

# EXHIBIT C



**U.S. Department of Justice**

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

Kurt Opsahl, Esq.  
The Electronic Frontier Foundation  
454 Shotwell Street  
San Francisco, CA 94110

Re: AG/08-R0497  
OLP/08-R0498  
OLA/08-R0499  
MAP:TEH:GEB

Dear Mr. Opsahl:

This is in further response to your Freedom of Information Act (FOIA) requests dated April 24, 2008 seeking various records pertaining to the Foreign Intelligence Surveillance Act, as described in previous correspondence.

After conducting a re-review of the material responsive to your request, we have decided to make a discretionary release of five documents. Enclosed please find documents numbered EFF2OLA(2)-155(a) and EFF3OLA-2, which were previously withheld in full pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). Also enclosed are e-mail messages numbered EFF2OLA(2)-146 and EFF2OLA(2)-54, which were previously released to you in part pursuant to Exemption 5 of the FOIA. We have now decided to release documents EFF2OLA(2)-155(a), EFF3OLA-2, EFF2OLA(2)-146, and EFF2OLA(2)-54 in their entireties as an exercise of administrative discretion. Lastly, enclosed is an e-mail message numbered EFF2OLA(1)-197, which was previously released to you in part pursuant to Exemptions 5 and 6 of the FOIA, 5 U.S.C. § 552(b)(5) and (6). As a matter of administrative discretion, we have now decided to release this document in part, with redactions only made pursuant to Exemption 6 of the FOIA.

Sincerely,

A handwritten signature in blue ink that reads "Melanie Ann Pustay".

Melanie Ann Pustay  
Director

Enclosures

**Comparison of the “The Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective (RESTORE) Act” with the Protect America Act.**

*The RESTORE Act limits on collection against foreign targets overseas*

- The bill would require the Intelligence Community (IC) to obtain court approval to obtain foreign intelligence from foreign intelligence targets overseas.
- Certain application requirements could be interpreted to require individualized determinations to be made with respect to proposed targets of surveillance and even persons whose communications are incidentally intercepted.

*The Protect America Act permits flexible collection against foreign targets overseas.*

- The PAA permits an acquisition of foreign intelligence when the target is reasonably believed to be outside the United States.
- The PAA provides for Court review of the procedures that are used to determine whether a target is overseas, without unnecessary individualized review of these targets.
- The PAA requires that minimization procedures, as defined in the FISA statute, be applied to communications incidentally intercepted.

*The RESTORE Act limits the types of intelligence that may be collected.*

- The bill would exclude intelligence collection related to the foreign affairs of the United States.
- The bill would put the Court in the position of making judgments about what constitutes foreign intelligence.

*The Protect America Act permits collection of foreign intelligence*

- The PAA consistently applies the definition of foreign intelligence contained in FISA.
- The PAA does not limit the types of foreign intelligence that can be collected from foreign targets.

*The RESTORE Act does not provide for retroactive liability protection.*

- The bill does nothing to aid companies alleged to have assisted the Nation’s counterterrorism efforts in the wake of the September 11 attacks.
- While the Protect America Act also does not provide for retroactive liability protection, the Director of National Intelligence agreed to delay discussion of this issue, in order to obtain the PAA’s authority to close critical gaps in the Nation’s intelligence capability; the majority agreed to consider the issue of retroactive liability, yet the RESTORE Act completely fails to address this issue.

EFF2OLA(2)-155(a)

October 10, 2007

*The RESTORE Act introduces uncertainty into the Intelligence Community by not providing for a permanent change to FISA.*

- The authority provided sunsets in December 2009, which fails to provide the certainty and permanence our Intelligence Community needs.
- While the Protect America Act also contains a sunset, the DNI agreed to accept a sunset in order to address a critical intelligence gap; to fail to provide a permanent provision now would be a serious mistake.

October 10, 2007

Talking Points: RESTORE Act

- The RESTORE Act would limit the type of foreign intelligence information that could be acquired under its purview and represents a significant departure from the Protect America Act.
  - There is no principled reason to differentiate between the types of foreign intelligence information collected, requiring different procedures for some types of information.
  - It is particularly difficult to understand the reason to limit the types of foreign intelligence information that can be acquired through procedures that apply only to targeting foreigners outside the United States.
- The RESTORE Act lacks a provision that would aid companies alleged to have assisted the government's counterterrorism efforts in the aftermath of the September 11th attacks.
  - It is important that providers who allegedly fulfilled their civic duty by providing assistance to the government in the wake of these major terrorist attacks be protected from lawsuits brought by plaintiffs' lawyers.
- The RESTORE Act improperly involves the Foreign Intelligence Surveillance Court in operational aspects of government surveillance in a variety of ways, such as requiring the court to review applicable minimization procedures; providing only very limited deference the Executive Branch's determination that a foreign intelligence target is located overseas; and authorizing the court to assess compliance with minimization and other procedures.
- The RESTORE Act also contains a number of serious technical flaws that would create uncertainty and confusion and thereby undermine the ability of the United States Intelligence Community to conduct surveillance against foreign intelligence targets located overseas.
  - While the Protect America Act sensibly turns on the location of the target, the RESTORE Act creates an unmanageable distinction between the information being acquired and the location of the target, undermining a key purpose of the Protect America Act.
  - The legislation could be read to continue to require certain types of individualized determinations regarding the targets of surveillance thereby undermining the legislation's apparent effort to provide authority to target certain communications *without* individualized applications.
- The RESTORE Act also imposes an unwarranted degree of wide-ranging, unnecessary oversight that will hamper the ability of the Intelligence Community to focus on its core mission of protecting the nation from threats to national security.
- By including a sunset provision, the RESTORE Act fails to permanently change FISA, creating uncertainty for the Intelligence Community and hampering its operations.

