

EXHIBIT 3

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

12 ELECTRONIC FRONTIER,
 13 FOUNDATION
 Plaintiff,

14 v. -

15 DEPARTMENT OF JUSTICE,
 16 FEDERAL BUREAU OF
 INVESTIGATION, AND DRUG
 17 ENFORCEMENT ADMINISTRATION,

18 Defendants.
 19

Civil Action No. C 10cv04892 (SI)

SECOND DECLARATION OF
 KATHERINE L. MYRICK
 DRUG ENFORCEMENT
 ADMINISTRATION

20 1. I am currently assigned as the Chief of the Freedom of Information (FOI)/Privacy Act Unit,
 21 FOI/Records Management Section (SARF), Drug Enforcement Administration (DEA), United
 22 States Department of Justice (DOJ), located at DEA Headquarters in Arlington, Virginia. I have
 23 served in this capacity since 1998 and oversee the processing of requests to DEA under the
 24 Freedom of Information Act (FOIA), 5 U.S.C. § 552; and the Privacy Act (PA) of 1974, 5 U.S.C.
 25 § 552a. SARF is the central DEA office responsible for responding to, searching for, and
 26 processing and releasing DEA information requested under the FOIA and PA.

1 2. Due to my experience in responding to requests for DEA records since 1998, and the nature
2 of my official duties, I am familiar with the policies and practices of DEA and DOJ related to
3 searching for, processing, and the release of DEA information responsive to FOIA and PA
4 requests, and in particular, I am familiar with the processing of Plaintiff's request to DEA that is
5 the basis of this suit.

6
7 3. In preparing this declaration, I have read and am familiar with the Complaint in the above
8 titled action, the pleadings regarding Plaintiff's Motion for Partial Summary Judgment seeking
9 expedited processing filed January 6, 2011, and this Court's Order establishing a rolling
10 processing schedule, dated March 3, 2011. The statements I make hereinafter are made on the
11 basis of my own personal knowledge, review of DEA records and the six (6) interim releases
12 made by DEA in this case, and information acquired by me in the performance of my official
13 duties as Chief of SARF.

14
15 4. By letter dated September 28, 2010, Plaintiff made a broad, six-item request generally
16 seeking information about DEA problems and limitations encountered in the surveillance of
17 communications systems or networks. A true and correct copy of the letter is attached as Exhibit
18 A. By letter dated October 1, 2010,¹ DEA responded to Plaintiff's request dated September 28,
19 2010. A true and correct copy of the letter is attached as Exhibit B. By letter dated October 26,
20 2010, Plaintiff's request for expedited processing was denied after consideration by SARF under
21 the DOJ standards promulgated at 28 C.F.R § 16.5 (d). A true and correct copy of this letter is
22 attached as Exhibit C. Thereafter, on or about November 15, 2010, DEA received notice of the
23 Complaint in the instant FOIA suit. At that time, DEA had a backlog in excess of 900
24 administrative cases in a single processing track.² While it is standard practice to process requests
25 in chronological order on a "first in, first out" basis, a practice consistent with the *Open America*

26
27 ¹ Internal DEA records indicate that this letter was sent on September 29, 2010.

28 ² The backlog as of the end of December 2010 was 882 cases.

1 decision, Plaintiff's request was moved forward in the queue for processing in a joint effort with
2 the Office of Chief Counsel, Administrative Law Section (CCA) in lieu of seeking an *Open*
3 *America* stay. See *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C.
4 Cir. 1976). As such, DEA began processing Plaintiff's request on November 18, 2010; ahead of
5 hundreds of requesters who submitted FOIA requests to DEA before September 28, 2010.

6 7 ADEQUACY OF SEARCH

8
9 5. DEA initiated its search for records on November 18, 2010, thereby employing this date as
10 the administrative "cut-off" for responsive records. See 28 C.F.R. 16.4(a).

11 a. First, to frame an adequate search, agency personnel with expertise and knowledge
12 regarding the issues raised in Plaintiff's Complaint and request were consulted to identify those
13 DEA offices/activities and/or personnel who would likely possess responsive information. As a
14 result, six primary DEA program offices/activities were identified and tasked to search for
15 information in any format responsive to Plaintiff's six-item request. These six offices/activities
16 comprised the Office of the Administrator (A), the Office of the Assistant Administrator for
17 Operational Support (SC), the Office of the Chief Counsel (CC), the Office of Investigative
18 Technology (ST), the Office of Congressional and Public Affairs (CPC), and the Special
19 Operations Division (SOD).

20 b. The searches conducted by the above offices/activities for responsive records from
21 January 1, 2006 to November 18, 2010, included manual searches of paper records maintained in
22 correspondence and/or administrative subject files as well as key word searches of designated or
23 known e-mail and electronic file subject/topic folders. Specific files, whether paper, electronic,
24 or e-mail, were identified by personnel in each office knowledgeable with that office's records
25 maintenance in relation to information about communications system or network surveillance
26 capability problem topics; communications or discussions with system or network operators,
27 vendors, or manufacturers about such capability problem topics and/or developmental needs to

1 address such problem topics; or otherwise related to the additional items sought in Plaintiff's
2 request. Concerning item six of Plaintiff's request, information regarding certain "exchanges
3 between DEA officials and members of the Senate or House of Representatives," CPC also
4 queried its WebCims and CONG databases using the terms "Electronic Assistance," "CALEA,"
5 and "Electronic Communications." WebCims is a web-based document management and
6 tracking system that can be used to locate Congressional inquiries or correspondence, and the
7 CONG database is an internal CPC electronic log of inquiries/taskings received from
8 Congressional liaisons. The CPC queries, however, did not result in the location of records
9 responsive to item six of Plaintiff's request.

10
11 6. In addition to the searches of the six offices/activities described above, three DEA personnel
12 assigned (formerly or presently) to two of the identified DEA program offices/activities (CC and
13 ST) were specifically identified as programmatic "experts" who likely possessed responsive
14 records because they regularly advised on and performed duties related to electronic surveillance
15 capability policy and practice issues to include surveillance challenges triggered by emerging
16 technology. These personnel were individually tasked to search for records in any format from
17 January 1, 2006 to November 18, 2010 responsive to Plaintiff's request, thus creating an
18 overlapping search effort with the program offices/activities who also performed searches as
19 described above. Specifically, these individuals performed both manual and key word searches
20 of their email accounts and those records maintained in designated electronic subject folders
21 concerning the matters sought in Plaintiff's request.

22
23 7. DEA completed the search efforts above on or about January 7, 2011. Given the nature of
24 the Plaintiff's multi-part request and the overlapping, multi-faceted search efforts by the six
25 program offices/activities and three designated programmatic "experts" described above, a
26 voluminous amount of potentially responsive records was received for processing.

27 a. As these records were received by the processing team, it became clear that there were

1 many duplicates/and or variations of the same documents and/or e-mail strings that were received
2 from multiple sources; and much of the material was highly technical and/or law enforcement
3 sensitive in nature, thus requiring additional consultations with DEA and DOJ personnel to assist
4 in determining responsiveness, consults and referrals with other DOJ components or agencies,
5 and to formulate appropriate release/withholding decisions.

6 b. As processing proceeded, two supplemental search taskings were performed by the Office
7 of Resource Management, Program Liaison and Analysis Section (FRP), and the Office of the
8 Deputy Administrator, Executive Policy and Strategic Planning Staff (ADSS) on or about March
9 24, 2011. These supplemental searches became necessary to ensure search completeness as
10 review of documents produced by the other offices/activities indicated that FR and ADSS likely
11 maintained copies of different versions of specified records, portions of which were determined
12 to be responsive to Plaintiff's request, but not duplicative of records already located by the other
13 office searches. FR and ADSS were contacted and provided copies of the specifically identified
14 records which concerned responsive information contained within preparatory budget testimony
15 materials (processing category 2D) and DEA recommended input to the National Drug Control
16 Strategy (processing category 1A).

17 18 **PROCESSING METHODOLOGY AND CATEGORY GROUPINGS**

19
20 8. Given the voluminous amount of potentially responsive material received and the issues
21 identified above, a two-phase processing plan was devised and implemented as outlined in my
22 Declaration of January 24, 2011, and comprised six monthly interim determinations beginning
23 with the first interim release on or about April 1, 2011, and concluding with the sixth interim
24 release on or about September 1, 2011. Copies of these interim release determinations and
25 processing accountings are attached respectively as Exhibits D through I.

26 a. In terms of processing methodology, during the initial "scoping" phase of
27 processing, potentially responsive records were grouped by like topical and/or functional

1 categories to allow for the detailed page-by-page review of the second processing phase. Given
2 the similarity in function and/or topic of the documents to review, the categorical groupings
3 allowed for more efficient processing, coordination, and established an organizational structure
4 for subsequent analysis and review.

5 b. The rolling page-by-page review, consultation, and processing efforts identified large
6 amounts of non-responsive and duplicate pages as a result of the broad six-item request and
7 overlapping search efforts. As the page-by-page category review progressed, pages were
8 identified for final determination processing, culminating in 1036³ total pages, responsive in
9 whole or part, to Plaintiff's request, including records referred to DEA from other DOJ
10 Components (processing category 10). 570 potentially responsive pages originating from other
11 agencies were also identified and referred for direct response to Plaintiff.

12 c. This narrative declaration provides a description of search and general processing efforts,
13 identifies assigned processing categories, describes exemptions and withholding justifications
14 commonly applied to information throughout the processing categories, segregability, and a
15 category-by-category discussion of withheld material. This declaration is accompanied by a
16 *Vaughn* Index (*hereinafter "Index"*) providing a detailed description of the withheld material
17 within each categorical group; further broken down into sub-groupings where necessary. In
18 addition to designating each category group and sub-group, the *Index* specifies the relevant page
19 ranges, dates of records (if any), applicable exemptions to the pages within the groupings, and the
20 action taken with respect to each responsive page: withheld in full (WIF), released in part (RIP),
21 or released in full (RIF). The *Index* is attached as Exhibit J.

22 d. The category grouping designations are as follows:
23
24
25

26
27 ³ There is a two-page variance between this number and the 1038 total responsive pages reported in the six
28 (6) interim releases; the figure was adjusted for accuracy as a final processing audit revealed one page previously
reported as withheld in full was a duplicate, and one page was non-responsive.

1	Category	General Description
2	1A	DEA Policy Input and Internal Strategy Formulation Related to
3		Emerging Technology Challenges.
4	1B	DEA "Next Generation Wireless Strategy" Formulation and
5		Implementation.
6	2A, 2B	Electronic Surveillance Facility Proposals, DEA-Internal.
7	2C	Draft Electronic Surveillance Resource and Budget Proposals.
8	2D	Talking Points: Administrator Preparation for Congressional Testimony.
9	3A	Talking Points: Title III; Pen Register and Trap and Trace.
10	3B	DEA edits/input into Draft Report to Congress.
11	3C	DEA Draft Legislative Input and Proposals.
12	4	Case Examples.
13	5A, 5B	Records Referred to Other Agencies or Components.
14	5C	Briefing Presentations and Slides.
15	6	Communications Industry Related Materials.
16	7	Miscellaneous Material Related to Emerging Technology Challenges.
17	8	Question and Answers (Q and A): Administrator Preparation for Confirmation
18		Hearing and other Congressional Testimony.
19	9	Special Operations Related Materials.
20	10	Referrals to DEA from other DOJ Components for Direct Response.

WITHHELD MATERIAL: COMMONLY APPLIED EXEMPTIONS

23 9. To avoid repetition in the explanation, justification, and harm analysis of the withheld
 24 material in the below category discussions, there are threshold matters and several types of
 25 information or documents that were uniformly withheld under the same exemption(s) and/or
 26 justifications throughout all processing categories. Where more particularized justifications are
 27 necessary to explain withholdings, such are contained in the category-by-category discussion

1 which follows this section. The commonly applied exemptions and matters throughout the
2 categories are as follows.

3 a. Exemption 3: FOIA Exemption 3, subpart B permits agencies to withhold material that is
4 specifically exempted from disclosure by statute, when the statute “establishes particular criteria
5 for withholding or refers to particular types of matters to be withheld.” As relevant here, and as
6 identified in the *Index*, Exemption 3 was employed throughout to withhold excerpts of Title III⁴
7 authorized communication intercepts. Specifically, Title III (T III) identifies intercepted
8 communications as the subject of its disclosure limitations,⁵ and apart from those instances where
9 judges may release intercepted material to parties overheard,⁶ Section 2517 limits disclosure of
10 intercepted communications to only three circumstances,⁷ none of which apply to the withheld T
11 III information herein.

12 b. Exemption 5: Drafts. Exemption 5 protects certain inter- and intra- agency documents
13 under the deliberative process privilege to prevent the premature disclosure of proposed policies,
14 avoid public confusion generated by unadopted rationales/decisions, and to maintain the integrity
15 of the agency decision-making process by encouraging open, candid discussions. By their very
16 nature as draft documents, the documents are pre-decisional, preliminary versions of what may
17 later become a final document in whole or in part, or they remain drafts that never mature into
18 final form as the material may be withdrawn or discarded during the decision-making process. In
19 fact, the process by which a draft evolves into a final document is itself a deliberative process.
20 Specifically, there are 461 pages of draft documents and e-mails that either forward draft material
21 or provide additional comments, recommendations, or suggested edits to the draft documents
22

23 ⁴ Title III of the Omnibus Crime Control and Safe Streets Act of 1968; 18 U.S.C. § 2510 *et seq.*

24 ⁵ See 18 U.S.C. § 2517, (“Authorization for disclosure and use of intercepted wire, oral, or electronic
25 communications”).

26 ⁶ See 18 U.S.C. § 2518 (8)(d), (10)(a).

27 ⁷ See 18 U.S.C. § 2517(1)-(3) (2011) (limiting disclosure to (1) exchanges between law enforcement
28 officers as necessary for the performance of official duties, (2) use by law enforcement officers for the performance
of official duties, and (3) persons testifying under oath).

1 they pertain to. Many draft documents within the processing categories are replete with edits,
2 strike-through and other formatting changes, marginal suggestions and comments, and/or
3 embedded questions regarding content. Drafts are specifically identified in the category-by-
4 category discussion below and the attached *Index* as the drafts relate to different policy
5 formulation or decision-making processes. Except in limited instances where factual or public
6 source information could be segregated for release, the deliberative process privilege was
7 commonly applied to all draft documents and emails that functioned as drafts as the release of
8 such would seriously impede DEA's ability to foster candid discussions, proposals, and debate
9 both internally within DEA, and between DEA and the Department and other agencies as needed
10 for efficient and proper policy formulation and decision making. Disclosure would have a
11 profound chilling effect across all DEA decision-making processes as agency personnel would be
12 less inclined to produce and circulate drafts for consideration and comment.

13 c. Exemption 5, Talking Points or Discussion Papers. Except for limited factual or public
14 source portions segregated for release, the deliberative process privilege was also commonly
15 applied throughout the processing categories to records identified as "Talking Points" or
16 "Discussion or Issue Papers." Talking points or discussion papers are routinely used within DEA
17 and, at times, reviewed with DOJ, as preparatory tools for executives, management, and
18 designated agency representatives in multiple decision-making processes and forums both
19 internally and to prepare DEA personnel for interaction with Congress, other agencies, and
20 private individuals or companies. In terms of function, these papers are inherently predecisional
21 and deliberative as they are preparatory in nature and do not reflect final agency actions as the
22 officials or working groups relying on the papers may disregard or modify these advisory papers
23 in full or in part. In terms of content, the papers reflect what issues the author has determined, in
24 his or her judgement, are worthy of discussion or consideration by the superior, or in the working
25 group context, by the other working group participants. In this regard, the papers contain the
26 opinions, suggestions, recommendations, and analysis of the subordinate employees or working
27 group participants who draft them. As such, the release of these papers would adversely impact

1 the quality of policy decision-making within DEA as well as the development of DEA positions,
2 recommendations, and advice to be presented externally, since disclosure would discourage the
3 use of, and chill candid discussion within, such talking points or discussion papers. Moreover,
4 release of such preparatory materials would only confuse the public as they do not reflect final
5 agency action or decision. This justification applies to all DEA talking point or discussion issue
6 papers identified herein; and to the extent more particularized descriptions of function, content,
7 or harm are necessary, they are included in the category-by-category discussion below.

8 d. Exemption 7 Threshold: FOIA Exemption 7 protects from disclosure information
9 compiled for law enforcement purposes. DEA's investigative jurisdiction derives from the
10 Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801, et seq.
11 (hereinafter, the Act) which authorizes DEA to enforce the Act through the investigation of
12 trafficking in controlled substances and the violators who operate at interstate and international
13 levels. All responsive records herein were compiled for law enforcement purposes as they either
14 (1) relate to, discuss, or summarize actual DEA criminal cases, or (2) they relate to or discuss--in
15 varied contexts--the substantive issue of DEA's ability or inability to conduct criminal
16 investigations by electronic intercept due to emerging communication technologies, commonly
17 referred to as "Going Dark" type issues.

18 e. Exemptions 6 and 7C. These exemptions were mutually employed to withhold privacy
19 related information, to wit: (1) the names or identities, e-mail addresses, and phone numbers of
20 DEA Special Agents and other DEA, DOJ, and federal agency personnel;⁸ (2) the names, alias
21 identities, and other personally identifying information (phone numbers, email addresses, user
22 account information, images) of investigative targets, co-conspirators, criminal associates, and
23 other third parties identified in the investigative context; (3) individual confidential source
24 identities and; (4) the names, contact, or other identifying information of individuals (primarily
25 personnel of third-party companies) who cooperated with DEA in the resolution of technical
26 intercept issues, consulted with DEA on intercept issues related to emerging technologies, or are

27 ⁸ The names of DEA Executive-level or publicly known personnel were released.
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1 otherwise identified by DEA in the investigative or resolution of intercept issue context.

2 (1) Once the law enforcement purpose threshold is reached, Exemption 7C exempts
3 material that “could reasonably be expected to constitute an unwarranted invasion of personal
4 privacy.” In similar fashion, 5 U.S.C. § 552 (b)(6) sets forth an exemption for “personnel and
5 medical files and similar files the disclosure of which would constitute a clearly unwarranted
6 invasion of personal privacy.” Exemptions 6 and 7C require a balancing of an individual’s right
7 to personal privacy against the public’s interest in shedding light on an agency’s performance of
8 its statutory duties.

9 (2) Employing the balancing test here, privacy interests were identified for each of the
10 individuals identified in the four groups cited in the paragraph above. The privacy interests of
11 these individuals were balanced against any discernible public interest in disclosure of the
12 individuals’ names and related personally identifying or contact information. In this instance, no
13 facts have been provided to support a public interest in the disclosure of these identities, which
14 standing alone, provide no insight into DEA’s performance of its statutory duties. Accordingly,
15 the individual privacy interests triggered herein outweigh the lack of a discernable public interest
16 in disclosure. Thus, disclosure of these names and related personally identifying or contact
17 information could reasonably be expected to constitute an unwarranted invasion of personal
18 privacy under Exemption 7C, or in the alternative, constitute an unwarranted invasion of their
19 personal privacy under Exemption 6. A detailed itemization of the types of information withheld
20 under Exemptions 6 and 7C is provided in the attached *Index*.

21 e. Exemption 7A: Case Examples. 5 U.S.C. § 552 (b)(7)(A) sets forth an exemption for
22 records or information compiled for law enforcement purposes the disclosure of which “could
23 reasonably be expected to interfere with enforcement proceedings.” The nature of Plaintiff’s
24 request resulted in the identification of a significant amount of information about, or related to,
25 DEA criminal cases. DEA routinely gathered, cited to, and summarized examples of
26 surveillance difficulties or limitations derived from actual DEA cases for myriad purposes;
27 including the formulation of policy, legislative proposals, changes to operational techniques,

1 development of criminal intelligence, and training of law enforcement personnel. Exemption 7A
2 was applied to withhold information which either summarizes, discusses, or relates to DEA
3 criminal cases which remain in an open or active status. Due to the significant amount of
4 criminal cases discussed in the responsive material, DEA employed a two-step research and
5 coordination process to confirm case status. First, those case summaries and discussions that
6 could be identified by DEA case number were entered into DEA's case status subsystem
7 (CAST), a component of DEA's investigative records filing system (IRFS). CAST, which can be
8 queried by DEA investigative file number, provides current, on-line access to information in
9 working files, to include current case status as open or closed. Second, where the DEA case
10 number was not included in the summary or case discussion, or the CAST case status check did
11 not provide a definitive case status, field agents were contacted directly to verify whether cases
12 remained under active investigation or remained open pending completion of ongoing or pending
13 prosecutions. As a result, and as further identified in the Index, 112 total pages were identified
14 as containing information about open or active cases. The release of such information would
15 reveal the scope, direction, and nature of the investigations as well as reveal information that
16 could harm prospective and/or ongoing government prosecutions in these matters. If the
17 information is released, the individuals and/or entities, who are of investigative interest in the
18 cases could use the information to develop alibis or intimidate, harass or harm potential
19 witnesses.

20 f. Exemption 7D: 5 U.S.C. § 552 (b)(7)(D) sets forth an exemption for the information
21 compiled for law enforcement purposes the disclosure of which could reasonably be expected to
22 reveal the identity of a confidential source and/or information furnished by a confidential source,
23 to include a State, local, or foreign agency or authority or private institution which furnished
24 information on a confidential basis. Many DEA case examples contained in responsive
25 documents cited throughout the processing categories contain information that identifies, relates
26 to, or was provided by confidential sources (See categories 4, 5C, 6, and 10). These confidential
27 sources include sources with expressed and those with implied confidentiality.

1 (1) Expressed confidentiality. There are two types of confidential sources applicable
2 here. First, information supplied by DEA registered or "coded" informants, who have a
3 continuing cooperative association, by written signed agreement, with DEA; they are expressly
4 assured confidentiality in their identities and the information they provide to DEA. Second, there
5 is a private institution which furnished information to DEA on a confidential basis under a non-
6 disclosure agreement between DEA and the private concern.

