FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 09/7/2007

To: Operational Technology Division

Office of General Counsel, National Security Law Branch
Science and Technology Unit
Investigative Law Unit

Cyber Division

Special Technology and Applications Office

Attn: AD, James E. Finch

Attn: DAD, Louis Grever

Attn: Operational Technology Division

Attn: Office of General Counsel, National Security Law Branch

Attn: Science and Technology Unit

Attn: Investigative Law Unit

Attn: Cyber Division

Attn: Special Technology and Applications Office

Date: 08/16/2007

From: Records Management
RIDS/WPU/Winchester Site 2, GR N23

Contact: 

Approved By: Hardy Davi

Drafted By: 

Case ID #: 190-HQ-C1547903

Title: FREEDOM OF INFORMATION ACT REQUEST FROM WIRED-NEWS, ELECTRONIC FRONTIER FOUNDATION AND CNET NETWORKS

Synopsis: To advise HQ Divisions to search for responsive documents created on or before August 1, 2007 and submit them to the Work Process Unit I (WPU-I), Record/Information Dissemination Section (RIDS), pursuant to the three captioned Freedom of Information Act (FOIA) requests for all agency records concerning the subject, Computer and Internet Protocol Address Verifier (CIPAV).

Details: By letter dated July 17, 2007, Wired News, through Kevin Poulsen, submitted a FOIA request to FBIHQ seeking the following records:

Any documents (including, but not limited to, electronic records concerning the FBI's development and utilization of the so-called Computer and Internet Protocol Address Verifier (CIPAV), a tool used to identify and/or monitor a target computer in a criminal or foreign intelligence investigation.

ALL INFORMATION CONTAINED HERIN IS UNCLASSIFIED
DATE 09-17-2008 BY 60322UC/LP/STP/5jj
To: Operational Technology Division  From: Records Management
Office of General Counsel  Cyber Division
Special Technology and Applications Office

Re: 190-HQ-C1547903, 08/16/2007

any other portable media (CD-ROMs, diskettes, etc.)

FBIHQ personnel are directed to conduct a thorough search for any and all documents in their possession responsive to these three FOIA requests for all records created on or before August 1, 2007 (the first date that WPU/RIDS began to search for documents potentially responsive to these three FOIA requests).

Please note that not all of the documents you provide will be released. All material will be evaluated as to whether it is responsive to these requests. Those records determined to be responsive will be processed and redacted pursuant to the FOIA before they are released. After RIDS has processed and redacted the records, you will have an opportunity to review the documents before any are released to the requesters.
To: Operational Technology Division  
From: Records Management 
Office of General Counsel  
Cyber Division  
Special Technology and Applications Office  

Re: 190-HQ-C1547903, 08/16/2007  

LEAD(s):  
Set Lead 1: (Action)  

ALL RECEIVING OFFICES  

Search for any and all information potentially responsive to the Wired News, CNET Networks, and Electronic Frontier Foundation’s FOIA requests and forward documents with pertinent enclosures, or your "no records" response to LAS  

***
From: (OGC)(FBI)
Sent: Wednesday, December 08, 2004 12:46 PM
To:  
Cc: (ITD)(FBI); Motta, Thomas G. (ITD)(FBI); (OGC)(FBI); DICLEMENTE, Anthony P. (ITD)(FBI); (OGC)(FBI)
Subject: RE: UCO Proposal

SECRET RECORD

Sounds good to me.

My only concern kicked in when wrote that

I will be happy to assist however necessary,

Thanks.

-----Original Message-----
From: (ITD)(FBI)
Sent: Wednesday, December 08, 2004 11:35 AM
To:  
Cc: (ITD)(FBI); Motta, Thomas G. (ITD)(FBI); (OGC)(FBI); DICLEMENTE, Anthony P. (ITD)(FBI); (OGC)(FBI)
Subject: RE: UCO Proposal

SECRET RECORD

I agree with this. We have been perfectly willing to look to OGC for guidance and policy and to follow that guidance and policy. What I am, and has been saying, is give us some guidance. I have discussed this issue before and it is my understanding that there is a disagreement on the status of the IPAV between what FBI/OGC says and what DOJ/CCIPS. If OGC will set out a policy on this, we will be glad to rely on it.

We all know that there are IPAVs and then there are IPAVs. Of course the technique can be used in a manner that would require a court order. We need to know how/when to draw the line for obvious reasons.

I think all of the investigative Divisions should weigh in on this, including Cyber. I would love it. Let's just get some guidance out there.

