

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

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ELECTRONIC FRONTIER FOUNDATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-cv-04892
	)	
DEPARTMENT OF JUSTICE	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION OF DAVID M. HARDY**

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and currently relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 21, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the state of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 278 employees who staff a total of ten (10) FBIHQ units and two field operational service center

units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to the Federal Bureau of Investigation (“FBI”) records and information pursuant to the FOIA, amended by the OPEN Government Act of 2007; Privacy Act; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the treatment which has been afforded plaintiff’s May 21, 2009, FOIA request (hereafter Cardozo request), submitted to FBIHQ seeking records pertaining to the FBI’s Going Dark Program from 2007 to present. I am also aware of the treatment afforded plaintiff’s September 28, 2010, FOIA request (hereafter Lynch request) submitted to FBIHQ<sup>1</sup>.

(4) This declaration is in response to plaintiff’s motion for partial summary judgement, wherein plaintiff seeks an Order from the Court directing the FBI to expedite processing of the Lynch request, as well as to process and disclose records in response to its Cardozo request. The FBI will provide the Court and plaintiff with an explanation of the FBI’s record-keeping system and the procedures used to expeditiously search for, collect, and process records potentially responsive to both of plaintiff’s requests.

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<sup>1</sup>See Decl. ¶ 20 for FOIA search request details.

**EXPLANATION OF THE FBI'S CENTRAL RECORDS SYSTEM**

(5) The Central Records System ("CRS") enables the FBI to maintain information which it has acquired in the course of fulfilling its mandated law enforcement responsibilities. The records maintained in the CRS consist of administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. CRS is organized into a numerical sequence of files, called FBI "classifications," which are broken down according to subject matter. The subject matter of a file may correspond to an individual, organization, company, publication, activity, or foreign intelligence matter (or program). Certain records in the CRS are maintained at FBIHQ, whereas records that are pertinent to specific field offices of the FBI are maintained in those field offices. While the CRS is primarily designed to serve as an investigative tool, the FBI searches the CRS for documents that are potentially responsive to FOIA/Privacy Act requests. The mechanism that the FBI uses to search the CRS is the Automated Case Support System ("ACS").

(6) On or about October 16, 1995, the ACS system was implemented for all Field Offices, Legal Attaches ("Legats"), and FBIHQ in order to consolidate portions of the CRS that were previously automated. ACS can be described as an internal computerized subsystem of the CRS. Because the CRS cannot electronically query the case files for data, such as an individual's name or social security number, the required information is duplicated and moved to the ACS so that it can be searched. More than 105 million records from the CRS were converted from automated systems previously utilized by the FBI. Automation did not change the CRS; instead, automation has facilitated more economic and expeditious access to records maintained in the

CRS.

(7) The retrieval of data from the CRS is made possible through the ACS using the General Indices, which are arranged in alphabetical order.<sup>2</sup> The entries in the General Indices fall into two categories:

(a) A “main” entry -- A “main” entry, or “main” file, carries the name corresponding with a subject of a file contained in the CRS.

(b) A “reference” entry -- A “reference” entry, sometimes called “cross-references,” are generally only a mere mention or reference to an individual, organization, or other subject matter, contained in a document located in another “main” file on a different subject matter.

(8) Searches made in the General Indices to locate records concerning a particular subject, such as “Going Dark Program” are made by searching the subject requested in the index.

(9) The ACS consists of three integrated, yet separately functional, automated applications that support case management functions for all FBI investigative and administrative cases:

(a) Investigative Case Management (“ICM”) – ICM provides the ability to open, assign, and close investigative and administrative cases as well as set, assign, and track leads.

The Office of Origin (“OO”), which sets leads for itself and other field offices, as needed, opens

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<sup>2</sup>The General Indices, which became fully automated on September 24, 1987, also include index cards which allow a manual search for records prior to that date.

a case. The field offices that receive leads from the OO are referred to as Lead Offices (“LOs”). When a case is opened, it is assigned a Universal Case File Number (“UCFN”), which is used by FBIHQ, as well as all FBI field offices and Legats that are conducting or assisting in the investigation. Using the following generic file number, “62F-HQ-1234567”, an explanation of the UCFN is as follows: “62F” indicates the classification for the specific type of investigation, which in this case relates to Miscellaneous-Other; “HQ” is the abbreviated form used for the OO of the investigation, which in this case refers to FBIHQ; and “1234567” denotes the individual case file number.

(b) Electronic Case File (“ECF”) – ECF serves as the central electronic repository for the FBI’s official text-based documents. ECF supports the universal serial concept in that only the creator of a document serializes it into a file. This provides a single-source entry of serials into the computerized ECF system. All original serials are maintained in the OO case file.

(c) Universal Index (“UNI”) – UNI continues the universal concepts of ACS by providing a complete subject/case index to all investigative and administrative cases. Only the OO is required to index; however, the LOs may index additional information as needed. UNI, an index of approximately 109.4 million records, functions to index names to cases, and to search names and cases for use in FBI investigations. Names of individuals or organizations are recorded with identifying applicable information such as date or place of birth, race, sex, locality, Social Security number, address, and/or date of event.

(10) The decision to index names other than subjects, suspects, and victims is a discretionary decision made by the FBI Special Agent (“SA”) – and on occasion, support

employees – assigned to work on the investigation, the Supervisory SA (“SSA”) in the field office conducting the investigation, and the SSA at FBIHQ. The FBI does not index every name in its files; rather, it indexes only that information considered to be pertinent, relevant, or essential for future retrieval. Without a “key” (index) to this enormous amount of data, information essential to ongoing investigations could not be readily retrieved. The FBI files would thus be merely archival in nature and could not be effectively used to serve the mandated mission of the FBI, which is to investigate violations of federal criminal and national security statutes. Therefore, the General Indices to the CRS files are the means by which the FBI can determine what retrievable information, if any, the FBI may have in its files on a particular subject matter or individual, i.e., “Going Dark Program.”

#### **PROCEDURAL HISTORY OF CARDOZO FOIA REQUEST**

(11) By faxed letter dated May 21, 2009, plaintiff submitted a FOIA request to FBIHQ for records pertaining to the FBI’s Going Dark Program from 2007 to the present. Plaintiff specifically requested, “all agency records that describe the Going Dark Program; all Privacy Impact Assessments prepared for the Going Dark Program; and all System of Records Notices (“SORNs”) that discuss or describe the Going Dark Program. This request includes, but is not limited to, electronic records.” Plaintiff requested that it “not be charged search and review fees,” asserting that “it qualified as a representative of the news media.” In addition, plaintiff requested a “waiver of duplication fees,” asserting that “disclosure of the requested information was in the public interest within the meaning of 5 U.S.C. § 522(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k).” Plaintiff did not seek expedited status for this request. (**See Exhibit A.**)



(12) By letter dated May 26, 2009, the FBI advised plaintiff that the Cardozo request had been assigned FOIA Number 1131078-000 and that the FBI would search the automated indices to the Central Records System (“CRS”) at FBIHQ for the requested information, and would inform plaintiff of the results as soon as possible. **(See Exhibit B.)**

(13) By letter dated August 21, 2009, plaintiff was notified by the FBI of the status of its Cardozo FOIA request. The FBI advised that it was searching for, retrieving, scanning, and evaluating files that might be responsive to the request. The FBI further advised that, once all the files had been evaluated, the request would be forwarded to the “perfected backlog,” where it would reside until it was assigned to a FOIA analyst.<sup>3</sup> **(See Exhibit C.)**

(14) By letter dated December 4, 2009<sup>4</sup>, the FBI notified plaintiff that approximately 1,099 pages of potentially responsive material had been located. Plaintiff was advised that the potential duplication cost for the material was \$99.90, and was asked to notify the FBI in writing within 60 days from the date of its letter whether it would accept the estimated charge.<sup>5</sup> In its

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<sup>3</sup>See Decl. ¶ 25, (b)(i) and (b)(ii) for an explanation of “perfected backlog.”

