

Electronic Frontier Foundation v. U.S. Department of Justice  
Civil Action No. 08-CV-2997 (JSW)  
U.S. District Court  
Northern District of California

Office of Information and Privacy (OIP) Draft Vaughn Index

This index contains a description of the records protected either in full or in part by Freedom of Information Act Exemptions 1, 2, 3, 5 and 6. The first portion of the Index describes the records withheld in full, and the second portion describes the records withheld in part.

Categories of documents:

- Group 1: E-mail messages between officials in DOJ, other Executive Branch (EB) offices, and the White House (WHO)
- Group 2: E-mail messages between officials in DOJ and EB
- Group 3: E-mail messages only between officials in DOJ
- Group 4: Talking point drafts and notes
- Group 5: E-mail messages between officials in DOJ, EB, and congressional staff, with attachments
- Group 6: E-mail messages between officials in DOJ, EB, and congressional staff
- Group 7: E-mail messages between officials in DOJ and congressional staff
- Group 8: E-mail messages between officials in DOJ, congressional staff, and WHO
- Group 9: E-mail messages between officials in DOJ, released in part, with Exemption 5 withholdings
- Group 10: E-mail messages released in part with WHO e-mail addresses withheld
- Group 11: E-mail messages released in part all with Exemption 3 withholdings on behalf of NSA and CIA
- Group 12: E-mail messages released in part with only Exemption 2 and 6 withholdings on behalf of ODNI and NSD
- Group 13: Document released in part with classified material withheld on behalf of NSD

Part I: Description of documents protected in full. All documents withheld in full were protected pursuant to Exemption 5 (deliberative process privilege, the presidential communications privilege and the inter-branch joint deliberative privilege). Portions of those documents are also protected pursuant to Exemptions 2, 3, and 6.

Group Number	Date	Description	Exemptions	Pages
1	10/09/07	Two electronic mail (e-mail) messages between officials in OLA, OLP, OLC, NSD and WHO discussing what may occur in a House Judiciary Committee mark-up to the RESTORE Act and what options DOJ has in areas in which it will be impacted; one follow-up e-mail message characterizing Hill reception of DOJ material.	<p align="center"><u>Exemption 5</u>            Presidential communications privilege            Deliberative process privilege            Inter-branch joint deliberative privilege</p>	12
	10/15/07	E-mail message from an official in OLP to WHO officials forwarding an October 15, 2007 e-mail message from a congressional staffer discussing and making suggestions on specific legislative provision (this e-mail is referenced in Category 6).	<p align="center"><u>Exemption 6 in part</u>            Personal privacy</p> <p align="center"><u>Exemption 2 in part</u>            Internal agency practices</p>	
	10/16/07	Five e-mail messages among officials in ODNI, OLP, OLA, and WHO regarding the appropriateness of a possible briefing of Members of Congress.	<p align="center"><u>Exemption 3 in part</u>            Information exempt pursuant to 50 U.S.C. § 402 note</p>	
	10/16/07	Two e-mail messages between officials in OLP, OLC and WHO deliberating a possible response to issues raised in an October 16, 2007 e-mail from a congressional staffer making suggestions on a various proposed statutory provision (this email is referenced in Group 6).		

	10/19/07	<p>One e-mail message from an official in OLP to officials in OLC, OLA, WHO, NSD, and ODNI summarizing a discussion with a congressional staffer regarding the contents of the current draft of the FISA, and a follow-up e-mail message with a question from an official in OAG to the official in OLP concerning merits of particular provisions.</p>		
	10/23/07	<p>One e-mail message from an official in OLP to officials in OLA, ODNI and WHO summarizing a briefing with Representatives Barton, Upton, and Whitfield.</p>		
	11/06/07	<p>One e-mail message from an official in OLP to officials in OLA, ODAG, OLC, NSD, NSA, ODNI and WHO summarizing a discussion with a congressional staffer regarding the language in a draft of amendments to the FISA, and offering an opinion regarding the impact of these provisions.</p>		
	11/09/07	<p>Six e-mail messages between officials in ODAG, CRM, OLA and WHO discussing DOJ's proposed revisions to technical issues in the amendments to FISA that DOJ was preparing for transmittal to congressional staff.</p>		