7 (2) Implied confidentiality. When it could not be ascertained that a source was found to
8 have been expressly made a promise of confidentiality, certain circumstances characteristically
9 support an inference of confidentiality, such as the character of the crime under investigation, and
10 the source's relation to the nature of the crime. As relevant here, there are numerous references
11 to individuals identified as "confidential sources." Although these individuals are not further
12 specified as registered, or "coded" informants, these individuals supplied information to DEA
13 during drug-trafficking investigations.

14 (3) The release of the names of any sources, expressed or implied, any identifying
15 information about such sources, or the information they provided, could jeopardize DEA
16 operations, to include investigations that are ongoing, as the continued cooperation of such
17 sources of information is paramount to DEA investigations and development of criminal
18 intelligence. Additionally, such sources could be needed in future criminal investigations and
19 release would hamper future cooperation. Exemption 7F was also used to protect the identity
20 and other identifying information provided by confidential sources who are individuals.

21 g. Exemption 7E: Surveillance/Intercept Techniques. 5 U.S.C. § 552 (b)(7)(E) sets forth an
22 exemption for techniques and procedures for law enforcement investigations or prosecutions, and
23 guidelines for law enforcement investigations or prosecutions, the disclosure of which could
24 reasonably be expected to risk circumvention of the law. Given Plaintiff's request seeking
25 records concerning DEA's problems with surveillance capabilities, Exemption 7E applies in full
26 or in part to nearly every responsive page as indicated in the attached *Index*. The responsive
27 pages are replete with detailed information regarding the employment of specific surveillance

1 techniques, the procedures employed by DEA, DOJ, and other law enforcement agencies for the
2 conduct of such surveillance; the difficulties, vulnerabilities, and /or limitations of conducting
3 such surveillance in technical and specific carrier/service-provider contexts; and the exploitation
4 of such vulnerabilities or limitations by criminal elements and international drug trafficking
5 organizations. The responsive pages also include guidance on how to conduct investigations of
6 communications systems or networks to work around intercept difficulties and/or how to employ
7 countermeasures to intercept evasion practices employed by criminal elements. 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 elements would gain valuable insight about the conduct of law
11 enforcement surveillance operations and the exploitation of capability weaknesses that would
12 enable them to structure their drug trafficking and other criminal enterprise communications in a
13 manner to evade lawful intercept and/or thwart investigative efforts.

14 h. Exemption 7E: G-DEP Code Numbers. Within processing categories 4 and 10, as further
15 identified in the *Index*, Geographical Drug Enforcement Program (G-DEP) code numbers on
16 select pages are also withheld under 7E. The DEA Agent's Manual, *inter alia*, prescribes law
17 enforcement practices, procedures, and guidelines used by DEA Special Agents, agency
18 personnel, and other law enforcement officers and establishes various systemic investigative
19 reporting procedures. These investigative reporting procedures include the documentation of
20 criminal activity by G-DEP number. G-DEP codes are part of DEA's internal system of
21 developing criminal activity information and intelligence. As these codes and numbers relate
22 solely to internal DEA investigative procedures, there is no public interest in the release of such
23 information. G-DEP codes are assigned to all DEA cases at the time the case file is opened and
24 indicate the classification of the violator(s), the types and amount of suspected drugs involved,
25 the priority of the investigation, and the suspected location and scope of criminal activity. The
26 release of the G-DEP codes would help identify priority given to narcotic investigations, types of
27 criminal activities involved, and violator ratings. Suspects could decode this information, and as

1 a result, change their pattern of drug-trafficking in an effort to respond to what they determined
2 DEA knows about them, develop enforcement countermeasures, avoid detection and
3 apprehension, create excuses for suspected activities, and/or create alibis for suspected activities.
4 As such, disclosure of the codes would enable circumvention of DEA law enforcement efforts.

5 i. Exemption 7F. The names and other identifying information of DEA Special Agents
6 (including supervisory agents) in the field, and confidential sources of information are also
7 withheld in accordance with 5 U.S.C. § 552 (b)(7)(F). Exemption (b)(7)(F) sets forth an
8 exemption for records or information compiled for law enforcement purposes the disclosure of
9 which could reasonably be expected to endanger the life or physical safety of an individual.
10 DEA Special Agents are frequently called upon to conduct a wide variety of investigations,
11 including sensitive and dangerous undercover operations. Special Agents routinely approach and
12 associate with violators in a covert capacity. Many of those violators are armed and many have
13 known violent tendencies. In DEA's experience, the release of Special Agents' identities has, in
14 the past, resulted in several instances of physical attacks, threats, harassment, and attempted
15 murder of undercover and other DEA Special Agents. This information was also withheld
16 pursuant to Exemption (b)(7)(C). The names and other identifying information of confidential
17 sources of information is also withheld under Exemption (b)(7)(F) in addition to Exemption
18 (b)(7)(D). Given the propensity of violence inherent in the trade of illicit substances, there is a
19 reasonable expectation that the release of identifying information about such individual(s) would
20 pose a danger to their life or physical safety.

21 j. Segregability. All responsive pages were examined to determine whether any reasonably
22 segregable information could be released after applying exemptions to each page while
23 considering the foreseeable harm that release would pose to interests protected by such
24 exemptions. As a result, 179 pages were identified for release in full and 63 pages were released
25 in part with redactions. Given the overlapping application of Exemptions 5, 7E, and other
26 relevant exemptions to most responsive records, 794 pages were withheld in full. After applying
27 these exemptions to each page, only blank pages, or pages with incomprehensible words and
28

1 phrases would remain. The release of that information would not contribute to the understanding
2 of how DEA or the Government conducts business. Segregability is addressed in more detail as
3 appropriate in the category-by-category section below.

4
5 **WITHHELD MATERIAL: CATEGORY GROUPINGS**

6
7 **CATEGORY 1A**

8 10. Category 1A has 77 pages responsive in whole or in part and comprises DEA policy input
9 and internal deliberation/strategy formulation documents regarding emerging technology
10 challenges. 50 of the 77 pages are drafts. All 77 pages are withheld in full under Exemptions 5
11 and 7E; Exemptions 6 and 7C were applied to portions of two pages. There are three sub-
12 groupings which track the *Index* entries: (a) DEA recommended strategy to the Office of
13 National Drug Control Policy (ONDCP) for inclusion in the annual National Drug Strategy
14 (NDS), (b) Internal DEA strategy development documents, and (c) DEA strategy-related
15 documents prepared in anticipation of DOJ Working Group meetings.

16 a. NDS Input. As relevant to Exemption 5, 17 pages comprise internal DEA drafts from the
17 Office of Investigative Technology (ST) to the DEA Deputy Administrator (responsible for
18 submissions to ONDCP) recommending NDS content. Two (2) pages are unsigned final
19 versions of NDS content sent to ONDCP by the DEA Deputy Administrator; the content was not
20 adopted by ONDCP for publication in the NDS. These pages are pre-decisional as they are
21 antecedent to ONDCP's decision regarding what content to include in the NDS, and deliberative,
22 as they comprise DEA's recommended content for NDS publication which was not ultimately
23 adopted by ONDCP. The release of the drafts and two (2) pages of recommended NDS input
24 would impede the internal DEA recommendation formulation process as well as the process of
25 recommendation between DEA and ONDCP as disclosure would chill the candid exchange of
26 recommended NDS content. As relevant to Exemption 7E, and as detailed in the attached *Index*,
27 these pages pertain to and discuss in detail the law enforcement technique of, and procedures

1 related to, the conduct of electronic surveillance, its vulnerabilities, and exploitation of such
2 vulnerabilities by criminal elements.

3 b. Internal DEA Strategy Development Materials. As relevant to Exemption 5, 29 of the 54
4 pages in this sub-group comprise unsigned drafts of internal DEA talking points and
5 discussion/issue papers for use in internal DEA strategy deliberations; numerous pages contain
6 edits and marginal comments. Twenty-one (21) of the 54 pages are talking points or discussion
7 papers prepared by subordinate DEA personnel for DEA managers and executives for their use in
8 strategy meetings and/or for use by internal DEA working groups in the early stages of DEA's
9 strategy formulation process in 2008 to address intercept difficulties posed by emerging
10 technologies which matured into the designated "Next Generation Wireless Strategy" process
11 outlined in Category 1B. These talking points and discussion issue papers are an integral part of
12 the internal DEA strategy formulation process, antecedent to the agency decision to adopt and
13 implement a formal strategy. These pages are deliberative in both content and function. In terms
14 of content, these 21 pages contain opinions, legal and policy analysis, procedural suggestions,
15 suggestions of what issues/problems need to be solved or are worthy of discussion, and myriad
16 proposed technical, policy, legislative, and resource solutions. In terms of function, the purpose
17 of these talking points is to identify and propose issues for internal DEA discussion and debate.
18 As relevant to Exemption 7E, and as detailed in the *Index*, the content of these pages pertain to
19 and discuss in detail the law enforcement technique of, and procedures related to, the conduct of
20 electronic surveillance, its vulnerabilities, and exploitation of such vulnerabilities by criminal
21 elements.

22 c. DEA Strategy-Related Documents Prepared for DOJ Working Group Meetings. These
23 four (4) pages, withheld in full under Exemptions 5 and 7E, comprise draft talking points (1
24 page) and rough-drafts of discussion or issue papers (3 pages) under development for anticipated
25 working group meetings concerning electronic surveillance challenges faced by DEA and/or
26 DOJ. Similar to the documents described in paragraph 10b above, these pages--in addition to
27 being drafts--are exempt under the deliberative process privilege of Exemption 5 in both function

1 and content. These drafts, as relevant to Exemption 7E, contain detailed discussions of specific
2 electronic surveillance challenges and vulnerabilities. See Index.

3 d. Segregability. Given the convergence of Exemptions 5 and 7E with respect to each page,
4 and those portions of two (2) pages containing Exemption 6/7C redactions, no reasonably
5 segregable, non-exempt information was identified for disclosure in Category 1A.

6 7 CATEGORY 1B

8 11. Category 1B is comprised of 15 pages responsive in whole or in part related to or associated
9 with the "Next Generation Wireless Strategy," an internal DEA strategy initiative relating to the
10 formulation of a common agency game plan to the identify and pursue solutions to intercept
11 difficulties posed by emerging technologies. Six (6) of the 15 pages are drafts; 3 of the 15 pages
12 were released in part and the remaining 12 were withheld in full as indicated in the attached
13 *Index*. Due to the varied nature of the documents in this grouping, there are 5 subcategories
14 which track the *Index* entries as outlined below.

15 a. Draft Field Advisory Council Meeting Minutes. These three (3) pages are a draft
16 summary of a DEA Field Advisory Council (or committee) meeting that include discussions and
17 Questions and Answers (Q and A) related to DEA "Next Generation Wireless Strategy" issues.
18 The DEA Field Advisory Council, as its name suggests, is an advisory body of DEA field unit
19 representatives which analyzes select operational issues and develops recommendations to DEA
20 executive leadership for consideration of operational policy, procedural, and/or resourcing
21 decisions. In addition to being in draft form, the content comports with the deliberative process
22 privilege of Exemption 5 as the meeting minutes reflect matters which did not mature into a
23 specific recommendation to DEA leadership and include the back and forth dynamic of Q and A
24 to flesh-out issues related to actual surveillance difficulties encountered by DEA, proposed
25 changes to training and investigative policy and practice, and the opinions of participating
26 council members regarding legal, policy, and procedural issues that impact DEA surveillance
27 operations. Release of this material would chill the candid exchange of ideas and points of view

1 within this DEA advisory body, thereby diminishing its effectiveness in the formulation of DEA
2 operational policy. In terms of Exemption 7E, the substantive content of these draft pages, as
3 detailed in the *Index*, include detailed information regarding electronic surveillance, DEA
4 vulnerabilities, exploitation of such vulnerabilities by criminal elements, and how DEA should
5 train or change investigative techniques/practices in response.

6 b. Introductory DEA Strategy Session Memorandum. This two (2) page memoranda also
7 falls within the deliberative process privilege and includes surveillance/intercept technique
8 related material. As relevant to Exemption 5, this memorandum was created to prepare DEA
9 leaders and participants for upcoming off-site strategy sessions designed to discuss and develop
10 proposed solutions to current intercept challenges. This document represents the link between
11 the early strategy formulation process described in Category 1A (paragraph 10b) and the later
12 stages of the agency decision chain to adopt a formal strategy designated the “Next Generation
13 Wireless Strategy.” The memorandum is predecisional as it was antecedent to the formal
14 adoption of a DEA strategy (paragraph 11e, below) and deliberative as it proposed an agenda for
15 interactive discussion sessions on intercept issues the proposing DEA official thought worthy of
16 collective DEA consideration and action. Release of this agenda-setting memorandum would
17 discourage open expression of proposed discussion items, thereby diminishing the quality and
18 effectiveness of DEA strategy and policy decisions. Per Exemption 7E, the memorandum also
19 identifies specific intercept issues encountered in DEA investigations recommended for strategy
20 session discussions.

21 c. Issue and Proposal Matrix. This two (2) page spreadsheet chart is a discussion or issue
22 paper prepared by a subordinate DEA program expert for senior DEA leadership, DEA working
23 groups, and other DEA participants in the “Next Generation Wireless Strategy” formulation
24 process that is likewise exempt under 5 and 7E. This issue matrix contains exempt 7E material
25 as it identifies several technical intercept impediments, including comments on the exploitation
26 of such impediments by drug-trafficking organizations to evade detection. As relevant to
27 Exemption 5, this matrix played a similar role in the early stages of DEA strategy formulation as

1 the talking point papers discussed in Category 1A above (paragraph 10b); it was antecedent to
2 the adoption of a formal agency strategy as well as legislative change recommendations made by
3 DEA to the Department (Category 3C). Moreover, the matrix is highly deliberative in content as
4 it provides the opinion and analysis of the program expert about specific technical intercept
5 impediments juxtaposed against existing statutory and regulatory frameworks; and includes
6 proposals for legislative and policy change, none of which were specifically adopted by DEA or
7 DOJ leadership. Release of this issue matrix would not only expose DEA intercept
8 vulnerabilities and techniques, it would degrade the internal DEA decision process of developing
9 operational strategy, policy, and legislative change recommendations both internally, and for
10 submission to the Department, as disclosure would chill the use of this idea-sharing method in
11 the future.

12 d. DEA Next Generation Wireless Strategy Proposal. These four (4) pages, three (3) pages
13 of which are unsigned drafts, comprise responsive excerpts of proposed DEA strategies for
14 formal adoption by DEA executive leadership. The one responsive page that is not in draft form
15 is withheld under Exemptions 5 and 7E. Per the deliberative process privilege of Exemption 5,
16 the page is the opinion and recommendation of a subordinate DEA program official to the DEA
17 Assistant Administrator for Operational Support. The purpose of this document is to provide a
18 summary of strategy development issues and discussions and to propose various strategies for
19 formal adoption as part of the DEA "Next Generation Wireless" strategy initiative.⁹ The
20 document is predecisional as it is a link in the chain of internal DEA strategy formulation and
21 deliberative as it is the subordinate program official's recommendation encapsulating strategy
22 proposals from the subordinate program official's perspective. Release would negatively impact
23 the dynamic, internal DEA process of developing formal strategy policies as disclosure would
24 have a chilling effect on the open sharing of subordinate recommendations. Per Exemption 7E,
25 the substantive content of these draft pages, as further articulated in the *Index*, include detailed
26

27 ⁹ Exemption 5 was not applied to the responsive portion of the status report recording the final adopted
28 strategy which was released in part (page 1B-12).

1 information regarding specific electronic surveillance capability problems and vulnerabilities.

2 e. DEA Next Generation Wireless Strategy Status Report. The withheld portions of the
3 responsive four (4) page excerpt of this internal status report reflecting strategy implementation
4 efforts primarily involve Exemption 7E, with two (2) of the 4 pages including discussion of five
5 (5) case examples pertaining to open or active investigations also withheld under Exemption 7A,
6 and two (2) of the 4 pages containing information derived from a confidential source also
7 withheld under Exemption 7D. As applicable to Exemption 7E, the withheld information in the
8 status report excerpt involves detailed summaries of DEA coordination with carriers/service-
9 providers to resolve specific intercept technical difficulties, coordination with other law
10 enforcement agencies to resolve specific intercept difficulties encountered in a criminal case, and
11 the discussion of the case examples highlighting how a particular technology is being used by
12 drug trafficking-organizations to circumvent intercept and frustrate DEA investigations.

13 f. Segregability. Three (3) pages were released in part, including the portion of one page
14 (1B-12) reflecting a component of DEA's final strategy, as the release of such factual matters--
15 not otherwise exempt under Exemptions 7A, 7D, or 7E-- posed no foreseeable harm.. Regarding
16 the 12 pages withheld in full, given the convergence of Exemptions 5 and 7E, and the other
17 applicable exemptions, no further reasonably segregable, non-exempt information was identified.

18
19 **CATEGORY 2A-B**

20 12. The 22 pages of responsive records in this combined category relate to internal DEA
21 proposals and deliberation over the establishment, staffing, and funding of an engineering facility
22 related to addressing and solving technical surveillance problems triggered by emerging
23 technologies. No proposed facility plan was ultimately adopted or approved at the Department
24 level. Twelve (12) of the 22 pages are drafts; and three (3) of the 22 pages were released in part.
25 There are three sub-groupings which track the *Index*: (a) draft DEA facility proposal documents,
26 (b) e-mails discussing DEA facility proposals, and (c) a talking points paper related to facility
27 proposals.

1 a. Draft DEA Facility Proposal Documents. Two early (late 2008, early 2009) or rough
2 drafts (12 pages total) of DEA engineering facility proposals. The release of these draft
3 proposals of an unapproved facility initiative to the Department would discourage frankness in
4 future organizational or resource proposals as well as promote public confusion. Additionally,
5 the 12 pages contain significant 7E exempt material as the these drafts include background detail
6 and discussion regarding specific technological surveillance issues and challenges such facility
7 would be designed to address if established.

8 b. E-mails Discussing Facility Proposals. These two e-mails (4 pages) between DEA
9 personnel are preparatory communications in advance of a DEA presentation to the Department
10 regarding approval of the proposed facility. Under Exemption 5, these emails are predecisional
11 as they are antecedent to Departmental decision on whether to approve the proposed facility and
12 deliberative as they involve the back and forth formulation of DEA positions and agenda topics
13 to prepare DEA officials for a presentation about the proposed facility to the Department. As
14 such, the release of these preparatory e-mails would adversely impact the dynamic process of
15 policy and position development within DEA, thereby degrading the quality of DEA facility
16 proposals for Departmental decision. Each page also contains sensitive Exemption 7E
17 information as identified in the *Index*, to include detailed information regarding specific
18 technologies beyond current intercept capability.

19 c. Talking Points Paper Related to Facility Proposals. This six (6) page talking points paper
20 was prepared by subordinate DEA personnel to prepare DEA leadership and management
21 officials in advance of anticipated meetings at the Department as part of the proposed DEA
22 facility approval process. This talking points paper related to the unapproved facility proposal
23 contains a host of suggested discussion topics, opinions, and proposed answers to anticipated
24 questions that may arise; release would trigger the harms as articulated in paragraph 9c above.
25 Per Exemption 7E, and as detailed in the *Index*, the content of these pages also pertain to and
26 discuss the law enforcement technique of, and procedures related to, the conduct of electronic
27 surveillance, intercept vulnerabilities, and exploitation of such vulnerabilities by criminal

1 elements.

2 d. Segregability. Portions of three (3) of the 22 pages in Category 2A-B were released in
3 part as they contain public source or publicly available Departmental report excerpts that could
4 be reasonably be segregated from the exempt material without triggering foreseeable harm to
5 release. Otherwise, the overlap of Exemptions 5 and 7E to all pages, and Exemptions 6 and 7C
6 where applicable, resulted in the withholding of 19 pages with no reasonably segregable
7 information remaining.

8 CATEGORY 2C

9 13. This category is comprised of three (3) draft budget proposal papers (12 pages) that are
10 responsive in that they contain specific surveillance capability assessments and descriptions of
11 detailed DEA intercept technique problems and difficulties, which are exempt under Exemption
12 7E. Moreover, as relevant to Exemption 5, release of these draft budget proposals of an
13 unapproved facility initiative to the Department would discourage frankness in future
14 organizational or resource proposals as well as promote public confusion.

15 CATEGORY 2D

16 14. The 98 responsive pages in this category comprise Talking Point papers and drafts prepared
17 for the use of then Acting DEA Administrator Leonhart for anticipated budget testimony before
18 Congress and/or for use in her confirmation testimony before Congress in November, 2010.
19 None of the content within these talking point papers and associated drafts were disclosed in
20 public testimony or are otherwise known to have been incorporated into final DEA policy. There
21 are a significant number of drafts in this category--86 of the 98 pages; all pages were withheld in
22 full. There are two subgroupings for discussion purposes which are itemized under four entries
23 in the attached *Index*: (a) DEA Administrator talking points for congressional testimony (*Index*,
24 2D 1-12), (b) draft versions of these talking point papers (*Index*, 2D 13-27 and 2D 32-98) and
25 related, draft Question and Answer (Q & A) papers (*Index*, 2D 28-31).

26 a. Administrator Talking Points. These twelve (12) pages comprise two versions of a
27 Talking Points Paper developed for then-Acting Administrator Leonhart's use in anticipation of

1 Congressional testimony. These talking point papers perform an especially key role within DEA
2 as they are prepared by subordinate personnel to advise DEA's agency head on matters which
3 may mature into formal DEA statements of policy or positions before Congress. Given the
4 advisory nature and role of these talking points--in similar fashion to other DEA talking point
5 papers--these papers are predecisional and deliberative. Moreover, the process by which
6 subordinate officials and program experts identify and select material to include within the
7 talking points is itself a deliberative process as they exercise discretion to determine what
8 substantive information should be elevated to Administrator-level for her consideration. Release
9 of this advisory material would not only quell the efficient preparation of the DEA Administrator
10 in formulating DEA policy and positions before Congress, it would trigger numerous Exemption
11 7E-related harms as the content of these pages contain detailed, surveillance operational insight;
12 elaborate on intercept problems and vulnerabilities; and discuss ongoing DEA initiatives and
13 plans to combat the intercept challenges posed by emerging technologies.

