



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrisette Drive
Springfield, Virginia 22152

Case Number: 10-00892-F, Interim Release Five Processing

Subject: ANY PROBLEMS, OBSTACLES OR LIMITATIONS THAT HAMPER THE DEA'S CURRENT ABILITY TO CONDUCT SURVEILLANCE ON COMMUNICATIONS SYSTEMS OR NETWORKS INCLUDING, BUT NOT LIMITED TO, ENCRYPTED SERVICE LIKE BLACKBERRY (RIM), SOCIAL NETWORKING SITES LIKE FACEBOOK, PEER-TO-PEER MESSAGING SERVICES OR VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE LIKE SKYPE, ETC (JANUARY 1, 2006 TO PRESENT) (FIFTH RELEASE).

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

AUG 01 2011

Dear Ms. Lynch:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated September 28, 2010, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject. Below is the breakdown of pages processed and referred for release five. This round of processing includes 1 page referred to DEA by the DOJ Criminal Division and 10 pages referred to DEA by the FBI.

Pages reviewed and released in full: 2
Pages reviewed and released in part: 6
Pages withheld in full: 212
Pages reviewed and referred to other agencies/components: 7
Pages reviewed and determined to be non-responsive: 350
Pages reviewed and identified as duplicates: 560

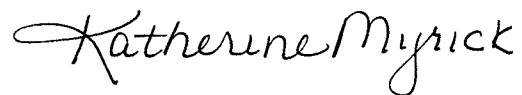
Grand Total pages processed: 1,137

Portions not released are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Information withheld in part is indicated by the FOIA Exemptions recorded on the documents attached herein. Information is withheld in full or in part under the following Exemptions: (b)(2), (b)(4), (b)(5), (b)(6), (b)(7)(a), (b)(7)(c), (b)(7)(d), (b)(7)(e), (b)(7)(f). An additional enclosure with this letter explains these exemptions in more detail. Below is the breakdown of what pages were processed and referred. These numbers are already included in the grand total of pages processed reflected above.

Pages reviewed and referred to OIP: 7

Refer any questions to Mr. Cartier, counsel for the Department of Justice in this matter.

Sincerely,

A handwritten signature in black ink that reads "Katherine Myrick". The signature is written in a cursive style with a large initial 'K' and a long, sweeping underline.

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Enclosure

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (b)(2) Materials related solely to the internal rules and practices of DEA.
- (b)(3) Information specifically exempted from disclosure by another federal statute.
- (b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.
- (b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.
- (b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.
- (j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.
- (k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (k)(2) Material compiled during civil investigations for law enforcement purposes.
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.
- (k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

The SRP reflects Congress's intent to "preserve the government's ability to . . . intercept communications that use advanced technologies such as digital or wireless transmission."²²

Under the SRP, a telecommunications carrier is:

a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of [CALEA].²³

11. The SRP contains three components, each of which must be satisfied before the Commission can deem a person or entity a telecommunications carrier for purposes of CALEA. We address each of these components in turn. First, the SRP requires that an entity be "engaged in providing wire or electronic communication switching or transmission service."²⁴ In the *Notice*, we interpreted the term "switching" in this phrase to include "routers, softswitches, and other equipment that may provide addressing and intelligence functions for packet-based communications to manage and direct the communications along to their intended destinations."²⁵ We affirm this reading of the statute, which has support in the record.²⁶ We disagree with commenters who claim that the term "switching" as used by Congress in 1994 did not contemplate routers and softswitches, and thus suggest that the interpretation of this term must forever be limited to the function as it was commonly understood in 1994, namely circuit switching in the narrowband PSTN.²⁷ Our decision today is reinforced by judicial precedent that has found CALEA to apply to certain packet-switched services.²⁸ Moreover, limiting the interpretation of "switching" to circuit-switched technology would effectively eliminate any ability the Commission may have to extend CALEA obligations under the SRP to service providers using advanced digital technologies, in direct contravention of CALEA's stated purpose.²⁹ **Our interpretation of the term "switching" is consistent with the Commission's prior recognition that CALEA is a technology-neutral statute that focuses on function not technology.**³⁰ In today's technological environment, where IP-based broadband networks are rapidly replacing the legacy narrowband circuit-switched network, various types of packet-mode equipment are increasingly being deployed to "originate, terminate, or direct communications" to their intended destinations.³¹ Interpreting CALEA's inclusion of the word "switching" to describe a function that Congress intended to be covered – regardless of the specific technology employed to perform that function – is, in our view, the interpretation most consistent with the purpose of the statute.

