

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

_____)	
ELECTRONIC FRONTIER FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Civil A. No. 4:09-cv-03351-SBA
)	
CENTRAL INTELLIGENCE AGENCY, et al.)	
)	
Defendant.)	
_____)	

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section ("RIDS"), Records Management Division ("RMD"), formerly at Federal Bureau of Investigation Headquarters ("FBIHQ") in Washington, D.C., and currently relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act ("FOIA") policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 237 employees who staff a total of ten (10) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests

for access to Federal Bureau of Investigation ("FBI") records and information pursuant to the FOIA; Privacy Act of 1974; Executive Order 12958, as amended; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's responses to the two FOIA requests which have been made by plaintiff EFF: plaintiff's February 25, 2008 FOIA request seeks access to records pertaining to all reports submitted by the FBI to the Intelligence Oversight Board ("IOB") from January 1, 2001 to the date of the request that have not been released to EFF in response to previous FOIA requests. In addition, plaintiff's June 19, 2008, FOIA request seeks access to all reports submitted to the IOB from February 25, 2008 to February 29, 2008 under Executive Order 12863 as well as all reports submitted to IOB or to the Director of National Intelligence ("DNI") pursuant to Executive Order 12333 from February 29, 2008 to the date of the request.

(4) The purpose of this declaration is to provide the Court and plaintiff with an overview of the FBI's efforts to respond to FOIA requests generally, and plaintiff's FOIA requests in particular, along with an explanation for the timing of the FBI's response to plaintiff's FOIA requests. As of this date, the FBI has identified approximately 81,000 pages of documents

potentially responsive to both requests. As a result, the FBI is submitting this declaration in support of a stay of proceedings in order to allow it to address and process plaintiff's two requests. As the FBI will discuss in further detail below, plaintiff's two requests will be assigned for processing in approximately 18 months and 24 months, respectively (based on the date of receipt by the FBI). This is the amount of time the FBI anticipates it will take for the two requests to rise to the top of the FBI's "large queue" backlog, respectively. Once each of the requests has been assigned for processing, the FBI anticipates it will be able to process and produce non-exempt documents on a rolling basis, with a completion date of approximately May 6, 2014.² As a result, the overall stay requested by the FBI to complete processing is 54 months - - (54 months for the first request and 42 months for the second request).

(5) During the processing phase, the FBI will review the universe of potentially responsive documents to determine whether they indeed fall within the scope of the two requests. It is possible that the actual number of responsive pages -- and the total number of pages to be processed -- may be reduced at that time. As a result, it is possible that the FBI will be able to complete its response more quickly than is currently anticipated. The FBI will advise the Court and plaintiff promptly as to any significant changes -- including reductions -- in its current

¹ In order to ensure fairness to all requesters and to administer equitably the deluge of FOIA/Privacy Act requests received by the FBI, a request is assigned based on the date of receipt on a "first in/first out" basis from within each of three queues ["small queue" -- less than 500 pages; "medium queue" -- 501 pages - 2500 pages; and "large queue" -- 2501 pages and more] according to sound administrative practices.

² This date is based on the date which the FBI anticipates that it will complete the process of scanning all potentially responsive documents into electronic format and both requests will be forwarded to the "perfected case" "large queue" backlog -- on or about November 6, 2009.

estimates of time required to process the documents potentially responsive to the two requests.

CORRESPONDENCE RELATED TO PLAINTIFF'S FOIA REQUESTS

(6) By letter dated February 25, 2008 addressed to FBIHQ, plaintiff, through Staff Attorney Marcia Hofmann, submitted a FOIA request for "all reports submitted by the Federal Bureau of Investigation to the Intelligence Oversight Board ('IOB') pursuant to Section 2.4 of Executive Order 12863." Plaintiff specified that it was seeking "all such reports submitted to the IOB since January 1, 2001 that have not been released to EFF in response to previous FOIA requests." (**See Exhibit A**).

(7) By letter dated March 21, 2008, the FBI acknowledged receipt of plaintiff's FOIA request, and assigned it FOIPA No. 111083-000. (**See Exhibit B**).

(8) By letter dated June 2, 2008, the FBI provided a status update to plaintiff advising that "the FBI was currently searching for, retrieving, scanning and evaluating files that may be responsive to your request." (**See Exhibit C**).

(9) By letter dated September 3, 2008, the FBI provided an additional status update to plaintiff. (**See Exhibit D**).

(10) By letter dated October 15, 2008, the FBI sent a "no record" letter to plaintiff, advising that a search of the automated and manual indices revealed no records responsive to plaintiff's FOIA request. (**See Exhibit E**).

(11) By letter dated December 8, 2008, the FBI provided a status update to plaintiff. (**See Exhibit F**). The FBI has provided additional status updates to plaintiff in letters dated March 13, 2009 (**see Exhibit G**), and June 11, 2009 (**see Exhibit H**).

(12) By letter dated June 19, 2009 addressed to FBIHQ, plaintiff, through Open Government Legal Fellow Nathan Cardozo, submitted a FOIA request for:

- 1). All reports submitted to the Intelligence Oversight Board ("IOB") pursuant to Section 2.4 of Executive Order 12863 from February 25, 2008 to February 29, 2008.³ [Quote from Executive Order omitted].
- 2). All reports submitted to IOB or the Director of National Intelligence ("DNI") pursuant to Section 1.7(d) of Executive Order 12333 from February 29, 2008 to the present. [Quote from Executive Order omitted].
- 3). All reports of any assessments or reviews of intelligence activities by the President's Intelligence Advisory Board ("PIAB") to the FBI pursuant to Sec. 4(a)(ii) of Executive Order 13462 from February 29, 2008 to the present.
- 4). All recommendations concerning intelligence matters identified by the PIAB to the FBI pursuant to Sec. 4(b) of Executive Order 13462 from February 29, 2008 to the present.
- 5). All reports and recommendations by the IOB to the FBI pursuant to Sec. 6(c) of Executive Order 13462 concerning the performance of the FBI under Executive Order 13462 from February 29, 2008 to the present.
- 6). All records containing information and all recommendations for corrective action submitted by the IOB to the FBI pursuant to Sec. 6(d) of Executive Order 13462 from February 29, 2008 to the present.
- 7). All requests for investigations of intelligence activities by the IOB to the FBI and reports by the FBI to the IOB of the results of those investigations pursuant to Sec. 6(e) of Executive Order 13462 from February 29, 2008 to the present.

³ Plaintiff referenced its prior request, 1110883-000, attached a copy, and requested that this request be combined with its prior request "[i]f it is convenient."

8). All reports made by the FBI to the IOB or PIAB pursuant to Sec. 8(c) of Executive Order 13462, concerning the reasons for not implementing a PIAB or IOB recommendation from February 29, 2008 to the present.

(See Exhibit I).

(13) By letter dated June 23, 2009, the FBI acknowledged receipt of plaintiff's FOIA request, and assigned it FOIPA No. 1132975-000 (See Exhibit J).

SEARCH FOR RECORDS RESPONSIVE TO PLAINTIFF'S REQUESTS

(14) In response to plaintiff's February 25, 2008 request to FBIHQ, the FBI conducted a search of the FBIHQ indices to the Central Records System ("CRS") to identify all potentially responsive files indexed under the Intelligence Oversight Board, IOB, Intelligence Oversight Board Matters, IOB Matters, Presidential Oversight Board, PIAB, Presidential Oversight Board Matters and PIAB Matters. As a result of this search, the FBI did not initially identify responsive records, and therefore sent plaintiff a "no record" response.

(15) RIDS next generated and sent two Electronic Communications ("ECs"), dated September 10, 2008 and April 17, 2009, respectively, to those offices at FBIHQ most likely to possess potentially responsive documents. The ECs requested each office to conduct a thorough search for any and all documentation in its possession that may be responsive to plaintiff's FOIA requests. The Office of the General Counsel ("OGC") identified numerous potentially responsive documents

(16) In response to plaintiff's June 19, 2009 request to FBIHQ, an EC dated July 7, 2009, was submitted to those offices at FBIHQ most likely to possess potentially responsive documents. This EC similarly requested that each office conduct a thorough search for any and

all documentation in its possession that may be responsive to plaintiff's FOIA requests. In response to this EC, the National Security Law Branch ("NSLB") in OGC identified numerous potentially responsive documents.

