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 10 *United States Department of Homeland Security*

11
 12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 14 **OAKLAND DIVISION**

15
 16 ELECTRONIC FRONTIER FOUNDATION,
 17 Plaintiff,
 18 v.
 19 DEPARTMENT OF HOMELAND
 SECURITY,
 20 Defendant.
 21
 22

) Case No.: 12-cv-5580 PJH
)
) **DECLARATION OF PATRICK**
) **HOWARD IN SUPPORT OF**
) **DEFENDANT'S MOTION FOR**
) **SUMMARY JUDGMENT**
)
) Date: December 11, 2013
) Time: 9:00 a.m.
) Place: Courtroom 3, 3rd floor
) Judge: Hon. Phyllis J. Hamilton

1 I, Patrick Howard, declare and state as follows:

2 1. From March 30, 2009 until July of 2013, I was a Management and Program Analyst in the
3 Freedom of Information Act ("FOIA") Division, Office of the Commissioner, U.S. Customs and
4 Border Protection ("CBP"). As such, during this period of time, I was responsible for the
5 processing of FOIA requests assigned to me for information in CBP record systems. I was
6 promoted to a position of Subject Matter Expert, Team Lead in July of 2013. In this capacity, I am
7 responsible for training and reviewing the case work of a team of employees, as well as processing
8 my own case load, to include processing the most complex and difficult requests for release of
9 CBP documents and information. I have been employed by CBP for 4.5 years.

10 2. I make the following statements based on my personal knowledge, including my personal
11 knowledge of the internal operations of this office and agency, and upon information provided to
12 me in the course of my official duties.

13 3. I am familiar with the procedures followed by CBP in responding to the request for
14 information pursuant to the provisions of FOIA, and with the procedures followed in responding to
15 the request made by the Electronic Frontier Foundation ("EFF") to CBP. I understand that EFF is
16 the Plaintiff in this matter.

17 4. The purpose of this declaration is to inform the Court and plaintiff of CBP's actions since
18 receiving the request and to provide an explanation of the procedures used in review and
19 processing of CBP records that are responsive to the request and subject to the FOIA.

20 **Administrative Processing of the Request**

21 5. In a letter sent by facsimile on June 25, 2012, plaintiff submitted a FOIA request to CBP
22 seeking documents related to CBP's use of unmanned aircraft systems ("UAS"). Specifically,
23 Plaintiff's FOIA request sought three categories of documents: (1) all agency records created from
24 January 1, 2010 to the present regarding CBP and/or DHS policies or procedures for responding to
25 requests from other agencies for assistance involving the use of UAS. (Category 1); (2) all agency
26 records created from January 1, 2010 to the present regarding records or logs of CBP UAS flights
27 to assist in any operation or activity of another agency, (Category 2); and (3) a copy of the

1 “Concept of Operations for CBP’s Predator B Unmanned Aircraft System, FY2010 Report to
2 Congress,” (Category 3). *See* Exhibit A.

3 6. In a letter sent to Plaintiff on July 9, 2012, CBP assigned a control number to EFF’s FOIA
4 request. *See* Exhibit B.

5 7. On October 30, 2012, prior to CBP responding to the request, EFF filed the instant
6 complaint against CBP.

7 **The Search Process**

8 8. When a FOIA request is received by CBP, the FOIA office staff carefully evaluates what
9 documents are being requested, in order to determine which offices and systems within CBP may
10 have records responsive to the request.

11 9. CBP personnel determined that the office within CBP responsible for the UAS program is
12 the Office of Air and Marine (“OAM”). OAM is uniquely positioned to provide direct air and
13 maritime support to multiple agencies and to ensure the success of border protection and law
14 enforcement operations between ports of entry, within the maritime operating areas and within the
15 nation’s interior. OAM searched for responsive documents for all three categories of information.

16 10. OAM determined that the only document responsive for Category 1 was a power point
17 presentation outlining the CBP procedures for responding to requests from other agencies for
18 assistance using the UAS program. This power point presentation was created in direct response to
19 a DHS Office of Inspector General report on “CBP’s Use of Unmanned Aircraft Systems in the
20 Nation’s Border Security,” which stated that at the time of the report, CBP did not have any
21 procedures in place for determining how to provide assistance to other federal, state, and local law
22 enforcement agencies. This power point presentation was released in full to EFF on January 25,
23 2013.