12. Second, the SRP requires that the service provided be "a replacement for a substantial portion of the local telephone exchange service."³² We conclude that this requirement is satisfied if a service replaces any significant part of an individual subscriber's functionality previously provided via circuit switched local telephone exchange service.³³

13. As we explained in the *Notice*, the legacy local telephone exchange network served two distinct purposes at the time CALEA was enacted: it provided POTS, which enabled customers to make telephone calls to other customers within a defined local service area;³⁴ and it was the primary, if not the only, conduit (*i.e.*, transmission facility) used to access many non-local exchange services such as long distance services,³⁵ enhanced services,³⁶ and the Internet.³⁷ The legislative history indicates that Congress intended CALEA to cover both the ability to "make, receive and direct calls"³⁸ (*i.e.*, the POTS functionality) and the transmission facilities that provide access to other services (*i.e.*, the access conduit functionality).³⁹ In 1994, this transmission function was commonly provided by dial-up Internet access, which shows that Congress did not mean to limit CALEA's scope to voice service alone.⁴⁰ We therefore agree with DOJ that the language "substantial portion of the local telephone exchange service" includes both the POTS

service and the transmission conduit functionality provided by local telephone exchange service in 1994.⁴³ Commenters have not persuaded us otherwise.

14. The SRP's third component requires that the Commission find that "it is in the public interest to deem . . . a person or entity to be a telecommunications carrier for purposes of [CALEA]" once that entity has met the first and second components of the SRP.⁴⁴ We sought comment in the *Notice* on how to define the "public interest" for purposes of CALEA, as the statute does not explicitly define the term. We noted that the *House Report* specifically identified three factors for the Commission to consider, at a minimum, in making its public interest determination under the SRP: whether deeming an entity a telecommunications carrier would "promote competition, encourage the development of new technologies, and protect public safety and national security."⁴⁵ Based on the record before us, we conclude that it is appropriate to rely primarily on these three factors when making our public interest determination for purposes of the SRP.⁴⁶ We find that consideration of these three factors balances the goals of competition and innovation with the needs of law enforcement.

Ellis, Kristin

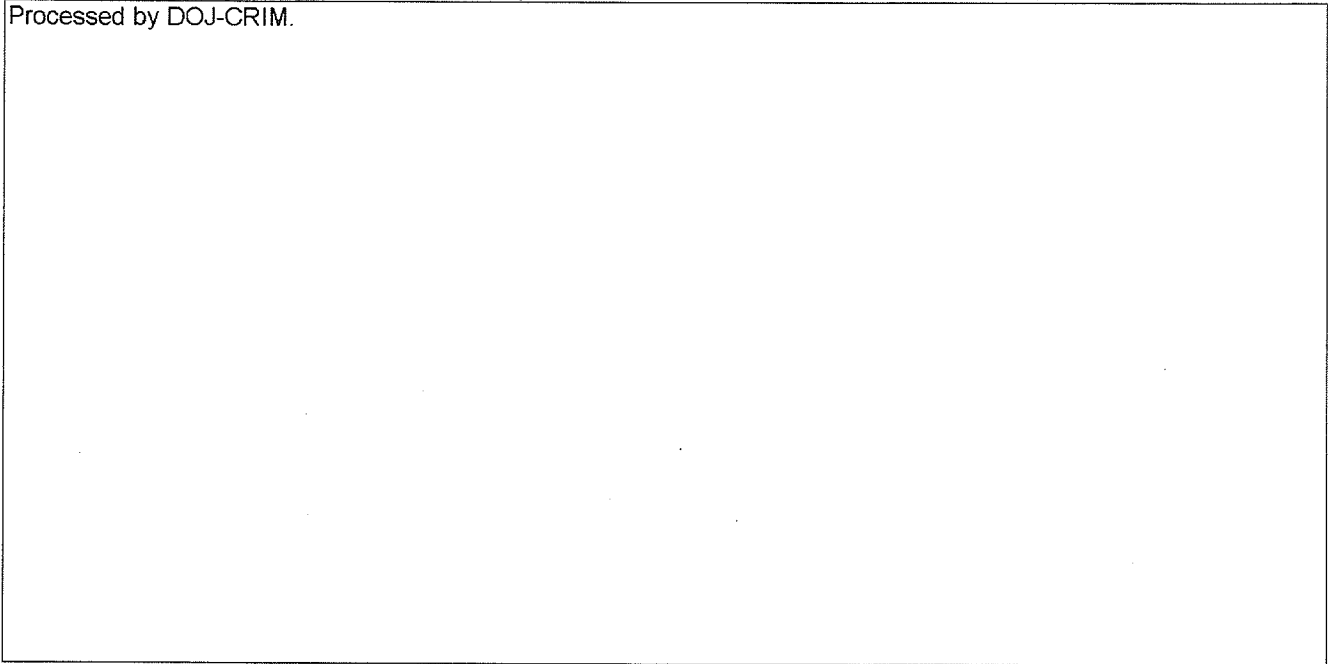
DEA Referral

A From: Maltz, Derek S. [redacted]
Sent: Friday, October 01, 2010 7:27 AM
To: Fruchterman, George
Subject: Re: Going Dark Question

There are many examples of this. I have a few examples but ST is now the ones who collect this. I will inquire.