(17) In addition to its efforts to conduct a search via ECs, RIDS conducted a second search of the CRS and located two potentially responsive files. These files have been retrieved from their location and will be added to those documents located in response to the ECs.

(18) As a result of these search efforts, which are now complete, a total of approximately 81,000 pages potentially responsive to plaintiff's two requests have been located. The potentially responsive documents will be scanned into electronic format and the FBI anticipates both requests to be forwarded to the "perfected case" backlog on or about November 6, 2009.⁴ Based on the page count of approximately 81,000 pages, both of plaintiff's requests will be in the large queue of the "perfected case" backlog.

(19) Based on the date of plaintiff's first request – February 25, 2008 – there are approximately ten (10) requests (consisting of a total of approximately 59,100 pages) pending ahead of plaintiff's request in the large queue. The FBI anticipates that the earliest plaintiff's request will be assigned to a RIDS Disclosure Unit for processing in approximately 18 months -- on or about May 6, 2011 -- which is the estimated time it will take for this request to rise to the

⁴ A request is considered "perfected" when all administrative tasks have been completed and all responsive documents have been scanned into the FOIPA Document Processing System ("FDPS"), as explained further infra.

top of the "large queue."⁵ Once the request is assigned for processing, the FBI will be able to review, process and release non-exempt pages on a rolling basis, and at this time anticipates that it will require a total of an additional approximately 36 months to complete processing of all documents responsive to this request -- until on or about May 6, 2014.

(20) Based on the date of the plaintiff's second request -- June 19, 2009 -- there are approximately 86 requests (consisting of a total of approximately 647,624 pages) pending ahead of plaintiff's request in the large queue. The FBI anticipates that the earliest plaintiff's request will be assigned to a RIDS Disclosure Unit for processing is in approximately 24 months -- on or about November 5, 2011-- which is the estimated time it will take for this second request to rise to the top of the "large queue." Once the request is assigned for processing, the FBI will be able to review, process and release non-exempt pages on a rolling basis, and at this time anticipates that it will require a total of approximately 18 months to complete processing of all documents responsive to this request -- until on or about May 4, 2013.

HOW A FOIA REQUEST IS ADDRESSED BY RIDS

(21) Over the years, FOIA management at FBIHQ has continuously re-engineered the process of responding to FOIA/Privacy Act requests in an effort to better serve the needs of requesters who seek information from the FBI. In 2002, reorganization of various divisions at FBIHQ resulted in the formation of the RMD, which now handles all FOIA/Privacy Act requests

⁵ In the event that the FBI and/or DOJ grants a subsequent request for expedited processing, that request is moved to the front of the backlog queue. As a result, a request which has been granted expedition could conceivably jump ahead of plaintiff's request as would any perfected request with a date antecedent to that of plaintiff's.

through the RIDS. These most recent re-engineering efforts have resulted in a new organizational plan which will be discussed in more detail below.

(22) The mission of RIDS is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information. RIDS provides program and policy management that pertains to the research, review, analysis, processing, and classification/declassification work related to the FOIA and Privacy Act; Executive Order 12958, as amended; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. RIDS also provides prepublication review of material written by current and/or former FBI employees concerning FBI matters as mandated by the FBI's employment agreement, executes the FBI's historic declassification program, and assists in managing defense discovery efforts in large counterterrorism criminal trials. RIDS currently employs approximately 237 personnel, most of whom are Legal Administrative Specialists ("LASs"), and who are assigned among the 12 units within RIDS. RIDS employees intake, review, process, and release information in response to FOIA and Privacy Act requests. To accomplish this mission, RIDS consists of the following 12 Units: one Service Request Unit ("SRU"), two Work Process Units ("WPU"), three Classification Units ("CU"), five FOIPA Units ("FOIPA Disclosure Units"),⁶ and the Litigation Support Unit ("LSU").

(a) Service Request Unit: the Service Request Unit ("SRU") includes the Negotiation Team, which works with individuals whose requests generate a large volume of

⁶ Two of the five FOIPA Disclosure Units operate at off-site locations in Savannah, Georgia and Butte, Montana.

records in an attempt to narrow the scope of responsive records and facilitate a more rapid response. Since 1995, this team has eliminated over 13 million pages from FOIA/Privacy Act requests. The Unit also has a RIDS Public Information Official, who is responsible for assisting requesters with issues concerning their request. The Government Response Team ("GRT"), also a part of SRU, provides timely feedback to other federal agencies and other DOJ components with regard to referrals of documents which are either FBI-originated or contain FBI-originated information.⁷ Referred documents are sent to the FBI for consultation or for direct response to the requester. Finally, SRU handles administrative appeals.

(b) Work Process Units

(i) The two Work Process Units ("WPU") are responsible for reviewing and sorting all correspondence/incoming requests for information from the public, Congress, Presidential Libraries, foreign governments, other federal and state agencies, and other FBI entities (*i.e.*, FBI field offices, Legats). The WPU handle various initial tasks required to "perfect" a FOIA/Privacy Act request, including sending letters to acknowledge requests, advising a requester to provide identifying data so that an accurate records search can be made and/or to submit a notarized signature/Privacy Act waiver, and advising a requester when no responsive records are located. The WPU also open new requests, assign a FOIA/Privacy Act ("FOIPA") Request Number, and enter the perfected requests into the FDPS tracking system.

⁷ The Government Response Team ("GRT") was formerly known as the "Government Response and Prepublication Review Unit." However, an internal reorganization resulted in shifting the GRT and its functions to the SRU, and a shift of the Prepublication Review Team to the RIDS front office.

The WPU's are responsible for preparing "perfected" requests for transfer to the four FOIPA Disclosure Units. As previously explained, a request is considered "perfected" when all administrative tasks have been completed and all responsive documents have been scanned into FDPS. Once a request has been perfected, it is placed in the backlog for assignment to a FOIPA Disclosure Unit for processing. The WPU's conduct searches of the general indices for identifiable records, confirm responsive documents, stamp files for retention, address fee issues (other than fee waiver reviews), retrieve and forward files for scanning into FDPS, respond to status inquiries, and maintain requests prior to their transfer to the FOIPA Disclosure Units.

(ii) After the WPU's perfect a request, it is sent to the "perfected backlog." To ensure fairness to all requesters and to equitably administer the deluge of FOIA/Privacy Act requests received by the FBI, a request is assigned based on the date of receipt on a "first in/first out" basis from within each of three queues according to sound administrative practices.⁸ The FBI uses a three-queue system as a way to fairly assign and process new requests.⁹ The three-queue system established "multi-track" processing for requests, based on the amount of time and work involved in handling a particular request.¹⁰ The system nevertheless preserves the principle that, within the three queues, requests are still assigned and processed on a first-in/first out basis. The placement of a request in one of the three queues depends on the

⁸ See 28 C.F.R. § 16.5(a).

⁹ This system went into effect on July 10, 1997, superseding the previous system of two queues (one for 100 pages or less, the other for requests greater than 100 pages).

¹⁰ See 5 U.S.C. § 552(a)(6)(D)(I) and 28 C.F.R. § 16.5(b).

total amount of material responsive to that request - 500 pages or less ("small queue"), 501 to 2,500 pages ("medium queue"), or more than 2,500 pages ("large queue"). This standard operating procedure, coupled with the FBI's "first in/first out" policy, permits requests to be addressed in the order in which they are received, while obviating the inequities to other requesters whose interests relate only to a small number of documents. As described earlier, individuals whose requests have been placed in the large queue are given the opportunity, through contact with SRU's Negotiation Team, to reduce the scope of their requests and accelerate assignment of their requests by relocating them to a more advantageous queue.

(c) Classification Units: The three Classification Units ("CUs") are responsible for complying with the classification/declassification review of FBI records under Executive Order 12958, as amended, and for conducting mandatory declassification review consistent with Executive Order 12958, as amended, and for conducting mandatory declassification review consistent with Executive Order 12958, as amended. The CUs review documents responsive to FOIA/Privacy Act requests, criminal and civil discovery requests, Congressional and Presidential mandates, Presidential Library requests, mandatory declassification requests, Office of Inspector General Reports, and other federal agency requests in order to determine whether such material should remain classified or be declassified. In addition, the CUs review and prepare classified material for review by the Department of Justice Review Committee ("DRC").¹¹

(d) FOIPA Disclosure Units: The five FOIPA Disclosure Units perform the

¹¹ The DRC is the FBI's appellate authority with regard to the implementation and administration of Executive Order 12958, as amended, and related directives and guidelines concerning classified information. See 28 C.F.R. § 17.14.

actual processing of records pursuant to the provisions of the FOIA and Privacy Act.

