

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELECTRONIC FRONTIER)
FOUNDATION,)
)
Plaintiff,)
)
v.)
)
CENTRAL INTELLIGENCE AGENCY,)
et al.,)
)
Defendants.)
_____)

Civil Action No. 09-3351 (SBA)

DECLARATION OF MELANIE ANN PUSTAY

I, Melanie Ann Pustay, declare the following to be true and correct:

1) I am the Director of the Office of Information Policy (OIP), United States Department of Justice. In this capacity, I am responsible for overseeing the actions of the Initial Request (IR) Staff. The IR Staff is responsible for searching for and reviewing records within OIP and the Senior Leadership Offices of the Department of Justice, including the Offices of the Attorney General, Deputy Attorney General, and Associate Attorney General in response to requests made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No 110-175, 121 Stat. 2524. The IR Staff determines whether records responsive to access requests exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the IR Staff consults with personnel in the Senior Leadership Offices and, when appropriate, with other components within the Department of Justice as well as with other Executive Branch agencies.

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

OIP's Processing of Plaintiff's Requests

Correspondence with Plaintiff Regarding its February 2009 Request

3) By letter dated February 13, 2009, Marcia Hofmann, on behalf of plaintiff Electronic Frontier Foundation, submitted a FOIA request to OIP for all reports submitted to the Attorney General from the Intelligence Oversight Board (IOB) from January 1, 2007 to the present, as well as records documenting any action or response to such reports by the Attorney General or other Justice Department officials. Furthermore, plaintiff requested that if the records it sought were not located in the Office of the Attorney General, their request be referred to other offices in which responsive records may be stored, such as the Offices of the Deputy Attorney General or Associate Attorney General. Plaintiff also asked that it not be charged with search or review fees, asserting that it is qualified as a "representative of the news media" pursuant to the FOIA and Department regulation, 28 C.F.R. § 16.11(b)(6) (2009). Plaintiff also requested a waiver of duplication fees. OIP received the request on February 17, 2009. (A copy of plaintiff's initial request letter is attached hereto as Exhibit A.)

4) By letter dated March 5, 2009, OIP acknowledged receipt of plaintiff's FOIA request and advised that, because the request required a search in another Office, OIP staff had not yet been able to complete a search for records within the scope of plaintiff's request. As is customary, OIP also advised plaintiff that it was deferring a decision on plaintiff's fee waiver request until it determined whether any fees would be assessed in the processing of plaintiff's request. Lastly, OIP did advise plaintiff that as a "representative of the news media" it would not

be charged search fees. (A copy of OIP's March 5, 2009 acknowledgment letter is attached hereto as Exhibit B.)

Office of the Attorney General

5) On March 26, 2009 a search was conducted of the Departmental Executive Secretariat, which is the official records repository for the Offices of the Attorney General, Deputy Attorney General, and Associate Attorney General. The Departmental Executive Secretariat uses a central database to control and track certain incoming and outgoing correspondence to these offices. Also, by memorandum dated May 1, 2009, the Office of the Attorney General informed OIP that its search of the records of the current staff in the Office of the Attorney General was complete. Lastly, on September 7, 2009 searches were also conducted of the records indices of former Attorney General Michael B. Mukasey. The indices supplement the electronic database of the Departmental Executive Secretariat and list file folder titles, arranged according to subject, for the records of the former Attorneys General and their staff. Through these searches, potentially responsive records were located.

6) The potentially responsive documents that were located are classified. OIP is currently working with staff in the Departmental Executive Secretariat to retrieve copies of these documents. Once copies are made, OIP will review these documents to determine if they are in fact responsive, if any classification review is necessary, and if any portion can be released.

7) OIP's review may include consultations with other Department components and other Executive Branch agencies, before a response can be provided. Such consultations are required by Department of Justice regulation 28 C.F.R. § 16.4(c)(1), and are appropriate if other components within the Department and other Executive Branch agencies have an interest in

the documents. In fact, as none of the documents originate with OIP, any disclosure determinations necessarily must be made in consultation with the originating offices.

