters. If the information is released, the individuals and/or entities, who are of investigative
15 interest in the cases could use the information to develop alibis, take steps to circumvent the law,
16 create factitious defenses or intimidate, harass or harm potential witnesses. Accordingly, the
17 FBI has properly withheld this information pursuant to Exemption (b)(7)(A), at times in
18 conjunction with (b)(1).

19 150. Exemption (b)(7)(D). At times in conjunction with (b)(1), Exemption (b)(7)(D) has been
20 asserted in Category 2A documents to withhold information provided to the FBI by a foreign
21 government and/or foreign law enforcement entity under an express assurance of confidentiality
22 according to the Foreign Government Information Classification Guide #1 (G-1 Guide), issued in
23 accordance with E.O. 13526, Information Security Oversight Office (ISOO), the FBI Security
24 Policy Manual, and the designated Original Classification Authority (OCA) of the Executive
25 Assistant Director, National Security Branch. During the course of the FBI's intelligence
26 investigations it received information from a foreign government regarding on-going
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2 investigations. The FBI has many agreements with foreign governments under which security
3 and/or criminal law enforcement information is exchanged. The agreements specify the extent of
4 confidentiality requested by the respective foreign government entity. In this case, the FBI has
5 express confidentiality agreements with this foreign government and/or foreign law enforcement
6 entity which provided information to the FBI during the conduct of intelligence investigations.
7 The FBI's agreements with this law enforcement entity provides express assurance that the FBI
8 will not disclose their identity, as well as the information that they provided to the FBI. If the
9 FBI were to disclose the identities and the information provided by foreign law enforcement
10 entities under an express assurance of confidentiality, such a disclosure would have a chilling
11 effect on the FBI's relationship with these entities. Furthermore, the disclosure would have a
12 chilling effect on the FBI's relationship with other foreign law enforcement agencies which have
13 entered into similar agreements with the FBI. Accordingly, the FBI has properly withheld this
14 information pursuant to Exemption (b)(7)(D), at times in conjunction with (b)(1).

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16 151. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 2A documents
17 to protect law enforcement records that would disclose techniques and procedures for law
18 enforcement investigations or prosecutions, and that would disclose guidelines for law
19 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
20 the law enforcement technique(s) of electronic or communications surveillance focused on
21 problems which hamper FBI's ability to successfully intercept communications systems and
22 networks, and details on preventing the FBI from "Going Dark." The responsive material details
23 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
24 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
25 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
26 release of this detailed information about surveillance techniques and associated problems or
27 vulnerabilities would provide violators a road map for successful law enforcement
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2 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
3 law enforcement surveillance operations and the exploitation of capability weaknesses that would
4 enable them to structure their criminal enterprise and terrorist formulating communications in a
5 manner to evade lawful intercept and/or thwart investigative efforts.

6 **CATEGORY 2B - FBI CYBER DIVISION (CD) RESPONSE (LYNCH)**

7 152. Category 2B contains 19 responsive Bates pages consisting of 2 internal e-mail chains
8 between FBI divisions discussing proposals to solve ELSUR and encryption shortfalls, and
9 deciding criteria for an Intelligence Assessment Report. The first e-mail chain seeks information
10 from a recently issued pen trap and trace order, and the second e-mail chain mentions that the
11 Going Dark Working Group (GDWG) is seeking examples of investigations where CALEA
12 shortfalls and communication service companies' technological advances have hampered the
13 collection of lawful intercepts. The Intelligence Assessment Report titled, "Going Dark:
14 Encryption and the Associated Issues Facing Law Enforcement," discusses software- and
15 hardware-based encryption deployment challenges that hinder both authorized collection and
16 analysis. Of these 19 Bates pages, 18 pages have been withheld in full, and 1 page released in
17 part.

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21 153. Exemption (b)(1). At times Exemption (b)(1) has been asserted in Category 2B
22 documents to withhold information that is properly classified. The information withheld (b)(1) is
23 currently and properly classified under E.O. 13256 at the SECRET level and is exempt from
24 disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert
25 action), intelligence sources or methods, as the unauthorized disclosure of this information could
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2 reasonably be expected to cause serious damage to the national security of the United States.

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4 154. The information withheld pursuant to Exemption (b)(1) for Category 2B documents
5 consists of classified procedures and methods of intelligence-gathering utilized by the FBI to
6 gather intelligence information. An intelligence activity or method has two characteristics.
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8 First, the intelligence activity and information generated by it is needed by U.S.
9 Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality
10 must be maintained with respect to the activity if the viability, productivity, and usefulness of
11 that information is to be preserved. The classification redactions have been asserted to protect
12 from disclosure information that would reveal the actual intelligence activities utilized by the FBI
13 against specific targets of foreign counterintelligence investigations or operations; or disclosure
14 of intelligence gathering capabilities of the activities directed at specific targets. The intelligence
15 activities detailed in the withheld information are effective means for the FBI to gather, store, or
16 disseminate intelligence information. The criteria applied and priorities assigned in these records
17 are used in the FBI's present intelligence or counterintelligence investigations in accordance with
18 the Attorney General's guidelines on FBI intelligence or counterintelligence investigations.
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23 155. The information in these Category 2B documents concerning intelligence activities is
24 very specific in nature and known to very few individuals. Disclosure of the specific information
25 which describes these intelligence activities would reveal that they are still used by the FBI today
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2 to gather intelligence information, and could reasonably be expected to cause serious damage to
3 the national security for the following reasons: (1) disclosure would allow hostile entities to
4 discover the current intelligence activities used; (2) disclosure would reveal or determine the
5 criteria used--and priorities assigned to--current intelligence or counterintelligence investigations;
6 (3) disclosure would reveal the Intelligence Communities (IC's) continual sensitive work creating
7 a decentralized communication medium which would aid in facilitating the sharing of
8 information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the
9 exact data collection and ELSUR capabilities shortfalls that the IC are encountering during
10 National Security investigations due to technology advancements in communication system
11 platforms, and encryption applications. Hostile entities could then develop countermeasures
12 which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely
13 damage the FBI's efforts to detect and apprehend violators of the United States' national security
14 and criminal laws. The FBI protected the identity of intelligence sources, or methods, specific to
15 intelligence activities, because disclosure reasonably could be expected to cause serious damage
16 to the national security. Accordingly, the FBI has properly withheld this information pursuant to
17 Exemption (b)(1).
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23 156. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
24 has been asserted in Category 2B documents to protect internal, non-public telephone numbers of
25 FBI personnel. These internal, non-public telephone numbers are used by FBI personnel while
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2 they are working on significant national security and criminal investigations. Disclosure of these
3 internal, non-public telephone numbers could subject these individuals to harassing telephone
4 calls, which could disrupt official business (including impeding the ability of Special Agents to
5 conduct and conclude functions related to the law enforcement investigations in a timely
6 manner). With the narrowing of the application of Exemption (b)(2) to those records which
7 relate to employee relations and human resource issues, the FBI has determined that, in those
8 instances where Exemption (b)(2) has been asserted in conjunction with Exemption (b)(7)(E), the
9 use of Exemption (b)(2) is now withdrawn. Accordingly, because disclosure of these internal,
10 non-public telephone numbers could impede the FBI's effectiveness and may risk circumvention
11 of the law, the FBI has properly withheld this information pursuant to Exemption (b)(2), at times
12 in conjunction with (b)(6) and (b)(7)(C).
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16 157. Exemption (b)(3). At times in conjunction with (b)(1), Exemption (b)(3) has been
17 asserted in Category 2B documents to withhold information pursuant to 18 U.S.C. § 3123(d), the
18 Pen Register Act, which protects from disclosure information pertaining to certain court "order(s)
19 authorizing or approving the installation and use of a pen register or a trap and trace device;" and
20 information pertaining to "the existence of the pen register or trap and trace device or the
21 existence of the investigation." Where documents at issue contain information, that, if disclosed,
22 would reveal the existence or use of a pen register or trap and trace device, or reveal the
23 existence of an investigation involving a pen register or trap and trace device, that information is
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2 protected from disclosure by Exemption (b)(3), at times in conjunction with Exemption (b)(1).

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4 158. Exemption (b)(3). In addition, at times in conjunction with (b)(1), Exemption (b)(3) has
5 been asserted in Category 2B documents to withhold information pursuant to 50 U.S.C. § 1806,
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7 which protects from disclosure information pertaining to the use of FISA information acquired
8 from electronic surveillance. Where documents at issue contain information, that, if disclosed,
9 would reveal the use of FISA information acquired from electronic surveillance, that information
10 is protected from disclosure by both Exemption (b)(3), at times in conjunction with Exemption
11 (b)(1).

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14 159. Exemption (b)(5). Exemption (b)(5) has been asserted in 17 of the 19 Category 2B
15 documents to protect the deliberative process privilege. The deliberative process privilege
16 protects the internal deliberations of an agency by exempting from release recommendations,
17 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
18 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
19 the quality of agency decisions. The protected material consisted of 2 internal e-mail chains
20 between FBI divisions, and discusses proposals to solve ELSUR and encryption shortfalls, and
21 deciding criteria for an Intelligence Assessment Report. The first e-mail chain seeks information
22 from a recently issued pen trap and trace order, and the second e-mail chain mentions that the
23 Going Dark Working Group (GDWG) is seeking examples of investigations where CALEA
24 shortfalls and communication service companies' technological advances have hampered the
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2 collection of lawful intercepts. The Intelligence Assessment Report titled, "Going Dark:
3 Encryption and the Associated Issues Facing Law Enforcement," discusses software- and
4 hardware-based encryption deployment challenges that hinder both authorized collection and
5 analysis.
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8 160. Thus, material that contains or was prepared in connection with the formulation of
9 opinions, advice, evaluations, deliberations, policy formulation, proposals, conclusions or
10 recommendations, may properly be withheld. Release of this type of information would have an
11 inhibitive effect upon the development of policy and administrative direction of an agency
12 because it would chill the full and frank discussion between agency personnel regarding a
13 decision. If agency personnel knew that their preliminary opinions, evaluations and comments
14 would be released for public consumption, they might be more circumspect in what they put in
15 writing, and thereby, impede a candid discussion of the issues surrounding a decision.
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18 161. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
19 and (b)(7)(C) have been asserted in Category 2B documents to protect the names and identifying
20 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
21 and/or maintaining the investigative activities reported in these records, or who were consulted
22 on sensitive internal developmental projects (e.g., National Electronic Surveillance Strategy).
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24 The SAs mentioned did not choose their assignments. The publicity associated with the release
25 of these SAs' identities, in connection with a particular investigation, or internal developmental
26 project, could trigger hostility toward a particular employee, or pressure of attempted bribery, to
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2 obtain intelligence. Publicity, adverse or otherwise, regarding any particular investigation
3 conducted by SAs may seriously impair the SAs effectiveness in conducting future
4 investigations, or consultations. This privacy consideration also protects SAs from unnecessary,
5 unofficial questioning as to the conduct of an investigation, or internal developmental project,
6 whether or not they are currently employed by the FBI. The names of FBI Professional Support
7 personnel are also withheld in Category 2B documents pursuant to Exemptions (b)(6) and
8 (b)(7)(C), at times in conjunction with (b)(2). Professional Support personnel are assigned to
9 handle tasks related to official criminal investigations, and/or internal developmental projects
10 (e.g., National Electronic Surveillance Strategy), as reflected in the documents responsive to
11 plaintiff's request. They maintain substantial privacy interests in not having their identities
12 disclosed. Accordingly, the FBI has properly withheld this information pursuant to Exemptions
13 (b)(6) and (b)(7)(C), at times in conjunction with (b)(2).

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17 162. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
18 been asserted in Category 2B documents to protect the names and identifying information of
19 third parties that were merely mentioned in the documents responsive to plaintiff's request.
20 These individuals are not of investigative interest to the FBI. Release of this type of information
21 about private citizens, without notarized authorizations permitting such a release violates
22 individuals legitimate privacy interests. If the FBI disclosed their names and/or other personal
23 information, the disclosure would reveal that these third parties were at one time connected with
24 an FBI investigation in some way. Disclosure of their identities could subject these individuals
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2 to possible harassment or criticism and focus derogatory inferences and suspicion on them.

3 Thus, the FBI determined that these individuals' privacy interests outweighed any public interest
4 in disclosure, and that disclosure of the names and/or identifying information of the third parties
5 merely mentioned would constitute a "clearly unwarranted and unwarranted invasion of personal
6 privacy." Accordingly, the FBI has properly withheld this information pursuant to Exemptions
7 (b)(6) and (b)(7)(C).
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10 163. Exemptions (b)(6)and (b)(7)(C). In addition, at times Exemptions (b)(6), and (b)(7)(C)
11 have been asserted in Category 2B documents to protect the name of a employee from the
12 Criminal Division (DOJ/CRM). Publicity (adverse or otherwise) regarding any particular
13 investigation they have been assigned, or internal FBI developmental project (e.g., National
14 Electronic Surveillance Strategy) they may have consulted on during development, may seriously
15 prejudice their effectiveness in conducting other investigations, or internal developmental
16 projects. The privacy consideration is also to protect this federal employee, as an individual,
17 from unnecessary, unofficial questioning as to the course of an investigation or internal
18 developmental project, whether or not they are currently with another government agency. This
19 employee may have to conduct official inquiries into violations of National Security, or help
20 develop strategic plans, like developing ways to enhance ELSUR capabilities. They come into
21 contact with all strata of society, conducting searches, research, and making inquiries, all of which
22 result in reasonable but nonetheless serious disturbances to people and their lives. It is possible
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2 for an individual targeted by this OGA to carry a grudge which may last for years, and to seek
3 revenge on the investigators and the federal employee involved in a particular investigation.
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5 Foreign governments, or criminal enterprises may threaten this OGA employee searching for
6 intelligence that may benefit their countries or criminal enterprises. The publicity associated
7 with the release of this OGA employee identity, in connection with a particular investigation, or
8 developmental project, could trigger hostility toward a particular employee, or future threat to
9 obtain intelligence. There is no public interest to be served by disclosing the identity of this
10 employee to the public. Thus, disclosure of this information would constitute a "clearly
11 unwarranted and unwarranted invasion of their personal privacy." Accordingly, the FBI has
12 properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C).
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16 164. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 1E documents
17 to protect law enforcement records that would disclose techniques and procedures for law
18 enforcement investigations or prosecutions, and that would disclose guidelines for law
19 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
20 the law enforcement technique(s) of electronic or communications surveillance focused on
21 problems which hamper FBI's ability to successfully intercept communications systems and
22 networks, and details on preventing the FBI from "Going Dark." The responsive material details
23 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
24 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
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2 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
3 release of this detailed information about surveillance techniques and associated problems or
4 vulnerabilities would provide violators a road map for successful law enforcement
5 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
6 law enforcement surveillance operations and the exploitation of capability weaknesses that would
7 enable them to structure their criminal enterprise and terrorist formulating communications in a
8 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
9 properly withheld this information pursuant to Exemption (b)(7)(E).
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13 **CATEGORY 2C - FBI COUNTER TERRORISM DIVISION (CTD) RESPONSE**
14 **(LYNCH)**