"Processing" involves a page-by-page, line-by-line review of the responsive documents to determine which, if any, FOIA and/or Privacy Act exemptions may apply. This includes redaction of the exempt material and notation of the applicable exemption(s) in the margin of each page and/or preparation of deleted page information sheets when pages are withheld in their entirety, which is now done electronically in FDPS. During the course of their review, the FOIPA Disclosure Units consult with other government agencies, as necessary, for their determination as to the releasability of the other agency's information contained within FBI records, or refer non-FBI documents to those originating agencies for processing and direct response to the requester. The FOIPA Disclosure Units ensure that FOIA and/or Privacy Act exemptions have been applied properly, no releasable material has been withheld, no material meriting protection has been released, all necessary classification reviews have been completed by transferring applicable cases to the CUs, and other government agency information and/or entire documents originating with other government agencies have been properly handled.

(e) Litigation Support Unit: The Litigation Support Unit ("LSU") is responsible for providing legal support and administrative assistance to the FBI's Office of the General Counsel and Chief Division Counsels and Assistant Division Counsels in the FBI's field offices, in all FOIA/Privacy Act requests that result in federal litigation. The LSU coordinates the progress of the FBI's response to a particular FOIA/Privacy Act request as it progresses through the units described above, the receipt of substantive litigation-related information from involved FBI Special Agents ("SAs") in the field offices and operational Divisions at FBIHQ, and the

referral of documents to other DOJ components and/or government agencies. The LSU prepares the administrative record, drafts both procedural and substantive declarations, codes documents processed by the FOIPA Disclosure Units,¹² and drafts detailed declarations justifying the assertion of all applicable FOIA/Privacy Act exemptions.

(23) To promote administrative efficiency, LASs work on more than one request at a time. Certain cases may require that the usual processing be halted midstream. This can occur for a variety of reasons, including the resolution of classification issues, the location of additional records, or consultation with other government agencies as to the nature and propriety of releasing certain information. In the interest of efficiency during this waiting period, the LAS may fully process other requests. Large requests are often processed on parallel tracks with smaller requests in an attempt to ensure that one requester does not consume a disproportionate share of RIDS resources.

(24) Consistent with standard administrative procedure, any records referred to the FBI from other DOJ components or other government agencies in response to a particular request are added to that pending FOIA/Privacy Act request. This process is an equitable way for RIDS to

¹² A coded format is used in cases to assist the Court and parties in reviewing information which the FBI withholds within the context of processed documents. Each instance of information withheld pursuant to the FOIA is accompanied by a coded designation that corresponds to specified categories. For example, if "(b)(7)(C)-1" appears on a document, the "(b)(7)(C)" designation refers to Exemption (b)(7)(C) of the FOIA, which concerns "Unwarranted Invasion of Privacy." The numerical designation "-1" following the "(b)(7)(C)" narrows the main category to the more specific subcategory of "Names and/or Identifying Data of Third Parties Merely Mentioned." Although adding codes is a time-consuming process, it helps the Court and the parties in those jurisdictions that accept coded declarations to explain more clearly the nature of the withheld material.

maintain administrative control of FOIA/Privacy Act requests. Under this system, the same LAS assigned to process a particular request will also handle the review of records referred by other DOJ components or government agencies. By ensuring continuity in the processing of FOIA requests, this system is not only fair to all persons seeking information under the FOIA, but is also administratively efficient.

HISTORICAL OVERVIEW OF THE FBI'S FOIA/PRIVACY ACT BACKLOG

(25) By way of historical background, the number of FOIA and Privacy Act requests received by the FBI increased dramatically during the early 1980s. The Freedom of Information and Privacy Acts ("FOIPA") Section [the predecessor to RIDS] began processing requests in 1975. Initially overwhelmed by the number of requests, by 1981 the FBI had achieved a steady backlog between 4,000-7,000 requests. Beginning in 1985, the unavailability of additional employees and a steady, large stream of new requests increased the backlog substantially until in 1996 there were in excess of 16,000 requests. In 1996, the median time for a pending request was in excess of three years.

(26) During the years that the backlog continued to grow, the FBI repeatedly sought additional funding for the creation of new FOIA/Privacy Act positions. For example, Congress appropriated funds in the 1997 fiscal year budget providing for 129 additional employees, and in the 1998 fiscal year budget providing for 239 additional employees. In 2002, RIDS moved to paperless processing through its FOIPA Document Processing System ("FDPS"). The FDPS allows the user to scan FBI files, documents, and correspondence, and enables the user to process pages electronically rather than manually. RIDS is now using this system to process virtually all

of its FOIA/Privacy Act requests. The new process required the FBI to redistribute some of its FOIPA personnel to other sections within RMD in order to support the scanning and archival services necessary for automated processing. Despite an additional reduction of RIDS personnel to support the war on terrorism following September 11, 2001, the new efficiencies allowed the FBI to make great strides in reducing further its FOIA/Privacy Act backlog. For example, requests at RIDS in various stages of processing between December 31, 1996 and December 31, 2006, dropped from 16,244 to 1,672, resulting in a reduction of 14,572 requests. The median time for a pending request dropped from 1,160 days on December 31, 1996, to 156 days on December 31, 2006.

(27) During 2006, there was an increase in requests, up from an average of 911 per month in 2005 to an average of 1,277 per month. Despite this increase, the FBI met or surpassed its primary goal of reducing the time required to process requests. The median time for processing small queue requests (less than 500 pages) decreased by 10% and the median time for processing medium queue requests (501 pages-2500 pages) decreased by 16%. However, the median time for the processing of large queue requests (over 2500 pages) increased by 22%. This increase was due to a concerted effort to reduce the backlog of the older, larger cases. This effort resulted in the number of pending large queue requests decreasing from 122 to 51.

(28) During 2007 to 2008, the FBI continued towards its primary goal of reducing the time required to process requests. By December, 2008, the median time for a pending request at the FBI was 82 days. In 2009, the dynamics of processing requests changed substantially. On March 19, 2009 the Attorney General provided new guidelines for processing FOIA requests.

Included in the guidelines was direction that agencies streamline the process for requesters. In consultation with the Department of Justice, the FBI determined that it should no longer adhere to the requirements set forth in 28 C.F.R. Sections 16.3(a) and 16.41(a), the "field office rule" in order to comply with the new guidelines. Subsequent to the March 19, 2009 request to any FBI office for records, the FBI will search for and process FBI records no matter where located. In addition, the FBI conducted new searches for every request that was pending on the effective date. This new policy had an immediate impact on the number of pages required to be processed by the FBI. The number of responsive requests rose 20 percent. The size of each request increased by 30 percent. By August, 2009 the increase in the number of pending pages exceeded the total number of pages processed in 2008.

(29) The FBI immediately responded to the dramatic increase of new work. In September 2009 the FBI converted 33 employees at two operational service centers to perform FOIA redaction reviews. In addition, in October 2009, the FBI hired 30 contractor employees to perform WPU functions, thereby freeing additional FBI LASs to perform FOIA review and processing work. Both contractors and FBI employees are currently undergoing training. By March 2010, the FBI anticipates that these individuals will have sufficient training and experience to assist in reducing the pending backlog at FBI.

(30) RIDS has taken all possible steps -- using available technologies -- to aid in the streamlining and reduction of the FOIA/Privacy Act backlog. These include the use of direct on-line computer searches to locate responsive records, the use of forms which eliminate delays associated with word processing, the formation of specific teams to target backlog issues, the

development of alternative methods to handle consultations with other government agencies, and the formation of the RIDS FOIPA Litigation Support Unit ("LSU"), which handles all FOIA/Privacy Act litigation. RIDS has a FOIPA Process Board and an Information Technology Change Management Board to improve existing processes, including the use of information technology enhancements to the existing automated processing system. These boards provide a systematic methodology to implement continuous process improvement for the future.