8) OIP must also review the documents to determine if it is appropriate to refer any to another office. Pursuant to Department of Justice regulation, 28 C.F.R. § 16.4(c), it is necessary to refer certain documents to other federal agencies when those documents either originate with or are of primary interest to those other agencies. OIP cannot make this determination until after it has had an opportunity to review the potentially responsive material.

9) By November 20, 2009, OIP anticipates providing plaintiff with an interim response addressing all responsive documents located in the Office of the Attorney General.

Office of the Deputy Attorney General

10) In its request, plaintiff asked that "[t]o the extent records we seek are not located in the Office of the Attorney General, we ask that you please refer this request to other offices in which the records may be stored, such as the Office of the Deputy Attorney General or the Office of the Associate Attorney General." After receiving initial search results for the searches conducted in the Office of the Attorney General, OIP decided to conduct a search in the Office of the Deputy Attorney General to ensure that the search was comprehensive. In order to provide plaintiff with a response as quickly as possible, OIP initiated this search by memorandum dated August 24, 2009, prior to completing the search in the Office of the Attorney General.

11) Plaintiff did not request expedited processing pursuant to Department of Justice regulation 28 C.F.R. § 16.5(d). Plaintiff's request was placed in OIP's regular processing queue. As provided in Department's regulation, 28 C.F.R. § 16.5(a), OIP ordinarily processes requests

according to the order of receipt. Without a request for expedition, plaintiff is not entitled to having its request taken out of order and receiving expedited treatment by OIP.

12) On September 7, 2009, the FOIA analyst assigned to plaintiff's request conducted searches of the classified and unclassified records indices of the former officials in the Office of the Deputy Attorney General during former Attorney General Michael B. Mukasey's tenure in the Department. The indices supplement the electronic database of the Departmental Executive Secretariat and list file folder titles, arranged according to subject, for the records of the former Attorneys General and their staff. No responsive records were located.

13) Officials in the Office of the Deputy Attorney General must balance their obligation to search for records in response to plaintiff's request, with the responsibilities of their pressing day-to-day duties, including conducting any necessary searches or document review in response to FOIA requests received prior to plaintiff's request. Searches of the files, both paper and electronic, of each current official in the Office of the Deputy Attorney General are still pending.

14) The practice for the Office of the Deputy Attorney is to notify each individual staff member in that Office of the receipt of OIP's memorandum requesting that a search be conducted, and each staff member's files, both paper and electronic, are then searched as necessary for records responsive to the request. A search of this nature typically involves hand searches of large paper files, as well as searches of e-mail files containing thousands of e-mails. Furthermore, because the subject matter of the request is current, the majority of responsive records, if any, will likely be located in the individual offices of senior Department officials. Most of these officials personally conduct the search for any responsive records that they might possess. While the officials in these Offices make every effort to respond to our search memoranda in a timely fashion, it is not always possible for senior Department officials to stop

their pressing day-to-day duties in order to immediately perform a search of records responsive to a FOIA request. These officials and employees are performing the necessary searches as soon as it is practical to do so.

15) As searches are still pending, OIP is unsure of the volume of responsive records that may be located. Consequently, OIP must plan for a significant number of responsive documents. For every potentially responsive document that is located, OIP will need to conduct a page-by-page review to ensure that the material is in fact responsive to plaintiff's request, that duplicative material is removed, and that FOIA exemptions are appropriately applied to any material, where there is a harm if such material is disclosed. This process can take a significant amount of time if a large volume of potentially responsive records are located.

