

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

ELECTRONIC FRONTIER FOUNDATION)
1875 Connecticut Avenue, N.W.)
Suite 650)
Washington, DC 20009,)

Plaintiff,

v.

DEPARTMENT OF JUSTICE)
950 Pennsylvania Avenue, N.W.)
Washington DC 20530,)

Defendant.)

Case: 1:08-cv-00327
Assigned To : Robertson, James
Assign. Date : 2/26/2008
Description: FOIA/Privacy Act

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Plaintiff Electronic Frontier Foundation seeks injunctive and other appropriate relief for the processing and release of agency records requested by plaintiff from defendant Department of Justice. Specifically, plaintiff seeks disclosure of records concerning communications between the Department's former Chief Privacy and Civil Liberties Officer and Google, which subsequently hired the agency official to act as the company's Senior Privacy Counsel.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Electronic Frontier Foundation (“EFF”) is a not-for-profit corporation established under the laws of the State of California, with offices in San Francisco, California and Washington, DC. EFF is a donor-supported membership organization that works to inform policymakers and the general public about civil liberties issues related to technology, and to act as a defender of those liberties. In support of its mission, EFF uses the FOIA to obtain and disseminate information concerning the activities of federal agencies.

4. Defendant Department of Justice (“DOJ”) is a Department of the Executive Branch of the United States Government. DOJ is an “agency” within the meaning of 5 U.S.C. § 552(f).

Background

5. In February 2006, former Attorney General Alberto Gonzales appointed Jane C. Horvath to serve as the DOJ’s first Chief Privacy and Civil Liberties Officer.

6. In August 2007, it was announced that Ms. Horvath would be leaving her position at DOJ to become Senior Privacy Counsel at Google.

7. Through its Internet search service and other activities, Google obtains and retains a massive quantity of information, some of which is personally identifiable and can facilitate the identification of search queries made by particular individuals, as well as other online transactions. Defendant DOJ has, on occasion, sought access to search data maintained by Google and other Internet companies. Google’s ability to collect and retain personal data, and defendant DOJ’s desire to obtain access to such data, have been the subjects of public debate and controversy.

Plaintiff's FOIA Request

8. By letter sent by facsimile to defendant DOJ on August 16, 2007, plaintiff requested under the FOIA the following agency records:

all correspondence, electronic mail or other communications between Jane C. Horvath, the Department's Chief Privacy and Civil Liberties Officer, and employees, representatives and/or agents of Google Inc. . . . created from February 2006 to the present.

9. By letter to plaintiff dated August 24, 2007, defendant DOJ acknowledged that it had received plaintiff's FOIA request on August 17, 2007.

10. To date, defendant DOJ has not disclosed or otherwise accounted for any agency records responsive to plaintiff's FOIA requests.

11. Defendant DOJ has violated the applicable statutory time limit for the processing of FOIA requests.

12. Plaintiff has exhausted the applicable administrative remedies.

13. Defendant DOJ has wrongfully withheld the requested records from plaintiff.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

14. Plaintiff repeats and realleges paragraphs 1-13.

15. Defendant DOJ has wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for the processing of FOIA requests.

16. Plaintiff has exhausted the applicable administrative remedies with respect to defendant DOJ's wrongful withholding of the requested records.


17. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested records.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendant DOJ to process immediately the requested records in their entirety;
- B. order defendant DOJ, upon completion of such processing, to disclose the requested records in their entirety and make copies available to plaintiff;
- C. provide for expeditious proceedings in this action;
- D. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- E. grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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