

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ELECTRONIC FRONTIER FOUNDATION,)	
)	
Plaintiff,)	Civil Action No. 08-1023
)	
v.)	
)	
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE)	
)	
and)	
)	
U.S. DEPARTMENT OF JUSTICE,)	
)	
Defendants.)	
)	

DECLARATION OF GAYLA D. SESSOMS

I, GayLa D. Sessoms, do hereby state and declare as follows:

1. I am the Freedom of Information Act (FOIA) Coordinator for the National Security Division (NSD), of the United States Department of Justice (DOJ). In that capacity, I manage day-to-day FOIA operations including the receipt, review, search, and records processing in connection with all incoming access requests.

2. I make the statements herein on the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties.

3. The National Security Division's core mission is to coordinate the Department's efforts to combat terrorism and protect national security. The NSD is responsible for assisting the Attorney General and other senior Department and Executive Branch officials in ensuring that the national security-related activities of the U.S. are consistent with relevant law; overseeing terrorism investigations and prosecutions; handling counterespionage cases and matters; obtaining court

authorization for the collection of foreign intelligence under the Foreign Intelligence Surveillance Act (FISA); and conducting oversight of intelligence agency compliance with certain national security legal requirements. The NSD, which consolidates the Department's primary national security elements within a single Division, currently consists of the Office of Intelligence Policy and Review (OIPR) ; the Counterterrorism (CTS) and Counterespionage (CES) Sections, formerly part of the Criminal Division; and a new Law and Policy Office (LPO).

ELECTRONIC FRONTIER FOUNDATION'S FOIA REQUEST

4. By letter dated December 21, 2007, the Electronic Frontier Foundation ("EFF") submitted a request under the Freedom of Information Act ("FOIA") for "all agency records from September 1, 2007 to the present concerning briefings, discussions, or other exchanges that Justice Department officials have had with 1) members of the Senate or House of Representatives and 2) representatives or agents of telecommunications companies concerning amendments to FISA, including any discussions or immunizing telecommunications companies or holding them otherwise unaccountable for their role in government surveillance activities." A copy of EFF's FOIA request is attached hereto as Exhibit A. The NSD received EFF's request on December 27, 2007 and acknowledged receipt on the same day. See Exhibit B. EFF also requested expedited processing of its FOIA request, and by letter dated January 29, 2008, the NSD notified EFF that its request had been granted for expedited treatment. See Exhibit C.

5. NSD routinely processes its FOIA requests on a first-in, first-out basis. However, upon granting expedited processing, EFF's request was immediately moved ahead of fourteen FOIA requests in the NSD FOIA queue that were received prior to plaintiff's request. Accordingly, EFF's FOIA request is currently under review and with the exception of "quick

hits,” the processing of most other pending requests has been minimal.¹

RECORDS SEARCHES

6. After granting expedited processing, NSD immediately began to coordinate a strategy for searching for records responsive to EFF’s requests that included identifying available personnel resources to conduct the searches. A search for responsive records was initiated within the National Security Division offices reasonably likely to maintain records responsive to plaintiff’s request: the Office of Intelligence Policy and Review (OIPR) , the Law and Policy Office (LPO) and the “Front Office.” In accordance with standard operating procedures, an electronic communication (e-mail) regarding search requirements was initially transmitted to approximate fifty staff members within these offices upon receipt of plaintiff’s request. Follow-up reminders were transmitted after expedited processing was granted and again when plaintiff filed its Complaint. The individuals asked to search for records responsive to this FOIA request also work on significant mission-related matters pertaining to the national security of the United States. These officials and employees are required to stop this critical work in order to perform the necessary searches for this case and each of them did so as soon as was practicable.

7. **OIPR** maintains three general categories of records: operations records relating to proceedings before the Foreign Intelligence Surveillance Court (FISC) under the Foreign Intelligence Surveillance Act (“FISA”), including applications for authority to conduct electronic surveillance, physical searches, other authorities under FISA as referenced above, and other operational matters; litigation records; and policy records including congressional inquiries,

¹ FOIA requests that can be processed and closed within five days are considered “quick hits,” and the NSD has a total of thirty-three pending FOIA requests (including the fourteen requests received prior to plaintiff’s).

reports and correspondence. In response to plaintiff's request, a search was conducted of OIPR's policy records because we could reasonably expect to locate responsive records within these files rather than the litigation and FISA files. This search was performed by the sole Program Analyst assigned to FOIA operations. In addition, all senior staff, as well as attorneys with responsibilities for matters related to plaintiff's request were asked to query their electronic communications (e-mail) and office files for responsive documents. The Program Analyst performed the searches for those attorneys unable to do so because of the priorities imposed by mission-related tasks. All electronic communications (e-mail) were queried as well as office (paper) files identified by the attorneys as potentially responsive. Responsive records (including classified) have been identified within OIPR.