(31) Currently, the FBI is taking two steps to update its technology and facilities that will in the future reduce dramatically the amount of time it takes the FBI to respond to FOIA and Privacy Act requests: (a) development of the electronic investigative case file (the Sentinel Project); and (b) establishment of an FBI Central Records Complex. The Sentinel Project is an on-going, multi-year project that will result in the elimination of paper investigative case files. With an embedded Records Management Application ("RMA"), FBI employees will be able to search for and retrieve these records electronically. Concurrently, the FBI has begun the process of designing and building a new, state-of-the art Central Records Complex ("CRC") in Frederick County, Virginia. This initiative will consolidate all closed FBI paper records from more than 265 different storage locations to one central site. When requested, paper records will be scanned and forwarded electronically. These initiatives will significantly improve RIDS's search and record retrieval capabilities by increasing search accuracy, by decreasing search time, by reducing lost files and missing serials, and by eliminating the manual movement of files. RIDS expects these initiatives, after they are fully implemented, to reduce by 40% the time required to process a FOIA/Privacy Act request. RIDS has moved to an interim facility in Frederick

County, Virginia, to recruit and train new employees in anticipation of the construction of the CRC. While this move is essential to future FBI FOIA/Privacy Act operations, it has created significant strains on the FBI's FOIA/Privacy Act resources.

SPECIFIC STRAINS ON RIDS RESOURCES

(32) Three significant factors have further impacted the FBI's ability to process recently located records: (a) the physical relocation of the Section's personnel and resources from FBIHQ to the interim facility in Frederick County, Virginia, which has had a significant impact on the section; (b) numerous competing litigation and administrative deadlines; and (c) addressing pending administrative appeals.

Winchester, Virginia Relocation

(33) RIDS began relocation of its operations from FBIHQ to Winchester, Virginia in February 2006 by establishing an advance team to prepare for the eventual relocation of RIDS in incremental stages. Beginning in the summer of 2006, RIDS began relocating its functions to the interim facility ("ICRC"). This transition continued until October of 2008, when all units completed their relocation to Frederick County, Virginia. As a direct result of this relocation, numerous seasoned RIDS employees chose to retire or find other employment rather than relocate to Winchester. Only 76 out of 211 employees who had worked at FBIHQ now remain with the section. Over 60 percent of the section has less than five years experience. As a result of the FBI's aggressive and intensive recruitment and hiring effort in the Frederick County, Virginia area, RIDS has been able to bring on-board 161 new employees, 54 of whom have less than one year of experience with FOIA.

(34) The new RIDS employees who have less than one year of experience are in various stages of professional development, but none are yet operating as experienced employees. It takes an average of three years to adequately train a new employee in the FOIA/Privacy Act process to be able to work independently in a productive, efficient, and effective manner. Accordingly, RIDS has only a limited number of experienced employees processing FOIA/Privacy Act requests at this time.

Pending FOIA Litigations

(35) Simultaneously with the resource drain caused by RIDS' relocation to Winchester, Virginia, the FBI has been faced with a significant FOIA litigation workload. Several pending litigations are document-intensive and have required the devotion of significant resources in order to comply with agreed-upon litigation deadlines.

(36) For example, in Rosenfeld v. U.S. Department of Justice and U.S. Federal Bureau of Investigation, Civ. A. No. 07-3240-MHP, (N.D. Cal.), the FBI has just completed the re-processing of approximately 8,000 pages and is awaiting response from plaintiff regarding this material. In addition, the FBI is currently reprocessing several large cross-references and searching for additional records. In order to comply with these demands, several components of RIDS have realigned its personnel resources and have made a substantial commitment of resources to address these issues.

(37) In ACLU v. Department of Defense, et al., Civ A. No. 08-1003 (D.D.C.), the FBI, in an agreement reached with ACLU, has agreed to produce all FBI documents provided to the Inspector General's Office ("IG") that were used in the IG report referencing the treatment of the

detainees. The FBI has located and scanned approximately 14,300 pages of responsive documents into its processing system. The FBI is currently making monthly releases to the plaintiff. The FBI reasonably anticipates that RIDS employee resources will once again be strained to meet this agreement.

(38) In New York Civil Liberties Union v. United States Department of Justice, Civ. A. No. 08-CV-5674 (S.D.N.Y.), the FBI has agreed to review an additional approximately 51,000 pages of interviews in order to produce a sample of 200 interviews. These pages were spread across the country and located in each of the FBI's 56 field offices. These pages are to be processed and released by November 27, 2009. To meet this commitment, RIDS once again shifted the already strained employee resources.

(39) In Kisseloff v. Federal Bureau of Investigation, et al., Civ. A. No. 08-cv-391 (D.D.C.), the FBI is working to reach an agreement with plaintiff to produce the documents originally requested by the plaintiff. The FBI has offered to produce approximately 48,200 pages of responsive material. As of this date, the FBI is waiting for a response to this counter-offer. This number could increase if this offer is not accepted by the plaintiff. The FBI reasonably anticipates that RIDS employee resources will once again be strained to meet this agreement.

(40) In Forensic Justice Project, et al. v. Federal Bureau of Investigation, et al., 06-CV-1001 (D.D.C.), the FBI has located and scanned in approximately 206,452 pages of responsive documents. As of October 22, 2009, the FBI has released approximately 62,185 pages to plaintiff, consistent with the agreement reached between the parties in this pending litigation. Currently, 31 Disclosure Unit LASs are processing and releasing documents in this case on a

rolling basis. RIDS' employee resources will continue to be diverted in order to comply with the schedule agreed upon between the plaintiff and the FBI in this case.

Pending Administrative Requests and Appeals

(41) In addition to the numerous pending litigations, the same RIDS personnel who are addressing litigation deadlines have also had to address a high volume of administrative requests and appeals. Over the past seven years, the FBI has received, on average, 1,043 FOIA/Privacy requests per month. In FY 2009, the FBI received a total of 13,511 FOIA/Privacy Act requests. There are approximately 1,144,907 pages of responsive documents currently being processed by the FOIPA Disclosure Units and an additional approximately 796,867 pages of responsive documents in the "perfected" backlog awaiting assignment to a FOIPA Disclosure Unit for processing.

(42) RIDS personnel also work closely with the staff of the U.S. Department of Justice, Office of Information Policy ("OIP") to review and assist with OIP's responses and determinations regarding pending appeals. During 2006, the FBI received a total of 1,015 administrative appeals. As of September 30, 2009, the FBI and OIP had managed to reduce the backlog of pending administrative appeals to 126. While this number represents a significant decrease, it has required a diversion of personnel resources and has been achieved at the expense of an additional drain on the FBI's FOIA resources. Inevitably, the time spent by RIDS personnel assisting OIP in addressing these administrative appeals reduces the amount of time that they are able to devote for regular processing duties related to litigation as well as other pending FOIPA requests.

CONCLUSION

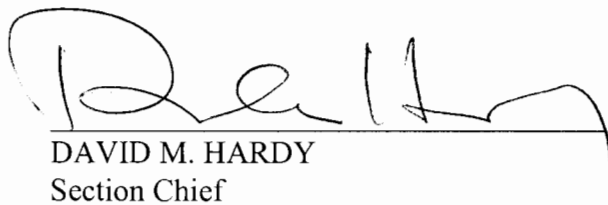
(43) The FBI takes its responsibilities with regard to the administration of the FOIA/Privacy Act program very seriously, and all reasonable efforts are being made to process requests in a timely manner. As explained above, the FBI has made tremendous strides in reducing its backlog over time. A reduction in pending requests has occurred even while the FBI continues to receive hundreds of new FOIA/Privacy Act requests. Nevertheless, the most equitable way to reduce the backlog and ensure that each request receives the attention it deserves is to process these requests based on the date of receipt according to sound administrative practices. It would be unfair to assign plaintiff's two requests for processing before other individuals whose requests were in the queue ahead of plaintiffs. Each court order which requires that one request be given priority ahead of the others invariably works to the detriment of the other patient requesters. This also encourages requesters to seek relief in the courts, thereby undermining the FBI's efforts to manage the thousands of FOIA/Privacy Act requests it receives annually in a fair and consistent fashion.

