

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

ELECTRONIC FRONTIER FOUNDATION

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE

Defendant.

Civil Action No. 1:14-cv-00760 (RMC)

DECLARATION OF SUSAN KIM

I, Susan Kim, do hereby state and declare as follows:

1. I am an Attorney Advisor in the Freedom of Information Act (“FOIA”) and Declassification Unit of the Office of Law and Policy in the National Security Division (“NSD”) of the United States Department of Justice (“DOJ” or “Department”). NSD is a component of the Department. NSD formally began operations on October 2, 2006, by, inter alia, consolidating the resources of the Department’s Office of Intelligence Policy and Review (“OIPR”)¹ and the Counterterrorism Section (“CTS”) and Counterespionage Section (“CES”) of the Department’s Criminal Division.

2. I submit this declaration in support of the Government’s Motion for Summary Judgment. I make this declaration based on my personal knowledge and information provided to me in my official capacity.

¹ OIPR is now known as the Office of Intelligence (“OI”).

FIRST EFF REQUEST

3. On August 23, 2013, plaintiff, the Electronic Frontier Foundation (“EFF”) submitted a FOIA request for the following:

- (1) The “separate order” or orders, as described in footnote 15 of the October 3 Opinion quoted above, in which the Foreign Intelligence Surveillance Court “address[ed] Section 1809(a) and related issues”; and,
- (2) The case, order, or opinion whose citation was redacted in footnote 15 of the October 3 Opinion and described as “concluding that Section 1809(a)(2) precluded the Court from approving the government’s proposed use of, among other things, certain data acquired by NSA without statutory authority through its ‘upstream collection.’”

NSD assigned this request NSD FOIA #13-250. This request is attached as Exhibit A. By email dated August 27, 2013 September 3, 2013, NSD acknowledged receipt of that request, and in an email dated September 3, 2013, NSD granted EFF’s request for expedited processing. This email and letter are attached as Exhibit B.

4. By letter dated September 3, 2014, NSD informed plaintiff that it had located a record responsive to part 2 of this request, and that record was being withheld in full pursuant to FOIA exemption (b)(1) and (b)(3). That letter is attached as Exhibit C. Additionally, in a letter dated November 3, 2014, NSD informed plaintiff that it had finished processing a record responsive to item 1 of this request, and that record was being released in part and withheld in part pursuant to FOIA exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C), and (b)(7)(E). That letter is attached as Exhibit D.

SECOND EFF REQUEST

5. By letter dated October 31, 2013, EFF submitted a FOIA request for the following:

- (1) The January 10, 2007 order(s) and/or opinion(s) — including, but not limited to, any “foreign content order” or “domestic content order” — of the Foreign Intelligence Surveillance Court, including all legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s January 2007 order(s) and/or opinion(s); and,
- (2) Any subsequent order(s) and/or opinion(s) of the Foreign Intelligence Surveillance Court reconsidering, reinterpreting, refusing to renew, or otherwise altering the January 10, 2007 orders, and all accompanying documents, including legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s order(s) and/or opinion(s).

NSD assigned this request NSD FOIA #14-028. This request is attached as Exhibit E. By letter dated November 29, 2013, NSD acknowledged receipt of this request. This letter is attached as Exhibit F. By letter dated December 11, 2013, NSD also granted EFF’s request for expedited processing of this request. This letter is attached as Exhibit G.

6. In a letter dated December 12, 2014, NSD informed plaintiff it had processed six records responsive to this request, and these were being withheld in part pursuant to FOIA exemptions (b)(1), (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E).² That letter is attached as Exhibit H. By letter dated January 26, 2015, NSD informed plaintiff it had processed two records responsive to this request and they were being released in part and withheld in part pursuant to FOIA exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C), and (b)(7)(E). That letter is attached as Exhibit I.

THIRD EFF REQUEST

7. By a separate letter dated February 24, 2014, EFF submitted a FOIA request for the following:

² This letter also responded to EFF’s March 14, 2014 request, NSD FOIA #14-084, which is discussed more fully below.

- (1) All written decisions, opinions, or orders issued by the Foreign Intelligence Surveillance Court of Review (“FISCR”);
- (2) All written decisions, opinions, or orders issued by the Supreme Court in any case or matter appealed from the FISCR.

NSD assigned this request NSD FOIA #14-066. This request is attached as Exhibit J. By email on February 26, 2014, NSD acknowledged receipt of this request. This email is attached as Exhibit K. By letter dated April 3, 2014, NSD granted EFF’s request for expedited processing of this request. This letter is attached as Exhibit L.

8. In a letter dated September 5, 2014, NSD informed EFF that it had located two records responsive to part 1 of this request, and that those records were being released in part and withheld in part pursuant to FOIA exemptions (b)(1), (b)(3), and (b)(6). In addition, NSD advised that these records had already been released to the public in the same exact form pursuant to a FISCR-ordered classification review. In this same letter, NSD informed plaintiff that there were no records responsive to part 2 of the request because the Supreme Court has never issued any decisions, opinions, or orders in any matter appealed from the FISCR. This letter is attached as Exhibit M.

FOURTH EFF REQUEST

9. By letter dated March 14, 2014, EFF submitted a FOIA request for the following:
 - (1) The “Raw Take” order (Dkt No. 02-431), dated July 22, 2002, and captioned “In Re Electronic Surveillance and Physical Search of International Terrorist Groups, Their Agents, and Related Targets;”
 - (2) The “Large Content FISA” order(s) and/or opinion(s);
 - (3) The September 4, 2008 FISC order(s) and/or opinion(s) concerning the FISA Amendments Act;
 - (4) All documents, including legal memoranda, declarations, briefs, or any other document submitted by the government in support of items (1)-(3) above; and

- (5) All documents, including legal memoranda, declarations, briefs, or any other document incorporated, adopted within, or issued with items (1)-(3) above.

NSD assigned this request NSD FOIA #14-084. This request is attached as Exhibit N. By letter dated March 27, 2014, NSD acknowledged receipt of this request. This letter is attached as Exhibit O. By letter dated April 10, 2014, NSD granted EFF's request for expedited processing of this request. This letter is attached as Exhibit P.

10. In a letter dated December 12, 2014, NSD informed plaintiff it had processed six records responsive to the March 14, 2014 request, and these were being withheld in part pursuant to FOIA exemptions (b)(1), (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E).³ In a letter dated, March 2, 2015, NSD informed plaintiff it had finished processing eight records responsive to parts 1, 2, 3, and 4 of this request, and these records were being released in part and withheld in part pursuant to FOIA exemptions (b)(1), (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E). NSD also stated that it was denying part 5 as improper because it did not specify the documents sought and required NSD to make legal conclusions. This letter is attached as Exhibit Q. By letter dated, March 6, 2015, NSD informed plaintiff it had processed three records responsive to item 4 of the request, and those records were being released in part and withheld in part pursuant to FOIA exemptions (b)(1), (b)(3), (b)(6), and (b)(7)(E). This letter is attached as Exhibit R.

PLAINTIFF'S CHALLENGES

11. On March 24, 2015, plaintiff provided the Government with a list of documents containing information whose withholdings EFF still challenges. This list is attached as Exhibit S. In this same document, EFF indicated stated that it was withdrawing its challenges to docket numbers and the names and descriptions of surveillance targets.

³ This letter is attached as Exhibit H and also addressed plaintiff's October 31, 2013 request, NSD FOIA #14-028.

12. By email dated March 27, 2015, EFF further narrowed the issues in dispute by withdrawing challenges to (1) certification numbers and quantities, (2) numbers of applications, and (3) withholdings under FOIA exemption (b)(6). As a result of that narrowing, the withholdings of the September 4, 2008 FISC Order and the Government's August 28, 2008 Submission to the FISC are no longer in dispute. The challenged withholdings are defended in the Declarations of David J. Sherman and David M. Hardy, filed herewith.

13. The only documents still in dispute are as follows: The case, order, or opinion whose citation was redacted in footnote 15 of the October 3, 2011 FISC opinion which was withheld in full (Document 1); the September 4, 2008 FISC Opinion, dated September 4, 2008 (Document 2a)⁴; Notice of Clarification and Correction filed September 2, 2008 (Document 2c)⁵; Government's Preliminary Response filed August 26, 2008 (Document 2d)⁶; Memorandum of Law, dated December 13, 2006 (Document 3a)⁷; Supplemental Memorandum of Law, Jan. 2,

⁴ The withholdings on the following pages of Document 2a fall into one of the categories of information that EFF advised the Department it was not challenging: page 1; page 5, line 1; page 13, footnote 11; page 18, footnote 14, information after "Certifications;" page 23; page 28, footnote 30, information after "Docket No.;" page 29; page 32, footnote 35; and page 42.

⁵ The withholdings on the following pages of Document 2c fall into one of the categories of information that EFF advised the Department it was not challenging: page 1, caption; and page 7, name of the NSD official.

⁶ The withholdings on the following pages of Document 2d fall into one of the categories of information that EFF advised the Department it was not challenging: page 1, name of the NSD official; page 2, first bullet; page 6, lines 1-2; and page 9.

⁷ The withholdings on the following pages of Document 3a fall into one of the categories of information that EFF advised the Department it was not challenging: the cover page; page 1, except the last three lines; page 2; page 3, footnote 3; page 4; page 5, lines 13-14; pages 6-10; page 11, header in the middle of that page; page 11, first and fifth lines after the header; page 12, lines 2 and 4; page 12, penultimate line; page 13, line 5, after the words, "approved in;" page 12, line 6; pages 14-23; page 26, lines 14-15; page 27, 3rd and 4th lines after the redaction box; page 27, 9th and 11th lines after the redaction box on the top of the page; page 31, lines 1, 7-8, and 12; page 34; page 37, lines 7-8 and 13; page 37, footnote 19; page 38, lines 1-3; page 40, page 45, line 4; page 47, lines 2-3 of the last paragraph; page 48, line 3; page 49, last bullet; page 50, all of the bullets; page 51; page 52; page 55, footnote 32; pages 58-59; pages 62-63; pages 66-70; page 71, lines 1-2 and 20-21; page 72; page 74; and page 76, name of an official in the Office of Legal Counsel.

2007 (Document 3b)⁸; FISC Order, dated January 10, 2007 (Document 3c)⁹; FISC Order (Foreign Order), dated January 10, 2007 (Document 3d)¹⁰; FISC Order and Memo Opinion, dated April 3, 2007 (Document 3e)¹¹; and FISC Order, dated April 5, 2007 (Document 3f)¹².

⁸ The withholdings on the following pages of the Supplemental Memorandum of Law in Document 3b fall into one of the categories of information that EFF advised the Department it was not challenging: Cover page; page 1, lines 5-7; page 2, 6th line after the header after “surveillance—;” page 2, redacted information in 7th and 8th line after the header; page 2 last bullet; page 3, line 1; page 3, identity of the NSA Program Manager; page 5, line 2; page 12, after “Most notably, in” in the 6th line after the redaction box; page 12, 7th line after the redaction box on page 12; page 12, after “PR/TT” in the 8th line after the redaction box; page 12, last two lines; page 21, 5th line of the 2nd paragraph; page 25, last paragraph; and page 28, name of an official in the Office of Legal Counsel.

The withholdings on the following pages of the Declaration of the NSA Official Document 3b fall into one of the categories of information that EFF advised the Department it was not challenging: page 1; page 2, lines 2-4, page 2, last two lines; page 2, footnote 1; pages 3-4; page 7, ¶¶ 10-11; page 7, lines 3-4 in ¶12; pages 7-8, ¶ 12; page 8, 2nd to 6th lines in ¶ 13; page 8, 2nd and 3rd lines in ¶ 14; page 10, ¶ 17; page 16, 5th line in ¶ 28; and page 19, name of the NSA Program Manager.