Cong. Chris Shays wants a briefing on FISA

Page 1 of 1

**Ahmad, Usman**

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**From:** Benczkowski, Brian A (OLA)

EFF2OLA(2)-146

**Sent:** Thursday, October 11, 2007 7:04 PM

**To:** Gerry, Brett (OLP); Eisenberg, John; Demers, John (NSD); Wainstein, Kenneth (NSD)

**Cc:** Frech, Christopher W.; Tracci, Robert N; Benczkowski, Brian

**Subject:** Cong. Chris Shays wants a briefing on FISA

Nick Pallorino of Cong. Shays' Oversight and Government Reform staff called Faith tonight to request a briefing for Cong Shays on FISA. I will reach out to Nick tomorrow morning to check availability, but wanted to give you guys a heads up. BAB

Brian A. Benczkowski  
Principal Deputy Assistant Attorney General  
Office of Legislative Affairs  
United States Department of Justice  
(202) 514-2141

RE: FISA Amendment

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Ahmad, Usman

[Redacted]

EFF2OLA(2)-80

FOIA Exemption b(5)

[Redacted]

EFF2OLA(2)-80(a)

FOIA Exemption b(5)

----- Original Message -----

EFF2OLA(2)-52

From: Benczkowski, Brian A (OLA)  
 To: Demers, John (NSD); Gerry, Brett (OLP); Wainstein, Kenneth (NSD); [Redacted]; Jaffer, Jamil N. (NSD)  
 Cc: Tracci, Robert N  
 Sent: Wed Nov 14 15:12:15 2007  
 Subject: FW: FISA Amendment

FOIA Exemption b(6)

Can we take a look at this and prepare talkers in opposition. Depending on how the rule plays out, we need to think about additional MTRs.

FOIA Exemption b(6)

From: McLaughlin, Sean [mailto:[Redacted]@mail.house.gov] EFF2OLA(2)-53  
 Sent: Wednesday, November 14, 2007 3:11 PM  
 To: Benczkowski, Brian A (OLA)  
 Subject: FW: FISA Amendment  
 Importance: High

st got it.

EFF2OLA(2)-54

From: Beach, Allison  
 Sent: Wednesday, November 14, 2007 3:09 PM  
 To: Gibson, Joseph; McLaughlin, Sean; Volkov, Michael; Lynch, Caroline; Cylke, Chris; Smith, Kim; 'Frech, Christopher W.'

11/13/2008

RE: FISA Amendment

Page 2 of 2

Subject: FW: FISA Amendment

Importance: High

EFF2OLA(2)-49

From: Halpern, Hugh

Sent: Wednesday, November 14, 2007 3:07 PM

To: Gorski, Jenny; Rules Rep Staff; Gonzalez, Cesar; Cassidy, Ed; Saltzman, Josh

Cc: Sommers, Mike; Diffell, Brian; Gibson, Joseph; Thorsen, Anne; Doneso, Chris; Beach, Allison; Nevins, Kyle; Eskew, Pete; Stombres, Steve; St. Martin, Jo Marie; Bradley, Neil (Rep. Whip); Stewart, Jen; Cooper, Charles

Subject: FISA Amendment

Importance: High

Here is the FISA amendment, finally.

Hugh Nathaniel Halpern

Staff Director

House Committee on Rules Republicans

H-152, the Capitol \* (202) 225-9191

<http://rules-republicans.house.gov>

13/2008



Re: FISA Meeting

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Ahmad, Usman

[Redacted]

EFF2OLA(1)-194

Not responsive

[Redacted]

EFF2OLA(1)-195

Not responsive

[Redacted]

EFF2OLA(1)-196

Not responsive

FOIA Exemption b(6)

EFF2OLA(1)-197

From: Hayes, Bradley (Judiciary-Rep) [mailto: [Redacted]@judiciary-rep.senate.gov]

Sent: Monday, January 07, 2008 9:53 AM

To: Baker, Jesse (Judiciary-Rep); Lari, Rita (Judiciary-Rep); Podsiadly, Nick (Judiciary-Rep); Matal, Joe (Judiciary-Rep); Kuhn, Walt (Judiciary-Rep); Johnson, Matthew (Judiciary-Rep); Petron, Lauren (Judiciary-Rep); Bacak, Brooke (Judiciary-Rep); Abegg, John (McConnell); Rice, K (Intelligence); Livingston, J (Intelligence)

Cc: Kim, Harold H.; Benczkowski, Brian A (OLA)

Subject: FISA Meeting

Ladies and Gents -

3/12/2008

Re: FISA Meeting

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I have SR-335 reserved for 1:30 this Wednesday to talk FISA floor strategy, amendments, etc. I've included the WH and DOJ...if you guys can/want to attend, please feel free.

Bradley F. Hayes

Senior Counsel

United States Senate Judiciary Committee

Subcommittee on Administrative Oversight and the Courts

p 202.224.7572

f 202.228.0545