

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

_____)	
ELECTRONIC FRONTIER FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:09-CV-03351
)	
CENTRAL INTELLIGENCE AGENCY, et al,)	
)	
Defendants.)	
_____)	

DECLARATION OF DIANE M. JANOSEK

I, Diane M. Janosek, hereby declare and state:

1. I am currently the Deputy Associate Director for Policy and Records for the National Security Agency (“NSA” or “the Agency”). I have served with NSA for ten years and, prior to my current assignment, I held various leadership positions throughout the Agency. As the Deputy Associate Director for Policy and Records, I am responsible for the processing of all requests made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Privacy Act (“PA”), 5 U.S.C. § 552a, for NSA records. Additionally, I am a TOP SECRET classification authority pursuant to section 1.3 of Executive Order 12958, as amended. Consequently, it is my responsibility to assert the FOIA/PA exemptions in the course of litigation. Through the exercise of my official duties, I have become familiar with the current litigation arising out of two requests for records filed by Plaintiff, Electronic Frontier Foundation.

2. The purpose of this declaration is to describe the steps NSA has taken in response to Plaintiff’s FOIA requests and the remaining actions to be taken in connection with that request.

In order to provide the necessary context for that discussion, I will describe NSA's origin and mission, NSA's policies and procedures for responding to FOIA requests, and the sensitivity and complexity of the information generally sought from NSA.

I. ORIGIN AND MISSION OF NSA

3. NSA was established by Presidential Directive in October 1952 as a separately organized agency within the Department of Defense. NSA's foreign intelligence mission includes the responsibility to collect, process, analyze, produce, and disseminate signals intelligence ("SIGINT") information, of which communications intelligence ("COMINT") is a significant subset, for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c) the support of military operations. See Executive Order 12333, Section 1.7(c), as amended.

4. There are two primary reasons for gathering and analyzing foreign intelligence information. The first, and most important, is to gain the information required to direct U.S. resources as necessary to counter threats. The second reason is to obtain the information necessary to direct the foreign policy of the United States. Foreign intelligence information provided by NSA is thus relevant to a wide range of important issues, including military order of battle; threat warnings and readiness; arms proliferation; terrorism; and foreign aspects of international narcotics trafficking.

II. NSA'S FOIA POLICY AND PROCEDURE

A. General Background

5. NSA responds to all written FOIA requests in compliance with the law and in a manner that is both fair and reasonable to each requester. In order to implement this policy, NSA has developed a "first-in, first-out" system for processing direct FOIA requests along with referrals from other agencies. Under this system, requests are categorized by complexity and placed in a queue in the order in which they are received by the Federal government. The requests are then pulled and assigned for processing in that order.

6. The NSA FOIA processing system utilizes a six-track variant of the first-in, first-out system. Under this system, the NSA FOIA Office maintains six queues – super easy, sensitive/personal easy, non-personal easy, sensitive/personal voluminous, non-personal complex, and expedite – and processes the requests within each queue in chronological order. 32 C.F.R. § 299.5(d).

7. When the NSA FOIA Office receives a properly submitted FOIA request, it assigns a case number to the request and logs the request into the Agency's FOIA database. A member of the FOIA Office then searches the database to determine if a prior request seeking similar information would help speed the processing of the current request. If no identical or similar case is found, the FOIA intake staff officers identify those organizations within the Agency that the staff believes are most likely to have responsive material. The staff then sends a search request or a search cost estimate to these organizations, depending on the requester's fee status. If a search cost estimate is conducted, then the FOIA officer must send out a fee letter and wait for the requester's agreement to pay, or the actual payment of, the associated fees.

8. Upon receiving a search request, each organization conducts a search for responsive documents. Each organization may further task subordinate offices to search for responsive records. Both electronic and paper searches for records are generally conducted for FOIA requests. If and when responsive records are located, they are forwarded to the FOIA Office. Upon receiving the records, the FOIA Office determines to which of the six aforementioned queues the request should be assigned. Queue assignment is based upon the volume, complexity, and classification level of the potentially responsive records. The request is then pulled from the queue on a first-in, first-out basis by a FOIA case officer.

9. When the FOIA case officer's review of the records begins, he or she conducts a line-by-line review of the records that have been forwarded. The case officer's review includes determining whether the records are in fact responsive to the request, whether the responsive records contain information that is exempt from disclosure, and whether any reasonably segregable non-exempt information exists in the responsive record. The FOIA unit is the sole organization in NSA that has a full-time staff specifically trained in and devoted to conducting the FOIA review process.