15 165. Category 2C contains 16 responsive Bates pages consisting of 4 internal e-mail chains
16 between FBI divisions, and 4 talking points presentations/papers. One of the e-mail chains
17 discusses the difficulty the FBI was having with a certain cellular communications provider
18 concerning a lawful intercept order. The first talking points presentation details the most
19 frequently asked questions relating to the collection, interpretation, and preservation of
20 intelligence data provided by an Internet Service Provider (ISP) in response to either a FISA
21 order, NSL, and/or search warrant. The second talking points presentation is in the form of a 2
22 page "User Guide" on how to read User, History, and Messaging Shorthand provided by a certain
23 ISP. The third presentation is a 1 page talking points summary report that defines what a social
24 networking company is, and what can or cannot be obtained with a NSL/Subpoena. Finally, the
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2 fourth talking points paper consists of 4 pages of a summary notes from an FBI employee on his
3 interpretation of the frequently asked questions and answers concerning collection, interpreting,
4 and preservation of data provided by ISP's in response to a FISA order, NSL, and/or search
5 warrant. Of these 16 Bates pages, 7 pages have been withheld in full, 8 pages released in part,
6 and 1 page released in full.
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9 166. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
10 has been asserted in Category 2C documents to protect internal, non-public telephone numbers of
11 FBI personnel. These internal, non-public telephone numbers are used by FBI personnel while
12 they are working on significant national security and criminal investigations. Disclosure of these
13 internal, non-public telephone numbers could subject these individuals to harassing telephone
14 calls, which could disrupt official business (including impeding the ability of Special Agents to
15 conduct and conclude functions related to the law enforcement investigations in a timely
16 manner). With the narrowing of the application of Exemption (b)(2) to those records which
17 relate to employee relations and human resource issues, the FBI has determined that, in those
18 instances where Exemption (b)(2) has been asserted in conjunction with Exemption (b)(7)(E), the
19 use of Exemption (b)(2) is now withdrawn. Accordingly, because disclosure of these internal,
20 non-public telephone numbers could impede the FBI's effectiveness and may risk circumvention
21 of the law, the FBI has properly withheld this information pursuant to Exemption (b)(2), at times
22 in conjunction with (b)(6) and (b)(7)(C).
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2 167. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
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4 and (b)(7)(C) have been asserted in Category 2C documents to protect the names and identifying
5 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
6 and/or maintaining the investigative activities reported in these records, or who were consulted
7 on sensitive developmental projects (e.g., National Electronic Surveillance Strategy). The SAs
8 mentioned did not choose their assignments. The publicity associated with the release of these
9 SAs' identities, in connection with a particular investigation, or internal developmental project,
10 could trigger hostility toward a particular employee, or pressure of attempted bribery, to obtain
11 intelligence. Publicity, adverse or otherwise, regarding any particular investigation conducted by
12 SAs may seriously impair the SAs effectiveness in conducting future investigations, or
13 consultations. This privacy consideration also protects SAs from unnecessary, unofficial
14 questioning as to the conduct of an investigation, or internal developmental project, whether or
15 not they are currently employed by the FBI. The names of FBI Professional Support personnel
16 are also withheld in Category 2C documents pursuant to Exemptions (b)(6) and (b)(7)(C), at
17 times in conjunction with (b)(2). Professional Support personnel are assigned to handle tasks
18 related to official criminal investigations, and/or developmental projects (e.g., National
19 Electronic Surveillance Strategy), as reflected in the documents responsive to plaintiff's request.
20 They maintain substantial privacy interests in not having their identities disclosed. Accordingly,
21 the FBI has properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C), at
22 times in conjunction with (b)(2).
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2 168. Exemptions (b)(6) and (b)(7)(C). Exemptions (b)(6), and (b)(7)(C) have also been
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4 asserted in a Category 2C document to protect the name and identifying information of a
5 corporate legal officer in the communication industry that was merely mentioned in a document
6 responsive to plaintiff's request. This individual was not of investigative interest to the FBI, but
7 was identified in connection with an ELSUR compliance legal issue. Release of this type of
8 information about private citizens, without notarized authorizations permitting such a release
9 violates individuals legitimate privacy interests. If the FBI disclosed their names and/or other
10 personal information, the disclosure would reveal that these third parties were at one time
11 connected with an FBI investigation, or developmental project, in some way. Disclosure of their
12 identities could subject these individuals to possible harassment or criticism and focus derogatory
13 inferences and suspicion on them.
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16 169. The FBI also examined the record at issue to determine whether there was any public
17 interest that outweighed the substantial privacy interests of the corporate employee merely
18 mentioned in the responsive records. The FBI could not identify any discernible public interest.
19 In particular, the FBI could not determine how the disclosure of the name, and/or identifying
20 information of this individual would shed any light on the operations and activities of the FBI.
21 Thus, the FBI determined that this individuals' privacy interests outweighed any public interest in
22 disclosure, and that disclosure of the name and/or identifying information of this third party
23 merely mentioned would constitute a "clearly unwarranted and unwarranted invasion of personal
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2 privacy." The FBI properly withheld this information pursuant to Exemptions (b)(6) and
3 (b)(7)(C).
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5 170. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 2C documents
6 to protect law enforcement records that would disclose techniques and procedures for law
7 enforcement investigations or prosecutions, and that would disclose guidelines for law
8 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
9 the law enforcement technique(s) of electronic or communications surveillance focused on
10 problems which hamper FBI's ability to successfully intercept communications systems and
11 networks, and details on preventing the FBI from "Going Dark." The responsive material details
12 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
13 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
14 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
15 release of this detailed information about surveillance techniques and associated problems or
16 vulnerabilities would provide violators a road map for successful law enforcement
17 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
18 law enforcement surveillance operations and the exploitation of capability weaknesses that would
19 enable them to structure their criminal enterprise and terrorist formulating communications in a
20 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
21 properly withheld this information pursuant to Exemption (b)(7)(E).
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2 **CATEGORY 2D - FBI OFFICE OF THE GENERAL COUNSEL (OGC) RESPONSE**
3 **(LYNCH)**

4 171. Category 2D contains 35 responsive Bates pages consisting of internal e-mail chains
5 (many partly classified) between FBI divisions, and a talking point paper. These e-mails
6 summarize meetings concerning legal, technical, legislative proposals, and communication
7 industry challenges that are limiting the effectiveness of lawful ELSUR intercept capabilities. A
8 majority of the e-mails discuss challenges working with foreign based communication service
9 providers, how peer to peer applications will continue to erode the FBI's ELSUR capabilities due
10 to the level of encryption, and exchange process that is very secure, and how expanding
11 technological advancements and multiple communication service platforms have highlighted
12 CALEA shortfalls. 2 of the email chains discuss the development of a talking points paper for
13 Director Mueller concerning cooperation and assistance efforts provided by ISP's, and legal and
14 technological issues that have effected FBI investigations. The talking points paper was prepared
15 for Director Mueller and details the cooperation and assistance provided by ISP's and how legal
16 and technical issues have effected FBI Investigations (case examples provided). Of these 35
17 Bates pages, 2 pages have been withheld in full, 32 pages released in part, and 1 page released in
18 full.
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23 172. Exemption (b)(1). At times Exemption (b)(1) has been asserted in Category 2D
24 documents to withhold information that is properly classified. The information withheld (b)(1) is
25 currently and properly classified under E.O. 13256 at the SECRET level and is exempt from
26 disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert
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2 action), intelligence sources or methods, and category (d) foreign relations, or foreign activities
3 of the United States, including confidential sources, as the unauthorized disclosure of this
4 information could reasonably be expected to cause serious damage to the national security of the
5 United States.
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8 173. The information withheld pursuant to Exemption (b)(1) for Category 2D documents
9 consists of classified procedures and methods of intelligence-gathering utilized by the FBI to
10 gather intelligence information. An intelligence activity or method has two characteristics.
11 First, the intelligence activity and information generated by it is needed by U.S.
12 Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality
13 must be maintained with respect to the activity if the viability, productivity, and usefulness of
14 that information is to be preserved. The classification redactions have been asserted to protect
15 from disclosure information that would reveal the actual intelligence activities utilized by the FBI
16 against specific targets of foreign counterintelligence investigations or operations; or disclosure
17 of intelligence gathering capabilities of the activities directed at specific targets. The intelligence
18 activities detailed in the withheld information are effective means for the FBI to gather, store, or
19 disseminate intelligence information. The criteria applied and priorities assigned in these records
20 are used in the FBI's present intelligence or counterintelligence investigations in accordance with
21 the Attorney General's guidelines on FBI intelligence or counterintelligence investigations.
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25 174. The information in these Category 2D documents concerning intelligence activities is
26 very specific in nature and known to very few individuals. Disclosure of the specific information
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2 which describes these intelligence activities would reveal that they are still used by the FBI today
3 to gather intelligence information, and could reasonably be expected to cause serious damage to
4 the national security for the following reasons: (1) disclosure would allow hostile entities to
5 discover the current intelligence activities used; (2) disclosure would reveal or determine the
6 criteria used--and priorities assigned to--current intelligence or counterintelligence investigations;
7 (3) disclosure would reveal the Intelligence Community's (IC's) continual sensitive work creating
8 a decentralized communication medium which would aid in facilitating the sharing of
9 information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the
10 exact data collection and ELSUR capabilities shortfalls that the IC are encountering during
11 National Security investigations due to technology advancements in communication system
12 platforms, and encryption applications. Hostile entities could then develop countermeasures
13 which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely
14 damage the FBI's efforts to detect and apprehend violators of the United States' national security
15 and criminal laws. The FBI protected the identity of intelligence sources, or methods, specific to
16 intelligence activities, because disclosure reasonably could be expected to cause serious damage
17 to the national security. Accordingly, the FBI has properly withheld this information pursuant to
18 Exemption (b)(1).

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24 175. Exemption (b)(1). In addition, information withheld pursuant to Exemption (b)(1) in
25 these Category 2D documents has also been found to affect the foreign relations of the United
26 States, and much like foreign government information, this relationship and/or activities, does
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2 not lose its sensitivity with the passage of time. The delicate liaisons established between and
3 among the United States and foreign governments could be severely damaged should the United
4 States disclose such information from these investigations. As a result, such information must be
5 handled with care so as to not jeopardize the fragile relationships which exist among the United
6 States and certain foreign governments. The unauthorized disclosure of information concerning
7 foreign relations or foreign activities of the United States can reasonably be expected to lead to
8 diplomatic or economic retaliation against the United States; identify the target, scope or time
9 frame of intelligence activities of the United States in or about a foreign country, which may
10 result in the curtailment or cessation of these activities; enable hostile entities to assess United
11 States intelligence-gathering activities in or about a foreign country and devise countermeasures
12 against these activities; or compromise cooperative foreign sources which may jeopardize their
13 safety and curtail the flow of information from these sources. Accordingly, the FBI has properly
14 withheld this information pursuant to Exemption (b)(1).

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19 176. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
20 has been asserted in Category 2D documents to protect internal, non-public telephone numbers of
21 FBI personnel. These internal, non-public telephone numbers are used by FBI personnel while
22 they are working on significant national security and criminal investigations. Disclosure of these
23 internal, non-public telephone numbers could subject these individuals to harassing telephone
24 calls, which could disrupt official business (including impeding the ability of Special Agents to
25 conduct and conclude functions related to the law enforcement investigations in a timely
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2 manner). With the narrowing of the application of Exemption (b)(2) to those records which
3 relate to employee relations and human resource issues, the FBI has determined that, in those
4 instances where Exemption (b)(2) has been asserted in conjunction with Exemption (b)(7)(E), the
5 use of Exemption (b)(2) is now withdrawn. Accordingly, because disclosure of these internal,
6 non-public telephone numbers could impede the FBI's effectiveness and may risk circumvention
7 of the law, the FBI has properly withheld this information pursuant to Exemption (b)(2), at times
8 in conjunction with (b)(6) and (b)(7)(C).
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12 177. Exemption (b)(3). In conjunction with (b)(1), Exemption (b)(3) has been asserted in a
13 Category 2D document to withhold information pursuant to 18 U.S.C. § 3123(d), the Pen
14 Register Act, which protects from disclosure information pertaining to certain court "order(s)
15 authorizing or approving the installation and use of a pen register or a trap and trace devise;" and
16 information pertaining to "the existence of the pen register or trap and trace device or the
17 existence of the investigation." Where documents at issue contain information, that, if disclosed,
18 would reveal the existence or use of a pen register or trap and trace device, or reveal the
19 existence of an investigation involving a pen register or trap and trace device, that information is
20 protected from disclosure by Exemption (b)(3), at times in conjunction with Exemption (b)(1).
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24 178. Exemption (b)(5). Exemption (b)(5) has been asserted in 32 of the 35 Category 2D
25 documents to protect the deliberative process privilege. The deliberative process privilege
26 protects the internal deliberations of an agency by exempting from release recommendations,
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2 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
3 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
4 the quality of agency decisions. The protected material contained draft deliberative e-mail
5 chains, and a talking points paper related to the FBI's strategic policy development process
6 concerning surveillance challenges posed by emerging technologies. The e-mails summarize
7 meetings concerning legal, technical, legislative proposals, and communication industry
8 challenges that are limiting the effectiveness of lawful ELSUR intercept capabilities. A majority
9 of the e-mails discuss challenges working with foreign based communication service providers,
10 how peer to peer applications will continue to erode the FBI's ELSUR capabilities due to the
11 level of encryption, and exchange process that is very secure, and how expanding technological
12 advancements and multiple communication service platforms have highlighted CALEA
13 shortfalls. The deliberative talking points paper, which was prepared for Director Mueller,
14 discusses details of the cooperation and assistance provided by ISP's and how legal and technical
15 issues have effected FBI Investigations.

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20 179. Thus, material that contains or was prepared in connection with the formulation of
21 opinions, advice, evaluations, deliberations, policy formulation, proposals, conclusions or
22 recommendations, may properly be withheld. Release of this type of information would have an
23 inhibitive effect upon the development of policy and administrative direction of an agency
24 because it would chill the full and frank discussion between agency personnel regarding a
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2 decision. If agency personnel knew that their preliminary opinions, evaluations and comments
3 would be released for public consumption, they might be more circumspect in what they put in
4 writing, and thereby, impede a candid discussion of the issues surrounding a decision.
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6 Accordingly, the FBI has properly withheld this information pursuant to Exemption (b)(5).

