

Exhibit A



1875 Connecticut Avenue, N.W.
Suite 650
Washington, DC 20009
+1 202 797 9009 (tel)
+1 202 797 9066 (fax)

FAX COVER SHEET

DATE: 9/1/06
TO: DAVID HARDY, FBI
Fax Number: (202) 324-3752
FROM: MARCIA HOFMANN
RE: FOIA REQUEST
Pages sent: 1 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



Electronic Frontier Foundation
Protecting Rights and Promoting Freedom in the Electronic World

September 1, 2006

BY FACSIMILE — (202) 324-3752

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue NW
Washington, DC 20535-0001

RE: Freedom of Information Act Request

Dear Mr. Hardy:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Federal Bureau of Investigation ("FBI") 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 30, 2006, the Washington Post published an article, attached hereto, concerning the FBI's "Investigative Data Warehouse" ("IDW").¹ According to the article, the FBI described the 659 million-record database as "one of the most powerful data analysis tools available to law enforcement and counterterrorism agents."

With respect to the data quality practices used to maintain the IDW, the article reported:

Irrelevant information can be purged or restricted, and incorrect information is corrected, [Gurvais Grigg, acting director of the FBI's Foreign Terrorist Tracking Task Force] said. Willie T. Hulon, executive assistant director of the FBI's National Security Branch, said that generally information is not removed from the system unless there is "cause for removal."

Every data source is reviewed by security, legal and technology staff members, and a privacy impact statement is created, Grigg said. The FBI conducts in-house auditing so that each query can be tracked, he said.

¹ Ellen Nakashima, "FBI Shows Off Counterterrorism Database," Washington Post, Aug 30, 2006 at A06, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/29/AR2006082901520.html>.

We seek disclosure of the following agency records (including, but not limited to, electronic records):

1. all records describing data expungement, restriction or correction procedures for the IDW;
2. all privacy impact statements created for the IDW; and
3. all results of audits conducted to ensure proper operation of the IDW.

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).

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 38,858,298 hits in July 2006 — an average of 52,228 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 two blogs that highlight the latest news from around the Internet. DeepLinks (<http://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology, while miniLinks (<http://www.eff.org/minilinks/>) directs readers to other news articles and commentary on these issues. DeepLinks had 817,993 hits in July 2006; miniLinks received 436,043 hits during the same period.⁴

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.

² Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npold=561625> (last visited Sept. 1, 2006).

³ *Id.*

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

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> and <feed://www.eff.org/rss/linenoiseogg.xml>. These podcasts were downloaded about 5,000 times from EFF's web site last month.

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, the FBI determines 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 FBI's development and use of the IDW concerns "the operations or activities of the government." 28 C.F.R. § 16.11(k)(2)(i).

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 the FBI's development and use of a large investigative database, as well as its functionality and the extent of its use.

Third, the requested material will "contribute to public understanding" of the nature and extent of the information contained in the IDW. 28 C.F.R. § 16.12(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to EFF's understanding of the FBI's investigative activity, 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 FBI's development and use of the IDW. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Little is publicly known about the IDW, so disclosure of this

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EFF DC

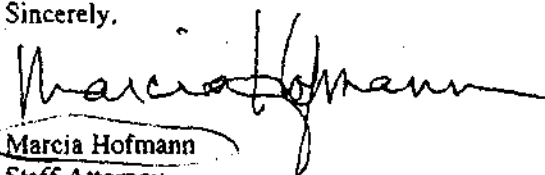
PAGE 05/07

information will help inform the public about the database and its potential impact on personal privacy.

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.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (202) 797-9009 x. 12. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,



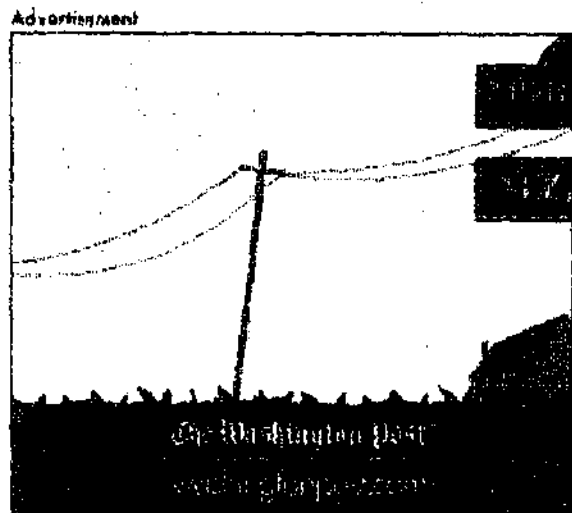
Marcia Hofmann
Staff Attorney

washingtonpost.com

FBI Shows Off Counterterrorism Database

By Ellen Nakashima
Washington Post Staff Writer
Wednesday, August 30, 2006; A06

The FBI has built a database with more than 659 million records -- including terrorist watch lists, intelligence cables and financial transactions -- culled from more than 50 FBI and other government agency sources. The system is one of the most powerful data analysis tools available to law enforcement and counterterrorism agents, FBI officials said yesterday.



The FBI demonstrated the database to reporters yesterday in part to address criticism that its technology was failing and outdated as the fifth anniversary of the Sept. 11, 2001, terrorist attacks nears.