24 11. Regarding the search for Category 2 records, CBP considered this a request for records of
25 all flights of UAS in support of other agencies to include agencies both within DHS and outside
26 federal, state, and local agencies. One type of document that was responsive to this request was the
27 Daily Report to the Assistant Commissioner of the Office of Air and Marine (OAM). The first

1 section of the Daily Reports is for UAS activity, organized by location. Under each location are
2 the following fields: "Date," "In Support of," "Sorties," "Flight Hours," and "Remarks." The
3 entries into these fields are partly based upon flight logs for UAS flights. Those logs are
4 maintained in a DOS-based system from the 1980s and are not organized by assistance to outside
5 agencies. With respect to UAS support of other agencies, these logs appeared to be less
6 informative and more conclusory than the daily reports. Because it is impossible to search the
7 flight logs for assistance to other agencies, individuals from OAM would have to read through each
8 Daily Report for the relevant time period to determine which daily reports reflect UAS assistance
9 to other agencies.

10 12. CBP indicated to EFF that OAM may be able to provide some (but likely not all) of the
11 underlying flight logs maintained in the 1980s DOS-based system, but OAM estimated that doing
12 so would take upwards of 3 months and would be burdensome to OAM's operations. CBP also
13 indicated that the Daily Reports give the most thorough information with respect to UAS support
14 for other agencies.

15 13. EFF agreed to only receive CBP's Daily Reports in response to Category 2, rather than
16 require CBP to produce both sets of documents.

17 14. OAM went through each Daily Report, reviewed the UAS section of each report to
18 determine if any entry reflected UAS support to another agency, and then extracted those
19 responsive portions. CBP then compiled the responsive portions of the Daily Reports in three
20 batches, grouped by years 2010, 2011, and 2012. When providing the Daily Reports to EFF, CBP
21 informed EFF that CBP cannot attest to the accuracy of the Daily Reports. Even though some
22 Daily Reports indicate support of another agency during a UAS operation, the noted agency may
23 not have actually been supported during the flight.

24 15. The 2010 Daily Reports were released in redacted form to EFF on May 1, 2013.

25 16. The 2011 Daily Reports were released in redacted form to EFF on May 15, 2013.

26 17. The 2012 Daily Reports were released in redacted form to EFF on May 29, 2013.

1 18. Where information was redacted from the Daily Reports, the withholdings were made
2 pursuant to one or more of the following exemptions: (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

3 19. Plaintiff requested the Category 3 record by name. CBP retrieved this report and processed
4 it pursuant to FOIA. On April 29, 2013, CBP released the report to EFF, with limited redactions
5 made pursuant to exemption (7)(E) or exemptions (b)(6) and (b)(7)(C).

6 20. On September 19, 2013, CBP made a secondary release of information for Category 3 to
7 EFF.

8 **Segregability**

9 21. Plaintiff has been provided with all segregable, non-exempt information from the
10 documents that are responsive to the request and subject to the FOIA. Where appropriate, CBP
11 asserted FOIA exemptions in the released records. No document was withheld in full and very few
12 pages were redacted in full. Most pages contain some exempt and some non-exempt material,
13 showing a great effort was made to provide segregable non-exempt information. All information
14 withheld is exempt from disclosure pursuant to a FOIA exemption or is not reasonably segregable
15 because it is so intertwined with protected material that segregation is not possible or its release
16 would have revealed the underlying protected material. CBP has reviewed the documents released
17 to Plaintiff, line-by-line, to identify information exempt from disclosure or for which a
18 discretionary waiver of exemption could apply, and I am satisfied that all reasonably segregable
19 portions of the relevant records have been released to plaintiff in this matter.

20
21 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge
22 and belief.