16) It is also very likely that any responsive documents located in the Office of the Deputy Attorney will require consultations with multiple Department components and other Executive Branch agencies, before a response can be provided. Such consultations are required by Department of Justice regulation 28 C.F.R. § 16.4(c)(1), and may be appropriate because other components within the Department and other Executive Branch agencies may have an interest in the documents. The documents located in the Department's Senior Leadership Offices are typically based on discussions, or exchanges of ideas, with officials in other offices. Consequently, the content of the documents may detail the activities of other offices, and so any consultation with those offices will need to occur before any disclosure determinations are reached. Many of these consultations may need to be conducted in stages, as certain offices need to know the views of other offices in order to make their disclosure determinations. With any responsive documents located, OIP will need to complete these steps before any processing is completed.

17) OIP will continue to make every effort to complete the remaining searches in the Office of the Deputy Attorney General as quickly as possible. OIP will then review any potentially responsive documents as soon as they are located, including conducting any necessary consultations. OIP must balance its work on plaintiff's request with the work necessary to respond to the hundreds of requests it receives each year, as well as completing what is necessary to comply with other litigation deadlines.

18) OIP reasonably estimates that it will complete its processing of plaintiff's request on behalf of the Office of the Deputy Attorney General by January 15, 2010.

Office of the Associate Attorney General

19) In an effort to ensure that the search was comprehensive, OIP also initiated a search in the Office of the Associate Attorney General. This search was completed and no records were located. Plaintiff was advised of this fact by letter dated October 22, 2009. (A copy of OIP's October 20, 2009 letter is attached as Exhibit C.)

OIP's Processing of Plaintiff's June 19, 2009 Request

20) By letter dated June 19, 2009, Nathan Cardozo, on behalf of plaintiff, submitted a FOIA request to OIP for all reports submitted by the Director of National Intelligence (DNI) to the Attorney General pursuant to Executive Order 13462 from February 29, 2008 to the present, records documenting any action or response to such reports by the Office of the Attorney General or other Justice Department officials, and communications between the Office of the Attorney General and the DNI, the Intelligence Oversight Board or the President's Intelligence Advisory Board concerning intelligence oversight activities pursuant to Executive Order 13462. Plaintiff also asked that it not be charged with search or review fees, asserting that is qualified as a "representative of the news media" pursuant to the FOIA and Department regulation 28 C.F.R.

§ 16.11(b)(6). Plaintiff also requested a waiver of duplication fees. OIP received this request on June 22, 2009. (A copy of plaintiff's initial request letter is attached hereto as Exhibit D.)

21) By letter dated July 13, 2009 OIP acknowledged receipt of plaintiff's FOIA request and advised that, because the request required a search in another Office, OIP staff had not yet been able to complete a search for records within the scope of plaintiff's request. As is customary, OIP also advised plaintiff that it was deferring a decision on plaintiff's fee waiver request until it determined whether any fees would be assessed in the processing of plaintiff's request. Lastly, OIP advised plaintiff that as a "representative of the news media" it would not be charged search fees. (A copy of OIP's July 13, 2009 acknowledgment letter is attached hereto as Exhibit E.)

22) By letter dated October 15, 2009, OIP advised plaintiff that searches were completed in the Office of the Attorney General, and in the Departmental Executive Secretariat, which, as mentioned above, is the official records repository of the Office of Attorney General, and no records responsive to its request were located. (A copy of OIP's October 15, 2009 letter is attached hereto as Exhibit F.) OIP's processing of plaintiff's request dated June 19, 2009 is now complete.

Summary of Current Status

23) In sum, OIP has completed processing, and responded to, plaintiff's request dated June 19, 2009 request. OIP has also completed processing plaintiff's request dated February 13, 2009, on behalf of the Office of the Associate Attorney General. Furthermore, searches are now complete on behalf of the Office of the Attorney General for this request. OIP must now review the potentially responsive documents that were located to determine how the material should be handled, and if any portion is releaseable under the FOIA. OIP anticipates completing this

review and responding to plaintiff by November 20, 2009. Lastly, searches are currently underway in the Office of the Deputy Attorney General for this request and OIP anticipates completing its processing on behalf of this remaining office by January 15, 2010.

