

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

<b>ELECTRONIC FRONTIER FOUNDATION</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 06-1708 (CKK)
	)	
<b>DEPARTMENT OF JUSTICE</b>	)	
	)	
Defendant.	)	
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**JOINT STATUS REPORT**

Pursuant to the Court’s June 9, 2008 minute order, Plaintiff Electronic Frontier Foundation (“EFF”) and Defendant Department of Justice (“DOJ”) submit the following joint status report in this matter:

1. On May 1, 2008, DOJ informed the Court that it had completed its review and processing of EFF’s Freedom of Information Act (“FOIA”) request, reviewing a total of 7,935 responsive pages and releasing 5,240 pages in whole or part. (Dkt. No. 21.)
2. On May 5, 2008, the Court ordered the parties to file a joint status report no later than May 30, 2008 explaining how they intend to proceed in this action. To facilitate negotiation of those issues, the parties stipulated to file a joint status report no later than July 11, 2008, informing the Court of the results of any agreements reached by the parties to limit the scope of the litigation and proposing a schedule for dispositive briefing in this matter.
3. Pursuant to the stipulation, the parties have conferred, but have been unable to reach an agreement on to how to proceed in this case. Each party reports as follows:

4. EFF maintains that it is necessary for the FBI to produce a *Vaughn* index to describe the material withheld by the agency and the basis for those withholdings. EFF notes that, in addition to the material redacted in documents that have been released, the FBI has withheld 2,695 pages in full without any explanation of what the material is or why it has been withheld. EFF requests that the FBI be ordered to 1) assign Bates numbers to the records that have been processed in response to EFF's request, and 2) produce a *Vaughn* index describing the material withheld in whole or in part and explaining the basis for the withholdings. Once the FBI has taken these steps and the parties are able to identify the material in dispute, EFF will be prepared to discuss removing particular records, or entire categories of exemption claims, from the scope of the litigation.

5. The FBI believes that, given the significant volume of pages at issue, producing a Vaughn declaration based on a representative sample of those pages withheld in full or in part will expedite the proceedings and promote judicial efficiency and economy. Specifically, the FBI proposes that it be permitted to select a representative sample comprised of 5% of the documents withheld in full or in part. Defendant believes that Plaintiff's suggested approach of first having Defendant produce a Vaughn index for all the material withheld in whole or in part and explaining the basis for the withholdings, only to then have Plaintiff engage in discussion regarding narrowing the scope of the litigation is counterproductive, burdensome to the Defendant and to the Court, and will delay the proceedings significantly. Defendant's requested approach of submitting a Vaughn declaration and moving for summary judgment based on a 5% representative sample will reduce the exemption issues to a manageable size, and will permit the Court

to extrapolate its conclusions from the representative sample to the larger group of withheld materials.

6. Given the parties' failure to reach an agreement on an appropriate means of producing a *Vaughn* index covering the material at issue in this case, the parties jointly request that the Court hold a status conference at its earliest convenience to determine how to proceed.

DATED: July 11, 2008

Respectfully submitted,

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