8. **LPO** maintains its records within the individual offices of the counsels for Law and Policy, rather than a central repository. Accordingly, both the electronic communications (e-mail) and office files of both LPO attorneys were searched. One attorney performed his own queries and I conducted queries for the other attorney that included all of his electronic communications (e-mail) as well as office (paper) files identified by the attorney as potentially responsive. Responsive records (including classified) have been identified within LPO.

9. **The Front Office** maintains its records within the individual offices of the Assistant Attorney General for National Security, the various Deputies, Senior Counsels and Counsels, rather than a central repository. Accordingly, both the electronic communications (e-mail) and office files of all Front Office attorneys were searched. To the extent that attorneys within the Front Office were unable to search their files because of the priorities imposed by mission-related tasks, the Program Analyst, Records Officer and I conducted these queries. We

queried all electronic communications (e-mail) as well as the office (paper) files identified by the attorneys as potentially responsive. Electronic communications (e-mail) identified during an initial search of the files of the Assistant Attorney General for National Security were subsequently reviewed by Front Office personnel and determined to be outside the scope of plaintiff's request. Other responsive records (including classified) have been identified within the Front Office.

10. The NSD completed its queries for responsive records last week and identified roughly two boxes of material that may be responsive to plaintiff's request. The Program Analyst and I are currently reviewing this material to 1) ensure that it is responsive to plaintiff's request; 2) eliminate any duplicates; 3) identify all third agency documents that require referral and/or consult; and 4) identify all classified records. Because the NSD's queries were conducted within three different offices, it is anticipated that multiple copies of the same document will be located. Once the universe of responsive documents is determined, the Program Analyst and I will immediately begin the review of this material for the application of any FOIA exemptions. The NSD will notify plaintiff of the exact volume of responsive records no later than Friday, March 21, 2008.

11. The existence of classified material contributes significantly to the complexities attendant to processing a FOIA request. Responsive documents that contain classified information must undergo an additional, and time-sensitive, review to ensure that national security interests are properly balanced against the public's access rights. Such review also includes a page-by-page and line-by-line review of the documents to determine which, if any, FOIA exemptions may apply. In light of the sensitive nature of classified information in general,

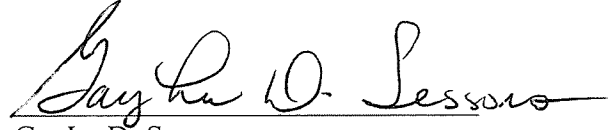
and records related to FISA amendments in particular, potentially responsive material must be reviewed by appropriate entities with equities in the documents to ensure that legitimate national security interests are fully protected.

12. Plaintiff's request that the NSD complete processing its FOIA request within ten days is simply not practicable. The NSD is devoting appropriate resources and effort to processing plaintiff's FOIA request as soon as practicable. Plaintiff's request for release of records within ten days is not practicable because the NSD has identified both third agency records that require referral and consult with other agencies as well as classified records that require a declassification and FOIA review. In addition, although plaintiff's request has been granted expedited treatment and is being processed accordingly, the NSD has a statutory obligation to process its current workload of thirty-three pending FOIA requests. The NSD cannot simply abandon its work on its other FOIA requests. Moreover, a ten day deadline would increase the chances of an inadvertent disclosure of records (some of which contain classified national security information) that are exempted from release under the FOIA. For these reasons, the NSD proposes to focus initially on the review of unclassified records as well as records that do not contain third agency equities. The Program Analyst and I will complete the review of this category of records and provide an interim response to plaintiff no later than April 11, 2008.

13. With respect to responsive records that require referral and consult with other agencies as well as any classified records, the NSD is not in a position to provide an estimated date of production given numerous considerations and additional burdens that must be taken into account before releasing such records. NSD is committed to processing these records as soon as practicable and is willing to provide the Court with a status report every thirty days to update the

Court on the NSD's progress.

14. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "GayLa D. Sessoms", written over a horizontal line.

GayLa D. Sessoms
FOIA Coordinator
National Security Division

Executed on this 18th day of March, 2008.

EXHIBIT A



Electronic Frontier Foundation

454 Shotwell Street
San Francisco, CA 94110
+1 415 436 9333 (tel)
+1 415 436 9993 (fax)

FAX COVER SHEET

DATE: December 21, 2007

TO: GayLa Sessoms, FOIA Coordinator, National Security
Division

Fax Number: (202) 305-4211

FROM: Marcia Hofmann, Electronic Frontier Foundation

RE: Freedom of Information Act Request and Request for
Expedited Processing

Pages sent: 26 including cover page

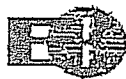
COMMENTS:

NOTICE This fax is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure. If you are not the intended recipient or his or her agent, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited and asked to please notify us immediately by telephone. Thank you.

PLEASE CALL IF THERE IS A PROBLEM

08-060

EXHIBIT A



Electronic Frontier Foundation

December 21, 2007

VIA FACSIMILE — (202) 305-4211

GayLa D. Sessoms, FOIA Coordinator
National Security Division
Department of Justice
Room 6150, 950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

RE: Freedom of Information Act Request and Request for Expedited Processing

Dear Ms. Sessoms:

This letter constitutes an expedited request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Department of Justice National Security Division on behalf of the Electronic Frontier Foundation ("EFF"). We make this request as part of EFF's FOIA Litigation for Accountable Government ("FLAG") Project, which works to obtain government documents and make them widely available to the public.

On August 5, 2007, President Bush signed into law the Protect America Act, legislation which amended the Foreign Intelligence Surveillance Act ("FISA") to expand the government's power to intercept communications without warrants, as well as shield telecommunications companies from future liability for their role in such activity.

Since the passage of this law, the Administration has tried to convince Congress to amend FISA to make it impossible for courts to impose liability on telecommunications companies for participating in a massive and illegal warrantless spying operation conducted by the National Security Agency. See Signing Statement, *President Bush Commends Congress on Passage of Intelligence Legislation*, Aug. 6, 2007; James Risen, *Bush Signs Law to Widen Reach for Wiretapping*, *NY Times*, Aug. 6, 2007; Mark Hosenball and Michael Isikoff, *Case Dismissed?: The Secret Lobbying Campaign Your Phone Company Doesn't Want You to Know About*, *Newsweek*, updated Sept. 26, 2007, available at <http://www.newsweek.com/id/41142>; Eric Lichtblau, James Risen and Scott Shane, *Wider Spying Fuels Aid Plan for Telecom Industry*, *NY Times*, Dec. 16, 2007.

We are seeking all agency records from September 1, 2007 to the present concerning briefings, discussions, or other exchanges that Justice Department officials have had with 1) members of the Senate or House of Representatives and 2) representatives or agents of telecommunications companies¹ concerning amendments to FISA, including any discussion of immunizing

¹ The phrase "representatives or agents of telecommunications companies" is intended to include lobbyists and lawyers acting on behalf of such companies. According to *Newsweek*, these individuals may include, but are not limited to, "powerhouse Republican lobbyists Charlie Black and Wayne Berman (who represent AT&T and Verizon, respectively), former GOP senator and

Freedom of Information Act Request and Request for Expedited Processing
 December 21, 2007
 Page 2

telecommunications companies or holding them otherwise unaccountable for their role in government surveillance activities. This request includes, but is not limited to, all e-mail, appointment calendars, telephone message slips, or other records indicating that such briefings, discussions, or other exchanges took place.

Request for Expedited Processing

This request warrants expedited processing because it pertains to information about which there is "[a]n urgency to inform the public about an actual or alleged federal government activity," and it is "made by a person primarily engaged in disseminating information." 28 C.F.R. § 16.5(d)(1)(ii). The information we request easily satisfies this standard.

As an initial matter, it is worth noting that OLA recently granted expedited processing for two FOIA requests nearly identical to this one (see EFF request letters seeking expedited processing and OLA letter granting expedited processing attached hereto).