7 180. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions
8 (b)(6), and (b)(7)(C) have been asserted in Category 2D documents to protect the names and
9 identifying information of FBI Special Agents (SAs) who were responsible for conducting,
10 supervising, and/or maintaining the investigative activities reported in these records, or who were
11 consulted on sensitive internal developmental projects (e.g., National Electronic Surveillance
12 Strategy). The SAs mentioned did not choose their assignments. The publicity associated with
13 the release of these SAs' identities, in connection with a particular investigation, or internal
14 developmental project, could trigger hostility toward a particular employee, or pressure of
15 attempted bribery, to obtain intelligence. Publicity, adverse or otherwise, regarding any
16 particular investigation conducted by SAs may seriously impair the SAs effectiveness in
17 conducting future investigations, or consultations. This privacy consideration also protects SAs
18 from unnecessary, unofficial questioning as to the conduct of an investigation, or internal
19 developmental project, whether or not they are currently employed by the FBI. The names of
20 FBI Professional Support personnel are also withheld in Category 2D documents pursuant to
21 Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2). Professional Support
22 personnel are assigned to handle tasks related to official criminal investigations, and/or
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2 developmental projects (e.g., National Electronic Surveillance Strategy), as reflected in the
3 documents responsive to plaintiff's request. They maintain substantial privacy interests in not
4 having their identities disclosed. Accordingly, the FBI has properly withheld this information
5 pursuant to Exemptions (b)(6) and (b)(7)(C), at times in conjunction with (b)(2).
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8 181. Exemptions (b)(6) and (b)(7)(C). In addition, in conjunction with (b)(7)(D), and (b)(1),
9 Exemptions (b)(6), and (b)(7)(C) have been asserted in Category 2D documents to withhold the
10 names and identifying information of intelligence officers of a Foreign Intelligence Agency who
11 provided tactical advice and intelligence concerning on-going investigations. The confidentiality
12 of the identities of these foreign intelligence officers is given under an express assurance of
13 confidentiality according to the Foreign Government Information Classification Guide #1 (G-1
14 Guide), issued in accordance with E.O. 13526, Information Security Oversight Office (ISOO),
15 the FBI Security Policy Manual, and the designated Original Classification Authority (OCA) of
16 the Executive Assistant Director, National Security Branch. During the course of the FBI's
17 intelligence investigations it received information from intelligence officers of a foreign
18 government regarding on-going investigations. The FBI has many agreements with foreign
19 governments under which security and/or criminal law enforcement information is exchanged.
20 The agreements specify the extent of confidentiality requested by the respective foreign
21 government entity. In this case, the FBI has express confidentiality agreements with this foreign
22 government and/or foreign law enforcement entity which provided information to the FBI during
23 the conduct of intelligence investigations, to protect the identity of its intelligence officers. The
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2 FBI's agreements with this law enforcement entity provides express assurance that the FBI will
3 not disclose their identity, the identity of their intelligence officers, as well as the information
4 that they provided to the FBI. If the FBI were to disclose the identities of these foreign
5 governments, the names of their intelligence officers, and the information provided by foreign
6 law enforcement entities under an express assurance of confidentiality, such a disclosure would
7 have a chilling effect on the FBI's relationship with these entities. Furthermore, the disclosure
8 would have a chilling effect on the FBI's relationship with other foreign law enforcement
9 agencies which have entered into similar agreements with the FBI. Accordingly, the FBI has
10 properly withheld this information pursuant to Exemption (b)(6), and (b)(7)(C), in conjunction
11 with (b)(7)(D), and (b)(1).
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15 182. Exemption (b)(7)(A). Exemption (b)(7)(A) exempts from disclosure records or
16 information compiled for law enforcement purposes, but only to the extent that the production of
17 such law enforcement records or information . . . could reasonably be expected to interfere with
18 enforcement proceedings. Exemption (b)(7)(A), at times in conjunction with (b)(1), has been
19 asserted in Category 2D documents to protect information that either summarize, discuss, or
20 relate to FBI criminal cases which remain in an open or active status. The release of such
21 information would reveal the scope, direction, nature and pace of the investigations as well as
22 reveal information that could harm prospective and/or ongoing government prosecutions in these
23 matters. If the information is released, the individuals and/or entities, who are of investigative
24 interest in the cases could use the information to develop alibis, take steps to circumvent the law,
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2 create factitious defenses or intimidate, harass or harm potential witnesses. Accordingly, the
3 FBI has properly withheld this information pursuant to Exemption (b)(7)(A), at times in
4 conjunction with (b)(1).
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7 183. Exemption (b)(7)(D). Exemption (b)(7)(D) has been asserted in Category 2D documents
8 to withhold information provided to the FBI by commercial/private companies and other non-
9 government entities under circumstances from which an assurance of confidentiality may be
10 implied. During the course of the FBI's intelligence investigations, certain commercial/private
11 companies provided information to the FBI relating to the subjects of these investigations. To
12 disclose the fact that these companies provided information to the FBI during the course of an
13 investigation could harm the commercial interests of these enterprises by deterring the public
14 from employing their services. In addition, such a disclosure has wider implications. If the FBI
15 disclosed the identities of confidential sources that provide information to the FBI on a
16 continuing basis, that revelation would have a chilling effect on the activities and cooperation of
17 other current or potential future FBI confidential sources. Accordingly, the FBI has properly
18 withheld this information pursuant to Exemption (b)(7)(D).
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22 184. Exemption (b)(7)(D). In addition, at times in conjunction with (b)(1), Exemption
23 (b)(7)(D) has been asserted in Category 2D documents to withhold information provided to the
24 FBI by a foreign government and/or foreign law enforcement entity under an express assurance
25 of confidentiality according to the Foreign Government Information Classification Guide #1 (G-1
26 Guide), issued in accordance with E.O. 13526, Information Security Oversight Office (ISOO),
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2 the FBI Security Policy Manual, and the designated Original Classification Authority (OCA) of
3 the Executive Assistant Director, National Security Branch. During the course of the FBI's
4 intelligence investigations it received information from a foreign government regarding on-going
5 investigations. The FBI has many agreements with foreign governments under which security
6 and/or criminal law enforcement information is exchanged. The agreements specify the extent of
7 confidentiality requested by the respective foreign government entity. In this case, the FBI has
8 express confidentiality agreements with this foreign government and/or foreign law enforcement
9 entity which provided information to the FBI during the conduct of intelligence investigations.
10 The FBI's agreements with this law enforcement entity provides express assurance that the FBI
11 will not disclose their identity, as well as the information that they provided to the FBI. If the
12 FBI were to disclose the identities and the information provided by foreign law enforcement
13 entities under an express assurance of confidentiality, such a disclosure would have a chilling
14 effect on the FBI's relationship with these entities. Furthermore, the disclosure would have a
15 chilling effect on the FBI's relationship with other foreign law enforcement agencies which have
16 entered into similar agreements with the FBI. Accordingly, the FBI has properly withheld this
17 information pursuant to Exemption (b)(7)(D), at times in conjunction with (b)(1).

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22 185. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 2D documents
23 to protect law enforcement records that would disclose techniques and procedures for law
24 enforcement investigations or prosecutions, and that would disclose guidelines for law
25 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
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2 the law enforcement technique(s) of electronic or communications surveillance focused on
3 problems which hamper FBI's ability to successfully intercept communications systems and
4 networks, and details on preventing the FBI from "Going Dark." The responsive material details
5 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
6 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
7 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
8 release of this detailed information about surveillance techniques and associated problems or
9 vulnerabilities would provide violators a road map for successful law enforcement
10 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
11 law enforcement surveillance operations and the exploitation of capability weaknesses that would
12 enable them to structure their criminal enterprise and terrorist formulating communications in a
13 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
14 properly withheld this information pursuant to Exemption (b)(7)(E).

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19 **CATEGORY 2E - FBI COUNTER-INTELLIGENCE (CID) RESPONSE (LYNCH)**

20 186. Category 2E contains 72 responsive Bates pages consisting of internal e-mail chains
21 (many classified) between FBI divisions and/or FBI field offices involved in mostly pending
22 investigations, a discussion paper, and a mostly classified Electronic Communication (EC). The
23 internal e-mail discussions summarize meetings concerning technical ELSUR challenges that are
24 limiting the effectiveness of lawful ELSUR intercept capabilities, and proposed legislative
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2 solutions. The mostly pending investigations outlined in the e-mails highlight ELSUR
3 limitations and the need to preserve lawful intercept capabilities by amending CALEA,
4 improving cooperation and assistance from communication service providers, and developing
5 advanced investigative techniques. A 2 page discussion paper summarizes new technological
6 advances in the Voice-over-IP network (VoIP) services that limit ELSUR capabilities. Finally, an
7 internal EC, concerning a classified investigation, discusses the issues concerning a Voice-over
8 Internet Protocol (VoIP) service provider and possible involvement with foreign entities. Of
9 these 72 Bates pages, 36 pages have been withheld in full, 31 pages released in part, and 5 pages
10 released in full.
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15 187. Exemption (b)(1). At times Exemption (b)(1) has been asserted in Category 2E
16 documents to withhold information that is properly classified. The information withheld (b)(1) is
17 currently and properly classified under E.O. 13256 at the SECRET level and is exempt from
18 disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert
19 action), intelligence sources or methods, as the unauthorized disclosure of this information could
20 reasonably be expected to cause serious damage to the national security of the United States.
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23 188. The information withheld pursuant to Exemption (b)(1) for Category 2E documents
24 consists of classified procedures and methods of intelligence-gathering utilized by the FBI to
25 gather intelligence information. An intelligence activity or method has two characteristics.
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2 First, the intelligence activity and information generated by it is needed by U.S.
3 Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality
4 must be maintained with respect to the activity if the viability, productivity, and usefulness of
5 that information is to be preserved. The classification redactions have been asserted to protect
6 from disclosure information that would reveal the actual intelligence activities utilized by the FBI
7 against specific targets of foreign counterintelligence investigations or operations; or disclosure
8 of intelligence gathering capabilities of the activities directed at specific targets. The intelligence
9 activities detailed in the withheld information are effective means for the FBI to gather, store, or
10 disseminate intelligence information. The criteria applied and priorities assigned in these records
11 are used in the FBI's present intelligence or counterintelligence investigations in accordance with
12 the Attorney General's guidelines on FBI intelligence or counterintelligence investigations.
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17 189. The information in these Category 2E documents concerning intelligence activities is very
18 specific in nature and known to very few individuals. Disclosure of the specific information
19 which describes these intelligence activities would reveal that they are still used by the FBI today
20 to gather intelligence information, and could reasonably be expected to cause serious damage to
21 the national security for the following reasons: (1) disclosure would allow hostile entities to
22 discover the current intelligence activities used; (2) disclosure would reveal or determine the
23 criteria used--and priorities assigned to--current intelligence or counterintelligence investigations;
24 (3) disclosure would reveal the Intelligence Communities (IC's) continual sensitive work creating
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2 a decentralized communication medium which would aid in facilitating the sharing of
3 information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the
4 exact data collection and ELSUR capabilities shortfalls that the IC are encountering during
5 National Security investigations due to technology advancements in communication system
6 platforms, and encryption applications. Hostile entities could then develop countermeasures
7 which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely
8 damage the FBI's efforts to detect and apprehend violators of the United States' national security
9 and criminal laws. The FBI protected the identity of intelligence sources, or methods, specific to
10 intelligence activities, because disclosure reasonably could be expected to cause serious damage
11 to the national security. Accordingly, the FBI has properly withheld this information pursuant to
12 Exemption (b)(1).
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17 190. Exemption (b)(2). At times in conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2)
18 has been asserted in Category 2E documents to protect internal, non-public telephone numbers of
19 FBI personnel. These internal, non-public telephone numbers are used by FBI personnel while
20 they are working on significant national security and criminal investigations. Disclosure of these
21 internal, non-public telephone numbers could subject these individuals to harassing telephone
22 calls, which could disrupt official business (including impeding the ability of Special Agents to
23 conduct and conclude functions related to the law enforcement investigations in a timely
24 manner). With the narrowing of the application of Exemption (b)(2) to those records which
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2 relate to employee relations and human resource issues, the FBI has determined that, in those
3 instances where Exemption (b)(2) has been asserted in conjunction with Exemption (b)(7)(E), the
4 use of Exemption (b)(2) is now withdrawn. Accordingly, because disclosure of these internal,
5 non-public telephone numbers could impede the FBI's effectiveness and may risk circumvention
6 of the law, the FBI has properly withheld this information pursuant to Exemption (b)(2), at times
7 in conjunction with (b)(6) and (b)(7)(C).
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10 191. Exemption (b)(3). At times in conjunction with (b)(1), Exemption (b)(3) has been
11 asserted in Category 2E documents to withhold information pursuant to 18 U.S.C. § 2516, which
12 protects from disclosure information pertaining to the authorization of interception of wire, oral,
13 or electronic communications. The Attorney General may authorize an application to a Federal
14 Judge, requesting to intercept wire or oral communications by the FBI when such interception
15 may provide or has provided evidence of a crime, e.g., Charter 37 (Espionage); Charter 90
16 (Protection of Trade Secrets); and Chapter 105 (Sabotage). Where documents at issue contain
17 information, that, if disclosed, would reveal information pertaining to the authorization of
18 interception of wire, oral, or electronic communications, that information is protected from
19 disclosure by Exemption (b)(3), at times in conjunction with Exemption (b)(1).
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24 192. Exemption (b)(5). Exemption (b)(5) has been asserted in Category 2E documents to
25 protect the deliberative process privilege. The deliberative process privilege protects the internal
26 deliberations of an agency by exempting from release recommendations, drafts, analyses,
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2 speculation and other non-factual information prepared in anticipation of agency decision-
3 making. The general purpose of the deliberative process privilege is to prevent injury to the
4 quality of agency decisions. The protected material contained deliberative discussions in
5 internal e-mail chains (many classified) between FBI divisions and/or FBI field offices involved
6 in mostly pending investigations. The internal e-mail discussions summarize meetings
7 concerning technical ELSUR and legal challenges that are limiting the effectiveness of lawful
8 ELSUR intercept capabilities, and proposed legislative solutions. The mostly pending
9 investigations outlined in the e-mails highlight ELSUR limitations and discussions on preserving
10 lawful intercept capabilities by proposing amendments to CALEA, improving cooperation and
11 assistance from communication service providers, and developing advanced investigative
12 techniques.
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16 193. Thus, material that contains or was prepared in connection with the formulation of
17 opinions, advice, evaluations, deliberations, policy formulation, proposals, conclusions or
18 recommendations, may properly be withheld. Release of this type of information would have an
19 inhibitive effect upon the development of policy and administrative direction of an agency
20 because it would chill the full and frank discussion between agency personnel regarding a
21 decision. If agency personnel knew that their preliminary opinions, evaluations and comments
22 would be released for public consumption, they might be more circumspect in what they put in
23 writing, and thereby, impede a candid discussion of the issues surrounding a decision.
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25 Accordingly, the FBI has properly withheld this information pursuant to Exemption (b)(5).
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2 194. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
3 and (b)(7)(C) have been asserted in Category 2E documents to protect the names and identifying
4 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
5 and/or maintaining the investigative activities reported in these records, or who were consulted
6 on sensitive internal developmental projects (e.g., National Electronic Surveillance Strategy).
7 The SAs mentioned did not choose their assignments. The publicity associated with the release
8 of these SAs' identities, in connection with a particular investigation, or internal developmental
9 project, could trigger hostility toward a particular employee, or pressure of attempted bribery, to
10 obtain intelligence. Publicity, adverse or otherwise, regarding any particular investigation
11 conducted by SAs may seriously impair the SAs effectiveness in conducting future
12 investigations, or consultations. This privacy consideration also protects SAs from unnecessary,
13 unofficial questioning as to the conduct of an investigation, or developmental project, whether or
14 not they are currently employed by the FBI. The names of FBI Professional Support personnel
15 are also withheld in Category 2E documents pursuant to Exemptions (b)(6) and (b)(7)(C), at
16 times in conjunction with (b)(2). Professional Support personnel are assigned to handle tasks
17 related to official criminal investigations, and/or developmental projects (e.g., National
18 Electronic Surveillance Strategy), as reflected in the documents responsive to plaintiff's request.
19 They maintain substantial privacy interests in not having their identities disclosed. Accordingly,
20 the FBI has properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C), at
21 times in conjunction with (b)(2).
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2 195. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
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4 been asserted in Category 2E documents to protect the names and identifying information of third
5 parties that were merely mentioned in the documents responsive to plaintiff's request. These
6 individuals are not of investigative interest to the FBI. Release of this type of information about
7 private citizens, without notarized authorizations permitting such a release violates individuals
8 legitimate privacy interests. If the FBI disclosed their names and/or other personal information,
9 the disclosure would reveal that these third parties were at one time connected with an FBI
10 investigation, or developmental project, in some way. Disclosure of their identities could subject
11 these individuals to possible harassment or criticism and focus derogatory inferences and
12 suspicion on them. Thus, the FBI determined that these individuals' privacy interests outweighed
13 any public interest in disclosure, and that disclosure of the names and/or identifying information
14 of the third parties merely mentioned would constitute a "clearly unwarranted and unwarranted
15 invasion of personal privacy." Accordingly, the FBI has properly withheld this information
16 pursuant to Exemptions (b)(6) and (b)(7)(C).
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20 196. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
21 been asserted in Category 2E documents to protect the names of personnel from the National
22 Security Division (NSD), several Assistant United States Attorney's (AUSA), and contractors
23 working for the FBI. Publicity (adverse or otherwise) regarding any particular investigation they
24 have been assigned, or internal FBI developmental project (e.g., National Electronic Surveillance
25 Strategy) they may be contracted to help develop, may seriously prejudice their effectiveness in
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2 conducting other investigations, or developmental projects. The privacy consideration is also to
3 protect these federal employees, and/or contractors, as individuals, from unnecessary, unofficial
4 questioning as to the course of an investigation or internal developmental project, whether or not
5 they are currently employed by the FBI as contractors, or with Other Government Agencies
6 (OGA's). These employees may have to conduct official inquiries into violations of National
7 Security, or help develop strategic plans, like developing ways to enhance ELSUR capabilities.
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9 They come into contact with all strata of society, conducting searches, research, and making
10 inquiries, all of which result in reasonable but nonetheless serious disturbances to people and
11 their lives. It is possible for an individual targeted by these OGA's to carry a grudge which may
12 last for years, and to seek revenge on the investigators and other federal employees involved in a
13 particular investigation. Foreign governments, or criminal enterprises may threaten FBI
14 contractors searching for intelligence that may benefit their countries or criminal enterprises.
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16 The publicity associated with the release of these OGA employee's, and/or contractors identities,
17 in connection with a particular investigation, or developmental project, could trigger hostility
18 toward a particular employee, or future threat to obtain intelligence. There is no public interest to
19 be served by disclosing the identities of these employees, and/or contractors, to the public. Thus,
20 disclosure of this information would constitute a "clearly unwarranted and unwarranted invasion
21 of their personal privacy." Accordingly, the FBI has properly withheld this information pursuant
22 to Exemptions (b)(6), and (b)(7)(C).
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2 197. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
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4 been asserted in Category 2E documents to protect the names and/or identifying information of
5 third-party individuals who were of investigative interest to the FBI and/or other law enforcement
6 agencies. Identifying information withheld concerning these third parties includes addresses,
7 dates of birth, social security numbers, and other personal information. Any link to a law
8 enforcement investigation carries a strong negative connotation and a stigma. Release of the
9 identities of these individuals to the public could subject them to harassment or embarrassment,
10 as well as undue public attention. Accordingly, the FBI has determined that these individuals
11 maintain a substantial privacy interest in not having their identities disclosed. In making a
12 determination whether to release the names and personal information concerning these third
13 parties, the public's interest in disclosure was balanced against the individual's right to privacy.
14 The FBI determined that this information would not enlighten the public on how the FBI
15 conducts its internal operations and investigations. Accordingly, the FBI concluded that the
16 disclosure of this information would constitute a "clearly unwarranted and unwarranted invasion
17 of their personal privacy." Accordingly, the FBI has properly withheld this information pursuant
18 to Exemptions (b)(6), and (b)(7)(C).
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22 198. Exemptions (b)(6) and (b)(7)(C). In addition, at times Exemptions (b)(6), and (b)(7)(C),
23 in conjunction with (b)(1), have also been asserted in Category 2E documents to protect the
24 names and identifying information of corporate personnel in the communication industry that
25 were mentioned in an internal EC, concerning a classified investigation, which discussed
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2 confidential intelligence concerning a Voice-over Internet Protocol (VoIP) network service
3 provider, and its possible involvement with foreign entities. Release of this type of information
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5 about private citizens, without notarized authorizations permitting such a release violates
6 individuals legitimate privacy interests. If the FBI disclosed their names and/or other personal
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8 information, the disclosure would reveal that these third parties were at one time connected with
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10 an FBI investigation in some way. Disclosure of their identities could subject these individuals
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12 to possible harassment or criticism and focus derogatory inferences and suspicion on them.