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


MELANIE ANN PUSTAY

Executed this 22 day of October, 2009

Exhibit A

AG/09-R0362

JK

DAG 09-R1091

ASG 09-R1092



Electronic Frontier Foundation

February 13, 2009

BY FACSIMILE — (202) 514-1009

Carmen L. Mallon, Chief of Staff
Office of Information and Privacy
Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, DC 20530-0001

OFFICE OF INFORMATION
AND PRIVACY

FEB 17 2009

RE: Freedom of Information Act Request

RECEIVED

Dear Ms. Mallon:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Office of the Attorney General ("OAG") 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.

Earlier this month, the Council of Foreign Relations released a working paper entitled "War About Terror: Civil Liberties and National Security After 9/11."¹ According to the paper:

The President's Foreign Intelligence Advisory Board (PFIAB)—established in 1956 and renamed the President's Intelligence Advisory Board (PIAB) in 2008—provides independent advice and analysis to the president on the effectiveness of U.S. intelligence and counterintelligence programs. Its Intelligence Oversight Board (IOB), established in 1976, offers guidance on the legality of intelligence activities. These bodies possess powerful investigative tools and the authority to oversee the general counsel and inspectors general of each agency in the intelligence community.

Critics have argued that the IOB under President Bush was not as active in providing oversight as it might have been, especially in light of the broad range of new and highly controversial counterterrorism intelligence efforts pursued after 9/11. The IOB's membership was not put into place until the second year of the Bush administration, *and it submitted no reports to the attorney general until 2007.*

Id. at 49 (emphasis added).

¹ The report is available for download at http://www.cfr.org/content/publications/attachments/Civil_Liberties_WorkingPaper.pdf.

Freedom of Information Act Appeal: Case No. TSA09-0185
 February 13, 2009
 Page 2

We seek all reports submitted to the Attorney General from the IOB from January 1, 2007 to the present, as well as records documenting any action or response to such reports by the Attorney General or other Justice Department officials.²

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 both 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 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."³ One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties."⁴ 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>. 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.⁵

² To the extent the records we seek are not located in the Office of the Attorney General, we ask that you please refer this request to other offices in which the records may be stored, such as the Office of the Deputy Attorney General or the Office of the Associate Attorney General.

³ Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited Feb. 10, 2009).

⁴ *Id.*

⁵ These figures include hits from RSS feeds through which subscribers can easily track updates to DeepLinks and miniLinks.

Freedom of Information Act Appeal: Case No. TSA09-0185
 February 13, 2009
 Page 3

In addition to reporting high-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>.

These extensive publication activities show that EFF is a "representative of the news media" under the FOIA and agency regulations.

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, Department of Justice components determine 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)(i), (ii). This request clearly satisfies these criteria.

First, communications from the IOB to the Attorney General concern "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i). The Justice Department's receipt of and response to such reports unquestionably constitutes government operations or activities.

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 records that will shed light on the frequency and nature of reports from the IOB to the Attorney General, as well as the response to such reports.

Freedom of Information Act Appeal; Case No. TSA09-0185

February 13, 2009

Page 4

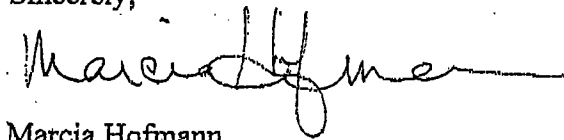
Third, the requested material will "contribute to public understanding" of the reports from the IOB to the Attorney General and any actions taken in response. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of how the Justice Department handles reports of possible intelligence abuses, 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 the nature of potential intelligence abuses, and how the Attorney General has responded to them. 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 Justice Department's interpretation and use of the laws that govern intelligence gathering, as well as contribute to the public debate about how this authority should be exercised.

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. 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

Exhibit B



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

Ms. Marcia Hofmann
Staff Attorney
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

MAR 5 2009

Re: AG/09-R0362
DRH:JK

Dear Ms. Hofmann:

This is to acknowledge receipt of your letter dated February 13, 2009, and received in this Office on February 17, 2009, in which you requested reports submitted to the Attorney General from the Intelligence Oversight Board from January 1, 2007 to present. This response is made on behalf of the Office of the Attorney General.

