



U.S. Department of Justice

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VIA EMAIL

November 10, 2015

Mark Rumold
Electronic Frontier Foundation
815 Eddy Street
San Francisco CA 94109
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Re: *Human Rights Watch v. DEA*, Case No. 2:15-cv-2573-PSG-JPR

Dear Mr. Rumold,

I am writing in order to follow up on our discussion yesterday regarding Plaintiff's objection to Defendants' interrogatory responses. In your letter dated November 3, 2015, you indicated your position that additional unnamed federal agencies should have provided responses to Plaintiff's interrogatories. In our discussion, you identified the concern that the responses that were already provided did not establish that the now-deleted DEA database described in the declaration by Agent Patterson that was attached to Plaintiff's Complaint was the sole database in the Federal Government that contained the raw telephony metadata collected by DEA through the subpoenas described in Agent Patterson's declarations.

However, DEA, in response to Plaintiff's Interrogatory No. 1, which asked whether the deleted DEA database was, at all times, the sole repository for all program call records possessed by the government, stated that this DEA database "was the only database ever used to store raw Collected Metadata [as defined earlier in the interrogatory responses] unconnected to the results of a particular Query Based on Reasonable Articulable Suspicion." Now that the DEA database has been destroyed, the only information from the DEA database that remains is information contained in reports of the results of specific queries based on reasonable articulable suspicion. You appear to acknowledge that Plaintiff has no plausible basis to allege that any telephony metadata relating to it is contained in such reports.

When I pointed out to you that DEA had already addressed Plaintiff's alleged concern regarding the possible retention of Collected Metadata relating to Plaintiff, you suggested that DEA's response did not establish that the DEA database was the only database ever used *in the Federal Government* to store the raw Collected Metadata. However, as you seemed to agree, DEA's signatory responded to Plaintiff's interrogatory on behalf of DEA, and his response

represents DEA's knowledge. You also seemed to agree that if another agency had had Collected Metadata other than that contained in reports of query results, DEA – as the agency that collected the Collected Metadata – would certainly be aware of it. Indeed, DEA further stated in response to Plaintiff's Interrogatory No. 1 that (1) the only files that might have contained Collected Metadata before it was added to the DEA database were temporary standardization files that have now been deleted, and (2) "[n]o Collected Metadata was extracted from the DEA Database unless it was in a Report of the results of a DEA Database Query Based on Reasonable Articulate Suspicion."

The responses that DEA has already provided make clear that the DEA database was the only database ever used in the Federal Government to store raw Collected Metadata (as defined in the interrogatory responses) unconnected to the results of a particular Query Based on Reasonable Articulate Suspicion. To the extent you are simply seeking clarification that DEA's reference to "the only database ever used" was not limited to databases used within DEA itself, I hope this letter provides sufficient clarification of that point.

I hope that you will now agree that the concern you raised regarding Defendants' Interrogatory responses has been fully addressed. Indeed, given Defendants' responses, it appears to me that there is no outstanding question regarding possible retention by any Defendant of Collected Metadata relating to Plaintiff, and Plaintiff should therefore agree to dismiss this case.

Sincerely,

/s/

Kathryn L. Wyer