(44) The FBI has made significant strides in the allocation of limited personnel resources in order to comply with all of its court-ordered deadlines, as well as the reduction of its backlog of pending FOIA/Privacy Act requests and administrative appeals over time. Regrettably however, the immediate processing and satisfaction of FOIPA requests is not always possible. In this case, the continued search for potentially responsive documents, coupled with RIDS' resource constraints – further aggravated by the long-term effects of RIDS' relocation and competing litigation deadlines – necessitate the FBI's request for a stay of proceedings in this

case. As of this date, the FBI has identified approximately 81,000 pages of documents potentially responsive to both requests. Plaintiff's two requests will be assigned for processing in approximately 18 months and 24 months, respectively. Next, the FBI anticipates it will be able to process and produce non-exempt documents on a rolling basis over the course of the subsequent 36 months, with an overall completion date of both requests of approximately May 6, 2014. In the event the FBI determines that the universe of potentially responsive documents is reduced, the FBI will advise the Court and plaintiff promptly as to any modifications in its current estimates of time required to process the documents.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits **A** through **J** attached hereto are true and correct copies.

Executed this 21st day of October, 2009.

A handwritten signature in black ink, appearing to read "D Hardy", written over a horizontal line.

DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

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

ELECTRONIC FRONTIER FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Civil A. No. 4:09-cv-03351-SBA
)	
CENTRAL INTELLIGENCE AGENCY, et al.)	
)	
Defendant.)	

EXHIBIT A



February 25, 2008

BY FACSIMILE — (202) 324-3752

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue NW
Washington, DC 20535-0001

RE: Freedom of Information Act Request

Dear Mr. Hardy:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Federal Bureau of Investigation 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.

We are seeking copies of all reports submitted by the Federal Bureau of Investigation to the Intelligence Oversight Board ("IOB") pursuant to Section 2.4 of Executive Order 12863. That section provides, in pertinent part, as follows:

Inspectors General and General Counsel of the Intelligence Community, to the extent permitted by law, shall report to the IOB at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.¹

We seek all such reports submitted to the IOB since January 1, 2001, that have not been released to EFF in response to previous FOIA requests.

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 28 C.F.R. § 16.11(b)(6). In requesting this classification, we note that the Department of Homeland Security, National Security Agency, and Department of State have recognized that EFF qualifies as a "news media" requester, based upon the publication activities set forth below (see DHS stipulation, NSA letter, and State Department letter attached hereto). We further note that the U.S. Court of Appeals for

¹ The Federal Bureau of Investigation is a member of the "Intelligence Community." See <http://www.intelligence.gov/1-members.shtml>.

Freedom of Information Act Request

February 25, 2008

Page 2

the D.C. Circuit has stressed that “different agencies [must not] 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).

EFF is a non-profit public interest organization that works “to protect and enhance our core civil liberties in the digital age.”² One of EFF’s primary objectives is “to educate the press, policymakers and the general public about online civil liberties.”³ To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which received 46,682,194 hits in July 2007 — an average of 62,744 per hour. The web site reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

EFF has regularly published an online newsletter, the EFFector, since 1990. The EFFector currently has more than 77,000 subscribers. A complete archive of past EFFectors is available at <http://www.eff.org/effector/>.

Furthermore, EFF publishes a blog that highlights the latest news from around the Internet. DeepLinks (<http://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology. It also provides miniLinks, which direct readers to other news articles and commentary on these issues. DeepLinks had 510,633 hits in July 2007.⁴

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <http://www.eff.org/wp/>, provide information and commentary on such diverse issues as 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>

² Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited Feb. 1, 2008).

³ *Id.*

⁴ These figures include hits from RSS feeds through which subscribers can easily track updates to DeepLinks and miniLinks.

Freedom of Information Act Request
February 25, 2008
Page 3

-des.htm and for sale at Amazon.com.

Most recently, EFF has begun broadcasting 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/linenoiseogg.xml>. These podcasts were downloaded more than 2,600 times from EFF's web site in July 2007.

Request for a Public Interest Fee Waiver

EFF is entitled to a waiver of 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 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, the agency determines 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." 28 C.F.R. §§ 16.11(k)(1)(i), (ii). This request clearly satisfies these criteria.

First, the agency's submission of reports to the IOB clearly concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i).

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on the agency's interpretation of laws governing intelligence activities, and how well it conforms to those laws.

Third, the requested material will "contribute to public understanding" of how the agency interprets applicable laws and monitors internal compliance. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the agency's interpretation and use of legal authority, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Fourth, the disclosure will "contribute significantly" to the public's knowledge and understanding of how the agency seeks compliance with laws governing intelligence activities. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Disclosure of the requested information will help inform the public about the agency's actions, as well as contribute to the public debate about how intelligence activities should be conducted.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). EFF is a 501(c)(3) nonprofit

Freedom of Information Act Request
February 25, 2008
Page 4

organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x. 116. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,

A handwritten signature in black ink that reads "Marcia Hofmann". The signature is fluid and cursive, with the first name "Marcia" and last name "Hofmann" clearly distinguishable.

Marcia Hofmann
Staff Attorney

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER)
FOUNDATION)
)
Plaintiff,)
)
v.)
)
DEPARTMENT OF HOMELAND)
SECURITY,)
)
Defendant.)

Civil Action No. 06-1988 (ESH)

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.

/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

Counsel for Plaintiff

PETER D. KEISLER
Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

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

/s/ John R. Coleman
JOHN R. COLEMAN
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 6118
Washington, D.C. 20530
(202) 514-4505

Counsel for Defendant



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-8000

FOIA Case: 52276
6 February 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, NW
Suite 650
Washington, DC 20009

Dear Ms. Hofmann:

This is an initial response to your Freedom of Information Act (FOIA) request submitted via facsimile on 23 January 2007, which was received by this office on 24 January 2007, for all agency records (including, but not limited to, electronic records) related to the NSA's review of and input on the configuration of the Microsoft Windows Vista operating system ("Vista"). Your request has been assigned Case Number 52276.

As we began to process your request, we realized that the first page of the actual request was missing from your 18-page facsimile package. On 1 February 2007, a member of my staff contacted you to advise you of this fact. As a result, you submitted another facsimile of your original five-page request, which we received and have begun to process. There is certain information relating to this processing about which the FOIA and applicable Department of Defense (DoD) and NSA/CSS regulations require we inform you.

For purposes of this request and based on the information you provided in your letter, you are considered a representative of the media. Unless you qualify for a fee waiver or reduction, you must pay for duplication in excess of the first 100 pages. Your request for a fee waiver has been granted. In addition, please be advised your request for expedited treatment has been accepted. We are currently in the process of searching for responsive documents and will notify you of the status of your request as soon as that search has been completed.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office

FOIA Case: 52276

(DC34), 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248 or may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA office is 301-688-6527.

Sincerely,

for Marianne Stupac

PAMELA N. PHILLIPS
Chief
FOIA/PA Office



United States Department of State

Washington, D.C. 20520

May 1, 2007

Case Number: 200701765

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W., Suite 650
Washington, DC 20009

Dear Ms. Hofmann:

This is in response to your Freedom of Information Act (FOIA) request, dated March 19, 2007 for copies of documents concerning copyright matters between the U.S. and Canada.

We will begin the processing of your request based upon the information provided in your communication. We will notify you as soon as responsive material has been retrieved and reviewed.

We wish to advise you that the cut-off date for retrieving records is either the date you have given the Department by specifying a particular time frame or the date the search is initiated.

Fees: The Freedom of Information Act requires agencies to assess fees to recover the direct costs of processing requests, unless a fee waiver has been granted.

By making a FOIA request, you have agreed to pay all applicable fees up to \$25.00 unless a fee waiver has been granted. You may

Office of Information Programs and Services
U.S. Department of State SA-2
Washington, DC 20522-8100
Web site: foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
email: FOIAStatus@state.gov

- 2 -

specify a willingness to pay a greater or lesser amount. If the estimated fees exceed this limit, you will be notified.

Based upon the information that you have provided, we have placed you in the "news media" requester category. This category requires us to assess:

- duplication costs after first 100 pages.(see 22 CFR 171, enclosed)

Therefore, without an agreement to pay fees please be advised that your request will be processed without cost up to the required duplication of the first 100 pages.

Please let us know if you are willing to pay the fees that will incurred in the processing of your request. You may set a limit of the maximum amount that you wish to pay.

Based upon the information provided in your letter, your request for a fee waiver has been denied. If you wish to appeal this decision, you may write to the Chief, Requester Liaison Division, at the address given on the bottom of this page. Your appeal should address the points listed in the enclosed sheet entitled "Requests for Fee Waivers." Your appeal must be sent to us within 30 days from the date that you receive this letter.