Because the records you seek will require a search in another office, our staff has not yet been able to complete a search to determine whether there are records within the scope of your request. Accordingly, we will be unable to comply with the twenty-working-day time limit in this case, as well as the ten additional days provided by the statute. You may wish to agree to an alternative time frame for processing, should records be located; or you may wish to await the completion of our records search to discuss this option.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. As a "representative of the news media," you will not be charged search fees.

I regret the necessity of this delay, but I assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact me by telephone at the above number or you may write to me at the above address.

Sincerely,

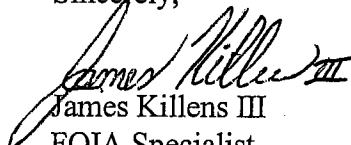

James Killens III
FOIA Specialist

Exhibit C



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

OCT 22 2009

Ms. Marcia Hofmann
Staff Attorney
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Re: AG/09-R0362, DAG/09-R1091
ASG/09-R1092
MAP:TEH:JK

Dear Ms. Hofmann:

This is an interim response to your Freedom of Information Act (FOIA) request dated February 13, 2009, and received in this Office on February 17, 2009, in which you requested reports submitted to the Attorney General from the Intelligence Oversight Board from January 1, 2007 to present. This response is made on behalf of the Offices of the Attorney General, Deputy Attorney General, and Associate Attorney General.

Your request asked that to the extent responsive records are not located in the Office of the Attorney General, searches be conducted in other offices in which records may be stored, such as the Offices of the Deputy Attorney General or Associate Attorney General. In an effort to ensure that the search was comprehensive we have initiated searches in those two offices. Please be advised that the records search in the Office of the Associate Attorney General is now complete and no records responsive to your request were located.

We are continuing our search for responsive records in the Offices of the Attorney General and Deputy Attorney General and will respond to you again when our searches are completed and any disclosure determinations are made.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal.

Sincerely,

A handwritten signature in black ink that reads "Melanie Ann Pustay".

Melanie Ann Pustay
Director

Exhibit D

AG/09-R0835
JK

June 19, 2009



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

BY FACSIMILE — (202) 541-1009

Carmen L. Mallon, Chief of Staff
Office of Information and Privacy
Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, DC 20530-0001

RECEIVED

JUN 22 2009

Office of Information Policy

RE: Freedom of Information Act Request

Dear Ms. Mallon:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Office of the Attorney General ("OAG") 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 records concerning the OAG's execution of its duties pursuant to Executive Order 13462 from February 29, 2008 the present.¹ This request includes but is not limited to:

1.) All reports submitted by the Director of National Intelligence ("DNI") to the OAG pursuant to Section 7(b)(ii) of Executive Order 13462. That section provides, in pertinent part, that the DNI shall, with respect to intelligence activities that may be unlawful or contrary to Executive Order or presidential directive,

forward to the Attorney General information in such reports relating to such intelligence activities to the extent that such activities involve possible violations of Federal criminal laws or implicate the authority of the Attorney General unless the DNI or the head of the department concerned has previously provided such information to the Attorney General[.]

2.) All records documenting any action or response to such reports by the Attorney General or other Justice Department officials.

¹ On February 13, 2009, EFF requested all reports submitted to the OAG from the Intelligence Oversight Board from January 1, 2007 to the date of the request, as well as records documenting any action or response to such reports by the Attorney General or other Justice Department officials. The Office of Information Privacy of the Department of Justice assigned the record number AG/09-R0362 to the February 13, 2009 request. Please consider this request to exclude records to the extent that it is coextensive with the request AG/09-R0362, attached hereto.