⁹ The withholdings on the following pages of Document 3c fall into one of the categories of information that EFF advised the Department it was not challenging: pages 1-6; page 10; and page 13

¹⁰ The withholdings on the following pages of Document 3d fall into one of the categories of information that EFF advised the Department it was not challenging: pages 1-4; page 5, footnote 2; page 8, 2nd and 3rd lines of footnote 6; page 8, information before “but also” in the 4th line of footnote 6; page 12; page 13, lines 6-7; page 14; page 15; and page 19.

¹¹ The withholdings on the following pages of Document 3e fall into one of the categories of information that EFF advised the Department it was not challenging: page 1; page 2, lines 2, 6-7, 16, 17, 22, 24 and 25; page 2, information after “Docket No.” in line 26; page 2, 1st to 3rd lines of footnote 2; page 2, information after “Docket No.” in the 4th line of footnote 2; page 3, lines 1, 6, 8, and 9; page 3, information after “Docket No.” in line 10; page 3, footnote 2; page 3, 1st line of footnote 3; page 3, after “Docket No.” in the 2nd line of footnote 3; page 3, 6th-7th lines of footnote 3; page 3, footnote 4; page 4, 4th and 5th lines of the 2nd paragraph; page 4, 10th line of the second paragraph; page 6, line 1; page 7, 2nd and 3rd lines of footnote 10; page 8, 2nd and 4th lines in the first paragraph of footnote 12; page 8, second paragraph of footnote 12; page 9, information after “Docket No.” in the 1st line of footnote 13; page 10, information after “Docket No.” in the middle of the page; page 10, 3rd line of footnote 16; page 12, footnote 20; page 13, information after “Docket No.” in line 2; page 16, line 3; page 17; page 19, line 2; page 19, second paragraph; page 19, 3rd line of footnote 41; page 20, information after the words, “Docket No.,” page 21, information after the words, “Docket No.,” and page 22.

¹² The withholdings on the following pages of Document 3f fall into one of the categories of information that EFF advised the Department it was not challenging: pages 1-5; page 8, 2nd and 3rd lines of footnote 5; page 8, information before “but also” in the 4th line of footnote 5; page 11, last line; page 12; page 14, paragraph (iii); page 15, line 1; and page 18

CONCLUSION

I certify, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of May 2015



SUSAN KIM

Exhibit A



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

August 23, 2012

Arnetta Mallory - FOIA Initiatives Coordinator
Patricia Matthews - FOIA Public Liaison
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 6150
Washington, DC 20530-0001

BY U.S. MAIL AND EMAIL — nsdfoia@usdoj.gov

RE: Freedom of Information Act Request
Request for Expedited Processing

Dear Ms. Mallory and Ms. Matthews:

This letter constitutes an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the Department of Justice (“DOJ”), National Security Division (“NSD”) on behalf of the Electronic Frontier Foundation (“EFF”). EFF makes this request as part of its Transparency Project, which works to obtain government records and make those records widely available to the public.

On August 21, 2013, Director of National Intelligence James Clapper declassified and released to EFF a redacted version of a memorandum opinion of the Foreign Intelligence Surveillance Court (“FISC”), dated October 3, 2011 (“October 3 Opinion” cover and relevant page attached hereto).

On page 17 of the October 3 Opinion, the FISC stated that certain collection activities of the NSA implicate 50 U.S.C. § 1809(a) and that the FISC would address those implications in a separate order. That footnote, number 15, reads:

15 The government’s revelations regarding the scope of NSA’s upstream collection implicate 50 U.S.C. § 1809(a), which makes it a crime (1) “to engage[] in electronic surveillance under color of law except as authorized” by statute or (2) to “disclose[] or use[] information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized” by statute. See [case citation redacted] (concluding that Section 1809(a)(2) precluded the Court from approving the government’s proposed use of, among other things, certain data acquired by NSA without statutory authority through its “upstream collection”). The Court will address Section 1809(a) and related issues in a separate order.

Accordingly, EFF hereby requests the following records:

1. The “separate order” or orders, as described in footnote 15 of the October 3 Opinion quoted above, in which the Foreign Intelligence Surveillance Court “address[ed] Section 1809(a) and related issues”; and,
2. The case, order, or opinion whose citation was redacted in footnote 15 of the October 3 Opinion and described as “concluding that Section 1809(a)(2) precluded the Court from approving the government’s proposed use of, among other things, certain data acquired by NSA without statutory authority through its ‘upstream collection.’”

Request for Expedited Processing

For the reasons discussed below, a “compelling need” exists for the records sought in this request, and, as such, EFF is entitled to expedited processing under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. §§ 16.5(d)(1)(ii) and (iv).

Expedited Processing under 28 C.F.R. § 16.5(d)(1)(ii)

EFF is entitled to expedited processing because the request pertains to information about which there is an “urgency to inform the public about an actual or alleged federal government activity,” and the request is “made by a person primarily engaged in disseminating information.” 28 C.F.R. § 16.5(d)(1)(ii). The information we request easily satisfies this standard.

First, the records sought by this request undeniably concern a “federal government activity.” *Id.* The records requested here—FISC opinions and orders concerning unauthorized electronic surveillance conducted by the NSA—reflect both on the federal government’s operation of surveillance and on the judicial and legislative oversight of those surveillance activities.

Second, there is an “urgency to inform the public” about the federal government activity. *Id.* As the October 3 Opinion demonstrates, on at least one occasion the FISC has found government surveillance activities unauthorized by statute. Clearly, when the government is acting beyond its congressionally proscribed powers, an “urgency to inform the public” exists.

Moreover, the NSA programs addressed in the requested records are being actively debated by both houses of Congress and are currently subject to at least ten bills pending in the House of Representatives¹ and nine bills pending in the Senate.² With Congressional debate surrounding

¹ H.R. 2399 (LIBERT-E Act), H.R. 2440 (FISA Court in the Sunshine Act of 2013), H.R. 2475 (Ending Secret Law Act), H.R. 2586 (FISA Court Accountability Act), H.R. 2603 (Relevancy Act), H.R. 2684 (Telephone Surveillance Accountability Act of 2013), H.R. 2736 (Government Surveillance Transparency Act of 2013), H.R. 2761 (Presidential Appointment of FISA Court Judges Act), H.R. 2818 (To repeal the USA PATRIOT Act and the FISA Amendments Act of 2008), and H.R. 2849 (Privacy Advocate General Act of 2013).

² S. 1016 (Preserving Freedom from Unwarranted Surveillance Act of 2013), S. 1121 (Fourth Amendment Restoration Act of 2013), S. 1130 (Ending Secret Law Act), S. 1168 (Restore Our

the FISC the subject of such rigorous debate, the need to inform the public about that court's opinions regarding the legality and operation of NSA surveillance is even more pressing. The information we request will help the public and Congress fully understand the current state and legality of FISA surveillance, and to participate in the ongoing debate over whether to expand—or restrict—the oversight capacity of the FISC. Delay in processing this FOIA request could inhibit the ability of Congress and the public to fully analyze and debate the implications of any changes to the statutory authority of the NSA or the FISC proposed in the 19 bills currently being debated.

In two recent FOIA cases brought by EFF, the court found that requests warranted expedited treatment where Congress is considering legislation “and the records may enable the public to participate meaningfully in the debate over such pending legislation.” *EFF v. ODNI*, 542 F. Supp. 2d 1181, 1187 (N.D. Cal. 2008) (citing *EFF v. ODNI*, 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)). Similarly, there is an urgency to inform the public about the information we seek here.

Further, as explained below in support of our request for “news media” treatment, EFF is “primarily engaged in disseminating information” under 28 C.F.R. § 16.11(c)(1)(i).

Therefore, this request meets the standard for expedited processing set forth in 28 C.F.R. § 16.5(d)(1)(ii).

Expedited Processing under 28 C.F.R. § 16.5(d)(1)(iv)

EFF is also entitled to expedited processing under 28 C.F.R. § 16.5(d)(1)(iv) because the subject of the request concerns “a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.”

First, the disclosure of the October 3 Opinion has generated “widespread and exceptional media interest.” See e.g., Charlie Savage and Scott Shane, *Top-Secret Court Castigated N.S.A. On Surveillance*, *New York Times* (August 22, 2013) (page A1);³ Ellen Nakashima, *NSA Gathered Thousands of Americans' E-mails Before Court Ordered it to Revise its Tactics*, *Washington*

Privacy Act), S. 1182 (A bill to modify the Foreign Intelligence Surveillance Act of 1978), S. 1215 (FISA Accountability and Privacy Protection Act of 2013), S. 1452 (A bill to enhance transparency for certain surveillance programs authorized by the Foreign Intelligence Surveillance Act of 1978), S. 1460 (FISA Judge Selection Reform Act of 2013), and S. 1467 (FISA Court Reform Act of 2013).

³ Available at <http://www.nytimes.com/2013/08/22/us/2011-ruling-found-an-nsa-program-unconstitutional.html>

Post (August 21, 2013);⁴ Cyrus Farivar, *Judge: NSA “systematically violated” its own privacy requirements*, *Ars Technica* (August 21, 2013)⁵; *see also Edmonds v. FBI*, 2002 US Dist. LEXIS 26578, *10 (D.D.C. 2002) (noting “extensive media coverage” satisfied by “numerous newspaper articles in the printed press . . . and on TV”), *rev’d on other grounds* 417 F.3d 1319 (D.C. Cir 2005).

Because the October 3 Opinion demonstrates that government surveillance was conducted in violation of the law, the topic necessarily “affect[s] public confidence” in the government’s integrity. 28 C.F.R. § 16.5(d)(1)(iv). Consequently, the records sought in this request satisfy the requirements for expedited processing under 28 C.F.R. § 16.5(d)(1)(iv).

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 and National Security Agency, among other agencies, have recognized that EFF qualifies as a “news media” requester, based upon the publication activities set forth below (see DHS stipulation and NSA 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.”⁶ One of EFF’s primary objectives is “to educate the press, policymakers and the general public about online civil liberties.”⁷ 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 1,314,234 unique visitors in July 2013 — an average of 1,776 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 235,000 subscribers. A complete archive of past EFFectors is available at <http://www.eff.org/effector/>.

⁴ Available at http://www.washingtonpost.com/world/national-security/nsa-gathered-thousands-of-americans-e-mails-before-court-struck-down-program/2013/08/21/146ba4b6-0a90-11e3-b87c-476db8ac34cd_story.html

⁵ Available at <http://arstechnica.com/tech-policy/2013/08/judge-nsa-systematically-violated-its-own-privacy-requirements/>

⁶ Guidestar Nonprofit Report, Electronic Frontier Foundation, <https://www.guidestar.org/organizations/04-3091431/electronic-frontier-foundation.aspx> (last visited August 22, 2013).

⁷ *Id.*

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. DeepLinks had 116,494 unique visitors in July 2013. EFF also maintains a presence on the social media networks Twitter (more than 140,000 followers), Facebook (more than 67,000 followers), and Google Plus (more than 2,000,000 followers).

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than forty white papers published since 2003. 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.

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)(1)(i), (ii). To determine whether a request meets this standard, the agency determines whether "[d]isclosure of the requested information . . . is likely to contribute significantly to public understanding of the operations or activities of the government," 28 C.F.R. § 16.11(k)(1)(i), and whether such disclosure "is not primarily in the commercial interest of the requester." 28 C.F.R. § 16.11(k)(1)(ii). This request satisfies these criteria.