13 199. The FBI also examined the records at issue to determine whether there was any public
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15 interest that outweighed the substantial privacy interests of the corporate employees mentioned in
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17 the responsive records. The FBI could not identify any discernible public interest. In particular,
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19 the FBI could not determine how the disclosure of the names, and/or identifying information of
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21 these individuals would shed any light on the operations and activities of the FBI. Thus, the FBI
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23 determined that these individuals' privacy interests outweighed any public interest in disclosure,
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25 and that disclosure of the names and/or identifying information of these third parties mentioned
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27 would constitute a "clearly unwarranted and unwarranted invasion of personal privacy." The FBI
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properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C), in conjunction
with (b)(1).

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2 200. Exemption (b)(7)(A). Exemption (b)(7)(A) exempts from disclosure records or
3 information compiled for law enforcement purposes, but only to the extent that the production of
4 such law enforcement records or information . . . could reasonably be expected to interfere with
5 enforcement proceedings. Exemption (b)(7)(A), at times in conjunction with (b)(1), has been
6 asserted in Category 2E documents to protect information that either summarize, discuss, or
7 relate to FBI criminal cases which remain in an open or active status. The release of such
8 information would reveal the scope, direction, nature and pace of the investigations as well as
9 reveal information that could harm prospective and/or ongoing government prosecutions in these
10 matters. If the information is released, the individuals and/or entities, who are of investigative
11 interest in the cases could use the information to develop alibis, take steps to circumvent the law,
12 create factitious defenses or intimidate, harass or harm potential witnesses. Accordingly, the FBI
13 has properly withheld this information pursuant to Exemption (b)(7)(A), at times in conjunction
14 with (b)(1).
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19 201. Exemption (b)(7)(D). At times Exemption (b)(7)(D), in conjunction with (b)(1), has
20 been asserted in Category 2E documents to withhold information provided to the FBI by
21 commercial/private companies and other non-government entities under circumstances from
22 which an assurance of confidentiality may be implied. During the course of the FBI's
23 intelligence investigations, certain commercial/private companies provided information to the
24 FBI relating to the subjects of these investigations. To disclose the fact that these companies
25 provided information to the FBI during the course of an investigation could harm the commercial
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2 interests of these enterprises by deterring the public from employing their services. In addition,
3 such a disclosure has wider implications. If the FBI disclosed the identities of confidential
4 sources that provide information to the FBI on a continuing basis, that revelation would have a
5 chilling effect on the activities and cooperation of other current or potential future FBI
6 confidential sources. Accordingly, the FBI has properly withheld this information pursuant to
7 Exemption (b)(7)(D), in conjunction with (b)(1).
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10 202. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 2E documents
11 to protect law enforcement records that would disclose techniques and procedures for law
12 enforcement investigations or prosecutions, and that would disclose guidelines for law
13 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
14 the law enforcement technique(s) of electronic or communications surveillance focused on
15 problems which hamper FBI's ability to successfully intercept communications systems and
16 networks, and details on preventing the FBI from "Going Dark." The responsive material details
17 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
18 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
19 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
20 release of this detailed information about surveillance techniques and associated problems or
21 vulnerabilities would provide violators a road map for successful law enforcement
22 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
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2 law enforcement surveillance operations and the exploitation of capability weaknesses that would
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4 enable them to structure their criminal enterprise and terrorist formulating communications in a
5 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
6 properly withheld this information pursuant to Exemption (b)(7)(E).

7 **CATEGORY 2F - FBI OFFICE OF CONGRESSIONAL AFFAIRS (OCA) RESPONSE**
8 **(LYNCH)**

9 203. Category 2F contains 77 responsive Bates pages consisting of talking points papers and/or
10 presentations, internal e-mails w/attachments between FBI personnel, congressional contact
11 summaries where amendments to CALEA were discussed, testimony by Director Mueller before
12 the Senate Committee on Intelligence, and information that was originally prepared by, and
13 obtained from, the DOJ, and was subsequently returned to the DOJ for direct response to
14 plaintiff. The talking points papers and/or presentations were developed on the following: 1)
15 defining 'Going Dark,' presenting case examples on how FBI ELSUR capabilities have been
16 effected, and offering possible solutions to enhance lawful intercept capabilities, 2) proposed
17 reforms presented by members of private industry and the privacy community concerning the
18 Electronic Communications Privacy Act of 1986 (ECPA), and 3) history of CALEA, summary of
19 different Federal Communication Council (FCC) orders that helped resolve some of CALEA's
20 shortfalls, and new proposals to amend CALEA through the legislative process to enhance
21 ELSUR capabilities. The internal e-mail chains show discussions that pertain to: 1) CALEA
22 limitations, and proposed amendments that will enhance ELSUR capabilities, 2) development of
23 'FBI Wikipedia' definitions on 'Going Dark,' 3) assessment and opinions related to surveillance
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2 challenges faced by the FBI, and defining 'Going Dark,' 4) Operational Technology (OTD)
3 statement of opposition to certain provisions of the COPS Improvement ACT-S167, and 5) an
4 announcement of a closed HPSCI Committee hearing on the DOJ/Intel programs and budget. Of
5 these 77 Bates pages, 70 pages have been withheld in full, and 7 pages released in part.
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7 204. Exemption (b)(1). At times Exemption (b)(1) has been asserted in Category 2F
8 documents to withhold information that is properly classified. The information withheld (b)(1) is
9 currently and properly classified under E.O. 13256 at the SECRET level and is exempt from
10 disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert
11 action), intelligence sources or methods, as the unauthorized disclosure of this information could
12 reasonably be expected to cause serious damage to the national security of the United States.
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16 205. The information withheld pursuant to Exemption (b)(1) for Category 2F documents
17 consists of classified procedures and methods of intelligence-gathering utilized by the FBI to
18 gather intelligence information. An intelligence activity or method has two characteristics.
19 First, the intelligence activity and information generated by it is needed by U.S.
20 Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality
21 must be maintained with respect to the activity if the viability, productivity, and usefulness of
22 that information is to be preserved. The classification redactions have been asserted to protect
23 from disclosure information that would reveal the actual intelligence activities utilized by the FBI
24 against specific targets of foreign counterintelligence investigations or operations; or disclosure
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2 of intelligence gathering capabilities of the activities directed at specific targets. The intelligence
3 activities detailed in the withheld information are effective means for the FBI to gather, store, or
4 disseminate intelligence information. The criteria applied and priorities assigned in these records
5 are used in the FBI's present intelligence or counterintelligence investigations in accordance with
6 the Attorney General's guidelines on FBI intelligence or counterintelligence investigations.
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9 206. The information in these Category 2F documents concerning intelligence activities is very
10 specific in nature and known to very few individuals. Disclosure of the specific information
11 which describes these intelligence activities would reveal that they are still used by the FBI today
12 to gather intelligence information, and could reasonably be expected to cause serious damage to
13 the national security for the following reasons: (1) disclosure would allow hostile entities to
14 discover the current intelligence activities used; (2) disclosure would reveal or determine the
15 criteria used--and priorities assigned to--current intelligence or counterintelligence investigations;
16 (3) disclosure would reveal the Intelligence Communities (IC's) continual sensitive work creating
17 a decentralized communication medium which would aid in facilitating the sharing of
18 information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the
19 exact data collection and ELSUR capabilities shortfalls that the IC are encountering during
20 National Security investigations due to technology advancements in communication system
21 platforms, and encryption applications. Hostile entities could then develop countermeasures
22 which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely
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2 damage the FBI's efforts to detect and apprehend violators of the United States' national security
3 and criminal laws. The FBI protected the identity of intelligence sources, or methods, specific to
4 intelligence activities, because disclosure reasonably could be expected to cause serious damage
5 to the national security. Accordingly, the FBI has properly withheld this information pursuant to
6 Exemption (b)(1).
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9 207. Exemption (b)(2). In conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2) has been
10 asserted on a Category 2F document to protect internal, non-public telephone numbers of FBI
11 personnel. These internal, non-public telephone numbers are used by FBI personnel while they
12 are working on significant national security and criminal investigations. Disclosure of these
13 internal, non-public telephone numbers could subject these individuals to harassing telephone
14 calls, which could disrupt official business (including impeding the ability of Special Agents to
15 conduct and conclude functions related to the law enforcement investigations in a timely
16 manner). With the narrowing of the application of Exemption (b)(2) to those records which
17 relate to employee relations and human resource issues, the FBI has determined that, in those
18 instances where Exemption (b)(2) has been asserted in conjunction with Exemption (b)(7)(E), the
19 use of Exemption (b)(2) is now withdrawn. Accordingly, because disclosure of these internal,
20 non-public telephone numbers could impede the FBI's effectiveness and may risk circumvention
21 of the law, the FBI has properly withheld this information pursuant to Exemption (b)(2), in
22 conjunction with (b)(6) and (b)(7)(C).
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2 208. Exemption (b)(5). Exemption (b)(5) has been asserted in 52 of 77 Category 2F
3 documents to protect the deliberative process privilege. The deliberative process privilege
4 protects the internal deliberations of an agency by exempting from release recommendations,
5 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
6 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
7 the quality of agency decisions. The protected material contained deliberative discussions
8 during the preparation of talking points papers and/or presentations, and e-mail chains
9 exchanging opinions, advice, proposals, and the making of recommendations. The deliberative
10 exchange included discussions on FBI ELSUR capabilities shortfalls, and proposed solutions to
11 enhance lawful intercept capabilities, the proposed reforms presented by members of private
12 industry and the privacy community concerning the Electronic Communications Privacy Act of
13 1986 (ECPA), opposition to certain provisions of the COPS Improvement ACT-S167, and the
14 history of CALEA, summary of different Federal Communication Council (FCC) orders that
15 helped resolve some of CALEA's shortfalls, and new proposals to amend CALEA through the
16 legislative process to enhance ELSUR capabilities.
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22 209. Thus, material that contains or was prepared in connection with the formulation of
23 opinions, advice, evaluations, deliberations, policy formulation, proposals, conclusions or
24 recommendations, may properly be withheld. Release of this type of information would have an
25 inhibitive effect upon the development of policy and administrative direction of an agency
26 because it would chill the full and frank discussion between agency personnel regarding a
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2 decision. If agency personnel knew that their preliminary opinions, evaluations and comments
3 would be released for public consumption, they might be more circumspect in what they put in
4 writing, and thereby, impede a candid discussion of the issues surrounding a decision.
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6 Accordingly, the FBI has properly withheld this information pursuant to Exemption (b)(5).
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8 210. Exemption (b)(5). In addition, Exemption (b)(5) has been asserted in 2 of the 77
9 Category 2F documents to protect material covered by the attorney-client privilege. These 2
10 pages pertained to the internal legal discussion as the FBI and DOJ developed an opposition
11 statement against certain provisions of the COPS Improvement ACT-S167. The attorney-client
12 privilege is appropriately asserted when legal advice of any kind is sought from a professional
13 legal adviser in his or her capacity as such, and the communications relating to that purpose are
14 made in confidence by the client. The communications are permanently protected from
15 disclosure by the client or by the legal adviser unless the attorney-client protection is waived.
16 This privilege encompasses confidential communications made to the attorney not only by
17 decision-making personnel but also by lower-echelon employees who possess information
18 relevant to an attorney's advice-rendering function. Disclosure of the two-way communications
19 between DOJ attorneys and their clients would impede the full disclosure of all of the
20 information that relates to the client's reasons for seeking legal advice, which is necessary if the
21 professional mission is to be accomplished. Accordingly, the FBI has properly withheld this
22 information pursuant to Exemption (b)(5).
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2 211. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions
3 (b)(6), and (b)(7)(C) have been asserted in Category 2F documents to protect the names and
4 identifying information of FBI Special Agents (SAs) who were responsible for conducting,
5 supervising, and/or maintaining the investigative activities reported in these records, or who were
6 consulted on sensitive internal developmental projects (e.g., National Electronic Surveillance
7 Strategy). The SAs mentioned did not choose their assignments. The publicity associated with
8 the release of these SAs' identities, in connection with a particular investigation, or internal
9 developmental project, could trigger hostility toward a particular employee, or pressure of
10 attempted bribery, to obtain intelligence. Publicity, adverse or otherwise, regarding any
11 particular investigation conducted by SAs may seriously impair the SAs effectiveness in
12 conducting future investigations, or consultations. This privacy consideration also protects SAs
13 from unnecessary, unofficial questioning as to the conduct of an investigation, or developmental
14 project, whether or not they are currently employed by the FBI. The names of FBI Professional
15 Support personnel are also withheld in Category 2F documents pursuant to Exemptions (b)(6)
16 and (b)(7)(C), at times in conjunction with (b)(2). Professional Support personnel are assigned to
17 handle tasks related to official criminal investigations, and/or developmental projects (e.g.,
18 National Electronic Surveillance Strategy), as reflected in the documents responsive to plaintiff's
19 request. They maintain substantial privacy interests in not having their identities disclosed.
20 Accordingly, the FBI has properly withheld this information pursuant to Exemptions (b)(6) and
21 (b)(7)(C), at times in conjunction with (b)(2).
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2 212. Exemptions (b)(6) and (b)(7)(C). In addition, Exemption (b)(6), and (b)(7)(C) have been
3 asserted in a Category 2F document to protect the name of a Congressional staff member, and a
4 representative of the DOJ. Summary briefings prepared by OCA staff members after meetings
5 with Congressman, Senators, and/or their congressional staff representative, list congressional
6 staffers, and other participants, that were involved with discussions, which in this case concerned
7 the need to update CALEA, especially in the area of VoIP devices and technology. Publicity
8 (adverse or otherwise) regarding any internal FBI developmental projects (e.g., National
9 Electronic Surveillance Strategy), and legislative strategy to make amendments to outdated laws,
10 that these congressional staffers, and DOJ representative, may be requested to provide input on,
11 may seriously prejudice their effectiveness in helping on other developmental projects, and
12 legislative strategies. The privacy consideration is also to protect these federal employees as
13 individuals, from unnecessary, unofficial questioning as to the course, and their knowledge, of
14 national security developmental projects, or legislative strategies, whether or not they are
15 currently employed by the Congress. These employees may have to give input on the
16 development of strategic plans, like developing ways to enhance ELSUR capabilities through
17 legislative amendments. They come into contact with all strata of society. The publicity
18 associated with the release of these congressional staffers involved with an FBI developmental
19 project, could trigger hostility toward a particular employee to obtain intelligence. There is no
20 public interest to be served by disclosing the identities of these employees to the public. Thus,
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2 disclosure of this information would constitute a "clearly unwarranted and unwarranted invasion
3 of their personal privacy." Accordingly, the FBI has properly withheld this information pursuant
4 to Exemptions (b)(6) and (b)(7)(C).
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7 213. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 2F documents
8 to protect law enforcement records that would disclose techniques and procedures for law
9 enforcement investigations or prosecutions, and that would disclose guidelines for law
10 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
11 the law enforcement technique(s) of electronic or communications surveillance focused on
12 problems which hamper FBI's ability to successfully intercept communications systems and
13 networks, and details on preventing the FBI from "Going Dark." The responsive material details
14 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
15 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
16 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
17 release of this detailed information about surveillance techniques and associated problems or
18 vulnerabilities would provide violators a road map for successful law enforcement
19 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
20 law enforcement surveillance operations and the exploitation of capability weaknesses that would
21 enable them to structure their criminal enterprise and terrorist formulating communications in a
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2 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
3 properly withheld this information pursuant to Exemption (b)(7)(E).
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5 **CATEGORY 2G - FBI DIRECTORS OFFICE (DO) UNCLASSIFIED CD RESPONSE**
6 **(LYNCH)**

