

**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.)	C. A. No. _____
)	
DEPARTMENT OF JUSTICE)	
950 Pennsylvania Avenue, N.W.)	
Washington DC 20530,)	
)	
Defendant.)	
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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 the Federal Bureau of Investigation, a component of defendant Department of Justice. Specifically, plaintiff seeks disclosure of records concerning the scope and privacy impact of the Federal Bureau of Investigation’s Investigative Data Warehouse, a huge database that holds hundreds of millions of records containing personal information.

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). The Federal Bureau of Investigation (“FBI”) is a component within defendant DOJ.

The FBI’s Investigative Data Warehouse

5. Following the terrorist attacks of September 11, 2001, the FBI began development of the Investigative Data Warehouse (“IDW”) “to provide counterterrorism investigators and analysts with quick, easy access to the full breadth of information relating to terrorism.” Federal Bureau of Investigation, Report to the National Commission on Terrorist Attacks upon the United States: The FBI’s Counterterrorism Program Since September 2001 (April 14, 2004), at 53. The FBI’s goal is to include in the IDW “all data that can legally be stored together.” *Id.* at 54.

6. The IDW provides FBI agents and analysts with “instant access to photographs, biographical information, physical location information, and financial data for thousands of known and suspected terrorists.” Remarks prepared for Delivery by John E. Lewis,

Deputy Assistant FBI Director, 4th Annual International Conference on Public Safety: Technology and Counterterrorism Counterterrorism Initiatives and Partnerships, San Francisco, California (March 14, 2005). According to Mr. Lewis, as of March 2005, “[t]he database comprise[d] more than 100 million pages of terrorism-related documents, and billions of structured records such as addresses and phone numbers.” *Id.*

7. The amount of information contained in the IDW appears to be growing at a tremendous rate. In May 2006, little more than a year after Mr. Lewis quantified the contents of the IDW, FBI Director Robert S. Mueller, III testified to Congress that the “IDW now contains over 560 million FBI and other agency documents.” Statement of Robert S. Mueller, III, Director, Federal Bureau of Investigation, Before the Senate Committee on the Judiciary (May 2, 2006). According to Mr. Mueller, “Nearly 12,000 users can access [the IDW] via the FBI’s classified network from any FBI terminal throughout the globe. And, nearly 30 percent of the user accounts are provided to task force members from other local, state, and federal agencies.” *Id.*

8. To date, the FBI has not published, with respect to the IDW, a “notice of the existence and character of the system of records,” under the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a(e)(4).

9. To date, the FBI has not filed, with respect to the IDW, a Standard Form (SF) 115, “Request for Records Disposition Authority,” nor made any other submission to the Archivist of the United States under the provisions of 44 U.S.C. § 3303.

10. To date, the FBI has not made publicly available, with respect to the IDW, a “privacy impact statement,” under the provisions of the E-Government Act of 2002, P.L. 107-347.

Plaintiff's FOIA Requests

11. By letter sent by facsimile to the FBI on August 25, 2006, plaintiff requested under the FOIA agency records concerning the IDW. Specifically, plaintiff requested:

- 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."

12. On information and belief, the FBI received plaintiff's letter described in ¶ 11 on August 25, 2006.

13. By letter sent by facsimile to the FBI on September 1, 2006, plaintiff requested under the FOIA additional agency records concerning the IDW. Specifically, plaintiff requested:

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

In support of its FOIA request, plaintiff noted that the *Washington Post* had published an article concerning the IDW on August 30, 2006, and that the article reported as follows:

Irrelevant information [in the IDW] 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.

14. On information and belief, the FBI received plaintiff's letter described in ¶ 13 on September 1, 2006.

15. To date, the FBI has not disclosed agency records responsive to plaintiff's FOIA requests.

16. The FBI has violated the applicable statutory time limit for the processing of FOIA requests.

17. Plaintiff has exhausted the applicable administrative remedies.

18. The FBI has wrongfully withheld the requested records from plaintiff.

CAUSE OF ACTION

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

19. Plaintiff repeats and realleges paragraphs 1-18.

20. The FBI has wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for the processing of FOIA requests.

21. Plaintiff has exhausted the applicable administrative remedies with respect to the FBI's wrongful withholding of the requested records.

22. 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 (and its component FBI) to process immediately the requested records in their entirety;
- B. order defendant DOJ (and its component FBI), 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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