14 b. Drafts, Talking Points and Q & A. There are 86 pages of draft material, 82 pages (*Index*,
15 2D 13-27 and 32-98) are several variations of the talking point papers discussed above (12 pages)
16 to include pages with substantial marginal comments and textual edits. Among these 82 draft
17 pages, there are five (5) pages of email which function as drafts, because they contain additional
18 editorial suggestions and comments that were not included in the draft documents attached to the
19 emails for internal DEA staffing. Four (4) of the 86 pages are draft Q & A papers (2D 28-31)
20 prepared for the then-Acting Administrator's preparation and consideration in advance of
21 anticipated congressional testimony; the content of these draft Q & As were not disclosed in any
22 public testimony.

23 c. Segregability. Given the convergence of Exemptions 5 (talking points and drafts) and 7E
24 with respect to each page, and the portions of those pages containing Exemptions 6 and 7C
25 redactions, no reasonably segregable, non-exempt information was identified for disclosure.
26
27
28

CATEGORY 3A

1
2 15. This category comprises talking point papers, drafts, and e-mails regarding the specific
3 intercept techniques known as "Title III" Wire Intercept, and Pen Register and Trap and Trace.
4 Seventeen (17) of the 23 pages in this category are drafts, one page was released in part, 22 pages
5 were withheld in full. There are three (3) subgroupings for discussion which are itemized under
6 six (6) entries in the *Index*: (a) draft talking points (3A-10, 3A 13-14, 3A 19-23); (b) DEA
7 talking point papers developed for submission to DOJ working groups and meetings (3A 11-12,
8 3A 15-16); and (c) meeting preparation emails (3A 17-18).

9 a. Draft Talking Points. These 17 pages include drafts, with edits and marginal comments,
10 that pertain to the two (2) talking point papers discussed in paragraph 15b, below; and a third
11 draft talking points paper (3A 19-23) prepared for use by a DEA representative in a Departmental
12 meeting relating to wire intercept and/or Pen Register and Trap and Trace policy and procedure.
13 The content of these draft pages, as further detailed in the *Index*, also pertain to and discuss in
14 detail the law enforcement technique of, and procedures related to, wire intercepts and Pen
15 Register and Trap and Traces, including technical intercept difficulties experienced in
16 investigations, intercept vulnerabilities, and exploitation of such vulnerabilities by criminal
17 elements.

18 b. T III and Pen Register Trap and Trace Talking Points/Discussion Papers. These four (4)
19 pages comprise two (2) talking points or discussion papers prepared by DEA personnel for
20 consideration by a DOJ working group in January 2010 as part of a process to develop
21 departmental policy recommendations for senior DOJ leaders regarding T III and Pen Register
22 and Trap and Trace operations. These papers are exempt under the deliberative process privilege
23 of Exemption 5 in both function and content. In terms of function, these papers served as DEA-
24 proposed items for DOJ group discussion, proposal, and debate antecedent to the formulation of
25 operational policy change recommendations for adoption by DOJ, which are ongoing and have
26 not been incorporated into any final operational policy. In terms of content, the papers contain
27 the assessments, opinions, and recommendations of the DEA personnel representing DEA in the

1 this working group forum. Release of the talking point papers would have a significant adverse
2 impact on the quality of DEA and DOJ operational policy decisions via working group
3 recommendations as disclosure would chill the development and sharing of such items designed
4 to facilitate healthy issue identification and debate. Per Exemption 7E, and as provided in the
5 *Index*, the content of these pages also include detailed identification and discussion of how T III
6 wire intercept and Pen Resister Trap and Trace techniques are employed, DEA-experienced
7 difficulties with these techniques, technique vulnerabilities, and exploitation of such
8 vulnerabilities by criminal elements.

9 c. Meeting Preparation E-mails. These two (2) pages of internal DEA e-mail traffic are
10 likewise exempt under Exemptions 5 and 7E and other applicable exemptions per the *Index*.
11 These two (2) pages function like draft talking points as the DEA official who drafted the email
12 proposes discussion topics, with legal and policy opinion and analysis, to prepare a DEA
13 management official for a meeting at the Department to discuss Pen Register Trap and Trace
14 policy formulation issues. Release of these advisory, talking point emails would trigger the
15 harms articulated in paragraph 9c above. The advisory nature and content of these emails also
16 involve detailed identification and discussion of specific technical intercept challenges of the Pen
17 Register and Trap and Trace surveillance techniques and opinion regarding the effectiveness of
18 law enforcement engineered solutions.

19 d. Segregability. Given the convergence of Exemptions 5 (talking points, drafts, and
20 advisory emails) and 7E with respect to each page, and those portions of two (2) pages
21 containing Exemption 6 and 7C redactions, no reasonably segregable, non-exempt information
22 was identified for disclosure beyond the one page of factual material released in part (3A-11).
23

24 CATEGORY 3B

25 16. This category is comprised of 174 pages responsive in whole or part and includes internal
26 DEA materials and drafts related to the Departmental process of assembling a report to Congress
27 (*hereinafter*, the "Report") regarding "Going Dark" or electronic intercept challenge issues posed
28

1 by emerging technologies.¹⁰ Given the significant number of drafts (166 pages) and internal
2 DEA deliberative material (6 pages), 172 pages were withheld in full under Exemptions 5 and 7E
3 with Exemptions 6 and 7C were applicable. The two subgroupings, as indicated in the attached
4 *Index*, are as follows:

5 a. DEA Preparatory Materials for DOJ Working Group Meetings. These eight (8) pages, six
6 (6) of which are withheld in full under Exemptions 5 and 7E, comprise an internal DEA email
7 and talking points paper both prepared for DEA personnel participating in upcoming working
8 group meetings. In similar fashion to the talking point papers and preparatory emails discussed
9 above, these six (6) pages are exempt under the deliberative process privilege. In terms of
10 function, the paper and email perform an advisory function whereby, in the case of the e-mail, a
11 DEA program expert proposes discussion items to prepare a DEA manger for an upcoming
12 working group meeting; and in the case of the talking points paper, DEA program experts
13 prepared an array of suggested discussion topics and issues for use by DEA leaders and
14 personnel. Antecedent to the Department's decision regarding the content of the final Report, the
15 paper and email contain DEA assessments, opinions, and recommendations to guide DEA
16 personnel participating in working group meetings related to Report development. Release of
17 these preparatory talking points paper and email would adversely impact the quality of DEA and
18 DOJ formulation of Congressional Reports via working groups as disclosure would chill the
19 candid, internal exchange of ideas to advise and prepare DEA personnel for policy and position
20 discussions at the Department level. Per Exemption 7E, as detailed in the *Index*, the content of
21 these pages likewise includes detailed information about specific intercept difficulties,
22 illustrative case examples, exploitation of intercept weaknesses by drug-trafficking organizations
23
24

25
26 ¹⁰ The Senate Report accompanying the 2010 Departments of Commerce, Justice, and Science, and Related
27 Agencies Appropriations Bill directed the Attorney General to report on whether DOJ has the resources needed to
28 preserve law enforcement's electronic surveillance capabilities in the face of emerging communication technologies;
and if sufficient resources do not exist, the Attorney General was further directed to provide recommendations on
needed resources to ensure that federal and state law enforcement agencies surveillance capabilities are maintained.
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1 and countermeasure techniques employed by DEA, and opinion regarding the effectiveness of
2 such countermeasures or operational solutions.

3 b. Draft Report Input to DOJ Working Group. These 166 pages all comprise draft
4 documents containing, in whole or part, DEA input to the DOJ working group formulating a
5 draft Report for approval by the Department for eventual submission to Congress. This input
6 includes content recommended by various DEA personnel for inclusion in the Report and
7 includes both substantive and editorial comments with many pages containing marginal notations
8 and textual edits. The final Departmental report, along with several draft versions thereof
9 originating from the working group, were referred to OIP for direct response to Plaintiff (See
10 Index, 5B). The drafts include recommended DEA content contained in nine (9) draft versions of
11 the Report which were circulated internally within DEA for edits and comments; two (2) internal
12 drafts of DEA proposed Report sections with one rough-draft outline section; the DEA portions
13 of six (6) draft versions of the Report submitted to the DOJ working group with DEA
14 recommendations, comments, and edits; and a joint DEA/FBI proposed response to the DOJ
15 working group on a specific technical intercept issue. Six (6) pages are in e-mail form and
16 function as drafts as they relate to the Report drafting process and discuss, propose, and
17 recommend DEA content for submission to the DOJ working group for inclusion in the Report.
18 In addition to the harm generated by the release of draft documents, these pages are also exempt
19 under Exemption 5 as they are subordinate component recommendations to a Departmental-level
20 working group formulating the Report for final Departmental approval and submission to
21 Congress. Accordingly, release would destabilize open and frank input and recommendations
22 from DEA personnel--and other DOJ Components--into such working groups as part of the DOJ
23 decision-making process of reporting to Congress. Per Exemption 7E, as provided in the Index,
24 the content of these pages likewise include detailed information about specific intercept
25 difficulties as the Report concerns the assessment of law enforcement electronic surveillance
26 capabilities in the face of emerging technologies.

1 c. Segregability. Given the prevalence of drafts, and the application of Exemption 5 and 7E
2 with respect to each page as described above, other than the two (2) pages of public source
3 material segregated for release in full, there remains no reasonably segregable, non-exempt
4 information.

5 CATEGORY 3C

6 17. This category is comprised of internal DEA documents and emails concerning the
7 formulation of legislative change proposals which were generated by DEA personnel for
8 recommendation and/or input into working group meetings at DOJ and/or were internal DEA
9 discussions related to the formulation of legislative change recommendations to be considered
10 for submission to DOJ. Of the eight (8) responsive pages in this category, five (5) pages are
11 drafts. There are two subcategories: (a) draft proposal documents (5 pages) and (b) internal DEA
12 emails (3 pages).

13 a. Legislative Change Proposal Documents Prepared for DOJ Recommendations. These
14 five (5) pages comprise unsigned, draft documents by counsel and other DEA personnel prepared
15 in contemplation of submission to a DOJ working group in the form of DEA recommended input
16 for legislative changes to the Communications Assistance for Law Enforcement Act (CALEA)
17 under consideration at Department level. The release of such drafts, none of which have matured
18 into policy at Department level or otherwise enacted by Congress, and reflect the legal analysis,
19 opinion, and recommendations of the DEA authors, would hamper the DEA and Departmental
20 process of formulating legislative change proposals to Congress. Moreover, as provided in the
21 *Index*, the content of these drafts also contain 7E exempt material as specific surveillance
22 technological problems are described vis-a-vis the DEA authors' arguments and
23 recommendations to the DOJ working group for legislative change.

24 b. Internal DEA Emails Relating to Legislative Change Proposals. These three (3) pages of
25 emails between DEA personnel likewise contain information withheld under Exemptions 5 and
26 7E, as they concern internal evaluation and deliberation of whether specific surveillance
27

1 problems and case examples should be incorporated into DEA legislative change
2 recommendations to be made to the DOJ working group, and contain internal DEA comments
3 regarding DOJ draft proposals. First, with respect to the deliberative process privilege, email is
4 routinely used by DEA personnel for internal communication regarding policy formulation
5 matters and is often used for circulating drafts and proposals for intra-agency consideration and
6 comment. These communications are inherently predecisional and deliberative as they reflect the
7 dialog within DEA and the exchange of ideas and suggestions pertaining to the formulation of
8 DEA recommendations to be made to the Department via the working group process. Disclosing
9 these emails would hamper the efficient day-to-day formulation of DEA policies and
10 perspectives both internally and with respect to legislative change proposals to be forwarded to
11 the Department level for consideration and adoption. As relevant to 7E, the content of these
12 drafts include the identification and discussion of specific surveillance technological problems,
13 an actual case example of intercept difficulty, and the discussion of surveillance techniques
14 employed by a field agent to overcome specific intercept problems.

15 c. Segregability. Four (4) pages were released in part as they contained public source
16 material that could reasonably be segregated and four (4) pages were withheld in full as no
17 reasonably segregable material remained after applying the overlapping exemptions.

18 CATEGORY 4

19
20 18. This category is comprised of “case example” related material: internal papers and e-mails
21 that document, discuss, and/or analyze actual DEA criminal investigative cases. 103 of the 115
22 pages were withheld in full under multiple exemptions as noted in the *Index*. As referenced
23 herein, “case examples” are summaries of DEA criminal case activity where specific electronic
24 surveillance difficulties were experienced during investigations; this information was derived
25 from DEA criminal investigative files and/or the personal knowledge of Special Agents and other
26 DEA field personnel conducting, or familiar with, the investigations. Typically, these case
27 examples were drafted by DEA field personnel at the request of DEA Headquarters officials and

1 compiled primarily for internal DEA use. The application of Exemption 7E applies to 112 of the
2 115 pages in full or in part as case examples highlight actual surveillance technique and
3 procedure impediments experienced in field investigations. 72 of the 115 pages in this category
4 are in draft form as case examples from the field were often revised by Headquarters Personnel
5 before using the examples for myriad operational and policy purposes. For discussion purposes,
6 there are four subgroupings itemized by six entries in the *Index*: (a) various DEA case example
7 summaries, (b) a DEA case example discussion paper developed for DOJ working group use
8 with related drafts, (c) various internal DEA emails concerning case examples with related drafts,
9 and (d) an interagency e-mail communication regarding a specific case example.

10 a. DEA Case Example Summaries, 2006 to February 2010. These 47 pages (4 1-47)
11 comprise case example summary papers compiled for internal DEA uses and all but portions of
12 seven (7) pages are withheld in full under Exemption 7E and the multiple overlapping
13 exemptions cited in the *Index*. Per 7E, the release of the information in these pages would have a
14 devastating impact on DEA electronic surveillance operations as the content involves very
15 detailed identification, discussion, and analysis of technical and carrier or service provider-
16 specific intercept problems experienced in DEA cases, the employment of measures by drug-
17 trafficking organizations and other criminal elements to evade lawful intercept, and the
18 development and employment of countermeasure techniques by law enforcement in response to
19 such evasion efforts. Moreover, Exemption 7A applies to 37 of the 47 pages in whole or in part
20 as they include information from, or related to, open and active criminal cases or investigations.
21 As further noted in the *Index*, there are many other applicable exemptions which also apply to
22 these pages in full or part, the release of which will trigger the relevant harms described in
23 paragraph 9, above. Per Exemption 5, 14 pages are drafts and/or include embedded Questions
24 and Answers between DEA Personnel to develop the content and accuracy of requested case
25 example information.
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1 b. DEA Case Example Discussion Paper and Related Drafts. This five (5) page discussion
2 paper (4 48-52) and all but the portion of one page of related draft input (4 53-83) were withheld
3 under Exemptions 5 and 7E, and multiple other applicable exemptions as noted in the *Index*.
4 Concerning Exemption 5, the discussion paper was prepared by a DEA official, representing the
5 views of DEA, at the request of the Department for the consideration and use of a DOJ policy
6 working group. The case example paper served as a guide for DOJ group discussion, proposal,
7 and debate as part of the formulation of DOJ policy change recommendations for senior DOJ
8 leaders regarding “Going Dark” or electronic surveillance challenge issues regarding intercept
9 policy, resourcing, and practice; a process which continues. The case example discussion paper
10 provides factual summaries of intercept difficulties encountered in DEA investigations. Release
11 would be tantamount to divulging DEA’s deliberations regarding what specific intercept
12 problems are worthy of consideration at the Department level. Moreover, the case example
13 summaries contain the analysis of the DEA official who, representing DEA, assessed the
14 technological impacts of specific intercept problems on DEA operations. Release of this case
15 example discussion paper and underlying draft documents would stifle the quality of DEA and
16 DOJ policy decision-making with respect to resolving operational problems; disclosure would
17 chill the development and sharing of such case examples designed to facilitate healthy issue
18 identification and debate. In terms of 7E, the content of the paper and associated drafts is similar
19 to that described above in subparagraph 18a; therefore, release would have a devastating impact
20 on DEA intercept operations as well as divulge significant amounts of confidential source and/or
21 active case information.

22 c. Internal DEA Emails Concerning Case Examples and Related Drafts. These DEA emails
23 include seven (7) pages of email exchanges between DEA personnel related to the compilation of
24 case examples for internal DEA consideration and use (4 84-90), and 23 pages (4 91-113) of
25 draft case example summaries provided by DEA field units via email to DEA HQ for review.
26 With the exception of a page released in full (public source), and one page released in part, the
27 remaining pages were withheld in full under Exemption 7E as they comprise detailed discussions
28

1 of intercept technical difficulties encountered during DEA investigations and the exploitation of
2 such difficulties by drug-trafficking organizations. Moreover, the content of nearly every page
3 (24 of the 30 pages) includes information about open or active criminal investigations and/or
4 information related to, or supplied by, confidential sources. As relevant to Exemption 5, four (4)
5 pages are identified as working drafts of a DEA program expert, and 23 pages (4 91-113)
6 constitute unfinalized, working case example summaries submitted by field units at the request of
7 DEA Headquarters management officials for consideration of whether or not additional case
8 example summaries should be compiled for multiple purposes, to include (1) internal DEA use in
9 support of continuing DEA efforts to evaluate and adjust its strategy, develop criminal
10 intelligence, and support working group efforts to formulate internal DEA operational policy and
11 procedural change recommendations; and/or (2) external submission to DOJ or interagency
12 working groups as part of ongoing DEA efforts to formulate policy, operational and legislative
13 change, and resource recommendations regarding "Going Dark" or electronic surveillance
14 challenge issues. Releasing these working case summaries would diminish the quality and
15 effectiveness of the DEA process of formulating operational policy decisions and legislative
16 change proposals--both internally and to Department leadership--regarding electronic
17 surveillance challenge issues.

18 d. Interagency Case Example Email. Portions of this two (2) page email communication
19 between DEA and FBI personnel (4 114-115) were withheld in part under 7E as they provide
20 detail, not publically released, regarding surveillance techniques employed in the case that is the
21 topic of the email discussion.

22 e. Segregability. Given the overlap of multiple exemptions with respect to each page as
23 provided in the *Index*, 103 of the 115 pages were withheld in full. Portions of 11 pages were
24 segregated for release and one page (public source) was released in full. Of the 115 responsive
25 pages, there are over 30 open or active cases discussed in 85 of the 115 pages, thereby exempting
26 those pages from disclosure, in whole or part, under Exemption 7A. Furthermore, many case
27

1 examples identify or contain information about, or were provided by, confidential sources,
2 thereby exempting 58 of the 115 pages in whole or part, from disclosure under 7D and 7F.

3 **CATEGORY 5A/5B**

4 19. This combined category comprises 570 pages of potentially responsive records located by
5 DEA search efforts and identified as the records originating from other components/agencies.
6 These records were referred for direct response to the Plaintiff. As outlined in the *Index*, these
7 referred records include 294 pages to the FBI (category 5A); and 276 pages to the DOJ, Office of
8 Information Policy (category 5B).

9 **CATEGORY 5C**

10 20. This category comprises 317 responsive pages in full or part in slide format that were
11 contained in multiple DEA briefings used for internal DEA purposes and for external
12 presentations to the Department and other agencies. Of the 317 responsive pages,¹¹ 160 pages
13 were released in full, 24 pages were released in part, and 133 pages were withheld in full under
14 Exemption 7E and several other applicable exemptions as noted below and detailed in the *Index*.
15 There are four (4) main subgroupings of this briefing material as indicated in the *Index*: (a)
16 deliberative-internal, (b) deliberative-external, (c) informational-internal, and (d) informational-
17 external.

18
19 a. Deliberative-Internal Briefing Material. Multiple exemptions were applied to 71 of the
20 146 responsive pages in this subgroup (62 withheld in full, 9 withheld in part) with the
21 overlapping application of Exemptions 5 and 7E to nearly each page. There are nine (9)
22 presentations in this subgroup. Concerning Exemption 7E, as the subject matter of these
23 presentations all relate to challenges to DEA surveillance operations posed by emerging
24 technologies, and as further articulated in the *Index*, all pages withheld in full or part contain
25 detailed discussions and/or identification of intercept difficulties encountered by DEA to include
26

27 ¹¹ The page-by-page nature of the presentations allowed for straight-forward segregation of non-responsive
28 topics/material.

1 case examples, the threats posed by intercept difficulties to operations, and evaluation of
2 intercept capability vulnerabilities.

3 (1) Concerning Exemption 5, five (5) of the presentations, were part of the internal DEA
4 process of strategy formulation (late 2008 and early 2009) to address surveillance challenge
5 issues (category 1A) which was later identified as the Next Generation Wireless Strategy
6 (category 1B). The withheld pages and portions of these presentations comport with the
7 deliberative process privilege in function and content. These briefing pages functioned in similar
8 fashion to the talking points and discussion papers used to steer DEA discussion and debate in
9 the strategy formulation process and are likewise an integral component of that decision-making
10 process as the pages identify relevant issues to be considered, antecedent to the adoption of a
11 formal agency strategy. In terms of content, these briefing pages also contain the opinions and
12 recommendations of subordinate DEA personnel who prepared them for consideration by DEA
13 executive leadership as well as DEA working group participants engaged in recommending
14 strategies for adoption by DEA leadership. The release of these briefing materials would
15 adversely impact the effectiveness of DEA policy development in the strategy context as
16 disclosure would not only discourage the drafting of such materials by subordinates, it would
17 chill candid assessment of issues for internal debate. Moreover, release of this deliberative
18 material would only serve to confuse the public as they do not reflect final agency action or
19 decisions.

20 (2) The four (4) remaining presentations in this sub-category are preparatory in nature.
21 The briefing material was drafted by subordinate DEA personnel to update and prepare the DEA
22 Administrator, other Senior DEA leaders, and DEA Field Advisory Council Members for
23 internal meetings and discussions (Oct. 2009 to Oct. 2010) of assessing the current DEA
24 strategies to decide whether new, or modified strategies should be adopted by DEA to address
25 continuing intercept challenges presented by emerging technologies, including whether DEA
26 should fashion additional recommendations to the Department for operational policy, resource,
27 and/or legislative change. The withheld portions of these briefing pages contain the unadopted

1 policy and legislative proposals of the DEA subordinates who prepared them, to include their
2 opinions and evaluations of what surveillance challenge issues are pertinent to assist DEA
3 leaders in determining which internal strategy changes, if any, to adopt; and which policy or
4 legislative change recommendations, if any, to raise to the Department for action. Likewise,
5 disclosure would harm the effectiveness of DEA policy development in the strategy context as
6 well as its ability to formulate recommendations regarding operational matters to the Department
7 since disclosure would discourage the development and sharing of candid strategy assessments.