10. The NSA's FOIA staff, when necessary, coordinates with various Agency organizations, because NSA consists of numerous highly specialized and technical organizations. This coordination is often necessary because of the nature of NSA documents and materials, which are often understood by only a limited number of people within a respective organization. Even after coordinating with other NSA organizations, the FOIA staff ensures compliance with the requirements of the FOIA by conducting all final line-by-line reviews of responsive materials.

B. Processing Complications

11. There are numerous factors that inevitably complicate the processing of FOIA requests submitted to NSA. Generally, records at NSA are diverse and often highly specialized and complex. Moreover, these records frequently contain classified information with access permitted strictly on a need-to-know basis. Because many requests seek material that is classified, it is necessary to exercise extreme care in reviewing the information in order to protect highly sensitive national security information while ensuring that any reasonably segregable, non-exempt material is disclosed. Every request goes through a minimum of two levels of review by the FOIA Office prior to release. Certain complex or highly sensitive cases are subject to additional levels of review.

12. When voluminous or highly sensitive documents are located in response to a FOIA request, processing the request not only may become more difficult but also may influence the order of cases in the queue. In the event that a requester seeks, and is granted, expedited processing, that request is moved to the front of the queue and processed on a first-in, first-out basis for expedited requests. The FOIA Office's responsibility for processing requests is balanced against NSA's duty to protect national security information. NSA is specifically charged with protecting such information pursuant to certain laws, including, but not limited to, Executive Order 12958, as amended, and Section 6 of the National Security Agency Act of 1959, Pub. L. No. 86-36 (codified at 50 U.S.C. § 402 note). Due to the importance of balancing the Agency's obligation to protect highly sensitive information and the transparency goals of the FOIA, NSA expends a great deal of time, effort, and resources in the FOIA review process. The goal of the NSA FOIA Office is to release as much information as possible, consistent with the need to protect classified or sensitive information.

III. NSA FOIA RESOURCES AND BACKLOG

13. NSA's FOIA staff currently consists of 18 full-time equivalent civilian employees and 15 part-time contractor case officers. In addition to FOIA requests, the staff processes Privacy Act requests as well as requests seeking review and sanitization of records for use in administrative proceedings such as equal employment opportunity cases. The Agency strives to continuously maintain its number of FOIA staff, but over the years the FOIA Office has also seen the departure of numerous experienced FOIA professionals. With each loss, NSA has sought to replace the departing case officer as soon as reasonably practicable. Nevertheless, even after replacement, it takes substantial time for new FOIA case officers to acquire the ability to process FOIA requests with the efficiency of an experienced case officer.

14. The NSA FOIA Office presently receives more FOIA requests in a year than it possesses resources to fully process the requests; accordingly, the Agency has a backlog of requests. NSA statistics show that the Agency is making progress in reducing its backlog despite an increase in FOIA requests over the last few years. For fiscal year 2007, NSA received 1,175 requests and consultations and had a backlog of approximately 622 cases at the beginning of the year and 472 at the end of the year. For fiscal year 2008, NSA received 1,305 FOIA requests and had a backlog of approximately 386 cases at the beginning of the year and 333 at the end of the year.¹ Finally, for fiscal year 2009, NSA received 989 FOIA requests and had a backlog of approximately 333 cases at the beginning of the year and 368 at the end of the year. Within the past four years, NSA has received additional media interest and has seen a corresponding

¹ Beginning in fiscal year 2008, the Department of Justice implemented changes in order to standardize Federal agencies' FOIA statistics. For fiscal year 2007, NSA statistics include all FOIA and Privacy Act requests and consultations that the NSA FOIA Office received. For fiscal year 2008 and thereafter, however, the total number of cases and number of backlogged cases include only FOIA requests and do not include Privacy Act requests or consultations.

increase in the number of FOIA requests that it receives.² Moreover, many of these requests seek information on issues of current public interest. In prior years, most requests sought records concerning historical events. The reviews for requests seeking information on current NSA activities require that the FOIA Office exercise increased diligence due to the risk that sensitive national security information concerning ongoing operations could be released. While the Agency receives a large number of requests, these statistics show that NSA is diligently trying to process FOIA requests and reduce its backlog.

IV. PROCESSING OF PLAINTIFF'S FOIA REQUESTS

15. I will now describe NSA's actions to date concerning the processing of Plaintiff's FOIA requests. Plaintiff submitted two separate FOIA requests to NSA. The first request was submitted on 25 February 2008 and the second on 19 June 2009. Plaintiff did not seek expedited processing with regard to either request.

16. Plaintiff's first FOIA request, dated 25 February 2008, sought copies of "all reports submitted by the National Security Agency to the Intelligence Oversight Board ("IOB") pursuant to Section 2.4 of Executive Order 12863." See Attachment A. Plaintiff sought all such reports dating back to 1 January 2001. Id.