Processed by DOJ-CRIM.

B





ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-13-2011 BY 65179/DMH/BAW/STP/bls

From: DiClemente, Anthony P.
Sent: Friday, June 04, 2010 5:29 PM
To: Sabol, Sherry E. (DEA-US)
Subject: Fw: [Redacted]

Sensitivity: Confidential
Below is the example forwarded today. I received several case examples from [Redacted] last week. Those examples were forwarded to [Redacted] last week.

b6
b7C
b7E

Anthony DiClemente
Chief, Data Acquisition/Intercept Section
Operational Technology Division
Federal Bureau of Investigation
[Redacted] Office
[Redacted] Mobile

From: DiClemente, Anthony P.
To: [Redacted] (DEA-US)
Sent: Fri Jun 04 13:08:36 2010
Subject: Re: [Redacted]

Thanks [Redacted] I'll forward it to [Redacted] as another great case example.

Regards,

b6
b7C
b7E

Anthony DiClemente
Chief, Data Acquisition/Intercept Section
Operational Technology Division
Federal Bureau of Investigation
[Redacted] Office
[Redacted] Mobile

From: [Redacted] (b)(6),(b)(7)(C)
To: DiClemente, Anthony P.
Sent: Fri Jun 04 12:34:16 2010
Subject: [Redacted] (b)(7)(E)

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-13-2011 BY 65179/DMH/BAW/STP/bls

Tony,

This one is good and involves an organization using [Redacted] (b)(7)(C),(b)(7)(E)
[Redacted] (b)(7)(C),(b)(7)(E)

Bail denied for alleged Staten Island cannabis king Jonathan Braun
New York Daily News - Online
06/04/2010

A reputed marijuana kingpin's hope of getting out on bail went up in smoke on Thursday.

Jonathan Braun, 27, looks more like a skinny slacker from Staten Island than the leader of an international drug-trafficking ring.

But that didn't sway a federal judge.

EFF/Lynch-761

file://D:\Going Dark\Fw [Redacted]

b7E 5/9/2011



"The government has posited substantial evidence of Mr. Braun's involvement in this conspiracy, which involves huge amounts of marijuana and huge amounts of money," said Brooklyn Magistrate Viktor Pohorelsky.

Braun is accused of smuggling more than 100,000 kilos of marijuana into the U.S. through Indian reservations along the Canadian border.

Drug Enforcement Administration agents arrested him last week in Staten Island, where he lives with his Orthodox Jewish parents, a sister and a 90-year-old grandparent.

Before Thursday's bail hearing, defense lawyer Ross Kramer handed a black yarmulke for Braun to a deputy U.S. marshal, who checked it for contraband.

Defense lawyer Gerald Shargel said nine family members were willing to sign a \$1 million bond and attacked the prosecutors' contention that Braun is a flight risk.

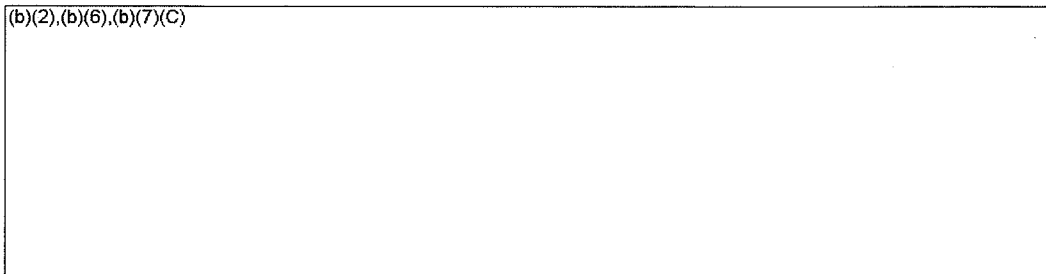
"He's lived with his parents his entire life," Shargel said. "His roots are deeply placed in Staten Island."

Assistant U.S. Attorney Steve Tiscione said Braun used a cellphone store he owned to launder millions of dollars in drug money and encrypted BlackBerry phones to evade surveillance.

The judge expressed concern that Braun might have access to a stash of illicit cash if he was freed.