The federal government activity at issue here — DOJ efforts to secure immunity for telecoms engaged in illegal surveillance — raises serious questions about the DOJ's interests in revision of the FISA. Moreover, the Protect America Act includes a sunset provision requiring Congress to decide within weeks whether to reauthorize the legislation. This decisionmaking process has involved, and will continue to involve, congressional debate about whether to expand the law further, and if so, how much. Because Congress will imminently consider modifying FISA again, there is an urgency to inform the public about the lobbying forces pushing for reform of the law. The information we have requested will help the public and Congress fully participate in the current and ongoing debate over whether the government's authority to conduct electronic surveillance should be further expanded and facilitated by telecommunications companies.

The purpose of this request is to obtain information directly relevant to the DOJ's communications with members of Congress and telecommunications carriers about updating FISA to grant the companies retroactive immunity for illegal activities. There is an urgency to inform the public about the information we seek. Therefore, this request clearly meets the standard for expedited processing set forth in DOJ regulations.

Further, as I explain below in support of our request for "news media" treatment, EFF is "primarily engaged in disseminating information."

U.S. ambassador to Germany Dan Coats (a lawyer at King & Spaulding who is representing Sprint), former Democratic Party strategist and one-time assistant secretary of State Tom Donilon (who represents Verizon), former deputy attorney general Jamie Gorelick (whose law firm also represents Verizon) and Brad Berenson, a former assistant White House counsel under President George W. Bush who now represents AT&T." Mark Hosenball and Michael Isikoff, *Case Dismissed?*, *Newsweek*, updated Sept. 26, 2007.

Freedom of Information Act Request and Request for Expedited Processing
 December 21, 2007
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Request for News Media Fee Status

EFF asks that it not be charged search or review fees for this request because EFF qualifies as a "representative of the news media" pursuant to the FOIA and 28 C.F.R. § 16.11(b)(6). In requesting this classification, we note that the Department of Homeland Security and Department of State have recognized that EFF qualifies as a "news media" requester based upon the publication activities set forth below (see DHS stipulation and State Department letter attached hereto). In addition, the National Security Agency has previously determined that EFF is not only a "news media requester," but also "primarily engaged in disseminating information" for purposes of expedited processing (see attached EFF FOIA request and NSA response, in which EFF requested expedited processing because it sought information "urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity," and NSA granted the request). We further note that the U.S. Court of Appeals for the D.C. Circuit has stressed that "different agencies [must not] adopt inconsistent interpretations of the FOIA." *Al-Fayed v. CIA*, 254 F.3d 300, 307 (D.C. Cir. 2001), quoting *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1287 (D.C. Cir. 1983).

EFF is a non-profit public interest organization that works "to protect and enhance our core civil liberties in the digital age."² One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties."³ To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which received 46,682,194 hits in July 2007 — an average of 62,744 per hour. The web site reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

EFF has regularly published an online newsletter, the EFFector, since 1990. The EFFector currently has more than 77,000 subscribers. A complete archive of past EFFectors is available at <http://www.eff.org/effector/>.

Furthermore, EFF publishes a blog that highlights the latest news from around the Internet. DeepLinks (<http://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology. It also provides miniLinks, which direct readers to other news articles and commentary on these issues. DeepLinks had 510,633 hits in July 2007.⁴

² Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited Dec. 18, 2007).

³ *Id.*

⁴ These figures include hits from RSS feeds through which subscribers can easily track updates to DeepLinks and miniLinks.

Freedom of Information Act Request and Request for Expedited Processing
 December 21, 2007
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In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <http://www.eff.org/wp/>, provide information and commentary on such diverse issues as electronic voting, free speech, privacy and intellectual property.

EFF has also published several books to educate the public about technology and civil liberties issues. *Everybody's Guide to the Internet* (MIT Press 1994), first published electronically as *The Big Dummy's Guide to the Internet* in 1993, was translated into several languages, and is still sold by Powell's Books (<http://www.powells.com>). EFF also produced *Protecting Yourself Online: The Definitive Resource on Safety, Freedom & Privacy in Cyberspace* (HarperEdge 1998), a "comprehensive guide to self-protection in the electronic frontier," which can be purchased via Amazon.com (<http://www.amazon.com>). Finally, *Cracking DES: Secrets of Encryption Research, Wiretap Politics & Chip Design* (O'Reilly 1998) revealed technical details on encryption security to the public. The book is available online at <http://cryptome.org/cracking-des.htm> and for sale at Amazon.com.