8 b. Deliberative-External Briefing Material. This subgroup is comprised of three (3) DEA
9 briefing presentations of which 25 of the 32 responsive pages were withheld in full or part given
10 the overlapping application of Exemptions 5 and 7E, with other applicable exemptions as
11 provided in the *Index*. These briefing pages contain sensitive 7E related material to include
12 detailed identification of surveillance difficulties and vulnerabilities, technical analysis of
13 intercept problems, and methods employed by criminal elements to circumvent intercepts.
14 Concerning the application of Exemption 5, these three briefings were prepared by DEA
15 personnel for external presentation to (1) another federal agency, (2) the Department, and (3) an
16 interagency working group.

17
18 (1) The purpose of the DEA briefing to another federal agency (Aug. 2009) was two-fold:
19 to share and discuss DEA's viewpoint and concerns relative to intercept difficulties posed by
20 emerging technologies, and to suggest strategies that may be of mutual interagency interest and
21 concern in formulating policy and/or legislative change proposals. In addition to exposing
22 sensitive 7E material, release of this idea-sharing presentation, unadopted in any agency or
23 legislative action, would stifle the open and honest exchange of policy, operational, and
24 legislative ideas between federal agencies, thereby diminishing the quality of formulating
25 policies within their respective Departments and/or legislative change recommendations to
26 Congress.

1 (2) The briefing presentation to the Department (approx. Aug. 2009) is advisory in nature
2 and identified specific examples of technical intercept problems encountered by DEA to guide
3 DOJ working group discussion, proposal, and debate antecedent to the formulation of DOJ
4 legislative recommendations to Congress. Release would not only expose sensitive 7E material,
5 it would stifle the quality of DEA and DOJ formulation of proposed legislative changes to
6 Congress via working groups; disclosure would chill the development and sharing of such
7 technical examples to facilitate issue identification and debate.

8 (3) The third briefing is functionally a talking points or discussion issue paper in slide
9 format prepared by a DEA program official for interagency working group participants (Oct.
10 2010), and proposes topics for discussion and debate to formulate policy, resource, and/or
11 legislative change recommendations of common interest for presentation to decision-makers at
12 respective agencies. These briefing pages contain the opinions, detailed legal and technical
13 analysis, and proposed solutions to a multitude of intercept problems that, in the DEA program
14 official's opinion, constitute issues of interagency significance. The release of these viewpoints,
15 unadopted in any final agency action or legislation, and comprised of sensitive 7E exempt
16 material that details current intercept problems would not only provide a roadmap for
17 circumvention, it would negatively impact interagency collaboration as means to develop
18 government policy decisions and legislative change proposals by the respective participating
19 agencies since disclosure would chill the sharing of such agency ideas and viewpoints.

20
21 c. Internal-Informational Briefing Material. This subgroup is comprised of three (3) similar
22 informational briefings used as training and familiarization presentations concerning diminishing
23 electronic surveillance capabilities. Two (2) of the presentations were used to train Special
24 Agents in the New York and St. Louis Field Divisions, and one presentation was provided to
25 agents and other operations personnel at the DEA Special Operations Division (SOD). Forty-
26 seven (47) of the 48 pages withheld in full or part concern Exemption 7E information and other
27 exemptions as described in the *Index*; a portion of one page (5C 238) contains confidential

1 commercial information withheld under Exemption 4 and is addressed in the category 6
2 discussion, below. The withheld information under 7E extends to detailed identification and
3 discussion of intercept difficulties encountered in DEA investigations and includes case
4 examples. Given the training purpose of these materials, they contain instruction on surveillance
5 techniques and procedures to include how to address specific intercept problems, intercept
6 equipment specifications, and identification of methods used by criminal elements to evade
7 detection.

8 d. Informational-External Briefing Material. This subgroup is comprised of two (2) DEA
9 informational presentations given to officials at the Department and another federal agency for
10 awareness of intercept problems posed by emerging technologies. Twelve (12) of the 13 pages
11 withheld in full or in part concern Exemption 7E information and other exemptions as described
12 in the *Index*. The withheld information under 7E includes detailed identification of intercept
13 difficulties encountered in DEA investigations and examples of particular emerging technology
14 methods and devices used by drug-trafficking organizations to evade detection.

15 e. Segregability. The bulletized, page-by-page nature of the briefing slides allowed for a
16 significant amount of material to be segregated for release (160 pages in full and 24 pages in
17 part) as no foreseeable harm to an exemption was posed by the array of public source, general,
18 and/or background information that was not otherwise intertwined with exempt material. As
19 many slide pages were factual in nature, those contained in deliberative-type presentations were
20 segregated for release if not otherwise intertwined with 7E and/or other exempt material.
21 Nonetheless, 133 pages were withheld in full given the prevalence of Exemption 7E information
22 throughout, the overlap of Exemption 5 (select pages in the deliberative subcategories), and the
23 other exemptions provided in the *Index*.
24

25 CATEGORY 6

26 21. This category comprises 40 pages responsive in whole or in part which relate to, or directly
27 involve DEA interaction with the communications industry about intercept difficulties,

1 identification of DEA needs, and/or development of intercept solutions. Five (5) of the 40 pages
2 are in draft form. All 40 pages are withheld in full under multiple exemptions, with 39 pages
3 withheld under Exemptions 5 and 7E. There are three subgroupings which track the attached
4 *Index* entries: (1) Office of Investigative Technology (ST) talking points, (2) communications
5 with industry related to intercept problems, and (3) meeting reports.

6 a. ST Talking Points Paper. This internal four (4) page talking points paper was prepared by
7 subordinate ST personnel to prepare the ST Section Chief to brief the DEA Administrator on a
8 host of intercept problems pertaining to certain carriers and technologies. These talking points,
9 like other such papers discussed above, are exempt under the deliberative process privilege of
10 Exemption 5. In terms of function, this paper is advisory and preparatory in nature and does not
11 reflect final agency actions as its purpose was to prepare a Section Chief to meet and confer with
12 the Agency head. In terms of content, the talking points contain the ST Section Chief's
13 recommendations and opinions with respect to technical solutions, operational policies,
14 resourcing, and legislative change. Release would trigger the harms identified in paragraph 9c
15 above, as well as compromise 7E exempt information as the paper concerns specific intercept
16 technique issues as described in the *Index*.

17 b. Communications with Industry Related to Intercept Problems. These 27 pages of highly
18 sensitive communications with and about private companies (carriers, service-providers, and
19 consultant/vendor companies) pertain to specific problems experienced by DEA during intercept
20 operations, the identification and development of DEA needs to address various intercept
21 problems, and collaborative efforts to solve intercept problems. The 27 pages are withheld in
22 full under the multiple, overlapping exemptions as noted in the *Index*, including confidential
23 commercial information under Exemption 4, and information shared with DEA under an
24 expressed confidentiality or non-disclosure agreement. In form, 22 of the 27 pages are email
25 communications, and 5 pages are draft letters from DEA to specific companies regarding
26 intercept issues.

27 (1) All but one page are withheld under Exemptions 5 and 7E. As relevant to Exemption

1 7E, as this information concerns communication exchanges about specific intercept problems
2 with certain companies, technical issues, and the perceived intercept resolution needs of DEA,
3 the release of this material would provide criminal elements a virtual play book of surveillance
4 evasion given the exposure of detailed, intercept vulnerabilities. Even release of the names of the
5 cooperating companies herein, would provide a critical piece of information to violators in
6 deciphering were DEA intercept vulnerabilities exist. Regarding Exemption 5, the emails also
7 contain predecisional, deliberative content as discussed below.

8 (a) First, the communications between DEA personnel involve planning and
9 coordination discussions regarding how DEA should address specific intercept issues with
10 respective companies. These back-and forth exchanges are multi-faceted and include
11 recommendations and strategies on how to approach and proceed with certain companies,
12 assessments of the progress of meetings with companies, suggestions of how to proceed in future
13 meetings, opinions regarding legal compliance and responsiveness, consideration of DEA
14 courses of action if issues with particular companies are not satisfactorily resolved, and
15 identification of issues or agenda items to discuss in future talks with these companies.

16 (b) Second, the deliberative communications between DEA and company personnel
17 are two-fold, as they are either (1) consultative in nature and content, as DEA initiated contact
18 with these companies seeking their expertise, advice, and voluntary assistance in solving
19 particular intercept issues and to flesh-out DEA needs and requirements; and/or they (2) reflect
20 the back-and forth process of identifying and solving particular intercept problems DEA brought
21 to the attention of such companies; to include technical trouble-shooting, recommended agenda
22 items for ongoing talks, and suggested intercept solution plans.

23 (c) These communications are vital to DEA operational decisions to solve immediate
24 technical problems during the course of investigations as well as the ongoing DEA process of
25 examining and formulating operational policies, practices, and procedure. Disclosure would be
26 detrimental to the DEA operational problem-solving process and ability to effectively formulate
27

1 operational policy change decisions as DEA, company personnel, and consultants alike would be
2 discouraged from candidly sharing ideas, advice, and analysis.

3 (2) Exemptions 4 and 7D. Portions of Ten (10) pages in this subcategory were also
4 withheld under Exemption 4. U.S.C. § 552 (b)(4) sets forth an exemption for “commercial or
5 financial information obtained from a person and privileged or confidential.” As relevant here,
6 the ten (10) pages¹² concern information voluntarily provided to DEA by three companies in
7 collaborative efforts with DEA, initiated by DEA, to understand and solve technical intercept
8 issues and/or define DEA needs in developing intercept solutions. Each of these companies were
9 consulted and confirmed that the company information they shared with DEA, which includes
10 information about their internal operations, technical and product capabilities, and compliance
11 plans is not information customarily released to the public. Although the information was
12 voluntarily provided to DEA, each company nevertheless also articulated the competitive harm
13 that would result from the release of such internal, commercial information shared with DEA and
14 made clear that release would adversely impact DEA’s ability to obtain any such information in
15 the future. Additionally, four (4) of these pages are exempt under 7D as they contain information
16 supplied to DEA under an expressed, confidentiality agreement.

17
18 c. Meeting Reports. These nine (9) pages comprise four (4) internal DEA summary reports
19 of meetings held in 2008 and 2009 between DEA and specific carriers, service-providers, and
20 industry consultants. The purpose of the meetings, initiated by DEA, were to seek the
21 understanding, advice, and cooperation of industry operators and experts, so that DEA could
22 obtain a more in-depth understanding of particular emerging technology intercept challenges
23 and/or establish collaborative efforts to solve intercept problems. The reports are also withheld in
24 full under Exemptions 7E, 5, and other applicable exemptions as noted in the *Index*. Per
25 Exemption 7E, these report summaries record information exchanges with certain companies and
26 consultants about specific intercept problems, techniques, vulnerabilities; and the identification

27
28 ¹² This also encompasses the page in Category 5C to which Exemption 4 applies; See subparagraph 20c.
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1 and development of strategies and solutions for DEA to consider in solving such problems.
2 Again, release would exposure detailed, intercept vulnerabilities for ready exploitation by
3 criminal elements. Likewise, the names of the cooperating companies and consultants, would
4 provide a critical piece of information that would assist violators in determining were DEA
5 intercept vulnerabilities lie.

6 (1) Per Exemption 5, these consultative meetings are an important component in DEA's
7 process of examining and formulating surveillance operations policies, practices, and procedure
8 within DEA as well as developing policy, resourcing, and/or legislative change recommendations
9 for consideration by the Department. Disclosure would undermine the DEA operational
10 problem-solving process and ability to effectively formulate operational policy change as
11 government and private participants would be less inclined to candidly share ideas, advice, and
12 analysis. Disclosure would also effectively foreclose DEA's ability to gather specialized advice
13 from industry as such companies have made clear that release would jeopardize voluntarily
14 sharing their expertise with DEA in the future.

15 (2) Regarding Exemption 4, two companies shared detailed, technical information with
16 DEA concerning their communication system capabilities; therefore, Exemption 4 was also
17 applied to five (5) of the nine (9) pages. This information was voluntarily provided to DEA by
18 both companies in a collaborative effort with DEA, initiated by DEA, for the meeting purposes
19 as stated above. Both companies were consulted and confirmed that the commercial information
20 they shared with DEA is not information customarily released to the public, to include internal
21 capability and product details, company positioning with respect to legal and regulatory matters,
22 levels of investment in certain technologies, and corporate operational and budget constraints
23 associated with implementing certain capabilities. Again, even though the information was
24 voluntarily provided to DEA, one company also articulated the competitive harm that would
25 likely result from the release of such sensitive commercial information which could readily be
26 exploited by competitors and that release would prevent such future cooperative exchanges with
27 law enforcement. One company expressed grave concern that the release of the company

1 information it shared with DEA could be used by terrorists or criminal elements to the detriment
2 of company and DEA operations.

3 d. Segregability. Given the overlap of Exemptions 5 and 7E to each page, and the additional
4 application of the multiple exemptions identified in the *Index* and discussed above, no
5 reasonably segregable, non-exempt information was identified.

6 CATEGORY 7

7 22. This “house-keeping” category of miscellaneous items is comprised of 13 pages responsive
8 in whole or part. Nine (9) pages are withheld in full with four (4) pages released in part. There
9 are three subgroupings which mirror the attached *Index* entries.

10
11 a. Internal Correspondence Regarding Emerging Technology Intercept Problems. These
12 seven (7) pages concern four (4) pages of internal DEA email traffic, one (1) intra agency
13 coordination email between DEA and FBI, and a two (2) page internal DEA bulletin. Five (5)
14 pages are withheld in full and portions of two (2) pages are withheld in part under Exemptions 5,
15 7E, and the other exemptions per the *Index*.

16 (1) Per Exemption 7E, the subject of the emails all concern specific intercept technical
17 difficulties, vulnerabilities, and/or employment of countermeasures in response to evasion
18 attempts by criminal elements in two contexts: solving operational intercept problems and
19 training. Moreover, as relevant to Exemption 5, these emails, also contain in whole or part the
20 varied opinions, analysis, queries, and policy and practice recommendations of several DEA
21 personnel who were exchanging ideas in an attempt to solve operational intercept problems or
22 determine which intercept issues should be incorporated into investigative training. These
23 communications are part of the DEA operational decision process to solve immediate technical
24 problems during the course of investigations and the evaluative process of determining training
25 policy. Disclosure would harm the quality of DEA operational problem-solving and training
26 policy formulation as DEA personnel would be less inclined to express their unvarnished
27 thoughts and opinions on such matters.

1 (2) Concerning the two (2) page bulletin, this internal-use publication is designed to
2 inform and advise DEA agents and investigative personnel on operational matters; it was
3 withheld in full under Exemptions 5 and 7E. As further described in the *Index*, the bulletin at
4 issue provides guidance and recommended procedural steps to investigators when a particular
5 intercept problem is encountered. Release would expose DEA investigative procedures, intercept
6 methodology, and technical detail about this particular problem which would enable violators to
7 thwart investigative detection efforts. Release would further quell the use of such advisory
8 bulletins as part of DEA's ongoing process of formulating investigative policy, practice, and
9 procedure.

10 b. Draft Administrator Talking Points. These four (4) pages comprise a draft talking points
11 paper prepared for the DEA Administrator's use in anticipation of a meeting with state officials
12 about DEA intercept challenges posed by emerging technologies. In addition to its draft form
13 and preparatory nature, the draft talking points reflect the selective analysis of the subordinate
14 personnel regarding which topics the Administrator should discuss, if at all (Exemption 5), and
15 further identify and describe specific intercept problems in detail and efforts to address such
16 problems to enhance enforcement operations and prevent circumvention efforts (Exemption 7E).

17 c. Report Excerpt, Joint Briefing. The responsive portions of this two (2) page excerpt from
18 a Department report on various DOJ activities were released in part. Portions of one page were
19 withheld from this joint presentation by DEA and the former U.S. Attorney, Eastern District of
20 Tennessee, under Exemption 7E as a specific intercept deficiency encountered by DEA and law
21 enforcement is identified and described. Portions of both pages were redacted under Exemption
22 5 as they contain the opinions and recommendations of the presenters regarding how DOJ should
23 proceed internally in formulating policy and legislative change recommendations to address this
24 intercept deficiency.

CATEGORY 8

1
2 23. This category is comprised of 38 pages responsive in whole or part, all of which are
3 withheld in full under Exemptions 5 and 7E. These pages are several versions of draft Questions
4 and Answers (Q and As), many pages with editorial comments and/or textual edits prepared by
5 counsel and program officials in the Office of Investigative Technology (ST). The Q and As
6 were drafted to prepare then Acting Administrator Leonhart for her confirmation testimony
7 before Congress in November 2010 (pages 8 1-35), and to prepare for possible Congressional
8 testimony regarding internet investigations (pages 8 36-38). The content of these drafts were not
9 disclosed in public testimony. These Q and As, like talking point papers, perform a key role
10 within DEA as they are prepared by subordinate personnel to advise DEA's agency head on
11 matters which may mature into formal DEA statements of policy or positions before Congress.
12 Release of this draft, advisory material would diminish efficient preparation of the DEA
13 Administrator in formulating DEA policy and positions before Congress as well as generate
14 public confusion as they do not relate to final agency actions. Release would also trigger
15 numerous Exemption 7E related harms as these drafts address topics concerning surveillance
16 capability problem areas and discuss in detail DEA intercept capabilities, vulnerabilities, evasion
17 methods employed by drug traffickers, and evaluations of the sufficiency of DEA resources to
18 address surveillance-deficiency challenges.

CATEGORY 9

19
20 24. This category comprises various types of records related to DEA Special Operations and/or
21 DEA interagency working group participation. In all, of the 62 pages responsive in whole or
22 part, 41 pages were withheld in full under Exemption 7E and several other exemptions per the
23 *Index*; 16 pages (presentation slides) were released in full while 5 pages were released in part.
24 Two pages concern classified national security matters of another DOJ component (FBI). There
25 are four (4) subgroups: (a) briefing material; (b) case example-related materials; (c) discussion
26 papers and drafts; and (d) interagency working group summaries.

1 a. Briefing Material. These 40 pages comprise responsive briefing slides or presentation
2 pages utilized by the DEA Special Operations Division (SOD) for internal training and
3 familiarization of DEA agents and other investigative personnel. The 24 pages withheld in full
4 or part under Exemption 7E contain detailed information and demonstrative examples of specific
5 operational intercept difficulties encountered in DEA investigations. The release of this
6 information, designed to assist agents and other personnel in the conduct of intercept
7 investigations, would expose DEA vulnerabilities and methods being employed by criminal
8 elements to evade detection. Other exemptions apply as described in the *Index*.

9 b. Case Example Related Material. These eight (8) pages relate to SOD case example
10 matters and comprise four (4) pages of internal DEA email, a two (2) page e-mail attachment,
11 and a case example coordination email between DEA and DOJ (2 pages) with privacy redactions
12 under Exemptions 6 and 7C.

13 (1) Concerning the four (4) DEA emails, three (3) email pages were withheld in full
14 under 7E, and other exemptions, as they contain detailed summaries of DEA criminal cases
15 where intercept difficulties were experienced, two pages of which pertain to ongoing
16 investigations. As relevant to Exemption 5, portions of two (2) of the emails contain the analysis
17 and/or opinions of DEA personnel regarding the case examples under discussion, to include
18 opinion regarding how such examples should be tracked and reported within DEA. Release of
19 such analysis and opinion, would diminish the quality of the DEA process of evaluating and
20 developing investigative policy and procedural decisions as personnel would be less inclined to
21 offer their candid assessments and recommendations.

22 (2) The responsive portions of the two (2) page attachment, is an excerpt from the
23 meeting minutes of an internal DEA (SOD) working group in February 2008. These two (2)
24 pages not only contain case example discussions and detail related to specifically-identified
25 problem technologies (Exemption 7E), they were an early component of DEA's internal strategy
26 formulation process discussed in Category 1A above. In terms of content, the pages contain what
27 the working group participants have identified as significant intercept issues to be considered in
28

1 the formulation of DEA strategy, itself a deliberative process. The pages also contain opinions
2 and assessments of working group members regarding the scope of intercept difficulties faced,
3 trend forecasts, and a rough outline of proposed strategies. In terms of function, the purpose of
4 this working group was to identify and recommend intercept issues and solution strategies for
5 consideration by the Special Agent In Charge (SAC), SOD; who in turn would provide SOD's
6 strategy recommendations to DEA executive management, as part of the DEA strategy
7 formulation process. Release of this formative and unadopted material antecedent to decision to
8 adopt formal strategies would quell open debate and the sharing of honest, frank opinions in the
9 DEA strategy formulation process.

10 c. Discussion Papers and Drafts. This ten (10) page subgrouping, withheld in full under
11 Exemptions 5, 7E, and other applicable exemptions, comprises two (2) discussion papers (5
12 pages), and drafts of one of the discussion papers (remaining 5 pages), one of which is an email
13 page containing recommended draft comments. These discussion papers are the individualized
14 opinions, recommendations, and analysis of a subordinate SOD program expert on varied
15 technical intercept problems and proposed solutions as further described in the *Index*.

16 (1) As relevant to Exemption 7E, the content of these discussion papers contain in-depth
17 analysis of current intercept problems with specific technologies and carriers with detailed
18 discussion of DEA efforts to solve such problems, and evaluations of the effectiveness of certain
19 DEA intercept capabilities within the emerging technology environment. Release of this detailed
20 information would have an immeasurable negative impact on DEA investigative operations as
21 criminal elements could readily exploit the exposed vulnerabilities.