23 Signed this 25th day of September, 2013.

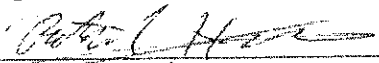
24 
25 Patrick Howard
26 Freedom of Information Act Office
27 U.S. Customs and Border Protection
28 U.S. Department of Homeland Security
90 K Street, NE
Washington, D.C. 20229-1181

EXHIBIT A



2012F24771

June 25, 2012

VIA FACSIMILE — (202) 325-0230
VIA EMAIL — CBPFOIA@DHS.gov

United States Customs & Border Protection
FOIA Division
799 9th Street NW, Mint Annex
Washington, DC 20229-1177

RE: Freedom of Information Act Request

To Whom It May Concern:

This letter constitutes a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and is submitted to Customs & Border Protection (CBP) 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.

On December 10, 2011, the *Los Angeles Times* reported that CBP used one of its Predator drones to help the Nelson County Sheriff's Department in North Dakota to find three individuals suspected of committing a property theft. See Brian Bennett, "Police Employ Predator Drone Spy Planes on Home Front," *LA Times* (Dec. 10, 2011).¹ In a second article on April 28, 2012, the *Times* reported that CBP "drones often are unavailable to assist border agents because Homeland Security officials have lent the aircraft to the FBI, Texas Rangers and other government agencies for law enforcement, disaster relief and other uses." Brian Bennett, "Predator Drones Have yet to Prove their Worth on Border," *LA Times*, (Apr. 28, 2012).² In a report on CBP's unmanned aircraft program dated May 30, 2012, the Department of Homeland Security, Office of Inspector General noted that "CBP had flown missions to support the following stakeholders:

- Department of Homeland Security (DHS) agencies, including Office of Border Patrol, United States Secret Service, Federal Emergency Management Agency (FEMA), and Immigration and Customs Enforcement (ICE);
- Bureau of Land Management;
- Federal Bureau of Investigation;
- Department of Defense;
- Texas Rangers;
- United States Forest Service; and

¹ Available at <http://articles.latimes.com/2011/dec/10/nation/la-na-drone-arrest-20111211>.

² Available at <http://articles.latimes.com/2012/apr/28/nation/la-na-drone-bust-20120429>.

Freedom of Information Act Request—CBP—Drone Policies
June 25, 2012
Page 2 of 6

National Oceanic and Atmospheric Administration (NOAA).”

Office of Inspector General, *CBP's Use of Unmanned Aircraft Systems in the Nation's Border Security*, DHS OIG-12-85, 6 (May 2012). The report also noted that “At the request of the State Department, [CBP] participated in discussions with another country on the use of unmanned aircraft.” *Id.* at 7.

This request seeks all agency records (including, but not limited to, electronic records) created from January 1, 2010 to the present regarding:

1. CBP and/or DHS policies or procedures for responding to requests from other agencies (including agencies at the federal, state and local level, such as those discussed in the articles above) for assistance involving the use of CBP's Predator drones;
2. records or logs of CBP drone flights to assist in any operation or activity of another agency (including foreign, federal, state, and local government agencies) similar to those described in the two *Times* articles above and in the DHS Inspector General report, including records or logs that detail when the drones were used for a these purposes, which outside agency requested the flight, how long the flight lasted, the geographic area over which the drone was flown, and information about the reason for the assistance request or purpose of the flight.
3. A copy of the “Concept of Operations for CBP's Predator B Unmanned Aircraft System, FY 2010 Report to Congress” discussed in the OIG May 2012 report at p. 7 (OIG-12-85).

Format of Documents

FOIA provides that agency records include records “maintained by an agency in any format, including electronic format.” 18 USC § 552(f)(2)(A). FOIA also provides that an agency should search for records in “electronic form or format,” 18 USC § 552(a)(3)(C), and “shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” 18 USC § 552(a)(3)(B). Accordingly, we request that, where available and appropriate, the requested records be provided in electronic format, either in their native format, or as image files (such as jpeg, png, tiff, etc), or saved as text-searchable pdf formatted files.

EFF also requests that all pages be consecutively numbered and that the page numbers of pages or records withheld in full be clearly indicated in a document or file accompanying the produced records.

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 6 C.F.R. § 5.11(b)(6), (d)(1). In requesting this classification, we note that the Department of Homeland Security has recognized that EFF qualifies as a “news media” requester, based upon the publication activities set forth below (*see* DHS stipulation attached hereto). This precedent is particularly important in light of the fact that the U.S. Court of Appeals for the D.C. Circuit has stressed that agencies must not

Freedom of Information Act Request—CBP—Drone Policies
June 25, 2012
Page 3 of 6

“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).