Most recently, EFF has begun broadcasting podcasts of interviews with EFF staff and outside experts. *Line Noise* is a five-minute audio broadcast on EFF's current work, pending legislation, and technology-related issues. A listing of *Line Noise* podcasts is available at [feed://www.eff.org/rss/linenoisemp3.xml](http://www.eff.org/rss/linenoisemp3.xml) and [feed://www.eff.org/rss/linenoiseogg.xml](http://www.eff.org/rss/linenoiseogg.xml). These podcasts were downloaded more than 2,600 times from EFF's in July 2007.

Due to these extensive publication activities, EFF is a "representative of the news media" under the FOIA and agency regulations.

Request for a Public Interest Fee Waiver

EFF is entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, Department of Justice components determine whether "[d]isclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government," and whether such disclosure "is not primarily in the commercial interest of the requester." 28 C.F.R. §§ 16.11(k)(i), (ii). This request clearly satisfies these criteria.

First, the DOJ's relationship with telecommunications companies concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i). Furthermore, the DOJ's push to amend FISA unquestionably constitutes government operations or activities.

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities," 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). EFF has requested information that will shed light on how and why the DOJ is lobbying to immunize telecommunications companies from liability for their role in conducting

Freedom of Information Act Request and Request for Expedited Processing
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Page 5

illegal surveillance.

Third, the requested material will "contribute to public understanding" of the DOJ's efforts to modify FISA. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the reasons why and manner in which the DOJ is lobbying for legal reform, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

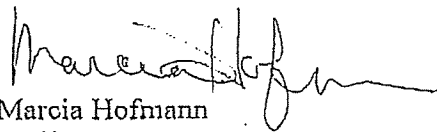
Fourth, the disclosure will "contribute significantly" to the public's knowledge and understanding of the DOJ's push to amend FISA to protect telecommunications companies. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Disclosure of the requested information will help inform the public about the Justice Department's efforts to reform the law and the interests behind them, as well as contribute to the public debate about whether FISA should be further modified.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge.

Thank you for your consideration of this request. As applicable Department regulations provide, we will anticipate your determination within ten (10) calendar days. 28 C.F.R. § 16.5(d)(1). Please be advised that, given the urgency of this matter, EFF intends to seek immediate judicial relief if a response to this request for expedition is not issued in a timely manner.

Sincerely,



Marcia Hofmann
Staff Attorney

Enclosures



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

AUG 27 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
Suite 650
1875 Connecticut Avenue, NW
Washington, DC 20009

Re: OLA/07-R0909
OLA/07-R0910
MLF:JNJ

Dear Ms. Hofmann:

This is to acknowledge receipt of your two letters dated August 16, 2007, which were received in this Office on August 17, 2007, in which you requested all records of communications between the Department of Justice and Congress and between Justice and telecommunications companies from December 2005 to the present concerning amendments to the Foreign Intelligence Surveillance Act. This response is made on behalf of the Office of Legislative Affairs.

I have determined that for purposes of these requests, it is appropriate to afford them expedited processing. At this time, your requests have been assigned to a FOIA Specialist in this Office and a records search has been initiated in the Office of Legislative Affairs.

We have not yet made a decision on your requests for fee waivers. We will do so after we determine whether fees will be assessed for these requests.

If you have any questions or wish to discuss the processing of your requests, you may contact Julie N. Johns, the analyst processing your requests, by telephone at the above number or you may write to her at the above address.

Sincerely,

A handwritten signature in black ink, appearing to read "Carmen L. Mallon", written over a horizontal line.

Carmen L. Mallon
Chief of Staff

SEP-10-2007 11:24 From:

7034822144

To: 2027979066

P.2/5

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
DIRECTOR OF THE INTELLIGENCE STAFF

Mr. John F. Hackett
Chief, Information Management Office
Office of the Director of National Intelligence
Washington, DC 20511

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W.
Suite 600
Washington, DC 20009

Reference: DF-2007-00079

Dear Ms. Hofmann:

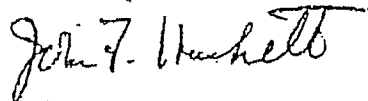
On 4 September 2007 the Office of the Director of National Intelligence received your facsimile dated 31 August 2007, wherein you requested under the Freedom of Information Act (FOIA) records concerning:

"... ODNI's communications with telecommunications companies about updating FISA to provide them retroactive legal immunity for illegal activities."