22 (2) As relevant to Exemption 5, these internal papers, written from the SOD perspective
23 of the intercept challenges faced by DEA are advisory in nature, and represent this particular
24 program expert's viewpoints for consideration by the SAC, SOD; DEA executive management;
25 and DEA working groups. One paper was generated (approximately March 2009) for
26 consideration during the DEA Strategy formulation process (See Category 1A and 1B) and the
27 other (approximately Aug. 2010) pertains to the ongoing post-strategy assessment phase within

1 DEA whereby intercept problem areas are under examination to decide whether new, or modified
2 strategies should be adopted by DEA to address continuing intercept challenges presented by
3 emerging technologies. Release of these individual discussion papers would trigger the harms as
4 described in paragraph 9c, above as well as damage the effectiveness of DEA policy
5 development in the reevaluation of its strategies.

6 d. Interagency Meeting Summaries. The responsive portions of these four (4) pages concern
7 two (2) internal DEA summaries of interagency working group meetings (Oct. 2010) considering
8 intercept policy and resource recommendations of common interest for presentation to decision-
9 makers at respective agencies; a process which continues. One summary contains classified
10 material from another agency (FBI). The responsive portion of the unclassified summary is
11 withheld in full under Exemptions 5 and 7E, and portions under 6, and 7C. The material
12 contains a DEA program expert's opinion and analysis shared with working group members
13 regarding a specific intercept problem, to include the participant's discussion of legal and
14 technical alternatives to address the intercept problem. The release of material about this
15 particular intercept problem would likewise trigger significant 7E-related harms. Moreover, as
16 relevant to Exemption 5, disclosure of the DEA program expert's opinion and analysis to the
17 working group--unadopted in any final action or policy--would immeasurably damage the quality
18 of DEA operational policymaking and negatively impact interagency collaboration as a means to
19 develop government policy decisions by the respective participating agencies as disclosure would
20 chill the sharing of such agency ideas and viewpoints. The other working group summary at
21 issue is similarly withheld under Exemptions 5 and 7E as it pertains to specific intercept problem
22 issues; however, the responsive portion of the summary also contains matters classified Secret
23 under Executive Order 12958 by FBI. A declaration from FBI addresses the withholding and
24 classification of the responsive portion of this summary (portions of 2 pages) and is attached as
25 Exhibit K.

CATEGORY 10

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2 25. This final category contains records referred to DEA by other DOJ Components. For
3 discussion purposes, there are three (3) subgroups.

4 a. Case Examples Referred by DOJ-Criminal Division. This 15-page DEA document is a
5 compilation of DEA criminal case examples for DEA and DOJ use in identifying surveillance
6 difficulty trends; 14 pages are withheld in full and one page was released in part. Like the case
7 examples discussed above in category 4, these case summaries were derived from DEA criminal
8 investigative files and/or the personal knowledge of Special Agents and other DEA investigative
9 personnel conducting, or familiar with, the investigations. As the case examples highlight actual
10 surveillance impediments experienced in field investigations, each page is exempt in full or part
11 under Exemption 7E. Moreover, as indicated in the *Index*, several other exemptions apply as
12 many of the cases discussed still remain open investigations, contain confidential source
13 information, and/or contain T III intercept material.

14 b. Partial E-mail Strings Referred by DOJ Criminal Div. (10-16 and 10-17). These two (2)
15 pages released in part, contain privacy redactions as noted by the *Index*. One page, (10-16)
16 contains 7E exempt material as the redacted information references a specific intercept
17 deficiency issue as well as a technique employed by DEA against certain criminal elements.

18 c. Coordination E-mails between DEA and FBI. The five (5) responsive pages referred by
19 FBI reflect coordination emails between DEA and FBI personnel related to a publication (that
20 portion released) and two DEA case examples shared with FBI for cooperative law enforcement
21 purposes. Exemption 7E was applied to large portions of four (4) of the five (5) email pages as
22 they pertain to specific intercept difficulties experienced in DEA investigations to include
23 methods of intercept evasion employed by criminal elements. Also, as indicated in the *Index*,
24 other exemptions were applied to portions of these pages as both case examples discussed in this
25 email traffic are open investigations, and contain confidential source or T III intercept-derived
26 material.

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

2/29/12

DATE

Katherine Myrick

KATHERINE L. MYRICK
Chief, FOI/Privacy Act Unit
FOI/Records Management Section
Drug Enforcement Administration
Washington, D.C. 20537

EXHIBIT A



Electronic Frontier Foundation
Protecting Rights and Promoting Freedom on the Electronic Frontier

September 28, 2010

VIA FACSIMILE — (202) 307-8556

Katherine L. Myrick, Chief
Freedom of Information Operations Unit
FOI/Records Management Section
Drug Enforcement Administration
Department of Justice
West Building, 6th Floor
700 Army Navy Drive
Arlington, VA 22202

RE: Freedom of Information Act Request and
Request for Expedited Processing

Dear Ms. Myrick:

This letter constitutes an expedited request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and is submitted to the Drug Enforcement Agency (DEA) on behalf of the Electronic Frontier Foundation (EFF). We make this request as part of EFF's FOIA Litigation for Accountable Government (FLAG) Project, which works to obtain government documents and make them widely available to the public.

Yesterday the *New York Times* reported that officials from the Department of Justice and other federal agencies, including presumably the DEA, have been meeting with White House officials to develop proposed statutory language and regulations to "require all services that enable communications — including encrypted e-mail transmitters like BlackBerry, social networking Web sites like Facebook and software that allows direct 'peer to peer' messaging like Skype — to be technically capable of complying if served with a wiretap order." Charlie Savage, *U.S. Tries to Make It Easier to Wiretap the Internet*, *New York Times* (Sept. 27, 2010).¹ See also Glenn Greenwald, *The Obama Administration's War on Privacy*, *Salon.com* (Sept. 27, 2010);² Kit Eaton, *What a Wiretappable Internet Could Mean for Facebook, Apple, Google, and You*, *Fast Company* (Sept. 27, 2010);³ Lolita C. Baldor, *Report: US Would Make Internet Wiretaps Easier*, *Washington Post* (Sept. 27, 2010);⁴ Ellen Nakashima, *Administration Seeks Ways*

¹ <http://www.nytimes.com/2010/09/27/us/27wiretap.html>.

² http://www.salon.com/news/opinion/glenn_greenwald/2010/09/27/privacy/index.html.

³ <http://www.fastcompany.com/1691505/wiretap-emails-facebook-apple-google>.

⁴ <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/27/AR2010092700719.html>.

to Monitor Internet Communications, Washington Post (Sept. 27, 2010);⁵ PBS News Hour, *Proposal Could Expand Government's Web Wiretapping Efforts* (Sept. 27, 2010).⁶

We hereby request all agency records created on or after January 1, 2006 (including, but not limited to, electronic records) discussing, concerning, or reflecting:

1. any problems, obstacles or limitations that hamper the DEA's current ability to conduct surveillance on communications systems or networks including, but not limited to, encrypted services like Blackberry (RIM), social networking sites like Facebook, peer-to-peer messaging services or Voice over Internet Protocol (VoIP) services like Skype, etc.;
2. any communications or discussions with the operators of communications systems or networks (including, but not limited to, those providing encrypted communications, social networking, and peer-to-peer messaging services), or with equipment manufacturers and vendors, concerning technical difficulties the DEA has encountered in conducting authorized electronic surveillance;
3. any communications or discussions concerning technical difficulties the DEA has encountered in obtaining assistance from non-U.S.-based operators of communications systems or networks, or with equipment manufacturers and vendors in the conduct of authorized electronic surveillance;
4. any communications or discussions with the operators of communications systems or networks, or with equipment manufacturers and vendors, concerning development and needs related to electronic communications surveillance-enabling technology;
5. any communications or discussions with foreign government representatives or trade groups about trade restrictions or import or export controls related to electronic communications surveillance-enabling technology;
6. any briefings, discussions, or other exchanges between DEA officials and members of the Senate or House of Representatives concerning implementing a requirement for electronic communications surveillance-enabling technology, including, but not limited to, proposed amendments to the Communications Assistance to Law Enforcement Act (CALEA).

Request for Expedited Processing

⁵ <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/27/AR2010092703244.html>.

⁶ http://www.pbs.org/newshour/bb/government_programs/july-dec10/wiretap_09-27.html.

This request warrants expedited processing because it pertains to information about which there is an “urgency to inform the public about an actual or alleged federal government activity,” and it is “made by a person primarily engaged in disseminating information.” 28 C.F.R. § 16.5(d)(1)(ii). The information we request easily satisfies this standard.

The federal government activity involved here—the proposed introduction of legislation that would impose new technical requirements on communications providers—raises significant issues concerning potential government intrusions into personal affairs, particularly those involving private communications and activities. The *New York Times* article notes that the Obama administration plans to submit the “sweeping new regulations for the Internet . . . next year.” When Congress begins the process of considering the administration’s request for new legislation, its deliberations will constitute the latest chapter in a public debate over anti-terrorism powers, which has been ongoing since late 2001. The information we request will help the public and Congress fully participate in that ongoing debate over whether to increase—or restrict—the investigative authority of the federal government. Delay in processing this FOIA request could inhibit the public’s ability to fully analyze and debate the implications of the legislative changes the administration seeks.

Notably, the need for expeditious disclosure of information concerning Executive branch requests for greater anti-terrorism authorities is not a matter of first impression. In *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24 (D.D.C. 2004), the court held that impending congressional consideration of expiring PATRIOT Act provisions created a “compelling” need for information concerning the FBI’s use of its investigative authorities. As such, the court ordered expedited processing of a FOIA request seeking that information. Similarly, in two cases involving FOIA requests to the Office of the Director of National Intelligence, the court found irreparable harm exists where Congress is considering legislation that would amend a surveillance statute (in these cases, FISA) “and the records may enable the public to participate meaningfully in the debate over such pending legislation.” *Elec. Frontier Found. v. Office of the Dir. of Nat’l Intelligence*, 542 F. Supp. 2d 1181, 1187 (N.D. Cal. 2008)(citing *Elec. Frontier Found. v. Office of the Dir. of Nat’l Intelligence*, 2007 U.S. Dist. LEXIS 89585 (Nov. 27, 2007)). Even though the court could not “predict the timing of passage of the legislation” the court granted expedited processing, holding “that delayed disclosure of the requested materials may cause irreparable harm to a vested constitutional interest in ‘the uninhibited, robust, and wide-open debate about matters of public importance that secures an informed citizenry.’” *Id.* (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). Likewise, there is an urgency to inform the public about the information we seek here. Therefore, this request clearly meets the standard for expedited processing set forth in DOJ regulations.

Further, as I explain below in support of our request for “news media” treatment, EFF is “primarily engaged in disseminating information.” Indeed, DOJ components have granted previous EFF requests for expedited processing under 28 C.F.R. § 16.5(d)(1)(ii)

and have thus acknowledged that the organization is "primarily engaged in disseminating information." See e.g., Letter to David Sobel of EFF, dated October 21, 2009 (attached).

Request for News Media Fee Status

EFF asks that it not be charged search or review fees for this request because EFF qualifies as a "representative of the news media" pursuant to the FOIA and 28 C.F.R. § 16.11(b)(6). In requesting this classification, we note that the Department of Homeland Security (DHS) has recognized that EFF qualifies as a "news media" requester based upon the publication activities set forth below (see DHS stipulation attached). In addition, the National Security Agency (NSA) has previously determined that EFF is not only a "news media requester," but also "primarily engaged in disseminating information" for purposes of expedited processing (see attached NSA response to prior EFF FOIA request, in which EFF requested expedited processing because it sought information "urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity," and NSA granted the request). These precedents are particularly important in light of the fact that the U.S. Court of Appeals for the D.C. Circuit has stressed that "different agencies [must not] adopt inconsistent interpretations of the FOIA." *Al-Fayed v. CIA*, 254 F.3d 300, 307 (D.C. Cir. 2001), quoting *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1287 (D.C. Cir. 1983).

EFF is a non-profit public interest organization that works "to protect and enhance our core civil liberties in the digital age."⁷ One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties."⁸ To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which received 43,403,630 hits in June 2007 — an average of 60,282 per hour. The web site reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

EFF has regularly published an online newsletter, the EFFector, since 1990. The EFFector currently has more than 77,000 subscribers. A complete archive of past EFFectors is available at <http://www.eff.org/effector/>.

Furthermore, EFF publishes a blog that highlights the latest news from around the Internet. DeepLinks (<http://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology. It also provides miniLinks, which direct readers to other news articles and commentary on these issues.

⁷ Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited July 10, 2007).

⁸ *Id.*

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <http://www.eff.org/wp/>, provide information and commentary on such diverse issues as electronic voting, free speech, privacy and intellectual property.

EFF has also published several books to educate the public about technology and civil liberties issues. *Everybody's Guide to the Internet* (MIT Press 1994), first published electronically as *The Big Dummy's Guide to the Internet* in 1993, was translated into several languages, and is still sold by Powell's Books (<http://www.powells.com>). EFF also produced *Protecting Yourself Online: The Definitive Resource on Safety, Freedom & Privacy in Cyberspace* (HarperEdge 1998), a "comprehensive guide to self-protection in the electronic frontier," which can be purchased via Amazon.com (<http://www.amazon.com>). Finally, *Cracking DES: Secrets of Encryption Research, Wiretap Politics & Chip Design* (O'Reilly 1998) revealed technical details on encryption security to the public. The book is available online at <http://cryptome.org/cracking-des.htm> and for sale at Amazon.com.

EFF also broadcasts podcasts of interviews with EFF staff and outside experts. *Line Noise* is a five-minute audio broadcast on EFF's current work, pending legislation, and technology-related issues. A listing of *Line Noise* podcasts is available at <feed://www.eff.org/rss/linenoisemp3.xml> and <feed://www.eff.org/rss/linenoiseogg.xml>.

Due to these extensive publication activities, EFF is a "representative of the news media" under the FOIA and agency regulations.

Request for a Public Interest Fee Waiver

EFF is entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, Department of Justice components determine whether "[d]isclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government," and whether such disclosure "is not primarily in the commercial interest of the requester." 28 C.F.R. §§ 16.11(k)(i), (ii). This request clearly satisfies these criteria.

First, the DEA's participation in a discussion to expand electronic communications surveillance capabilities concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i).

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on the nature of the DEA's Internet surveillance technology and the reasons behind the DEA's stated need for

09/28/2010 15:50 FAX 4154389993

EFF

007

updated electronic communications surveillance capabilities.

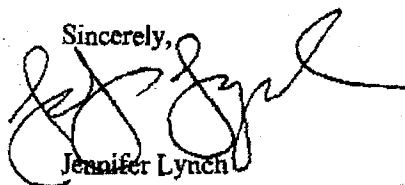
Third, the requested material will "contribute to public understanding" of the DEA's proposals to expand its surveillance capabilities and the need for that expansion. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the DEA's surveillance activity, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Fourth, the disclosure will "contribute significantly" to the public's knowledge and understanding of the DEA's use of electronic surveillance. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Disclosure of the requested information will help inform the public about the DEA's need for expanded surveillance capabilities, as well as contribute to the public debate about whether and how proposed technological changes should be employed. The ability of law enforcement agencies to monitor new forms of electronic communications technology has important implications for the American public in the digital age. Law enforcement's ability to counter criminal threats and fulfill its duty to protect the American public, the consequent risk and potential for abuse due to such monitoring, and the possible economic and technological effect new regulations could have upon burgeoning technologies are all an important part of the public debate.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x. 136. As the FOIA and applicable regulations provide, I will anticipate a determination on our request for expedited processing within 10 calendar days and a determination with respect to the disclosure of requested records within 20 working days.

Sincerely,



Jennifer Lynch
Staff Attorney

Attachments

EXHIBIT B



U.S. Department of Justice
Drug Enforcement Administration

OCT 01 2010

Case Number: 10-00892-F

Subject: ANY PROBLEMS, OBSTACLES OR LIMITATIONS THAT HAMPER THE DEA'S CURRENT ABILITY TO CONDUCT SURVEILLANCE ON COMMUNICATIONS SYSTEMS OR NETWORKS INCLUDING, BUT NOT LIMITED TO, ENCRYPTED SERVICE LIKE BLACKBERRY (RIM), SOCIAL NETWORKING SITES LIKE FACEBOOK, PEER-TO-PEER MESSAGING SERVICES OR VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE LIKE SKYPE, ETC (JANUARY 1, 2006 TO PRESENT)

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, received by the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to DEA records. Your request has been opened and assigned the above case number. Please include this case number when corresponding with this office.

This letter confirms your obligation that by filing your request, you have agreed to pay all applicable fees charged under 28 C.F.R. § 16.11, up to \$25.00. No fees are due at this time.

In order to expedite all requests, your request will be handled in chronological order based on the date of this letter. If you have any questions regarding this letter, you may contact our Customer Service Hotline Representative on (202) 307-7596 or mail your correspondence to:

DEA HEADQUARTERS
ATTN: FOI/PA UNIT (SARF)
8701 MORRISSETTE DRIVE
SPRINGFIELD, VIRGINIA 22152

Sincerely,

A handwritten signature in black ink that reads "Katherine Myrick".

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

EXHIBIT C



U.S. Department of Justice
Drug Enforcement Administration

Case Number: 10-00892-F

Subject: LYNCH, JENNIFER

OCT 26 2010

Jennifer Lynch
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, addressed to the Drug Enforcement Administration (DEA), FOI/Records Management Section, Operations Unit (SARO), seeking access to DEA records pertaining to the above referenced subject.

The Department of Justice (DOJ) has provided guidance to Federal Agencies so that each request for expedited treatment receives consideration for "Exceptional need or urgency." See 28 C.F.R. § 16.5 (d). Under the FOIA, requests... will be taken out of order and given expedited treatment whenever it is determined that they involve:

- (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

The FOI/Records Management Section, Operations Unit makes a determination regarding the first three standards while the DOJ's Director of Public Affairs makes the initial determination regarding the fourth standard. See id. § 16.5(d)(2). In your letter, you requested expedited processing of your request because "it pertains to information about which there is an urgency to inform the public about an actual or alleged federal government activity." I have construed your request for expedited treatment as made pursuant to the second (ii) standard listed above. Based on the information you provided, your request is insufficient to warrant expedited treatment under this standard (demonstrating that a particular urgency concerning actual or alleged federal government activity beyond the public's right to know about government activities exists). Consequently, your request for expedited processing is denied.

Case Number: 10-00892-F

Page 2

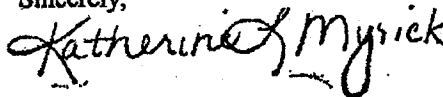
If you wish to appeal the denial of your request for expedited treatment, you may do so within 60 days from the date of this letter pursuant to 28 C.F.R. § 16.9. The appeal should be sent to the following address, with the envelope marked "FOIA Appeal":

DEPARTMENT OF JUSTICE
OFFICE OF INFORMATION POLICY
NYAV BUILDING, 11TH FLOOR
WASHINGTON, D.C. 20530

Accordingly, your request will be handled in chronological order. Please be assured that your request is being handled as equitably as possible. If you have any questions regarding this letter, please contact me on (202) 307-7596 or forward your correspondence, referencing your case number to the following address:

DEA HEADQUARTERS
ATTN: OPERATIONS UNIT (SARO)
8701 MORRISSETTE DRIVE
SPRINGFIELD, VIRGINIA 22152

Sincerely,



Katherine L. Myrick
Chief, Operations Unit
FOI/Records Management Section

EXHIBIT D



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrisette Drive
Springfield, Virginia 22152

MAR 31 2011

Case Number: 10-00892-F, Release One Processing

Subject: ANY PROBLEMS, OBSTACLES OR LIMITATIONS THAT HAMPER THE DEA'S CURRENT ABILITY TO CONDUCT SURVEILLANCE ON COMMUNICATIONS SYSTEMS OR NETWORKS INCLUDING, BUT NOT LIMITED TO, ENCRYPTED SERVICE LIKE BLACKBERRY (RIM), SOCIAL NETWORKING SITES LIKE FACEBOOK, PEER-TO-PEER MESSAGING SERVICES OR VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE LIKE SKYPE, ETC (JANUARY 1, 2006 TO PRESENT) (FIRST RELEASE).

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject. Below is the breakdown of pages processed and referred for release one.

Pages reviewed and released in full: 160
Pages reviewed and released in part: 24
Pages withheld in full: 246
Pages reviewed and referred to other agencies/components: 201
Pages reviewed and determined to be non-responsive: 115
Pages reviewed and identified as duplicates: 382

Grand Total pages processed: 1,128

Certain DEA files contain information that was furnished by another government agency/agencies. That information and a copy of your request have been referred for a decision as to access and the agency/agencies involved will respond directly to you in accordance with 28 C.F.R § 16.4 and/or 16.42. Below is the breakdown of what pages were processed and referred. These numbers are already included in the grand total of pages processed reflected above.

Pages reviewed and referred to FBI: 192
Pages reviewed and referred to OIP: 9

Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Information withheld in part is indicated by the FOIA Exemptions recorded on the documents attached in the compact disk (.pdf format) herein. Information is withheld from the pages withheld in full, or in part, under the following Exemptions: (b)(2)(low), (b)(4), (b)(5), (b)(6), (b)(7)(a), (b)(7)(c), (b)(7)(d), (b)(7)(e) and (b)(7)(f). The attached enclosure to this letter explains these exemptions in more detail. For information purposes, the release of documents herein includes releasable material (in full or in part) from the following DEA records; this is not a sequential or exhaustive list of the records processed as part of this release.

Powerpoint Presentations:

“Diminishing Electronic Surveillance Capabilities in the Communications Age.”

“DEA Office of Investigative Technology: Briefing for the DEA Acting Administrator Leonhart and the Executive Staff: October 20, 2009.”

“DEA Office of Investigative Technology: Briefing for the DEA Field Advisory Committee.”

“DEA Office of Investigative Technology: Diminishing Electronic Surveillance Capabilities in the Communications Age: November 18, 2009.”

“Overview of Communication Technology and Electronic Surveillance: October 19, 2010.”

“DEA Office of Investigative Technology: Emerging Communications: New York, April 8, 2010.”

“DEA Office of Investigative Technology: Diminishing Electronic Surveillance Capabilities in the Communications Age: St. Louis Division, August 10, 2010.”

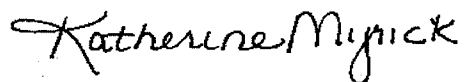
“DEA Office of Investigative Technology: Diminishing Electronic Surveillance Capabilities in the Communications Age: Merlin Users Group, October 21, 2010.”