12/9/2004
I don't necessarily think a search warrant is needed in all cases, I agree that if the AUSA says xxx and the SAC authorizes it as lawful in a field Division, that would be fine. But having said that, Several months ago I found my employees in a position of having to work out these problems across the country without FBI/OGC policy guidance. Until a policy or directive is put in place, DITU has and will support any case that obtains a search warrant. Over the last six months it has not proven to be an obstacle to investigations. I don't think it need be controversial nor even difficult for OGC to draft and disseminate appropriate guidance. It may be that in some cases a search warrant is needed and in others an AUSA can say no search warrant is needed.

I am not personally concerned with suppression, as that is an operational and legal matter, my concern is merely constitutional and ensuring that my personnel are acting within scope and guidance.

There are many statements in this string of Email that indicate that ITD is this or ITD is that. What ITD "is" is awaiting appropriate legal guidance. Until such time as it is disseminated from OGC we will continue with our current cautious approach. I don't pretend to know the answer. I leave that to OGC.

I'll talk to you today at FBIHQ but ITD is interested in establishing an FBI policy on this matter via OGC. Cyber will get its say if the EC ever makes it to the coordination process. ITD's position on this matter is driven by CCIPS and by the fact that ITD believes that it is the only division that actually uses the IPAV tool albeit on behalf of other divisions, FOs, etc., in both criminal and FISA cases.
This may be more controversial than I suspected.
see this as overall FBI policy.

-----Original Message-----
From: (OGC) (FBI)
Sent: Friday, December 03, 2004 8:21 AM
To: (OGC) (FBI); (ITD)
Cc: BOWMAN, MARION E. (OGC) (FBI); (OGC)
Subject: RE: UCO Proposal

Thank you and

Very helpful as always.

-----Original Message-----
From: (OGC) (FBI)
Sent: Thursday, December 02, 2004 6:33 PM
To: (ITD) (FBI); (OGC)
Cc: BOWMAN, MARION E. (OGC) (FBI); (OGC)
Subject: RE: UCO Proposal

Although CCIPS recommends the "play it safe" method to AUSAs, it still leaves the matter ultimately to their judgment.
Although we're not aware of the full details of this IPAV proposal (which makes any legal review more difficult), it also...

So, I hope that helps,

---Original Message---
From: [ITD] (FBI)
Sent: Wednesday, December 01, 2004 4:53 PM
To: [OGC] (FBI)
Cc: BOWMAN, MARION E. (OGC) (FBI)
(OGC) (FBI)
Subject: RE: UCO Proposal

SECRET

There is still admittedly a good deal of uncertainty about what authority is required to deploy an IPAV. Of course, the safest course is to secure a warrant, though one might arguably not be required—hence DOJ's position that a warrant should be obtained.
On that, I am cc'ing... who is the primary attorney assigned to DITU, the group responsible for this technology. He might be able to flush out the ITD/DOJ view on this. I'm also including... since he works most closely with Cyber Div and may be able to add to the discussion.

---Original Message---

From: [OGC (FBI)]

Sent: Wednesday, December 01, 2004 4:16 PM

To: [OGC (FBI)]

Cc: BOWMAN, MARTIN E. (OGC (FBI)); [ITD (FBI)]

Subject: RE: UCO Proposal

SECRET

RECORD

According to guidance issued by DOJ CCCPS, DOJ has "consistently advised AUSAs and agents proposing to use IPRs to obtain a warrant to avoid the exclusion of evidence."

This opinion is dated March 7, 2002, written by...

...has advised me on this issue in the past and I copy her for her comments.
Have LA call me immediately or give me names and numbers. If I hear nothing, I am going to call the CDC myself.

--- Original Message ---
From: (OGC) (FBI)  
Sent: Wednesday, December 01, 2004 1:51 PM  
To: [No recipients listed]  
Cc: BOWMAN, MARION E. (OGC) (FBI); (OGC) (FBI)  
Subject: RE: UCO Proposal

SECRET
RECORD
(S)

As we knew each other from San Juan and now you are at CD-5, I'm going to be very candid with you.

--- Original Message ---
From: (CyD) (FBI)  
Sent: Wednesday, December 01, 2004 1:21 PM  
To: [No recipients listed]  
Cc: (OGC) (FBI)  
Subject: RE: UCO Proposal

SECRET
RECORD
(S)

Hello

12/9/2004
CD-3C was present for this conference call. Cyber and CD-3C's positions are at a minimum the URC needs full disclosure of LA's intent to go outside the scope of the current renewal proposal. LA insists that is my job. I pointed out that there is no mention of use of an IPAV in the proposal and that if LA says is vital then perhaps more than a passing mention of "tracking software" in and among how the next phase would likely be introduction of an UCA is not enough. No legal review has been conducted.
Techno terms aside, as you may remember, I have a degree in Physics. This degree included some computer programming because USC wants its graduates to be able to write programs to crunch large amounts of data with various formulae. So if they can't explain it to me, it never happened.