We accept your request and have assigned it the reference number above. Please use this number when corresponding with us so that we can identify it easily. In addition, your request for expedited processing is granted and your request will be processed as soon as practicable.

If you have any questions you may contact the FOIA Requester Service Center at 571-204-4774.

Sincerely,



John F. Hackett
Director, Information Management Office

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Distribution:
TMS/IRRC/PTD/carey/.../6 September 2007

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7034822144

To: 2027979066

P.4/5

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
DIRECTOR OF THE INTELLIGENCE STAFF

Mr. John F. Hackett
Chief, Information Management Office
Office of the Director of National Intelligence
Washington, DC 20511

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W.
Suite 600
Washington, DC 20009

Reference: DF-2007-00080

Dear Ms. Hofmann:

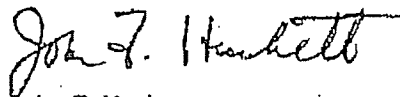
On 4 September 2007 the Office of the Director of National Intelligence received your facsimile dated 31 August 2007, wherein you requested under the Freedom of Information Act (FOIA) records concerning:

"...exchanges that Director McConnell or other ODNI officials have had with members of the Senate or House of Representatives concerning amendments to FISA ..."

We accept your request and have assigned it the reference number above. Please use this number when corresponding with us so that we can identify it easily. In addition, your request for expedited processing is granted and your request will be processed as soon as practicable.

If you have any questions you may contact the FOIA Requester Service Center at 571-204-4774.

Sincerely,



John F. Hackett
Director, Information Management Office

SEP-10-2007 11:24 From:

7034822144

To:2027979066

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IMS/MRC/PIPD/carey/.../6 September 2007

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER
FOUNDATION

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Civil Action No. 06-1988 (ESH)

STIPULATED DISMISSAL OF PLAINTIFF'S SECOND CAUSE OF ACTION

Plaintiff Electronic Frontier Foundation (EFF) and Defendant Department of Homeland Security (DHS), by counsel, hereby stipulate and agree as follows:

1. Defendant DHS has granted news media status to Plaintiff EFF based on the representations contained in EFF's FOIA requests, which demonstrate that EFF is an "entity that is organized and operated to publish or broadcast news to the public." 6 C.F.R. § 5.11(b)(6).

Defendant DHS will continue to regard Plaintiff EFF as a "representative of the news media" absent a change in circumstances that indicates that EFF is no longer an "entity that is organized and operated to publish or broadcast news to the public." 6 C.F.R. § 5.11(b)(6).

2. Accordingly, the parties herewith agree to the dismissal of Plaintiff EFF's Second Cause of Action, related to EFF's status as a "representative of the news media."

3. The parties further agree that each will pay its own fees and costs for work on the dismissed claim.

SO STIPULATED AND AGREED this 27th day of February, 2007.

Case 1:06-cv-01988-ESH Document 15 Filed 02/27/2007 Page 2 of 2

/s/ David L. Sobel

DAVID L. SOBEL
D.C. Bar 360418

MARCIA HOFMANN
D.C. Bar 484136

ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Avenue, N.W.
Suite 650
Washington, D.C. 20009
(202) 797-9009

Counsel for Plaintiff

PETER D. KEISLER
Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

ELIZABETH J. SHAPIRO
D.C. Bar 418925
Assistant Branch Director
U.S. Department of Justice
Civil Division, Federal Programs Branch

/s/ John R. Coleman

JOHN R. COLEMAN
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW; Room 6118
Washington, D.C. 20530
(202) 514-4505

Counsel for Defendant



United States Department of State
Washington, D.C. 20520

May 1, 2007
Case Number: 200701765

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W., Suite 650
Washington, DC 20009

Dear Ms. Hofmann:

This is in response to your Freedom of Information Act (FOIA) request, dated March 19, 2007 for copies of documents concerning copyright matters between the U.S. and Canada.

We will begin the processing of your request based upon the information provided in your communication. We will notify you as soon as responsive material has been retrieved and reviewed.

We wish to advise you that the cut-off date for retrieving records is either the date you have given the Department by specifying a particular time frame or the date the search is initiated.

Fees: The Freedom of Information Act requires agencies to assess fees to recover the direct costs of processing requests, unless a fee waiver has been granted.