“Presentation To United States Department of Justice Office of Enforcement Operations Narcotics & Dangerous Drugs Section: April 17, 2008.”

“DEA Office of Investigative Technology: Emerging Communications Directorate of National Intelligence: April 9, 2010.”

Refer any questions to Mr. Cartier, counsel for the Department of Justice in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Myrick".

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Enclosures

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (b)(2) Materials related solely to the internal rules and practices of DEA.
- (b)(3) Information specifically exempted from disclosure by another federal statute.
- (b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.
- (b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.
- (b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.
- (j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.
- (k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (k)(2) Material compiled during civil investigations for law enforcement purposes.
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.
- (k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

EXHIBIT E



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrisette Drive
Springfield, Virginia 22152

Case Number: 10-00892-F, Interim Release Two Processing

APR 29 2011

Subject: ANY PROBLEMS, OBSTACLES OR LIMITATIONS THAT HAMPER THE DEA'S CURRENT ABILITY TO CONDUCT SURVEILLANCE ON COMMUNICATIONS SYSTEMS OR NETWORKS INCLUDING, BUT NOT LIMITED TO, ENCRYPTED SERVICE LIKE BLACKBERRY (RIM), SOCIAL NETWORKING SITES LIKE FACEBOOK, PEER-TO-PEER MESSAGING SERVICES OR VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE LIKE SKYPE, ETC (JANUARY 1, 2006 TO PRESENT) (SECOND RELEASE).

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject. Below is the breakdown of pages processed and referred for release two.

Pages reviewed and released in full: 1
Pages reviewed and released in part: 15
Pages withheld in full: 155
Pages reviewed and referred to other agencies/components: 69
Pages reviewed and determined to be non-responsive: 665
Pages reviewed and identified as duplicates: 285

Grand Total pages processed: 1,190

Certain DEA files contain information that was furnished by another government agency/agencies. That information and a copy of your request have been referred for a decision as to access and the agency/agencies involved will respond directly to you in accordance with 28 C.F.R § 16.4 and/or 16.42. Below is the breakdown of what pages were processed and referred. These numbers are already included in the grand total of pages processed reflected above.

Pages reviewed and referred to FBI: 69

Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Information withheld in part is indicated by the FOIA Exemptions recorded on the documents attached herein. Information is withheld in full or in part under the following Exemptions: (b)(2)(low), (b)(3), (b)(5), (b)(6), (b)(7)(a), (b)(7)(c), (b)(7)(d), (b)(7)(e) and (b)(7)(f). An additional enclosure with this letter explains these exemptions in more detail.

Based on an internal review of the processing statistics provided for interim release one, the categorical numbers have been adjusted for accuracy below. There is no change to the total number of pages processed, or the materials released to you in full or in part.

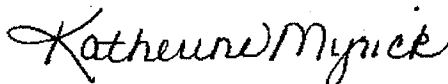
Pages reviewed and released in full: 160
Pages reviewed and released in part: 24
Pages withheld in full: 206
Pages reviewed and referred to other agencies/components: 201
Pages reviewed and determined to be non-responsive: 153
Pages reviewed and identified as duplicates: 384

Grand Total pages processed: 1,128

Moreover, please find enclosed paper copy slides 5C-108 and 5C-221 which were requested from interim release one.

Refer any questions to Mr. Cartier, counsel for the Department of Justice in this matter.

Sincerely,



Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Enclosures

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (b)(2) Materials related solely to the internal rules and practices of DEA.
- (b)(3) Information specifically exempted from disclosure by another federal statute.
- (b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.
- (b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.
- (b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.
- (j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.
- (k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (k)(2) Material compiled during civil investigations for law enforcement purposes.
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.
- (k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

EXHIBIT F



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrissette Drive
Springfield, Virginia 22152

Case Number: 10-00892-F, Interim Release Three Processing

JUN 01 2011

Subject: ANY PROBLEMS, OBSTACLES OR LIMITATIONS THAT HAMPER THE DEA'S CURRENT ABILITY TO CONDUCT SURVEILLANCE ON COMMUNICATIONS SYSTEMS OR NETWORKS INCLUDING, BUT NOT LIMITED TO, ENCRYPTED SERVICE LIKE BLACKBERRY (RIM), SOCIAL NETWORKING SITES LIKE FACEBOOK, PEER-TO-PEER MESSAGING SERVICES OR VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE LIKE SKYPE, ETC (JANUARY 1, 2006 TO PRESENT) (THIRD RELEASE).

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject. Below is the breakdown of pages processed and referred for release three. This round of processing includes 15 pages referred to DEA by the DOJ Criminal Division.

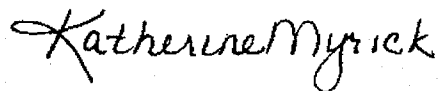
Pages reviewed and released in full: 0
Pages reviewed and released in part: 8
Pages withheld in full: 134
Pages reviewed and referred to other agencies/components: 0
Pages reviewed and determined to be non-responsive: 1,008
Pages reviewed and identified as duplicates: 191

Grand Total pages processed: 1,341

Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Information withheld in part is indicated by the FOIA Exemptions recorded on the documents attached herein. Information is withheld in full or in part under the following Exemptions: (b)(2)(low), (b)(5), (b)(6), (b)(7)(a), (b)(7)(c), (b)(7)(d), (b)(7)(e) and (b)(7)(f). An additional enclosure with this letter explains these exemptions in more detail.

Refer any questions to Mr. Cartier, counsel for the Department of Justice in this matter.

Sincerely,

A handwritten signature in black ink that reads "Katherine Myrick". The signature is written in a cursive, flowing style.

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Enclosure

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (b)(2) Materials related solely to the internal rules and practices of DEA.
- (b)(3) Information specifically exempted from disclosure by another federal statute.
- (b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.
- (b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.
- (b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.
- (j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.
- (k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (k)(2) Material compiled during civil investigations for law enforcement purposes.
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.
- (k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

EXHIBIT G



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrisette Drive
Springfield, Virginia 22152

Case Number: 10-00892-F, Interim Release Four Processing

JUL 01 2011

Subject: ANY PROBLEMS, OBSTACLES OR LIMITATIONS THAT HAMPER THE DEA'S CURRENT ABILITY TO CONDUCT SURVEILLANCE ON COMMUNICATIONS SYSTEMS OR NETWORKS INCLUDING, BUT NOT LIMITED TO, ENCRYPTED SERVICE LIKE BLACKBERRY (RIM), SOCIAL NETWORKING SITES LIKE FACEBOOK, PEER-TO-PEER MESSAGING SERVICES OR VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE LIKE SKYPE, ETC (JANUARY 1, 2006 TO PRESENT) (FOURTH RELEASE).

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject. Below is the breakdown of pages processed and referred for release four. This round of processing includes 1 page referred to DEA by the DOJ Criminal Division.

Pages reviewed and released in full: 0
Pages reviewed and released in part: 1
Pages withheld in full: 1
Pages reviewed and referred to other agencies/components: 293
Pages reviewed and determined to be non-responsive: 488
Pages reviewed and identified as duplicates: 240

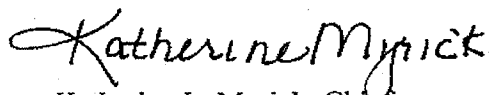
Grand Total pages processed: 1,023

Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Information withheld in part is indicated by the FOIA Exemptions recorded on the documents attached herein. Information is withheld in full or in part under the following Exemptions: (b)(2)(low), (b)(5), (b)(6), (b)(7)(c), (b)(7)(e). An additional enclosure with this letter explains these exemptions in more detail. Below is the breakdown of what pages were processed and referred. These numbers are already included in the grand total of pages processed reflected above.

Pages reviewed and referred to FBI: 33
Pages reviewed and referred to OIP: 260

Refer any questions to Mr. Cartier, counsel for the Department of Justice in this matter.

Sincerely,

A handwritten signature in black ink that reads "Katherine Myrick". The signature is written in a cursive style with a large, prominent "K" and "M".

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Enclosure

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (b)(2) Materials related solely to the internal rules and practices of DEA.
- (b)(3) Information specifically exempted from disclosure by another federal statute.
- (b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.
- (b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.
- (b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.
- (j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.
- (k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (k)(2) Material compiled during civil investigations for law enforcement purposes.
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.
- (k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

EXHIBIT H



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrisette Drive
Springfield, Virginia 22152

Case Number: 10-00892-F, Interim Release Five Processing

Subject: ANY PROBLEMS, OBSTACLES OR LIMITATIONS THAT HAMPER THE DEA'S CURRENT ABILITY TO CONDUCT SURVEILLANCE ON COMMUNICATIONS SYSTEMS OR NETWORKS INCLUDING, BUT NOT LIMITED TO, ENCRYPTED SERVICE LIKE BLACKBERRY (RIM), SOCIAL NETWORKING SITES LIKE FACEBOOK, PEER-TO-PEER MESSAGING SERVICES OR VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE LIKE SKYPE, ETC (JANUARY 1, 2006 TO PRESENT) (FIFTH RELEASE).

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

AUG 01 2011

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject. Below is the breakdown of pages processed and referred for release five. This round of processing includes 1 page referred to DEA by the DOJ Criminal Division and 10 pages referred to DEA by the FBI.

Pages reviewed and released in full: 2
Pages reviewed and released in part: 6
Pages withheld in full: 212
Pages reviewed and referred to other agencies/components: 7
Pages reviewed and determined to be non-responsive: 350
Pages reviewed and identified as duplicates: 560

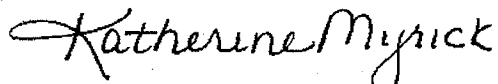
Grand Total pages processed: 1,137

Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Information withheld in part is indicated by the FOIA Exemptions recorded on the documents attached herein. Information is withheld in full or in part under the following Exemptions: (b)(2), (b)(4), (b)(5), (b)(6), (b)(7)(a), (b)(7)(c), (b)(7)(d), (b)(7)(e), (b)(7)(f). An additional enclosure with this letter explains these exemptions in more detail. Below is the breakdown of what pages were processed and referred. These numbers are already included in the grand total of pages processed reflected above.

Pages reviewed and referred to OIP: 7

Refer any questions to Mr. Cartier, counsel for the Department of Justice in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Myrick".

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Enclosure

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (b)(2) Materials related solely to the internal rules and practices of DEA.
- (b)(3) Information specifically exempted from disclosure by another federal statute.
- (b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.
- (b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.
- (b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.
- (j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.
- (k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (k)(2) Material compiled during civil investigations for law enforcement purposes.
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.
- (k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

EXHIBIT I



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrisette Drive
Springfield, Virginia 22152

SEP 01 2011

Case Number: 10-00892-F, Interim Release Six Processing

Subject: ANY PROBLEMS, OBSTACLES OR LIMITATIONS THAT HAMPER THE DEA'S CURRENT ABILITY TO CONDUCT SURVEILLANCE ON COMMUNICATIONS SYSTEMS OR NETWORKS INCLUDING, BUT NOT LIMITED TO, ENCRYPTED SERVICE LIKE BLACKBERRY (RIM), SOCIAL NETWORKING SITES LIKE FACEBOOK, PEER-TO-PEER MESSAGING SERVICES OR VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE LIKE SKYPE, ETC (JANUARY 1, 2006 TO PRESENT) (SIXTH RELEASE).

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject. Below is the breakdown of pages processed and referred for release six. This round of processing includes 3 pages which were reprocessed from interim Release Two (pages 4-12, 4-15, and 4-34) to apply Exemption (b)(7)(a) in addition to other exemptions which were applied to withhold the same information. These 3 pages are not included in the Release Six processing numbers below.

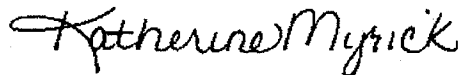
Pages reviewed and released in full: 16
Pages reviewed and released in part: 9
Pages withheld in full: 88
Pages reviewed and referred to other agencies/components: 0
Pages reviewed and determined to be non-responsive: 366
Pages reviewed and identified as duplicates: 141

Grand Total pages processed: 620

Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Information withheld in part is indicated by the FOIA Exemptions recorded on the documents attached herein. Information is withheld in full or in part under the following Exemptions: (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(a), (b)(7)(c), (b)(7)(e). An additional enclosure with this letter explains these exemptions in more detail.

Refer any questions to Mr. Cartier, counsel for the Department of Justice in this matter.

Sincerely,

A handwritten signature in black ink that reads "Katherine Myrick". The signature is written in a cursive style with a large initial "K" and a distinct "M".

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Enclosure

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (b)(2) Materials related solely to the internal rules and practices of DEA.
- (b)(3) Information specifically exempted from disclosure by another federal statute.
- (b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.
- (b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.
- (b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.
- (j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.
- (k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (k)(2) Material compiled during civil investigations for law enforcement purposes.
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.
- (k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

EXHIBIT J

Electronic Frontier Foundation v. U.S. Department of Justice, et al**Vaughn Index**

Detailed description of the Drug Enforcement Administration's (DEA) responsive records by category groupings for information withheld in full (WIF) or in part (annotated as "released in part" (RIP)).

Category Group	Bates Numbering/ (Page count)	Dates	Description	Exemptions	Withholding/ Release
1A	1A- 1-19 (19)	Aug. 20, 2008; mostly Undated.	National Drug Strategy Input to ONDCP. Responsive portions of strategy recommendation documents concerning "Technology and Communications" topics for DEA recommendation to ONDCP for inclusion in annual National Drug Strategy (NDS) 2009, 2010. 17 of the 19 pages comprise drafts, signed and unsigned, with editing for internal DEA formulation of recommendations for submission to ONDCP. Two (2) of the 19 pages comprise unsigned portions of DEA submissions to ONDCP, recommending material for NDS publication. The content of these 19 pages include DEAs threat analysis and assessment of the scope of the intercept challenges triggered by emerging technologies; identification and discussion of specific intercept difficulties and operational assessments of DEA's ability to conduct electronic surveillance in light of these difficulties; discussion of strategic activities employed by DEA in response to intercept challenges; exploitation of surveillance challenges by drug-trafficking organizations.	all pages: 5,7E	all pages: WIF
1A	1A- 20-73 (54)	Nov. 2008; mostly Undated.	Internal DEA Strategy Development Materials. Internal, deliberative DEA talking points and discussion papers of internal DEA strategy development process relating to surveillance challenges posed by emerging technologies. These 54 pages include assessment and opinions of surveillance challenges faced by DEA and the law enforcement community with varied recommendations, proposals, and advice on multi-point strategies or actions DEA should adopt, pursue, or consider to resolve such challenges both internal and external to DEA including proposed changes to policy,	all pages: 5, 7E 2 pages: 6, 7C	all pages: WIF

			legislation, resources, and DEA operational techniques/procedures. Detailed identification, analysis, and discussion of technical, legal, policy, and resource impediments to DEA electronic intercept operations. 21 of the 54 pages are unsigned talking points/discussion papers to prepare DEA leadership and personnel for internal strategy meetings and/or guide discussion of DEA participants in the consideration/formulation of strategies or initiatives to address emerging technology issues. 4 of the 54 pages comprise a Nov 08 email w/attachment between DEA Personnel forwarding talking points to prepare DEA leadership for internal strategy discussions. 29 of the 54 pages are unsigned drafts of the internal DEA talking points and discussion papers, many pages with edits and/or marginal comments. <u>Ex. 6/7C</u> : Portions of 2 pages, identities, email addresses, and phone numbers of DEA personnel.		
1A	1A- 74-77 (4)	Undated.	DEA Materials drafted in preparation/anticipation of DOJ Working Group Meetings/Discussions. These pages identify and describe specific technological intercept difficulties or challenges posed by emerging technologies, the exploitation of specific emerging technologies by drug-trafficking organizations, detailed identification and discussion of DEA intercept vulnerabilities, trend analysis/opinion, proposed solutions, strategies, initiatives to combat surveillance issues triggered by emerging technologies. One of the 4 pages is an unsigned "talking points" draft preparing a DEA official for a DOJ Working Group meeting. 3 of the 4 pages comprise unsigned, rough-draft discussion/issue papers regarding electronic surveillance challenges as recommended discussion topics for anticipated DOJ Working Group meetings/discussions.	all pages: 5, 7E	all pages: WIF
1B	1B- 1-3 (3)	Nov. 3-5, 2009.	Draft DEA Field Advisory Council Meeting Minutes , unsigned with edits and strikethroughs. Discussion of advisory committee discussions concerning ongoing DEA strategy development efforts; discussion of specific new technology and its impact on DEA's ability to subpoena data; discussion of need for new tactics and what methods criminal elements are using to exploit weaknesses; training recommendations/ideas for agents to counter evasion efforts by criminal organizations; Questions and Answers regarding policy and procedural issues; opinions, discussion of contemplated DEA positions/actions vis-a-vis Departmental policy/procedures and other governmental regulatory actions; discussion of comparative legal/regulatory systems; recommendations/discussion on changes to DEA investigative techniques/procedures. <u>Ex. 6/7C</u> : Portions of all pages, identities of DEA	all pages: 5, 6, 7C, 7E	all pages: WIF

			personnel.		
1B	1B- 4-5 (2)	Dec. 11, 2008.	Introductory DEA Strategy Session Memo. Signed internal memo to DEA participants to initiate senior leadership strategy session to address electronic surveillance challenges. Identification and analysis of specific intercept issues/challenges encountered in DEA investigations--both in the technical and carrier/service-provider context-- to be addressed in strategy meetings/discussions; strategy development philosophy; proposed strategy formulation agenda. <u>Ex. 6/7C</u> : Portion of one page, identity and phone numbers of DEA personnel.	all pages: 5, 7E 1 page: 6, 7C	all pages: WIF
1B	1B- 6-7 (2)	Undated.	Internal DEA Issue and Proposal Matrix. Talking points/discussion paper in a spreadsheet format, internal DEA, titled "Emerging Technology Proposed Legislation." Used as a discussion reference document in preparation of DEA strategy formulation meetings. Reflects analysis and opinion of DEA subordinate for consideration by senior leadership and working groups. Identification of specific intercept impediments; legal and policy analysis, opinion, and comment with respect to such impediments; and proposed statutory/policy changes. Comments include detail about exploitation of intercept weaknesses by drug-trafficking organizations.	all pages: 5, 7E	all pages: WIF
1B	1B- 8-11 (4)	Undated; May 20, 2009.	DEA Next Generation Wireless Strategy Proposal. Three (3) of 4 pages; responsive excerpts of unsigned, draft strategy memoranda; one of 4 pages; responsive excerpt of signed memoranda, proposing strategies for adoption. All pages identify and discuss specific surveillance capability problems, vulnerabilities, use/exploitation by criminal elements, operational assessments and opinions on the nature and scope of challenges to be addressed by DEA leadership. <u>Ex. 6/7C</u> : Portions of 3 pages, identities of DEA personnel.	all pages:5, 7E 3 pages: 6, 7C	3 pages: WIF 1 page: RIP
1B	1B- 12-15 (4)	Feb. 23, 2010.	DEA Next Generation Wireless Strategy Status Report. This 4 page excerpt of signed DEA memo on status of various strategy implementation actions, titled "Next Generation Wireless Strategy" (portion of adopted strategy released, pg. 1B-12 ¹). Discussion of ongoing cooperative efforts/meetings/consults with specific carriers/companies regarding technical intercept problems/challenges; assessment and opinions of progress. Two (2) of the 4 pages also detail operational coordination/initiatives with other	all pages: 7E 1 page: 6, 7C 2 pages: 7A, 7D	2 pages: WIF 2 pages: RIP

¹The 7D notation inadvertently did not appear on Page 1B-12, previously released in part.