	1/23/08	<p>Two e-mail messages from an OLA official to officials in WHO, copying an official in OAG and ODNI, summarizing closely held calls with Members of Congress regarding the amendments to the FISA.</p> <p>Of the e-mail messages in category one, ten contain non-public names, e-mail addresses, or phone numbers of ODNI employees; two contain non-public FBI e-mail addresses; and two e-mails contain e-mail addresses of non-public NSA officials, all of which are protected.</p>		
2	10/15/07	<p>One e-mail message from an ODNI official to NSD, ODNI, OLC, OLP, OLA, CIA and NSA officials discussing potential participants to conduct a briefing before Congress regarding FISA and the PAA.</p> <p>This e-mail message contains non-public e-mail addresses of NSA, CIA and ODNI officials, which are protected, pursuant to Exemptions 2, 3, and 6.</p>	<p><u>Exemption 5</u>  Deliberative process privilege  Presidential communications privilege  Inter-branch joint deliberative privilege</p> <p><u>Exemption 3 in part</u>  Information exempt pursuant to  50 U.S.C. § 402 note and  50 U.S.C. § 403g</p> <p><u>Exemption 2 in part</u>  Internal agency practices</p>	1

			<u>Exemption 6 in part</u> Personal privacy	
3	<p>9/16/07</p> <p>9/20/07</p> <p>October, 2007</p>	<p>One e-mail message from an official in OLP to officials in OLA and OLP discussing items to prepare for AG's testimony in Congress.</p> <p>One e-mail message from an official in OLP to officials in NSD, CIV, and OLC providing draft language for a provision in the FISA amendments.</p> <p>Twenty-six e-mail messages between officials in OLP, OLC, CIV, OLA, NSD, OAG, and/or ODAG discussing various drafts of the FISA amendments, identifying various issues for discussion within DOJ, providing summaries of conversations with congressional staffers and committees, offering advice for communications with Congress, discussing potential witnesses to appear at hearings where DOJ is testifying, summarizing activity in Congress regarding amendments, and circulating documents with suggestions for handling before transmittal to the Hill for internal DOJ review.</p>	<p><u>Exemption 5</u> Deliberative process privilege Presidential communications privilege Inter-branch joint deliberative privilege</p> <p><u>Exemption 6 in part</u> Personal privacy</p>	59



	March, 2008	<p>to the AG during congressional testimony, discussing potential witnesses to appear on behalf of DOJ, concerning FISA amendments.</p> <p>One e-mail message, and attachment, from an official in NSD to officials in OLA providing a draft letter from the AG and DNI to Members of Congress and an e-mail message from an official in OLA in response to NSD's e-mail message, copying officials in OLA, OAG, and OLC, and providing comments on the letter; five e-mail messages among OLA officials discussing draft language for this letter.</p> <p>Of the e-mail messages in category three, twenty-four contain names of non-public NSD officials which are protected.</p>		
4	10/9/07	<p>E-mail message from an OLA official to a congressional staffer, forwarding comments and edits back to House on talking points memorandum on the RESTORE Act, and on draft statement of Congressman Lamar Smith, as well as its accompanying e-mail from a NSD official to officials in OAG, OLP, NSD, and OLC. The e-mail message contains an e-mail address for a Congressional staffer in which the prefix is protected and the accompanying e-mail message</p>	<p><u>Exemption 5</u>  Deliberative process privilege  Presidential communications privilege  Inter-branch joint deliberative privilege</p> <p><u>Exemption 6 in part</u>  Personal privacy</p>	18

	<p>10/10/07</p> <p>Undated</p> <p>Undated</p> <p>Undated</p>	<p>has the name of a non-public NSD official that is protected.</p> <p>E-mail message from an OLA official to congressional staffers with a talking points memorandum on the RESTORE Act attached.</p> <p>Talking points regarding the RESTORE Act.</p> <p>Talking points regarding the impact of modernization of FISA.</p> <p>Handwritten notes taken by an OLA official describing the Department's meetings with congressional staff regarding the amendments to the FISA, and noting future activity on this subject matter.</p>		
5	<p>10/8/07</p> <p>One dated 10/9/07, one dated 10/11/07,</p>	<p>One e-mail message from a congressional staffer to an OLA official forwarding a draft of the RESTORE Act and two accompanying e-mail messages between congressional staffers. Two subsequent e-mail messages (one dated October 9, 2007) between OLA officials discussing and characterizing the attached draft.</p> <p>Six e-mail messages, and attachments, between congressional staffers in SSCI and officials in OLA, OLP, OLC, NSD, NSA, FBI, or ODNI forwarding versions of draft congressional bills,</p>	<p><u>Exemptions 5</u></p> <p>Deliberative process privilege</p> <p>Presidential communications privilege</p> <p>Inter-branch joint deliberative privilege</p> <p><u>Exemption 3 in part</u></p> <p>Information exempt pursuant to 50 U.S.C. § 402 note</p>	192