<sup>4</sup>According to plaintiff this cost letter was dated January 14, 2010, and it stated that the FBI located approximately 1039 pages of responsive material that would cost plaintiff \$93.90 if all the material was processed for release. The FBI’s correspondence records only show a draft letter dated December 4, 2009 being generated **(See Exhibit D)**, but internal notes reveal that final approval of the cost estimate letter was not completed until January 19, 2010 and the final letter was mailed by January 21, 2010. The FBI does not have a record of this updated cost estimate letter, but internal notes and plaintiff’s own acknowledgment show that a final cost estimate letter did reflect a later mailing date, and a lower page count and potential cost.

<sup>5</sup>With the mailing of this letter, the FBI inadvertently failed to make a determination on plaintiff’s request for waiver of duplication costs. This error was rectified on February 1, 2010 when plaintiff’s request was approved.

letter, the FBI offered plaintiff the option of reducing the scope of its request in order to reduce the potential duplication cost. The FBI explained its “three-queue processing system”<sup>6</sup>, advising that, due to the number of potentially responsive pages located by the FBI, plaintiff’s request had been placed in the medium queue (501 pages to 2500 pages of potentially responsive material). Plaintiff was advised that, by agreeing to reduce the scope of its request, it could reduce the page count, resulting in movement of the request to the small queue; (500 pages or less), and also reduce the potential duplication cost. **(See Exhibit D.)**

(15) In a letter dated January 7, 2010, the FBI notified plaintiff of the status of its Cardozo FOIA request. Plaintiff was informed that the request was currently being reviewed by an analyst to confirm that the records were responsive before applying any exemptions allowed under FOIA. Plaintiff was also advised that, if any of the potentially responsive records contained sensitive national security information, they would undergo a systematic declassification review prior to application of FOIA exemptions. **(See Exhibit E.)**

(16) In a faxed letter dated January 26, 2010, plaintiff reminded the FBI that it requested a fee waiver for duplication costs in its original FOIA request letter of May 21, 2009. Plaintiff stated that, “the FBI’s January 14, 2010<sup>7</sup> cost estimate letter makes no reference to this request.” Plaintiff inquired whether the cost estimate letter constituted a denial of its request for

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<sup>6</sup>See Decl. ¶ 25, (b)(ii) for detailed explanation of FBI’s “three-queue processing system.”

<sup>7</sup>Plaintiff states that the cost estimate letter was dated January 14, 2010 and that the FBI claimed they located 1,039 pages of potentially responsive material, which would have an estimated cost of \$93.90. The FBI’s correspondence records shows that a draft cost estimate letter was dated December 4, 2009, but a copy of the final cost estimate letter was not saved for FBI records. See Decl. ¶ 14 and footnote 4 for a full explanation.



a fee waiver for duplication costs, and, if so, asked that its current request be treated as an appeal of that decision. **(See Exhibit F.)**

(17) By letter dated February 1, 2010, the FBI informed plaintiff that it had received its January 26, 2010 renewed fee waiver request, and agreed to waive the duplication cost fee. **(See Exhibit G.)**

(18) In letters dated April 9, 2010, July 8, 2010, and October 6, 2010, the FBI updated plaintiff on the status of its Cardozo FOIA request, informing plaintiff that the request was still under review by the assigned analyst. **(See Exhibits H, I and J.)**

(19) On October 28, 2010 plaintiff commenced the instant action regarding both the Cardozo, and Lynch FOIA requests.

#### **PROCEDURAL HISTORY OF LYNCH FOIA REQUEST**

(20) In a letter dated September 28, 2010, plaintiff submitted a FOIA request for, “all agency records created on or after January 1, 2006 (including, but not limited to, electronic records) discussing, concerning, or reflecting: 1). any problems, obstacles or limitations that hamper the FBI’s current ability to conduct surveillance on communications systems or networks including, but not limited to, encrypted services like Blackberry (RIM), social networking sites like Facebook, peer to peer messaging services or Voice over Internet Protocol (VoIP) services like Skype, etc.; 2). any communications or discussions with the operators of communications systems or networks (including, but not limited to, those providing encrypted communications, social networking, and peer to peer-to-peer messaging services), or with equipment manufactures and vendors, concerning technical difficulties the FBI has encountered in conducting authorized

electronic surveillance; 3). any communications or discussions concerning technical difficulties the FBI has encountered in obtaining assistance from non-U.S.-based operators of communications systems or networks, or with equipment manufacturers and vendors in the conduct of authorized electronic surveillance; 4). any communications or discussions with the operators of communications systems or networks, or with equipment manufacturers and vendors, concerning development and needs related to electronic communications surveillance-enabling technology; 5). any communications or discussions with foreign government representatives or trade groups about trade restrictions or import or export controls related to electronic communications surveillance-enabling technology; 6). any briefings, discussions, or other exchanges between FBI officials and members of the Senate or House of Representatives concerning implementing a requirement for electronic communications surveillance-enabling technology, including, but not limited to, proposed amendments to the Communications Assistance to Law Enforcement Act (CALEA).” In addition to a fee waiver request, plaintiff requested expedited processing of this request. **(See Exhibit K.)**

(21) By letter dated October 20, 2010, the FBI advised plaintiff that the Lynch request had been assigned FOIA number 1154593-000, and that the FBI would search the automated indices to the Central Records System (“CRS”) at FBIHQ for the requested information, and inform plaintiff of the results as soon as possible.<sup>8</sup> **(See Exhibit L.)**

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<sup>8</sup>The FBI subsequently determined that it would not be productive to search the automated indices of the CRS for the subject of plaintiff’s September 28, 2010 FOIA request. The requested information is not the type for which a case file is created in CRS. See Decl. ¶ 5-10 for an explanation of when a CRS search is appropriate. Due to the extraordinary breadth and depth of plaintiff’s request, the FBI determined that a more individualized inquiry (outside of the

(22) By letter dated October 20, 2010, the FBI advised plaintiff that its request for a waiver of any duplication fee costs associated with the Lynch request had been granted. The FBI also informed plaintiff that the request for expedited processing was granted. **(See Exhibit M.)**

(23) On October 28, 2010 plaintiff commenced the instant action regarding both the Cardozo, and Lynch FOIA requests.

#### **HOW A FOIA REQUEST IS PROCESSED IN RIDS**

(24) Over the years, FOIA management at FBIHQ has continuously re-engineered the process of responding to FOIA/Privacy Act requests in an effort to better serve the needs of requesters who seek information from the FBI. In 2002, reorganization of various divisions at FBIHQ resulted in the formation of the RMD, which now handles all FOIA/Privacy Act requests through the RIDS. These most recent re-engineering efforts have resulted in a new organizational plan which will be discussed in more detail below.

(25) The mission of RIDS is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information. RIDS provides program and policy management that pertains to the research, review, analysis, processing, and classification/declassification work related to the FOIA and Privacy Act; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and

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CRS system) of certain FBI divisions and offices was the most appropriate method to locate potentially responsive material. RIDS/RMD circulated an initial Electronic Communication (“EC”)(internal memorandum) on November 8, 2010 to the FBIHQ divisions and offices most likely to possess potentially responsive records. When additional FBI offices were subsequently identified as having potentially responsive material, a second search EC was circulated on January 10, 2011. (See Decl. ¶ 20 for search request).

Presidential and Congressional directives. RIDS also provides prepublication review of material written by current and/or former FBI employees concerning FBI matters as mandated by the FBI's employment agreement, executes the FBI's historic declassification program, and assists in managing defense discovery efforts in large counterterrorism criminal trials. RIDS currently employs 278 personnel, most of whom are Legal Administrative Specialists ("LASs"), and who are assigned among the 12 units within RIDS. RIDS employees intake, review, process, and release information in response to FOIA and Privacy Act requests. To accomplish this mission, RIDS consists of the following 12 Units: one Service Request Unit ("SRU"), one Work Process Unit ("WPU"), three Classification Units ("CU"), six FOIA/Privacy Act Units ("FOIA Disclosure Units"),<sup>9</sup> and the Litigation Support Unit ("LSU").

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

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<sup>9</sup>Two of the six FOIPA Disclosure Units operate at off-site locations in Savannah, Georgia and Butte, Montana.

the requester. Finally, SRU handles administrative appeals.