The FOIA defines a “representative of the news media” as

any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term “news” means information that is about current events or that would be of current interest to the public.

5 U.S.C. § 552(a)(4)(A)(ii). The FOIA further provides that, “as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities.” *Id.* Department of Homeland Security regulations provide that news media requesters include “publishers of periodicals (but only in those instances where they can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public.” 6 C.F.R. § 5.11(b)(6).

Several courts have further defined the scope of news media status. For example, in *Nat'l Sec. Archive v. Dep't of Def.*, the D.C. Circuit Court of Appeals held that a “representative of the news media” is “a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. 880 F. 2d 1381, 1387 (D.C. Cir. 1989). The court noted that it is “critical that the phrase ‘representative of the news media’ be broadly interpreted if the Act is to work as expected.” *Id.* at 1386 (finding the National Security Archives’ activities, including “compilation and distribution of document sets [are] surely ‘publishing or otherwise disseminating information.’”). After the FOIA was amended in 2007 to clarify the definition of a news media representative, the D.C. District Court reiterated that the National Security Archive’s activities still qualified it as a “representative of the news media for all pending and future non-commercial FOIA requests.” *Nat'l Sec. Archive v. CIA*, 584 F. Supp. 2d 144, 147 (D.D.C. 2008); see also *EPIC v. Dept. of Defense*, 241 F. Supp. 2d 5, 12, 14 (D.D.C. 2003) (finding “no material difference between EPIC and National Security Archive and that, “in light of EPIC’s publication and distribution of its biweekly newsletter reporting on privacy and civil liberties issues [distributed to “over 15,000 readers”], the Court concludes that EPIC is a publisher of a periodical, and therefore falls within DoD’s definition of a representative of the news media.” activities.” *Id.* at 13)

EFF meets the qualifications in the FOIA, the department’s regulations and in the cases cited above. EFF is a non-profit public interest organization that works “to protect and enhance our core civil liberties in the digital age.”³ One of EFF’s primary objectives is “to educate the press,

³ Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npoid=561625> (last visited July 8, 2009).

Freedom of Information Act Request—CBP—Drone Policies
June 25, 2012
Page 4 of 6

polycymakers and the general public about online civil liberties.”⁴ To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <https://www.eff.org>, which reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues. EFF posts documents received in response to its FOIA requests here, along with accompanying analysis and commentary. See <https://www.eff.org/issues/foia>.

EFF regularly publishes an online newsletter, the EFFector, and has done so since 1990. EFF distributes the EFFector weekly to over 185,000 subscribers. All back issues of the EFFector are available on EFF’s website at <https://www.eff.org/effector/>, and we are attaching a copy of a recent issue of the EFFector to this FOIA request.

Furthermore, EFF publishes a blog called DeepLinks that analyzes and reports on newsworthy developments in technology. (See <https://www.eff.org/deeplinks/>) It also provides miniLinks, which direct readers to other news articles and commentary on these issues from around the Internet.⁵

In addition to reporting high tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than thirty-seven white papers published since 2002. These papers, available at <https://www.eff.org/wp/>, provide information and commentary on such diverse issues as biometrics, 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 records and releases 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/linenoisecogg.xml>.

⁴ *Id.*

⁵ These figures include hits from RSS feeds through which subscribers can easily track updates to DeepLinks and miniLinks.

Freedom of Information Act Request—CBP—Drone Policies
June 25, 2012
Page 5 of 6

Finally, EFF uses new media extensively to disseminate information to the public. EFF has almost 81,000 followers on Twitter and sends out approximately 150 “Tweets” per month with short summaries of EFF blog posts and information on current issues in surveillance, intellectual property, technology and civil liberties. These Tweets contain links back to EFF’s site and to other sites on the Internet that readers can and regularly do click on for more in-depth coverage. EFF also has more than 37,000 people who “like” the organization on Facebook and who receive EFF’s blog posts and updates through the site. And finally, EFF has a channel on Youtube where it publishes short videos on the issues of the day. EFF’s Youtube channel has approximately 1.9 million views.⁶

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 search and 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 6 C.F.R. § 5.11(k). To determine whether a request meets this standard, regulations require that ICE assess 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.” 6 C.F.R. §§ 5.11(k)(1)(i), (ii). This request clearly satisfies these criteria.