7 214. Category 2G contains 436 responsive Bates pages consisting of talking points papers
8 and/or presentations, internal e-mails w/attachments between FBI personnel, and information (34
9 Bates pages) that was originally prepared by, and obtained from, the DOJ, DHS, and DEA, and
10 was subsequently returned to each agency for direct response to plaintiff. 383 of the responsive
11 Bates pages are multiple draft talking points papers and/or presentations titled: 1) "Law
12 Enforcement's Need for Lawful Intercept Capabilities," 2) "Preservation of Lawful Intercepts:
13 Challenges and Potential Solutions," 3) "Going Dark: Problems and Proposals," 4) "Closing the
14 National Security ELSUR Gap," and/or 5) "Going Dark: Talking Points." These presentations
15 present the FBI's strategic policy development process concerning surveillance challenges posed
16 by emerging technologies. The presentations were being developed to highlight to various
17 internal and external audiences the surveillance challenges faced by the FBI and the law
18 enforcement community, as well as various recommendations, proposals, legislative initiatives
19 (i.e., amending CALEA), and advice on multi-point strategies, or actions FBI should, or could,
20 adopt, pursue, or consider to resolve such challenges. 17 responsive Bates pages are internal e-
21 mail discussions, which pertain to: 1) September 2010 New York Times story on 'Going Dark,'
22 seeking new law enforcement regulations for the Internet, and telecommunications carriers
23 having technical difficulties implementing lawful intercept court orders, and having 'Talking
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2 Points' ready for FBI leadership to answer questions, 2) September 2010 Washington Post article
3 on 'Going Dark,' and amending CALEA, and 3) 'Going Dark' case examples showing
4 technological advances out pacing law enforcement's ability to perform lawful intercepts. Of
5 these 436 Bates pages, 421 pages have been withheld in full, 14 pages released in part, and 1
6 page released in full.
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9 215. Exemption (b)(5). Exemption (b)(5) has been asserted in 388 of 436 Category 2G
10 documents to protect the deliberative process privilege. The deliberative process privilege
11 protects the internal deliberations of an agency by exempting from release recommendations,
12 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
13 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
14 the quality of agency decisions. The protected material contained deliberative discussion on the
15 preparation of talking points papers and/or presentations, and e-mail chains exchanging opinions,
16 advice, proposals, the making of recommendations. These presentations present the FBI's
17 strategic policy development process concerning surveillance challenges posed by emerging
18 technologies. The presentations were being developed to highlight to various internal and
19 external audiences the surveillance challenges faced by the FBI and the law enforcement
20 community, as well as various recommendations, proposals, legislative initiatives (i.e., amending
21 CALEA), and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or
22 consider to resolve such challenges.
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2 216. Thus, material that contains or was prepared in connection with the formulation of
3 opinions, advice, evaluations, deliberations, policy formulation, proposals, conclusions or
4 recommendations, may properly be withheld. Release of this type of information would have an
5 inhibitive effect upon the development of policy and administrative direction of an agency
6 because it would chill the full and frank discussion between agency personnel regarding a
7 decision. If agency personnel knew that their preliminary opinions, evaluations and comments
8 would be released for public consumption, they might be more circumspect in what they put in
9 writing, and thereby, impede a candid discussion of the issues surrounding a decision.
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12 Accordingly, the FBI has properly withheld this information pursuant to Exemption (b)(5).
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14 217. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
15 and (b)(7)(C) have been asserted in Category 2G documents to protect the names and identifying
16 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
17 and/or maintaining the investigative activities reported in these records, or who were consulted
18 on sensitive internal developmental projects (e.g., National Electronic Surveillance Strategy).
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20 The SAs mentioned did not choose their assignments. The publicity associated with the release
21 of these SAs' identities, in connection with a particular investigation, or internal developmental
22 project, could trigger hostility toward a particular employee, or pressure of attempted bribery, to
23 obtain intelligence. Publicity, adverse or otherwise, regarding any particular investigation
24 conducted by SAs may seriously impair the SAs effectiveness in conducting future
25 investigations, or consultations. This privacy consideration also protects SAs from unnecessary,
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2 unofficial questioning as to the conduct of an investigation, or developmental project, whether or
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4 not they are currently employed by the FBI. The names of FBI Professional Support personnel
5 are also withheld in Category 2G documents pursuant to Exemptions (b)(6) and (b)(7)(C), at
6 times in conjunction with (b)(2). Professional Support personnel are assigned to handle tasks
7 related to official criminal investigations, and/or developmental projects (e.g., National
8 Electronic Surveillance Strategy), as reflected in the documents responsive to plaintiff's request.
9
10 They maintain substantial privacy interests in not having their identities disclosed. Accordingly,
11 the FBI has properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C), at
12 times in conjunction with (b)(2).
13

14 218. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
15 been asserted in Category 2G documents to protect the names and identifying information of
16 third parties that were merely mentioned in the documents responsive to plaintiff's request.
17 These individuals are not of investigative interest to the FBI. Release of this type of information
18 about private citizens, without notarized authorizations permitting such a release violates
19 individuals legitimate privacy interests. If the FBI disclosed their names and/or other personal
20 information, the disclosure would reveal that these third parties were at one time connected with
21 an FBI investigation, or internal developmental project, in some way. Disclosure of their
22 identities could subject these individuals to possible harassment or criticism and focus derogatory
23 inferences and suspicion on them. Thus, the FBI determined that these individuals' privacy
24 interests outweighed any public interest in disclosure, and that disclosure of the names and/or
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2 identifying information of the third parties merely mentioned would constitute a "clearly
3 unwarranted and unwarranted invasion of personal privacy." Accordingly, the FBI has properly
4 withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C).
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7 219. Exemptions (b)(6) and (b)(7)(C). In addition, at times Exemptions (b)(6), and (b)(7)(C)
8 have also been asserted in Category 2G documents to protect the names of personnel from the
9 Drug Enforcement Administration (DEA), Office of Deputy Attorney General (ODAG), Office
10 of Legal Policy (OLP), and contractors working for the FBI. Publicity (adverse or otherwise)
11 regarding any particular investigation they have been assigned, or internal FBI developmental
12 project (e.g., National Electronic Surveillance Strategy) they may be contracted to help develop,
13 may seriously prejudice their effectiveness in conducting other investigations, or developmental
14 projects. The privacy consideration is also to protect these federal employees, and/or contractors,
15 as individuals, from unnecessary, unofficial questioning as to the course of an investigation or
16 developmental project, whether or not they are currently employed by the FBI as contractors, or
17 with Other Government Agencies (OGA's). These employees may have to conduct official
18 inquiries into violations of National Security, or help develop strategic plans, like developing
19 ways to enhance ELSUR capabilities. They come into contact with all strata of society,
20 conducting searches, research, and making inquiries, all of which result in reasonable but
21 nonetheless serious disturbances to people and their lives. It is possible for an individual targeted
22 by these OGA's to carry a grudge which may last for years, and to seek revenge on the
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2 investigators and other federal employees involved in a particular investigation. Foreign
3 governments, or criminal enterprises may threaten FBI contractors searching for intelligence that
4 may benefit their countries or criminal enterprises. The publicity associated with the release of
5 these OGA employee's, and/or contractors identities, in connection with a particular
6 investigation, or developmental project, could trigger hostility toward a particular employee, or
7 future threat to obtain intelligence. There is no public interest to be served by disclosing the
8 identities of these employees, and/or contractors, to the public. Thus, disclosure of this
9 information would constitute a "clearly unwarranted and unwarranted invasion of their personal
10 privacy." Accordingly, the FBI has properly withheld this information pursuant to Exemptions
11 (b)(6), and (b)(7)(C).
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16 220. Exemption (b)(7)(D). Exemption (b)(7)(D) has been asserted in a Category 2G
17 document to withhold information provided to the FBI by a foreign government and/or foreign
18 law enforcement entity under an express assurance of confidentiality according to the Foreign
19 Government Information Classification Guide #1 (G-1 Guide), issued in accordance with E.O.
20 13526, Information Security Oversight Office (ISOO), the FBI Security Policy Manual, and the
21 designated Original Classification Authority (OCA) of the Executive Assistant Director, National
22 Security Branch. During the course of an FBI intelligence investigation it received information
23 from a foreign government regarding an investigation. The FBI has many agreements with
24 foreign governments under which security and/or criminal law enforcement information is
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2 exchanged. The agreements specify the extent of confidentiality requested by the respective
3 foreign government entity. In this case, the FBI has an express confidentiality agreement with
4 this foreign government and/or foreign law enforcement entity which provided information to the
5 FBI during the conduct of intelligence investigation. The FBI's agreements with this law
6 enforcement entity provides express assurance that the FBI will not disclose their identity, as well
7 as the information that they provided to the FBI. If the FBI were to disclose the identities and the
8 information provided by foreign law enforcement entities under an express assurance of
9 confidentiality, such a disclosure would have a chilling effect on the FBI's relationship with
10 these entities. Furthermore, the disclosure would have a chilling effect on the FBI's relationship
11 with other foreign law enforcement agencies which have entered into similar agreements with the
12 FBI. Accordingly, the FBI has properly withheld this information pursuant to Exemption
13 (b)(7)(D).
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17 221. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 2G documents
18 to protect law enforcement records that would disclose techniques and procedures for law
19 enforcement investigations or prosecutions, and that would disclose guidelines for law
20 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
21 the law enforcement technique(s) of electronic or communications surveillance focused on
22 problems which hamper FBI's ability to successfully intercept communications systems and
23 networks, and details on preventing the FBI from "Going Dark." The responsive material details
24 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
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2 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
3 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
4 release of this detailed information about surveillance techniques and associated problems or
5 vulnerabilities would provide violators a road map for successful law enforcement
6 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
7 law enforcement surveillance operations and the exploitation of capability weaknesses that would
8 enable them to structure their criminal enterprise and terrorist formulating communications in a
9 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
10 properly withheld this information pursuant to Exemption (b)(7)(E).
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14 **CATEGORY 2H - FBI DIRECTORS OFFICE (DO) CLASSIFIED CD RESPONSE**
15 **(LYNCH)**