While we will make every effort to meet the time limits cited in the Freedom of Information Act (5 USC § 552), unusual circumstances

Office of Information Programs and Services
U.S. Department of State SA-2
Washington, DC 20522-8100
Web site: foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
email: FOIAStatus@state.gov

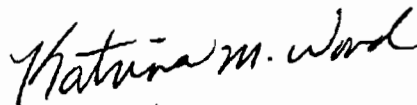
- 3 -

may arise for extending the time limit (see enclosure). We appreciate your patience in this matter.

If you have any questions, please do not hesitate to contact us. We can provide faster service if you include the case number of your request in your communications with us.

We are pleased to be of service to you.

Sincerely,



Katrina M. Wood
Requester Communications Branch

Enclosure: As stated.

Office of Information Programs and Services
U.S. Department of State SA-2
Washington, DC 20522-8100
Web site: foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
email: FOIAStatus@state.gov

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

_____)	
ELECTRONIC FRONTIER FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Civil A. No. 4:09-cv-03351-SBA
)	
CENTRAL INTELLIGENCE AGENCY, et al.)	
)	
Defendant.)	
_____)	

EXHIBIT B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 21, 2008

MARCIA HOFMANN ESQ
ELECTRONIC FRONTIER FOUNDATION
SUITE 650
1875 CONNECTICUT AVENUE NORTHWEST
WASHINGTON, DC 20009

Request No.: 1110883- 000
Subject: REPORTS, INTELLIGENCE
OVERSIGHT BOARD

Dear Requester:

- This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant to Title 28, United States Code 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- We are searching the indices to our central records system at FBI Headquarters for the information you requested, and will inform you of the results as soon as possible.
- Processing delays have been caused by the large number of requests received by the FOIPA. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your patience is appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over the signature line.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section

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

ELECTRONIC FRONTIER FOUNDATION)

Plaintiff,)

v.)

CENTRAL INTELLIGENCE AGENCY, et al.)

Defendant.)

Civil A. No. 4:09-cv-03351-SBA

EXHIBIT C



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

June 02, 2008

ESQ MARCIA HOFMANN
ELECTRONIC FRONTIER FOUNDATION
SUITE 650
1875 CONNECTICUT AVENUE NORTHWEST
WASHINGTON, DC 20009

Request No: 1110883-000
Subject: REPORTS, INTELLIGENCE
OVERSIGHT BOARD

Dear Requester:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D Hardy", is positioned above the typed name.

David M. Hardy
Section Chief,
Record/Information Dissemination Section
Records Management Division

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

ELECTRONIC FRONTIER FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Civil A. No. 4:09-cv-03351-SBA
)	
CENTRAL INTELLIGENCE AGENCY, et al.)	
)	
Defendant.)	

EXHIBIT D



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

September 03, 2008

ESQ MARCIA HOFMANN
ELECTRONIC FRONTIER FOUNDATION
SUITE 650
1875 CONNECTICUT AVENUE NORTHWEST
WASHINGTON, DC 20009

Request No: 1110883-000
Subject: REPORTS, INTELLIGENCE
OVERSIGHT BOARD

Dear Requester:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D Hardy", is positioned below the "Sincerely yours," text.

David M. Hardy
Section Chief,
Record/Information Dissemination Section
Records Management Division

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

ELECTRONIC FRONTIER FOUNDATION)

Plaintiff,)

v.)

CENTRAL INTELLIGENCE AGENCY, et al.)

Defendant.)

Civil A. No. 4:09-cv-03351-SBA

EXHIBIT E



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

October 15, 2008

MARCIA HOFMANN ESQ
ELECTRONIC FRONTIER FOUNDATION
SUITE 650
1875 CONNECTICUT AVENUE NORTHWEST
WASHINGTON, DC 20009

Request No.: 1110883- 000
Subject: REPORTS, INTELLIGENCE
OVERSIGHT BOARD

Dear Ms. Hoffman:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request noted above.

To promptly respond to requests, we concentrate on identifying main files in the central records system at FBI Headquarters. No records responsive to your FOIPA request were located by a search of the automated and manual indices.

You may file an administrative appeal by writing to the Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned below the "Sincerely yours," text.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure

FBI FILE FACT SHEET

- The primary function of the FBI is law enforcement.
The FBI does not keep a file on every citizen of the United States .
- **The FBI was not established until 1908 and we have very few records prior to the 1920's.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, foreign counter-intelligence, organized crime/drugs, violent crime, white-collar crime, applicants, and civil rights.
- **The FBI does not issue clearances or nonclearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should write directly to that entity.
- **An FBI identification record or "rap sheet" is NOT the same as an FBI "file"** - it is simply a listing of information taken from fingerprint cards submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI, CJIS Division, Attn: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Each request must have proof of identity which shall consist of **name, date and place of birth and a set of rolled-ink fingerprint impressions** placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies, plus **payment of \$18.00** in the form of a certified check or money order, payable to the Treasury of the United States.
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index to identify **any** information contained in FBI records that may be associated with an individual and provides the results of that search to the requesting Federal, State or local agency. For the NNCP, a name is searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine whether it is applicable to the individual in question.
- **The Record/Information Dissemination Section/Freedom of Information-Privacy Acts (FOIPA)** search for records provides copies of FBI files relevant to a FOIPA request for information. FOIPA provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject name, event, activity, business, or event is searched to determine whether there is an investigative file associated with the subject. This is called a "main file search" and differs from The **NNCP** search.

**FOR GENERAL INFORMATION ABOUT THE FBI,
CHECK OUT OUR WEBSITE AT
<http://www.fbi.gov>**

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

ELECTRONIC FRONTIER FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Civil A. No. 4:09-cv-03351-SBA
)	
CENTRAL INTELLIGENCE AGENCY, et al.)	
)	
Defendant.)	

EXHIBIT F



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 08, 2008

MARCIA HOFMANN, ESQ.
ELECTRONIC FRONTIER FOUNDATION
454 SHOTWELL STREET
SAN FRANCISCO, CA 94110

Request No: 1110883-000
Subject: REPORTS, INTELLIGENCE
OVERSIGHT BOARD

Dear Ms. Hofmann :

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned above the typed name of the sender.

David M. Hardy
Section Chief,
Record/Information Dissemination Section
Records Management Division

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

ELECTRONIC FRONTIER FOUNDATION)

Plaintiff,)

v.)

CENTRAL INTELLIGENCE AGENCY, et al.)

Defendant.)

Civil A. No. 4:09-cv-03351-SBA

EXHIBIT G



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 13, 2009

MARCIA HOFMANN, ESQ
ELECTRONIC FRONTIER FOUNDATION
SUITE 650
1875 CONNECTICUT AVENUE NORTHWEST
WASHINGTON, DC 20009

Request No: 1110883-000
Subject: REPORTS, INTELLIGENCE
OVERSIGHT BOARD

Dear Ms. Hofmann:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned below the "Sincerely yours," text.

David M. Hardy
Section Chief,
Record/Information Dissemination Section
Records Management Division

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

ELECTRONIC FRONTIER FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Civil A. No. 4:09-cv-03351-SBA
)	
CENTRAL INTELLIGENCE AGENCY, et al.)	
)	
Defendant.)	

EXHIBIT H



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

June 11, 2009

MARCIA HOFMANN, ESQUIRE
ELECTRONIC FRONTIER FOUNDATION
SUITE 650
1875 CONNECTICUT AVENUE NORTHWEST
WASHINGTON, DC 20009

Request No: 1110883-000
Subject: REPORTS, INTELLIGENCE
OVERSIGHT BOARD

Dear Ms. Hofmann:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned below the "Sincerely yours," text.

David M. Hardy
Section Chief,
Record/Information Dissemination Section
Records Management Division

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

ELECTRONIC FRONTIER FOUNDATION)

Plaintiff,)

v.)

CENTRAL INTELLIGENCE AGENCY, et al.)

Defendant.)

Civil A. No. 4:09-cv-03351-SBA

EXHIBIT I



ELECTRONIC FRONTIER FOUNDATION
Protecting Rights and Promoting Freedom on the Electronic Frontier

June 19, 2009

BY FACSIMILE — (540) 868-4995

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue NW
Washington, DC 20535-0001

RE: Freedom of Information Act Request

Dear Mr. Hardy:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Federal Bureau of Investigation ("FBI") 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.

