

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

Civ. A. No. 06-CV-1708 (CKK)

EXHIBIT A



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

1875 Connecticut Avenue, NW • Suite 850 • Washington, DC 20009 USA  
202.797.8009 (v) • 202.797.9086 (f) • [www.eff.org](http://www.eff.org) • [information@eff.org](mailto:information@eff.org)

August 11, 2006

BY FACSIMILE — (202) 324-3752

David M. Hardy, Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Department of Justice  
935 Pennsylvania Avenue NW  
Washington, DC 20535-0001

RE: Freedom of Information Act Request

Dear Mr. Hardy:

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

We are seeking all agency records (including, but not limited to, electronic records) concerning electronic surveillance systems known as DCS-3000 and Red Hook. Please interpret this request to include any reports made by the FBI to Congress on the Bureau's use of these technologies.

According to a report published earlier this year by the Department of Justice Inspector General:

System DCS-3000. The FBI has spent nearly \$10 million on this system. The FBI developed the system as an interim solution to intercept personal communications services delivered via emerging digital technologies used by wireless carriers in advance of any CALEA solutions being deployed. Law enforcement continues to utilize this technology as carriers continue to introduce new features and services.

\* \* \*

Red Hook. The FBI has spent over \$1.5 million to develop a system to collect voice and data calls and then process and display the intercepted information in the absence of a CALEA solution.<sup>1</sup>

<sup>1</sup> Dep't of Justice, Office of the Inspector General, Audit Division, Audit Report No. 06-13, *The Implementation of the Communications Assistance for Law Enforcement Act 107* (March 2006), available at <http://www.usdoj.gov/oig/reports/FBI/a0613/final.pdf>.

## 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).

EFF is a non-profit public interest organization that works "to protect and enhance our core civil liberties in the digital age."<sup>2</sup> One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties."<sup>3</sup> To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which received 38,858,298 hits in July 2006 — an average of 52,228 per hour. The web site reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

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

Furthermore, EFF publishes two blogs that highlight the latest news from around the Internet. *DeepLinks* (<http://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology, while *miniLinks* (<http://www.eff.org/minilinks/>) directs readers to other news articles and commentary on these issues. *DeepLinks* had 817,993 hits in July 2006; *miniLinks* received 436,043 hits during the same period.<sup>4</sup>

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <http://www.eff.org/wp/>, provide information and commentary on such diverse issues as electronic voting, free speech, privacy and intellectual property.

EFF has also published several books to educate the public about technology and civil liberties issues. *Everybody's Guide to the Internet* (MIT Press 1994), first published electronically as *The Big Dummy's Guide to the Internet* in 1993, was translated into several languages, and is still sold by Powell's Books (<http://www.powells.com>). EFF also produced *Protecting Yourself Online: The Definitive Resource on Safety, Freedom & Privacy in Cyberspace* (HarperEdge 1998), a "comprehensive guide to self-protection in the electronic frontier," which can be purchased via Amazon.com (<http://www.amazon.com>). Finally, *Cracking DES: Secrets of Encryption Research, Wiretap Politics & Chip 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.

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<sup>2</sup> Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited Aug. 9, 2006).

<sup>3</sup> *Id.*

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

Most recently, EFF has begun broadcasting podcasts of interviews with EFF staff and outside experts. *Line Noise* is a five-minute audio broadcast on EFF's current work, pending legislation, and technology-related issues. A listing of *Line Noise* podcasts is available at <feed://www.eff.org/rss/linenoisemp3.xml> and <feed://www.eff.org/rss/linenoiseogg.xml>. These podcasts were downloaded about 5,000 times from EFF's web site last month.

### **Request for a Public Interest Fee Waiver**

EFF is entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, the FBI determines whether "[d]isclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government," and whether such disclosure "is not primarily in the commercial interest of the requester." 28 C.F.R. §§ 16.11(k)(i), (ii). This request clearly satisfies these criteria.

First, the FBI's development and use of Internet surveillance technology concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i). The Bureau is a government agency. Therefore, its surveillance of communications unquestionably constitutes government operations or activities.

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on the FBI's development of electronic surveillance technology, as well as its functionality and the extent of its use.