First, any FISC orders or opinions in the possession of DOJ NSD necessarily implicate "the operations or activities of the government." 28 C.F.R. § 16.11(k)(1)(i). The opinions and orders concern surveillance undertaken by the U.S. intelligence community under Section 702 of FISA.

Second, disclosure of the requested information will contribute to a public understanding of government operations or activities. *Id.* EFF has requested information that will shed light on the intelligence community's interaction with the FISC in the implementation of FISA Section 702, as well as the FISC's interpretation of the legality of those surveillance activities. This information will contribute not only to EFF's understanding of current surveillance activities under Section 702, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Finally, since only limited information has been made available regarding surveillance activities under Section 702, the disclosure will “contribute significantly” to the public’s knowledge and understanding of surveillance activities – and the legality of that surveillance – undertaken by the federal government. *Id.* Disclosure of the requested information will help inform the public about the legality of the intelligence community’s actions, as well as contribute to the public debate about the propriety of reauthorizing Section 702.

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)(1)(ii). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x146. As the FOIA provides, I will anticipate a determination on this request for expedited processing within 10 calendar days.

I certify that, to the best of my knowledge and belief, all information within this request is true and correct.

Sincerely,

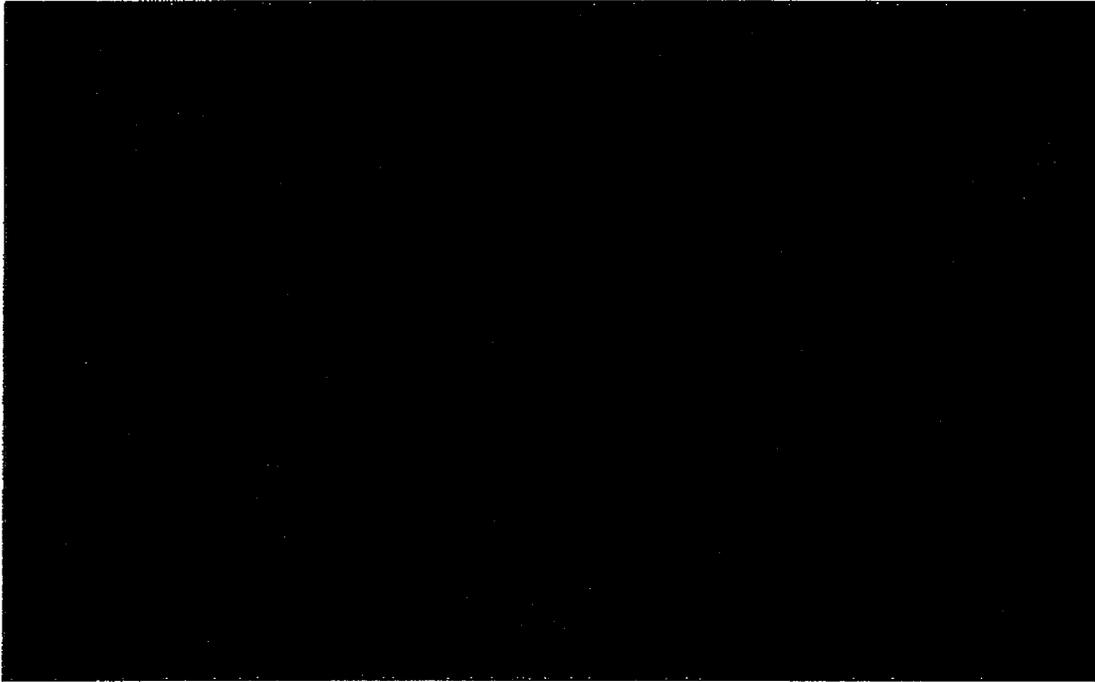
/s/ Nathan Cardozo

Nathan Cardozo
Staff Attorney

Enclosure
cc: Office of Information Policy

~~TOP SECRET//COMINT//ORCON,NOFORN~~

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.



MEMORANDUM OPINION

These matters are before the Foreign Intelligence Surveillance Court ("FISC" or "Court") on: (1) the "Government's Ex Parte Submission of Reauthorization Certification and Related Procedures, Ex Parte Submission of Amended Certifications, and Request for an Order Approving Such Certification and Amended Certifications" for DNI/AG 702(g) Certifications

~~TOP SECRET//COMINT//ORCON,NOFORN~~

~~TOP SECRET//COMINT//ORCON,NOFORN~~

The government's submissions make clear not only that NSA has been acquiring Internet transactions since before the Court's approval of the first Section 702 certification in 2008,¹⁵ but also that NSA seeks to continue the collection of Internet transactions. Because NSA's acquisition of Internet transactions presents difficult questions, the Court will conduct its review in two stages. Consistent with the approach it has followed in past reviews of Section 702 certifications and amendments, the Court will first consider the targeting and minimization procedures as applied to the acquisition of communications other than Internet transactions – i.e., to the discrete communications between or among the users of telephone and Internet communications facilities that are to or from a facility tasked for collection.¹⁶ The Court will

¹⁴ [REDACTED]

¹⁵ The government's revelations regarding the scope of NSA's upstream collection implicate 50 U.S.C. § 1809(a), which makes it a crime (1) to "engage[] in electronic surveillance under color of law except as authorized" by statute or (2) to "disclose[] or use[] information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized" by statute. See [REDACTED] (concluding that Section 1809(a)(2) precluded the Court from approving the government's proposed use of, among other things, certain data acquired by NSA without statutory authority through its "upstream collection"). The Court will address Section 1809(a) and related issues in a separate order.

¹⁶ As noted, the Court previously authorized the acquisition of [REDACTED] categories of "about" communications. The Court now understands that all "about" communications are acquired by means of NSA's acquisition of Internet transactions through its upstream collection. See June 1 Submission at 1-2, see also Sept. 7, 2011 Hearing Tr. at 76. Accordingly, the Court considers the
(continued...)

~~TOP SECRET//COMINT//ORCON,NOFORN~~

Exhibit B

Gleaves, Lani (NSD)

From: Gleaves, Lani (NSD)
Sent: Tuesday, August 27, 2013 4:58 PM
To: 'nate@eff.org'
Cc: Mallory, Arnetta (NSD); NSDFOIA (NSD)
Subject: FW: FOIA Request 13-250 Cardozo

Nathan Cardozo
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109

Re: FOIA/PA # 13-250

Dear Mr. Cardozo:

This is to acknowledge receipt of your email dated August 23, 2013, seeking “1. The “separate order” or orders, as described in footnote 15 of the October 3 Opinion quoted above, in which the Foreign Intelligence Surveillance Court “address[ed] Section 1809(a) and related issues”; and, 2. The case, order, or opinion whose citation was redacted in footnote 15 of the October 3 Opinion and described as “concluding that Section 1809(a)(2) precluded the Court from approving the government’s proposed use of, among other things, certain data acquired by NSA without statutory authority through its ‘upstream collection.’” Our FOIA office received your Freedom of Information request on August 26, 2013.

Our policy is to process FOIA requests on a first-in, first-out basis. Consistent with this policy, every effort will be made to respond to your request as quickly as possible. The actual processing time will depend upon the complexity of the request, whether it involves sensitive or voluminous records, and whether consultations with other agencies or agency components are appropriate.

Also, you requested expedited processing of your FOIA request and a waiver of processing fees. The request for a fee waiver and expedited processing is under consideration and you will be notified our decision. If you have any questions concerning your request, feel free to contact me on (202) 233-0754. Thank you in advance for your continuing patience.

Sincerely,

Arnetta Mallory

Arnetta Mallory
FOIA Coordinator

Mallory, Arnetta (NSD)

From: NSDFOIA (NSD)
Sent: Tuesday, September 03, 2013 4:15 PM
To: nate@eff.org
Subject: FOIA Request 13-250 Cardozo

Nathan Cardozo
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109

Re: FOIA/PA # 13-250

Dear Mr. Cardozo:

This is in reference to your email dated August 23, 2013, pertaining to “1. The “separate order” or orders, as described in footnote 15 of the October 3 Opinion quoted above, in which the Foreign Intelligence Surveillance Court “address[ed] Section 1809(a) and related issues”; and, 2. The case, order, or opinion whose citation was redacted in footnote 15 of the October 3 Opinion and described as “concluding that Section 1809(a)(2) precluded the Court from approving the government’s proposed use of, among other things, certain data acquired by NSA without statutory authority through its ‘upstream collection.’” Our FOIA office received your Freedom of information request on August 26, 2013.

You have requested expedited processing of your request under the Department of Justice standards permitting expedition when a requester demonstrates a “compelling need.” A compelling need is defined as follows:

1. Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
2. With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

You have demonstrated that there is a particular urgency to inform the public about an actual or alleged federal government activity. Therefore, your request for expedited process is granted.

Also, you requested a waiver of processing fees. Your reason for a fee waiver does meet the fee waiver threshold. Therefore, your request for a fee waiver has been granted.

Your continued patience is appreciated. Please continue to use the file number indicated above in all future correspondence with this office.

Sincerely,

Arnetta Mallory

Arnetta Mallory
FOIA Coordinator

Exhibit C

U.S. Department of Justice



National Security Division

Washington, D.C. 20530

SEP - 3 2014

NSD FOI/PA #13-250

Mr. Nathan Cardozo
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109

Dear Mr. Cardozo:

This letter is in response to your August 23, 2012 Freedom of Information Act (FOIA)/Privacy Act (PA) request seeking the following:

(1) The “separate order” or orders, as described in footnote 15 of the October 3 Opinion [...], in which the Foreign Intelligence Surveillance Court “address[ed] Section 1809(a) and related issues”; and,

(2) The case, order, or opinion whose citation was redacted in footnote 15 of the October 3 Opinion and described as “concluding that Section 1809(a)(2) precluded the Court from approving the government’s proposed use of, among other things, certain data acquired by NSA without statutory authority through its ‘upstream collection.’”

We assigned this request NSD FOIA #13-250.

We have processed the responsive records under the FOIA/PA, and we located one record responsive to part 1 of your request. We are releasing that record in part pursuant to one or more of the following FOIA exemptions set forth in 5 U.S.C. 552(b):

(1) which permits the withholding of information properly classified pursuant to Executive Order No. 13526; and,

(3) which permits the withholding of information specifically exempted from disclosure by statute (the applicable statute is 50 U.S.C. Section 403-1(i)(1) of the National Security Act of 1947).

Please note that the Office of the Director of National Intelligence (ODNI) already released this record in this exact form as part of that office's transparency initiative. As a result of your request we will be reviewing the record further to determine if any part of the withheld portions may be released under the FOIA. We will inform you of the results of our review as soon as it is completed.

We also located one record responsive to part 2 of your request. We are withholding that record in full pursuant to 5 U.S.C. 552(b)(1) and 5 U.S.C. 552(b)(3), listed above.

As this request is now in litigation, we are omitting our standard appeals paragraph.

Sincerely,



Arnetta Mallory,
FOIA Coordinator

Exhibit D



National Security Division

Washington, D.C. 20530

NOV - 3 2014

NSD FOI/PA #13-250

Mr. Nathan Cardozo
Electronic Frontier Foundation
815 Eddy Street
San Francisco, California 94109

Dear Mr. Cardozo:

This letter is in further response to your August 23, 2013 Freedom of Information Act (FOIA)/Privacy Act (PA) request seeking the following:

(1) The “separate order” or orders, as described in footnote 15 of the October 3 Opinion [...], in which the Foreign Intelligence Surveillance Court “address[ed] Section 1809(a) and related issues”; and,

(2) The case, order, or opinion whose citation was redacted in footnote 15 of the October 3 Opinion and described as “concluding that Section 1809(a)(2) precluded the Court from approving the government’s proposed use of, among other things, certain data acquired by NSA without statutory authority through its ‘upstream collection.’”