(b) Work Process Unit

(i) The Work Process Unit (“WPU”) is responsible for reviewing and sorting all correspondence/incoming requests for information from the public, Congress, Presidential Libraries, foreign governments, other federal and state agencies, and other FBI entities (i.e., FBI field offices, Legats). The WPU handles various initial tasks required to “perfect” a FOIA/Privacy Act request, including sending letters to acknowledge requests, advising a requester to provide identifying data so that an accurate records search can be made and/or to submit a notarized signature/Privacy Act waiver, and advising a requester when no responsive records are located. The WPU also opens new requests, assigns a FOIA/Privacy Act (“FOIA”) Request Number, and enters the perfected requests into the FOIA Document Processing System (“FDPS”) tracking system. The WPU is responsible for preparing “perfected” requests for transfer to the six FOIA Disclosure Units. As previously explained, a request is considered “perfected” when all administrative tasks have been completed and all responsive documents have been scanned into FDPS. Once a request has been perfected, it is placed in the backlog for assignment to a FOIA Disclosure Unit for processing. The WPU conducts searches of the general indices for identifiable records<sup>10</sup>, confirms responsive documents, stamps files for

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<sup>10</sup>At times, when a standard search of the general indices does not produce anticipated results, WPU drafts an electronic communication called a “search EC” and directs it to those divisions most likely to house potentially responsive material. The search EC then requires a specific point of contact from those divisions to respond to WPU within a specific time period, and provide WPU with copies of any potentially responsive documents they have located within their division. Subsequently, if more divisions or offices are identified during this search phase, as having potentially responsive material, additional search EC’s will be directed to these newly



retention, addresses expedited requests<sup>11</sup> and fee issues (other than fee waiver reviews), retrieves and forwards files for scanning into FDPS, responds to status inquiries, and maintains requests prior to their transfer to the FOIA Disclosure Units.

(ii) After the WPU perfects a request, it is sent to the “perfected backlog.” To ensure fairness to all requesters and to equitably administer the deluge of FOIA/Privacy Act requests received by the FBI, a request is assigned based on the date of receipt on a “first-in, first-out” basis from within each of three queues according to sound administrative practices.<sup>12</sup> The FBI uses a three-queue processing system as a way to fairly assign and process new requests.<sup>13</sup> The three-queue processing system established “multi-track” processing for requests, based on the amount of time and work involved in handling a particular request.<sup>14</sup> The system nevertheless preserves the principle that, within the three queues, requests are still assigned and processed on a first-in/first-out basis. The placement of a request in one of the three queues depends on the total amount of material responsive to that request - 500 pages or less (“small queue”), 501 to 2,500 pages (“medium queue”), or more than 2,500 pages (“large queue”). This standard operating procedure, coupled with the FBI’s “first-in, first-out” policy,

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identified divisions and offices. Searches that involve this level of coordination with other divisions are far more complex than the searches conducted on the average request and therefore often require additional time.

<sup>11</sup>See Decl. ¶ 28-32 for how expedited processing is handled.

<sup>12</sup>See 28 C.F.R. § 16.5(a).

<sup>13</sup>This system went into effect on July 10, 1997, superseding the previous system of two queues (one for 100 pages or less, the other for requests greater than 100 pages).

<sup>14</sup>See 5 U.S.C. § 552(a)(6)(D)(I) and 28 C.F.R. § 16.5(b).



permits requests to be addressed in the order in which they are received, while obviating the inequities to other requesters whose interests relate only to a small number of documents. As described earlier, individuals whose requests have been placed in the large queue are given the opportunity, through contact with SRU's Negotiation Team, to reduce the scope of their requests and accelerate assignment of their requests by relocating them to a more advantageous queue.

(c) Classification Units: The three Classification Units ("CUs") are responsible for complying with the classification/declassification review of FBI records under Executive Order 13526 and for conducting mandatory declassification review consistent with Executive Order 13526. The CUs review documents responsive to FOIA/Privacy Act requests, criminal and civil discovery requests, Congressional and Presidential mandates, Presidential Library requests, mandatory declassification requests, Office of Inspector General Reports, and other federal agency requests in order to determine whether such material should remain classified or be declassified. In addition, the CUs review and prepare classified material for review by the Department of Justice Review Committee ("DRC").<sup>15</sup>

(d) FOIA Disclosure Units: The six FOIA Disclosure Units perform the actual processing of records pursuant to the provisions of the FOIA and Privacy Act. "Processing" involves a page-by-page, line-by-line review of the responsive documents to determine which, if any, FOIA and/or Privacy Act exemptions may apply. This includes redaction of the exempt material and notation of the applicable exemption(s) in the margin of each page and/or

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<sup>15</sup>The DRC is the FBI's appellate authority with regard to the implementation and administration of Executive Order 13526 and related directives and guidelines concerning classified information. See 28 C.F.R. § 17.14.

preparation of deleted page information sheets when pages are withheld in their entirety, which is now done electronically in FDPS. During the course of their review, the FOIA Disclosure Units consult with other government agencies, as necessary, for their determination as to the releasability of the other agency's information contained within FBI records, or refer non-FBI documents to those originating agencies for processing and direct response to the requester. The FOIA Disclosure Units ensure that FOIA and/or Privacy Act exemptions have been applied properly, no releasable material has been withheld, no material meriting protection has been released, all necessary classification reviews have been completed by transferring applicable cases to the CUs, and other government agency information and/or entire documents originating with other government agencies have been properly handled.

(e) Litigation Support Unit: The Litigation Support Unit (“LSU”) is responsible for providing legal support and administrative assistance to the FBI’s Office of the General Counsel and Chief Division Counsels and Associate Division Counsels in the FBI’s field offices, in all FOIA/Privacy Act requests that result in federal litigation. The LSU coordinates the progress of the FBI’s response to a particular FOIA/Privacy Act request as it progresses through the units described above, the receipt of substantive litigation-related information from involved FBI Special Agents in the field offices and operational Divisions at FBIHQ, and the referral of documents to other DOJ components and/or government agencies. The LSU prepares the administrative record, drafts both procedural and substantive declarations, codes documents

processed by the FOIA Disclosure Units,<sup>16</sup> and drafts detailed declarations justifying the assertion of all applicable FOIA/Privacy Act exemptions.

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

(27) Consistent with standard administrative procedure, any records referred to the FBI from other DOJ components or other government agencies in response to a particular request are added to that pending FOIA/Privacy Act request. This process is an equitable way for RIDS to maintain administrative control of FOIA/Privacy Act requests. Under this system, the same LAS assigned to process a particular request will also handle the review of records referred by other

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<sup>16</sup>A coded format is used in cases to assist the Court and parties in reviewing information which the FBI withholds within the context of processed documents. Each instance of information withheld pursuant to the FOIA is accompanied by a coded designation that corresponds to specified categories. For example, if “(b)(7)(C)-1” appears on a document, the “(b)(7)(C)” designation refers to Exemption (b)(7)(C) of the FOIA, which concerns “Unwarranted Invasion of Privacy.” The numerical designation “-1” following the “(b)(7)(C)” narrows the main category to the more specific subcategory of “Names and/or Identifying Data of Third Parties Merely Mentioned.” Although adding codes is a time-consuming process, it helps the Court and the parties in those jurisdictions that accept coded declarations to explain more clearly the nature of the withheld material.

DOJ components or government agencies. By ensuring continuity in the processing of FOIA/Privacy Act requests, this system is not only fair to all persons seeking information under the FOIA/Privacy Act, but is also administratively efficient.

#### **EXPEDITED STATUS**

(28) An agency will process a FOIA request on an expedited basis when a requestor has shown a compelling need or urgency for the records that warrants prioritization of his or her request over other earlier requests. 28 C.F.R. § 16.5(d) describes four circumstances under which requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve the following:

- (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.

(29) Decisions to expedite under this fourth standard are made by DOJ's Director of Public Affairs. Pursuant to 28 C.F.R. § 16.5(d)(4), within 10 calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable.

(30) In the September 28, 2010 Lynch request<sup>17</sup>, plaintiff asked for expedited processing. The FBI notified plaintiff by letter dated October 20, 2010, of the decision to approve the request.