16 222. Category 2H contains 438 responsive Bates pages consisting of talking points papers
17 and/or presentations, internal e-mails w/attachments between FBI personal, discussion papers,
18 and internal memorandums. 343 of the responsive Bates pages consist of multiple partly
19 classified draft talking points papers, and/or presentations titled: 1) "Going Dark Initiative:
20 Closing [Minimizing] the National Security ELSUR Gap," 2) "Preservation of Lawful Intercepts:
21 Challenges and Potential Solutions," 3) "National Security Proposal for NSA," 4) "Going Dark:
22 Strengthening National Security by Minimizing the Electronic Surveillance Gap," 5) "Challenges
23 With Emerging Technologies," 6) "Going Dark: Law Enforcement's Need to Preserve Lawful
24 Intercept Capabilities," 7) "Make CALEA Implementation Easier for Service Providers," 8)
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2 “Basics of CALEA: Who is Covered? Who is Not?” 9) “Going Dark: Q/A,” 10) “FBI Efforts to
3 Protect Title III and FISA Capabilities,” 11) “FBI Efforts to Preserve Electronic Surveillance
4 (ELSUR) Capabilities, 12) “Continued Problems with CALEA Implementation Despite the
5 FCC’s Initial Efforts,” 13) “Going Dark: Technology Gaps,” and “Governments Need to
6 Preserve Lawful Intercept Capabilities.” These draft presentations present the FBI’s strategic
7 policy development process concerning surveillance challenges posed by emerging technologies.
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9 The presentations were being developed to highlight to various internal and external audiences
10 the surveillance challenges faced by the FBI and the law enforcement community, as well as
11 various recommendations, proposals, legislative initiatives (i.e., amending CALEA), and advice
12 on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve
13 such challenges. 42 of the responsive Bates pages are internal e-mail chain discussions that
14 pertain to: 1) multiple FBI investigation case examples where communication industry technical
15 issues, and compliance questions are hampering implementing of lawful intercept orders, 2)
16 VoIP communication services, 3) draft ‘Going Dark’ talking point slide presentations, and 3)
17 meeting preparation, and subsequently follow-up summary, of the Capabilities Gaps Working
18 Group, where Going Dark legislative, and institutional proposals under consideration, and
19 ELSUR technological gaps were to be discussed. 42 of the responsive Bates pages are discussion
20 papers that detailed technical issues and impediments faced during many former and current FBI
21 investigations. Finally, 11 of the responsive Bates pages are part of a partly classified internal
22 memorandum, which outlined the ELSUR challenges law enforcement are encountering with
23 regard to emerging technologies, outline talking point development that defines ‘Going Dark,’
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2 and gives FBI investigation case examples showing how ELSUR limitations have hampered
3 these investigations. Of these 438 Bates pages, 429 pages have been withheld in full, and 9
4 pages released in part.
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6 223. Exemption (b)(1). At times Exemption (b)(1) has been asserted in Category 2H
7 documents to withhold information that is properly classified. The information withheld (b)(1) is
8 currently and properly classified under E.O. 13256 at the SECRET level and is exempt from
9 disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert
10 action), intelligence sources or methods, and category (d) foreign relations, or foreign activities
11 of the United States, including confidential sources, as the unauthorized disclosure of this
12 information could reasonably be expected to cause serious damage to the national security of the
13 United States.
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17 224. The information withheld pursuant to Exemption (b)(1) for Category 2H documents
18 consists of classified procedures and methods of intelligence-gathering utilized by the FBI to
19 gather intelligence information. An intelligence activity or method has two characteristics.
20 First, the intelligence activity and information generated by it is needed by U.S.
21 Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality
22 must be maintained with respect to the activity if the viability, productivity, and usefulness of
23 that information is to be preserved. The classification redactions have been asserted to protect
24 from disclosure information that would reveal the actual intelligence activities utilized by the FBI
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2 against specific targets of foreign counterintelligence investigations or operations; or disclosure
3 of intelligence gathering capabilities of the activities directed at specific targets. The intelligence
4 activities detailed in the withheld information are effective means for the FBI to gather, store, or
5 disseminate intelligence information. The criteria applied and priorities assigned in these records
6 are used in the FBI's present intelligence or counterintelligence investigations in accordance with
7 the Attorney General's guidelines on FBI intelligence or counterintelligence investigations.
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10 225. The information in these Category 2H documents concerning intelligence activities is
11 very specific in nature and known to very few individuals. Disclosure of the specific information
12 which describes these intelligence activities would reveal that they are still used by the FBI today
13 to gather intelligence information, and could reasonably be expected to cause serious damage to
14 the national security for the following reasons: (1) disclosure would allow hostile entities to
15 discover the current intelligence activities used; (2) disclosure would reveal or determine the
16 criteria used--and priorities assigned to--current intelligence or counterintelligence investigations;
17 (3) disclosure would reveal the Intelligence Community's (IC's) continual sensitive work creating
18 a decentralized communication medium which would aid in facilitating the sharing of
19 information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the
20 exact data collection and ELSUR capabilities shortfalls that the IC are encountering during
21 National Security investigations due to technology advancements in communication system
22 platforms, and encryption applications. Hostile entities could then develop countermeasures
23 which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely
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2 damage the FBI's efforts to detect and apprehend violators of the United States' national security
3 and criminal laws. The FBI protected the identity of intelligence sources, or methods, specific to
4 intelligence activities, because disclosure reasonably could be expected to cause serious damage
5 to the national security. Accordingly, the FBI has properly withheld this information pursuant to
6 Exemption (b)(1).
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9 226. Exemption (b)(1). In addition, information withheld pursuant to Exemption (b)(1) in
10 these Category 2H documents has also been found to affect the foreign relations of the United
11 States, and much like foreign government information, this relationship and/or activities, does
12 not lose its sensitivity with the passage of time. The delicate liaisons established between and
13 among the United States and foreign governments could be severely damaged should the United
14 States disclose such information from these investigations. As a result, such information must be
15 handled with care so as to not jeopardize the fragile relationships which exist among the United
16 States and certain foreign governments. The unauthorized disclosure of information concerning
17 foreign relations or foreign activities of the United States can reasonably be expected to lead to
18 diplomatic or economic retaliation against the United States; identify the target, scope or time
19 frame of intelligence activities of the United States in or about a foreign country, which may
20 result in the curtailment or cessation of these activities; enable hostile entities to assess United
21 States intelligence-gathering activities in or about a foreign country and devise countermeasures
22 against these activities; or compromise cooperative foreign sources which may jeopardize their
23 safety and curtail the flow of information from these sources. Accordingly, the FBI has properly
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2 withheld this information pursuant to Exemption (b)(1).

3 227. Exemption (b)(3). At times in conjunction with (b)(1), Exemption (b)(3) has been
4 asserted in Category 2H documents to withhold information pursuant to 18 U.S.C. § 3123(d), the
5 Pen Register Act, which protects from disclosure information pertaining to certain court "order(s)
6 authorizing or approving the installation and use of a pen register or a trap and trace devise;" and
7 information pertaining to "the existence of the pen register or trap and trace device or the
8 existence of the investigation." Where documents at issue contain information, that, if disclosed,
9 would reveal the existence or use of a pen register or trap and trace device, or reveal the
10 existence of an investigation involving a pen register or trap and trace device, that information is
11 protected from disclosure by Exemption (b)(3), at times in conjunction with Exemption (b)(1).
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16 228. Exemption (b)(3). At times in conjunction with (b)(1), Exemption (b)(3) has also been
17 asserted in Category 2H documents to withhold information pursuant to 50 U.S.C. § 1806, which
18 protects from disclosure information pertaining to the use of FISA information acquired from
19 electronic surveillance. Where documents at issue contain information, that, if disclosed, would
20 reveal the use of FISA information acquired from electronic surveillance, that information is
21 protected from disclosure by both Exemption (b)(3), at times in conjunction with Exemption
22 (b)(1).
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26 229. Exemption (b)(3). In addition, at times in conjunction with Exemption (b)(1), Exemption
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2 (b)(3) has been asserted in Category 2H documents to withhold information pursuant to 18
3 U.S.C. § 2510, et. seq., Title III of the Omnibus Crime Control and Safe Streets Act, which
4 protects from disclosure information pertaining to wiretap requests and the contents of any wire,
5 oral, or electronic communication obtained through wiretaps. Where documents at issue contain
6 information, that, if disclosed, would reveal, information pertaining to wiretap requests and the
7 contents of any wire, oral, or electronic communication obtained through wiretaps, that
8 information is protected from disclosure by both Exemption (b)(3), at times in conjunction with
9 Exemption (b)(1).

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13 230. Exemption (b)(5). Exemption (b)(5) has been asserted in 408 of 438 Category 2H
14 documents to protect the deliberative process privilege. The deliberative process privilege
15 protects the internal deliberations of an agency by exempting from release recommendations,
16 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
17 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
18 the quality of agency decisions. The protected material contained draft presentations that
19 presented the FBI's strategic policy development process concerning surveillance challenges
20 posed by emerging technologies. The presentations were being developed to highlight to various
21 internal and external audiences the surveillance challenges faced by the FBI and the law
22 enforcement community, as well as various recommendations, proposals, legislative initiatives
23 (i.e., amending CALEA), and advice on multi-point strategies, or actions FBI should, or could,
24 adopt, pursue, or consider to resolve such challenges. The internal e-mail chain discussions
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2 pertain to the 'Going Dark' legislative initiative to develop proposals on updating CALEA,
3 compliance questions that are hampering implementing of lawful intercept orders, institutional
4 proposals under consideration, and ELSUR technological gaps and potential ways to solve the
5 weakening of the FBI's capabilities to obtain lawful intercepts.
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8 231. Thus, material that contains or was prepared in connection with the formulation of
9 opinions, advice, evaluations, deliberations, policy formulation, proposals, conclusions or
10 recommendations, may properly be withheld. Release of this type of information would have an
11 inhibitive effect upon the development of policy and administrative direction of an agency
12 because it would chill the full and frank discussion between agency personnel regarding a
13 decision. If agency personnel knew that their preliminary opinions, evaluations and comments
14 would be released for public consumption, they might be more circumspect in what they put in
15 writing, and thereby, impede a candid discussion of the issues surrounding a decision.
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17 Accordingly, the FBI has properly withheld this information pursuant to Exemption (b)(5).
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20 232. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
21 and (b)(7)(C) have been asserted in Category 2H documents to protect the names and identifying
22 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
23 and/or maintaining the investigative activities reported in these records, or who were consulted
24 on sensitive internal developmental projects (e.g., National Electronic Surveillance Strategy).
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26 The SAs mentioned did not choose their assignments. The publicity associated with the release
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2 of these SAs' identities, in connection with a particular investigation, or internal developmental
3 project, could trigger hostility toward a particular employee, or pressure of attempted bribery, to
4 obtain intelligence. Publicity, adverse or otherwise, regarding any particular investigation
5 conducted by SAs may seriously impair the SAs effectiveness in conducting future
6 investigations, or consultations. This privacy consideration also protects SAs from unnecessary,
7 unofficial questioning as to the conduct of an investigation, or developmental project, whether or
8 not they are currently employed by the FBI. The names of FBI Professional Support personnel
9 are also withheld in Category 2H documents pursuant to Exemptions (b)(6) and (b)(7)(C), at
10 times in conjunction with (b)(2). Professional Support personnel are assigned to handle tasks
11 related to official criminal investigations, and/or developmental projects (e.g., National
12 Electronic Surveillance Strategy), as reflected in the documents responsive to plaintiff's request.
13 They maintain substantial privacy interests in not having their identities disclosed. Accordingly,
14 the FBI has properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C), at
15 times in conjunction with (b)(2).
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21 233. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
22 been asserted in Category 2H documents to protect the names and personal identifiers of
23 contractors working for the FBI. Publicity (adverse or otherwise) regarding any particular
24 internal FBI developmental project (e.g., National Electronic Surveillance Strategy) they may be
25 contracted to help develop, may seriously prejudice their effectiveness in conducting other
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2 developmental projects. The privacy consideration is also to protect these contractors, as
3 individuals, from unnecessary, unofficial questioning as to the course of a developmental project,
4 whether or not they are currently employed by the FBI as contractors. These contract employees
5 may have to help develop strategic plans, like developing ways to enhance ELSUR capabilities.
6 They come into contact with all strata of society, conducting searches, research, and making
7 inquiries, all of which result in reasonable but nonetheless serious disturbances to people and
8 their lives. Foreign governments, or criminal enterprises may threaten FBI contractors searching
9 for intelligence that may benefit their countries or criminal enterprises. The publicity associated
10 with the release of these contractors identities, in connection with a particular developmental
11 project, could trigger hostility toward a particular employee, or future threat to obtain
12 intelligence. There is no public interest to be served by disclosing the identities of these
13 contractors to the public. Thus, disclosure of this information would constitute a "clearly
14 unwarranted and unwarranted invasion of their personal privacy." Accordingly, the FBI has
15 properly withheld this information pursuant to Exemptions (b)(6), and (b)(7)(C).
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21 234. Exemptions (b)(6) and (b)(7)(C). In addition, at times Exemptions (b)(6), and (b)(7)(C)
22 have been asserted in Category 2H documents to protect the names and/or identifying
23 information of third-party individuals who were of investigative interest to the FBI and/or other
24 law enforcement agencies. Identifying information withheld concerning these third parties
25 includes addresses, dates of birth, social security numbers, and other personal information. Any
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2 link to a law enforcement investigation carries a strong negative connotation and a stigma.
3 Release of the identities of these individuals to the public could subject them to harassment or
4 embarrassment, as well as undue public attention. The FBI has determined that these individuals
5 maintain a substantial privacy interest in not having their identities disclosed. In making a
6 determination whether to release the names and personal information concerning these third
7 parties, the public's interest in disclosure was balanced against the individual's right to privacy.
8 The FBI determined that this information would not enlighten the public on how the FBI
9 conducts its internal operations and investigations. The FBI concluded that the disclosure of this
10 information would constitute a "clearly unwarranted and unwarranted invasion of their personal
11 privacy." Accordingly, the FBI has properly withheld this information pursuant to Exemptions
12 (b)(6), and (b)(7)(C).
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16 235. Exemption (b)(7)(A). Exemption (b)(7)(A) exempts from disclosure records or
17 information compiled for law enforcement purposes, but only to the extent that the production of
18 such law enforcement records or information . . . could reasonably be expected to interfere with
19 enforcement proceedings. Exemption (b)(7)(A), at times in conjunction with (b)(1), has been
20 asserted in Category 2H documents to protect information that either summarize, discuss, or
21 relate to FBI criminal cases which remain in an open or active status. The release of such
22 information would reveal the scope, direction, nature and pace of the investigations as well as
23 reveal information that could harm prospective and/or ongoing government prosecutions in these
24 matters. If the information is released, the individuals and/or entities, who are of investigative
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2 interest in the cases could use the information to develop alibis, take steps to circumvent the law,
3 create factitious defenses or intimidate, harass or harm potential witnesses. Accordingly, the FBI
4 has properly withheld this information pursuant to Exemption (b)(7)(A), at times in conjunction
5 with (b)(1).
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8 236. Exemption (b)(7)(D). At times Exemption (b)(7)(D) has been asserted in Category 2H
9 documents to withhold information provided to the FBI by commercial/private companies and
10 other non-government entities under circumstances from which an assurance of confidentiality
11 may be implied. During the course of the FBI's intelligence investigations, certain
12 commercial/private companies provided information to the FBI relating to the subjects of these
13 investigations. This information was especially needed in relation to criminal enterprises and/or
14 pornographic exploitation rings using anonymizes/encrytion services, and unmangaed VoIP
15 Communication services. To disclose the fact that these companies provided information to the
16 FBI during the course of an investigation could harm the commercial interests of these
17 enterprises by deterring the public from employing their services. In addition, such a disclosure
18 has wider implications. If the FBI disclosed the identities of confidential sources that provide
19 information to the FBI on a continuing basis, that revelation would have a chilling effect on the
20 activities and cooperation of other current or potential future FBI confidential sources.
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23 Accordingly, the FBI has properly withheld this information pursuant to Exemption (b)(7)(D).
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25 237. Exemption (b)(7)(E). Exemption (b)(7)(E) has been asserted in Category 2H documents
26 to protect law enforcement records that would disclose techniques and procedures for law
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2 enforcement investigations or prosecutions, and that would disclose guidelines for law
3 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
4 the law enforcement technique(s) of electronic or communications surveillance focused on
5 problems which hamper FBI's ability to successfully intercept communications systems and
6 networks, and details on preventing the FBI from "Going Dark." The responsive material details
7 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
8 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
9 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
10 release of this detailed information about surveillance techniques and associated problems or
11 vulnerabilities would provide violators a road map for successful law enforcement
12 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
13 law enforcement surveillance operations and the exploitation of capability weaknesses that would
14 enable them to structure their criminal enterprise and terrorist formulating communications in a
15 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
16 properly withheld this information pursuant to Exemption (b)(7)(E).
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23 **CATEGORY 2I - FBI DIRECT-REFERRAL RESPONSES TO PLAINTIFF - DEA**
24 **REFERRALS (LYNCH)**