Braun nodded to his father, a shoe salesman, and his mother, a city teacher, as he was escorted out. "Don't worry," the father mouthed.

(b)(2),(b)(6),(b)(7)(C)



EFF/Lynch-762





From: Sabol, Sherry E.
Sent: Monday, June 07, 2010 7:56 PM
To: [Redacted]
Cc: [Redacted]
Subject: Fw: [Redacted] Case Example [Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-13-2011 BY 65179/DMH/BAW/STP/bls

b6
b7C
b7E

Sensitivity: ~~Confidential~~

From: (b)(6),(b)(7)(C)
To: Sabol, Sherry E.
Sent: Mon Jun 07 19:24:39 2010
Subject: RE: (b) Case Example ((b)(7)(E))

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-13-2011 BY 65179/DMH/BAW/STP/bls

Sherry and [Redacted]
Here is another (b)(7)(E) case example from

(b)(7)(E)

b6
b7C Per FBI

(b)(5),(b)(6),(b)(7)(A),(b)(7)(C),(b)(7)(D),(b)(7)(E),(b)(7)(F)

(b)(6),(b)(7)(C)

EFF/Lynch-765

file://D:\Going Dark\Fw [Redacted] Case Example [Redacted].htm

b7E 5/9/2011



(b)(6),(b)(7)(C)

From: Sabol, Sherry E. [mailto:Sherry.Sabol@ic.fbi.gov]
Sent: Monday, June 07, 2010 2:33 PM
To: [Redacted]
Cc: [Redacted]
Subject: RE: [Redacted] Case Example [Redacted]
Sensitivity: Confidential

b6
b7C
b7E

Thank you. We may need something on ELSUR if you have it. If not, we'll go with what we have.
Sherry.

From: (b)(6),(b)(7)(C)
Sent: Monday, June 07, 2010 11:04 AM
To: Sabol, Sherry E.
Cc: [Redacted]
Subject: (b) Case Example (Data Retention-Preservation)
Sensitivity: Confidential

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-13-2011 BY 65179/DMH/BAW/STP/bls

b6
b7C Per FBI

Sherry and [Redacted]
Here is a (b)(7)(E) case example that demonstrates the need for [Redacted]

[Redacted] (b)(6),(b)(7)(E)

(b)(3):18 U.S.C. 2510,(b)(5),(b)(7)(A),(b)(7)(C),(b)(7)(E)

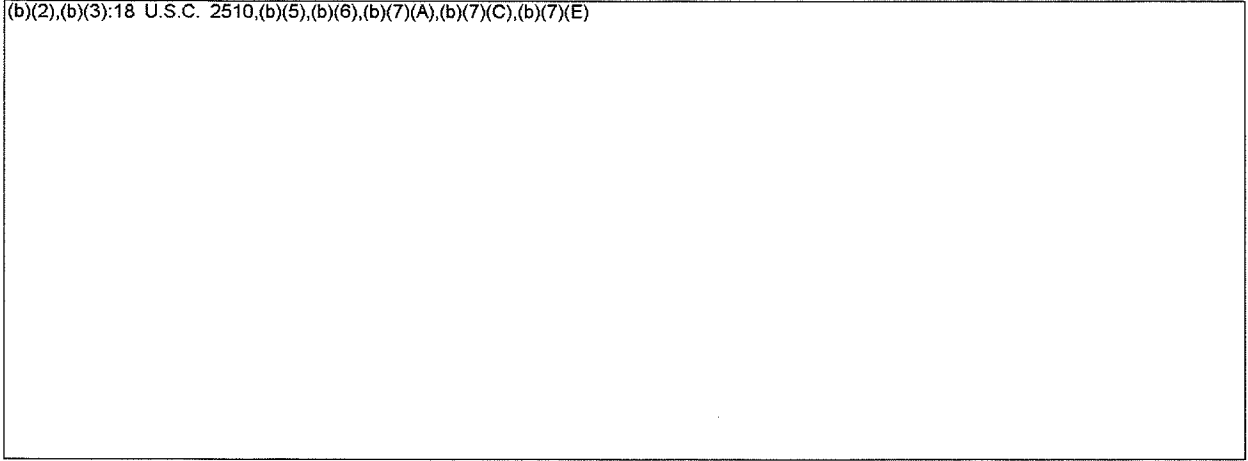
[Large Redacted Area]

EFF/Lynch-766

file://D:\Going Dark\Fw [Redacted] Case Example [Redacted].htm b7E 5/9/2011



(b)(2),(b)(3):18 U.S.C. 2510,(b)(5),(b)(6),(b)(7)(A),(b)(7)(C),(b)(7)(E)



EFF/Lynch-767