All this said, in Cyber, I'm writing an EC today, telling LA we do not authorize use of any IPAVs. Whether a FISA is required or not, I need to follow-up with SSA on that. And trust me, I'm experienced in these matters. I'm not even sure if this should continue (without the IPAV aspect) in accordance with the initial proposal, to be "passive."

Sincerely,

SSA
Cyber Division (CyD), Computer Intrusion Section (CIS),
CT/CI Computer Intrusion Unit (C3IU)

Original Message
From (CD) (FBI)
Sent: Wednesday, 12/9/2004
December 01, 2004 11:39 AM

To: (CyD) (FBI)

Subject: UCO Proposal

I just reviewed your presenter's page. Sorry for being late but I just got a chance to sit down here in NYO and respond.

Has anyone from NSLB reviewed it?

Also, were any stipulations that had to be addressed? Refer to the attached EC that lists these issues. Some of the board members skim the proposals and need to be reminded on where to find the info. (aren't involved in answering operational questions, so I don't know if they were able to help...)
On the cover page, there should be a spot to indicate whether was contacted (administrative step- more so they are aware of a Group I within their division, since this doesn't really entail their services. This includes a brief attachment from LA offering their assistance if needed...)

SSA
Counterintelligence Division
CD-5A
Undercover/Logistics
(cell)
Secured Fax
Unsecured Fax

DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97. Foreign Counterintelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET

DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97. Foreign Counterintelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET

DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97. Foreign Counterintelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET
SECRET

DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET

12/9/2004
Secret

From: '_J_ (ITD) (FBI)
Sent: Wednesday, December 08, 2004 11:35 AM
To: (ITD) (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI); (OGC) (FBI); (OGC) (FBI); (OGC) (FBI);
Cc: (ITD) (FBI); MOTTA, THOMAS G. (ITD) (FBI); (OGC) (FBI); (OGC) (FBI)
Subject: RE: UCO Proposal

SECRET

RECORD

Original Message

From: '_J_ (ITD) (FBI)
Sent: Wednesday, December 08, 2004 10:30 AM
To: (ITD) (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI); (OGC) (FBI); (OGC) (FBI)
Cc: (ITD) (FBI); MOTTA, THOMAS G. (ITD) (FBI); (OGC) (FBI)
Subject: RE: UCO Proposal

SECRET

RECORD

I don't necessarily think a search warrant is needed in all cases. I agree that if the AUSA says xxx and the SAC authorizes it as lawful in a field Division, that would be fine. But having said that, Several months ago I found my employees in a position of having to work out these problems across the country without FBI/OGC policy guidance. Until a policy or directive is put in place, DITU has and will support any case that obtains a search warrant. Over the last six months it has not proven to be an obstacle to investigations. I don't think it need be controversial nor even difficult for OGC to draft and disseminate appropriate guidance. It may be that in some cases a search warrant is needed and in others an AUSA can say no search warrant is needed.

I am not personally concerned with suppression, as that is an operational and legal matter, my concern is merely constitutional and ensuring that my personnel are acting within scope and guidance.

12/9/2004
There are many statements in this string of Email that indicate that ITD is this or ITD is that. What ITD "is" is awaiting appropriate legal guidance. Until such time as it is disseminated from OGC we will continue with our current cautious approach. I don't pretend to know the answer. I leave that to OGC.

---Original Message-----
From: (OGC) (FBI)
Sent: Wednesday, December 08, 2004 8:40 AM
To: (ITD) (FBI); MOTTA, THOMAS G. (ITD) (FBI); (OGC) (FBI)
Cc: (FBI); (OGC) (FBI)
Subject: RE: UCO Proposal

I'll talk to you today at FBIHQ but ITD is interested in establishing an FBI policy on this matter via OGC. Cyber will get its say if the EC ever makes it to the coordination process. ITD's position on this matter is driven by CCIPS and by the fact that ITD believes that it is the only division that actually uses the tool albeit on behalf of other divisions, FOs, etc., in both criminal and FISA cases.

