


Exhibit 3

Exhibit 3

From: "Cartier, Nicholas (CIV)" <Nicholas.Cartier@usdoj.gov> 
Subject: RE: 10-04892 - EFF v. DOJ - Draft Documents
Date: March 20, 2012 3:53:47 PM PDT
To: "Jennifer Lynch" <jlynch@eff.org>

Jennifer,

I've heard back from FBI. I was told that the presentations you identified below are not "drafts" in the sense of there being a "final" version of the presentations. Rather, the deliberative process privilege was claimed because of the substance of the presentations, which involve an ongoing discussion about proposed policy changes. The FBI did not identify any "final" version of these presentations during their search.

Do you have questions about other documents identified as drafts by the components?

Nick

From: Jennifer Lynch [mailto:jlynch@eff.org]
Sent: Thursday, March 15, 2012 5:25 PM
To: Cartier, Nicholas (CIV)
Subject: 10-04892 - EFF v. DOJ - Draft Documents

Nick,

I have been going through the agencies' Vaughns and declarations this week and noticed that the FBI has withheld in full many draft versions of documents responsive to EFF's FOIA request. EFF is considering waiving its claims with regards to these drafts if there are final versions of the documents. However, given the dearth of information in FBI's Vaughn Index, I am having great difficulty finding the final versions of these documents. I am wondering if FBI would be interested in telling EFF where the final versions are located within the records. If so, EFF would consider waiving claims to those records. This is something we have been able to negotiate successfully with agencies in the past, and I think it saves the parties and the court significant time and energy if we can take the drafts off the table. Please let me know your thoughts.

Some examples of FBI's draft documents include:

- draft Going Dark presentation titled, "Preservation of Lawful Intercepts: Challenges and Potential Solutions."
- draft Going Dark presentation titled, "Law Enforcement's Need to Preserve Lawful Intercept Capabilities."
- draft discussion paper titled, "Going Dark: Problems and Proposals."

- draft presentation titled, "*Going Dark Initiative: Closing the National Security ELSUR Gap.*"

Best,

Jennifer

PS - We would appreciate this information from the other components as well, although I haven't yet had a chance to look through their filings in detail.

Jennifer Lynch

Staff Attorney

Electronic Frontier Foundation

jlynch@eff.org

415-436-9333 x136

<https://www.eff.org/join>