25 238. Category 2I contains 259 responsive Bates pages consisting of talking points papers
26 and/or presentations, discussion papers, a sample CALEA ELSUR Non-compliance Incident
27 Report, the FY 2010 Budget at a Glance Report, an internet article, and meeting summary notes.
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2 161 of the responsive Bates pages are talking points papers and/or presentations titled: 1) "Voice
3 over Internet Protocol (VoIP) Communications," 2) "Going Dark: Law Enforcement's Need to
4 Preserve Lawful Intercept Capabilities," 3) "State and Local Law Enforcement Challenges," 4)
5 "Technology Transfer Program: Office of National Drug Control Policy, Counterdrug
6 Technology Assessment Center," 5) "Going Dark: Update," and 6) "Going Dark: Preservation of
7 Technology Assessment Center," 5) "Going Dark: Update," and 6) "Going Dark: Preservation of
8 Lawful Intercept's Challenges and Potential Solutions." These presentations present the FBI's
9 strategic policy development process concerning surveillance challenges posed by emerging
10 technologies. The presentations were being developed to highlight to various internal and
11 external audiences the surveillance challenges faced by the FBI and the law enforcement
12 community, as well as various recommendations, proposals, legislative initiatives (i.e., amending
13 CALEA), and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or
14 consider to resolve such challenges. 73 of the responsive Bates pages are discussion papers
15 titled: 1) "Obtaining Assistance with De-compressing Lawful Intercepted Blackberry
16 Communications, and Office of General Council (OGC) Recommendations," 2) "Whitepaper:
17 Law Enforcement's Need to Preserve Lawful Intercept Capabilities," 3) "Going Dark Problems
18 and Potential Solutions," and 4) "FBI CALEA Scope of Coverage Amendment Proposal." 3 of
19 the 259 Bates pages is a sample CALEA ELSUR Non-compliance Incident Report. The
20 remaining 23 responsive Bates pages are an internet article titled: "FBI 'Going Dark' with New
21 Advanced Surveillance Program," a copy of the FBI FY 2010 budget request at a glance, and
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2 summarized meeting notes from the June 25, 2009, Law Enforcement Executive Forum (LEEF).

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4 Of these 259 Bates pages 246 pages have been withheld in full, 3 pages released in part, and 10
5 released in full.

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7 239. Exemption (b)(2). In conjunction with (b)(6), and (b)(7)(C), Exemption (b)(2) has been
8 asserted on Category 2I documents to protect internal, non-public telephone numbers of FBI
9 personnel. These internal, non-public telephone numbers are used by FBI personnel while they
10 are working on significant national security and criminal investigations. Disclosure of these
11 internal, non-public telephone numbers could subject these individuals to harassing telephone
12 calls, which could disrupt official business (including impeding the ability of Special Agents to
13 conduct and conclude functions related to the law enforcement investigations in a timely
14 manner). With the narrowing of the application of Exemption (b)(2) to those records which
15 relate to employee relations and human resource issues, the FBI has determined that, in those
16 instances where Exemption (b)(2) has been asserted in conjunction with Exemption (b)(7)(E), the
17 use of Exemption (b)(2) is now withdrawn. Accordingly, because disclosure of these internal,
18 non-public telephone numbers could impede the FBI's effectiveness and may risk circumvention
19 of the law, the FBI has properly withheld this information pursuant to Exemption (b)(2), in
20 conjunction with (b)(6) and (b)(7)(C).

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25 240. Exemption (b)(5). Exemption (b)(5) has been asserted in 229 of 259 Category 2I
26 documents to protect the deliberative process privilege. The deliberative process privilege
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2 protects the internal deliberations of an agency by exempting from release recommendations,
3 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
4 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
5 the quality of agency decisions. The protected material contained draft presentations, discussion
6 papers, and summary notes from a LEEF meeting that presented the FBI's strategic policy
7 development process concerning surveillance challenges posed by emerging technologies. The
8 presentations, and discussion papers were being developed to highlight to various internal and
9 external audiences the surveillance challenges faced by the FBI and the law enforcement
10 community, as well as various recommendations, proposals, legislative initiatives (i.e., amending
11 CALEA), and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or
12 consider to resolve such challenges. These recommendations, proposals, and legislative
13 initiatives were presented at the LEEF meeting.
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17 241. Thus, material that contains or was prepared in connection with the formulation of
18 opinions, advice, evaluations, deliberations, policy formulation, proposals, conclusions or
19 recommendations, may properly be withheld. Release of this type of information would have an
20 inhibitive effect upon the development of policy and administrative direction of an agency
21 because it would chill the full and frank discussion between agency personnel regarding a
22 decision. If agency personnel knew that their preliminary opinions, evaluations and comments
23 would be released for public consumption, they might be more circumspect in what they put in
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2 writing, and thereby, impede a candid discussion of the issues surrounding a decision.

3 Accordingly, the FBI has properly withheld this information pursuant to Exemption (b)(5).
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5 242. Exemption (b)(5). In addition, Exemption (b)(5) has been asserted in 16 of the 259
6 Category 2I documents to protect material covered by the attorney-client privilege. These 16
7 pages pertained to the internal legal discussion of proposed legal procedures needed to obtain
8 assistance with de-compressing compressed electronic data obtained from lawful intercepts from
9 a foreign manufacturer that has ownership of a proprietary algorithm used to send, receive, and
10 store electronic data on a communication device. The attorney-client privilege is appropriately
11 asserted when legal advice of any kind is sought from a professional legal adviser in his or her
12 capacity as such, and the communications relating to that purpose are made in confidence by the
13 client. The communications are permanently protected from disclosure by the client or by the
14 legal adviser unless the attorney-client protection is waived. This privilege encompasses
15 confidential communications made to the attorney not only by decision-making personnel but
16 also by lower-echelon employees who possess information relevant to an attorney's advice-
17 rendering function. Disclosure of the two-way communications between DOJ attorneys and their
18 clients would impede the full disclosure of all of the information that relates to the client's
19 reasons for seeking legal advice, which is necessary if the professional mission is to be
20 accomplished. Accordingly, the FBI has properly withheld this information pursuant to
21 Exemption (b)(5).
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2 243. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
3 and (b)(7)(C) have been asserted in Category 2I documents to protect the names and identifying
4 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
5 and/or maintaining the investigative activities reported in these records, or who were consulted
6 on sensitive internal developmental projects (e.g., National Electronic Surveillance Strategy).
7 The SAs mentioned did not choose their assignments. The publicity associated with the release
8 of these SAs' identities, in connection with a particular investigation, or internal developmental
9 project, could trigger hostility toward a particular employee, or pressure of attempted bribery, to
10 obtain intelligence. Publicity, adverse or otherwise, regarding any particular investigation
11 conducted by SAs may seriously impair the SAs effectiveness in conducting future
12 investigations, or consultations. This privacy consideration also protects SAs from unnecessary,
13 unofficial questioning as to the conduct of an investigation, or developmental project, whether or
14 not they are currently employed by the FBI. The names of FBI Professional Support personnel
15 are also withheld in Category 2I documents pursuant to Exemptions (b)(6) and (b)(7)(C), at times
16 in conjunction with (b)(2). Professional Support personnel are assigned to handle tasks related to
17 official criminal investigations, and/or developmental projects (e.g., National Electronic
18 Surveillance Strategy), as reflected in the documents responsive to plaintiff's request. They
19 maintain substantial privacy interests in not having their identities disclosed. Accordingly, the
20 FBI has properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C), at times
21 in conjunction with (b)(2).
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2 244. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
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4 been asserted in Category 2I documents to protect the names and identifying information of third
5 parties that were merely mentioned in the documents responsive to plaintiff's request. These
6 individuals are not of investigative interest to the FBI. Release of this type of information about
7 private citizens, without notarized authorizations permitting such a release violates individuals
8 legitimate privacy interests. If the FBI disclosed their names and/or other personal information,
9 the disclosure would reveal that these third parties were at one time connected with an FBI
10 investigation, or developmental project, in some way. Disclosure of their identities could subject
11 these individuals to possible harassment or criticism and focus derogatory inferences and
12 suspicion on them. Thus, the FBI determined that these individuals' privacy interests outweighed
13 any public interest in disclosure, and that disclosure of the names and/or identifying information
14 of the third parties merely mentioned would constitute a "clearly unwarranted and unwarranted
15 invasion of personal privacy." Accordingly, the FBI has properly withheld this information
16 pursuant to Exemptions (b)(6) and (b)(7)(C).
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20 245. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
21 been asserted in Category 2I documents to protect the names of personnel from the Bureau of
22 Alcohol, Tobacco, Firearms, and Explosives (ATF), Drug Enforcement Administration (DEA),
23 Immigration and Customs Enforcement (ICE), United States Marshals Service (USMS), and
24 United States Secret Service (USSS). Publicity (adverse or otherwise) regarding any particular
25 FBI developmental project (e.g., National Electronic Surveillance Strategy) they may be
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2 consulted to help develop, or Law Enforcement Executive Forum (LEEF) meeting where they
3 brought their LE concerns for group discussion, may seriously prejudice their effectiveness in
4 conducting other future developmental projects, or private discussion groups. The privacy
5 consideration is also to protect these federal employees as individuals from unnecessary,
6 unofficial questioning as to the course of an developmental project, or LE discussion topic,
7 whether or not they are currently employed by or with Other Government Agencies (OGA's).
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9 These employees may have to conduct official inquiries into future violations of National
10 Security, and help develop strategic plans, like developing ways to enhance ELSUR capabilities.
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12 They come into contact with all strata of society, conducting searches, research, and making
13 inquiries, all of which result in reasonable but nonetheless serious disturbances to people and
14 their lives. Foreign governments, or criminal enterprises may threaten these OGA's searching for
15 intelligence that may benefit their countries or criminal enterprises. The publicity associated
16 with the release of these OGA employee's identities, in connection with a particular investigation,
17 developmental project, or LE discussion topic, could trigger hostility toward a particular
18 employee, or future threat to obtain intelligence. There is no public interest to be served by
19 disclosing the identities of these employees to the public. Thus, disclosure of this information
20 would constitute a "clearly unwarranted and unwarranted invasion of their personal privacy."
21 Accordingly, the FBI has properly withheld this information pursuant to Exemptions (b)(6), and
22 (b)(7)(C).
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2 246. Exemptions (b)(6) and (b)(7)(C). In addition, at times Exemptions (b)(6), and (b)(7)(C)
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4 have also been asserted in Category 2I documents to protect the names and identifying
5 information of local law and state law enforcement employees, such as employee's working with
6 the Jefferson County Sheriff's Office Louisville, KY, National Sheriff's Association (NSA), San
7 Jose Police Department, New York State Police, New Jersey State Police, San Bernardino
8 Sherries Department, Las Vegas, Metro Police Department, International Association of Chefs of
9 Police (IACP), Major Cities Chiefs (MCC), Fairfax County Police Department, Virginia, and
10 DuPage County Sheriffs Office, Wheaton, IL. These employees were acting in their official
11
12 capacity, and attended the Law Enforcement Executive Forum (LEEF), June 25, 2009, to discuss
13 state and local law enforcement challenges relating to lawful intercepts, and technological
14
15 advancements in the communication industry that are out-pacing LE intercept capabilities. The
16 rationale for protecting the identities of FBI SAs discussed in ¶58-59, supra, applies with equal
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18 force to the names of these local and state law enforcement employees. Release of the identity of
19 these law enforcement employees could subject these individuals to unnecessary and unwelcome
20 harassment, and inquires into LE challenges, which would constitute an unwarranted invasion of
21 privacy. The FBI could identify no discernible public interest in the disclosure of this
22 information because the disclosure of the names of local and state law enforcement employees
23 would not shed light on the operations and activities of the FBI. Accordingly, the FBI concluded
24 that the disclosure of this information would constitute a clearly unwarranted and an unwarranted
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2 invasion of their personal privacy. The FBI properly withheld this information pursuant to
3 Exemptions (b)(6) and (b)(7)(C).
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5 247. Exemption (b)(7)(E). At times Exemption (b)(7)(E) has been asserted in Category 2I
6 documents to protect law enforcement records that would disclose techniques and procedures for
7 law enforcement investigations or prosecutions, and that would disclose guidelines for law
8 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
9 the law enforcement technique(s) of electronic or communications surveillance focused on
10 problems which hamper FBI's ability to successfully intercept communications systems and
11 networks, and details on preventing the FBI from "Going Dark." The responsive material details
12 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
13 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
14 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
15 release of this detailed information about surveillance techniques and associated problems or
16 vulnerabilities would provide violators a road map for successful law enforcement
17 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
18 law enforcement surveillance operations and the exploitation of capability weaknesses that would
19 enable them to structure their criminal enterprise and terrorist formulating communications in a
20 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
21 properly withheld this information pursuant to Exemption (b)(7)(E).
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2 **CATEGORY 2J - FBI DIRECT-REFERRAL RESPONSES TO PLAINTIFF - CRM**
3 **REFERRALS (LYNCH)**