---Original Message-----
From: (OGC) (FBI)
Sent: Monday, December 06, 2004 5:53 PM
To: (OGC) (FBI)
Cc: (ITD) (FBI); MOTTA, THOMAS G. (ITD) (FBI); (OGC) (FBI)
(OGC) (FBI); (OGC) (FBI)
Subject: RE: UCO Proposal

This may be more controversial than I suspected.
I want to spend more time on this matter but know that DITU/ITD has asked me to draft an EC that will establish that, as a matter of FBI policy, all will be employed pursuant to a Rule 41 SW based upon the position taken by CCIPS. Also, I have to disagree with when he says that National Security is not a context within which we need to be concerned about use of IPAVs. ITD looks at every case now as a possible criminal prosecution. The time has past when we can comfortably talk in terms of FISA or prosecution as an either or proposition. For all practical purposes, every FISA case is viewed as a potential Federal prosecution waiting to begin. That said, ITD won't employ an without a SW and would like to see this as overall FBI policy.

Thank you and

Very helpful as always.
Thanks for looking at this, all you STLU guys. I think Greg Motta, and I would need to review any guidance on this to make sure all bases are covered. Please put us all on any EC being drafted as signatories so we can be sure that this has been properly vetted.

Thanks
Subject: RE: UGO Proposal

Thank you and

Very helpful as always.

Tom
There is still admittedly a good deal of uncertainty about what authority is required to deploy an IPAV. Of course, the safest course is to secure a warrant, though one might arguably not be required—hence DOJ's position that a warrant should be obtained.

On that, I am cc-ing [_] who is the primary attorney assigned to DITU, the group responsible for this technology. He might be able to flush out the ITD/DOJ view on this. I'm also including [_] since he works most closely with Cyber Div and may be able to add to the discussion.

---Original Message---
From: 
Sent: Wednesday, December 01, 2004 4:16 PM 
To:  
Cc: BOWMAN, MARION E. (OGC) (FBI);  
Subject: RE: UCO Proposal

According to guidance issued by DOJ CCIPS, DOJ has "consistently advised AUSAs and agents proposing to use IPAVs to obtain a warrant to avoid the exclusion of evidence."

This opinion is dated March 7, 2002; written by [__]. [__] has advised me on this issue in the past and I copy her for her comments.
OGC) (FBI)

From: (ITD)
Sent: Tuesday, November 23, 2004 8:24 AM
To: (OGC) (FBI)
Subject: RE: Re IPAV/CIPAV

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

No handouts. I talk to case agents and TTAs on the phone about the capabilities and how the collected info is provided to the field for ELSUR compliance. I email case agents the template s/w, app, and affidavit after we received a RMS from their TTA. Sometimes, I will email case agents the definition I provided to you and I have also provided a more in-depth discussion of how the capability works to TTAs only via email.

Do you have an accepted definition of IPAV versus CIPAV?

Indicated that you have a standard handout that you provide field offices when they are thinking of using this tool. I need a copy of this material as well.

Thanks,
From: (OGC) (FBI)
Sent: Monday, November 22, 2004 11:20 AM
To: (ITD)
Cc: (ITD) (FBI)
Subject: RE: Re IPAV/CIPAV

**SENSITIVE BUT UNCLASSIFIED NON-RECORD**

My understanding is that [wants it to go to All Offices therefore all SA. He wants all SA to know that OGC expects a SW for all IPAV/CIPAV applications (no getting around ITD by going to another Division that currently doesn't follow CCIPS guidance on this point). We can talk and clarify. I intend to run my draft thru both you and [before I begin the process of working it up thru Motta to OGC. We need to agree first.

---Original Message---
From: (ITD)
Sent: Monday, November 22, 2004 7:34 AM
To: (OGC) (FBI)
Subject: RE: Re IPAV/CIPAV

**SENSITIVE BUT UNCLASSIFIED NON-RECORD**

Will your EC be sent to only Tech Agents or all Agents?

---Original Message---
From: (OGC) (FBI)
Sent: Friday, November 19, 2004 5:20 PM
To: (ITD)
Cc: (ITD) (FBI)
Subject: Re IPAV/CIPAV

**SENSITIVE BUT UNCLASSIFIED NON-RECORD**

[asked me to draft an EC to all field offices regarding the fact that it is OGC's position that a search warrant is required if]

11/24/2004
The definition previously emailed for CIPAV is our current definition of the capability whether someone wants to call it CIPAV, IPAV, or Web Bug.

Do you have an accepted definition of IPAV versus CIPAV?

I indicated that you have a standard handout that you provide field offices when they are thinking of using this tool. I need a copy of this material as well.