This request was assigned NSD FOI/PA #13-250.

We have completed processing pursuant to FOIA of the one record that we previously advised was responsive to part 1 of your request, and we are releasing additional portions of that opinion. This record is being released in part pursuant to one or more of the following FOIA exemptions set forth in 5 U.S.C. 552(b):

(1) which permits the withholding of information properly classified pursuant to Executive Order No. 13526;

(3) which permits the withholding of information specifically exempted from disclosure by statute;

(6) which permits the withholding of information whose disclosure would constitute an unwarranted invasion of personal privacy;

(7)(C) which permits the withholding of law enforcement information whose disclosure would constitute an unwarranted invasion of personal privacy; and,

(7)(E) which permits the withholding of techniques and procedures for law enforcement investigations or prosecutions whose disclosure could risk circumvention of the law.

Because our review has concluded, and we have released all responsive, non-exempt information, we are closing out your request, dated August 23, 2013 and assigned NSD FOI/PA #13-250.

As this case is in litigation, we are omitting our standard appeals paragraph.

Sincerely,



Arnetta Mallory,
FOIA Coordinator

Exhibit E



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

October 31, 2013

Arnetta Mallory - FOIA Initiatives Coordinator
Patricia Matthews - FOIA Public Liaison
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 6150
Washington, DC 20530-0001

BY EMAIL — nsdfoia@usdoj.gov

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

Dear Ms. Mallory and Ms. Matthews:

This letter constitutes an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the Department of Justice (“DOJ”), National Security Division (“NSD”) on behalf of the Electronic Frontier Foundation (“EFF”). EFF makes this request as part of its Transparency Project, which works to obtain government records and make those records widely available to the public.

On January 10, 2007, a judge on the Foreign Intelligence Surveillance Court (FISC) “issued orders authorizing the Government to target for collection international communications into or out of the United States . . . As a result of these orders, any electronic surveillance that was occurring as part of the Terrorist Surveillance Program [was subsequently] conducted subject to approval of the [FISC].” Letter to Sen. Patrick Leahy & Sen. Arlen Specter from Att’y Gen. Alberto Gonzalez (Jan. 17, 2007);¹ *see also* Offices of the Inspectors Gen., *Unclassified Report on the President’s Surveillance Program* 30-31 (July 10, 2009).²

In May 2007, however, a second FISC judge refused to renew the January 2007 FISC order. According to the Senate Select Committee on Intelligence “[a]t the end of May 2007. . . attention was drawn to a ruling of the FISA Court. When a second judge of the FISA Court considered renewal of the January 2007 FISA orders, he issued a ruling that the DNI later described as significantly diverting NSA analysts from their counterterrorism mission to provide information to the Court.” Report on S. Rep. 110-209, *Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007*, Sen. Select Comm. on Intelligence, 110th Cong. (Oct. 26, 2007); *see also* Chris Roberts, *Transcript: Debate On The Foreign Intelligence Surveillance Act*, *El Paso Times* at 1 (Aug. 22, 2007) (quoting then-Director of National Intelligence Mike McConnell saying, “[The Program] was submitted to the FISA court and the first ruling in the FISA court was what we needed to do we could do with an approval process that was at a summary level and that was OK, we stayed in business and we’re doing our mission. . . . But the FISA process has a

¹ Available at http://graphics8.nytimes.com/packages/pdf/politics/20060117gonzales_Letter.pdf.

² Available at <https://www.fas.org/irp/eprint/psp.pdf>.

renewal. . . So the second judge looked at the same data and said well wait a minute I interpret the law, which is the FISA law, differently.”).

Accordingly, EFF hereby requests the following records:

1. The January 10, 2007³ order(s) and/or opinion(s) — including, but not limited to, any “foreign content order” or “domestic content order” — of the Foreign Intelligence Surveillance Court, including all legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s January 2007 order(s) and/or opinion(s); and,
2. Any subsequent order(s) and/or opinion(s) of the Foreign Intelligence Surveillance Court reconsidering, reinterpreting, refusing to renew, or otherwise altering the January 10, 2007 orders, and all accompanying documents, including legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s order(s) and/or opinion(s).

Request for Expedited Processing

For the reasons discussed below, a “compelling need” exists for the records sought in this request, and, as such, EFF is entitled to expedited processing under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. §§ 16.5(d)(1)(ii) and (iv).

Expedited Processing under 28 C.F.R. § 16.5(d)(1)(ii)

EFF is entitled to expedited processing because the request pertains to information about which there is an “urgency to inform the public about an actual or alleged federal government activity,” and the request is “made by a person primarily engaged in disseminating information.” 28 C.F.R. § 16.5(d)(1)(ii). The information we request easily satisfies this standard.

First, the records sought by this request undeniably concern a “federal government activity.” *Id.* The records requested here—FISC opinions and orders concerning electronic surveillance conducted by the NSA—reflect both on the federal government’s operation of domestic electronic surveillance and on the judicial oversight of those surveillance activities.

Second, there is an “urgency to inform the public” about the federal government activity. *Id.* The NSA programs addressed in the requested records are being actively debated by both houses of Congress and are currently subject to at least ten bills pending in the House of

³ EFF is informed and believes the FISC opinions it seeks are dated January 10, 2007 and provides it only as a guide for locating the correct opinions. However, if Attorney General Gonzalez’s letter provided an incorrect or incomplete date for the relevant opinions, EFF asks that the date not be used to restrict or otherwise limit the production of relevant FISC materials.

Representatives⁴ and nine bills pending in the Senate.⁵ With Congressional debate surrounding the FISC the subject of such rigorous debate, the need to inform the public about the law governing the operation of NSA surveillance is imperative. The information we request will help the public and Congress fully understand the current state and legality of FISA surveillance, and to participate in the ongoing debate over whether to expand—or restrict—the oversight capacity of the FISC. Delay in processing this FOIA request could inhibit the ability of Congress and the public to fully analyze and debate the implications of any changes to the statutory authority of the NSA or the FISC proposed in the bills currently being debated.

In two FOIA cases brought by EFF, the court found that requests warranted expedited treatment where Congress is considering legislation “and the records may enable the public to participate meaningfully in the debate over such pending legislation.” *EFF v. ODNI*, 542 F. Supp. 2d 1181, 1187 (N.D. Cal. 2008) (citing *EFF v. ODNI*, 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)). Similarly, there is an urgency to inform the public about the information we seek here.

Further, as explained below in support of our request for “news media” treatment, EFF is “primarily engaged in disseminating information” under 28 C.F.R. § 16.11(c)(1)(i).

Therefore, this request meets the standard for expedited processing set forth in 28 C.F.R. § 16.5(d)(1)(ii).

Expedited Processing under 28 C.F.R. § 16.5(d)(1)(iv)

EFF is also entitled to expedited processing under 28 C.F.R. § 16.5(d)(1)(iv) because the subject of the request concerns “a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.”

⁴ H.R. 2399 (LIBERT-E Act), H.R. 2440 (FISA Court in the Sunshine Act of 2013), H.R. 2475 (Ending Secret Law Act), H.R. 2586 (FISA Court Accountability Act), H.R. 2603 (Relevancy Act), H.R. 2684 (Telephone Surveillance Accountability Act of 2013), H.R. 2736 (Government Surveillance Transparency Act of 2013), H.R. 2761 (Presidential Appointment of FISA Court Judges Act), H.R. 2818 (To repeal the USA PATRIOT Act and the FISA Amendments Act of 2008), and H.R. 2849 (Privacy Advocate General Act of 2013).

⁵ S. 1016 (Preserving Freedom from Unwarranted Surveillance Act of 2013), S. 1121 (Fourth Amendment Restoration Act of 2013), S. 1130 (Ending Secret Law Act), S. 1168 (Restore Our Privacy Act), S. 1182 (A bill to modify the Foreign Intelligence Surveillance Act of 1978), S. 1215 (FISA Accountability and Privacy Protection Act of 2013), S. 1452 (A bill to enhance transparency for certain surveillance programs authorized by the Foreign Intelligence Surveillance Act of 1978), S. 1460 (FISA Judge Selection Reform Act of 2013), and S. 1467 (FISA Court Reform Act of 2013).

First, the disclosure of other FISC opinions over the past three months has generated “widespread and exceptional media interest.” *See e.g.*, Charlie Savage & Scott Shane, *Top-Secret Court Castigated N.S.A. On Surveillance*, New York Times (August 22, 2013) (page A1);⁶ Ellen Nakashima, *NSA Gathered Thousands of Americans’ E-mails Before Court Ordered it to Revise its Tactics*, Washington Post (August 21, 2013);⁷ Cyrus Farivar, *Judge: NSA “systematically violated” its own privacy requirements*, Ars Technica (August 21, 2013)⁸; *see also Edmonds v. FBI*, 2002 US Dist. LEXIS 26578, *10 (D.D.C. 2002) (noting “extensive media coverage” satisfied by “numerous newspaper articles in the printed press . . . and on TV”), *rev’d on other grounds* 417 F.3d 1319 (D.C. Cir 2005).

Because the requested opinions likely contain substantial interpretations of federal law and the Constitution, the continued secrecy of the opinions necessarily “affect[s] public confidence” in the government’s integrity. 28 C.F.R. § 16.5(d)(1)(iv). Consequently, the records sought in this request satisfy the requirements for expedited processing under 28 C.F.R. § 16.5(d)(1)(iv).

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 and National Security Agency, among other agencies, have recognized that EFF qualifies as a “news media” requester, based upon the publication activities set forth below (see DHS stipulation and NSA 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.”⁹ One of EFF’s primary objectives is “to educate the press, policymakers and the general public about online civil liberties.”¹⁰ 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 1,314,234 unique visitors in July 2013 — an average of 1,776 per hour. The web site reports the latest

⁶ Available at <http://www.nytimes.com/2013/08/22/us/2011-ruling-found-an-nsa-program-unconstitutional.html>

⁷ Available at http://www.washingtonpost.com/world/national-security/nsa-gathered-thousands-of-americans-e-mails-before-court-struck-down-program/2013/08/21/146ba4b6-0a90-11e3-b87c-476db8ac34cd_story.html

⁸ Available at <http://arstechnica.com/tech-policy/2013/08/judge-nsa-systematically-violated-its-own-privacy-requirements/>

⁹ Guidestar Nonprofit Report, Electronic Frontier Foundation, <https://www.guidestar.org/organizations/04-3091431/electronic-frontier-foundation.aspx> (last visited August 22, 2013).

¹⁰ *Id.*

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 235,000 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. DeepLinks had 116,494 unique visitors in July 2013. EFF also maintains a presence on the social media networks Twitter (more than 150,000 followers), Facebook (more than 67,000 followers), and Google Plus (more than 2,000,000 followers).

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than forty white papers published since 2003. 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.

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)(1)(i), (ii). To determine whether a request meets this standard, the agency must assess whether "[d]isclosure of the requested information . . . is likely to contribute significantly to public understanding of the operations or activities of the government," 28 C.F.R. § 16.11(k)(1)(i), and whether such disclosure "is not primarily in the commercial interest of the requester." 28 C.F.R. § 16.11(k)(1)(ii). This request satisfies these criteria.

First, any FISC orders or opinions in the possession of DOJ NSD necessarily implicate "the operations or activities of the government." 28 C.F.R. § 16.11(k)(1)(i). The opinions and orders concern domestic surveillance undertaken by the U.S. intelligence community.