(31) WPU's normal process is to wait until all results from the search EC in a particular request are received before forwarding the potentially responsive material to the appropriate place in the queue system. Generally, an item cannot be placed "in queue" until there is material available for processing. This remains true even when a case has received approval for expedited status. Once placed in the proper queue, however, an expedited case moves to the front of that queue unless another expedited or court ordered case is placed in front of it.

(32) The first material potentially responsive to the Lynch request was received, and the FOIA case was immediately sent to the perfected backlog on January 6, 2011, without waiting for all the divisions and offices to report their search results. The case was highlighted as an expedited case in the FBI's FOIA Document Processing System ("FDPS"). That very same day a FOIA analyst was assigned to the case to begin processing the material. Also on January 6, 2011, the FOIA Analyst reviewed the material, and identified the material as containing classified information, and in turn, forwarded the material to the Classification Unit, noting that it should receive expedited classification processing. As additional potentially responsive information is received the FOIA analyst will upload it into FDPS, and determine if it also should receive classification review. Since January 6, 2011, the Lynch request has continued to receive constant and immediate attention.

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<sup>17</sup>Plaintiff did not request expedited processing in its Cardozo request.



**SEARCH FOR RECORDS RESPONSIVE TO THE CARDOZO FOIA REQUEST**

(33) In response to plaintiff's May 21, 2009 request, the FBI's RIDS/RMD conducted a search on May 26, 2009 of the FBIHQ manual and automated indices to the CRS to identify all potentially responsive main files indexed to the subject, "Going Dark Program." A search was conducted using the subject's name, "Going Dark Program." The FBI also searched for "Going Dark," a variation of the subject. As a result of this CRS search, the FBI did not locate any main responsive files indexed to "Going Dark Program" or "Going Dark."

(34) The FBI subsequently determined that a more individualized inquiry (outside of the CRS system) of certain FBI divisions and FBI offices which were reasonably likely to have potentially responsive records was necessary. RIDS/RMD circulated an Electronic Communication ("EC") on July 8, 2009 to FBIHQ divisions most likely to possess potentially responsive records. The EC requested that personnel in the designated divisions conduct a thorough search for any potentially responsive documents in their possession, in response to plaintiff's FOIA request<sup>18</sup> for records created on or after January 1, 2007 to on or before June 1, 2009.

(35) With all of the requested divisions reporting, the FBI located 1039 potentially responsive documents related to plaintiff's May 21, 2009 request. WPU "perfected"<sup>19</sup> the FOIA request, and placed the request in the backlog for assignment to a FOIA Disclosure Unit for

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<sup>18</sup>A copy of plaintiff's FOIA request was incorporated into the text of the search EC to insure accuracy of the search.

<sup>19</sup>See Decl. ¶ 25, Section (b)(i) and (b)(ii) for explanation of "perfected backlog".



processing on December 1, 2009. The FOIA case was assigned to a FOIA Unit analyst on January 7, 2010<sup>20</sup>, who forwarded the material to Classification Unit (CU), for mandatory classification review. Upon completion of classification review on January 22, 2010, the potentially responsive material was returned to the FOIA Unit analyst for processing.

(36) The FOIA Unit analyst has been processing the potentially responsive material, sending out referral/consults, working with internal divisional reviews, and preparing responsive material to be released in two interim releases. The FBI expects to make its first release to plaintiff shortly. The second, and final interim release, continues to be processed by the FOIA analyst; certain parts of the potentially responsive material are currently under review by Other Government Agencies (“OGA”) who have an equity interest in the material. Once processing is completed in RIDS, the second and final interim release will be made to plaintiff.

#### **SEARCH FOR RECORDS RESPONSIVE TO THE LYNCH FOIA REQUEST**

(37) The FBI has employed several mechanisms as part of its search to identify documents responsive to the plaintiff’s FOIA request. As a threshold matter, it is important to note that, due to the extraordinary breadth of the Lynch request, the request does not lend itself readily or naturally to the searches that the FBI routinely conducts in response to FOIA requests seeking access to FBI investigative files.

(38) Because plaintiff’s FOIA request did not lend itself to a CRS search (See Decl. ¶ 5-10 supra), the FBI determined a more individualized inquiry (outside of the CRS system) of

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<sup>20</sup>Plaintiff did not request expedited processing in the Cardozo request, so the assignment of the case to a FOIA Analyst was determined by the FBI’s first in, first out, case assignment protocol.

certain FBI divisions and FBI offices, which were reasonably likely to have potentially responsive records, was necessary. RIDS/RMD circulated an initial Electronic Communication (“EC”) on November 8, 2010 to FBIHQ divisions and offices most likely to possess responsive records. When additional FBI offices were subsequently identified as having potentially responsive material, a second search EC was circulated on January 10, 2011. Both ECs requested that personnel in the designated divisions conduct a thorough search for any potentially responsive documents in their possession, in response to Lynch’s FOIA request<sup>21</sup> for records created on or after January 1, 2006 to on or before November 8, 2010.

(39) As of January 24, 2011 this search for potentially responsive material continues, with responsive material being provided to RIDS from responding FBI divisions, and offices as it is located.

**SUMMARY OF POTENTIALLY RESPONSIVE DOCUMENTS & PROPOSED  
SCHEDULE FOR PRODUCTION OF REMAINING MATERIALS**

(40) The FBI’s search for material potentially responsive to plaintiff’s May 21, 2009 Cardozo FOIA request is complete. Approximately 1039 pages are being processed and the FBI expects to provide them to plaintiff in two separate releases. The FBI expects to make its first interim release shortly. Potentially responsive material is still being collected for plaintiff’s September 28, 2010 Lynch FOIA request. The exact quantity of potentially responsive material has not yet been determined, but preliminary estimates place the number of pages in the thousands. The FBI expects to be able to process 400-500 pages per month and will do so until

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<sup>21</sup>A copy of plaintiff’s September 28, 2010 FOIA request was incorporated into the text of both search ECs to insure accuracy of the search.

production of all material responsive plaintiff's request is complete. When all divisions and offices have responded to the two search ECs, the FBI will be able to provide an estimated completion date based on its processing rate of 400-500 pages per month. With this in mind, it is impracticable to complete processing of plaintiff's expedited Lynch request within the requested 10 days. FBI anticipates processing its first interim response on or about April 1, 2011. This is a good faith estimate based on the currently known volume and nature of the information involved in this request. It may need to be refined or modified as processing continues.

(41) The FBI receives approximately 16,000 FOIA/Privacy Act requests per year. The average response is 1,380 pages. In just-completed fiscal year 2010, the FBI released 2.2 million pages with a staff of 278 employees in RIDS. Twenty-five percent of the requests required declassification review. There are currently 1.85 million pages currently awaiting review in the queues. In fiscal year 2011 to date, RIDS/RMD has received 11 requests for expedition; 8 have been granted. In addition, processing under court ordered litigation deadlines takes priority over cases awaiting review in the queues.

(42) There are currently five cases being worked under court ordered deadlines that fall within the next thirty days. These include Boehm v. FBI (1:09-cv-02173, U.S. District Court for the District of Columbia), ACLU v. FBI (10-cv-3759, U.S. District Court, Northern District of California), National Day Labor Organizing Committee, et.al, v. ICE et.al., (10-cv-03488, U.S. District Court, Southern District of New York), Kisseloff v. FBI, et.al., (09-cv-0391, U.S. District Court for the District of Columbia), and Judicial Watch v. FBI, (10-cv-01568, U.S. District Court for the District of Columbia). FBI is required to process thousands of pages in the

next month in accordance with court ordered deadlines.

(43) RIDS has given the plaintiff's Lynch request expeditious treatment, pursuing a diligent search effort, notwithstanding the complex nature of the request, which has necessitated that the FBI search for potentially responsive material outside of its normal CRS paradigm. While responding to the plaintiff's request the FBI has simultaneously accommodated an array of other competing court-imposed processing deadlines and expedite cases, as well as the very large number of administrative requests made to the FBI on a regular basis.