Thanks,
(OGC) (FBI)

From: (ITD)
Sent: Tuesday, November 23, 2004 8:18 AM
To: OGC) (FBI)
Subject: RE: Re IPAV/CIPAV

SENSITIVE BUT UNCLASSIFIED NON-RECORD

application and search warrant attached

--- Original Message ---
From: OGC) (FBI)
Sent: Monday, November 22, 2004 4:10 PM
To: ITD)
Subject: RE: Re IPAV/CIPAV

--- Original Message ---
From: ITD)
Sent: Monday, November 22, 2004 11:53 AM
To: OGC) (FBI)
Subject: RE: Re IPAV/CIPAV

--- Original Message ---
From: [ ]
Sent: Monday, November 22, 2004 11:20 AM
To: [ ]
Cc: [ ]
Subject: RE: Re IPAV/CIPAV

My understanding is that [ ] wants it to go to All Offices therefore all SA. He wants all SA to

--- Original Message ---
From: OGC) (FBI)
Sent: Monday, November 22, 2004 11:20 AM
To: ITD)
Cc: ITD) (FBI)
Subject: RE: Re IPAV/CIPAV

DATE: 10-23-2008
CLASSIFIED BY 60322UC/LP/STP/qjg
REASON: 1.4 (C)
DECLASSIFY ON: 10-23-2033

My understanding is that [ ] wants it to go to All Offices therefore all SA. He wants all SA to
As to conferring with CCIPS—it's probably not a bad idea, since we regularly accuse them of establishing legal arguments that effect our techniques without conferring with us. That said, I would consider having all your pros and cons determined and supporting case law prior to discussing it.

good luck.

Would a Magistrate listen to these arguments and act accordingly or do they strictly rely upon CCIPS in computer cases? I guess my questions is do I need to discuss this with CC/PS or just provide case law
and argument to the case agent and the AUSA and let the AUSA work with CCIPS if this is the direction that he/she wants to go?

Looks like you have a good Magistrate. I'll do some checking and get back to you and any thoughts?
I spoke with U.S. Magistrate Judge Michael W. Leavitt in Yakima, Washington regarding the possibility of extending the Search Warrant for a period of time greater than 10 days. As it is right now, I am having to travel from Seattle to Yakima or Spokane, which are on the other side of the state, every ten days, which has become very old. The Magistrate understands the problem inherent with this type of SW and believes there should be a way to get around this 10 day issue. The Magistrate was not sure if this was possible, he only suggested we look into it. This is an "if then" type of scenario. I'm OGC counsel to ITD and interested in your Magistrate's thought that he can get a search warrant for an IPAV/CIPAV for a period of time greater than the 10 day period authorized by Rule 41. As you can see the lawyers at ILU are stumped. Is it possible that you or you AUSA partner can ask the Magistrate for details? How does he see doing this?

This could be very important if we could get SW for periods to exceed 10 days. Please let me know what you think.

Thanks,

Assistant General Counsel
Science and Technology Law Unit/OGC
Don't know off the top of my bald head. But, we will give it a look. Please explore this issue.

---Original Message---
From: OGC (FBI)
Sent: Thursday, November 04, 2004 3:07 PM
To: OGC (FBI)
Subject: FW

The question to me is can a federal magistrate issue a search warrant against a computer for a period of time to exceed the 10 days authorized by Rule 41? Right now we have to go back to the magistrate every 10 days to keep these things going. I have found no authority to exceed the 10 day rule of the Rule 41. Do you know of any exceptions?

Thanks,

---Original Message---
From: ITD (FBI)
Sent: Thursday, November 04, 2004 2:59 PM
To: ITD (FBI)
Cc:
Subject: RE:

I've researched the law on searching and seizing computers and data and have determined that Federal Rule of Criminal Procedure 41(c)(1) dictates that the search must be conducted "within a specified time not to exceed 10 days." I know of no way a Magistrate can deviate from this guidance but I'll ask the Investigative Law crowd for their view.

---Original Message---
From: ITD
Sent: Thursday, October 21, 2004 7:40 AM
To: OGC (FBI)
Subject: FW
Original Message:
From: (ITD)
Sent: Monday, October 18, 2004 1:31 PM
To: (SE) (FBI); (CG) (FBI); (SD) (FBI); (CY) (FBI)
Subject: RE:

Not sure if this is possible. Has there been any other suggestions concerning this.

Original Message:
From: (ITD)
Sent: Thursday, September 16, 2004 9:34 AM
To: (SE) (FBI)
Subject: RE:

Good luck and just email me the renewal date. and make that file name irresistable.

