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10
 11 **IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 ELECTRONIC FRONTIER,
 13 FOUNDATION
 Plaintiff,

14 v.

15 DEPARTMENT OF JUSTICE,
 16 FEDERAL BUREAU OF
 INVESTIGATION, AND DRUG
 17 ENFORCEMENT AGENCY,

18 Defendants.
 19

Civil Action No. C 10cv04892 (SI)

DECLARATION OF
 KATHERINE L. MYRICK
 DRUG ENFORCEMENT
 ADMINISTRATION

20 1. I am currently assigned as the Chief of the Freedom of Information Operations Unit,
 21 (SARF), Drug Enforcement Administration (DEA), United States Department of Justice (DOJ),
 22 located at DEA Headquarters in Arlington, Virginia. I have served in this capacity since 1998
 23 and oversee the processing of requests to DEA under the Freedom of Information Act (FOIA), 5
 24 U.S.C. § 552; and the Privacy Act (PA) of 1974, 5 U.S.C. § 552a. SARF is the central DEA
 25 office responsible for responding to, searching for, and processing and releasing DEA
 26 information requested under the FOIA and PA.

27
 28 *Myrick Declaration- Civ. Action No. C 10-04892*

1 2. Due to my experience in responding to requests for DEA records since 1998, and the
2 nature of my official duties, I am familiar with the policies and practices of DEA and DOJ
3 related to searching for, processing, and the release of DEA information responsive to FOIA and
4 PA requests, and in particular, I am familiar with the processing of Plaintiff's request to DEA
5 that is the basis of this suit.

6
7 3. In preparing this declaration, I have read and am familiar with the Complaint in the
8 above titled action and the Plaintiff's Motion for Partial Summary Judgment filed January 6,
9 2011. The statements I make hereinafter are made on the basis of my own personal knowledge,
10 review of DEA records, and information acquired by me in the performance of my official duties
11 as Chief of SARF. The purpose of this declaration is to provide the Court with information
12 regarding DEA's processing of Plaintiff's six-item request dated September 28, 2010, to include
13 a processing plan going forward.

14
15 4. By letter dated October 1, 2010, DEA responded to Plaintiff's request.¹ A true and
16 correct copy of this letter is attached as Exhibit A. By letter dated October 26, 2010, Plaintiff's
17 request for expedited processing was denied after consideration by SARF under the DOJ
18 standards promulgated at 28 C.F.R § 16.5 (d). Specifically, as outlined in the letter, Plaintiff's
19 request was deemed insufficient to warrant expedited treatment in that it did not demonstrate a
20 particular urgency to inform the public about an actual or alleged federal government activity. 28
21 C.F.R. §16.5(d)(ii). A true and correct copy of this letter is attached as Ex. B. Thereafter, on or
22 about November 15, 2010, DEA received notice of the Complaint in the instant FOIA suit. At
23 that time, DEA had a backlog in excess of 900 administrative cases in a single processing track.²

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25
26 ¹ Internal DEA records indicate that this letter was sent on September 29, 2010. See
27 Answer ¶ 19. After the filing of Defendants' Answer, however, Plaintiff provided a copy of the
letter to DEA, which is dated October 1, 2010.

28 ² The backlog as of the end of December 2010 was 882 cases.
Myrick Declaration- Civ. Action No. C 10-04892 - 2 -

1 While it is standard practice to process requests in chronological order on a “first in, first out”
2 basis, a practice consistent with the *Open America* decision, Plaintiff’s request was moved
3 forward in the queue for processing in a joint effort with the Office of Chief Counsel,
4 Administrative Law Section (CCA) in lieu of seeking an *Open America* stay. *See Open America*
5 *v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976). As such, DEA began
6 processing Plaintiff’s request on November 18, 2010; ahead of hundreds of requesters who
7 submitted FOIA requests to DEA before September 28, 2010.

8
9 5. DEA initiated its search for records on November 18, 2010, thereby employing this
10 date as the administrative “cut-off” for responsive records. *See* 28 C.F.R. 16.4(a). First, to frame
11 an adequate search, agency personnel familiar with the issues raised in Plaintiff’s Complaint and
12 request were consulted to identify those DEA offices/activities and/or personnel who would
13 likely possess responsive information. As a result, six DEA program offices/activities were
14 identified and tasked to search for information in any format responsive to Plaintiff’s six-item
15 request. In addition, three DEA personnel assigned (formerly or presently) to two of the
16 identified DEA program offices/activities were identified as specific “action officers” who
17 routinely performed duties related to the subject matter of the requests. These three DEA
18 personnel were also tasked to search for records in any format responsive to Plaintiff’s request,
19 thus creating an overlapping search effort with the six program offices/activities who also
20 performed searches.