	<p>three dated 10/23/07, one dated 11/7/07</p> <p>11/7/07</p>	<p>or other proposals submitted to Congress, regarding the FISA amendments; e-mail messages provide commentary on or summarize the substance of the attachments.</p> <p>Four e-mail messages, with attachments, from congressional staffers in SJC forwarding draft amendments to FISA bills, to officials in OLA or OLP, and summarizing the contents of the draft or including an e-mail chain of messages among congressional staff, which includes a summary of the attached documents; two e-mail messages from an OLA official forwarding these e-mail messages to other OLA officials.</p> <p>Of the e-mail messages in category five, eleven contain the personal portion (i.e., prefix) of congressional staffer e-mail addresses; three contain e-mail addresses of non-public ODNI officials; and one contains the name of a non-public NSA official, all of which are protected.</p>	<p><u>Exemption 2 in part</u> Internal agency practices</p> <p><u>Exemption 6 in part</u> Personal Privacy</p>	
6	10/10/07-2/21/08	<p>Eighty-five e-mail messages among several congressional staffers in either SSCI, SJC, or in the House and officials in OLP, ODNI, OAG, OLC, CIV, and NSD, and/or NSA forwarding document to the Hill for consideration, discussing specific language to use in drafts of congressional bills of amendments to the FISA, providing suggestions and comments on those drafts,</p>	<p><u>Exemptions 5</u> Presidential communications privilege Deliberative process privilege Inter-branch joint deliberative privilege</p>	55

		<p>offering candid opinions on others' suggestions, presenting arguments for language to insert, raising issues for further discussion, debating the various interpretations of potential language to include in those congressional bills.</p> <p>Of the e-mails messages in category six, thirty-four contain the personal portion (i.e., prefix) of congressional staffer e-mail addresses; fifty-six contain the e-mail addresses of non-public ODNI officials; sixteen e-mails contain the names of non-public ODNI officials; and thirty-one contain the names of non-public NSA officials, all of which are protected.</p>	<p><u>Exemption 2 in part</u> Internal agency practices</p> <p><u>Exemption 3 in part</u> Information exempt pursuant to 50 U.S.C. § 402 note</p> <p><u>Exemption 6 in part</u> Personal privacy</p>	
7	<p>1/17/07 to 2/07/08</p> <p>9/24/07 to 11/08/07</p>	<p>Fourteen e-mail messages between House congressional staffers and officials in OLA discussing potential responses to public inquiries regarding the FISA amendments, considering congressional inquiries, or discussing status of congressional activity.</p> <p>Twenty e-mail messages between congressional staffers in SSCI and officials in OLP, OLC, and/or CIV providing draft language for congressional bills and amendments, offering suggestions to draft language proposals by others, acknowledging receipt of suggestions, requesting insight into particular provisions, discussing the status of specific bills under discussion.</p>	<p><u>Exemptions 5</u> Deliberative process privilege Presidential communications privilege Inter-branch joint deliberative privilege</p> <p><u>Exemption 6 in part</u> Personal privacy</p>	25

	<p>One dated 1/22/08, two dated 1/24/08</p> <p>10/29/07</p>	<p>Three e-mail messages between congressional staffers in SJC and officials in OLA, discussing draft language for amendments to the FISA.</p> <p>One e-mail message from a congressional staffer in SJC to an official in OLA, copying congressional staffers in SSCI responding to a question regarding access to testimony.</p> <p>Of the e-mail messages in category seven, twenty-two contain the personal portion (i.e. prefix) of congressional staffer e-mail addresses, which is protected.</p>		
8	<p>One dated 11/07/07, one dated 11/14/07</p> <p>11/14/07</p>	<p>Two e-mail messages from congressional staffers in SJC to officials in OLP, OLA, and WHO, each of which forwards an e-mail message from a congressional staffer to other congressional staff that summaries the issues or drafting amendments to the FISA.</p> <p>E-mail message from a congressional staffer in SJC to officials in OLA and one in WHO, requesting advice on potential language to amend FISA.</p>	<p><u>Exemptions 5</u>  Deliberative process privilege  Presidential communications privilege  Inter-branch joint deliberative privilege</p> <p><u>Exemption 6 in part</u>  Personal privacy</p>	110

	11/14/07	<p>Four e-mail messages from a congressional staffer in SJC to officials in OLP, OLA, and WHO attaching versions of draft FISA amendments, and forwarding e-mail messages among congressional staff summarizing the attachments.</p> <p>Of the e-mail messages in category eight, ten contain the personal portion (i.e., prefix) of congressional staffer e-mail addresses.</p>		
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Part II: Description of documents released in part with excisions made pursuant to Exemptions 1, 2, 3, 5 and 6 of the FOIA.