### CONCLUSION

(44) The FBI has completed the search for material responsive to plaintiff's Cardozo FOIA request and expects to provide it to plaintiff via two separate releases<sup>22</sup>. The FBI expects to make its first interim release to plaintiff shortly. The FBI expeditiously initiated and continues to search for, review and process material potentially responsive to the plaintiff's Lynch request, and anticipates processing its first interim response on or about April 1, 2011. The FBI is processing the material already received and will continue to expeditiously process additional material as it arrives. Despite the complexity of this complex, multi-faceted request, the FBI has made, and continues to make, every effort to locate responsive material and expedite the processing of the material.

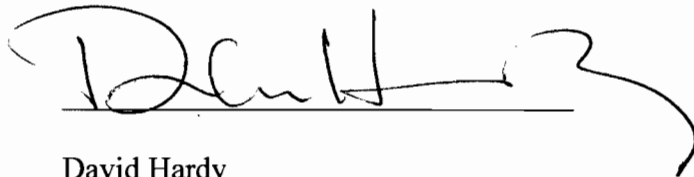
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true

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<sup>22</sup>Although the FBI has completed its search efforts to identify all information responsive to this request, it remains possible that during the processing of the remaining documents and of those documents responsive to the September 28th request, additional documents responsive to both requests may be identified.

and correct and that Exhibits A through M attached hereto are true and correct copies.

Executed this <sup>th</sup>25 day of January, 2011.

A handwritten signature in black ink, appearing to read "David Hardy", written over a horizontal line. The signature is stylized and includes a long, sweeping flourish extending to the right.

David Hardy

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

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

_____	)	
ELECTRONIC FRONTIER FOUNDATION	)	
Plaintiff,	)	
v.	)	Civil Action No. 10-CV-04892
U.S. DEPARTMENT OF JUSTICE,	)	
Defendant.	)	
_____	)	

**Exhibit A**



05/21/2009 11:45 4369993

EFF



454 Shotwell Street  
San Francisco, CA 94110  
+1 415 436 9333 (tel)  
+1 415 436 9993 (fax)

FAX COVER SHEET

DATE: 5/21/09  
TO: David Hardy  
Fax Number: 540-868-4995  
FROM: Nathan Cardozo  
RE: FOIA Request  
Pages sent: 5 including cover page

COMMENTS:

NOTICE This fax is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure. If you are not the intended recipient or his or her agent, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited and asked to please notify us immediately by telephone. Thank you.

PLEASE CALL IF THERE IS A PROBLEM



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

May 21, 2009

BY FACSIMILE — (540) 868-4995

David M. Hardy, Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Department of Justice  
170 Marcel Drive  
Winchester, VA 22602-4843

**RE: *Freedom of Information Act Request***

Dear Mr. Hardy:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Federal Bureau of Investigation ("FBI") on behalf of the Electronic Frontier Foundation ("EFF"). We make this request as part of EFF's FOIA Litigation for Accountable Government ("FLAG") Project, which works to obtain government documents and make them widely available to the public.

In May 2009, the Department of Justice made public its Fiscal Year 2010 Budget Request. As part of that request, the FBI seeks \$9 million for "Advanced Electronic Surveillance, otherwise known as the FBI's Going Dark Program."<sup>1</sup> According to comments by an FBI spokesman published by ABC, the Going Dark Program is the "program name for the part of the FBI, Operational Technology Division's (OTD) lawful interception program which is shared with other law enforcement agencies."<sup>2</sup> The budget request explains that the program "supports the FBI's electronic surveillance (ELSUR), intelligence collection and evidence gathering capabilities, as well as those of the greater Intelligence Community."

We are seeking all agency records from 2007 to the present concerning the Going Dark Program. This request includes but is not limited to:

1. all records that describe the Going Dark Program;

<sup>1</sup> FY2010 Budget and Performance Summary, Federal Bureau of Investigation (FBI), <http://www.usdoj.gov/jmd/2010summary/pdf/fbi-bud-summary.pdf> (last visited May 20, 2009), page 131 (see attached).

<sup>2</sup> Jason Ryan, *DOJ Budget Details High-Tech Crime Fighting Tools*, ABC NEWS, May 9, 2009 (available at <http://abcnews.go.com/TheLaw/Story?id=7532199&page=1> (last visited May 20, 2009)).

May 21, 2009  
Page 2 of 4

2. all Privacy Impact Assessments prepared for the Going Dark Program; and
3. all System of Records Notices ("SORNs") that discuss or describe the Going Dark Program.

This request includes, but is not limited to, electronic records.

**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 DOJ Office of the Inspector General, Department of Homeland Security, National Security Agency, and Department of State have all recognized that EFF qualifies as a "news media" requester, based upon the publication activities set forth below (see DOJ OIG 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."<sup>3</sup> One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties."<sup>4</sup> To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

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

EFF has also 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.<sup>5</sup>

<sup>3</sup> Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited May 20, 2009).

<sup>4</sup> *Id.*

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

May 21, 2009  
Page 3 of 4

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.

EFF also records and releases 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>.

Due to these extensive publication activities, 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, DOJ 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, the government's operation of a program of advanced electronic surveillance unquestionably concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i).

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on the manner in which the FBI conducts electronic surveillance.



May 21, 2009  
Page 4 of 4

Third, the requested material will "contribute to public understanding" of the Going Dark Program. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the program, 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 Going Dark Program. 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 government's operation of the program, as well as contribute to the public debate about how electronic surveillance should be performed.

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 and applicable Department regulations provide, we will anticipate your determination within twenty (20) working days.

Regards,



Nathan Cardozo  
Staff Attorney

Attachments.

**FY 2010 Program Changes (cont.):**

**SURVEILLANCE**

**Advanced Electronic Surveillance:** \$9 million for Advanced Electronic Surveillance, otherwise known as the FBI's Going Dark Program. The program supports the FBI's electronic surveillance (ELSUR), intelligence collection and evidence gathering capabilities, as well as those of the greater Intelligence Community. FY 2010 current services for this program are 133 positions (15 agents) and \$233.9 million.

**Surveillance:** 75 positions (12 agents) and \$23.5 million to enhance and support the surveillance capabilities of the Special Operations Group (SOG), the Special Surveillance Group (SSG), and the Aviation Program. FY 2010 current services for this program are 1,108 position (53 agents) and \$161 million.

**WORKFORCE**

**National Security Training/Career Path:** 32 positions (1 Agent) and \$25.1 million to support the National Security Training and Career Path Initiative which will enhance the FBI's ability to recruit and train agents, analysts, and support staff. FY 2010 current services for this initiative include 407 positions (23 agents) and \$177.7 million.

**OVERSEAS CONTINGENCY OPERATIONS**

**Overseas Contingency Operations:** \$101.1 million to continue support of overseas contingency operations. Funding will continue FBI operations in Afghanistan, international deployment activities, overtime and hazardous duty pay, and other counterterrorism-related requirements previously supported by supplemental funding.

**CONSTRUCTION**

**Biometric Technology Center (BTC):** \$97.8 million (\$30.0 million provided by the Department of Defense (DOD) for the joint DOD/DOJ/FBI project) to support Phase III construction of a BTC at the Criminal Justice Information Services (CJIS) Division complex in Clarksburg, WG. The BTC will be a collaborative effort between the FBI and DOD to serve as the center for biometric research and development. Current services for the BTC are \$361,000.

**FBI Training Facility A&E Study:** \$10 million to conduct an Architecture and Engineering (A&E) study, to determine the requirements to expand its FBI Academy training facilities on the Quantico Marine Corps Base. There are no FY 2010 current services for this initiative.

**Financial Snapshot 2008**

Clean Opinion on Financial Statements	Yes
Timely Financial Reporting	Yes
Material Weaknesses	None





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

**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  
Washington, DC 20522-8100  
Web site: [foia.state.gov](http://foia.state.gov)

Inquiries:  
Phone: 202-261-8484  
FAX: 1-202-261-8579  
email: [FOIAStatus@state.gov](mailto:FOIAStatus@state.gov)

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EFF

- 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

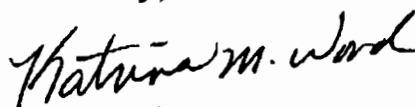
- 3 -

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.





**NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE**  
FORT GEORGE G. MEADE, MARYLAND 20785-6000

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

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EFF

FOIA Case: 52276

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

Sincerely,

*for Marianne Stupar*

PAMELA N. PHILLIPS  
Chief  
FOIA/PA Office



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 27<sup>th</sup> 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*

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

---

ELECTRONIC FRONTIER FOUNDATION )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 U.S. DEPARTMENT OF JUSTICE, )  
 )  
 Defendant. )

---

Civil Action No. 10-CV-04892

**Exhibit B**



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

May 26, 2009

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

Request No.: 1131078- 000  
Subject: GOING DARK PROGRAM

Dear Mr. Cardoza:

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

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

Sincerely yours,

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

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

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

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ELECTRONIC FRONTIER FOUNDATION )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 U.S. DEPARTMENT OF JUSTICE, )  
 )  
 Defendant. )

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Civil Action No. 10-CV-04892

**Exhibit C**



**U.S. Department of Justice**

**Federal Bureau of Investigation**

*Washington, D.C. 20535*

August 21, 2009

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

Request No: 1131078-000

Subject: GOING DARK PROGRAM

Dear Mr. Cardoza:

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

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

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

Sincerely yours,

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

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



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

_____	)	
ELECTRONIC FRONTIER FOUNDATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-CV-04892
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
_____	)	

**Exhibit D**



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 4, 2009

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

FOIPA Request No.: 1131078- 000  
Subject: GOING DARK PROGRAM

Dear Mr. Cardoza:

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

We have located approximately 1,099 pages which are potentially responsive to your request. Pursuant to the U.S. Department of Justice (DOJ) regulations, 28 C.F.R. §§ 16.11 and 16.49, there is a duplication fee of ten cents per page. The first 100 pages will be provided to you free of charge. In accordance with the DOJ regulations, the FBI notifies requesters when anticipated fees exceed \$25. If all of the pages that are potentially responsive to your request are released, you will owe \$99.90 in duplication fees. Although no payment needs to be made at this time, you must notify us in writing within 60 days from the date of this letter of your willingness to pay. Please remember that this is only an estimate, and if some of the pages are withheld in full pursuant to FOIA/Privacy Act exemption(s) or are, determined to not be responsive to your request, the actual charges could be less.

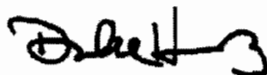
You may want to consider reducing the scope of your request. This would allow you to lower your search and duplication costs and hasten the receipt of your information. The FBI uses a three-queue system as a way to fairly assign and process new requests. The placement of a request in one of the three queues depends on the total number of pages responsive to that request – 500 pages or less (small queue), 501 pages to 2500 pages (medium queue), or more than 2500 pages (large queue). The small queue has the fastest rate of processing. To accelerate the processing of your request, you may wish to consider reducing the scope of your request so that it will fall within one of the smaller queues. Please let us know in writing if you are interested in discussing the possibility of reducing the scope of your request, as well as your willingness to pay the estimated search and duplication costs indicated in the above paragraph. Your written response should provide a telephone number where you can be reached between the hours of 8:00 a.m. and 5:00 p.m., EST, if one is available. Please send this response to:

Work Process Unit  
Record Information/Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
170 Marcel Drive  
Winchester, VA 22602

You may also fax your response to the following number: (540) 868-4996, Attention: Work Process Unit. If you fail to notify us of your willingness to pay [and/or] we do not hear from you regarding your willingness to reduce the scope of your request within 60 days from the date of this letter, your request will be closed. You must include the FOIPA Request Number in any communication regarding this matter.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "D Hardy", with a stylized flourish at the end.

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

Enclosure

## FBI FILE FACT SHEET

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

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

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

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ELECTRONIC FRONTIER FOUNDATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-CV-04892
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	

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**Exhibit E**



**U.S. Department of Justice**

**Federal Bureau of Investigation**

*Washington, D.C. 20535*

January 07, 2010

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

Request No: 1131078-000  
Subject: GOING DARK PROGRAM

Dear Mr. Cardoza:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently your request is being reviewed by an analyst. The analyst will confirm that all records are responsive to your request and apply exemptions allowed under FOIPA. If your request is for sensitive national security information, then the records must undergo a systematic declassification review prior to application of FOIPA exemptions. Large requests take the longest time to be processed by an analyst.

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

Sincerely yours,

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

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



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

_____	)	
ELECTRONIC FRONTIER FOUNDATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-CV-04892
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
_____	)	

**Exhibit F**



454 Shotwell Street  
San Francisco, CA 94110  
+1 415 436 9333 x 117 (tel)  
+1 415 436 9993 (fax)

**FAX COVER SHEET**

**DATE: January 26, 2010**

**ATTN: Work Process Unit**

**Fax Number: 540-868-4996**

**FROM: Nathan Cardozo**

**RE: FOIPA Request No. 1131078-000**

**Pages sent including this page: 6**

**COMMENTS:**

**NOTICE**

This fax is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure. If you are not the intended recipient or his or her agent, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited and asked to please notify us immediately by telephone. Thank you.

***PLEASE CALL (415) 436-9333 x 117 IF THERE IS A PROBLEM***



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

January 26, 2010

BY FACSIMILE — (540) 868-4996

David M. Hardy, Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Department of Justice  
170 Marcel Drive  
Winchester, VA 22602-4843

ATTN: Work Process Unit

**RE: *Freedom of Information Act Request No. 1131078-000  
Going Dark Program  
Duplication Fee Waiver***

Dear Mr. Hardy:

On May 21, 2009, I submitted a Freedom of Information Act (FOIA) request on behalf of EFF seeking records related to the Going Dark Program. A copy of that request is attached hereto. By letter dated January 14, 2010, your office notified EFF that it had located 1,039 pages potentially responsive to that request. Your letter also stated that the FBI intends to charge EFF as much as \$93.90 in duplication fees.

In our May 21 request letter, EFF sought a waiver of duplication fees under 5 U.S.C. § 552(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k). The FBI's January 14 letter makes no reference to this request. If your office has not considered EFF's request for a duplication fee waiver, we ask that you do so at this time. To the extent that the January 14 letter can be construed as a denial of our request for a fee waiver, please consider this letter an appeal of that decision.

If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x136.

Regards,

Nathan Cardozo  
Open Government Legal Fellow

Attachments.

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

_____	)	
ELECTRONIC FRONTIER FOUNDATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-CV-04892
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
_____	)	

**Exhibit G**



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 1, 2010

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

Request No.: 11131078-000  
Subject: GOING DARK PROGRAM

Dear Mr. Cardozo:

This is in reference to your letter dated January 26, 2010, directed to the Federal Bureau of Investigation (FBI), wherein you request a fee waiver for the above-referenced Freedom of Information Act (FOIA) request. Requests for fee waivers are determined on a case-by-case basis. See 5 U.S.C. 552 (a)(4)(A)(iii). See also Nat'l Sec. Archive v. DOD, 808 F.2d 1381, 1383 (D.C. Cir. 1989). The burden is on the requester to show that the statutory requirements for a fee waiver have been met. Pursuant to the Department of Justice (DOJ) standards, a fee waiver can only be granted when it is determined that a FOIA request involves one or more of the below categories.

You have requested a fee waiver stating that:

- the subject of the requested records concerns "the operations or activities of the government
- the disclosure is "likely to contribute " to an understanding of governmental operations or activities
- the disclosure of the requested information will contribute to the understanding of the general public, as opposed to the individual requester, and that the requester has the ability and intention to disseminate the information to the public
- the disclosure is likely to contribute "significantly" to public understanding of government operations or activities
- the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether any such commercial interest outweighs the public interest in disclosure. See 28 C.F.R. 16.11§ (k) (2004).

You have provided enough information concerning the statutory requirements for a fee waiver; therefore, your request is approved.

Sincerely yours,

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

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

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

_____	)	
ELECTRONIC FRONTIER FOUNDATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-CV-04892
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
_____	)	

**Exhibit H**





**U.S. Department of Justice**

**Federal Bureau of Investigation**

*Washington, D.C. 20535*

April 09, 2010

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

Request No: 1131078-000  
Subject: GOING DARK PROGRAM

Dear Mr. Cardoza:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently your request is being reviewed by an analyst. The analyst will confirm that all records are responsive to your request and apply exemptions allowed under FOIPA. If your request is for sensitive national security information, then the records must undergo a systematic declassification review prior to application of FOIPA exemptions. Large requests take the longest time to be processed by an analyst.