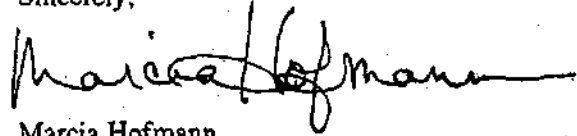
Third, the requested material will "contribute to public understanding" of the extent to which the FBI uses DCS-3000 and Red Hook. 28 C.F.R. § 16.12(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the FBI's surveillance activity, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Fourth, the disclosure will "contribute significantly" to the public's knowledge and understanding of the FBI's development and use of DCS-3000 and Red Hook. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Little is publicly known about these technologies and how the Bureau uses them, so disclosure of this information will help inform the public about DCS-3000 and Red Hook, as well as contribute to the public debate about the FBI's electronic surveillance activities.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (202) 797-9009 x. 12. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,

A handwritten signature in black ink, appearing to read "Marcia Hofmann". The signature is fluid and cursive, with a long horizontal stroke at the end.

Marcia Hofmann  
Staff Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER FOUNDATION, )

Plaintiff, )

v. )

U.S. DEPARTMENT OF JUSTICE, )

Defendant. )

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Civ. A. No. 06-CV-1708 (CKK)

EXHIBIT B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

August 22, 2006

MARCIA HOFMANN, ESQ.  
ELECTRONIC FRONTIER FOUNDATION  
SUITE 650  
1875 CONNECTICUT AVENUE, NORTHWEST  
WASHINGTON, DC 20009

Request No.: 1056287- 000  
Subject: SYSTEM DCS-3000

Dear Requester:

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

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

Sincerely yours,

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



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

August 22, 2006

MARCIA HOFMANN, ESQ.  
ELECTRONIC FRONTIER FOUNDATION  
SUITE 650  
1875 CONNECTICUT AVENUE, NORTHWEST  
WASHINGTON, DC 20009

Request No.: 1056307- 000  
Subject: RED HOOK

Dear Requester:

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

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

Sincerely yours,

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



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Civ. A. No. 06-CV-1708 (CKK)

EXHIBIT C



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

MARCIA HOFMANN, ESQ  
ELECTRONIC FRONTIER FOUNDATION  
SUITE 650  
1875 CONNECTICUT AVENUE, NW  
WASHINGTON, DC 20009

August 30, 2006

Request No.: 1056287- 000  
Subject: SYSTEM DCS-3000

Dear Requester:

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

To promptly respond to requests, we concentrate on identifying main files in the central records system at FBI Headquarters. No records responsive to your FOIPA request were located by a search of the automated indices.

You may file an administrative appeal by writing to the Co-Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

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

Sincerely yours,

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

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

Enclosure

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER FOUNDATION, )  
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 Defendant. )  
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Civ. A. No. 06-CV-1708 (CKK)

EXHIBIT D



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

ESQ. MARCIA HOFMANN  
ELECTRONIC FRONTIER FOUNDATION  
SUITE 650  
1875 CONNECTICUT AVENUE, NORTHWEST  
WASHINGTON, DC 20009

January 9, 2007

Request No.: 1056287- 000 and  
1056307  
Subject: SYSTEM DCS-3000 and  
RED HOOK

Dear Ms. Hofmann:

Reference is made to your Freedom of Information Act (FOIA) requests for FBI Headquarters (FBIHQ) records concerning System DCS 3000 and Red Hook. This letter will serve to document your telephone conversations with my representative, Mr. Loren Shaver, on December 19, 2006, and January 9, 2007.

Mr. Shaver explained to you that the records responsive to your requests totaled approximately 20,000 pages. He described to you, in very basic terms, the general types of records we had identified and retrieved for your requests, and inquired if your clients would be interested in excluding any of these records from the requests in order to accelerate the assigning and processing of the requests.

After considering this option, you advised Mr. Shaver that your clients did not wish to reduce their FOIA requests, but, rather, wished to receive all of the responsive records.

We certainly appreciate your consideration in this matter and we solicit your continued patience. If you have any further questions concerning your request or the responsive materials, you may telephone Mr. Shaver @ 540-868-4839.

Sincerely yours,

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