17. In response thereto, the NSA FOIA Office conducted a search, located responsive records, and provided Plaintiff with an initial response on 25 March 2008. See Attachment B. The FOIA Office's initial response informed Plaintiff that the search for responsive records had been completed, that responsive material was located in a separate FOIA request, Case No.

² For example, in fiscal year 2005, NSA received 935 requests. In fiscal year 2006, however, which included the 15 December 2005 public disclosure by President George W. Bush of the existence of the "Terrorist Surveillance Program," NSA received 2,186 requests. Each year thereafter, the Agency has received more FOIA requests than it received in fiscal year 2005.

49107 that was similar to Plaintiff's, and that Case No. 49107 was presently being processed. The FOIA Office also informed Plaintiff that their request had been placed in the first-in, first-out processing queue for Non-Personal Easy cases along with FOIA Case No. 49107 and that the FOIA Office would perform an updated search to include the difference in time between the two requests. Finally, the FOIA Office informed Plaintiff that there were several cases ahead of Plaintiff's in the Non-Personal Easy queue and that NSA would not be able to respond to the request within 20 days.

18. On 8 June 2009, the NSA FOIA Office provided Plaintiff with an interim response. See Attachment C. Within this response, the FOIA Office provided Plaintiff with responsive documents dating through the first quarter of fiscal year 2006 and informed Plaintiff that the documents were being released concurrently to several FOIA requesters. The FOIA Office also informed Plaintiff that the remaining documents responsive to its request (dating through fiscal year 2007) would be released as soon as available. Finally, the FOIA Office informed Plaintiff that certain information in the included documents had been withheld pursuant to Exemptions 1, 2, 3, 5, and 6 of the FOIA and provided Plaintiff with the Agency's appeal procedures.

19. In a facsimile dated 19 June 2009, Plaintiff appealed NSA's 8 June 2009 initial determination. See Attachment D. In short, Plaintiff claimed that "NSA ha[d] applied its claimed exemptions more broadly than the FOIA allows. . . ."

20. On 26 June 2009, NSA's Office of General Counsel ("OGC") informed Plaintiff by letter that the Agency had received Plaintiff's appeal of the Agency's initial determination.³ See Attachment E. OGC explained to Plaintiff that their appeal had been placed in the appeal queue in the order it had been received, but that because there were 22 appeals ahead of Plaintiff's, the

³ By regulation, NSA's OGC is assigned the task of processing all FOIA appeals that the Agency receives. 32 C.F.R. § 299.5(o).

Agency would be unable to provide a response within 20 days. The letter further indicated that Plaintiff could expect a response to their appeal within four months.

21. In a facsimile dated 19 June 2009, Plaintiff submitted a second FOIA request to NSA seeking records on the following:

- A. All reports submitted to the IOB from [Fiscal Year 2008 to the present], pursuant to Section 2.4 of Executive Order 12863;
- B. All reports submitted to the IOB [through NSA's designated contact] pursuant to Section 1.7(d) of Executive Order 12333 from 29 February 2008 to the present⁴;
- C. All reports of any assessments or reviews of intelligence activities by the President's Intelligence Advisory Board ("PIAB") to the NSA pursuant to Section 4(a)(ii) of Executive Order 12462 from 29 February 2008 to the present;
- D. All recommendations concerning intelligence matters identified by the PIAB to NSA pursuant to Section 4(b) of Executive Order 13462 from 29 February 2008 to the present;
- E. All reports and recommendations by the IOB to NSA pursuant to Section 6(c) of Executive Order 13462 concerning the performance of NSA under Executive Order 13462 from 29 February 2008 to the present;
- F. All records containing information and all recommendations for corrective action submitted by the IOB to NSA of the results of those investigations pursuant to Section 6(d) of Executive Order 13462 from 29 February 2008 to the present;
- G. All requests for investigations of intelligence activities by the IOB to NSA and reports by NSA to the IOB of the results of those investigations pursuant to Section 6(e) of Executive Order 13462 from 29 February 2008 to the present; and
- H. All reports made by NSA to the IOB or PIAB pursuant to Section 8(c) of Executive Order 13462 concerning the reasons for not implementing a PIAB or IOB recommendation, from 29 February 2008 to the present.

See Attachment F.

22. In response thereto, the NSA FOIA Office conducted a search, located responsive records, and provided Plaintiff with an initial response on 7 July 2009. See Attachment G.

⁴ Plaintiff amended items a. and b. during a 23 June 2009 telephone conversation with a representative of NSA's FOIA Office. These amendments are shown within the bracketed information above.

