

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

FOIA Case: 60650 25 February 2010

Mr. Nathan Cardozo Electronic Frontier Foundation 1875 Connecticut Avenue, NW Suite 650 Washington, DC 20009

Dear Mr. Cardozo:

This responds to your Freedom of Information Act (FOIA) request of 19 June 2009 to the Director of National Intelligence (DNI) for Intelligence Oversight reporting. Copies of your request and the 25 February 2008 request from Ms. Marcia Hofmann, are enclosed. The DNI referred 11 pages to the National Security Agency/Central Security Service (NSA/CSS) on 20 January 2010 for our review and direct response to you. This referral has been assigned case number 60650.

The referred pages have been reviewed by this Agency as required by the FOIA and are enclosed. Certain information, however, has been deleted from the enclosures.

Some of the withheld information has been found to be currently and properly classified in accordance with Executive Order 12958, as amended. The information meets the criteria for classification as set forth in Subparagraph (c) of Section 1.4 and remains classified SECRET as provided in Section 1.2 of Executive Order 12958, as amended. The information is classified because its disclosure could reasonably be expected to cause serious damage to the national security. Because the 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 this document. 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).

The Initial Denial Authority for NSA information is the Deputy Associate Director for Policy and Records, Diane M. Janosek. 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 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. 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 unusual circumstances.

Sincerely,

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Encls: a/s



June 19, 2009

BY FACSIMILE — (703) 275-1299

John F. Hackett, Director, Information Management Office Director of National Intelligence Office of the Director of National Intelligence Washington, D.C. 20511

RE: Frieedom of Information Act Request

Dear Mr. Hackett:

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 Director of National Intelligence ("ODNI") 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.

Executive Order 12863 determined the responsibilities of the Intelligence Oversight Board ("IQB") from September 13, 1993 through February 29, 2008. Section 2.4 of that Order provided, in pertinent part:

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.

We seek copies of all reports submitted by the ODNI to the IOB pursuant to Executive Order 12863 from February 25, 2008 through February 29, 2008.

On February 29, 2008, Executive Order 13462 repealed Executive Order 12863 and greatly expanded the intelligence oversight role of the ODNI.

We also seek copies of all records, including but not limited to electronic records, concerning the DNI's activities under Executive Order 13462 from February 29, 2008 to the present. This request includes but is not limited to reports, assessments, reviews, instructions, guidelines, and submissions to or communications between the ODNI and

The DNI is a member of the "Intelligence Community." See http://www.intelligence.gov/1-

members.shtml.

On February 25, 2008, EFF requested all reports submitted by the DNI to the IOB pursuant to Executive Order 12863 from January 1, 2001 through the date of the request. If convenient, please feel free to combine this request with our prior request, attached hereto for your reference.

June 19, 2009 Page 2 of 5

the IOB and/or the President's Intelligence Advisory Board ("PIAB"). This request specifically includes:

- 1. reports of any assessments or reviews of intelligence activities by the PIAB to the DNI pursuant to Sec. 4(a)(ii) of Executive Order 13462;
- 2. recommendations concerning intelligence matters identified by the PIAB to the DNI pursuant to Sec. 4(b) of Executive Order 13462;
- 3. criteria on the thresholds for reporting matters to the IOB issued by the IOB to the DNI pursuant to Sec. 6(a) of Executive Order 13462;
- 4. reports and recommendations by the IOB to the DNI pursuant to Sec. 6(c) of Executive Order 13462 concerning the performance of the DNI under Executive Order 13462;
- 5. all records containing information and all recommendations for corrective action submitted by the DNI to the IOB pursuant to Sec. 6(d) of Executive Order 13462;
- 6. requests for investigations of intelligence activities by the IOB to the DNI and reports by the DNI to the IOB of the results of those investigations pursuant to Sec. 6(e) of Executive Order 13462;
- 7. guidelines concerning intelligence activities reviewed by the DNI pursuant to Sec. 7(a)(i) of Executive Order 13462;
- 8. instructions issued by the DNI pursuant to Sec. 7(a)(ii) of Executive Order 13462 to members of the intelligence community for incorporating intelligence oversight reporting into their intelligence guidelines;
- reports of intelligence activity which "may be unlawful or contrary to Executive Order or Presidential directive" received by the DNI pursuant to Sec. 7(b)(i) of Executive Order 13462, which incorporates Section 1.7(d) of Executive Order 12333 by reference, or pursuant to Section 8(b)(i)(A) of Executive Order 13462;
- all redords containing information regarding intelligence activities forwarded by the DNI to the Attorney General pursuant to Sec. 7(b)(ii) of Executive Order 13462;
- 11. analyses by the DNI of reports received by it under Sec. 7(b)(i) of Executive Order 13462 and submitted to the IOB pursuant to Sec. 7(c)(i) of Executive Order 13462:
- 12. summaries and related recommendations by the DNI of the activities monitored by it under Sec. 7(b)(iii) of Executive Order 13462 and submitted to the IOB

June 19, 2009 Page 3 of 5

pursuant to Sec. 7(c)(ii) of Executive Order 13462;

- 13. assessments of the effectiveness of corrective action with respect to intelligence activities which "may be unlawful or contrary to Executive Order or Presidential directive" under Sec. 6(b)(i)(A) of Executive Order 13462 and submitted by the DNI to the IOB pursuant to Sec. 7(c)(iii) of Executive Order 13462;
- 14. any records concerning information and assistance provided by the DNI to the PIAB or IOB pursuant to Sec. 8(a) of Executive Order 13462;
- 15. any information received by the DNI from heads of departments pursuant to Sec. 8(b)(i)(B) of Executive Order 13462; and
- 16. reports made by heads of departments to the DNI or by the DNI 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.

