

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

_____	)	
ELECTRONIC FRONTIER FOUNDATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. C 07-5278 SI
	)	
OFFICE OF THE DIRECTOR OF NATIONAL	)	
INTELLIGENCE,	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION OF JOHN F. HACKETT**

Pursuant to 28 U.S.C. § 1746, I, John F. Hackett, declare the following to be true and correct:

1. I am the Director of the Information Management Office (IMO) for the Office of the Director of National Intelligence ("ODNI"). In this capacity I am the final decision-making authority for the IMO which receives, processes, and responds to requests for ODNI records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

2. I make the statements herein on the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties.

3. By facsimile dated August 31, 2007, plaintiff Electronic Frontier Foundation submitted two FOIA requests to ODNI for records concerning 1) briefings, discussions, or other exchanges that Director McConnell or other ODNI officials have had with representatives of telecommunications companies concerning amendments to FISA,

including any discussion of immunizing such companies or holding them otherwise unaccountable for their role in government surveillance and activities (hereinafter “request number one”); and 2) briefings, discussions, or other exchanges that Director McConnell or other ODNI officials have had with members of the Senate or House of Representatives concerning amendments to FISA, including, but not limited to, any discussion of immunizing telecommunications companies or holding them otherwise unaccountable for their role in government surveillance activities (hereinafter “request number two”).<sup>1</sup>

4. On November 27, 2007, the Court in the above-captioned matter granted in part and denied in part plaintiff’s motion for a preliminary injunction. The Court ordered ODNI to “respond to plaintiff’s FOIA request and provide an interim release no later than November 30, 2007.” The Court further ordered ODNI “to provide a final release of all responsive, non-exempt documents no later than December 10, 2007.” The Court also directed ODNI to provide an “affidavit with its final response setting forth the basis for withholding any responsive documents it does not release.” This declaration is provided to the plaintiff consistent with the Court’s order.<sup>2</sup>

5. Pursuant to the Court’s order, by letter dated November 30, 2007, 34 documents, totaling approximately 230 pages, were released to plaintiff in response to request number two. That material was also made available on ODNI’s public web site.

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<sup>1</sup> Both of plaintiff’s requests seek information pertaining to, among other things, “any discussion of immunizing such companies or holding them otherwise unaccountable for their role in government surveillance activities.” Nothing in this declaration should be construed to confirm or deny any role that telecommunications companies may or may not have in government surveillance activities.

<sup>2</sup> This declaration is provided to plaintiff without prejudice to ODNI’s rights to provide additional information regarding the processing of plaintiff’s FOIA requests and/or the reasons for any withholdings. ODNI specifically reserves the right to submit such additional information, as appropriate, in the context of summary judgment or other subsequent proceedings in this case.

Redactions were made on 12 pages pursuant to FOIA Exemption 2, 5 U.S.C. § 552(b)(2), which protects information related solely to the internal personnel rules and practices of an agency. The information that was redacted from these documents consists exclusively of non-public ODNI fax numbers and phone numbers. Because the internal phone and fax numbers relate solely to ODNI's internal practices, because disclosure would not serve any public interest, and because disclosure could impede ODNI's effectiveness in carrying out its official business (*i.e.*, subject ODNI employees to harassing communications that could disrupt official business), the information was properly withheld on the basis of FOIA Exemption 2.

6. Today, December 10, 2007, plaintiff is being provided with a final response to both of its FOIA requests. In further response to request number two, 238 pages are being released in full. Also in response to request number two, 29 pages are being withheld in part and 12 pages are being withheld in full pursuant to FOIA Exemptions 1, 2, 3, and 6, 5 U.S.C. § 552(b)(1), (2), (3), (6).

7. With the exception of one document described below in paragraph eleven, there are three categories of documents responsive to request number two that are being withheld either in full or in part: (1) correspondence between ODNI and Members of Congress and classified attachments to correspondence; (2) official classified statements by the DNI during closed congressional hearings; and (3) classified briefing materials (*e.g.*, slides) used by ODNI to brief Members of Congress regarding national security and intelligence matters.