By making a FOIA request, you have agreed to pay all applicable fees up to \$25.00 unless a fee waiver has been granted. You may

Office of Information Programs and Services
U.S. Department of State SA-2
Washington, DC 20522-8100
Web site: foia.state.gov

Inquiries: 202-261-8484
Phone: 202-261-8484
FAX: 1-202-261-8579
email: FOIAStatus@state.gov

- 2 -

specify a willingness to pay a greater or lesser amount. If the estimated fees exceed this limit, you will be notified.

Based upon the information that you have provided, we have placed you in the "news media" requester category. This category requires us to assess:

- duplication costs after first 100 pages.(see 22 CFR 171, enclosed)

Therefore, without an agreement to pay fees please be advised that your request will be processed without cost up to the required duplication of the first 100 pages.

Please let us know if you are willing to pay the fees that will incurred in the processing of your request. You may set a limit of the maximum amount that you wish to pay.

Based upon the information provided in your letter, your request for a fee waiver has been denied. If you wish to appeal this decision, you may write to the Chief, Requester Liaison Division, at the address given on the bottom of this page. Your appeal should address the points listed in the enclosed sheet entitled "Requests for Fee Waivers." Your appeal must be sent to us within 30 days from the date that you receive this letter.

While we will make every effort to meet the time limits cited in the Freedom of Information Act (5 USC § 552), unusual circumstances

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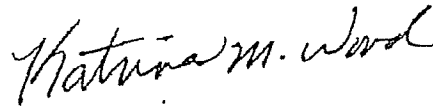
- 3 -

may arise for extending the time limit (see enclosure). We appreciate your patience in this matter.

If you have any questions, please do not hesitate to contact us. We can provide faster service if you include the case number of your request in your communications with us.

We are pleased to be of service to you.

Sincerely,



Katrina M. Wood
Requester Communications Branch

Enclosure: As stated.

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Electronic Frontier Foundation
Protecting Rights and Promoting Freedom on the Electronic Frontier

January 23, 2007

BY FACSIMILE — (301) 688-4762

National Security Agency
ATTN: FOIA Office (DC34)
9800 Savage Road STE 6248
Ft. George G. Meade, MD 20755-6248

RE: Freedom of Information Act Request and
Request for Expedited Processing

Dear Sir or Madam:

This letter constitutes an expedited request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the National Security Agency on behalf of the Electronic Frontier Foundation ("EFF"). We make this request as part of EFF's FOIA Litigation for Accountable Government ("FLAG") Project, which works to obtain government documents and make them widely available to the public.

On January 9, 2007, the Washington Post reported:

When Microsoft introduces its long-awaited Windows Vista operating system this month, it will have an unlikely partner to thank for making its flagship product safe and secure for millions of computer users across the world: the National Security Agency.

For the first time, the giant software maker is acknowledging the help of the secretive agency, better known for eavesdropping on foreign officials and, more recently, U.S. citizens as part of the Bush administration's effort to combat terrorism. The agency said it has helped in the development of the security of Microsoft's new operating system -- the brains of a computer -- to protect it from worms, Trojan horses and other insidious computer attackers.

Alec Klein and Ellen Nakashima, "For Windows Vista Security, Microsoft Called in Pros," *Washington Post*, Jan. 9, 2007, at D01 (attached hereto).

We are seeking all agency records (including, but not limited to, electronic records) related to the NSA's review of and input on the configuration of the Microsoft Windows Vista operating system ("Vista").

Request for Expedited Processing

This request warrants expedited processing because it pertains to information that "is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity." 32 CFR § 286.4(d)(3)(ii). According to DOD regulations, information is "urgently needed" when it "has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest." 32 CFR § 286.4(d)(3)(ii)(A). The information we request easily satisfies this standard.

The government activity at issue here — the NSA's involvement in the configuration of Microsoft's latest operating system — raises serious questions about the Department of Defense's interest in Vista's development. Indeed, the NSA's involvement in the system's configuration has already attracted substantial media interest since the publication of the *Washington Post* story. Specifically, a Google News search for "Vista and 'National Security Agency'" returned 67 results from news outlets throughout the world since January 9, 2007 (see first page of Google News search results attached hereto).

Furthermore, the *Washington Post* reported that Microsoft plans to make Vista available to consumers on January 30, 2007, and the system will likely be used by more than 600 million computer users by 2010. Thus, the information we request is unquestionably the subject of a breaking news story of general public interest particularly in the days leading to the product launch.