Original Message:
From: (SE) (FBI)
Sent: Thursday, September 16, 2004 11:59 AM
To: (ITD)
Subject:
SENSITIVE BUT UNCLASSIFIED NON-RECORD

Of course, I've been trying to type up a summary of the meeting for you to have a record of it, but this email should help. FYI—asked if he and I could talk through—or rather if I would listen to his arguments/concerns—simply because he knows me. I told him I would discuss his concerns with you and DITU. He also wanted to chat in advance of the CTC conference because they wanted to mention the use of IPAVs at the CTC conference that just concluded yesterday. I will provide copies of the slides for you.

Obviously this is of concern, because AUSAs will start drafting SW with technical descriptions as they understand the tool to work, but it may or may not be technically correct, etc. --DITU has had experience on that front with OIPR... As to the description of the technique, pointed to a number of places in the current SW template that he thought were potentially inaccurate or that stated more detail than was necessary to explain the tool for purposes of securing the warrant—he said he mentioned some of them to... Although his biggest concern was with the inadequate showing for delayed notice under 18 USC 3103a.

At the conference, CCIPS also touched on the jurisdiction issue, but acknowledged that the issue is still under debate. Nonetheless the handout (copy in the BU mail for you) clearly states CCIPS view—which is that Rule 41 jurisdiction vests either...

It is therefore more appropriate to analyze it consistent with a harddrive image/seizure and rather than with other forms of electronic surveillance which are statutorily governed. They rely primarily on United States v. Karo, 468 U.S. 705, 718 (1984) for the rule that a search warrant can be obtained by describing the place or object where the beacon is placed regardless of where the beacon travels, even if it goes outside of the jurisdiction. See Rule 41(b)(2).
-----Original Message-----
From: [(OGC) (FBI)]
Sent: Monday, October 04, 2004 11:32 AM
To: [(ITD) (FBI)]
Subject: Re: IPAVs

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

UC has asked me to work closely with on the IAPV technique. and I sat down last Friday and talked about where DITU is right now with the technique and it was mentioned that you had an encounter with at CCIPS that you passed on to or info only.

DITU is concerned about this matter as it could dramatically affect the way they accomplish their mission.

I would like to come over and sit down and talk to you about IPA vs in general and in particular.

When would be amenable to such a discussion?

SENSITIVE BUT UNCLASSIFIED

10/7/2004
From: (ITD)
Sent: Thursday, September 02, 2004 1:08 PM
To: (OGC) (FBI)
Subject: Template Affidavit for basic IPAV

This is the one...

Digital Evidence Section, Investigative Technology Division

secure voice
secure fax

9/2/2004
Subject: RE: help
SECRET

---Original Message---
From: [OGC] (FBI)
Sent: Monday, August 30, 2004 3:22 PM.
To: [ITD] (FBI)
Subject: help

SECRET

RECORD xxx

- do you have any case law that stands for the proposition under Title III that we can test a
device prior to court authorization and get limited data to verify that everything is working?

but we would like to be prepared to defend this to the court if necessary. thanks.

9/1/2004
this is the footnote:

DERIVED FROM: Multiple Sources
DECLASSIFICATION EXEMPTION 1
SECRET

DERIVED FROM: Multiple Sources
DECLASSIFICATION EXEMPTION 1
SECRET

9/1/2004
From: [Redacted] (ITD) (FBI)
Sent: Wednesday, August 04, 2004 11:47 AM
To: [Redacted] (OGC) (FBI)
Cc: MOTTA, THOMAS G. (ITD) (FBI)
Subject: RE: IPAVs

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Attached is the CCIPS memo. Also ask [Redacted] for a copy of the latest DRAFT FISA descriptions which includes a
record. (at any rate, I haven't attached it b/c then I would have to make it a
record). Also ask [Redacted] if I have not done any official legal analysis of it, but have had several discussion with
& Co. You also ought to take a look at the CCIPS/DOJ OnLine investigative Principle #2
http://privacy.law.harvard.edu/library/doj_ip.htm There is an argument that at least the simplest IPAV is essentially
akin to a command and that under this principle may be used without a court order. Obviously talking it
ever will help flesh out the validity of that argument.

-----Original Message-----
From: (OGC) (FBI)
Sent: Wednesday, August 04, 2004 11:33 AM
To: MOTTA, THOMAS G. (ITD) (FBI); [Redacted] (ITD) (FBI)
Subject: FW: IPAVs

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Attached is a very recent EC that addresses sensitive DITU investigative techniques - FYI. UC asked me to look at in conjunction with a request to develop a matrix of techniques vs. evidentiary predicates necessary for use by TTA in the field. He used the term IPAVs with a comment that you did some work for him on this subject. If either of you have anything that would be helpful on IPAVs or
matrix, I would appreciate a copy.