First, because CBP is a component of the federal government, information concerning how CBP uses drones clearly and directly relates to the “operations or activities of the federal government.” 6 C.F.R. § 5.11(k)(2)(i).

Second, disclosure of the requested information will “contribute to an understanding of government operations or activities.” 6 C.F.R. § 5.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested records that will shed light on how CBP is using drones for purposes other than border patrol. EFF will compile and analyze this information and make it available to the public. The requested information is not in the public domain, and EFF has already published extensively on this topic. Therefore, this information will necessarily contribute to a more robust public understanding of the subject.

Third, the requested material will “contribute to public understanding” of CBP’s drone program. 6 C.F.R. § 5.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF’s understanding, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information obtained under the FOIA available to the public and the media through its web site and the EFF newsletter, which highlight developments concerning privacy and civil liberties issues. Because EFF is a representative of the news media, EFF’s request presumptively satisfies this criterion. *Id.*

Fourth, the disclosure will “contribute significantly” to the public’s knowledge and

⁶ <https://www.youtube.com/user/EFForg>.

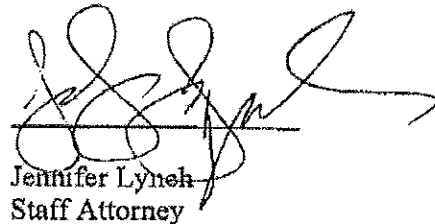
Freedom of Information Act Request—CBP—Drone Policies
June 25, 2012
Page 6 of 6

understanding of how CBP uses its drones and how it is spending its scarce resources on drone flights. 6 C.F.R. § 5.11(k)(2)(iv) (internal quotation marks omitted). As noted above, the DHS Inspector General recently criticized CBP for how it is running its unmanned aircraft program, and specifically criticized CBP for not seeking compensation from the many agencies to which it loans its drones. So far, however, specific data on these non-CBP drone flights has not been available. The information sought through this FOIA request will contribute significantly to the public's knowledge and understanding of the issues involved in expanding use of drones to patrol inside US borders and will enable the public to make informed decisions on whether this use is appropriate or necessary, especially given the federal government's current budget crisis. As such, the response to this FOIA request will undoubtedly enhance the public's understanding of the subject.

Finally, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 6 C.F.R. § 5.11(k)(1)(ii). EFF is a 501(c)(3) nonprofit organization, and will not derive commercial benefit from the information at issue here.

Thank you for your consideration of this request. As the FOIA provides, I will anticipate a determination with respect to the disclosure of requested records within 20 working days. If you have any questions or concerns, do not hesitate to contact me at jlynch@eff.org or 415-436-9333 x 136.

Sincerely,



Jennifer Lynch
Staff Attorney
Electronic Frontier Foundation

Enclosures

ATTACHMENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER)	
FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-1988 (ESH)
)	
DEPARTMENT OF HOMELAND)	
SECURITY,)	
)	
Defendant.)	
_____)	

STIPULATED DISMISSAL OF PLAINTIFF'S SECOND CAUSE OF ACTION

Plaintiff Electronic Frontier Foundation (EFF) and Defendant Department of Homeland Security (DHS), by counsel, hereby stipulate and agree as follows:

1. Defendant DHS has granted news media status to Plaintiff EFF based on the representations contained in EFF's FOIA requests, which demonstrate that EFF is an "entity that is organized and operated to publish or broadcast news to the public." 6 C.F.R. § 5.11(b)(6). Defendant DHS will continue to regard Plaintiff EFF as a "representative of the news media" absent a change in circumstances that indicates that EFF is no longer an "entity that is organized and operated to publish or broadcast news to the public." 6 C.F.R. § 5.11(b)(6).
2. Accordingly, the parties herewith agree to the dismissal of Plaintiff EFF's Second Cause of Action, related to EFF's status as a "representative of the news media."
3. The parties further agree that each will pay its own fees and costs for work on the dismissed claim.