4 248. Category 2J contains 74 responsive Bates pages consisting of talking points papers and/or
5 presentations, discussion papers, and e-mails between FBI personnel, and contacts with OGA's.
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7 59 of the responsive Bates pages are talking points papers and/or presentations titled: 1) "Going
8 Dark: Preservation of Lawful Intercept, Challenges and Potential Solutions," 2) "Going Dark:
9 Law Enforcement's Need to Preserve Lawful Intercept Capabilities," 3) "FBI Efforts to Preserve
10 Electronic Surveillance (ELSUR) Capabilities," 4) "Going Dark: The Going Dark Problem,
11 Congressional Briefing, Office of Hon. Lamar Smith (HJC)," and 5) "Going Dark: The Going
12 Dark Problem, Congressional Briefing, House and Senate Intelligence Committee Staff." These
13 presentations present the FBI's strategic policy development process concerning surveillance
14 challenges posed by emerging technologies. The presentations were being developed to highlight
15 to various internal and external audiences the surveillance challenges faced by the FBI and the
16 law enforcement community, as well as various recommendations, proposals, legislative
17 initiatives (i.e., amending CALEA), and advice on multi-point strategies, or actions FBI should,
18 or could, adopt, pursue, or consider to resolve such challenges. 10 of the responsive Bates pages
19 are discussion papers titled: 1) "FBI CALEA Scope of Coverage Amendment Proposal," and 2)
20 "FBI Transnational Threat Priorities." Finally, 4 of the responsive Bates pages are e-mails
21 between FBI personnel, and contacts at DEA, and OLP seeking input on ELSUR compliance
22 issues with communication service providers, and technical issues with private network providers
23 and access point entry.
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2 249. Exemption (b)(1). At times Exemption (b)(1) has been asserted in Category 2J
3 documents to withhold information that is properly classified. The information withheld is
4 currently and properly classified under E.O. 13256 at the Secret level and is exempt from
5 disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert
6 action), intelligence sources or methods, as the unauthorized disclosure of this information could
7 reasonably be expected to cause serious damage to the national security of the United States.
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10 250. The information withheld in Category 2J documents, pursuant to Exemption (b)(1),
11 consists of classified procedures and methods of intelligence-gathering utilized by the FBI to
12 gather intelligence information. An intelligence activity or method has two characteristics.
13 First, the intelligence activity and information generated by it is needed by U.S.
14 Intelligence/Counterintelligence agencies to carry out their missions. Second, confidentiality
15 must be maintained with respect to the activity if the viability, productivity, and usefulness of
16 that information is to be preserved. The classification redactions have been asserted to protect
17 from disclosure information that would reveal the actual intelligence activities utilized by the FBI
18 against specific targets of foreign counterintelligence investigations or operations; or disclosure
19 of intelligence gathering capabilities of the activities directed at specific targets. The intelligence
20 activities detailed in the withheld information are effective means for the FBI to gather, store, or
21 disseminate intelligence information. The criteria applied and priorities assigned in these records
22 are used in the FBI's present intelligence or counterintelligence investigations in accordance with
23 the Attorney General's guidelines on FBI intelligence or counterintelligence investigations.
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2 251. The information in these Category 1F documents concerning intelligence activities is very
3 specific in nature and known to very few individuals. Disclosure of the specific information
4 which describes these intelligence activities would reveal that they are still used by the FBI today
5 to gather intelligence information, and could reasonably be expected to cause serious damage to
6 the national security for the following reasons: (1) disclosure would allow hostile entities to
7 discover the current intelligence activities used; (2) disclosure would reveal or determine the
8 criteria used--and priorities assigned to--current intelligence or counterintelligence investigations;
9 (3) disclosure would reveal the Intelligence Community's (IC's) continual sensitive work creating
10 a decentralized communication medium which would aid in facilitating the sharing of
11 information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the
12 exact data collection and ELSUR capabilities shortfalls that the IC are encountering during
13 National Security investigations due to technology advancements in communication system
14 platforms, and encryption applications. Hostile entities could then develop countermeasures
15 which could severely disrupt the FBI's intelligence-gathering capabilities. This would severely
16 damage the FBI's efforts to detect and apprehend violators of the United States' national security
17 and criminal laws. The FBI protected the identity of intelligence sources, or methods, specific to
18 intelligence activities, because disclosure reasonably could be expected to cause serious damage
19 to the national security. Accordingly, the FBI has properly withheld this information pursuant to
20 Exemption (b)(1).
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2 252. Exemption (b)(5). Exemption (b)(5) has been asserted in 69 of 74 Category 2J
3 documents to protect the deliberative process privilege. The deliberative process privilege
4 protects the internal deliberations of an agency by exempting from release recommendations,
5 drafts, analyses, speculation and other non-factual information prepared in anticipation of agency
6 decision-making. The general purpose of the deliberative process privilege is to prevent injury to
7 the quality of agency decisions. The protected material contained draft presentations that
8 presented the FBI's strategic policy development process concerning surveillance challenges
9 posed by emerging technologies. The presentations were being developed to highlight to various
10 internal and external audiences the surveillance challenges faced by the FBI and the law
11 enforcement community, as well as various recommendations, proposals, legislative initiatives
12 (i.e., amending CALEA), and advice on multi-point strategies, or actions FBI should, or could,
13 adopt, pursue, or consider to resolve such challenges. The internal e-mail chain discussions
14 pertain to ELSUR compliance questions that are hampering implementing of lawful intercept
15 orders, and ELSUR technological gaps and proposed solutions to solve the weakening of the
16 FBI's capabilities to obtain lawful intercepts.
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21 253. Exemptions (b)(6) and (b)(7)(C). At times in conjunction with (b)(2), Exemptions (b)(6),
22 and (b)(7)(C) have been asserted in Category 2J documents to protect the names and identifying
23 information of FBI Special Agents (SAs) who were responsible for conducting, supervising,
24 and/or maintaining the investigative activities reported in these records, or who were consulted
25 on sensitive developmental projects. The SAs mentioned did not choose their assignments. The
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2 publicity associated with the release of these SAs' identities, in connection with a particular
3 investigation, or developmental project, could trigger hostility toward a particular employee, or
4 pressure of attempted bribery, to obtain intelligence. Publicity, adverse or otherwise, regarding
5 any particular investigation conducted by SAs may seriously impair the SAs effectiveness in
6 conducting future investigations, or consultations. This privacy consideration also protects SAs
7 from unnecessary, unofficial questioning as to the conduct of an investigation, or developmental
8 project, whether or not they are currently employed by the FBI. The names of FBI Professional
9 Support personnel are also withheld in Category 2J documents pursuant to Exemptions (b)(6)
10 and (b)(7)(C), at times in conjunction with (b)(2). Professional Support personnel are assigned to
11 handle tasks related to official criminal investigations, and/or developmental projects, as
12 reflected in the documents responsive to plaintiff's request. They were, and possibly are, in
13 maintain substantial privacy interests in not having their identities disclosed. Accordingly, the
14 FBI has properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C), at times
15 in conjunction with (b)(2).
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21 254. Exemptions (b)(6) and (b)(7)(C). At times Exemptions (b)(6), and (b)(7)(C) have also
22 been asserted in Category 2J documents to protect the names of personnel from the Drug
23 Enforcement Administration (DEA), National Security Division (NSD), Office of Legal Policy
24 (OLP), and contractors working for the FBI. Publicity (adverse or otherwise) regarding any
25 particular investigation they have been assigned, or internal FBI developmental project (e.g.,
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2 National Electronic Surveillance Strategy) they may be contracted to help develop, may seriously
3 prejudice their effectiveness in conducting other investigations, or developmental projects. The
4 privacy consideration is also to protect these federal employees, and/or contractors, as
5 individuals, from unnecessary, unofficial questioning as to the course of an investigation or
6 developmental project, whether or not they are currently employed by the FBI as contractors, or
7 with Other Government Agencies (OGA's). These employees may have to conduct official
8 inquiries into violations of National Security, or help develop strategic plans, like developing
9 ways to enhance ELSUR capabilities. They come into contact with all strata of society,
10 conducting searches, research, and making inquiries, all of which result in reasonable but
11 nonetheless serious disturbances to people and their lives. It is possible for an individual targeted
12 by these OGA's to carry a grudge which may last for years, and to seek revenge on the
13 investigators and other federal employees involved in a particular investigation. Foreign
14 governments, or criminal enterprises may threaten FBI contractors searching for intelligence that
15 may benefit their countries or criminal enterprises. The publicity associated with the release of
16 these OGA employee's, and/or contractors identities, in connection with a particular
17 investigation, or developmental project, could trigger hostility toward a particular employee, or
18 future threat to obtain intelligence. There is no public interest to be served by disclosing the
19 identities of these employees, and/or contractors, to the public. Thus, disclosure of this
20 information would constitute a "clearly unwarranted and unwarranted invasion of their personal
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2 privacy." Accordingly, the FBI has properly withheld this information pursuant to Exemptions
3 (b)(6), and (b)(7)(C).
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5 255. Exemptions (b)(6) and (b)(7)(C). In addition, at times Exemptions (b)(6), and (b)(7)(C)
6 have been asserted in Category 2J documents to protect the names and/or identifying information
7 of third-party individuals who were of investigative interest to the FBI and/or other law
8 enforcement agencies. Identifying information withheld concerning these third parties includes
9 addresses, dates of birth, social security numbers, and other personal information. Any link to a
10 law enforcement investigation carries a strong negative connotation and a stigma. Release of the
11 identities of these individuals to the public could subject them to harassment or embarrassment,
12 as well as undue public attention. The FBI has determined that these individuals maintain a
13 substantial privacy interest in not having their identities disclosed. In making a determination
14 whether to release the names and personal information concerning these third parties, the public's
15 interest in disclosure was balanced against the individual's right to privacy. The FBI determined
16 that this information would not enlighten the public on how the FBI conducts its internal
17 operations and investigations. The FBI concluded that the disclosure of this information would
18 constitute a "clearly unwarranted and unwarranted invasion of their personal privacy."
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20 Accordingly, the FBI has properly withheld this information pursuant to Exemptions (b)(6), and
21 (b)(7)(C).
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24 256. Exemption (b)(7)(A). Exemption (b)(7)(A) exempts from disclosure records or
25 information compiled for law enforcement purposes, but only to the extent that the production of
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2 such law enforcement records or information . . . could reasonably be expected to interfere with
3 enforcement proceedings. Exemption (b)(7)(A), at times in conjunction with (b)(1), has been
4 asserted in Category 2J documents to protect information that either summarize, discuss, or relate
5 to FBI criminal cases which remain in an open or active status. The release of such information
6 would reveal the scope, direction, nature and pace of the investigations as well as reveal
7 information that could harm prospective and/or ongoing government prosecutions in these
8 matters. If the information is released, the individuals and/or entities, who are of investigative
9 interest in the cases could use the information to develop alibis, take steps to circumvent the law,
10 create factitious defenses or intimidate, harass or harm potential witnesses. Accordingly, the FBI
11 has properly withheld this information pursuant to Exemption (b)(7)(A), at times in conjunction
12 with (b)(1).
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16 257. Exemption (b)(7)(E). At times Exemption (b)(7)(E) has been asserted in Category 2J
17 documents to protect law enforcement records that would disclose techniques and procedures for
18 law enforcement investigations or prosecutions, and that would disclose guidelines for law
19 enforcement investigations and prosecutions. Plaintiff's requests seeks information concerning
20 the law enforcement technique(s) of electronic or communications surveillance focused on
21 problems which hamper FBI's ability to successfully intercept communications systems and
22 networks, and details on preventing the FBI from "Going Dark." The responsive material details
23 difficulties encountered by law enforcement in conducting electronic surveillance and discusses
24 possible operational, legal, and procedural changes to the use, or enhancement of, investigative
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2 techniques that would ensure ELSUR capabilities are effective and productive. Accordingly, the
3 release of this detailed information about surveillance techniques and associated problems or
4 vulnerabilities would provide violators a road map for successful law enforcement
5 circumvention. Criminal and terrorist elements would gain valuable insight about the conduct of
6 law enforcement surveillance operations and the exploitation of capability weaknesses that would
7 enable them to structure their criminal enterprise and terrorist formulating communications in a
8 manner to evade lawful intercept and/or thwart investigative efforts. Accordingly, the FBI has
9 properly withheld this information pursuant to Exemption (b)(7)(E).
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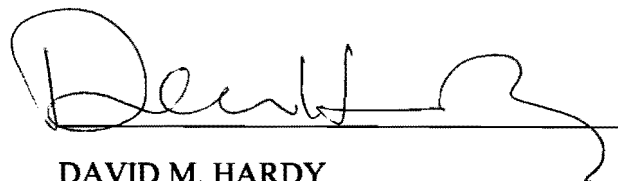
13 CONCLUSION

14 258. The FBI conducted a thorough search of the CRS, manual indices, and all FBIHQ
15 divisions and offices most likely to possess responsive records. These searches combined
16 produced a total of 2,662 responsive pages which 707 total pages have been released in full or in
17 part to plaintiff. The FBI has processed and released all reasonably segregable information from
18 the records responsive to plaintiff's requests to the FBI. The remaining responsive documents
19 have been withheld pursuant to FOIA Exemptions 1, 2, 3, 4, 5, 6, 7(A), 7(C), 7(D), and 7(E), 5
20 U.S.C. §§ 552 (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C), (b)(7)(D), and
21 (b)(7)(E). The FBI has carefully examined the responsive documents and has determined that the
22 information withheld from plaintiff, if disclosed, could reasonably be expected to cause serious
23 damage to the national security; disclose internal, non-public telephone numbers of particular
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2 damage to the national security; disclose internal, non-public telephone numbers of particular
3 FBI employees; could violate federal statutes; disclose trade secrets and commercial or financial
4 information obtained from a corporation or electronic communication service providers [that are]
5 privileged or confidential; reveal inter-agency, and intra-agency documents under the deliberative
6 process privilege, and information protected by the attorney-client privilege; disclose the
7 existence of law enforcement records that are pending or under prospective law enforcement
8 proceedings; cause a "clearly unwarranted and unwarranted invasion of personal privacy; could
9 disclose the identities of and information provided by confidential sources; and disclose sensitive
10 investigative techniques and procedures. Accordingly, the FBI has released all reasonably
11 segregable, non-exempt information to plaintiff in response to its FOIA request.
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16 259. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
17 and correct, and that **Exhibits A through P** attached hereto are true and correct copies.
18

19 Executed this 29th day of February, 2012.

20
21 

22 DAVID M. HARDY

23 Section Chief
24 Record/Information Dissemination Section
25 Records Management Division
26 Federal Bureau of Investigation
27 Winchester, VA
28