We are seeking copies of all FBI records, including but not limited to electronic records, as follows:

1.) All reports submitted to the Intelligence Oversight Board ("IOB")¹ pursuant to Section 2.4 of Executive Order 12863 from February 25, 2008 to February 29, 2008.² That section provides, in pertinent part, as follows:

Inspectors General and General Counsel of the Intelligence Community, to the extent permitted by law, shall report to the IOB at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.³

2.) All reports submitted to the IOB or the Director of National Intelligence ("DNI") pursuant to Section 1.7(d) of Executive Order 12333 from February 29, 2008 to the present. That section, incorporated by reference by Section 8(b)(i)(A) of Executive Order 13462,⁴ provides that heads of departments shall "[r]eport to the Intelligence Oversight

¹ On February 25, 2008, EFF requested all reports submitted to the IOB from January 1, 2001 through the date of the request. If it is convenient, please feel free to combine this request with our prior request, request number 1110883-000, attached hereto for your reference.

² Executive Order 12863 was explicitly revoked by Executive Order 13462 on February 29, 2008.

³ The FBI is a member of the "Intelligence Community." See <http://www.intelligence.gov/1-members.shtml>.

⁴ Executive Order 13462, Section 8(b)(i)(A) provides that all heads of department shall ensure that the DNI receives "copies of reports submitted to the IOB pursuant to section 1.7(d) of Executive Order 12333[.]"

454 Shotwell Street • San Francisco, CA 94110 USA

voice +1 415 436 9333 fax +1 415 436 9993 web www.eff.org email information@eff.org

June 19, 2009

Page 2 of 4

Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.”

- 3.) All reports of any assessments or reviews of intelligence activities by the President’s Intelligence Advisory Board (“PIAB”) to the FBI pursuant to Sec. 4(a)(ii) of Executive Order 13462 from February 29, 2008 to the present.
- 4.) All recommendations concerning intelligence matters identified by the PIAB to the FBI pursuant to Sec. 4(b) of Executive Order 13462 from February 29, 2008 to the present.
- 5.) All reports and recommendations by the IOB to the FBI pursuant to Sec. 6(c) of Executive Order 13462 concerning the performance of the FBI under Executive Order 13462 from February 29, 2008 to the present.
- 6.) All records containing information and all recommendations for corrective action submitted by the IOB to the FBI pursuant to Sec. 6(d) of Executive Order 13462 from February 29, 2008 to the present.
- 7.) All requests for investigations of intelligence activities by the IOB to the FBI and reports by the FBI to the IOB of the results of those investigations pursuant to Sec. 6(e) of Executive Order 13462 from February 29, 2008 to the present.
- 8.) All reports made by the FBI to the IOB or PIAB pursuant to Sec. 8(c) of Executive Order 13462, concerning the reasons for not implementing a PIAB or IOB recommendation from February 29, 2008 to the present.

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 28 C.F.R. § 16.11(b)(6). In requesting this classification, we note that the National Security Agency, Department of Justice, Department of Homeland Security, and Department of State have recognized that EFF qualifies as a “news media” requester, based upon the publication activities set forth below (see NSA letter, DOJ letter, DHS stipulation, and State Department letter attached hereto). We further note that the U.S. Court of Appeals for the D.C. Circuit has stressed that “different agencies [must not] 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).

EFF is a non-profit public interest organization that works “to protect and enhance our core civil liberties in the digital age.”⁵ One of EFF’s primary objectives is “to educate

⁵ Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?>

June 19, 2009

Page 3 of 4

the press, policymakers and the general public about online civil liberties.”⁶ To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

EFF has regularly published an online newsletter, the EFFector, since 1990. The EFFector currently has more than 77,000 subscribers. A complete archive of past EFFectors is available at <http://www.eff.org/effector/>.

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

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <http://www.eff.org/wp/>, provide information and commentary on such diverse issues as 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.

Most recently, EFF has begun broadcasting 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/linenoiseogg.xml.

Request for a Public Interest Fee Waiver

EFF is entitled to a waiver of duplication fees because disclosure of the requested

npold=561625 (last visited June 12, 2009).

⁶ *Id.*

June 19, 2009

Page 4 of 4

information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, the agency determines 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.” 28 C.F.R. §§ 16.11(k)(1)(i), (ii). This request clearly satisfies these criteria.

First, the agency’s submission of reports to the IOB clearly concerns “the operations or activities of the government.” 28 C.F.R. § 16.11(k)(2)(i).

Second, disclosure of the requested information will “contribute to an understanding of government operations or activities.” 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on the agency’s interpretation of laws governing intelligence activities, and how well it conforms to those laws.

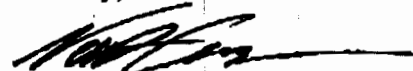
Third, the requested material will “contribute to public understanding” of how the agency interprets applicable laws and monitors internal compliance. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF’s understanding of the agency’s interpretation and use of legal authority, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Fourth, the disclosure will “contribute significantly” to the public’s knowledge and understanding of how the agency seeks compliance with laws governing intelligence activities. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Disclosure of the requested information will help inform the public about the agency’s actions, as well as contribute to the public debate about how intelligence activities should be conducted.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x. 136. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,



Nathan Cardozo

Open Government Legal Fellow

Enclosures



February 25, 2008

BY FACSIMILE — (202) 324-3752

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue NW
Washington, DC 20535-0001

RE: Freedom of Information Act Request

Dear Mr. Hardy:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Federal Bureau of Investigation 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.

We are seeking copies of all reports submitted by the Federal Bureau of Investigation to the Intelligence Oversight Board ("IOB") pursuant to Section 2.4 of Executive Order 12863. That section provides, in pertinent part, as follows:

Inspectors General and General Counsel of the Intelligence Community, to the extent permitted by law, shall report to the IOB at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.¹

We seek all such reports submitted to the IOB since January 1, 2001, that have not been released to EFF in response to previous FOIA requests.

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 28 C.F.R. § 16.11(b)(6). In requesting this classification, we note that the Department of Homeland Security, National Security Agency, and Department of State have recognized that EFF qualifies as a "news media" requester, based upon the publication activities set forth below (see DHS stipulation, NSA letter, and State Department letter attached hereto). We further note that the U.S. Court of Appeals for

¹ The Federal Bureau of Investigation is a member of the "Intelligence Community." See <http://www.intelligence.gov/1-members.shtml>.

Freedom of Information Act Request
February 25, 2008
Page 2

the D.C. Circuit has stressed that “different agencies [must not] 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).

EFF is a non-profit public interest organization that works “to protect and enhance our core civil liberties in the digital age.”² One of EFF’s primary objectives is “to educate the press, policymakers and the general public about online civil liberties.”³ To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which received 46,682,194 hits in July 2007 — an average of 62,744 per hour. The web site reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

EFF has regularly published an online newsletter, the *EFFector*, since 1990. The *EFFector* currently has more than 77,000 subscribers. A complete archive of past *EFFectors* is available at <http://www.eff.org/effector/>.

Furthermore, EFF publishes a blog that highlights the latest news from around the Internet. *DeepLinks* (<http://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology. It also provides *miniLinks*, which direct readers to other news articles and commentary on these issues. *DeepLinks* had 510,633 hits in July 2007.⁴

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <http://www.eff.org/wp/>, provide information and commentary on such diverse issues as 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>

² Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited Feb. 1, 2008).

³ *Id.*

⁴ These figures include hits from RSS feeds through which subscribers can easily track updates to *DeepLinks* and *miniLinks*.

Freedom of Information Act Request
February 25, 2008
Page 3

-des.htm and for sale at Amazon.com.

Most recently, EFF has begun broadcasting 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](http://www.eff.org/rss/linenoisemp3.xml) and [feed://www.eff.org/rss/linenoiscogg.xml](http://www.eff.org/rss/linenoiscogg.xml). These podcasts were downloaded more than 2,600 times from EFF's web site in July 2007.

Request for a Public Interest Fee Waiver

EFF is entitled to a waiver of 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 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, the agency determines 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." 28 C.F.R. §§ 16.11(k)(1)(i), (ii). This request clearly satisfies these criteria.