Group Number	Date	Description	Exemptions	Pages
9	<p>One dated 1/22/08, and one dated 11/27/08</p> <p>12/13/07</p>	<p>Portions of two e-mail messages, one from an official in OLA to an official in OAG, the other from an official in NSD to an official in OLA and an official in OAG, describing discussions with officials outside DOJ, regarding the amendments to FISA.</p> <p>Portion of one e-mail message from an official in OLC to an official in OAG characterizing the AG's testimony before the Hill.</p>	<p><u>Exemption 5</u>  Deliberative process privilege  Presidential communications privilege  Inter-branch joint deliberative privilege</p>	3 partial pages

10	10/11/07, 11/14/07  1/7/08	Portions of two e-mail messages containing the name of a WHO official in the recipient or copied line of the e-mail message.  Portion of an e-mail message containing name of a WHO official in the copied line of the e-mail message. In addition, the personal portion (prefix) of a congressional staffer e-mail address was withheld.	<u>Exemption 5</u> Presidential communications privilege  <u>Exemption 6</u> Personal privacy	5 partial pages
11	10/13/07 to 2/14/08	Portions of thirty e-mail messages containing names for non-public officials in NSA, or CIA, as well as e-mail addresses and phone numbers for all NSA officials. On eight of these e-mail messages the personal portion (i.e., prefix) of congressional staffer e-mail addresses was also withheld pursuant of Exemption 6. In addition, twenty-seven of these e-mail messages contained the e-mail address of public and non-public ODNI officials and/or the telephone numbers of direct lines for ODNI officials were withheld under Exemptions 2 and 6. Furthermore, on eleven of these e-mail messages, the names of	<u>Exemption 3 in part</u> Information exempt pursuant to 50 U.S.C. § 402 note and 50 U.S.C. § 403g  <u>Exemption 2</u> Internal agency practices  <u>Exemption 6</u> Personal privacy	16 partial pages

		non-public ODNI or NSD officials were withheld pursuant to Exemption 6.		
12	1/17/07 to 5/20/08	Portions of thirty-two e-mail messages containing the personal portion (i.e., prefix) of congressional staffer e-mail addresses or telephone numbers for the non-public direct lines or cell phone numbers of congressional staffers.	<p style="text-align: center;"><u>Exemption 2</u> Internal agency practices</p> <p style="text-align: center;"><u>Exemption 6</u> Personal privacy</p>	25 partial pages
	10/03/07-5/19/08	Portions of eighteen e-mail messages, or Outlook calendar entries, containing the e-mail addresses of ODNI officials, the telephone numbers of direct lines for ODNI officials, or names of non-public ODNI and NSD officials.		11 partial pages
	10/03/07-5/19/08	Portions of ten e-mail messages that containing both the personal portion (i.e., prefix) of congressional staffer e-mail addresses, or telephone numbers for the direct lines of congressional staffers, as well as e-mail addresses of ODNI officials, the telephone numbers of direct lines for ODNI officials, or the names of non-public ODNI officials.		7 partial pages

13	10/10/07	Letter from Senators John D. Rockefeller, IV and Christopher S. Bond to Acting Attorney General Peter D. Keisler concerning Foreign Surveillance Courts, which contained Top Secret information	<p style="text-align: center;"><u>Exemption 1</u> Information properly classified in the interest of national security</p> <p style="text-align: center;"><u>Exemption 3</u> Information exempted by statutes 50 U.S.C. § 403-1(i), 50 U.S.C. § 402 note and 18 U.S.C. § 798</p>	2 pages
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Legend

- DOJ – Department of Justice
- OAG – Office of the Attorney General
- ODAG – Office of the Deputy Attorney General
- OLA – Office of Legislative Affairs
- OLP – Office of Legal Policy
- OLC – Office of Legal Counsel
- NSD – National Security Division
- CIV – Civil Division
  
- EB – Executive Branch
- ODNI – Office of the Director of National Intelligence
- WHO – White House
- NSA – National Security Agency
- CIA – Central Intelligence Agency
- SSCI – Senate Select Committee on Intelligence
- SJC – Senate Judiciary Committee
- FISA – Foreign Intelligence Surveillance Act
- PAA – Protect America Act