			agencies to address particular intercept issues. <u>Ex. 7A</u> : Two (2) pages relate to or discuss 5 DEA criminal cases (as examples) were intercept difficulties were encountered; these cases relate to open and active investigations. <u>Ex. 7D</u> : Portions of 2 pages include confidential information disclosed to DEA by a private concern under a non-disclosure agreement. <u>Ex. 6/7C</u> : Portion of one page, identity of subordinate DEA personnel.		
2A	2A- 1-12 (12)	Undated.	Draft DEA Facility Proposal Documents. Two unsigned, internal-DEA (rough) draft proposals with edits to establish, staff, and resource a new engineering facility (not approved) to address surveillance capability problems. These pages contain detailed description/assessments of intercept challenges and technical intercept impediments, proposed internal and external strategies and solutions; detailed plan proposals with resource recommendations.	all pages; 5, 7E	all pages: WIF
2B	2B- 1-4 (4)	Jul. 20, 2009..	Internal DEA Facility Proposal E-mails. Two e-mail strings (2 pages each), internal DEA discussions in preparation of "Going Dark" briefing to Department concerning proposed facility. These pages contain back and forth deliberation/suggestions on topics/issues/how DEA should respond to anticipated questions by the Department; discussion of specific intercept issues/challenges. Detailed identification of technologies that cannot be intercepted and require engineering solutions. <u>Ex. 6/7C</u> : Portions of all pages, identities and phone numbers of DEA personnel.	all pages: 5, 6, 7C, 7E	3 pages: WIF 1 page: RIP
2B	2B- 5-10 (6)	Undated.	Talking Points Paper Related to Facility Proposals. Unsigned, talking points/discussion paper proposing answers to anticipated questions in preparation for meetings at Department concerning establishment of proposed engineering facility; discussion of specific intercept issues/surveillance capability problems, use/exploitation by criminal elements, operational assessments and opinions on the nature and scope of challenges faced.	all pages: 5, 7E	4 pages: WIF 2 pages: RIP
2C	2C- 1-12 (12)	May 28, 2010; Undated.	Draft Budget Proposal Papers Related to Proposed Facility. Three (3) unsigned drafts/working papers with edits and marginal comments regarding DEA proposal to establish and resource facility (not adopted or approved). These pages discuss specific intercept issues and surveillance capability problems; exploitation of problems by criminal elements; operational assessments and opinions on the nature and scope of challenges faced by DEA; detailed (not adopted) plan proposals /analysis of proposed operations/ resource and funding recommendations.	all pages: 5, 7E	all pages: WIF
2D	2D- 1-12 (12)	Undated.	DEA Administrator Talking Points for Congressional Testimony. Two (2) versions of talking points or discussion papers regarding electronic	all pages: 5, 7E 1 page: 6, 7C	all pages: WIF

			intercept issues or challenges posed by emerging technologies, prepared for DEA Acting Administrator use for possible (1) FY 10 Appropriation/budget testimony to Congress and (2) confirmation to DEA Administrator hearing testimony. Content of these papers were not put forth in public testimony. These pages contain opinions and assessments of scope of DEA operational difficulties, resourcing needs, and the predictive success or failure of legislative change proposals. Evaluations of DEA program and policy efforts to combat surveillance difficulties posed by emerging technologies. Description/analysis of specific intercept challenges, operational vulnerabilities, exploitation by criminal elements, assessments of strategy implementation by DEA, and status of continuing working group efforts to address intercept capability problems. <u>Ex. 6/7C</u> : Portion of one page, identity and phone numbers of DEA personnel.		
2D	2D- 13-27 (15)	Undated.	Draft Talking Points for Congressional Testimony. Three (3), unsigned draft versions of the same emerging technologies talking points/issue paper identified above (2D 1-12) with edits and marginal comments. <u>Ex. 6/7C</u> : Portions of 3 pages, identity and phone numbers of DEA personnel.	all pages: 5, 7E 3 pages: 6, 7C	all pages: WIF
2D	2D- 28-31 (4)	Undated.	Draft Question and Answer Papers for Congressional Testimony. Two (2) unsigned, draft Question and Answer (Q &As) papers for Acting Administrator use in preparation for the anticipated Congressional testimony identified above (2D 1-12); edits and marginal comments.	all pages: 5, 7E	all pages: WIF
2D	2D- 32-98 (67)	Mar. 6, 2009; May 3, 2010; mostly Undated.	Additional Draft Versions of Talking Points for Congressional Budget Testimony. These pages comprise eleven (11) draft, unsigned, variations of the same emerging technologies talking point/discussion papers identified above (2D 1-12) to prepare the Acting Administrator for possible Appropriation/budget testimony for FYs 09, 10, 11. Content of these papers were not put forth in any public testimony. Several pages contain edits and/or marginal comments. Five (5) of the 67 draft pages are two e-mails forwarding attached drafts, which discuss and propose questions to be answered and suggest edits to the attached drafts. <u>Ex. 6/7C</u> : Portions of 12 pages, identity and phone numbers of DEA personnel.	all pages: 5, 7E 12 pages: 6, 7C	all pages: WIF
3A	3A- 1-10 (10)	Undated.	Draft Talking Points; Pen Register and Trap and Trace. Four (4) draft versions of unsigned, talking points/discussion papers regarding specific pen register and trap and trace surveillance issues triggered by emerging technologies; two (2) of the 4 drafts include edits and marginal comments. These internal-DEA drafts were developed in Jan. 2010 for internal DEA deliberation/comment in advance of submission to a DOJ working group	all pages: 5, 7E	all pages: WIF

			considering operational policy and legislative change issues. See 3A 15-16 below for discussion of content.		
3A	3A- 11-12 (2)	Undated.	Title III Intercept Talking Points Paper. DEA Talking points/discussion paper provided to DOJ Working Group (Jan. 2010) regarding T III intercept issues triggered by emerging technologies developed from internal drafts below (3A 13-14). For consideration/discussion of DOJ Working Group participants formulating policy recommendations to DOJ leaders. Identification/analysis of specific intercept difficulties; legal analysis/opinion; evaluation and assessment of current and prospective operational techniques/challenges in wiretaps; recommendations for policy and statutory change.	all pages: 5, 7E	1 page: WIF 1 page: RIP
3A	3A- 13-14 (2)	Undated.	Draft Talking Points; Title III Intercept Issues. Unsigned, DEA-internal draft of above paper (3A 11-12) with edits and marginal comments. See above for discussion of content.	all pages: 5, 7E	both pages: WIF
3A	3A- 15-16 (2)	Undated.	Pen Register and Trap and Trace Talking Points Paper. Talking points paper developed for consideration by DOJ working group (Jan. 2010) to guide DOJ policy discussions and derived from internal drafts above (3A 1-10). For consideration/discussion of DOJ working group developing policy/legislative recommendations for DOJ leaders. Analysis of current state of this intercept technique and data specific technical problems that arise in operations due to emerging technologies; identification/analysis of intercept difficulties/vulnerabilities; employment of operational techniques; problem-solving recommendations and approaches. Several proposed questions/discussion topics for group consideration; legal, policy analysis and opinion.	all pages: 5, 7E	both pages: WIF
3A	3A- 17-18 (2)	April 1, 2010.	Pen Register Meeting Preparation E-mails. Internal DEA email proposing/discussing talking points in preparation of meeting at Department concerning pen register/trap and trace issues. Recommended discussion topics, identification and assessment of technical challenges, opinions on the effectiveness of solutions, identification of operational vulnerabilities and problem solving suggestions, identification of legal challenges with opinion and analysis, and suggested formulation of policy recommendations to the Department. <u>Ex. 6/7C:</u> Portions of both pages, identities and phone numbers of DEA personnel.	all pages: 5, 6, 7C, 7E	all pages: WIF
3A	3A- 19-23 (5)	Undated.	Draft Meeting Talking Points. Unsigned, draft talking points paper regarding pen register trap and trace issues (not attached to the e-mail above) prepared for use of DEA official to participate in Departmental meetings	all pages: 5, 7E	all pages: WIF

			related to the formulation of policy. Identification of intercept difficulties and exploitation by criminal elements, trend analysis and operational forecasts, evaluation and assessment of current and prospective intercept operational challenges.		
3B	3B- 1-8 (8)	Jan. 2010; Undated.	DEA Preparatory Materials for DOJ Working Group Meetings. One internal DEA e-mail (2 pages) suggesting talking points for an upcoming DOJ working group meeting with attachment (2 pages released in part); and an internal DEA talking points/issue summary paper (4 pages) prepared to advise, guide, and inform DEA leadership and those personnel representing DEA interests at upcoming DOJ Working Group sessions. The withheld pages include detailed discussion of specific intercept difficulties including case examples, exploitation of weaknesses by drug-trafficking organizations, countermeasures employed by DEA, and opinions regarding the effectiveness of such countermeasures or solutions. Multiple suggested agenda items, arguments/positions to present to the working group, opinions/analysis on carrier/service provider capability and compliance, and overview and analysis of the scope and direction of emerging technology problems from the DEA perspective. Opinions/analysis of policy and legal impediments impacting intercept capability concerns. <u>Ex. 6/7C</u> : Portions of two (2) pages, identities of DEA personnel.	6 pages: 5, 7E 2 pages: 6, 7C	6 pages: WIF 2 pages: RIF
3B	3B- 9-143; 148; 151;155; 157-164; 166-173; 177- 181;195- 197;211-214 (166) ²	Various, Mar. 2010 to June 2010.	Drafts of DEA Submissions to DOJ Working Group, Report to Congress. These pages comprise several versions of DEA portions of unsigned drafts as part of a DOJ Working Group process to develop a report to Congress (the Report) concerning law enforcement electronic surveillance capabilities and resource needs. The materials herein include: nine (9) draft versions of the Report received from the Department for component comment that were staffed internally within DEA to formulate edits/comments to be forwarded back to the DOJ working group as part of the Report drafting process; two (2) internal DEA, draft sections of the Report, with one rough draft/outline of a DEA-proposed Report section; six (6) versions of the draft Report submitted by DEA to the Department recommending edits, offering editorial and substantive comments, and/or proposing the inclusion of specific substantive material; and, one joint DEA/FBI proposed response to the DOJ Report working group concerning specific technical intercept questions related to material proposed for Report inclusion. DEA withholding relates only to	Of the 166 responsive pages: all pages: 5, 7E 19 pages: 6, 7C	All 166 pages: WIF

² Forty (40) pages in Bates range 9-214 are duplicate pages of pages referred to DOJ, Office of Information Policy (OIP) for direct reply to Plaintiff.

			DEA recommended edits/comments/and marginal notations and comments that appear on the pages of these draft Report versions. Given the many draft versions originating from the Department, 40 pages are duplicative of draft versions referred to DOJ, OIP for direct response. (See 5B, 260 page referral to OIP). DEA comments, suggested edits, and/or recommended substantive material include detailed descriptions of law enforcement electronic intercept challenges/issues and how criminal elements evade intercept; opinion and analysis of scope and direction of the challenges posed by emerging technologies, trends, and impacts on surveillance operations; and legal analysis and opinion regarding effectiveness and scope of CALEA vis-a-vis electronic surveillance difficulties. Six (6) pages comprise internal DEA e-mails (3B 50-51; 3B 159-162) proposing, discussing, and recommending responses to questions raised about material to be included in DEA submissions to the draft RTC, including suggested technical solutions. <u>Ex. 6/7C</u> : Portions of 19 pages; identities, phone numbers, email addresses of DEA personnel.		
3C	3C- 1-5 (5)	Undated.	Legislative Change Proposal Documents Prepared for DOJ Recommendation. These pages comprise materials prepared in anticipation of meetings/input into DOJ working group developing recommendations for legislative changes to CALEA. All pages are draft, internal DEA proposals for legislative change (not adopted) including legal analysis; identification of specific electronic surveillance capability problems; assessments/descriptions of problem emerging technologies; and legislative proposals, suggestions, and opinions for the DOJ working group to consider. <u>Ex. 6/7C</u> : Portion of one page, identity of DEA personnel.	all pages: 5,7E 1 page: 6, 7C	2 pages: RIP 3 pages: WIF
3C	3C- 6-8 (3)	Oct 4, 2010; May 19, 2010.	Internal DEA Emails Relating to Legislative Change Proposals. Two (2) pages are an internal DEA e-mail discussing, evaluating, and recommending input into DOJ working group process; consideration/ discussion of submitting a case example of actual intercept problems to assist in working group discussions. One page is an internal DEA e-mail evaluating whether a specific type of intercept problem should be included in legislative change recommendations being considered by the DOJ working group. Discussion of intercept techniques employed by a field agent. <u>Ex. 6/7C</u> : Portions of 2 pages; identity and phone numbers of DEA personnel.	2 pages: 5,7E 2 pages: 6, 7C	2 pages: RIP 1 page: WIF

4	4- 1-47 (47)	Undated.	DEA Case Example Summaries, 2006 to Feb 2010. These 47 pages comprise case summary papers, unsigned, compiled from 2006 to Feb. 2010. (<i>hereinafter</i> case examples) for internal DEA tracking, status reporting, facilitation of operational planning, leadership awareness, and internal DEA working group use as a foundation for discussions to facilitate policy and operational change. Detailed identification, discussion, and analysis of cases involving intercept technical difficulties with specific carriers/technologies and/or exploitation by drug-trafficking organizations to include discussions of countermeasures attempted or successfully employed by law enforcement. Operational coordination with other law enforcement agencies. 14 of the 47 pages are in draft form with edits and/or include embedded Q and As between DEA HQ and field personnel. <u>Ex. 7A:</u> 37 pages, in full or in part contain information about active/open criminal investigations. <u>Ex. 7D/7F:</u> 35 pages, in full or in part, contain information related to, or supplied by, individual confidential sources. <u>Ex. 6/7C/7F:</u> Portions of 16 pages, identities and phone numbers of investigative subjects, identities of DOJ and DEA personnel (field agents and other personnel). <u>Ex. 3:</u> Portions of 2 pages contain excerpts of conversations obtained from Title III wiretapping operations.	all pages: 7E (7 of 47 pages include GDEP codes) 37 pages: 7A 35 pages: 7D, 7F 16 pages: 6/7C 13 pages: 5 2 pages: 3 (18 USC 2510, et seq.)	40 pages: WIF 7 pages: RIP
4	4- 48-52 (5)	Undated.	DEA Case Example Discussion Paper for DOJ Working Group Use. Specific case example paper, unsigned, submitted to DOJ Working Group in Feb. 2010 for consideration/discussion to assist in the formulation of policy recommendations to the Department. In-depth analysis of cases and individualized assessments/analysis of the technological impact for each documented intercept difficulty including employment of successful and unsuccessful countermeasures. Most case examples discussed relate to active/open criminal investigations and/or contain information supplied by confidential sources. <u>Ex. 7A:</u> Four (4) of the 5 pages, in full or in part, contain information about active/open criminal investigations. <u>Ex. 7D/7F:</u> All pages contain information related to, or supplied by, individual confidential sources.	all pages: 5, 7D, 7E, 7F 4 pages: 7A	all pages: WIF
4	4- 53-83 (31)	Various, Jan. 22, 2010 to Feb. 15, 2010.	Draft Case Examples Related to Above Discussion Paper. Internal DEA e-mails from several field offices, some with unsigned attachments, forwarding draft case examples to DEA HQ for consideration of which case examples DEA should select for submission to DOJ working group process. After internal DEA review, selection, and revision, these drafts were the foundation for the 5-page case example summary submitted to the working group cited above (4 48-52) for consideration in formulating DOJ policy and	all pages: 5, 7E (4 of 31 pages include GDEP codes) 22 pages: 6, 7A, 7C, 7F 12 pages: 7D	30 pages: WIF 1 page: RIP

			resource recommendations to DOJ leadership. <u>Ex. 6/7C/7F</u> : Portions of 22 pages; identities, phone numbers, and email addresses of DEA agents and other personnel; identities of investigative subjects and third-party associates. <u>Ex. 7A</u> : 22 pages, in full or in part, contain information about active/open criminal investigations. <u>Ex. 7D/7F</u> : 12 pages, in full or in part, contain information related to, or supplied by, confidential sources.		
4	4- 84-90 (7)	May 12, 2010; Aug 24, 2010.	DEA Case Example Related Emails, May-Aug., 2010. Internal DEA e-mails from field offices and between DEA HQ personnel regarding 2 case examples provided for tracking, status reporting, operational planning, leadership awareness, and internal DEA working group use as a foundation for discussions to facilitate policy and operational changes. Detailed identification, discussion, and analysis of cases involving intercept technical difficulties with specific carriers/technologies and/or exploitation by drug-trafficking organizations. Four (4) of the 7 pages are a DEA program expert's working draft of case example summaries, with back and forth discussion in Question and Answer format to flesh-out details. <u>Ex. 6/7C/7F</u> : Portions of all pages; identification of investigative subjects, third-party associates, third-party phone numbers; identities, phone numbers, and email addresses of DEA agents and other personnel. <u>Ex. 3, 7A</u> : Both case examples discussed involve open investigations (5 of the 7 pages) and include information derived from Title III intercepts (3 of the 7 pages). <u>Ex. 7D/7F</u> : One case example (2 pages) contains confidential source related information.	all pages: 6, 7C, 7E (1 page includes GDEP code) 5 pages: 7A 4 pages: 5, 7F 3 pages: 3 (18 USC 2510, et seq.) 2 pages: 7D	6 pages: WIF 1 page: RIF
4	4- 91-113 (23)	Various, Nov. 4, 2010 to Nov. 18, 2010.	Draft Case Example Related Emails, Nov., 2010. Internal DEA e-mails from several field offices, with unsigned attachments (6 pages), forwarding draft case examples at the request of DEA HQ for consideration of further DEA case examples for selection and submission to ongoing internal and external working group efforts to formulate policy, legislative, and resource recommendations. The drafts contain detailed identification, discussion, and analysis of cases involving intercept technical difficulties with specific carriers/technologies; exploitation by drug-trafficking organizations/criminal elements; and identification of investigative targets. Discussion of internal working group structure/procedures; back and forth deliberation, exchanges of Q & As regarding content of the reported examples; recommendations for policy and/or legislative action. <u>Ex. 6/7C/7F</u> : Portions of 20 pages; identities, email addresses, and phone numbers of investigative subjects; identities, phone numbers, email addresses of DEA agents and other personnel. <u>Ex. 7A</u> : Several examples discuss active/open investigations, 16	all pages: 5, 7E (6 of 23 pages include GDEP codes) 20 pages: 6, 7C 16 pages: 7A 4 pages: 7D 16 pages: 7F 1 page: 3 (18 USC 2510, et seq.)	22 pages: WIF 1 page: RIF

			pages in full or in part. <u>Ex. 7D/7E</u> : Portions of 4 pages, contain individual confidential source information. <u>Ex. 3</u> : One example (portion of 1 page), includes information derived from T III intercepts.		
4	4- 114-115 (2)	Sept 24, 2010.	Interagency Case Example Email. Interagency e-mail between DEA and FBI discussing a specific case example regarding intercept difficulties experienced in the investigation of a drug-trafficking organization to provide in response to a press query. Redacted portions under 7E involve specific information relating to case details, investigative techniques, and law enforcement intercept vulnerabilities which were not published. <u>Ex. 6/7C</u> : Portions of one page, identity of DEA personnel and e-mail address of FBI personnel.	both pages: 7E 1 page: 6, 7C	Both pages: RIP
5A	(100)	Jan. 19, 2011.	Referral to FBI. One-hundred (100) pages referred to FBI. Documents and slide presentation pages.	N/A	N/A
5A	(92)	Jan. 19, 2011.	Referral to FBI. Ninety-Two (92) pages referred to FBI. Document.	N/A	N/A
5A	(48)	Feb. 17, 2011.	Referral to FBI. Forty-eight (48) pages referred to FBI. Slide presentation pages.	N/A	N/A
5A	(21)	Mar. 10, 2011.	Referral to FBI. Twenty-one (21) pages referred to FBI. Documents and slide presentation pages.	N/A	N/A
5A	(11)	Apr. 15, 2011.	Referral to FBI. Eleven (11) pages referred to FBI. Documents.	N/A	N/A
5A	(6)	May 10, 2011.	Referral to FBI. Six (6) pages referred to FBI. Email string.	N/A	N/A
5A	(16)	Jun. 2, 2011.	Referral to FBI. Sixteen (16) pages referred to FBI. Document.	N/A	N/A
5B	(9)	Feb. 2, 2011.	Referral to OIP. Nine (9) pages referred to OIP. Slide presentation pages and email page.	N/A	N/A
5B	(260)	Apr. 6, 2011.	Referral to OIP. Two-hundred sixty (260) pages referred to OIP. Email strings with attached draft reports.	N/A	N/A
5B	(7)	June 30, 2011	Referral to OIP. Seven (7) pages referred to OIP.	N/A	N/A
5C	5C- 1-25; 28-43; 45-47;49- 54; 56- 57;59-	Various, Jan. 2009 to Nov. 2009; Undated.	Deliberative-Internal Briefing Material. Responsive Portions of 9 briefing presentations. Five (5) of the 9 are DEA deliberative presentations/ slideshows (1-25;28-43;45-47;49-54) employed in internal DEA strategy formulation process regarding surveillance challenges generated by emerging technologies. These materials were used to identify and propose relevant	Of the 71 pages WIF or RIP: all pages: 5 70 pages: 7E	Of 146 responsive pages: RIF: 75

	60;63-70;78-80;82-83;86-89;96-125;127-147;150-173 (146) ³		issues/problems for discussion on how DEA should address intercept problems via strategies related to policy, resource, and legislative change; determining the parameters of industry outreach; and/or making adjustments to operational techniques, practices, and procedures. Four (4) of the 9 presentations are responsive portions of 4 update briefings (56-57;59-60;63-70;78-80;82-83;86-89;96-125;127-147;150-173) to prepare DEA Acting Administrator, Executive Leadership, and the DEA Field Advisory Council (or Committee) for meetings/discussions related to the evaluation of current strategies and to decide whether changes to these strategies are required. These include recommendations on solving operational surveillance problems and making investigative technique adjustments; proposals for legislative change; evaluating/assessing industry and inter-governmental cooperative efforts to resolve intercept challenges. Withheld portions of all presentations contain detailed discussion/identification of specific intercept difficulties encountered by DEA; to include DEA case examples, analysis on the scope and evolution of emerging technology surveillance challenge issues, and threat and vulnerability analysis. <u>Ex. 7A</u> : Portions of 3 pages reference case examples from open/active investigations. <u>Ex. 6/7C/7E</u> : Portions of 4 pages; identifying information (including email addresses and phone numbers) of investigative subjects and third-parties; DEA agents, and personnel of other agencies.	4 pages: 6, 7C 3 pages: 7A 1 page: 7F	RIP: 9 WIF: 62
5C	5C- 174-190; 192-202; 204-207 (32) ⁴	Undated.	Deliberative-External Briefing Material. Three (3) DEA deliberative presentations/slide shows regarding surveillance issues created by emerging technologies used in briefings to the Department, another federal agency, and an interagency working group, identifying/proposing issues for discussion; legal and policy analysis and proposed legislative change; proposed strategies/solutions; proposed resource and operational changes/strategies; and evaluation of proposed solutions. The withheld portions of these pages also contain identification of surveillance difficulties/inabilities/vulnerabilities; technical analysis of intercept problems/trends; opinions on scope and nature of intercept problems; and examples of methods employed by criminal elements to avoid or circumvent surveillance detection. <u>Ex. 7D/7E</u> : Portion of one page, information supplied	Of the 25 pages WIF or RIP: all pages: 5, 7E 1 page: 7D, 7F	Of the 32 responsive pages: RIF: 7 RIP:1 WIF: 24

³ Twenty-seven (27) pages in Bates range 1-173 non-responsive.

