

Electronic Frontier Foundation v. DOJ, et al**Vaughn Index for Cardozo FOIA Releases**

Detailed description of FBI responsive records by category groupings for information withheld in full (WIF), or in part, annotated as “released in part” (RIP) for the Cardozo FOIA releases (See Exhibit M for Bates pages 1-1088). Category groupings are based on individual FBI divisions responding to a July 8, 2009 FBI search Electronic Communication (EC) request for responsive records on the “The Going Dark Program” from January 1, 2007 to June 1, 2009. The order of groupings below is based on the order responsive records were processed and released to the plaintiff’s representative.

Category Group	Bates Numbering/ (Page count)	Dates	Description	Exemptions	Withholding/ Release
1 A	1-66 (66)	May 7, 2009 – July 24, 2009	FBI Office of Public Affairs (OPA) Response: E-mail Communications. Responsive material consists of internal e-mail chains between FBI divisions in response to a request from a media outlet for a definition of “Going Dark.” The FBI’s Office of Technology Division (OTD) went on record as defining “Going Dark” as the program name given to the FBI’s efforts to utilize innovative technology; foster cooperation with industry; and assist our state, local, and tribal law enforcement partners in a collaborative effort to close the growing gap between lawful interception requirements and our capabilities. The term applies to the research and development of new tools, technical support and training initiatives.	18 Bates Pages: (b)(2) 11 Bates Pages: (b)(5) 65 Bates Pages: (b)(6)/(b)(7)C 11 Bates Pages: (b)(7)E	65 Bates Pages: RIP
1 B	67-245 (179)	January 15, 2008 – May 29, 2009	FBI Office of Congressional Affairs (OCA) Response: Talking Points, Discussion Papers, Internal E-mails, and Legislative Proposals. Responsive material consists mostly of internal deliberative talking points and discussion papers concerning the FBI’s strategic policy development process relating to surveillance challenges posed by emerging technologies. These 179 pages include assessments and opinions concerning surveillance	162 Bates Pages: (b)(2) 143 Bates Pages: (b)(5) 14 Bates Pages:	141 Bates Pages: WIF 23 Bates Pages: RIP

			<p>challenges faced by the FBI and the law enforcement community, as well as various recommendations, proposals, and advice on multi-point strategies or actions FBI should, or could, adopt, pursue, or consider in order to resolve these challenges. The material includes internal discussions between FBI and DOJ on proposals to change policy, legislation, resources, and FBI operational techniques/procedures as well as detailed identification, analysis, and discussion of technical, legal, policy, and resource impediments to FBI electronic intercept operations. 88 of the 179 Bates pages are unsigned talking points/discussion papers to prepare FBI leadership and personnel for internal strategy meetings and/or guide discussion of FBI participants in the consideration/formulation of strategies or initiatives to address emerging technology issues. 4 of the 179 Bates pages comprise 2 e-mail chains w/attachments between FBI personnel, forwarding talking points to prepare the FBI Director for his annual threat assessment hearing in February 2008, and a Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies hearing on June 4, 2009. 79 of the 179 Bates pages are unsigned, edited "redline" versions of proposed legislation, and internal discussion of proposals for amending CALEA to enhance ELSUR capabilities. 8 of the 179 Bates pages are summary briefings prepared by OCA staff members after meetings with Congressman, Senators, and/or congressional staffers concerning budget discussions and sharing updates on topics such as "Going Dark Initiative."</p>	<p>(b)(6)/(b)(7)C 159 Bates Pages: (b)(7)E</p>	
1 C	246-474 (229)	April 2, 2008 – June 30, 2009	<p>FBI Operational Technology Division (OTD) Response, Sections 1 and 3: Internal E-mails, and Talking Points/Discussion Papers. Due to the amount of responsive material received from OTD, RIDS divided the material into 4 sections. Category 1C addresses Section 1 and Section 3. Section 2 is addressed in Category 1E, and Section 4 is addressed in Category 1F. Some of the responsive attachments from OTD Response Sections 1-3, either could not be properly 'married' with their original e-mail, or were inadvertently misplaced during the original FOIA processing. They are now being addressed in OTD Response, Section 4. Sections 1 and 3 were processed for release together as described in Bates pages 246-474. 222 pages of the 228 responsive pages are internal FBI e-mail chains w/attachments, the remaining 6 pages are internal FBI talking points/discussion papers related to defining "Going Dark" and the need to preserve lawful intercept capabilities. These e-mails w/attachments discuss the background development of various talking</p>	<p>179 Bates Pages: (b)(2) 217 Bates Pages: (b)(6)/(b)(7)C 2 Bates Pages: (b)(7)D 35 Bates Pages: (b)(7)E</p>	227 Bates Pages: RIP