Within its response, the FOIA Office informed Plaintiff that records responsive to items A and B had been located, that the request had been placed in the first-in, first-out processing queue for Non-Personal Easy cases, and that there were several cases ahead of Plaintiff's in that queue and so the Agency would be unable to respond within 20 days. Finally, the FOIA Office informed Plaintiff that a search of the Agency's files revealed no records responsive to items C through H. With regard to items C through H, the FOIA Office provided Plaintiff with the Agency's appeal procedures.

23. The NSA FOIA Office is actively processing Plaintiff's 25 February 2008 and 19 June 2009 requests in accordance with all applicable regulations and policies. Because Plaintiff did not request expedited processing for either request, the standard NSA practice for all such requests involves placing a request in the appropriate queue to be processed in chronological order (i.e., first-in, first-out processing). See 32 C.F.R. § 299.5(d) (2009). As an initial matter, the NSA FOIA Office placed both of Plaintiff's requests into the appropriate queue, the "Non-Personal Easy" queue. See Attachments B and G. "Non-Personal Easy" queue cases are defined as cases that generally contain classified information requiring coordination among NSA components. Id. at (d)(3). Such cases typically are not voluminous and do not require lengthy review. Id. Reviews are performed by NSA FOIA Office review personnel who specialize in handling classified information. Id.

24. As described above, however, the FOIA Office determined that the information requested in Plaintiff's 25 February 2008 request was responsive to a similar, separate FOIA request submitted by a different requester that was already being processed. As a result, Plaintiff's 25 February 2008 request was placed in the queue with that similar, but separate, request. The NSA FOIA Office informed Plaintiff that when responsive documents were

released to the requester in the earlier case, these documents would also be forwarded to Plaintiff. Thereafter, an initial batch of responsive documents was forwarded to Plaintiff on 8 June 2009. The FOIA Office continues to process the remaining documents responsive to both the earlier request and Plaintiff's 19 June 2009 request. The review of the remaining documents is currently nearing completion and a response will be forwarded to Plaintiff shortly. The FOIA Office's decision to place Plaintiff's 25 February 2008 request in the queue alongside the earlier FOIA request resulted in Plaintiff receiving responsive documents in advance of when they would have received the documents had their request been processed in chronological order apart from the earlier, but substantially similar, request.

25. With regard to Plaintiff's 19 June 2009 request, it too was placed in the Non-Personal Easy queue and, consistent with NSA regulations, will be processed in chronological order. See 32 C.F.R. § 299.5(e) (requiring that all requests "shall be processed by the appropriate specialized processing team on a first-in, first-out basis within its queue"). Similar to Plaintiff's 25 February 2008 request, Item A of the 19 June 2009 request, which seeks all reports submitted to the IOB from fiscal year 2008 to the present, is responsive to a similar, earlier FOIA request from a different requester. The earlier requester's submission has been pulled from the queue and is presently being processed by the FOIA Office. Therefore, documents responsive to Item A will be released to Plaintiff concurrent with the release of the documents to the earlier requester. The FOIA Office estimates that these documents will be released to the requesters by 4 January 2010.

26. With regard to Item B of Plaintiff's 19 June 2009 request, which seeks all reports submitted to the IOB through NSA's designated contact pursuant to Section 1.7(d) of Executive Order 12333 from 29 February 2008 to the present, that portion of Plaintiff's request case has not

yet reached the front of the first-in, first-out Non-Personal Easy queue. Unlike Plaintiff's first request and Item A of their second request, NSA was not concurrently processing a request for similar documents. Once the processing of Plaintiff's 19 June 2009 request begins, the following steps will be necessary before Item B is completed:

(a) a FOIA case officer must conduct a line-by-line review to discern whether segregable, non-exempt information is contained in the responsive records;

(b) if applicable, the FOIA Office will refer records or portions of records to other Executive Branch agencies or entities and/or perform other collaboration, as necessary; and

(c) the FOIA case officer must redact documents, if necessary, and prepare a response to Plaintiff.

27. At present, there are two cases in this queue that were received earlier in time than Plaintiff's 19 June 2009 request. The oldest case in the queue has an origination date of November 2008. Of the two FOIA requests ahead of Plaintiff's, none are referrals. If one or more referrals are received that predate Plaintiff's 19 June 2009 request, however, the referrals would be given priority pursuant to NSA's implementing FOIA regulations.