Second, disclosure of the requested information will contribute to a public understanding of government operations or activities. *Id.* EFF has requested information that will shed light on the intelligence community's interaction with the FISC in the implementation and transition of NSA

surveillance activities to FISA Court oversight. This information will contribute not only to EFF's understanding of surveillance activities and law, but also to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Finally, since only limited information has been made available regarding the shift of NSA surveillance activities to FISC oversight, the disclosure will "contribute significantly" to the public's knowledge and understanding of surveillance activities – and the legal basis for that surveillance – undertaken by the federal government. *Id.* Disclosure of the requested information will help inform the public about the legality of the intelligence community's actions, as well as contribute to the public debate about proper reforms to such authority.

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)(1)(ii). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x146. As the FOIA provides, I will anticipate a determination on this request for expedited processing within 10 calendar days.

I certify that, to the best of my knowledge and belief, all information within this request is true and correct.

Sincerely,

/s/ Mark Rumold

Mark Rumold
Staff Attorney

Enclosure

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC FRONTIER)
FOUNDATION)
)
Plaintiff,)
)
v.)
)
DEPARTMENT OF HOMELAND)
SECURITY,)
)
Defendant.)
_____)

Civil Action No. 06-1988 (ESH)

STIPULATED DISMISSAL OF PLAINTIFF’S SECOND CAUSE OF ACTION

Plaintiff Electronic Frontier Foundation (EFF) and Defendant Department of Homeland Security (DHS), by counsel, hereby stipulate and agree as follows:

1. Defendant DHS has granted news media status to Plaintiff EFF based on the representations contained in EFF’s FOIA requests, which demonstrate that EFF is an “entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6). Defendant DHS will continue to regard Plaintiff EFF as a “representative of the news media” absent a change in circumstances that indicates that EFF is no longer an “entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6).
2. Accordingly, the parties herewith agree to the dismissal of Plaintiff EFF’s Second Cause of Action, related to EFF’s status as a “representative of the news media.”
3. The parties further agree that each will pay its own fees and costs for work on the dismissed claim.

SO STIPULATED AND AGREED this 27th day of February, 2007.

/s/ David L. Sobel

DAVID L. SOBEL
D.C. Bar 360418

MARCIA HOFMANN
D.C. Bar 484136

ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Avenue, N.W.
Suite 650
Washington, D.C. 20009
(202) 797-9009

Counsel for Plaintiff

PETER D. KEISLER
Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

ELIZABETH J. SHAPIRO
D.C. Bar 418925
Assistant Branch Director
U.S. Department of Justice
Civil Division, Federal Programs Branch

/s/ John R. Coleman

JOHN R. COLEMAN
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 6118
Washington, D.C. 20530
(202) 514-4505

Counsel for Defendant



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

FOIA Case: 52276
6 February 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, NW
Suite 650
Washington, DC 20009

Dear Ms. Hofmann:

This is an initial response to your Freedom of Information Act (FOIA) request submitted via facsimile on 23 January 2007, which was received by this office on 24 January 2007, for all agency records (including, but not limited to, electronic records) related to the NSA's review of and input on the configuration of the Microsoft Windows Vista operating system ("Vista"). Your request has been assigned Case Number 52276.

As we began to process your request, we realized that the first page of the actual request was missing from your 18-page facsimile package. On 1 February 2007, a member of my staff contacted you to advise you of this fact. As a result, you submitted another facsimile of your original five-page request, which we received and have begun to process. There is certain information relating to this processing about which the FOIA and applicable Department of Defense (DoD) and NSA/CSS regulations require we inform you.

For purposes of this request and based on the information you provided in your letter, you are considered a representative of the media. Unless you qualify for a fee waiver or reduction, you must pay for duplication in excess of the first 100 pages. Your request for a fee waiver has been granted. In addition, please be advised your request for expedited treatment has been accepted. We are currently in the process of searching for responsive documents and will notify you of the status of your request as soon as that search has been completed.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office

FOIA Case: 52276

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

Sincerely,

for Marianne Stypa

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Exhibit F



U.S. Department of Justice

National Security Division

Washington, D.C. 20530

Mark Rumold
EPIC
815 Eddy Street
San Francisco, CA 94109
Washington, DC 20009

NOV 29 2013

COPY

Re: FOIA/PA # 14-028

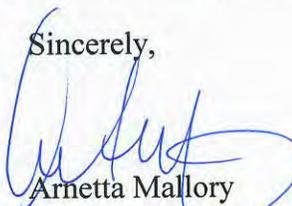
Dear Mr. Rumold:

This is to acknowledge receipt of your letter dated October 31, 2013, pertaining to “1. The January 10, 2007^s order(s) and/or opinion(s) — including, but not limited to, any “foreign content order” or “domestic content order” — of the Foreign Intelligence Surveillance Court, including all legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s January 2007 order(s) and/or opinion(s); and, 2. Any subsequent order(s) and/or opinion(s) of the Foreign Intelligence Surveillance Court reconsidering, reinterpreting, refusing to renew, or otherwise altering the January 10, 2007 orders, and all accompanying documents, including legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s order(s) and/or opinion(s).” Our FOIA office received your Freedom of Information request on October 31, 2013.

Our policy is to process FOIA requests on a first-in, first-out basis. Consistent with this policy, every effort will be made to respond to your request as quickly as possible. The actual processing time will depend upon the complexity of the request, whether it involves sensitive or voluminous records, and whether consultations with other agencies or agency components are appropriate.

Also, you requested expedited processing of your FOIA request and a waiver of processing fees. The request for a fee waiver and expedited processing is under consideration and you will be notified our decision. If you have any questions concerning your request, feel free to contact me on (202) 233-0754. Thank you in advance for your continuing patience.

Sincerely,



Arnetta Mallory
FOIA Coordinator

Exhibit G



U.S. Department of Justice

National Security Division

Washington, D.C. 20530

Mark Rumold
EPIC
815 Eddy Street
San Francisco, CA 94109
Washington, DC 20009

DEC 11 2013

Re: FOIA/PA # 14-028

Dear Mr. Rumold:

This is to acknowledge receipt of your letter dated October 31, 2013, pertaining to “1. The January 10, 2007^s order(s) and/or opinion(s) — including, but not limited to, any “foreign content order” or “domestic content order” — of the Foreign Intelligence Surveillance Court, including all legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s January 2007 order(s) and/or opinion(s); and, 2. Any subsequent order(s) and/or opinion(s) of the Foreign Intelligence Surveillance Court reconsidering, reinterpreting, refusing to renew, or otherwise altering the January 10, 2007 orders, and all accompanying documents, including legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s order(s) and/or opinion(s).” Our FOIA office received your Freedom of Information request on October 31, 2013.

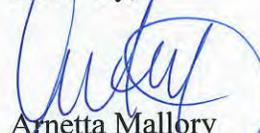
You have requested expedited processing of your request under the Department of Justice standards permitting expedition when a requester demonstrates a “compelling need.” A compelling need is defined as follows:

1. Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
2. With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

You have demonstrated that there is a particular urgency to inform the public about an actual or alleged federal government activity. Therefore, your request for expedited process is granted.

Your continued patience is appreciated. Please continue to use the file number indicated above in all future correspondence with this office.

Sincerely,



Arnetta Mallory
FOIA Coordinator

Exhibit H

U.S. Department of Justice



National Security Division

Washington, D.C. 20530

DEC 12 2014

NSD FOI/PA #14-028, #14-084

Mr. Mark Rumold
Electronic Frontier Foundation
815 Eddy Street
San Francisco, California 94109

Dear Mr. Rumold:

This letter closes your October 31, 2013 Freedom of Information Act (FOIA)/Privacy Act (PA) request and further responds to your March 14, 2014 FOIA/PA request.

Your October 31, 2013 request sought the following:

- (1) The January 10, 2007 order(s) and/or opinion(s) — including, but not limited to, any “foreign content order” or “domestic content order” — of the Foreign Intelligence Surveillance Court, including all legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s January 2007 order(s) and/or opinion(s); and,
- (2) Any subsequent order(s) and/or opinion(s) of the Foreign Intelligence Surveillance Court reconsidering, reinterpreting, refusing to renew, or otherwise altering the January 10, 2007 orders, and all accompanying documents, including legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s order(s) and/or opinion(s).

This request was assigned NSD FOI/PA #14-028.

Your March 14, 2014 request sought the following:

- (1) The “Raw Take” order (Dkt No. 02-431), dated July 22, 2002, and captioned “In Re Electronic Surveillance and Physical Search of International Terrorist Groups, Their Agents, and Related Targets;” and,
- (2) The “Large Content FISA” order(s) and/or opinion(s); and,
- (3) The September 4, 2008 FISC order(s) and/or opinion(s) concerning the FISA

- (4) All documents, including legal memoranda, declarations, briefs, or any other document submitted by the government in support of items (1)-(3) above; and,
- (5) All documents, including legal memoranda, declarations, briefs, or any other document incorporated, adopted within, or issued with items (1)-(3) above.

This request was assigned NSD FOI/PA #14-084.

We have completed processing pursuant to FOIA of six records responsive to both requests. These records are being released in part pursuant to one or more of the following FOIA exemptions set forth in 5 U.S.C. 552(b):

(1) which permits the withholding of information properly classified pursuant to Executive Order No. 13526;

(3) which permits the withholding of information specifically exempted from disclosure by statute;

(6) which permits the withholding of information whose disclosure would constitute an unwarranted invasion of personal privacy;

(7)(A) which permits the withholding of law enforcement information whose disclosure could reasonably be expected to interfere with enforcement proceedings;

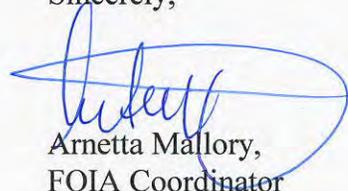
(7)(C) which permits the withholding of law enforcement information whose disclosure would constitute an unwarranted invasion of personal privacy; and,

(7)(E) which permits the withholding of techniques and procedures for law enforcement investigations or prosecutions whose disclosure could risk circumvention of the law.

We are still processing documents responsive to your March 14, 2014 request, but our review of materials responsive to your October 31, 2013 request has concluded. As a result, we are closing out your request, dated October 31, 2013 and assigned NSD FOI/PA #14-028.

As this case is in litigation, we are omitting our standard appeals paragraph.

Sincerely,



Arnetta Mallory,
FOIA Coordinator

Exhibit I



National Security Division

Washington, D.C. 20530

NSD FOI/PA #14-028

Mr. Mark Rumold
Electronic Frontier Foundation
815 Eddy Street
San Francisco, California 94109

JAN 26 2015

Dear Mr. Rumold:

This letter is in further response to your October 31, 2013 Freedom of Information Act (FOIA)/Privacy Act (PA) request.¹

Your October 31, 2013 request sought the following:

- (1) The January 10, 2007 order(s) and/or opinion(s) — including, but not limited to, any “foreign content order” or “domestic content order” — of the Foreign Intelligence Surveillance Court, including all legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s January 2007 order(s) and/or opinion(s); and,
- (2) Any subsequent order(s) and/or opinion(s) of the Foreign Intelligence Surveillance Court reconsidering, reinterpreting, refusing to renew, or otherwise altering the January 10, 2007 orders, and all accompanying documents, including legal memoranda, documents, briefings, minimization and targeting procedures, and/or policies incorporated within the Court’s order(s) and/or opinion(s).

This request was assigned NSD FOI/PA #14-028.

We have completed processing pursuant to FOIA two records responsive to part 2 of your October 31, 2013 request. The records are being released in part pursuant to one or more of the following FOIA exemptions set forth in 5 U.S.C. 552(b):

(1) which permits the withholding of information properly classified pursuant to Executive Order No. 13526;

¹ In NSD’s letter dated December 12, 2014, I incorrectly stated that NSD FOIA had finished processing your October 31, 2013 request.