454 Shotwell Street • San Francisco, CA 94110 USA

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web www.eff.org

email information@eff.org

June 19, 2009
Page 2 of 4

3.) All communications between the OAG and the DNI, the Intelligence Oversight Board or the President's Intelligence Advisory Board concerning intelligence oversight activities pursuant to Executive Order 13462.

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 Justice Inspector General, 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 DOJ letter, 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).

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>. 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

In addition to reporting high-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.

² Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npoid=561625> (last visited June 17, 2009).

³ *Id.*

June 19, 2009

Page 3 of 4

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>.

These extensive publication activities show that EFF is a "representative of the news media" under the FOIA and agency regulations.

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, Department of Justice components determine 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)(i), (ii). This request clearly satisfies these criteria.

First, communications from the DNI and/or IOB to the Attorney General concern "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i). The Justice Department's receipt of and response to such reports unquestionably constitutes government operations or activities.

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 records that will shed light on the frequency and nature of reports from the DNI and/or IOB to the Attorney General, as well as the response to such reports.

Third, the requested material will "contribute to public understanding" of the reports from the IOB to the Attorney General and any actions taken in response. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of how the Justice Department handles reports of possible

June 19, 2009
Page 4 of 4

intelligence abuses, 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 the nature of potential intelligence abuses, and how the Attorney General has responded to them. 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 Justice Department's interpretation and use of the laws that govern intelligence gathering, as well as contribute to the public debate about how this authority should be exercised.

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



Electronic Frontier Foundation

February 13, 2009

BY FACSIMILE — (202) 514-1009

Carmen L. Mallon, Chief of Staff
Office of Information and Privacy
Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, DC 20530-0001

RE: Freedom of Information Act Request

Dear Ms. Mallon:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the Office of the Attorney General (“OAG”) 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.

Earlier this month, the Council of Foreign Relations released a working paper entitled “War About Terror: Civil Liberties and National Security After 9/11.”¹ According to the paper:

The President’s Foreign Intelligence Advisory Board (PFIAB)—established in 1956 and renamed the President’s Intelligence Advisory Board (PIAB) in 2008—provides independent advice and analysis to the president on the effectiveness of U.S. intelligence and counterintelligence programs. Its Intelligence Oversight Board (IOB), established in 1976, offers guidance on the legality of intelligence activities. These bodies possess powerful investigative tools and the authority to oversee the general counsel and inspectors general of each agency in the intelligence community.

Critics have argued that the IOB under President Bush was not as active in providing oversight as it might have been, especially in light of the broad range of new and highly controversial counterterrorism intelligence efforts pursued after 9/11. The IOB’s membership was not put into place until the second year of the Bush administration, *and it submitted no reports to the attorney general until 2007.*

Id. at 49 (emphasis added).

¹ The report is available for download at http://www.cfr.org/content/publications/attachments/Civil_Liberties_WorkingPaper.pdf.

Freedom of Information Act Appeal: Case No. TSA09-0185
February 13, 2009
Page 2

We seek all reports submitted to the Attorney General from the IOB from January 1, 2007 to the present, as well as records documenting any action or response to such reports by the Attorney General or other Justice Department officials.²

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 both 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 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."³ One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties."⁴ 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>. 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.⁵

² To the extent the records we seek are not located in the Office of the Attorney General, we ask that you please refer this request to other offices in which the records may be stored, such as the Office of the Deputy Attorney General or the Office of the Associate Attorney General.

³ Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited Feb. 10, 2009).

⁴ *Id.*

⁵ These figures include hits from RSS feeds through which subscribers can easily track updates to DeepLinks and miniLinks.

Freedom of Information Act Appeal: Case No. TSA09-0185
 February 13, 2009
 Page 3

In addition to reporting high-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>.

These extensive publication activities show that EFF is a "representative of the news media" under the FOIA and agency regulations.

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, Department of Justice components determine 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)(i), (ii). This request clearly satisfies these criteria.

First, communications from the IOB to the Attorney General concern "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i). The Justice Department's receipt of and response to such reports unquestionably constitutes government operations or activities.