8. With respect to the first category of materials (correspondence and classified attachments), 17 pages are being withheld in part and no pages are being withheld in full.

The withheld information is currently and properly classified under Executive Order 12958, as amended. Specifically, the withheld information contained in these documents meets the criteria for classification as set forth in subparagraphs (c) and (g) of Section 1.4 of Executive Order 12958, as amended, which authorizes the classification of information concerning “intelligence activities (including special activities), intelligence sources or methods, or cryptology,” and “vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection systems relating to nation security, which includes defense against transnational terrorism.” The withheld information is classified at the secret and top secret levels, which means that its unauthorized disclosure could reasonably be expected to cause serious and in some instances exceptionally grave damage to the national security of the United States. Additionally, portions of the withheld information must be protected from disclosure pursuant to other statutes, in this instance, 50 U.S.C. § 402 note, 18 U.S.C. § 798 and 50 U.S.C. § 403-1(i). For these reasons, the information is properly withheld pursuant to FOIA Exemptions 1 and 3. Further, the telephone number of an ODNI employee contained in one document is being withheld on the basis of Exemption 2 (see paragraph 5 above).

9. With respect to the second category of materials (classified statements), 18 pages are being released in full, 12 pages are being withheld in part, and no pages are being withheld in full. The withheld information is currently and properly classified under Executive Order 12958, as amended. Specifically, the withheld information contained in these documents meets the criteria for classification as set forth in subparagraphs (c) and (g) of Section 1.4 of Executive Order 12958, as amended, which authorizes the classification of information concerning “intelligence activities (including

special activities), intelligence sources or methods, or cryptology,” and “vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection systems relating to nation security, which includes defense against transnational terrorism.” The withheld information is classified at the secret and top secret levels, which means that its unauthorized disclosure could reasonably be expected to cause serious and in some cases exceptionally grave damage to the national security of the United States. Additionally, portions of the withheld information must be protected from disclosure pursuant to other statutes, in this instance, 50 U.S.C. § 402 note, 18 U.S.C. § 798 and 50 U.S.C. § 403-1(i). For these reasons, the information is properly withheld pursuant to FOIA Exemptions 1 and 3.

10. With respect to the third category of materials (briefing materials), 11 pages are being withheld in full. No pages are being released in part. These documents consist of power point slides that were used to brief members of Congress on FISA matters. The withheld information is currently and properly classified under Executive Order 12958, as amended. Specifically, the withheld information contained in these documents meets the criteria for classification as set forth in subparagraphs (c) and (g) of Section 1.4 of Executive Order 12958, as amended, which authorizes the classification of information concerning “intelligence activities (including special activities), intelligence sources or methods, or cryptology,” and “vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection systems relating to nation security, which includes defense against transnational terrorism.” The withheld information is classified at the secret and top secret levels, which means that its unauthorized disclosure could reasonably be expected to cause serious and in some cases exceptionally grave damage to

the national security of the United States. Additionally, portions of the withheld information must be protected from disclosure pursuant to other statutes, in this instance, 50 U.S.C. § 402 note, 18 U.S.C. § 798 and 50 U.S.C. § 403-1(i). For these reasons, the information is properly withheld pursuant to FOIA Exemptions 1 and 3.

11. In addition to the three categories described above, one document, totaling one page, that is potentially responsive to request number two is being withheld because it is not an agency record under the FOIA. In addition, this document qualifies to be withheld pursuant to FOIA Exemption 6 because its disclosure would constitute a clearly unwarranted invasion of personal privacy. This document consists of a personal handwritten note from a member of Congress to the ODNI General Counsel thanking him for his work on the FISA bill.

12. ODNI located one document that is potentially responsive to request number one. This document is a telephone message slip that contains the handwritten personal notes and mental impressions of an ODNI employee. This document is being withheld because it is not an agency record under the FOIA. In addition, this document qualifies to be withheld pursuant to FOIA Exemptions 1, 3, 5 and 6.

13. In sum, ODNI has released 438 pages in full, 41 pages in part, and withheld 14 pages in full.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 10th day of December, 2007.



John F. Hackett  
Director, Information Management Office