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. § 1700.2(h)(4). 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 Sate 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." One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties." 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.

³ Guidestar Basic Report, Electronic Frontier Foundation, http://www.guidestar.org/pqShowGsReport.do? npoId=561625 (last visited June 12, 2009). ⁴ Id.

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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 Destgn (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 32 C.F.R. § 1700.6(b)(2). To determine whether a request meets this standard, the agency determines whether "[d]isclosure [of the requested information] is likely to contribute significantly to public understanding of the operations or activities of the United States government," and whether such disclosure "is not primarily in the commercial interest of the requester." 32 C.F.R. § 1700.6(b)(2). This request clearly satisfies these criteria.

First, the agency's submission of reports to the IOB clearly concerns "the operations or activities of the government." 32 C.F.R. § 1700.6(b)(2).

June 19, 2009 Page 5 of 5

Second, disclosure of the requested information will contribute to a public understanding of government operations or activities. 32 C.F.R. § 1700.6(b)(2). 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. 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.

Finally, 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. § 1700.6(b)(2) (internal quotation marks omitted). Disclosure of the requested information will help inform the public about the agency's actions, as well as contribute to the public debate about how intelligence activities should be conducted.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 32 C.F.R. § 1700.6(b)(2). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

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

Sincerely,

Nathan Cardozo

Open Government Legal Fellow

Enclosures



February 25, 2008

BY FACSIMILE -- (703) 482-2144

John F. Hackett, Director, Information Management Office Director of National Intelligence Office of the Director of National Intelligence Washington, D.C. 20511

RE: Freedom of Information Act Request

Dear Mr. Hackett:

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 Director of National Intelligence 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 Office of the Director of National Intelligence 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 April 2005.

Request for News Media Fee Status

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The Office of the Director of National Intelligence is a member of the "Intelligence Community." See http://www.intelligence.gov/1-members.shtml.

⁴⁸⁴ Shotwell Street, San Francisco, CA 94110 USA +1 415 436 933); (v) +1 415 436 9993 (f) www.efi.org

Freedom of Information Act Request February 25, 2008 Page 2

EFF is a non-profit public interest organization that works "to protect and enhance our core civil liberties in the digital age." One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties." 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/.

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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.

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

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

Preedom of Information Act Request February 25, 2008 Page 3

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.

EFF

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Freedom of Information Act Request February 25, 2008 Page 4

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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. 116. As the FOLA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,

Marcia Hofmann Staff Attorney

Enclosures

SECRETICOMINT/NOPORN-



NATIONAL SECURITY AGENCY

FORT HEOMER & MEADE, WARNLAND 20755-6000

OCT 6 2008

MEMORANDUM FOR STAFF DIRECTOR, SENATE SELECT COMMITTEE ON INTELLIGENCE

SUBJECT: (U//FOUO) Congressional Notification - News Media to Raise Serious Allegations Concerning NSA Operations -INFORMATION MEMORANDUM

(b)(3)-P.L. 86-36

(S) This is to inform you of an upcoming televised interview of James Bamford by ABC News Chief Investigative Correspondent Brian Ross, which is expected to soon air allegations that, after 9/11, the National Security Agency (NSA) engaged in improper intelligence activities.

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Derived From: NSA/CSSM 1-52

Dated: 20070108

Declassify On: 20320108

SECRET/COMINT/INOFORM

Approved for Release by NSA or 11-29-2010, FOIA Case # 60650

SECRET//COMINT//NOPORN

(U#POUO) ABC News requested an NSA official appear on camera to comment on the allegations made by Mr. Bamford. We have declined an on camera interview and responded with a very brief statement, "The civilian and military members of the National Security Agency/Central Security Service take an oath to support and uphold the Constitution of the United States. We have been entrusted to protect and defend the nation with integrity, accountability, and respect for the law. As Americans, we take this obligation seriously. Our employees work tirelessly for the good of the nation, and serve this country proudly."

(C)	
	(別)(3)-P.L. 86-36
(U#FOUO) Should yo	have any questions, please contact

JONATHAN E. MILLER Associate Director Legislative Affairs Office

2 encls, a/s

Copy Furnished:
Minority Staff Director, Senate
Select Committee on Intelligence

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SECRET//COMINT//NOFORN//20320108-NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE FORT GEORGE G. MEADE, MARYLAND 20755-6000

14 December 2007

	ISTANT TO THE SECRETARY OF DEFENSE NTELLIGENCE OVERSIGHT) (b) (3)-P.L. 86-	-36
SUBJECT: (U) Inquiry from	Senator Leahy	
REFERENCE: (U) ATSD(IO December 2007, Classified SE) Memorandum subject: Same, received on 5 ECRET/SI//NOFORN	
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-SECRET//COMINT//NOFORN//20320108-

Assigned personnel were surveyed to determine their level of knowledge of intelligence oversight regulations and associated responsibilities. Personnel within the operational areas were well versed in the authorities.

(U//FOUO)

We provide

you with this notification for your review and further action, as you deem necessary. If you need additional information or clarification, please contact

Assistant Inspector General for Intelligence Oversight, on

GEORGE ELLARD
Inspector General

cc:

The Inspector General, Department of Defense
The Inspector General, Department of the Army
The Inspector General, U.S. Army Intelligence and Security Command