			<p>points, discussion papers, and slide presentations on the FBI's Science and Technology Branch's "Going Dark Initiative" (also referred to as the National Electronic Surveillance Strategy) to highlight to various internal and external audiences the surveillance challenges faced by the FBI and the law enforcement community. In addition, the e-mail participants were tasked to search for a variety of recommendations, proposals, and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges. The e-mails show how the identification, analysis, and review of technical, legal, policy, and resource impediments to the FBI's electronic intercept operations led to the development of a five-prong strategic approach to address the identified lawful intercept capability gap. This five prong strategic approach includes 1) modernization/amendment of existing laws (EX: CALEA), regulations, and assistance mandates, 2) enhancing authorities to protect industry proprietary and Law Enforcement (LE) sensitive lawful intercept information, equipment and techniques, 3) enhancing LE agencies coordination leveraging technical expertise of FBI with other LE entities, 4) enhancing lawful intercept cooperation between communications industry and LEA's with a "One Voice" approach, and 5) seeking new federal funding to bolster lawful intercept capabilities.</p>		
1 D	475-657 (183)	August 6, 2008 – June 16, 2009	<p>FBI Office of General Counsel (OGC) Response: Discussion Papers and Talking Points. Responsive material consists of internal, deliberative talking points and discussion papers related to the FBI's strategic policy development process concerning surveillance challenges posed by emerging technologies. These 183 pages include assessments and opinions related to the surveillance challenges faced by the FBI and the law enforcement community as well as various recommendations, proposals, and advice on multi-point strategies or actions FBI should, or could, adopt, pursue, or consider in order to resolve these challenges. The material includes internal discussions between FBI and DOJ on proposals to change policy, legislation, resources, and FBI operational techniques/procedures as well as detailed identification, analysis, and discussion of technical, legal, policy, and resource impediments to FBI electronic intercept operations. 109 of the 183 Bates pages are unsigned, internal talking points/discussion papers to prepare FBI leadership and personnel for internal strategy meetings and/or guide discussion of FBI participants in the consideration/formulation of strategies or initiatives to address emerging technology issues. 74 of the 183 Bates pages comprise</p>	<p>152 Bates Pages: (b)(2) 148 Bates Pages: (b)(5) 71 Bates Pages: (b)(6)/(b)(7)C 137 Bates Pages: (b)(7)E</p>	<p>87 Bates Pages: WIF 85 Bates Pages: RIP</p>

			internal e-mail chains w/attachments between FBI personnel, and the FBI OGC staff, forwarding talking points and discussion papers asking for legal review and consultation related to finalizing the National Lawful Intercept Strategy Whitepaper (also referred to as “Going Dark Initiative “).		
1 E	658-953 (296)		<p>FBI Operational Technology Division (OTD) Response, Section 2: E-mails, Talking Points, Discussion Papers, Accomplishment Reports, Status Reports, and Contractual Paperwork. Responsive material consists of internal e-mail chains w/attachments between FBI personnel, deliberative talking points and discussion papers concerning the FBI’s strategic policy development process relating to surveillance challenges posed by emerging technologies, accomplishment reports of the division, status reports on the ‘Going Dark Initiative,’ and contractual paperwork with an external contractor. 210 of the 296 Bates pages are deliberative talking points and discussion papers related to the FBI’s strategic policy development process concerning surveillance challenges posed by emerging technologies. These pages include background development of talking points, discussion papers and slide presentations on the FBI’s Science and Technology Branch’s “Going Dark Initiative” (also referred to as the National Electronic Surveillance Strategy) to highlight to various internal and external audiences the surveillance challenges faced by the FBI and the law enforcement community, as well as various recommendations, proposals, and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges. The material includes internal discussions between FBI and DOJ on proposals to change policy, legislation, resources, and FBI operational techniques/procedures as well as detailed identification, analysis, and discussion of technical, legal, policy, and resource impediments to FBI electronic intercept operations. 41 Bates pages consist of contractual paperwork from the RAND Corporation detailing its contract obligations with the FBI’s Operational Technology Division (OTD) for the “FBI Going Dark Initiative Electronic Surveillance Analysis Project.” 15 Bates pages consist of e-mail chains w/attachments between FBI personnel, and the forwarding of talking points and discussion papers asking for technical input and consultation on finalizing the National Lawful Intercept Strategy Whitepaper (also referred to as “Going Dark Initiative”). 13 Bates pages consists of OTD “Significant Monthly Accomplishment” reports detailing accomplishments on its work for the “Going Dark Initiative.</p>	13 Bates Pages: (b)(1) 250 Bates Pages: (b)(2) 39 Bates Pages: (b)(4) 225 Bates Pages: (b)(5) 41 Bates Pages: (b)(6)/(b)(7)C 5 Bates Pages: (b)(7)D 238 Bates Pages: (b)(7)E	250 Bates Pages: WIF 40 Bates Pages: RIP