21
22 6. DEA completed this search for records on or about January 7, 2011. Given the nature
23 of the multi-part request and the overlapping search efforts described above, a voluminous
24 amount of potentially responsive records were received. As these records were received by the
25 processing team, it became clear that there were many duplicates/and or variations of the same
26 documents and/or e-mail strings that were received from multiple sources; and much of the
27 material is highly technical and/or law enforcement sensitive in nature, thus requiring additional

1 consultation to determine responsiveness, referral, and to formulate appropriate
2 release/withholding decisions.

3
4 7. Given the voluminous amount of material received and the issues identified above, a
5 two-phase processing plan was devised.

6
7 A. Phase I. This first phase, known as “scoping,” was designed to eliminate clearly
8 duplicative (exact copies) and clearly non-responsive material (out of scope by date or topic) and
9 to organize material to ensure orderly Phase II processing by placing potentially responsive
10 material in similar processing categories. Unfortunately, this work could only be performed
11 manually, and given the voluminous amount of material received, required substantial effort.
12 Beginning on January 4, 2011 (most material had been received by that date), a four person
13 SARF/CCA team began the Phase I scoping process. I diverted two senior FOIA Specialists
14 from their normal duties of processing FOIA requests to assist the two designated CCA members
15 of this joint processing team. Working on a full-time basis,³ this first phase was completed on
16 January 12, 2011, and identified approximately 5,800 pages of potentially responsive material.

17
18 B. Phase II. This phase involves page-by-page review to determine which records are
19 responsive, and if so, to determine whether such records may be released, referred, and/or
20 withheld. Even though the Phase I scoping efforts succeeded in eliminating many duplicates,
21 more duplicates will be identified in Phase II processing as there remain multiple draft variations
22 of the same documents which will entail close review to determine if they are duplicate drafts or
23 are different draft document variations. This Phase began January 19, 2011, and again, two
24 FOIA Specialists assigned to SARF have been diverted from processing other requests as part of
25 the joint processing team for Plaintiff’s request.

26 At this initial stage of Phase II processing, it is very difficult to accurately estimate the

27
28 ³Estimated 187 hours of labor total for the 4-person team working full time.

1 rate of processing the remaining records for several reasons, to include: (1) the case is significant
2 in terms of size for DEA; (2) given the technical and/or deliberative nature of many of the
3 records, the case is unprecedented in terms of complexity and will require additional consultation
4 with program “experts” and/or counsel to assist in determining responsiveness and what
5 information should be released/withheld under applicable exemptions; and (3) there still remain
6 substantial intertwined strings of emails/communication (intra and inter agency) of potentially
7 responsive material, as well as multiple drafts of the same documents identified above, that will
8 slow review determinations as these documents must be manually sorted for comparison, internal
9 DEA consult, and referral/consultation with DOJ components, other agencies, and third parties.

10
11 8. As the above makes clear, Plaintiff’s demand for processing to be completed within 10
12 days ignores the scope and difficulties posed in this case. DEA personnel must review thousands
13 of pages of materials to determine responsiveness and the applicability of any exemptions under
14 the FOIA. Given the technical nature of many of the underlying documents, this review process
15 is highly complex and the need to avoid inadvertent disclosure of sensitive law enforcement
16 information is paramount. Given these challenges, and consistent with processing Plaintiff’s
17 request as soon as practicable, see 5 U.S.C. § 552(a)(E)(iii), it is DEA’s goal to process⁴ a
18 minimum of 350 pages per month and to provide Plaintiff a rolling update/determination/release
19 on a monthly basis, with the first to occur on or about April 1, 2011, until the project is
20 completed.⁵

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25 ⁴ The term “processing” includes pages determined to be duplicates, non-responsive,
26 referred to other components/agencies/third-parties for direct response/consultation, released or
withheld in full or in part.