(3) which permits the withholding of information specifically exempted from disclosure by statute;

(6) which permits the withholding of information whose disclosure would constitute an unwarranted invasion of personal privacy;

(7)(C) which permits the withholding of law enforcement information whose disclosure would constitute an unwarranted invasion of personal privacy.

(7)(E) which permits the withholding of techniques and procedures for law enforcement investigations or prosecutions whose disclosure could risk circumvention of the law.

Our review of materials responsive to your October 31, 2013 request has concluded. As a result, we are closing out your request, dated October 31, 2013 and assigned NSD FOI/PA #14-028.

As this case is in litigation, we are omitting our standard appeals paragraph.

Sincerely,



Susan Kim,
Attorney Advisor

Exhibit J



February 24, 2014

Arnetta Mallory - FOIA Initiatives Coordinator
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 6150
Washington, DC 20530-0001

BY EMAIL — nsdfoia@usdoj.gov

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

Dear Ms. Mallory:

This letter constitutes an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the Department of Justice (“DOJ”), National Security Division (“NSD”) on behalf of the Electronic Frontier Foundation (“EFF”). EFF makes this request as part of its Transparency Project, which works to obtain government records and make those records widely available to the public.

EFF hereby requests the following records:

1. All written decisions, opinions, or orders issued by the Foreign Intelligence Surveillance Court of Review (“FISCR”);
2. All written decisions, opinions, or orders issued by the Supreme Court in any case or matter appealed from the FISCR.

Request for Expedited Processing

For the reasons discussed below, a “compelling need” exists for the records sought in this request, and, as such, EFF is entitled to expedited processing under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. §§ 16.5(d)(1)(ii).

EFF is entitled to expedited processing because the request pertains to information about which there is an “urgency to inform the public about an actual or alleged federal government activity,” and the request is “made by a person primarily engaged in disseminating information.” 28 C.F.R. § 16.5(d)(1)(ii). The information we request satisfies this standard.

First, the records sought by this request undeniably concern a “federal government activity.” *Id.* The records requested here—appellate decisions concerning electronic surveillance conducted by the NSA—reflect both on the federal government’s operation of domestic electronic surveillance and on the judicial oversight of those surveillance activities.

Second, there is an “urgency to inform the public” about the federal government activity. *Id.*

The surveillance programs addressed in the requested records are being actively debated by both houses of Congress and are currently subject to at least ten bills pending in the House of Representatives¹ and nine bills pending in the Senate.² With Congressional debate surrounding the FISC the subject of such rigorous debate, the need to inform the public about the law governing the operation of government surveillance is imperative. The information we request will help the public and Congress fully understand the current state and legality of FISA surveillance, and to participate in the ongoing debate over whether to expand—or restrict—the oversight capacity of the courts. Delay in processing this FOIA request could inhibit the ability of Congress and the public to fully analyze and debate the implications of any changes to the statutory authority of the NSA or the FISC proposed in the bills currently being debated.

In two FOIA cases brought by EFF, the court found that requests warranted expedited treatment where Congress is considering legislation “and the records may enable the public to participate meaningfully in the debate over such pending legislation.” *EFF v. ODNI*, 542 F. Supp. 2d 1181, 1187 (N.D. Cal. 2008) (citing *EFF v. ODNI*, 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)). Similarly, there is an urgency to inform the public about the information we seek here.

Further, as explained below in support of our request for “news media” treatment, EFF is “primarily engaged in disseminating information” under 28 C.F.R. § 16.11(c)(1)(i).

Therefore, this request meets the standard for expedited processing set forth in 28 C.F.R. § 16.5(d)(1)(ii).

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 and National Security Agency, among other agencies, have recognized that EFF qualifies as a “news media” requester, based upon the publication activities set forth below (see DHS stipulation and NSA 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-*

¹ H.R. 2399 (LIBERT-E Act), H.R. 2440 (FISA Court in the Sunshine Act of 2013), H.R. 2475

² S. 1016 (Preserving Freedom from Unwarranted Surveillance Act of 2013), S. 1121 (Fourth Amendment Restoration Act of 2013), S. 1130 (Ending Secret Law Act), S. 1168 (Restore Our Privacy Act), S. 1182 (A bill to modify the Foreign Intelligence Surveillance Act of 1978), S. 1215 (FISA Accountability and Privacy Protection Act of 2013), S. 1452 (A bill to enhance transparency for certain surveillance programs authorized by the Foreign Intelligence Surveillance Act of 1978), S. 1460 (FISA Judge Selection Reform Act of 2013), and S. 1467 (FISA Court Reform Act of 2013).

Fayed v. CIA, 254 F.3d 300, 307 (D.C. Cir. 2001), quoting *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1287 (D.C. Cir. 1983).

EFF is a non-profit public interest organization that works “to protect and enhance our core civil liberties in the digital age.”³ One of EFF’s primary objectives is “to educate the press, policymakers and the general public about online civil liberties.”⁴ To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which received 1,314,234 unique visitors in July 2013 — an average of 1,776 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 235,000 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. DeepLinks had 116,494 unique visitors in July 2013. EFF also maintains a presence on the social media networks Twitter (more than 150,000 followers), Facebook (more than 67,000 followers), and Google Plus (more than 2,000,000 followers).

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than forty white papers published since 2003. 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.

³ Guidestar Nonprofit Report, Electronic Frontier Foundation, <https://www.guidestar.org/organizations/04-3091431/electronic-frontier-foundation.aspx> (last visited August 22, 2013).

⁴ *Id.*

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)(1)(i), (ii). To determine whether a request meets this standard, the agency must assess whether “[d]isclosure of the requested information . . . is likely to contribute significantly to public understanding of the operations or activities of the government,” 28 C.F.R. § 16.11(k)(1)(i), and whether such disclosure “is not primarily in the commercial interest of the requester.” 28 C.F.R. § 16.11(k)(1)(ii). This request satisfies these criteria.

First, any FISC orders or opinions in the possession of DOJ NSD necessarily implicate “the operations or activities of the government.” 28 C.F.R. § 16.11(k)(1)(i). The opinions and orders concern domestic surveillance undertaken by the U.S. intelligence community.

Second, disclosure of the requested information will contribute to a public understanding of government operations or activities. *Id.* EFF has requested information that will shed light on the intelligence community’s interaction with the FISC in the implementation and transition of NSA surveillance activities to FISA Court oversight. This information will contribute not only to EFF’s understanding of surveillance activities and law, but also to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Finally, since only limited information has been made available regarding the shift of NSA surveillance activities to FISC oversight, the disclosure will “contribute significantly” to the public’s knowledge and understanding of surveillance activities – and the legal basis for that surveillance – undertaken by the federal government. *Id.* Disclosure of the requested information will help inform the public about the legality of the intelligence community’s actions, as well as contribute to the public debate about proper reforms to such authority.

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)(1)(ii). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x146. As the FOIA provides, I will anticipate a determination on this request for expedited processing within 10 calendar days.

I certify that, to the best of my knowledge and belief, all information within this request is true and correct.

Sincerely,

/s/ Mark Rumold

Mark Rumold
Staff Attorney

Enclosures

ATTACHMENTS



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

(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 Stepan

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.)
<hr/>	

Civil Action No. 06-1988 (ESH)

STIPULATED DISMISSAL OF PLAINTIFF’S SECOND CAUSE OF ACTION

Plaintiff Electronic Frontier Foundation (EFF) and Defendant Department of Homeland Security (DHS), by counsel, hereby stipulate and agree as follows:

1. Defendant DHS has granted news media status to Plaintiff EFF based on the representations contained in EFF’s FOIA requests, which demonstrate that EFF is an “entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6). Defendant DHS will continue to regard Plaintiff EFF as a “representative of the news media” absent a change in circumstances that indicates that EFF is no longer an “entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6).
2. Accordingly, the parties herewith agree to the dismissal of Plaintiff EFF’s Second Cause of Action, related to EFF’s status as a “representative of the news media.”
3. The parties further agree that each will pay its own fees and costs for work on the dismissed claim.

SO STIPULATED AND AGREED this 27th day of February, 2007.

/s/ David L. Sobel

DAVID L. SOBEL
D.C. Bar 360418

MARCIA HOFMANN
D.C. Bar 484136

ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Avenue, N.W.
Suite 650
Washington, D.C. 20009
(202) 797-9009

Counsel for Plaintiff

PETER D. KEISLER
Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

ELIZABETH J. SHAPIRO
D.C. Bar 418925
Assistant Branch Director
U.S. Department of Justice
Civil Division, Federal Programs Branch

/s/ John R. Coleman

JOHN R. COLEMAN
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 6118
Washington, D.C. 20530
(202) 514-4505

Counsel for Defendant

Exhibit K

Gleaves, Lani (NSD)

From: Gleaves, Lani (NSD)
Sent: Wednesday, February 26, 2014 12:15 PM
To: 'mark@eff.org'
Cc: NSDFOIA (NSD); Mallory, Arnetta (NSD)
Subject: FOIA Request FOIA/PA #14-066 Rumold (EFF)

Importance: High

Mark Rumold
EPIC
815 Eddy Street
San Francisco, CA 94109

Re: FOIA/PA # 14-066

Dear Mr. Rumold:

This is to acknowledge receipt of your email dated February 24, 2014, pertaining to: “1. All written decisions, opinions, or orders issued by the Foreign Intelligence Surveillance Court of Review ("FISCR"); 2. All written decisions, opinions, or orders issued by the Supreme Court in any case or matter appealed from the FISCR.” Our FOIA office received your Freedom of Information request on February 24, 2014.

Our policy is to process FOIA requests on a first-in, first-out basis. Consistent with this policy, every effort will be made to respond to your request as quickly as possible. The actual processing time will depend upon the complexity of the request, whether it involves sensitive or voluminous records, and whether consultations with other agencies or agency components are appropriate.

Also, you requested expedited processing of your FOIA request and a waiver of processing fees. The request for a fee waiver and expedited processing is under consideration and you will be notified our decision. If you have any questions concerning your request, feel free to contact me on (202) 233-0754. Thank you in advance for your continuing patience.

Sincerely,

Arnetta Mallory

Arnetta Mallory
FOIA Coordinator

Exhibit L



U.S. Department of Justice

National Security Division

Washington, D.C. 20530

Mark Rumold
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109

APR - 3 2014

COPY

Re: FOIA/PA # 14-066

Dear Mr. Rumold:

This is in reference to your email dated February 24, 2014, seeking “1. All written decisions, opinions, or orders issued by the Foreign Intelligence Surveillance Court of Review (“FISCR”); 2. All written decisions, opinions, or orders issued by the Supreme Court in any case or matter appealed from the FISCR.” Our FOIA office received your Freedom of Information request on February 24, 2014.

You have requested expedited processing of your request under the Department of Justice standards permitting expedition when a requester demonstrates a compelling need. A compelling need is defined as follows:

1. Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
2. With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

You have demonstrated that there is a particular urgency to inform the public about an actual or alleged federal government activity. Therefore, your request for expedited process was granted on March 13, 2014.

Also, you requested a waiver of processing fees. Your reason for a fee waiver does meet the fee waiver threshold. Therefore, your request for a fee waiver has been granted.

Your continued patience is appreciated. Please continue to use the file number indicated above in all future correspondence with this office.

Sincerely,

Arnetta Mallory
FOIA Coordinator

Sincerely,

Arnetta Mallory

Arnetta Mallory
FOIA Coordinator

Exhibit M

U.S. Department of Justice



National Security Division

Washington, D.C. 20530

SEP - 5 2014

NSD FOI/PA #14-066

Mr. Mark Rumold
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109

Dear Mr. Rumold:

This letter is in response to your February 24, 2014 Freedom of Information Act (FOIA)/Privacy Act (PA) request seeking the following:

- (1) All written decisions, opinions, or orders issued by the Foreign Intelligence Surveillance Court of Review ("FISCR");
- (2) All written decisions, opinions, or orders issued by the Supreme Court in any case or matter appealed from the FISCR.