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

Sincerely yours,

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

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

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

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ELECTRONIC FRONTIER FOUNDATION )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 U.S. DEPARTMENT OF JUSTICE, )  
 )  
 Defendant. )

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Civil Action No. 10-CV-04892

**Exhibit I**



**U.S. Department of Justice**

**Federal Bureau of Investigation**

*Washington, D.C. 20535*

July 08, 2010

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

Request No: 1131078-000  
Subject: GOING DARK PROGRAM

Dear Mr. Cardoza:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently your request is being reviewed by an analyst. The analyst will confirm that all records are responsive to your request and apply exemptions allowed under FOIPA. If your request is for sensitive national security information, then the records must undergo a systematic declassification review prior to application of FOIPA exemptions. Large requests take the longest time to be processed by an analyst.

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

Sincerely yours,

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

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

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

---

ELECTRONIC FRONTIER FOUNDATION )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 U.S. DEPARTMENT OF JUSTICE, )  
 )  
 Defendant. )

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Civil Action No. 10-CV-04892

**Exhibit J**



**U.S. Department of Justice**

**Federal Bureau of Investigation**

*Washington, D.C. 20535*

October 06, 2010

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

Request No: 1131078-000  
Subject: GOING DARK PROGRAM

Dear Mr. Cardoza:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently your request is being reviewed by an analyst. The analyst will confirm that all records are responsive to your request and apply exemptions allowed under FOIPA. If your request is for sensitive national security information, then the records must undergo a systematic declassification review prior to application of FOIPA exemptions. Large requests take the longest time to be processed by an analyst.

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

Sincerely yours,

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

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

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

---

ELECTRONIC FRONTIER FOUNDATION )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 U.S. DEPARTMENT OF JUSTICE, )  
 )  
 Defendant. )

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Civil Action No. 10-CV-04892

**Exhibit K**





**454 Shotwell Street  
San Francisco, CA 94110  
+1 415 436 9333 (tel)  
+1 415 436 9993 (fax)**

**FAX COVER SHEET**

**DATE:** September 28, 2010  
**TO:** David M. Hardy - FBI  
**Fax Number:** (540) 868-4995  
**FROM:** Jennifer Lynch  
**RE:** Freedom of Information Act Request  
**Pages sent:** 12 including cover page

**COMMENTS:**

**NOTICE** This fax is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure. If you are not the intended recipient or his or her agent, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited and asked to please notify us immediately by telephone. Thank you.

**PLEASE CALL IF THERE IS A PROBLEM**



**Electronic Frontier Foundation**  
Protecting Rights and Promoting Freedom on the Electronic Frontier

September 28, 2010

VIA FACSIMILE — (540) 868-4995

David M. Hardy  
Federal Bureau of Investigation  
Attn: FOI/PA Request  
Record/Information Dissemination Section  
170 Marcel Drive  
Winchester, VA 22602-4843

**RE: Freedom of Information Act Request and  
Request for Expedited Processing**

Dear Mr. Hardy:

This letter constitutes an expedited request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and is submitted to the Federal Bureau of Investigation (FBI) on behalf of the Electronic Frontier Foundation (EFF). We make this request as part of EFF's FOIA Litigation for Accountable Government (FLAG) Project, which works to obtain government documents and make them widely available to the public.

Yesterday the *New York Times* reported that the FBI and other federal agencies have been meeting with White House officials to develop proposed statutory language and regulations to "require all services that enable communications — including encrypted e-mail transmitters like BlackBerry, social networking Web sites like Facebook and software that allows direct 'peer to peer' messaging like Skype — to be technically capable of complying if served with a wiretap order." Charlie Savage, *U.S. Tries to Make It Easier to Wiretap the Internet*, *New York Times* (Sept. 27, 2010).<sup>1</sup> See also Glenn Greenwald, *The Obama Administration's War on Privacy*, *Salon.com* (Sept. 27, 2010);<sup>2</sup> Kit Eaton, *What a Wiretappable Internet Could Mean for Facebook, Apple, Google, and You*, *Fast Company* (Sept. 27, 2010);<sup>3</sup> Lolita C. Baldor, *Report: US Would Make Internet Wiretaps Easier*, *Washington Post* (Sept. 27, 2010);<sup>4</sup> Ellen Nakashima, *Administration Seeks Ways to Monitor Internet Communications*, *Washington Post* (Sept. 27, 2010);<sup>5</sup>

<sup>1</sup> <http://www.nytimes.com/2010/09/27/us/27wiretap.html>.

<sup>2</sup> [http://www.salon.com/news/opinion/glenn\\_greenwald/2010/09/27/privacy/index.html](http://www.salon.com/news/opinion/glenn_greenwald/2010/09/27/privacy/index.html).

<sup>3</sup> <http://www.fastcompany.com/1691505/wiretap-emails-facebook-apple-google>.

<sup>4</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/27/AR2010092700719.html>.

<sup>5</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/27/AR2010092703244.html>.

PBS News Hour, *Proposal Could Expand Government's Web Wiretapping Efforts* (Sept. 27, 2010).<sup>6</sup>

We hereby request all agency records created on or after January 1, 2006 (including, but not limited to, electronic records) discussing, concerning, or reflecting:

1. any problems, obstacles or limitations that hamper the FBI's current ability to conduct surveillance on communications systems or networks including, but not limited to, encrypted services like Blackberry (RIM), social networking sites like Facebook, peer-to-peer messaging services or Voice over Internet Protocol (VoIP) services like Skype, etc.;
2. any communications or discussions with the operators of communications systems or networks (including, but not limited to, those providing encrypted communications, social networking, and peer-to-peer messaging services), or with equipment manufacturers and vendors, concerning technical difficulties the FBI has encountered in conducting authorized electronic surveillance;
3. any communications or discussions concerning technical difficulties the FBI has encountered in obtaining assistance from non-U.S.-based operators of communications systems or networks, or with equipment manufacturers and vendors in the conduct of authorized electronic surveillance;
4. any communications or discussions with the operators of communications systems or networks, or with equipment manufacturers and vendors, concerning development and needs related to electronic communications surveillance-enabling technology;
5. any communications or discussions with foreign government representatives or trade groups about trade restrictions or import or export controls related to electronic communications surveillance-enabling technology;
6. any briefings, discussions, or other exchanges between FBI officials and members of the Senate or House of Representatives concerning implementing a requirement for electronic communications surveillance-enabling technology, including, but not limited to, proposed amendments to the Communications Assistance to Law Enforcement Act (CALEA).

**Request for Expedited Processing**

This request warrants expedited processing because it pertains to information about which there is an "urgency to inform the public about an actual or alleged federal government activity," and it is "made by a person primarily engaged in disseminating

<sup>6</sup> [http://www.pbs.org/newshour/bb/government\\_programs/july-dec10/wiretap\\_09-27.html](http://www.pbs.org/newshour/bb/government_programs/july-dec10/wiretap_09-27.html).

information.” 28 C.F.R. § 16.5(d)(1)(ii). The information we request easily satisfies this standard.

The federal government activity involved here—the proposed introduction of legislation that would impose new technical requirements on communications providers—raises significant issues concerning potential government intrusions into personal affairs, particularly those involving private communications and activities. The *New York Times* article notes that the Obama administration plans to submit the “sweeping new regulations for the Internet . . . next year.” When Congress begins the process of considering the administration’s request for new legislation, its deliberations will constitute the latest chapter in a public debate over anti-terrorism powers, which has been ongoing since late 2001. The information we request will help the public and Congress fully participate in that ongoing debate over whether to increase—or restrict—the investigative authority of the federal government. Delay in processing this FOIA request could inhibit the public’s ability to fully analyze and debate the implications of the legislative changes the administration seeks.

