

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)
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SECOND DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

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

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 208 employees who staff a total of ten (10) FBIHQ units and a field operational service center unit with the collective mission to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA; Privacy Act; Executive Order 12958, as amended; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my

official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the treatment which has been afforded the FOIA request of plaintiff, the Electronic Frontier Foundation, for documents related to two electronic surveillance systems. More specifically, plaintiff's August 11, 2006 FOIA request seeks access to records pertaining to the System DCS-3000 and Red Hook, and any reports made by the FBI to Congress on the FBI's use of these technologies.

(4) As Ordered by the Court on May 7, 2007, this declaration provides the Court and plaintiff with a status of the progress being made by the FBI with regard to plaintiff's FOIA request.

CORRESPONDENCE

(5) By letter dated June 4, 2007, FBIHQ released documents to plaintiff, subject to withholdings pursuant to Exemptions (b)(1), (b)(2), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E). Plaintiff was advised that 112 pages had been reviewed and 103 pages were being released. Plaintiff was advised this was the first interim release as ordered by the court on May 7, 2007, for documents concerning electronic surveillance systems known as DCS-3000 and Red Hook. **(See Exhibit A.)**

(6) By letter dated July 2, 2007, FBIHQ released documents to plaintiff, subject to withholdings pursuant to Exemptions (b)(2), (b)(6), (b)(7)(C) and (b)(7)(E). Plaintiff was advised that 811 pages had been reviewed and 711 pages were being released. Plaintiff was advised that this was the second interim release as ordered by the court on May 7, 2007 for documents concerning plaintiff's electronic surveillance systems known as DCS-3000 and Red Hook. FBIHQ stated that a decision had not yet been made concerning plaintiff's request for a

fee waiver and that the FBI would be corresponding with plaintiff in the near future on that subject. Further, plaintiff was advised that pursuant to 28 C.F.R. § 16.11, there is a duplication fee of ten cents per page and that no fees are assessed for the first 100 pages. Plaintiff was further advised that if it is determined that plaintiff does not qualify for a fee waiver, duplication fees would be assessed accordingly. Plaintiff was advised of its right to file an administrative appeal. **(See Exhibit B.)**

(7) By letter dated July 30, 2007, FBIHQ released documents to plaintiff, subject to withholdings pursuant to Exemptions (b)(1), (b)(2), (b)(5), (b)(6), (b)(7)(C), (b)(7)(E) and (b)(7)(E). Plaintiff was advised that 996 pages had been reviewed and 781 pages were being released. Plaintiff was advised that this was the third interim release as ordered by the court on May 7, 2007. Plaintiff was advised that a decision had not yet been made with regard to plaintiff's request for a fee waiver and that the FBI would be corresponding with plaintiff in the near future. Plaintiff was further advised that if the FBI determined that plaintiff does not qualify for a fee waiver, duplication fees would be assessed accordingly. Plaintiff was advised of its right to file an administrative appeal. **(See Exhibit C.)**

(8) In my Declaration dated February 9, 2007 (hereinafter the "First Hardy Declaration"), I advised the Court that the FBI had located approximately 20,000 pages potentially responsive to plaintiff's request, and that plaintiff's request would be placed in the FOIA large queue of the "perfected" case backlog.

(9) Plaintiff's request came out of the FOIA large queue on May 9, 2007, and was assigned for processing on May 10, 2007.

(10) At this time, approximately 7,964 pages remain to be reviewed and processed.¹ The FBI estimates that the review and processing of these pages will take approximately 40

¹ The total number of responsive pages is 9,883. The difference between this number and the original estimate of 20,000 potentially-responsive pages (see First Hardy Declaration) can be attributed to the FBI's subsequent determination that more than 10,000 pages were not in fact responsive.

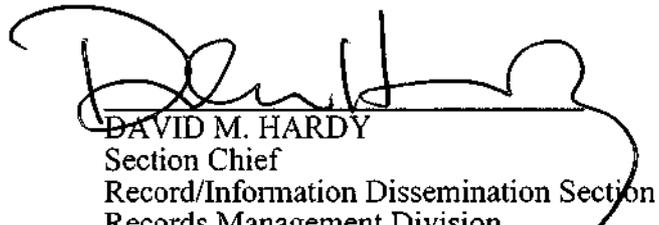
weeks.²

CONCLUSION

(11) To date, the FBI has made three (3) interim releases to plaintiff, consisting of 1595 pages released out of a total of 1919 pages reviewed. In accordance with the Court Order dated May 7, 2007, the next scheduled release will be August 27, 2007. Approximately 7,964 pages remain to be reviewed and processed, which the FBI anticipates will take the FBI approximately 40 weeks to complete.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that Exhibits A through C attached hereto are true and correct copies.

Executed this 30th day of August, 2007.



DAVID M. HARDY
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² The FBI will be able to review and process approximately 800 pages every four (4) weeks. See First Hardy Declaration, ¶ 39.