27 ⁵This is a good faith estimate based on available resources, the need to devote adequate
28 time and resources to other requests, and internal review procedures known at this time.

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

2
3
4 1/24/11

5
6 DATE

Katherine L. Myrick

7 Katherine L. Myrick
8 Chief, Operations Unit
9 Freedom of Information Section (SARF)
10 Drug Enforcement Administration
11 Washington, D.C. 20537
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EXHIBIT A



**U.S. Department of Justice
Drug Enforcement Administration**

OCT 01 2010

Case Number: 10-00892-F

Subject: ANY PROBLEMS, OBSTACLES OR LIMITATIONS THAT HAMPER THE DEA'S CURRENT ABILITY TO CONDUCT SURVEILLANCE ON COMMUNICATIONS SYSTEMS OR NETWORKS INCLUDING, BUT NOT LIMITED TO, ENCRYPTED SERVICE LIKE BLACKBERRY (RIM), SOCIAL NETWORKING SITES LIKE FACEBOOK, PEER-TO-PEER MESSAGING SERVICES OR VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE LIKE SKYPE, ETC (JANUARY 1, 2006 TO PRESENT)

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, received by the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to DEA records. Your request has been opened and assigned the above case number. Please include this case number when corresponding with this office.

This letter confirms your obligation that by filing your request, you have agreed to pay all applicable fees charged under 28 C.F.R. § 16.11, up to \$25.00. No fees are due at this time.

In order to expedite all requests, your request will be handled in chronological order based on the date of this letter. If you have any questions regarding this letter, you may contact our Customer Service Hotline Representative on (202) 307-7596 or mail your correspondence to:

DEA HEADQUARTERS
ATTN: FOI/PA UNIT (SARF)
8701 MORRISSETTE DRIVE
SPRINGFIELD, VIRGINIA 22152

Sincerely,

A handwritten signature in cursive script that reads "Katherine Myrick".

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

EXHIBIT B



U.S. Department of Justice
Drug Enforcement Administration

Case Number: 10-00892-F

Subject: LYNCH, JENNIFER

OCT 26 2010

Jennifer Lynch
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, addressed to the Drug Enforcement Administration (DEA), FOI/Records Management Section, Operations Unit (SARO), seeking access to DEA records pertaining to the above referenced subject.

The Department of Justice (DOJ) has provided guidance to Federal Agencies so that each request for expedited treatment receives consideration for "Exceptional need or urgency." See 28 C.F.R. § 16.5 (d). Under the FOIA, requests... will be taken out of order and given expedited treatment whenever it is determined that they involve:

- (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

The FOI/Records Management Section, Operations Unit makes a determination regarding the first three standards while the DOJ's Director of Public Affairs makes the initial determination regarding the fourth standard. See id. § 16.5(d)(2). In your letter, you requested expedited processing of your request because "it pertains to information about which there is an urgency to inform the public about an actual or alleged federal government activity." I have construed your request for expedited treatment as made pursuant to the second (ii) standard listed above. Based on the information you provided, your request is insufficient to warrant expedited treatment under this standard (demonstrating that a particular urgency concerning actual or alleged federal government activity beyond the public's right to know about government activities exists). Consequently, your request for expedited processing is denied.

Case Number: 10-00892-F

Page 2

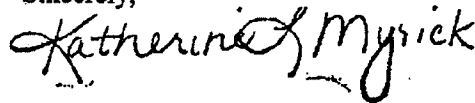
If you wish to appeal the denial of your request for expedited treatment, you may do so within 60 days from the date of this letter pursuant to 28 C.F.R. § 16.9. The appeal should be sent to the following address, with the envelope marked "FOIA Appeal":

DEPARTMENT OF JUSTICE
OFFICE OF INFORMATION POLICY
NYAV BUILDING, 11TH FLOOR
WASHINGTON, D.C. 20530

Accordingly, your request will be handled in chronological order. Please be assured that your request is being handled as equitably as possible. If you have any questions regarding this letter, please contact me on (202) 307-7596 or forward your correspondence, referencing your case number to the following address:

DEA HEADQUARTERS
ATTN: OPERATIONS UNIT (SARO)
8701 MORRISSETTE DRIVE
SPRINGFIELD, VIRGINIA 22152

Sincerely,



Katherine L. Myrick
Chief, Operations Unit
FOI/Records Management Section