Privacy advocates said the Investigative Data Warehouse, launched in January 2004, raises concerns about how long the government stores such information and about the right of citizens to know what records are kept and correct information that is wrong.

The data warehouse is an effort to "connect the dots" that the FBI was accused of missing in the months before the 2001 attacks, bureau officials said. About a quarter of the information comes from the FBI's records and criminal case files. The rest -- including suspicious financial activity reports, no-fly lists, and lost and stolen passport data -- comes from the Treasury, State and Homeland Security departments and the Federal Bureau of Prisons.

"That's where the real knowledge comes from . . . sharing information," said Gurvais Grigg, acting director of the FBI's Foreign Terrorist Tracking Task Force, who helped develop the system.

In a demonstration, Grigg sat at a computer and typed in the name "Mohammad Atta," one of the 19 hijackers in 2001. The system can handle variants of names and up to 29 variants on birth dates. He typed "flight training" in the query box and pulled up 250 articles relating to Atta.

The system, designed by Chiliad Inc. of Amherst, Mass., can be programmed to send alerts to agents on new information, Grigg said. Names, Social Security numbers and driver's license details can be linked and cross-matched across hundreds of millions of records.

No top secret information is in the system, officials said.

Grigg said that before 2002, it would take 32,222 hours to run 1,000 names and birth dates across 50 databases. Now agents can make such a search in 30 minutes or less, he said.

The 13,000 agents and analysts who use the system make an average 1 million queries a month, Grigg said.

The system does not reach into the databases themselves but mines copies that are updated regularly, he said.

Irrelevant information can be purged or restricted, and incorrect information is corrected, he said. Willie T. Hulon, executive assistant director of the FBI's National Security Branch, said that generally information is not removed from the system unless there is "cause for removal."

Every data source is reviewed by security, legal and technology staff members, and a privacy impact statement is created, Grigg said. The FBI conducts in-house auditing so that each query can be tracked, he said.

David Sobel, senior counsel of the Electronic Frontier Foundation, said the Federal Register has no record of the creation of such a system, a basic requirement of the Privacy Act. He also said the FBI's use of an internal privacy assessment undercuts the intent of the privacy law.

FBI officials said the database is in "full compliance" with the law.

Sobel said he learned under a Freedom of Information Act disclosure last week that the system includes 250 million airline passenger records, stored permanently.

"It appears to be the largest collection of personal data ever amassed by the federal government," he said. "When they develop the capability to cross-reference and data-mine all these previously separate sources of information, there are significant new privacy issues that need to be publicly debated."

Michael Morehart, chief of the FBI's Terrorist Financing Operations Section, has testified to Congress about some aspects of the system. He said that Treasury Department documents included in the database have helped counterterrorism investigations significantly.

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The Price of Security. Let's all Discover Where to Draw the Line.
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Law Enforcement Software

Specialized L.E. Programs Free Demo. Free 20-Day Trial
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Exhibit B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

September 21, 2006

MARCIA HOFMANN ESQ
ELECTRONIC FRONTIER FOUNDATION
SUITE 650
1875 CONNECTICUT AVENUE, NORTHWEST
WASHINGTON, DC 20009

Request No.: 1058805-000
Subject: INVESTIGATIVE DATA
WAREHOUSE

Dear Requester:

- This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant to Title 28, United States Code 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- We are searching the indices to our central records system at FBI Headquarters for the information you requested, and will inform you of the results as soon as possible.
- Processing delays have been caused by the large number of requests received by the FOIPA. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your patience is appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over the signature line.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Exhibit C



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

August 25, 2006

BY FACSIMILE — (202) 324-3752

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue NW
Washington, DC 20535-0001

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We seek disclosure of the following agency records (including, but not limited to, electronic records) concerning the FBI's "Investigative Data Warehouse" ("IDW"):

- 1) records listing, describing or discussing the categories of individuals covered by the IDW;
- 2) records listing, describing or discussing the categories of records in the IDW;
- 3) records listing, describing or discussing criteria for inclusion of information in the IDW;
- 4) records describing or discussing any FBI determination that the IDW is, or is not, subject to the requirements of the Privacy Act of 1974; and
- 5) records describing or discussing any FBI determination that the IDW is, or is not, subject to federal records retention requirements, including the filing of Standard Form (SF) 115, "Request for Records Disposition Authority."

David M. Hardy
August 25, 2006
Page two

To assist you in conducting a search for responsive records, we note that FBI Deputy Assistant Director John E. Lewis stated, in a speech on March 14, 2005, that

within the FBI's Counterterrorism Division, we operate an information system known as the Investigative Data Warehouse. The IDW provides our agents and analysts with instant access to photographs, biographical information, physical location information, and financial data for thousands of known and suspected terrorists. The database comprises more than 100 million pages of terrorism-related documents, and billions of structured records such as addresses and phone numbers. . . .

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¹ Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npold=561625> (last visited July 5, 2006).

² *Id.*

David M. Hardy
August 25, 2006
Page three

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David M. Hardy
August 25, 2006
Page four

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Fourth, the disclosure will "contribute significantly" to the public's knowledge and understanding of the FBI's development and use of the IDW. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Little is publicly known about the IDW, so disclosure of this information will help inform the public about the database and its potential impact on personal privacy.

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.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (202) 797-9009 x. 10. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,



David L. Sobel
Senior Counsel