SO STIPULATED AND AGREED this 27th day of February, 2007.

Case 1:06-cv-01988-ESH Document 15 Filed 02/27/2007 Page 2 of 2

/s/ David L. Sobel
DAVID L. SOBEL
D.C. Bar 360418

MARCIA HOFMANN
D.C. Bar 484136

ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Avenue, N.W.
Suite 650
Washington, D.C. 20009
(202) 797-9009

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United States Attorney

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D.C. Bar 418925
Assistant Branch Director
U.S. Department of Justice
Civil Division, Federal Programs Branch

/s/ John R. Coleman
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(202) 514-4505

Counsel for Defendant

Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 25028

DEC 30 2010



Homeland Security

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

SUBJECT: Freedom of Information Act Request No. 2011-045

Dear Ms. Lynch:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated December 3, 2010. Your request seeks news media fee status, expedited review, and a fee waiver. Your request was received in this office on December 22, 2010, and was assigned the above-referenced FOIA tracking number.

Regarding your media fee status request, I am granting your request for "representative of the news media" status. DHS FOIA regulations specifically define "representative of the news media" as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." 6 C.F.R. §§ 5.11(b)(6). Even though the Electronic Frontier Foundation (EFF) is a non-profit public interest organization, EFF's activities of collecting and disseminating information to the public about civil liberties through online reports, newsletters, and published books satisfy the status of a representative of the news media. As such, based on the above stated information, I am granting your request for this fee status.

As to your request for expedited review, 5 U.S.C. § 552(a)(6)(E)(i) states that "each agency shall promulgate regulations ... providing for expedited processing of requests for records." There are two categories of requests that merit expedited review under DHS FOIA regulations: (1) requests for which a "lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;" or (2) where there is "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." 6 C.F.R. §§ 5.5(d)(1)(i), (ii). Requesters that seek expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing will be held in abeyance pending your response to Ms. Nikki Gramian's December 29, 2010 telephone message. A subsequent response will be provided upon resolution of an agreement concerning OIG's search for records responsive to your FOIA request.

Finally, as it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records. DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will therefore consider these factors in our evaluation of your request for a fee waiver:

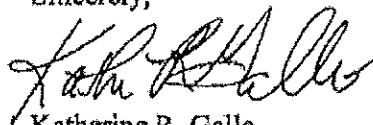
1. Whether the subject of the requested records concerns "the operations or activities of the government;"
2. Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
3. Whether disclosure of the requested information will contribute to the understanding of the public at large, "as opposed to the individual understanding of the requestor" or a narrow segment of interested persons;
4. Whether the contribution to public understanding of government operations or activities will be "significant;"
5. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
6. Whether the magnitude of public interest in disclosure is sufficiently large, when compared to the requester's identified commercial interest in disclosure.

If any responsive records are located, we will consider these factors in our evaluation of your request for a fee waiver.

In the event that your fee waiver is denied, we shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to media requestors. As a media requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free. You will be promptly notified once a determination is made regarding your fee waiver request.

Should you have any questions, you may contact Ms. Aneet Thind, FOIA/PA Analyst, at (202) 254-4373, or by writing to: DHS/Office of Inspector General/ STOP 2600, 245 Murray Drive, S.W., Building 410, Washington, DC 20528. Please refer to the above-referenced tracking number if you contact us regarding your request. If we require additional information, we will contact you.

Sincerely,



Katherine R. Gallo
Assistant Counsel to the Inspector General

From: "EFFector List" <editor@eff.org>
Subject: [E-S] The patent system is broken -- and we need your help | EFFector 25.17
Date: June 20, 2012 1:19:36 PM PDT
To: <eff-all@eff.org>
Reply-To: EFFector List <editor@eff.org>

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EFFector

A Publication of the Electronic Frontier Foundation



In our 612th issue:

- [UPDATES](#)
- [MINILINKS](#)
- [ANNOUNCEMENTS](#)

The Patent System Is Broken -- And We Need Your Help

Patents are supposed to foster innovation, but modern software patents have been turned against inventors. We need your help to defend innovation from a broken patent system. Sign on to EFF's seven proposals for fixing the patent system, and we'll take these signatures with us when we go to Washington, D.C., to tell legislators about our concerns. Let's create a system that defends innovation, instead of hindering it.