-----Original Message-----
From: (ITD)
Sent: Wednesday, August 04, 2004 10:08 AM
To: (OGC) (FBI)
Subject: RE: IPAVs

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

I recently authored an EC on FBI policy as it relates to the deployment of IPAVs. If you want to know the
details of how IPAVs work and what they do, let's meet. Here's the EC.
I'm not sure that we've met yet but I have recently been detailed as DITU/CEAU's attorney. I'm assigned to Science and Technology Law Unit/OGC. As you might guess, what DITU does is all new to me and I'm picking up everything as new and unusual, like IPAVs.

gave me your name as a starting point for learning what IPAVs are, from which he expects me to work up a matrix for use in the field for use of the end product, e.g., evidence. said that you recently authored an EC on IPAVs. Could you please email a copy or send my the ID# so I can pull it off of ACS. Once I've read it, I'd like to meet you and discuss this topic.

Thanks,
SECRET
RECORD xxxx

this is the final one that we sent over.

-----Original Message-----
From: (OGC) (FBI)
Sent: Thursday, August 19, 2004 3:38 PM
To: (OGC) (FBI)
Subject: FW: descriptions affidavit

SECRET
RECORD xxxx

Can you tell me where you are in negotiations with OIPR regarding the definitions that will be used by the FISA court in matters affecting my client, DITU? Attached is an affidavit that lists the terms to be defined that appears to have been prepared in the July 04 timeframe but has not been submitted to the court. I am waiting, evidently, to be told that these are the agreed upon definitions. Back in June 04, you thought you were close to agreement....

In the alternative, if overall agreement has not been reached, has agreement been reached on some of the terms and if so which terms. This would help us to some extent.

Thanks for your help on this,

-----Original Message-----
From: (ITD) (FBI)
Sent: Thursday, August 19, 2004 2:54 PM
To: (ITD) (FBI), (OGC) (FBI)
Subject: RE: descriptions affidavit

SECRET
RECORD xxxx

FYI--this one has a later date, but I don't know if it is in fact the "final"

-----Original Message-----
From: (ITD) (FBI)
Sent: Thursday, August 19, 2004 12:39 PM
To: (OGC) (FBI), (ITD) (FBI)
Subject: FW: descriptions affidavit

9/6/2007
DECLASSIFIED BY 60322UC/LP/STP/gjy
ON 10-17-2006
I think this was close to final

-----Original Message-----
From: (OGC) (FBI)
Sent: Friday, June 25, 2004 3:03 PM
To: (ITD) (FBI)
Subject: RE: descriptions affidavit

-----Original Message-----
From: (ITD) (FBI)
Sent: Friday, June 25, 2004 3:00 PM
To: (OGC) (FBI)
Subject: RE: descriptions affidavit

-----Original Message-----
From: (ITD) (FBI)
Sent: Friday, June 25, 2004 1:24 PM
To: (ITD) (FBI)
Subject: RE: descriptions affidavit

-----Original Message-----
From: (ITD) (FBI)
Sent: Friday, June 25, 2004 1:26 PM
To: (ITD) (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI)
Cc: MOLTA, THOMAS G. (ITD) (FBI); (ITD) (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI)
Subject: RE: descriptions affidavit

-----Original Message-----
From: (OGC) (FBI)
Sent: Friday, June 25, 2004 11:48 AM
To: (OGC) (FBI)
Subject: RE: descriptions affidavit

are we fine on the EC, too - or does that need revision

-----Original Message-----
From: (ITD) (FBI)
Sent: Friday, June 25, 2004 12:24 PM
To: (ITD) (FBI)
Subject: RE: descriptions affidavit

everything else looks fine to me.

mct

-----Original Message-----
From: (OGC) (FBI)
Sent: Friday, June 25, 2004 11:48 AM
To: (OGC) (FBI)

9/6/2007
To: HTTP (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI); MOTTA, THOMAS G. (ITD) (FBI); OGC (FBI)
Cc: ITD (FBI)
Subject: RE: descriptions affidavit

SECRET
RECORD xxxx

it was reworded - i don't have a problem with the concept or with the practice.