The purpose of this request is to obtain information directly relevant to the NSA's involvement in Vista's development, which has attracted considerable interest from the press and public in the past several days. The information we request is the subject of a breaking news story of general public interest, and therefore clearly meets the standard for expedited processing set forth in DOD regulations.

Further, as I explain below in support of our request for "news media" treatment, EFF is "primarily engaged in disseminating information."

Request for News Media Fee Status

EFF asks that it not be charged search or review fees for this request because EFF qualifies as a "representative of the news media" pursuant to the FOIA and 32 C.F.R. § 286.28(e)(7). In requesting this classification, we note that the Department of Homeland Security has recognized that EFF qualifies as a "news media" requester, based upon the publication activities set forth below (see DHS letter, attached hereto). We further note that the U.S. Court of Appeals for the D.C. Circuit has stressed that "different agencies [must not] adopt inconsistent interpretations of the FOIA." *Al-Fayed v. CIA*, 254 F.3d 300, 307 (D.C. Cir. 2001), quoting *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1287 (D.C. Cir. 1983).



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20725-8000

FOIA Case: 52276
6 February 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, NW
Suite 650
Washington, DC 20009

Dear Ms. Hofmann:

This is an initial response to your Freedom of Information Act (FOIA) request submitted via facsimile on 23 January 2007, which was received by this office on 24 January 2007, for all agency records (including, but not limited to, electronic records) related to the NSA's review of and input on the configuration of the Microsoft Windows Vista operating system ("Vista"). Your request has been assigned Case Number 52276.

As we began to process your request, we realized that the first page of the actual request was missing from your 18-page facsimile package. On 1 February 2007, a member of my staff contacted you to advise you of this fact. As a result, you submitted another facsimile of your original five-page request, which we received and have begun to process. There is certain information relating to this processing about which the FOIA and applicable Department of Defense (DoD) and NSA/CSS regulations require we inform you.

For purposes of this request and based on the information you provided in your letter, you are considered a representative of the media. Unless you qualify for a fee waiver or reduction, you must pay for duplication in excess of the first 100 pages. Your request for a fee waiver has been granted. In addition, please be advised your request for expedited treatment has been accepted. We are currently in the process of searching for responsive documents and will notify you of the status of your request as soon as that search has been completed.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office

FOIA Case: 52276

(DC34), 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248 or may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA office is 301-688-6527.

Sincerely,

for Marianne Stypa

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

EXHIBIT B



COPY

U.S. Department of Justice
National Security Division

Washington, D.C. 20530

DEC 27 2007

Marcia Hofmann
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Re: FOIA/PA # 08-060

Dear Ms. Hofmann:

This is to acknowledge receipt of your letter dated December 21, 2007, requesting access to "all records from September 1, 2007 to the present concerning briefings, discussions, or other exchanges that Justice Department officials have had with 1) members of the Senate or House of Representatives and 2) representatives or agents of telecommunications companies concerning amendments to FISA," et al. Your Freedom of Information Act request was received by this office on December 27, 2007.

Our policy is to process FOIA requests on a first-in, first-out basis. However, you requested expedited processing of your FOIA request and you will be notified once a determination is made. If you have any questions concerning your request, feel free to contact me on (202) 353-3092. Thank you in advance for your continuing patience.

Sincerely,

A handwritten signature in cursive script, reading "Theresa Crosland", is positioned above the typed name.

Theresa Crosland
FOIA Public Liaison

EXHIBIT B

EXHIBIT C



COPY

U.S. Department of Justice

National Security Division

Washington, D.C. 20530

JAN 29 2008

Marcia Hofmann
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Re: FOIA/PA # 08-060

Dear Ms. Hofmann:

This is in further reference to your Freedom of Information Act request for access to "all records from September 1, 2007 to the present concerning briefings, discussions, or other exchanges that Justice Department officials have had with 1) members of the Senate or House of Representatives and 2) representatives or agents of telecommunications companies concerning amendments to FISA," et al. You also requested expedited processing of your request, and it has been granted. We have initiated a search for responsive records within all components of the National Security Division, and will notify you once our search is completed. If you have any questions concerning your request, feel free to contact me on (202) 353-3092. Thank you in advance for your continuing patience.

Sincerely,

A handwritten signature in black ink, reading "Theresa Crosland", is written over a horizontal line.

Theresa Crosland
FOIA Public Liaison

EXHIBIT C