Want to Abolish Software Patents Completely? Tell Us.

Our campaign to Defend Innovation isn't just about our proposals -- we want to hear, and amplify, the views of the technical community. Many engineers, researchers, and entrepreneurs have suggested that reform is not enough and that software should not be patentable, period. We want to record these views.

EFF Updates

Internet Archive Sues to Stop New Washington State Law

The Internet Archive has filed a federal challenge to a new Washington State law that intends to make online service providers criminally liable for providing access to third parties' offensive materials. EFF is representing the Internet Archive in order to block the enforcement of SB 6251, a law aimed at combatting advertisements for underage sex workers but with vague and overbroad language that is squarely in conflict with federal law.

How to Turn on Do Not Track in Your Browser

In recent years, online tracking companies have begun to monitor our clicks, searches and reading habits as we move around the internet. If you are concerned about pervasive online web tracking by behavioral advertisers, then you may want to enable Do Not Track

Join EFF



Announcements

International Intellectual Property Expert Joins EFF

Carolina Roscini has joined the EFF as its International Intellectual Property Director, bringing more than ten years of experience in global IP law and policy to EFF's international team. Roscini joins an expanded international team that brings new depth to EFF's work on global digital rights issues.

Pioneer Award Nominations Are Now Open

Nominations are now open for EFF's 21st Annual Pioneer Awards, to be presented this fall in San Francisco. EFF established the Pioneer Awards in 1992 to recognize leaders on the electronic frontier who are extending freedom and innovation in the realm of information technology.

American Library Association Annual Conference 2012

Could recent cybersecurity bills erode our civil liberties as well as our right to know what pur

on your web browser. Our tutorial walks you through the enabling Do Not Track in the four most popular browsers: Safari, Internet Explorer 9, Firefox, and Chrome.

Biometric National IDs and Passports: A False Sense of Security

People tend to think that digital copies of our biological features, stored in a government-run database, are problems of a dystopian future. But governments around the world are already using such technologies. Several countries are collecting massive amounts of biometric data for their national identity and passport schemes -- a development that raises significant civil liberties and privacy concerns.

UK Mass Surveillance Bill: The Return of a Bad Idea

The British government has unveiled a bill that has a familiar ring to it. The Communications Data Bill would require all Internet Service Providers and mobile phone network providers in Britain to collect and store information on everyone's internet and phone activity. Essentially, the bill seeks to publicly require in the UK what EFF and many others have long maintained is happening in the US in secret -- and what we have been trying to bring to public and judicial review since 2005.

"Hacking" Strikes Fear in the Heart of Texas Bureau of Prisons

Earlier this month, an inmate in Texas was denied access to computers and an electronic messaging system because he ordered a copy of the information security handbook Hacking Exposed. Does simply ordering a copy of an information security handbook render an individual a threat to the safe, secure, and orderly operation of a federal prison? Almost certainly not.

New Trojan Spread Over Skype as Cat-and-Mouse Game Between Syrian Activists Government Hackers Continues

Since March of this year, EFF has reported extensively on the ongoing campaign to use social engineering to install surveillance software that spies on Syrian activists. Syrian opposition activists have been targeted using several Trojans, including one disguised as a Skype encryption tool, which covertly install spying software onto the infected computer, as well as a multitude of phishing attacks which steal YouTube and Facebook login credentials. The latest attack covertly installs a new remote access tool, Blackshades Remote Controller, whose capabilities include keystroke logging and remote screenshots.

miniLinks

While battle against ACTA rages, next clash against TPP looms on the horizon

The parallels between ACTA and TPP can't be ignored. But, as CitizenVox explains, TPP is even worse.

PGP founder, Navy SEALs unlock encrypted comm biz

Phil Zimmermann and some of the original PGP team have joined up with former US Navy SEALs to build an encrypted communications platform. Silent Circle will launch later this year, and \$20 a month will buy encrypted email, text messages, phone calls, and videoconferencing.