-----Original Message-----
From: HTTP (FBI)
Sent: Thursday, June 24, 2004 3:03 PM
To: HTTP (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI); MOTTA, THOMAS G. (ITD) (FBI); OGC (FBI)
Cc: HTTP (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI); MOTTA, THOMAS G. (ITD) (FBI); OGC (FBI)
Subject: RE: descriptions affidavit

SECRET
RECORD xxxx

How did we deal with footnote 1? Is it ok?

marcus

-----Original Message-----
From: HTTP (FBI)
Sent: Thursday, June 24, 2004 11:03 AM
To: HTTP (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI); MOTTA, THOMAS G. (ITD) (FBI); OGC (FBI)
Cc: HTTP (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI); MOTTA, THOMAS G. (ITD) (FBI); OGC (FBI)
Subject: descriptions affidavit

SECRET
RECORD xxxx

Attached is what I hope is the final draft of the affidavit. I have added the CIPAV and made any changes that were suggested. Please review this one last time prior to it being sent to OIPR. If there are any additions, corrections, deletions, etc., please let me know sooner rather than later. Thanks.

DERIVED FROM: Multiple Sources
DECLASSIFICATION EXEMPTION 1
SECRET
I think this was close to final

---Original Message---
From: (OGC) (FBI)
Sent: Friday, June 25, 2004 3:03 PM
To: (ITD) (FBI)
Subject: RE: descriptions affidavit

---Original Message---
From: (OGC) (FBI)
Sent: Friday, June 25, 2004 3:00 PM
To: (OGC) (FBI)
Subject: RE: descriptions affidavit

---Original Message---
From: (ITD) (FBI)
Sent: Friday, June 25, 2004 1:26 PM
To: (ITD) (FBI); (ITD) (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI)
Cc: Motta, Thomas G. (ITD) (FBI)
Subject: RE: descriptions affidavit

---Original Message---
From: (ITD) (FBI)
Sent: Friday, June 25, 2004 1:24 PM
To: (OGC) (FBI)
Subject: RE: descriptions affidavit

---Original Message---
From: (CN) (FBI)
Sent: Thursday, August 19, 2004 12:39 PM
To: (OGC) (FBI); (OGC) (FBI)
Subject: FW: descriptions affidavit

---Original Message---
From: (OGC) (FBI)
Sent: Friday, June 25, 2004 3:03 PM
To: (ITD) (FBI)
Subject: RE: descriptions affidavit

---Original Message---
From: (OGC) (FBI)
Sent: Friday, June 25, 2004 3:00 PM
To: (OGC) (FBI)
Subject: RE: descriptions affidavit

---Original Message---
From: (ITD) (FBI)
Sent: Friday, June 25, 2004 1:26 PM
To: (ITD) (FBI); DICLEMENTE, ANTHONY P. (ITD) (FBI)
Cc: Motta, Thomas G. (ITD) (FBI)
Subject: RE: descriptions affidavit

---Original Message---
From: (ITD) (FBI)
Sent: Friday, June 25, 2004 1:24 PM
To: (OGC) (FBI)
Subject: RE: descriptions affidavit
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mtc

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How did we deal with footnote 1? Is it ok?

marcus

Attached is what I hope is the final draft of the affidavit. I have added the CIPAV and made any changes that were suggested. Please review this one last time prior to it being sent to OIPR. If there are any additions, corrections, deletions, etc., please let me know sooner rather than later. Thanks.
By letter dated July 24, 2007, Electronic Frontier Foundation, through staff attorney Marcia Hofmann, submitted a FOIA request to FBIHQ seeking the following records:

All agency records (including, but not limited to, electronic records) concerning to Bureau's use of Computer and Internet Protocol Address Verifier (CIPAV) software.

By letter dated July 19, 2007, CNET Networks, through Chief Political Correspondent Declan McCullagh, submitted a FOIA request to FBIHQ seeking the following records:

All records, including but not limited to correspondence, memoranda, reports, presentations, use or deployment logs, procurement agreements, vendor contracts, and legal opinions, concerning or involving a technology used by the FBI called Computer and Internet Protocol Address Verifier (CIPAV) or technologies with substantially similar capabilities as CIPAV.

We are sending this EC to you because we believe that you may have documents potentially responsive to these three FOIA requests. The FOIA requires the FBI to conduct a search which is reasonably calculated to uncover all relevant agency records in response to a FOIA request. As a result, we request that FBI personnel in your office be directed to search for any and all retrievable agency records in their custody, control and/or possession in those locations likely to reveal potentially responsive records. It is recommended that you submit an "all employee" e-mail to your office to identify whether any such records exist.

Examples of agency records include:

- all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals or studies;

- electronic records maintained on computers, or audio or video tapes;

- e-mails (regardless of whether they have been designated as "record" or "non-record" in Trilogy Microsoft Outlook);