We assigned this request NSD FOIA #14-066.

In response to part 1 of your request, we have located two responsive records. Since its inception, the FISCR has issued only two opinions. The first is *In Re Sealed Case*, FISCR docket #02-001, reported at 310 F.3d 717 (FISCR 2002); and the second is *In Re Directives*, FISCR docket #08-01, reported at 551 F.3d 1004 (FISCR 2008). We are releasing both opinions in part pursuant to one or more of the following FOIA exemptions set forth in 5 U.S.C. 552(b):

- (1) which permits the withholding of information properly classified pursuant to Executive Order No. 13526; and,
- (3) which permits the withholding of information specifically exempted from disclosure by statute (the applicable statute is 50 U.S.C. Section 403-1(i)(1) of the National Security Act of 1947).

(6) which permits the withholding of information whose release would constitute an unwarranted invasion of privacy.

Please note that the Government has already released these materials in this exact form. Further, the FISCER has ordered a classification review of *In Re Directives*, FISCER docket #08-01. Pursuant to the FISCER's order, the Government provided to the FISCER an unclassified version of the *In Re Directives* decision that discloses certain previously redacted information. That version is under seal pursuant to a July 28, 2014 order of the FISCER, and it cannot be made publicly available until further order from that court.

In response to part 2 of your request, we have located no responsive records. The Supreme Court has never issued any decisions, opinions, or orders in any matter appealed from the FISCER.

As this request is now in litigation, we are omitting our standard appeals paragraph.

Sincerely,

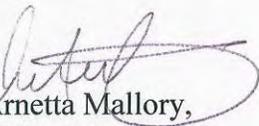

Arnetta Mallory,
FOIA Coordinator

Exhibit N



14-084

March 14, 2014

Arnetta Mallory - FOIA Initiatives Coordinator
Patricia Matthews - FOIA Public Liaison
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 6150
Washington, DC 20530-0001

BY EMAIL — nsdfoia@usdoj.gov

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

Dear Ms. Mallory and Ms. Matthews:

This letter constitutes an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the Department of Justice (“DOJ”), National Security Division (“NSD”) on behalf of the Electronic Frontier Foundation (“EFF”). EFF makes this request as part of its Transparency Project, which works to obtain government records and make those records widely available to the public.

On March 11, 2014, the New York Times published an article describing a previously unknown order of the Foreign Intelligence Surveillance Court (FISC). Charlie Savage & Laura Poitras, *How a Court Secretly Evolved, Extending U.S. Spies’ Reach*, N.Y. Times (Mar. 11, 2014).¹ According to the article, the order “weakened restrictions on sharing private information about Americans” and allowed intelligence agencies to share “unfiltered personal information.”

The article described other FISC orders as well: the “Large Content FISA orders,” which the article explained were “sweeping but short-lived orders issued on Jan. 10, 2007, that authorized the Bush administration to continue its warrantless wiretapping program.” The article also describes a September 4, 2008 opinion approving of minimization rules for the recently-enacted FISA Amendments Act.

Accordingly, EFF hereby requests the following records:²

1. The “Raw Take” order (Dkt No. 02-431), dated July 22, 2002, and captioned “In Re Electronic Surveillance and Physical Search of International Terrorist Groups, Their Agents, and Related Targets;” and,

¹ Available at <http://www.nytimes.com/2014/03/12/us/how-a-courts-secret-evolution-extended-spies-reach.html>

² EFF is informed and believes that the following information accurately describes the FISC orders, opinions, and other documents EFF requests. If any doubt exists concerning the records requested (e.g., if a particular date, docket number, or caption is incorrect), EFF respectfully directs the agency to the descriptions of the opinions and orders provided in the article.

2. The “Large Content FISA” order(s) and/or opinion(s); and,
3. The September 4, 2008 FISC order(s) and/or opinion(s) concerning the FISA Amendments Act; and
4. All documents, including legal memoranda, declarations, briefs, or any other document submitted by the government in support of items (1)-(3) above; and,
5. All documents, including legal memoranda, declarations, briefs, or any other document incorporated, adopted within, or issued with items (1)-(3) above.

Request for Expedited Processing

For the reasons discussed below, a “compelling need” exists for the records sought in this request, and, as such, EFF is entitled to expedited processing under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. §§ 16.5(d)(1)(ii) and (iv).

Expedited Processing under 28 C.F.R. § 16.5(d)(1)(ii)

EFF is entitled to expedited processing because the request pertains to information about which there is an “urgency to inform the public about an actual or alleged federal government activity,” and the request is “made by a person primarily engaged in disseminating information.” 28 C.F.R. § 16.5(d)(1)(ii). The information we request easily satisfies this standard.

First, the records sought by this request undeniably concern a “federal government activity.” *Id.* The records requested here—FISC opinions and orders concerning electronic surveillance conducted by the NSA—reflect both on the federal government’s operation of domestic electronic surveillance and on the judicial oversight of those surveillance activities.

Second, there is an “urgency to inform the public” about the federal government activity. *Id.* The NSA programs addressed in the requested records are being actively debated by both houses of Congress and are currently subject to at least ten bills pending in the House of Representatives³ and nine bills pending in the Senate.⁴ With Congressional debate surrounding

³ H.R. 2399 (LIBERT-E Act), H.R. 2440 (FISA Court in the Sunshine Act of 2013), H.R. 2475 (Ending Secret Law Act), H.R. 2586 (FISA Court Accountability Act), H.R. 2603 (Relevancy Act), H.R. 2684 (Telephone Surveillance Accountability Act of 2013), H.R. 2736 (Government Surveillance Transparency Act of 2013), H.R. 2761 (Presidential Appointment of FISA Court Judges Act), H.R. 2818 (To repeal the USA PATRIOT Act and the FISA Amendments Act of 2008), and H.R. 2849 (Privacy Advocate General Act of 2013).

⁴ S. 1016 (Preserving Freedom from Unwarranted Surveillance Act of 2013), S. 1121 (Fourth Amendment Restoration Act of 2013), S. 1130 (Ending Secret Law Act), S. 1168 (Restore Our Privacy Act), S. 1182 (A bill to modify the Foreign Intelligence Surveillance Act of 1978), S. 1215 (FISA Accountability and Privacy Protection Act of 2013), S. 1452 (A bill to enhance transparency for certain surveillance programs authorized by the Foreign Intelligence

the FISC the subject of such rigorous debate, the need to inform the public about the law governing the operation of NSA surveillance is imperative. The information we request will help the public and Congress fully understand the current state and legality of FISA surveillance, and to participate in the ongoing debate over whether to expand—or restrict—the oversight capacity of the FISC. Delay in processing this FOIA request could inhibit the ability of Congress and the public to fully analyze and debate the implications of any changes to the statutory authority of the NSA or the FISC proposed in the bills currently being debated.

In two FOIA cases brought by EFF, the court found that requests warranted expedited treatment where Congress is considering legislation “and the records may enable the public to participate meaningfully in the debate over such pending legislation.” *EFF v. ODNI*, 542 F. Supp. 2d 1181, 1187 (N.D. Cal. 2008) (citing *EFF v. ODNI*, 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)). Similarly, there is an urgency to inform the public about the information we seek here.

Further, as explained below in support of our request for “news media” treatment, EFF is “primarily engaged in disseminating information” under 28 C.F.R. § 16.11(c)(1)(i).

Therefore, this request meets the standard for expedited processing set forth in 28 C.F.R. § 16.5(d)(1)(ii).

Expedited Processing under 28 C.F.R. § 16.5(d)(1)(iv)

EFF is also entitled to expedited processing under 28 C.F.R. § 16.5(d)(1)(iv) because the subject of the request concerns “a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.”

First, the disclosure of other FISC opinions over the past three months has generated “widespread and exceptional media interest.” *See e.g.*, Charlie Savage & Scott Shane, *Top-Secret Court Castigated N.S.A. On Surveillance*, *New York Times* (August 22, 2013) (page A1);⁵ Ellen Nakashima, *NSA Gathered Thousands of Americans' E-mails Before Court Ordered it to Revise its Tactics*, *Washington Post* (August 21, 2013);⁶ Cyrus Farivar, *Judge: NSA “systematically*

Surveillance Act of 1978), S. 1460 (FISA Judge Selection Reform Act of 2013), and S. 1467 (FISA Court Reform Act of 2013).

⁵ Available at <http://www.nytimes.com/2013/08/22/us/2011-ruling-found-an-nsa-program-unconstitutional.html>

⁶ Available at http://www.washingtonpost.com/world/national-security/nsa-gathered-thousands-of-americans-e-mails-before-court-struck-down-program/2013/08/21/146ba4b6-0a90-11e3-b87c-476db8ac34cd_story.html

violated” its own privacy requirements, *Ars Technica* (August 21, 2013)⁷; see also *Edmonds v. FBI*, 2002 US Dist. LEXIS 26578, *10 (D.D.C. 2002) (noting “extensive media coverage” satisfied by “numerous newspaper articles in the printed press . . . and on TV”), *rev’d on other grounds* 417 F.3d 1319 (D.C. Cir 2005).

Because the requested opinions likely contain substantial interpretations of federal law and the Constitution, the continued secrecy of the opinions necessarily “affect[s] public confidence” in the government’s integrity. 28 C.F.R. § 16.5(d)(1)(iv). Consequently, the records sought in this request satisfy the requirements for expedited processing under 28 C.F.R. § 16.5(d)(1)(iv).

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 and National Security Agency, among other agencies, have recognized that EFF qualifies as a “news media” requester, based upon the publication activities set forth below (see DHS stipulation and NSA 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.”⁸ One of EFF’s primary objectives is “to educate the press, policymakers and the general public about online civil liberties.”⁹ 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 1,314,234 unique visitors in July 2013 — an average of 1,776 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 235,000 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. DeepLinks had 116,494 unique visitors in July 2013. EFF also maintains a presence

⁷ Available at <http://arstechnica.com/tech-policy/2013/08/judge-nsa-systematically-violated-its-own-privacy-requirements/>

⁸ Guidestar Nonprofit Report, Electronic Frontier Foundation, <https://www.guidestar.org/organizations/04-3091431/electronic-frontier-foundation.aspx> (last visited August 22, 2013).

⁹ *Id.*

on the social media networks Twitter (more than 150,000 followers), Facebook (more than 67,000 followers), and Google Plus (more than 2,000,000 followers).

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than forty white papers published since 2003. 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.

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)(1)(i), (ii). To determine whether a request meets this standard, the agency must assess whether "[d]isclosure of the requested information . . . is likely to contribute significantly to public understanding of the operations or activities of the government," 28 C.F.R. § 16.11(k)(1)(i), and whether such disclosure "is not primarily in the commercial interest of the requester." 28 C.F.R. § 16.11(k)(1)(ii). This request satisfies these criteria.

First, any FISC orders or opinions in the possession of DOJ NSD necessarily implicate "the operations or activities of the government." 28 C.F.R. § 16.11(k)(1)(i). The opinions and orders concern domestic surveillance undertaken by the U.S. intelligence community.

Second, disclosure of the requested information will contribute to a public understanding of government operations or activities. *Id.* EFF has requested information that will shed light on the intelligence community's interaction with the FISC in the implementation and transition of NSA surveillance activities to FISA Court oversight. This information will contribute not only to EFF's understanding of surveillance activities and law, but also to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Finally, since only limited information has been made available regarding the shift of NSA surveillance activities to FISC oversight, the disclosure will "contribute significantly" to the public's knowledge and understanding of surveillance activities – and the legal basis for that

surveillance – undertaken by the federal government. *Id.* Disclosure of the requested information will help inform the public about the legality of the intelligence community’s actions, as well as contribute to the public debate about proper reforms to such authority.