Wall Street Journal: Real-time auctions drive rise in online tracking

The prevalence of online tracking on the top 50 websites has risen exponentially since 2010, driven in part by the rise of online advertising auctions, according to a new study by San Francisco-based data protection company Krux Digital Inc.

government is doing? Why are these bills of concern for librarians and our patrons? John Dr. Patricia McDermott, Director of Open the Government, and Rainey Reitman, Activism Director at EFF, in a morning session on CIARA and other cybersecurity bills. June 23, 2012. Anaheim, CA

Rainey Bowes Privacy and Security Conference

EFF Staff Attorney Hanni Fakhoury will join a number of other speakers at the 8th Annual Rainey Bowes Privacy and Security Conference. He'll be discussing "The Future of Location Privacy After U.S. v. Jones." June 26, 2012. Stamford, CT

HOPE Number 8

For three full days and nights, HOPE hosts hackerspace, village, film festival, art installations, vintage computers, electronic workshops, the country's biggest supply of Club-Mate, and of course the provocative talks that it has become well-known for offering. This year, many EFF staffers will be attending and speaking. July 14-16. New York, NY

EFF on



Administrivia

ISSN 1062-9424

EFFector is a publication of the Electronic Frontier Foundation.

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FAX COVER SHEET

DATE: 6/25/12

TO: 202-325-0230

Fax Number: Customs + Border Protection

FROM: Jennifer Lynch

RE: FOIA Request

Pages sent including this page: 15

COMMENTS:

NOTICE

This fax is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure. If you are not the intended recipient or his or her agent, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited and asked to please notify us immediately by telephone. Thank you.

PLEASE CALL (415) 436-9333 x 117 IF THERE IS A PROBLEM

EXHIBIT B

U.S. Customs and Border Protection
Washington, DC 20503



U.S. Customs and
Border Protection

DIS2:OT:FD LJP
2012F24771

July 9, 2012

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

Dear Ms. Lynch:

This letter is an acknowledgement to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) requesting all agency records (including, but not limited to, electronic records) created from January 1, 2010 to the present regarding:

1. CBP and/or DHS policies or procedures for responding to requests from other agencies (including agencies at the federal, state and local level, such as those discussed in the articles above) for assistance involving the use of CBP's Predator drones;
2. records or logs of CBP drone flights to assist in any operation or activity of another agency (including foreign, federal, state, and local government agencies) similar to those described in the two *Times* articles above and in the DHS Inspector General report, including records or logs that detail when the drones were used for these purposes, which outside agency requested the flight, how long the flight lasted, the geographic area over which the drone was flown, and information about the reason for the assistance request or purpose of the flight.
3. A copy of the "Concept of Operations for CBP's Predator B Unmanned Aircraft System. FY 2010 Report to Congress" discussed in the 010 May 2012 report at p. 7 (0IG-12-85).

Your request is under review. Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although CBP's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. We will make every effort to comply with your request in a timely manner.

As it relates to your fee waiver request, CBP has reviewed your letter thoroughly and has determined that you have not presented a convincing argument that you are entitled to a blanket waiver of fees.

The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We considered these factors in our evaluation of your request for a fee waiver:

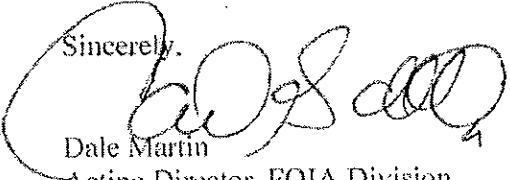
- (1) Whether the subject of the requested records concerns "the operations or activities of the government;"
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant;"
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

As a requester, you bear the burden under the FOIA of showing that the fee waiver requirements have been met. Your request does not adequately describe how or whether the contribution to the public understanding of this topic would be "significant." Any assessable fees shall be held in abeyance pending the collection of responsive documents.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply representatives of the media. You will be charged for the direct costs associated with duplication of the records released to you; i.e., 10-cents per page, although the first 100 pages are free. By submitting your request, you have agreed to pay up to \$25.00 in applicable processing fees, if any fees associated with your request exceed this amount, CBP shall contact you.

Your request has been assigned reference number 2012F24771, please refer to this identifier in any future correspondence. You may contact this office at (202) 325-0150.

Sincerely,



Dale Martin
Acting Director, FOIA Division
Office of International Trade