First, the agency's submission of reports to the IOB clearly concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i).

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on the agency's interpretation of laws governing intelligence activities, and how well it conforms to those laws.

Third, the requested material will "contribute to public understanding" of how the agency interprets applicable laws and monitors internal compliance. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the agency's interpretation and use of legal authority, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Fourth, the disclosure will "contribute significantly" to the public's knowledge and understanding of how the agency seeks compliance with laws governing intelligence activities. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Disclosure of the requested information will help inform the public about the agency's actions, as well as contribute to the public debate about how intelligence activities should be conducted.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). EFF is a 501(c)(3) nonprofit

06/19/2009 10:50 43699

EFF

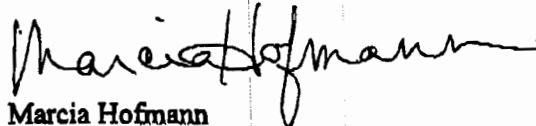
PAGE 09

Freedom of Information Act Request
February 25, 2008
Page 4

organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x. 116. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,



Marcia Hofmann
Staff Attorney

Enclosures



**NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE**
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 52276
6 February 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, NW
Suite 650
Washington, DC 20009

Dear Ms. Hofmann:

This is an initial response to your Freedom of Information Act (FOIA) request submitted via facsimile on 23 January 2007, which was received by this office on 24 January 2007, for all agency records (including, but not limited to, electronic records) related to the NSA's review of and input on the configuration of the Microsoft Windows Vista operating system ("Vista"). Your request has been assigned Case Number 52276.

As we began to process your request, we realized that the first page of the actual request was missing from your 18-page facsimile package. On 1 February 2007, a member of my staff contacted you to advise you of this fact. As a result, you submitted another facsimile of your original five-page request, which we received and have begun to process. There is certain information relating to this processing about which the FOIA and applicable Department of Defense (DoD) and NSA/CSS regulations require we inform you.

For purposes of this request and based on the information you provided in your letter, you are considered a representative of the media. Unless you qualify for a fee waiver or reduction, you must pay for duplication in excess of the first 100 pages. Your request for a fee waiver has been granted. In addition, please be advised your request for expedited treatment has been accepted. We are currently in the process of searching for responsive documents and will notify you of the status of your request as soon as that search has been completed.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office

FOIA Case: 52276

(DC34), 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248
or may be sent by facsimile to 443-479-3612. If sent by fax, it should be
marked for the attention of the FOIA office. The telephone number of the FOIA
office is 301-688-6527.

Sincerely,

Marianne Stepan
for

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

**U.S. Department of Justice****Office of the Inspector General**

July 22, 2008

Marcia Hoffman
Staff Attorney
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, California 94110

Subject: Freedom of Information/Privacy Act Request [08-OIG-164]

Dear Ms. Hoffman:

Your Freedom of Information Act (FOIA) request seeking records relating to the Federal Bureau of Investigation's use of National Security Letters was received in this office on July 21, 2008. We have assigned your request control number 08-OIG-164. Please cite this number in any future inquiry relating to your request.

You requested that we expedite your request pursuant to 28 C.F.R. § 16.5(d)(1)(ii), which provides that a request will be given expedited treatment if it is "made by a person primarily engaged in disseminating information" and the responding component determines that there is "[a]n urgency to inform the public about an actual or alleged federal government activity." The regulations further provide that in order to satisfy this provision a requestor must "establish a particular urgency beyond the public's right to know about government activity generally." Id. § 16.5(d)(3).

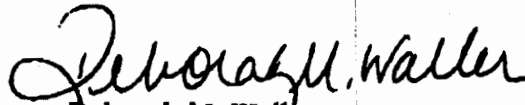
As support for your expedition request you state that "there is an urgency to inform the public about the information [you] seek." However, you have not explained the nature of this urgency beyond the public's general right to know. Accordingly, we are denying your request for expedition.

You have also requested a fee waiver on the basis of §16.11(b)(6) (representative of the news media) and §16.11(k) (public interest). We are granting your request for news media status and accordingly, you will not incur search fees in connection with your request. We will make

a determination regarding your request under §16.11(k) once we have completed our search for responsive documents and are in a better position to determine whether disclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government. We will inform you regarding our decision on this aspect of your fee waiver prior to incurring any expense that could be attributed to you.

If you are dissatisfied with my action regarding your request for expedited processing, you may appeal by writing to the Director, Office of Information and Privacy, U.S. Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530, within 60 days of the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,



Deborah M. Waller
FOI/PA Specialist

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC FRONTIER
FOUNDATION

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 06-1988 (ESH)

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.

/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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U.S. Department of Justice
Civil Division, Federal Programs Branch

/s/ John R. Coleman
JOHN R. COLEMAN
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U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 6118
Washington, D.C. 20530
(202) 514-4505

Counsel for Defendant



United States Department of State

Washington, D.C. 20520

May 1, 2007

Case Number: 200701765

**Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W., Suite 650
Washington, DC 20009**

Dear Ms. Hofmann:

This is in response to your Freedom of Information Act (FOIA) request, dated March 19, 2007 for copies of documents concerning copyright matters between the U.S. and Canada.

We will begin the processing of your request based upon the information provided in your communication. We will notify you as soon as responsive material has been retrieved and reviewed.

We wish to advise you that the cut-off date for retrieving records is either the date you have given the Department by specifying a particular time frame or the date the search is initiated.

Fees: The Freedom of Information Act requires agencies to assess fees to recover the direct costs of processing requests, unless a fee waiver has been granted.

By making a FOIA request, you have agreed to pay all applicable fees up to \$25.00 unless a fee waiver has been granted. You may

**Office of Information Programs and Services
U.S. Department of State SA-2
Washington, DC 20522-8100
Web site: foia.state.gov**

**Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
email: FOIAStatus@state.gov**

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EFF

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specify a willingness to pay a greater or lesser amount. If the estimated fees exceed this limit, you will be notified.

Based upon the information that you have provided, we have placed you in the "news media" requester category. This category requires us to assess:

- duplication costs after first 100 pages.(see 22 CFR 171, enclosed)

Therefore, without an agreement to pay fees please be advised that your request will be processed without cost up to the required duplication of the first 100 pages.

Please let us know if you are willing to pay the fees that will incurred in the processing of your request. You may set a limit of the maximum amount that you wish to pay.

Based upon the information provided in your letter, your request for a fee waiver has been denied. If you wish to appeal this decision, you may write to the Chief, Requester Liaison Division, at the address given on the bottom of this page. Your appeal should address the points listed in the enclosed sheet entitled "Requests for Fee Waivers." Your appeal must be sent to us within 30 days from the date that you receive this letter.

While we will make every effort to meet the time limits cited in the Freedom of Information Act (5 USC § 552), unusual circumstances

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U.S. Department of State SA-2
Washington, DC 20522-8100
Web site: foia.state.gov

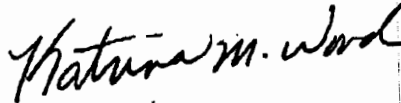
Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
email: FOIAStatus@state.gov

may arise for extending the time limit (see enclosure). We appreciate your patience in this matter.

If you have any questions, please do not hesitate to contact us. We can provide faster service if you include the case number of your request in your communications with us.

We are pleased to be of service to you.

Sincerely,



Katrina M. Wood
Requester Communications Branch

Enclosure: As stated.

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

_____)	
ELECTRONIC FRONTIER FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Civil A. No. 4:09-cv-03351-SBA
)	
CENTRAL INTELLIGENCE AGENCY, et al.)	
)	
Defendant.)	
_____)	

EXHIBIT J



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

June 23, 2009

MR. NATHAN CARDOZO
ELECTRONIC FRONTIER FOUNDATION
454 SHOTWELL STREET
SAN FRANCISCO, CA 94110

FOIPA Request No.: 1132975- 000
Subject: REPORTS, INTELLIGENCE
OVERSIGHT BOARD

Dear Mr. Cardozo:

- This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant 28 U.S.C. § 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- We are searching the indices to our Central Records System for the information you requested, and will inform you of the results as soon as possible.
- Processing delays have been caused by the large number of requests received by the FBI. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your request for a fee waiver is being considered, and you will be advised of its status at a later date. Your patience is appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "D Hardy", is written over the typed name.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division