28. Given the current status of the number of FOIA requests in the queue in juxtaposition to the resources available to process these requests, the NSA FOIA Office estimates that it will be able to fully respond to Item B of Plaintiff's request by **31 March 2010**. This response will complete the Agency's obligations to respond to Plaintiff's 25 February 2008 and 19 June 2009 requests. My estimate is based upon a number of factors. In the first place, as described above, NSA is presently processing a number of other requests that are ahead of Plaintiff in the queue. In addition, it takes into account the minimal referral of requests by other Federal agencies dated earlier in time as well as requests granted expedited processing. My estimate also takes into account the time it will take NSA to process and ultimately provide Plaintiff with any segregable,

non-exempt information contained in records responsive to their request. Due to the nature of the records responsive to Plaintiff's requests (namely, that the records were prepared for an element within the Executive Office of the President through the Assistant to the Secretary of Defense for Intelligence Oversight), I have been advised that NSA is required to apprise the appropriate Executive Branch officials. Finally, the estimate takes into consideration the nature of NSA's first-in, first-out processing system and the backlog in the Non-Personal Easy queue described above.

29. It is important that Plaintiff's requests be processed in a manner consistent with all applicable Agency policies and regulations and taking into account the limited resources available to the NSA FOIA Office. At no point in time has Plaintiff sought expedited processing or indicated that such processing was necessary. Therefore, the NSA FOIA Office placed Plaintiff's requests in the appropriate queue to be processed in chronological order with the other multitude of requests presently in that queue. If the NSA FOIA Office was required to process Plaintiff's requests before other requests received earlier in time, those other requesters would be unnecessarily penalized.

30. Due to the risk that non-exempt national security information could be released if the NSA FOIA Office were to make a mistake, the office expends a great deal of time and effort in the review process. The FOIA Office processes all requests in a manner consistent with its implementing FOIA regulations. If ordered to process this request ahead of others received earlier in time, the FOIA Office would be forced to delay consideration of those other requests until it was certain that all documents responsive to Plaintiff's requests had been appropriately reviewed and, if necessary, exempted information withheld prior to providing these documents to Plaintiff. As a

result, the Agency's reviews of other requests, which were received earlier in time, would be delayed. As described above, the NSA FOIA Office takes its obligations under the FOIA seriously and seeks to release as much information under the FOIA as possible, consistent with the need to protect classified and sensitive information.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of October 2009, pursuant to 28 U.S.C. § 1746.



DIANE M. JANOSEK
Deputy Associate Director for Policy and Records
National Security Agency

Attachment A



February 25, 2008

BY FACSIMILE — (301) 688-4762

National Security Agency
Pamela N. Phillips
Chief, FOIA/PA Office, DJP4
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20755-6248

RE: Freedom of Information Act Request

Dear Ms. Phillips:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the National Security Agency 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 National Security Agency 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 such reports submitted to the IOB since January 1, 2001.

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 32 C.F.R. § 286.28(e)(7). In requesting this classification, we note that the National Security Agency, 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 DHS stipulation, NSA letter, 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).

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

454 Shotwell Street, San Francisco, CA 94110 USA
+1 415 436 9333 (v) +1 415 436 9993 (f) www.eff.org

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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 & Chtp 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.

² Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npold=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.

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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 32 C.F.R. § 286.28(d). To determine whether a request meets this standard, Department of Defense components determine whether disclosure of the requested information "is in the public interest because it 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." 32 C.F.R. §§ 286.28(d)(3)(i), (ii). This request clearly satisfies these criteria.

First, disclosure of the requested information will "will significantly contribute to the public understanding of the operations or activities of the Department of Defense." 32 C.F.R. § 286.28(d)(3)(i)(A). 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.

Second, the "informative value" of the records EFF has requested is likely to be meaningful. 32 C.F.R. § 286.28(d)(3)(i)(B). EFF has requested information that will shed light on the manner in which the agency reviews and reports intelligence matters to the IOB. This information is unlikely to be duplicative of information about the Army's operations and activities already in the public domain.

Third, the requested material will contribute to the general public's understanding of how the agency interprets applicable laws and monitors internal compliance. 32 C.F.R. § 286.28(d)(3)(i)(C). (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.

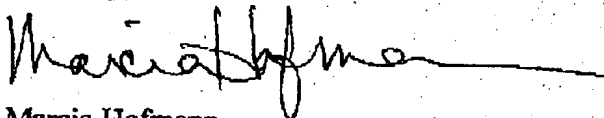
Fourth, the disclosure will contribute significantly to the public's knowledge and understanding of how the agency seeks compliance with laws governing intelligence activities. 32 C.F.R. § 286.28(d)(3)(i)(D). Disclosure of the requested information will help inform the public about the agency's actions, as well as contribute to the public debate about how intelligence activities should be conducted.