⁴ Two (2) pages in Bates range 174-207 non-responsive.

			by confidential sources.		
5C	5C- 208-269; 271-313 (104) ⁵	Apr. 8, 2010; Aug. 10, 2010; Oct. 21, 2010.	Informational-Internal Briefing Material. Three (3) DEA-internal informational briefings to inform, train, and familiarize DEA personnel and agents on intercept issues and problems related to emerging technologies. Detailed discussion/identification of specific intercept difficulties encountered by DEA, including case examples; situational awareness/overview of scope of challenges faced; investigative instruction on surveillance techniques and procedures; examples of exploitation/evasion by criminal elements; and detailed technical information regarding intercept equipment. <u>Ex. 6/7C/7E</u> : 13 pages contain identifying information regarding investigative subjects, criminal associates, and/or third-parties to include email addresses, usernames, and communications account information; one (1) of these 13 pages also identifies DEA agents. <u>Ex. 7A</u> : Five (5) pages reference case examples from open/active investigations; and <u>Ex. 3</u> : one page is a T III intercept excerpt. <u>Ex. 4</u> Portion of one (1) page contains confidential commercial information from a third-party company.	Of the 48 pages WIF or RIP: 47 pages: 7E 13 pages: 6, 7C 5 pages: 7A 1 page: 4, 7F 1 page: 3 (18 USC 2510, et. seq.)	Of the 104 responsive pages: RIF: 56 RIP: 11 WIF: 37
5C	5C- 315-331; 333-350 (35) ⁶	Apr. 17, 2008; Apr. 9, 2010.	Informational-External Briefing Material. Two (2) DEA informational briefings provided to the Department of Justice and the Office of the Director of National Intelligence, respectively, concerning intercept issues/challenges related to emerging technologies. Detailed discussion/identification of specific intercept difficulties encountered by DEA, examples of exploitation/evasion measures employed by drug- trafficking organizations, and analysis of scope and source of intercept capability problems requiring attention. <u>Ex. 6/7C</u> : Portion of one (1) page, identity of DEA personnel.	Of the 13 pages WIF or RIP: 12 pages: 7E 1 page: 6, 7C	Of the 35 responsive pages: RIF: 22 RIP: 3 WIF: 10
6	6- 1-4 (4)	Undated.	Office of Investigative Technology (ST) Talking Points. Internal DEA talking points prepared for ST officials for an internal meeting/briefing with the DEA Administrator. These pages contain detailed, technical information about specific intercept problems and development of tactical solutions/countermeasures; intercept trend analysis, research and	all pages: 5,7E	all pages: WIF

⁵ Three (3) pages in Bates range 174-314 non-responsive.

⁶ Two (2) pages in Bates range 315-351 non-responsive.

			development of intercept solutions; discussion and analysis of intercept capabilities/vulnerabilities of law enforcement as they relate to specific carrier/Internet Service Providers (ISPs); methods employed by criminal elements to evade intercept; and general recommendations/proposals for policy, resourcing, and legislative changes to address intercept issues.		
6	6- 5-31 (27)	Various; Mar. 2008 to Sept 2010.	<p>Communications with Industry Related to Intercept Problems. Communications relating to, and between, DEA and six (6) carrier, service provider, and/or consultant/vendor companies regarding specific technical intercept difficulties encountered during intercept operations, the resolution of such issues, and/or discussion of DEA needs/requirements to develop solutions to identified intercept problems. 22 of the 27 pages are e-mail exchanges between DEA personnel and the companies or internal DEA emails about interaction with such companies. These email communications are detailed, technical discussions of specific intercept difficulties; discussions, opinions, and proposals between DEA personnel on how to approach certain service providers and recommendations of technical solutions; analysis of intercept difficulties from technical and legal compliance perspectives; proposed discussion/agenda items for future meetings between DEA and companies; discussion of intercept exploitation by criminal elements; consideration/exploration of solution proposals; opinions by DEA personnel regarding progress of talks/interaction with the companies; assessment and opinion of carrier technical capabilities, legal compliance, and responsiveness; proposals for operational cooperation and procedural changes; discussion/contemplation of technical and infrastructure proposals and testing of proposed intercept solutions. 5 of the 27 pages are draft letters to carrier/service providers regarding particular intercept difficulties. <u>Ex. 6/7C/7F</u>: Portions of all pages: identities, email addresses, and phone numbers of DEA agents, other DEA personnel, and company personnel communicating with DEA. <u>Ex 4</u>: 10 pages contain confidential or commercial information from third-party companies. <u>Ex 7D</u>: Portions of four (4) pages contain confidential source information from a private concern. <u>Ex. 7A</u>: Portion of 1 page contains a DEA case example of an open/active investigation where an intercept problem was encountered.</p>	all pages: 6, 7C 26 pages: 5/7E 10 pages: 4 5 pages: 7F 4 pages: 7D 1 page: 7A	all pages: WIF
6	6- 32-40 (9)	Various, Mar. 2008 to Nov. 2009.	<p>Meeting Reports Between DEA and Industry. Four (4) internal reports documenting meetings between designated DEA personnel and representative personnel of communication carriers, service providers, or communications industry consultants. These reports contain detailed discussion of specific</p>	all pages: 5, 7E 8 pages: 6, 7C 5 pages: 4	all pages: WIF

			<p>company operational/technical capabilities and where intercept problems are encountered; identification and discussion of intercept cooperative/procedural issues; identification and detailed discussion of specific DEA intercept challenges and needs. DEA analysis of the meetings and internal recommendations on how to approach solutions, to include seeking legal review of one proposal; assessments or lessons learned from the meetings; analysis/opinions of the scope and complexity of the intercept challenges presented by emerging technologies and suggested strategies/recommendations on how address such challenges. Detailed discussion of intercept evasion by criminal elements, recommendations for future meetings and strategies to pursue; discussions/opinions of whom DEA should approach and how DEA can best seek support for legislative and policy reforms; analysis/overview of impacts that emerging technology is having on DEA intercept operations; opinions on current industry and law enforcement interests/positions regarding emerging technology problems; opinions on carrier priorities; discussion of a specific investigative intercept technique key to solving crimes; discussion of the feasibility of proposed solutions; opinions on intercept accountability; proposed topics for future meetings/agendas. <u>Ex. 6/7C</u>: Portions of 8 pages, identities of DEA, company, and consultant personnel. <u>Ex. 4</u>: 5 pages contain confidential or commercial information from third-party companies.</p>		
7	7- 1-7 (7)	Various, Feb. 2010 to Oct. 2010; Undated.	<p>Miscellaneous Internal Correspondence Regarding Emerging Technology Intercept Problems. Four (4) of the 7 pages comprise internal DEA emails discussing varied intercept issues and include detailed identification/discussion of specific intercept difficulties; feasibility analysis of problems and proposed solutions; presentation and evaluation of arguments made for and against certain solutions or reform proposals; opinions regarding contemplated actions/positions taken by other agencies; detailed technical analysis of a specific intercept system employed by DEA, how it functions, and where vulnerabilities exist; requirement recommendations; and projections on future intercept capability enhancements. One of the 7 pages is an email exchange between DEA and FBI Chief and General Counsel respectively, coordinating on a particular intercept problem and discussing how each component approaches the intercept problem to include intercept vulnerabilities. The top portion of this e-mail page (page 7-4, RIP) is an internal DEA email regarding the DEA/FBI coordination and provides very detailed discussion of DEA intercept methods and successful</p>	All pages: 5, 7E 6 pages: 6, 7C	5 pages: WIF 2 pages: RIP

			countermeasures to known intercept capability problems. Two (2) of the 7 pages comprise an internal DEA bulletin on a particular intercept issue to advise and inform agents conducting surveillance about the particular intercept problem. These pages contain detailed technical discussion of the intercept problem, recommended step-by-step procedures for DEA investigators to follow when the problem is encountered during an investigation, and discussion of DEA intercept operational procedures. <u>Ex. 6/7C</u> : Portions of 6 pages, DEA personnel identities, phone numbers, and email addresses.		
7	7- 8-11 (4)	Undated.	Draft Administrator Talking Points. Draft talking points paper to prepare the DEA Administrator for a future meeting with state officials regarding intercept challenges posed by emerging technologies and overview of DEA efforts to address/solve those challenges. Detailed identification and discussion of technical problems and internal DEA actions, plans to address such.	all pages: 5, 7E	all pages: WIF
7	7- 12-13 (2)	Jun. 2008.	Report Excerpt, Joint Briefing. Responsive portion of Department of Justice Report summarizing a joint DEA, U.S. Attorney presentation. Identification of a specific intercept capability problem/vulnerability. Opinion and recommendations of presenters on how DOJ should proceed internally to formulate policy and legislative change proposals to solve this intercept capability issue. <u>Ex. 6/7C</u> : Portion of one page, phone number of DOJ personnel.	All pages: 5 1 page: 7E, 6,7C	all pages: RIP
8	8- 1-35 (35)	Undated.	Draft Q and A for Confirmation Hearing. Several unsigned, draft Question and Answers (Q and As) relating to electronic intercept issues/challenges presented by emerging technologies prepared by the Office of Investigative Technology (ST) and Chief Counsel (CC) to prepare then Acting Administrator Leonhart for her confirmation to DEA Administrator hearing testimony before Congress; several pages with edits and/or marginal comments. Detailed information about DEA intercept capabilities and vulnerabilities; evaluations of DEA resources and technical abilities; evasion methods employed by drug-trafficking organizations; analysis/opinions of current statutory structure/authority and views on need for legislative change; opinions on consequences of courses of action; analysis/opinions on cooperation with industry; impact assessments; and viewpoints on proposed technical/legal solutions. Content of these papers were not put forth in public testimony.	all pages: 5, 7E	all pages: WIF

8	8- 36-38 (3)	Undated.	Draft Q and A for Acting Administrator Hearing Preparation. Excerpts of draft Q and A's related to electronic surveillance challenges prepared for Acting Administrator use in preparation of possible Congressional testimony regarding internet investigations. Identification of specific DEA intercept challenges and analysis/opinion of cooperation by service providers.	all pages: 5, 7E	all pages: WIF
9	9- 1-40 (40)	Various, Apr. 2009 to Mar. 2010.	Special Operations Briefing Material. Responsive pages from internal DEA presentations used to familiarize and train DEA agents and investigative personnel of the DEA Special Operations Division (SOD) on intercept challenges posed by new and emerging technologies. Instructive and illustrative charts and examples regarding specific technologies which pose intercept difficulties in DEA investigations; detail and examples of methods employed by criminal elements to evade detection; capability assessments of carrier/service providers to assist law enforcement. <u>Ex 6/7C:</u> One page, identity, images, and account information of third-parties. <u>Ex. 3/7D/7F:</u> One page, excerpt of T III intercept and information provided by a confidential source.	24 pages: 7E 1 page: 6, 7C 1 page: 3, (18 USC 2510, et seq.), 7D,7F	21 pages: WIF 3 pages: RIP 16 pages: RIF
9	9- 41-48 (8)	Various, Feb. 2008 to Oct. 2010.	Special Operations Case Example Related Material. Four (4) of the 8 pages comprise email traffic between DEA personnel discussing, analyzing case examples where DEA was experiencing intercept difficulties. Detail of intercept problems and vulnerabilities in these cases. Portions of 2 of these 4 email pages contain opinions and recommendation on how to use the case examples internally for tracking and reporting, operational assessments, and proposals for lessons learned from the examples. Two (2) of the 8 pages concern a case example coordination email between DEA and DOJ with privacy redactions. Two (2) of the 8 pages are an excerpt of an email attachment of internal DEA working group minutes considering case examples and specific technical intercept problems to formulate strategy, policy, and practice recommendations. Opinions and assessment of scope of problem faced by DEA and where trend(s) are headed; what technologies should be of concern to DEA, rough outline of proposed actions/strategies to employ. <u>Ex 7A:</u> Open and active cases discussed in 2 of the DEA email pages. <u>Ex 6/7C:</u> Portions of 5 pages, identities, phone numbers, and email addresses of DEA and DOJ personnel.	5 pages: 6, 7C, 7E 4 pages: 5 2 pages: 7A	6 pages: WIF 2 pages: RIP
9	9- 49-58 (10)	Undated; Sept. 20, 2010.	Special Operations Discussion Papers and Drafts. Five (5) of the 10 pages are responsive portions of 2 unsigned, discussion papers; 5 of the 10 pages are draft versions with textual edits and marginal comments of one discussion paper with one of these 5 draft pages in email form, containing suggested	all pages: 5,7E 1 page: 6, 7C	All pages: WIF

			<p>edits to a discussion paper. These 10 pages contain detailed analysis of technical intercept problems from the special operations perspective to include identification and discussion of specific technology and carrier-related problems; DEA efforts to solve intercept problems with particular technologies, carriers, or service-providers; opinion and recommendations of scope of challenges faced, actions to be taken with respect to specific carriers, and what issues/topics require higher level attention. Proposed long and short-term solutions regarding procedural, policy, and operational steps DEA executives should consider; assessment and opinion regarding the effectiveness of DEA use of existing capabilities to conduct intercept operations in the emerging technology environment. <u>Ex 6/7C</u>: Portion of one page, identity of DEA personnel.</p>		
9	9- 59-60 (2)	Oct. 21, 2010.	<p>Meeting Summary, Interagency Working Group, Unclassified. Responsive excerpt, portions of 2 pages, of internal DEA summary of interagency working group. Opinions of legal versus technical approaches to address intercept impediments. Identification, detail, and analysis of specific intercept problem experienced by DEA and opinion (forecast) regarding future use trends and impact on enforcement efforts. <u>Ex. 6/7C</u>: Portion of one page, identities of DEA and other federal agency personnel.</p>	all pages: 5, 7E 1 page: 6, 7C	all pages: WIF
9	9- 61-62 (2)	Oct 19, 2010	<p>Meeting Summary, Interagency Working Group, Classified. Responsive excerpt, portions of 2 pages, internal DEA summary of interagency working group. Contains classified information (SECRET) discussed at meeting.</p>	All pages: 1, 5, 6, 7C, 7E	all pages: WIF
10	10- 1-15 (15)	Undated.	<p>Case Examples Referred from DOJ-Criminal Division. DEA case summaries, unsigned, compiled on or about July 26, 2006 by the DEA Technology Working Group (TWG) to assist in the identification of surveillance difficulties and trends occurring as a result of emerging technologies. These case examples were drafted by DEA field elements and derived from actual DEA criminal investigative files and/ or the personal knowledge of the responsible case agents/supervisory agents responsible for these cases. Detailed identification, discussion, and analysis of cases involving intercept technical difficulties with specific carriers/technologies and/or exploitation by drug-trafficking organizations/criminal elements, to include discussions of countermeasures attempted or successfully employed by law enforcement. Discussion of DEA investigative techniques/methods. Operational coordination with other law enforcement agencies. <u>Ex. 7A</u>: 12 pages, in whole or part, contain case examples relating to active/open criminal investigations. <u>Ex. 7D/7F</u>: portions of 7 pages contain information</p>	All pages: 7E (12 of the 15 pages contain GDEP codes) 14 pages: 6, 7C, 7F 11 pages: 7A 7 pages: 7D 1 page: 3 (18 USC 2510, et seq.)	14 pages: WIF 1 page: RIP

			supplied by, or pertaining to, confidential sources. <u>Ex. 6/7C/7E</u> : Portions of 14 pages; identification of agents and undercover agents; investigative targets and associates; cooperating third-parties, and/or other third-parties named in the cases. <u>Ex. 3</u> : Portion of one page, discussion and excerpt of T III intercept.		
10	10- 16 (1)	June 16, 2009.	Portion of E-mail String Referred by DOJ-Criminal Division (Section B). E-mail from Deputy DEA Administrator to a DOJ official; post-meeting discussion of DOJ meeting concerning Electronic Surveillance Reform Initiative. References to specific intercept deficiency issue and its scope; reference to DEA investigative intercept technique employed against certain criminal elements. Section A of this e-mail string processed by DOJ-Crim. Div. <u>Ex. 6/7C</u> : E-mail address of DEA personnel.	Page: 7E, 6/7C	Page: RIP
10	10- 17 (1)	Oct 1, 2010.	Portion of E-mail String Referred by DOJ-Criminal Division (Section A). Email from a DEA Special Agent In Charge to DOJ-Criminal official generally referring to case examples. Section B of this e-mail string processed by DOJ-Crim. <u>Ex. 6/7C</u> : E-mail address of DEA personnel.	Page: 6/7C	Page: RIP
10	10- 18-27 (10) ⁷	Various, June 2010.	Coordination E-mails Referred by FBI. Email string between DEA and FBI personnel forwarding a news article and discussing/coordinating 2 DEA case examples involving specific, technical intercept difficulties experienced by DEA. Detailed discussion of intercept deficiencies and measures employed by criminal elements to evade. Discussion of internal DOJ investigative procedural issues. <u>Ex 6/7C</u> : Portions of all pages, identification of DEA personnel, phone numbers, and email addresses; identification of investigative subjects, criminal associates, and other third-parties. <u>Ex 7A</u> : Both case examples (portions of 3 pages) discussed are open/active investigations, and <u>Ex 7D/7E</u> : one case (portion of one page) contains detailed information supplied by an individual confidential source. <u>Ex 3</u> : Portions of 2 pages, excerpts of T III intercepts. Redactions with mesh cover are from FBI processing.	5 responsive pages: All pages: 6/7C 4 pages: 7E 3 pages: 7A 2 pages: 3 (18 USC 2510, et seq.) 1 page: 7D, 7F	5 responsive pages: RIP

⁷ Five (5) pages in Bates range 18-27 are duplicates of DEA case examples processed and withheld in full at pages 4-48 to 4-52.

EXHIBIT K

**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)

THIRD 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 284 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 13526, Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based
Hardy Declaration- Civ. Action No. C 10-04892

upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order ("E.O.") 13526,¹ and the preparation of declarations in support of Exemption 1 claims under the FOIA.² I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to E.O. Order 13526, §§ 1.3 and 3.1.

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

4. This declaration³ has been prepared to defend FBI's assertion of (b)(1) for FBI information located in a one page DEA document titled, "Going Dark Interim Solutions Working Group Meeting Summaries." The FBI submits this declaration in support of DEA's Motion for Summary Judgment, and to provide the Court and plaintiff with justification for the requested

¹ The classified information in this case was reviewed in accordance with E.O. 13526 of December 29, 2009.

² 5 U.S.C. § 552 (b)(1).

³ The First Hardy Declaration provided the Court and plaintiff with an explanation of the FBI's record-keeping system and the procedures used to expeditiously search for, collect, and process records potentially responsive to both of plaintiff's FOIA requests, up through the date it was signed, January 25, 2011. The Second Hardy Declaration has been prepared and will be submitted in support of the Defendants' Motion for Summary Judgment anticipated to be filed on February 9, 2012; that declaration will provide the Court and plaintiff with justification for the withholding of information from its seven (7) interim releases to plaintiff.

withholding of information from plaintiff, in accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), and pursuant to FOIA Exemptions 1, 5 U.S.C. §§ 552 (b)(1).

EXEMPTION (b)(1) - CLASSIFIED INFORMATION

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

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

7. In those instances where, in my judgement, the disclosure of this information could reasonably be expected to cause serious damage to the national security, and its withholding

outweighed the benefit of disclosure, I exercised my prerogative as an original classification authority and designated that information as classified in the interest of national security at the "Secret" level, and invoked Exemption (b)(1) to prevent disclosure. Likewise, the justifications for the withheld classified information were prepared with the intent that they be read with consideration given to the context in which the classified information is found. This context includes not only the surrounding unclassified information, but also other information already in the public domain, as well as information likely known or suspected by hostile intelligence entities. It is my judgment that any greater specificity in the descriptions and justifications set forth with respect to the intelligence activities (including special activities), and intelligence sources or methods, could reasonably be expected to jeopardize the national security of the United States, and as a result, information appearing in this document has been appropriately classified pursuant to E.O. 13526, and withheld pursuant to Exemption (b)(1).⁴

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

13526, § 1.1 (a):

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in § 1.4 of this order;

⁴ Section 6.1 (cc) of E.O. 13526, defines "National Security" as "the national defense or foreign relations of the United States."

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

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

- (a) the document was marked as required and stamped with the proper classification designation;
- (b) the document was marked to indicate clearly which portions are classified and which portions are exempt from declassification as set forth in E.O. 13526, § 1.5 (b);
- (c) the prohibitions and limitations on classification specified in E.O. 13526, § 1.7, were adhered to;
- (d) the declassification policies set forth in E.O. 13526, §§ 3.1 and 3.3 were followed; and
- (e) any reasonably segregable portion of this classified document that did not meet the standards for classification under E.O. 13526, were declassified and marked for release, unless withholding was otherwise warranted under applicable law.

10. With the above requirements in mind, I personally and independently examined the information withheld from plaintiff in this case pursuant to FOIA Exemption (b)(1). I determined that the classified information continues to warrant classification at the "Secret"

level, respectively, and is exempt from disclosure pursuant to E.O. 13526, § 1.4, category (c) intelligence activities (including covert action), and intelligence sources or methods.

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

11. The information in this document concerning intelligence activities is very specific in nature and known to very few individuals. Disclosure of the specific information which describes these intelligence activities would reveal that they are still used by the FBI today to gather intelligence information, and could reasonably be expected to cause serious damage to the national security for the following reasons: (1) disclosure would allow hostile entities to discover

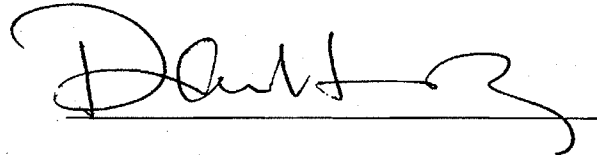
the current intelligence activities used; (2) disclosure would reveal or determine the criteria used --and priorities assigned to--current intelligence or counterintelligence investigations, (3) disclosure would reveal the Intelligence Community's (IC's) ongoing, sensitive work towards creating a decentralized communication medium which will facilitate the sharing of information and enhance collaboration efforts across the IC; and (4) disclosure will highlight the exact data collection and ELSUR capabilities shortfalls that the IC are encountering during National Security investigations due to technology advancements in communication system platforms, and encryption applications. Hostile entities could then develop countermeasures which could severely disrupt the FBI and the IC's intelligence-gathering capabilities. This would severely damage the FBI's efforts to detect and apprehend violators of the United States' national security and criminal laws. The FBI protected the identity of intelligence sources or methods specific to intelligence activities because disclosure reasonably could be expected to cause serious damage to the national security.

CONCLUSION

12. The FBI has consulted with reference to FBI information located in a one page DEA document and its requested assertion of (b)(1). The FBI has carefully examined the responsive document and has determined that the information withheld from plaintiff, if disclosed, could reasonably be expected to cause serious damage to the national security.

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

Executed this 2nd day of February, 2012.

A handwritten signature in black ink, appearing to read "David Hardy", written over a horizontal line.

DAVID M. HARDY

Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, VA