			<p>10 Bates pages are internal OTD “Going Dark Campaign” status reports on how the FBI is pro-actively engaging policy and decision makers advocating enhancement of its ELSUR capabilities, and “Going Dark Initiative” status reports on the FBI’s development of its five-prong strategic approach to support the community of ELSUR stakeholders, and proposed future actions required to accomplish these tasks. 7 Bates pages are FBI internal meeting agendas which list the discussion topics and updates on the “Going Dark Initiative,” and proposed future actions/decisions needing to be accomplished to enhance ELSUR capabilities.</p>		
IF	954-1088 (135)	April 2, 2008 – June 30, 2009	<p>FBI Operational Technology Division (OTD) Response, Sections 4: Internal E-mails, Talking Points Presentations, Discussion Paper, and Monthly Accomplishment Report Templates. Some of the responsive attachments from OTD Response Sections 1-3, either could not be properly ‘married’ with their original e-mail, or were inadvertently misplaced during the original FOIA processing. They are now being addressed here in OTD Response, Section 4. 5 of the 135 Bates pages are newly identified responsive internal FBI e-mail chains w/attachments. 44 of the 135 responsive pages are duplicates of previously processed e-mail chains. They were inserted in front of the newly located attachments to show plaintiff where they should have been processed during the earlier FOIA releases. See the deleted page inserts between Bates 954-1088 in Exhibit M to see the location of the processed originals. These e-mails w/attachments discuss the background development of various talking points, discussion papers, and slide presentations on the FBI’s Science and Technology Branch’s “Going Dark Initiative” (also referred to as the National Electronic Surveillance Strategy) to highlight to various internal and external audiences the surveillance challenges faced by the FBI and the law enforcement community. In addition, the e-mail participants were tasked to search for a variety of recommendations, proposals, and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges. The e-mails show how the identification, analysis, and review of technical, legal, policy, and resource impediments to the FBI’s electronic intercept operations led to the development of a five-prong strategic approach to address the identified lawful intercept capability gap. This five prong strategic approach includes 1) modernization/amendment of existing laws (EX: CALEA), regulations, and assistance mandates, 2) enhancing</p>	<p>6 Bates Pages: (b)(1) 33 Bates Pages: (b)(5) 5 Bates Pages: (b)(6)/(b)(7)C 44 Bates Pages: (b)(7)E</p>	<p>116 Bates Pages: WIF 15 Bates Pages: RIP</p>

		<p>authorities to protect industry proprietary and Law Enforcement (LE) sensitive lawful intercept information, equipment and techniques, 3) enhancing LE agencies coordination leveraging technical expertise of FBI with other LE entities, 4) enhancing lawful intercept cooperation between communications industry and LEA's with a "One Voice" approach, and 5) seeking new federal funding to bolster lawful intercept capabilities. 31 of the 135 Bates pages are newly identified responsive talking point presentations, and were part of the missing attachments identified from OTD Response, Sections 1-3. 39 of the 135 responsive pages are duplicates of previously processed talking point presentations. They were identified as part of the missing attachments, because we could not 'marry' them up with an e-mail during the original FOIA processing. They now have been properly identified, and the deleted page inserts between Bates 954-1088 in Exhibit M will detail the location of the processed originals. 3 of the 135 responsive pages is a newly identified discussion paper that was part of the missing attachments. This discussion paper highlighted instances where technology has, or is, still impacting the ability of the FBI's DITU to perform lawful intercepts. 13 of the 135 responsive pages are newly identified accomplishment report 'templates,' and were part of the missing attachments. These monthly accomplishment report templates were being developed by OTD to highlight all significant accomplishments of the OTD Division programs, and not just the 'Going Dark' initiative.</p>		
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