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Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 32 C.F.R. § 286.28(d)(3)(ii). 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. 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

Attachment B

FOIA Case: 54854

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W., 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 25 February 2008, which was received by this office on 26 February 2008, for "copies of all reports submitted by the National Security Agency to the Intelligence Oversight Board (IOB) pursuant to Section 2.4 of Executive Order 12863." You state in your request that you "seek such reports submitted to the IOB since January 1, 2001." Your request has been assigned Case Number 54854. This letter indicates that we have begun to process your request. 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. Your request for a waiver of fees has been granted.

We have completed our search for records responsive to your request. The material responsive to your request was located in a similar FOIA request that is currently being processed. Therefore, your request has been placed in the first-in, first-out processing queue for Non-Personal Easy along with the previous FOIA request (FOIA Case 49107). We are also performing an updated search for your request to include the difference in time between the two requests. Because there are a several cases ahead of yours in that queue, however, we are unable to respond to your request within 20 days. We appreciate your patience with our efforts to treat all requesters fairly by responding to each on a "first-in, first-out" basis. We will forward all documents to you that are found to be releasable in FOIA Case 49107 when the processing of that case 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: 54854

(DJP4), 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 Stypa

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Attachment C



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

FOIA Case: 54854A
8 June 2009

Electronic Frontier Foundation
ATTN: Ms. Marcia Hofmann
464 Shotwell Street
San Francisco, CA 94110

Dear Ms. Hofmann:

This further responds to your Freedom of Information Act (FOIA) request of 25 February 2008 for "copies of all reports submitted by the National Security Agency to the Intelligence Oversight Board ("IOB")...since January 1, 2001." A copy of your request is enclosed.

As you were previously advised, for purposes of this request and based on the information you provided in your letter, you are considered a representative of the media. As such, you are allowed the duplication of 100 pages at no cost. Since duplication fees were minimal, no fees have been assessed.

Your request has been processed under the provisions of the FOIA, and documents responsive to your request are enclosed in this interim response. These documents, which date through the first quarter of fiscal year 2006, are being released concurrently to several FOIA requesters. The additional documents responsive to your request (through fiscal year 2007) are nearing completion and will be released to you in a follow-up response as soon as they are available. Please be advised that certain information has been deleted from the enclosures as explained below.

Some of the information deleted from the documents was found to be currently and properly classified in accordance with Executive Order 12958, as amended. This information meets the criteria for classification as set forth in Subparagraph (c) of Section 1.4 and remains classified TOP SECRET and SECRET as provided in Section 1.2 of the Executive Order. The information is classified because its disclosure could reasonably be expected to cause exceptionally grave or serious damage to the national security. Because the

FOIA Case: 54854A

information is currently and properly classified, it is exempt from disclosure pursuant to the first exemption of the FOIA (5 U.S.C. Section 552(b)(1)).

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. We have determined that such information exists in these documents. Accordingly, those portions are exempt from disclosure pursuant to the third exemption of the FOIA, which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are Title 18 U.S. Code 798, Title 50 U.S. Code 403-1(i), and Section 6, Public Law 86-36 (50 U.S. Code 402 note).

Also, some of the information has been deleted from the enclosures pursuant to the fifth exemption of the FOIA. This exemption applies to inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency, protecting information that is normally privileged in the civil discovery context, such as information that is part of a pre-decisional deliberative process and attorney-client privileged information.

Personal information regarding individuals has been deleted from the enclosures in accordance with 5 U.S.C. 552 (b)(6). This exemption protects from disclosure information that would constitute a clearly unwarranted invasion of personal privacy. In balancing the public interest for the information you request against the privacy interests involved, we have determined that the privacy interests sufficiently satisfy the requirements for the application of the (b)(6) exemption.

Finally, subsection (b)(2) of the FOIA exempts from disclosure matters related solely to the internal personnel rules and practices of an agency. This exemption has been held to apply to matters that are "predominantly internal," the release of which would "significantly risk circumvention of agency regulations or statutes." Crooker v. Bureau of Alcohol, Tobacco, and Firearms, 670 F.2d 1051, 1074 (D.C. Cir. 1981). Information contained within one of the reports meets the criteria for exemption (b)(2) protection as that statutory provision has been interpreted and applied by the Federal Judiciary.

Since these deletions may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days from the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority

FOIA Case: 54854A

(DJP4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes release of the information is required. The NSA/CSS Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

The Department of Defense (DoD) has asked that we protect information pursuant to (b)(6). Those deletions have been marked with the code OGA (Other Government Agency). Any appeal of the denial of DoD information should be directed to that agency.

Sincerely,

A handwritten signature in black ink, appearing to read "Pamela N. Phillips". The signature is written in a cursive style with a large initial "P".

