



Homeland Security

April 30, 2009

SENT VIA E-MAIL TO: MARCIA@EFF.ORG

Mr. Marcia Hofmann
Electronic Frontier Foundation
454 Shotwell Street
San Francisco CA 94110-1914 USA

Re: **DHS/OS/PRIV 08-440**

Dear Ms. Hofmann:

This is the final response to your Freedom of Information Act (FOIA) requests to the Department of Homeland Security (DHS), dated February 25, 2008, and seeking copies of all reports submitted by DHS to the Intelligence Oversight Board (IOB) pursuant to Section 2.4 of Executive Order 12863. Specifically, you requested reports submitted to the IOB since January 1, 2001.

Our search produced 56 pages of responsive records. Of those pages, I have determined that 11 pages are releasable in their entirety, 35 pages are partially releasable, and 10 pages are withheld in their entirety pursuant to the FOIA, 5 U.S.C. §§ 552 (b)(2)(high), (b)(5), (b)(6), (b)(7)(A), (b)(7)(C) and (b)(7)(E). Enclosed are 45 pages with certain information withheld, as described below:

Exemption 2(high) protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, to the extent that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency's activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing criminal law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions (2), 7(C), 7(D), and 7(E).

Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.


Exemption 7E protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or 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.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at http://www.dhs.gov/xlibrary/assets/FOIA_FedReg_Notice.pdf; Internet; accessed 30 April 2009.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. As a media requester, you are responsible for the cost of duplication only in excess of 100 pages. Therefore, there is no charge associated with this response. As such, your request for a fee waiver is moot.

If you have any questions regarding this response, you may contact this office at 866-431-0486 or 703-235-0790. Please reference **DHS/OS/PRIV 08-440** in any future correspondence with this office.

Sincerely,



Vanita T. Lockett
Associate Director, Disclosure & FOIA Operations

Enclosures: As stated, 45 pages