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)(1)(ii). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x146. As the FOIA provides, I will anticipate a determination on this request for expedited processing within 10 calendar days.

I certify that, to the best of my knowledge and belief, all information within this request is true and correct.

Sincerely,

/s/ Mark Rumold

Mark Rumold
Staff Attorney

Enclosure

ATTACHMENTS



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

(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 Stepan

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC FRONTIER)	
FOUNDATION)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-1988 (ESH)
)	
DEPARTMENT OF HOMELAND)	
SECURITY,)	
)	
Defendant.)	
)	

STIPULATED DISMISSAL OF PLAINTIFF’S SECOND CAUSE OF ACTION

Plaintiff Electronic Frontier Foundation (EFF) and Defendant Department of Homeland Security (DHS), by counsel, hereby stipulate and agree as follows:

1. Defendant DHS has granted news media status to Plaintiff EFF based on the representations contained in EFF’s FOIA requests, which demonstrate that EFF is an “entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6). Defendant DHS will continue to regard Plaintiff EFF as a “representative of the news media” absent a change in circumstances that indicates that EFF is no longer an “entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6).
2. Accordingly, the parties herewith agree to the dismissal of Plaintiff EFF’s Second Cause of Action, related to EFF’s status as a “representative of the news media.”
3. The parties further agree that each will pay its own fees and costs for work on the dismissed claim.

SO STIPULATED AND AGREED this 27th day of February, 2007.

/s/ David L. Sobel

DAVID L. SOBEL
D.C. Bar 360418

MARCIA HOFMANN
D.C. Bar 484136

ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Avenue, N.W.
Suite 650
Washington, D.C. 20009
(202) 797-9009

Counsel for Plaintiff

PETER D. KEISLER
Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

ELIZABETH J. SHAPIRO
D.C. Bar 418925
Assistant Branch Director
U.S. Department of Justice
Civil Division, Federal Programs Branch

/s/ John R. Coleman

JOHN R. COLEMAN
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 6118
Washington, D.C. 20530
(202) 514-4505

Counsel for Defendant

Exhibit O



U.S. Department of Justice

National Security Division

Washington, D.C. 20530

Mark Rumold
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109

MAR 27 2014

COPY

Re: FOIA/PA # 14-084

Dear Mr. Rumold:

This is to acknowledge receipt of your email dated March 14, 2014, seeking "1. The "Raw Take" order (Dkt No. 02-431), dated July 22, 2002, and captioned "In Re Electronic Surveillance and Physical Search of International Terrorist Groups, Their Agents, and Related Targets;" and; 2. The "Large Content FISA" order(s) and/or opinion(s); and, 3. The September 4, 2008 FISC order(s) and/or opinion(s) concerning the FISA Amendments Act; and 4. All documents, including legal memoranda, declarations, briefs, or any other document submitted by the government in support of items (1)-(3) above; and, 5. All documents, including legal memoranda, declarations, briefs, or any other document incorporated, adopted within, or issued with items (1)-(3) above." Our FOIA office received your Freedom of Information request on March 18, 2014.

Our policy is to process FOIA requests on a first-in, first-out basis. Consistent with this policy, every effort will be made to respond to your request as quickly as possible. The actual processing time will depend upon the complexity of the request, whether it involves sensitive or voluminous records, and whether consultations with other agencies or agency components are appropriate.

Also, you requested expedited processing of your FOIA request and a waiver of processing fees. The request for a fee waiver and expedited processing is under consideration and you will be notified our decision. If you have any questions concerning your request, feel free to contact me on (202) 233-0754. Thank you in advance for your continuing patience.

Sincerely,



Arnetta Mallory
FOIA Coordinator

Exhibit P



U.S. Department of Justice

National Security Division

Washington, D.C. 20530

Mark Rumold
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109

APR 10 2014

Re: FOIA/PA # 14-084

Dear Mr. Rumold:

This is in reference to your email dated March 14, 2014, seeking "1. The "Raw Take" order (Dkt No. 02-431), dated July 22, 2002, and captioned "In Re Electronic Surveillance and Physical Search of International Terrorist Groups, Their Agents, and Related Targets;" and; 2. The "Large Content FISA" order(s) and/or opinion(s); and, 3. The September 4, 2008 FISC order(s) and/or opinion(s) concerning the FISA Amendments Act; and 4. All documents, including legal memoranda, declarations, briefs, or any other document submitted by the government in support of items (1)-(3) above; and, 5. All documents, including legal memoranda, declarations, briefs, or any other document incorporated, adopted within, or issued with items (1)-(3) above." Our FOIA office received your Freedom of Information request on March 18, 2014.

You have requested expedited processing of your request under the Department of Justice standards permitting expedition when a requester demonstrates a compelling need. A compelling need is defined as follows:

1. Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
2. With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

You have demonstrated that there is a particular urgency to inform the public about an actual or alleged federal government activity. Therefore, your request for expedited process was granted on April 7, 2014.

Also, you requested a waiver of processing fees. Your reason for a fee waiver does meet the fee waiver threshold. Therefore, your request for a fee waiver has been granted.

Your continued patience is appreciated. Please continue to use the file number indicated above in all future correspondence with this office.

Sincerely,



Arnetta Mallory
FOIA Coordinator

Exhibit Q

U.S. Department of Justice



National Security Division

Washington, D.C. 20530

March 2, 2015
NSD FOI/PA #14-084

Mr. Mark Rumold
Electronic Frontier Foundation
815 Eddy Street
San Francisco, California 94109

Dear Mr. Rumold:

This letter further responds to your March 14, 2014 Freedom of Information Act (FOIA)/Privacy Act (PA) request.

Your March 14, 2014 request sought the following:

- (1) The "Raw Take" order (Dkt No. 02-431), dated July 22, 2002, and captioned "In Re Electronic Surveillance and Physical Search of International Terrorist Groups, Their Agents, and Related Targets;" and,
- (2) The "Large Content FISA" order(s) and/or opinion(s); and,
- (3) The September 4, 2008 FISC order(s) and/or opinion(s) concerning the FISA Amendments Act; and
- (4) All documents, including legal memoranda, declarations, briefs, or any other document submitted by the government in support of items (1)-(3) above; and,
- (5) All documents, including legal memoranda, declarations, briefs, or any other document incorporated, adopted within, or issued with items (1)-(3) above.

This request was assigned NSD FOI/PA #14-084.

We have completed processing pursuant to FOIA eight records responsive to items 1, 2, 3, and 4 of your March 14, 2014 request. These records are being released in part pursuant to one or more of the following FOIA exemptions set forth in 5 U.S.C. 552(b):

- (1) which permits the withholding of information properly classified pursuant to Executive Order No. 13526;

(3) which permits the withholding of information specifically exempted from disclosure by statute;

(6) which permits the withholding of information whose disclosure would constitute an unwarranted invasion of personal privacy;

(7)(A) which permits the withholding of law enforcement information whose disclosure could reasonably be expected to interfere with enforcement proceedings;

(7)(C) which permits the withholding of law enforcement information whose disclosure would constitute an unwarranted invasion of personal privacy; and,

(7)(E) which permits the withholding of techniques and procedures for law enforcement investigations or prosecutions whose disclosure could risk circumvention of the law.

Department of Justice regulations require that requests must describe the records sought in enough detail to enable Department personnel to locate the requested records with a reasonable amount of effort. Further, whenever possible, requests should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. 28 CFR § 16.3 (b). Part 5 of your March 14, 2014 request asks for any “document incorporated” and “adopted within” items (1)-(3) above.” Item 5 is an improper FOIA request because it does not specify the documents sought and furthermore requires NSD to make legal conclusions. For these reasons, we are denying item 5 of your request.

As this case is in litigation, we are omitting our standard appeals paragraph.

Sincerely,

A handwritten signature in black ink, appearing to read 'Susan Kim', with a stylized flourish at the end.

Susan Kim
Attorney Advisor

Exhibit R

U.S. Department of Justice



National Security Division

Washington, D.C. 20530

March 6, 2015
NSD FOI/PA #14-084

Mr. Mark Rumold
Electronic Frontier Foundation
815 Eddy Street
San Francisco, California 94109

Dear Mr. Rumold:

This letter further responds to your March 14, 2014 Freedom of Information Act (FOIA)/Privacy Act (PA) request.

Your March 14, 2014 request sought the following:

- (1) The "Raw Take" order (Dkt No. 02-431), dated July 22, 2002, and captioned "In Re Electronic Surveillance and Physical Search of International Terrorist Groups, Their Agents, and Related Targets;" and,
- (2) The "Large Content FISA" order(s) and/or opinion(s); and,
- (3) The September 4, 2008 FISC order(s) and/or opinion(s) concerning the FISA Amendments Act; and
- (4) All documents, including legal memoranda, declarations, briefs, or any other document submitted by the government in support of items (1)-(3) above; and,
- (5) All documents, including legal memoranda, declarations, briefs, or any other document incorporated, adopted within, or issued with items (1)-(3) above.

This request was assigned NSD FOI/PA #14-084.

We have completed processing pursuant to FOIA three records responsive to item 4 of your March 14, 2014 request. These records are being released in part pursuant to one or more of the following FOIA exemptions set forth in 5 U.S.C. 552(b):

- (1) which permits the withholding of information properly classified pursuant to Executive Order No. 13526;

(3) which permits the withholding of information specifically exempted from disclosure by statute;

(6) which permits the withholding of information whose disclosure would constitute an unwarranted invasion of personal privacy; and,

(7)(E) which permits the withholding of techniques and procedures for law enforcement investigations or prosecutions whose disclosure could risk circumvention of the law.

Because our review has concluded, and we have released all responsive, non-exempt information, we are closing out your request, dated March 14, 2014 and assigned NSD FOI/PA #14-084.

As this case is in litigation, we are omitting our standard appeals paragraph.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Kim', written over a horizontal line.

Susan Kim
Attorney Advisor

Exhibit S

Continue to Challenge:

1. Any document withheld in full (this is not limited to only those documents that the government has identified, but to any document that is responsive and that has not been disclosed)
2. The September 4, 2008 FAA Release, including:
 - a. FISC Opinion September 4, 2008
 - b. FISC Order September 4, 2008
 - c. Notice of Clarification and Correction
 - d. Government's Preliminary Response
 - e. Government's Submission to FISC
3. Large Content Orders Release, including:
 - a. Memo of Law December 13, 2006
 - b. Supplemental Memorandum of Law and Dec Jan. 2, 2007
 - c. FISC Order January 10, 2007
 - d. FISC Order (Foreign Order) Jan 10, 2007
 - e. FISC Order and Memo Opinion April 3, 2007
 - f. FISC Order April 5, 2007

Withdraw Challenges to:

1. Raw Take Order Release, including:
 - a. Motion for Amended Minimization Procedures
 - b. Exhibit A to May 10, 2002 Motion
 - c. Exhibit B to May 10, 2002 Motion
 - d. FISC Order July 22, 2002
 - e. Motion for Amendments to Standard Minimization Procedures
 - f. FISC Opinion and Order May 18, 2012
2. In re Directives
3. The NSA & CIA Minimization Procedures Associated with the Large Content Order
4. The following categories of information from all documents*:
 - a. Docket numbers
 - b. Names or descriptions of surveillance targets

*Although we withdraw our challenge to this information, we ask that the government still identify this information, where it exists, to facilitate EFF's review of the withholdings and their claimed justification.