PAMELA N. PHILLIPS
Acting Initial Denial Authority

Encls:
a/s

Attachment D

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EFF

PAGE 02



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

June 19, 2009

BY FACSIMILE — (301) 688-4762

Pamela Phillips, Chief Freedom of Information Act Officer
NSA/CSS FOIA Appeal Authority (DJP4)
National Security Agency
9800 Savage Rd. STE 6248
Fort George G. Mead, MD 20755-6248

RE: Appeal, Freedom of Information Act Case No. 54854A

Dear Ms. Phillips:

This letter constitutes an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Frontier Foundation ("EFF"). We appeal an initial determination by the National Security Agency ("NSA") issued on June 8, 2009 (attached hereto) in response to a request for records submitted by EFF on February 25, 2008 (also attached hereto).

In our request to NSA, EFF sought copies of all reports submitted by the agency to the Intelligence Oversight Board from January 1, 2001 through the date of the request. In an interim release, NSA disclosed 235 pages in part or full, but redacted a substantial amount of material under 5 U.S.C. §§ 552(b)(1), (2), (3), (5) & (6).¹

We appeal this initial determination on the ground that the NSA has applied its claimed exemptions more broadly than the FOIA allows, despite the fact that the law favors disclosure and requires that exemptions be narrowly applied. *See, e.g., Department of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989) ("consistent with the Act's goal of broad disclosure, these exemptions have been consistently given a narrow compass"); *FBI v. Abramson*, 456 U.S. 615, 630 (1982) ("FOIA exemptions are to be narrowly construed"). While EFF understands that it has requested documents that may include some material legitimately exempt from disclosure under the law, we maintain that NSA has withheld more information than permitted by the FOIA.

Moreover, the agency does not appear to have segregated properly exempt material from factual information to which EFF is entitled under the FOIA.

¹ According to the NSA's June 8, 2009 letter, the agency made an interim response to EFF's request, releasing documents dating through only the first quarter of fiscal year 2006. The agency has not yet made a determination on records dating from the second quarter of fiscal year 2006 through the date of EFF's request.

454 Shotwell Street - San Francisco, CA 94110 USA

voice +1 415 436 9333

fax +1 415 436 9933

web www.eff.orgemail information@eff.org

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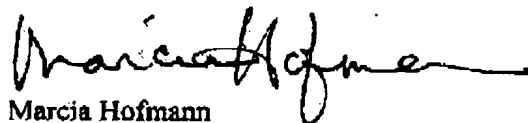
EFF

PAGE 03

FOIA Appeal Case No. 54854A
June 19, 2009
Page 2 of 2

Thank you for your consideration of this appeal. As the FOIA provides, I will anticipate your determination within twenty (20) working days. Should you have any questions, please feel free to call me at (415) 436-9333 ext. 116.

Sincerely,



Marcia Hofmann
Staff Attorney

Enclosures

Attachment E



NATIONAL SECURITY AGENCY

FORT GEORGE G. MEADE, MARYLAND 20755-6000

Case No. 54854/Appeal No. 3455

26 June 2009

Marcia Hofmann, Esq.
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Hofmann:

This is an interim response to your Freedom of Information Act appeal letter, dated 19 June 2009. Your appeal was received in the NSA/CSS Office of General Counsel on 22 June 2009.

Your appeal was placed in the processing queue in the order in which it was received. In view of the fact that there are 22 cases ahead of yours in the queue, we will be unable to provide you a timely response. We expect, however, to issue a decision on your appeal within the next four months. We appreciate your understanding in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Cerlenko".

ARIANE E. CERLENKO
Associate General Counsel
(Litigation)

Attachment F

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EFF

PAGE 02



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

June 19, 2009

BY FACSIMILE — (301) 688-4762

National Security Agency
Pamela N. Phillips
Chief, FOIA/PA Office (DJP4)
9800 Savage Road, Ste 6248
Fort George G. Meade, MD 20755-6248

RE: Freedom of Information Act Request

Dear Ms. Phillips:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the National Security Agency ("NSA") 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 NSA 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 Board, and keep the Director of Central Intelligence appropriately informed, concerning

¹ On February 25, 2008, EFF requested all reports submitted to the IOB from January 1, 2001 through the date of the request. On June 8, 2009, the NSA issued a partial response to that request, FOIA case number 54854A. EFF today appeals that response under separate cover.

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

³ The NSA 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 5

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 NSA 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 NSA 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 NSA pursuant to Sec. 6(c) of Executive Order 13462 concerning the performance of the NSA 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 NSA 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 NSA and reports by the NSA 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 NSA 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 32 C.F.R. § 286.28(e)(7). 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?npofid=561625> (last visited June 12, 2009).