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 records that will shed light on the frequency and nature of reports from the IOB to the Attorney General, as well as the response to such reports.

Freedom of Information Act Appeal: Case No. TSA09-0185
February 13, 2009
Page 4

Third, the requested material will "contribute to public understanding" of the reports from the IOB to the Attorney General and any actions taken in response. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of how the Justice Department handles reports of possible intelligence abuses, 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 the nature of potential intelligence abuses, and how the Attorney General has responded to them. 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 Justice Department's interpretation and use of the laws that govern intelligence gathering, as well as contribute to the public debate about how this authority should be exercised.

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. 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



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).

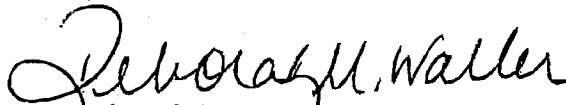
As support for your expedition request you state that "there is an urgency to inform the public about the information [you] seek." However, you have not explained the nature of this urgency beyond the public's general right to know. Accordingly, we are denying your request for expedition.

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

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 20755-6000

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.

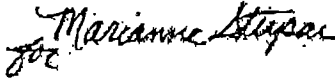
For purposes of this request and based on the information you provided in your letter, you are considered a representative of the media. Unless you qualify for a fee waiver or reduction, you must pay for duplication in excess of the first 100 pages. Your request for a fee waiver has been granted. In 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,



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.

Exhibit E



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

Mr. Nathan Cardozo
Open Government Legal Fellow
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

JUL 13 2009

Re: AG/09-R0835
LAD:JK

Dear Mr. Cardozo:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated June 19, 2009, and received in this Office on June 22, 2009, in which you requested 1) reports submitted by the Director of National Intelligence (DNI) to the Office of the Attorney General pursuant to Executive Order 13462 from February 29, 2009 to present, 2) records documenting any action or response to such reports by the Attorney General or other Justice Department officials, and 3) communications between the Office of the Attorney General and the DNI, the Intelligence Oversight Board or the President's Intelligence Advisory Board concerning intelligence oversight activities pursuant to Executive Order 13462. This response is made on behalf of the Office of the Attorney General.

Because the records you seek will require a search in another office, our staff has not yet been able to complete a search to determine whether there are records within the scope of your request. Accordingly, we will be unable to comply with the twenty-working-day time limit in this case, as well as the ten additional days provided by the statute. You may wish to agree to an alternative time frame for processing, should records be located; or you may wish to await the completion of our records search to discuss this option.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. As a "representative of the news media," you will not be charged search fees.

I regret the necessity of this delay, but I assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact me by telephone at the above number or you may write to me at the above address. Lastly, you may contact our FOIA Public Liaison at the telephone number listed above to discuss any aspect of your request.

Sincerely,



James Killens III
FOIA Specialist

Exhibit F



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

OCT 15 2009

Mr. Nathan Cardozo
Open Government Legal Fellow
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Re: AG/09-R0835
MAP:TEH:JK

Dear Mr. Cardozo:

This responds to your Freedom of Information Act request dated June 19, 2009, and received in this Office on June 22, 2009, in which you requested 1) reports submitted by the Director of National Intelligence (DNI) to the Office of the Attorney General pursuant to Executive Order 13462 from February 29, 2008 to present, 2) records documenting any action or response to such reports by the Attorney General or other Justice Department officials, and 3) communications between the Office of the Attorney General and the DNI, the Intelligence Oversight Board or the President's Intelligence Advisory Board concerning intelligence oversight activities pursuant to Executive Order 13462. This response is made on behalf of the Office of the Attorney General.

Please be advised that a search has been conducted in the Office of the Attorney General, as well as of the electronic database of the Departmental Executive Secretariat, which is the official records repository for the Office of the Attorney General, and no records responsive to your request have been located.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal.

Sincerely,

A handwritten signature in cursive script that reads "Melanie Ann Pustay".

Melanie Ann Pustay
Director