Notably, the need for expeditious disclosure of information concerning Executive branch requests for greater anti-terrorism authorities is not a matter of first impression. In *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24 (D.D.C. 2004), the court held that impending congressional consideration of expiring PATRIOT Act provisions created a “compelling” need for information concerning the FBI’s use of its investigative authorities. As such, the court ordered expedited processing of a FOIA request seeking that information. Similarly, in two cases involving FOIA requests to the Office of the Director of National Intelligence, the court found irreparable harm exists where Congress is considering legislation that would amend a surveillance statute (in these cases, FISA) “and the records may enable the public to participate meaningfully in the debate over such pending legislation.” *Elec. Frontier Found. v. Office of the Dir. of Nat’l Intelligence*, 542 F. Supp. 2d 1181, 1187 (N.D. Cal. 2008)(citing *Elec. Frontier Found. v. Office of the Dir. of Nat’l Intelligence*, 2007 U.S. Dist. LEXIS 89585 (Nov. 27, 2007)). Even though the court could not “predict the timing of passage of the legislation” the court granted expedited processing, holding “that delayed disclosure of the requested materials may cause irreparable harm to a vested constitutional interest in ‘the uninhibited, robust, and wide-open debate about matters of public importance that secures an informed citizenry.’” *Id.* (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). Likewise, there is an urgency to inform the public about the information we seek here. Therefore, this request clearly meets the standard for expedited processing set forth in DOJ regulations.

Further, as I explain below in support of our request for “news media” treatment, EFF is “primarily engaged in disseminating information.” Indeed, the FBI and other DOJ components have granted previous EFF requests for expedited processing under 28 C.F.R. § 16.5(d)(1)(ii) and have thus acknowledged that the organization is “primarily engaged in disseminating information.” See Letter to David Sobel of EFF, dated October 21, 2009 (attached).



### Request for News Media Fee Status

EFF asks that it not be charged search or review fees for this request because EFF qualifies as a “representative of the news media” pursuant to the FOIA and 28 C.F.R. § 16.11(b)(6). In requesting this classification, we note that the Department of Homeland Security (DHS) has recognized that EFF qualifies as a “news media” requester based upon the publication activities set forth below (*see* DHS stipulation attached). In addition, the National Security Agency (NSA) has previously determined that EFF is not only a “news media requester,” but also “primarily engaged in disseminating information” for purposes of expedited processing (*see* attached NSA response to prior EFF FOIA request, in which EFF requested expedited processing because it sought information “urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity,” and NSA granted the request). These precedents are particularly important in light of the fact 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.”<sup>7</sup> One of EFF’s primary objectives is “to educate the press, policymakers and the general public about online civil liberties.”<sup>8</sup> 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 43,403,630 hits in June 2007 — an average of 60,282 per hour. The web site reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

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

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

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

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<sup>7</sup> Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited July 10, 2007).

<sup>8</sup> *Id.*

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.

EFF also broadcasts 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>.

Due to these extensive publication activities, 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, the FBI's participation in a discussion to expand electronic communications surveillance capabilities concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i).

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on the nature of the FBI's Internet surveillance technology and the reasons behind the FBI's stated need for updated electronic communications surveillance capabilities.

Third, the requested material will "contribute to public understanding" of the FBI's




proposals to expand its surveillance capabilities and the need for that expansion. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the FBI's surveillance activity, 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 FBI's use of electronic surveillance. 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 FBI's need for expanded surveillance capabilities, as well as contribute to the public debate about whether and how proposed technological changes should be employed. The ability of law enforcement agencies to monitor new forms of electronic communications technology has important implications for the American public in the digital age. Law enforcement's ability to counter criminal threats and fulfill its duty to protect the American public, the consequent risk and potential for abuse due to such monitoring, and the possible economic and technological effect new regulations could have upon burgeoning technologies are all an important part of the public debate.

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 and applicable regulations provide, I will anticipate a determination on our request for expedited processing within 10 calendar days and a determination with respect to the disclosure of requested records within 20 working days.

Sincerely,  
  
Jennifer Lynch  
Staff Attorney

Attachments



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

October 21, 2009

Mr. David L. Sobel  
Senior Counsel  
Electronic Frontier Foundation  
Suite 650  
1875 Connecticut Avenue, Northwest  
Washington, DC 20009

FOIPA No.: 1138791  
Subject: USA PATRIOT Act /  
Re-Authorization of Three  
Provisions

Dear Mr. Sobel:

This is in reference to your request to the U.S. Department of Justice (DOJ), Federal Bureau of Investigation (FBI) Headquarters, for expedition of your Freedom of Information Act (FOIA) request dated September 25, 2009. Your FOIA request seeks information on the "Justice Department's recommendations on the three provisions of the Foreign Intelligence Surveillance Act (FISA) currently scheduled to expire on December 31, 2009", specifically the three provisions "Roving Wiretaps" (USA PATRIOT Act Section 206); "Business Records" (USA PATRIOT Act Section 215); and "Lone Wolf" (Intelligence Reform and Terrorism Prevention Act of 2004 Section 6001). You requested expedited processing pursuant to the Department of Justice standard permitting expedition for requests involving "a(n) urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." 28 C.F.R. §16.5 (d)(1)(ii). Your request for expedition has been approved.

By separate letter dated October 21, 2009, the FBI acknowledged your FOIA request and advised that you that your FOIA request has been assigned FOIPA Request No. 1138791, and we have begun to conduct a search for potentially responsive records. Once the FBI completes its search for all records potentially responsive to your FOIA request, you will be advised as to the outcome of this search effort.

With respect to the portion of your letter seeking a waiver of the customary fees, we will make a decision once our records search is completed. In the event that your request for a fee waiver is denied, you will be notified of any applicable fees prior to the processing of any responsive records.

Sincerely yours,

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

**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 27<sup>th</sup> 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,

A handwritten signature in cursive script that reads "Marianne Stepan" with a small "for" written below the first name.

PAMELA N. PHILLIPS  
Chief  
FOIA/PA Office

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

---

ELECTRONIC FRONTIER FOUNDATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-CV-04892
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	

---

**Exhibit L**





U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

October 20, 2010

MS. JENNIFER LYNCH  
STAFF ATTORNEY  
ELECTRONIC FRONTIER FOUNDATION  
454 SHOTWELL STREET  
SAN FRANCISCO, CA 94110

FOIPA Request No.: 1154593- 000  
Subject: COMMUNICATIONS COMPLIANCE WITH FBI  
ELECTRONIC SURVEILLANCE FROM JANUARY 1,  
2006 TO PRESENT

Dear Ms. Lynch:

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

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

Very truly yours,

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

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

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

---

ELECTRONIC FRONTIER FOUNDATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 10-CV-04892
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	

---

**Exhibit M**



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

October 20, 2010

MS. JENNIFER LYNCH  
STAFF ATTORNEY  
ELECTRONIC FRONTIER FOUNDATION  
454 SHOTWELL STREET  
SAN FRANCISCO, CA 94110

FOIPA Request No. 1154593- 000  
Subject: COMMUNICATIONS COMPLIANCE WITH FBI ELECTRONIC  
SURVEILLANCE FROM JANUARY 1, 2006 TO PRESENT

Dear Ms. Lynch:

This is in reference to your September 28, 2010 letter, in which you requested a fee waiver and expedited processing for the above-referenced Freedom of Information/Privacy Acts (FOIPA) request. Requests for fee waivers are determined on a case-by-case basis. See 5 U.S.C. 552 (a)(4)(A)(iii). The burden is on the requester to show that the statutory requirements have been met.

You have requested that duplication fees be waived because disclosure of the information sought in the above FOIPA request will "contribute significantly to public understanding of the operations or activities of the government." You cited your organization's status as a nonprofit, as well as its ability to widely disseminate information as factors which meet the statutory requirements.

I have considered your request in accordance with Title 28, Code of Federal Regulations, Section 16.11(k) and agree with the reasons you have provided as to why you qualify in this instance for a fee waiver. Therefore, your request for a fee waiver is granted.

You have requested expedited processing under 28 C.F.R. §16.5 (d)(1)(ii) as the topic is a matter of "widespread and exceptional media interest," and 28 C.F.R. §16.5 (d)(1)(iv) as a matter "in which there exist possible questions about the government's integrity which affect public confidence."

Based on the information cited, your request for expedited processing is also granted.

Sincerely yours,

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

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