June 19, 2009

Page 3 of 5

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 information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and

⁶ *Id.*

June 19, 2009

Page 4 of 5

32 C.F.R. § 286.28(d). To determine whether a request meets this standard, Department of Defense components determine whether disclosure of the requested information "is in the public interest because it 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." 32 C.F.R. §§ 286.28(d)(3)(i), (ii). This request clearly satisfies these criteria.

First, disclosure of the requested information will "will significantly contribute to the public understanding of the operations or activities of the Department of Defense." 32 C.F.R. § 286.28(d)(3)(i)(A). 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.

Second, the "informative value" of the records EFF has requested is likely to be meaningful. 32 C.F.R. § 286.28(d)(3)(i)(B). EFF has requested information that will shed light on the manner in which the agency reviews and reports intelligence matters to the IOB. This information is unlikely to be duplicative of information about the Army's operations and activities already in the public domain.

Third, the requested material will contribute to the general public's understanding of how the agency interprets applicable laws and monitors internal compliance. 32 C.F.R. § 286.28(d)(3)(i)(C). (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. 32 C.F.R. § 286.28(d)(3)(i)(D). 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. 32 C.F.R. § 286.28(d)(3)(ii). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

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EFF

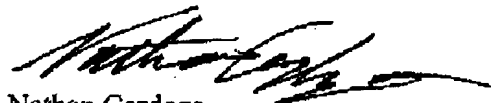
PAGE 06

June 19, 2009

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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

Attachment G



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

FOIA Case: 58957
7 July 2009

Mr. Nathan Cardozo
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Mr. Cardozo:

This is an initial response to your Freedom of Information Act (FOIA) request of 19 June 2009, which was received by this office on 22 June 2009 for the following:

1. All reports submitted to the Intelligence Oversight Board (IOB) pursuant to Section 2.4 of Executive Order 12863 from [FY08 to the present];
2. All reports submitted to the IOB [through NSA's designated contact] pursuant to Section 1.7(d) of Executive Order 12333 from 29 February 2008 to the present;
3. All reports of any assessments or reviews of intelligence activities by the President's Intelligence Advisory Board (PIAB) to the NSA pursuant to Section 4(a)(ii) of Executive Order 13462 from 29 February 2008 to the present;
4. All recommendations concerning intelligence matters identified by the PIAB to the NSA pursuant to Section 4(b) of Executive Order 13462 from 29 February 2008 to the present;
5. All reports and recommendations by the IOB to the NSA pursuant to Section 6(c) of Executive Order 13462 concerning the performance of the NSA under Executive Order 13462 from 29 February 2008 to the present;
6. All records containing information and all recommendations for corrective action submitted by the IOB to the NSA of the results of those investigations pursuant to Section 6(d) of Executive Order 13462 from 29 February 2008 to the present;
7. All requests for investigations of intelligence activities by the IOB to the NSA and reports by the NSA to the IOB of the results of those investigations pursuant to Section 6(e) of Executive Order 13462 from 29 February 2008 to the present; and

FOIA Case: 58957

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

Your request has been assigned Case Number 58957. This letter indicates that we have begun to process your request. 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 waiver of fees has been granted. Also, on 23 June 2009, you spoke with me to clarify request items 1 and 2. The clarification information has been incorporated and is shown in brackets in the numbered items above.

We have completed our search for records responsive to your request. Regarding request items 1 and 2, the material responsive to these portions of your request is not voluminous or complex, and your request has been placed in the first-in, first-out processing queue for Non-Personal Easy cases. Because there are several cases ahead of yours in that queue, however, we are unable to respond to your request within 20 days. We appreciate your patience with our efforts to treat all requesters fairly by responding to each on a "first-in, first-out" basis.

Regarding request items 3-8, a thorough search of our files was conducted, but no records responsive to these portions of your request were located.

The Initial Denial Authority for NSA information is the Deputy Associate Director for Policy and Records, Diane M. Janosek. The fact that we were unable to locate records responsive to items 3-8 of your request may be considered by you as an adverse determination, and you are hereby advised of this Agency's appeal procedures. Any person notified of an adverse determination may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days after the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJP4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. To aid in processing the appeal, it should reference the inability of the Agency to locate the records you seek, in sufficient detail and particularity, and the grounds upon which you believe this Agency maintains such records. The

FOIA Case: 58957

NSA/CSS FOIA Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent unusual circumstances.

Correspondence related to the remaining portions of 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 (DJP4), 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,

A handwritten signature in black ink, appearing to read "Pamela N. Phillips". The signature is written in a cursive style with a large initial "P".

PAMELA N. PHILLIPS
Chief
FOIA/PA Office