

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

<b>ELECTRONIC FRONTIER FOUNDATION,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 12-1441-ABJ
	)	
<b>DEPARTMENT OF JUSTICE,</b>	)	
	)	
Defendant.	)	
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**DEFENDANT’S CONSOLIDATED STATUS REPORT AND UNOPPOSED  
MOTION FOR NINE-DAY EXTENSION OF TIME**

Defendant, the U.S. Department of Justice (“Department”), respectfully (1) moves this Court for a nine-day extension of time to produce re-processed versions of the documents at issue in this Freedom of Information Act (“FOIA”) action, and corresponding nine-day extensions of subsequent briefing on renewed cross-motions for summary judgment; and (2) provides herein a current Status Report on Defendant’s re-review of those documents and position concerning this action. Good cause exists for granting Defendant’s Unopposed Motion as follows:

1. This action concerns a Freedom of Information Act (“FOIA”) request dated July 26, 2012 submitted by Electronic Frontier Foundation (“Plaintiff” or “EFF”) to the Department’s National Security Division seeking:

- (1) Any written opinion or order . . . in which “the Foreign Intelligence Surveillance Court held that some collection carried out pursuant to Section 702 minimization procedures used by the government was unreasonable under the Fourth Amendment”;
- (2) Any written opinion or order . . . reflecting or concerning a FISC determination that “the government’s implementation of Section 702 of FISA has sometimes circumvented the spirit of the law”; and

(3) Any briefing provided to the Senate Select Committee on Intelligence or the House Permanent Select Commission on Intelligence concerning FISC opinions or orders described in items (1) and (2) above.

Compl. for Inj. Relief ¶ 12, Aug. 30, 2012, ECF No. 1.

2. The Department previously advised the Court of the possible impact of the unauthorized disclosures in June 2013 of classified information concerning the government's collection of intelligence pursuant to the Foreign Intelligence Surveillance Act ("FISA") and the government's response thereto on both the arguments in the Department's pending Motion for Summary Judgment and the underlying withholdings in this case.

3. In its Minute Order of July 9, 2013, the Court Ordered that by August 12, 2013, Defendant assess its position and make any additional disclosures it intends to make in light of the developments described in the July 1 status report. The Court further Ordered that, by that date, Defendant file a notice indicating whether any other materials were provided to the plaintiff in whole or in part, and stating whether Defendant intends to rely upon the Motion for Summary Judgment filed on April 1, 2013.

4. As the Court is aware, in response to the unauthorized disclosure of classified information, the government has declassified certain information concerning intelligence collection pursuant to Section 702 of the FISA. Pursuant to the Court's Order and consistent with the Director of National Intelligence's prior decision to declassify certain information, Defendant now provides notice to the Court and Plaintiff that Defendant does not intend to rely on, and will withdraw, its Motion for Summary Judgment filed on April 1, 2013, ECF No. 11.<sup>1</sup> *See* Mot. for Summ. J., Apr. 1, 2013, ECF

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<sup>1</sup> In light of the FISC's ruling on Plaintiff's motion to that court, the Department also will withdraw, and no longer rely upon, a jurisdictional argument advanced in the alternative in the government's original motion for summary judgment in support of the withholding of

No. 11; Mem. of Points & Authorities in Supp. of Dep't of Justice's Mot. for Summ. J., Apr. 1, 2013, ECF No. 11-1.

5. Defendant further provides notice to the Court and Plaintiff that it has determined it will release to Plaintiff a redacted version of the Foreign Intelligence Surveillance Court ("FISC") opinion previously withheld in full pursuant to FOIA exemptions (b)(1) and (b)(3), and a redacted version of the one responsive paragraph in the classified white paper to Congress also previously withheld in full pursuant to those exemptions. The information to be released to Plaintiff will consist of segregable information that the government has declassified and thus is no longer exempt under (b)(1) and (b)(3). Assuming a dispute remains between the parties once Defendant has produced those documents to Plaintiff, Defendant intends to file a renewed motion for summary judgment in support of the Department's continued withholding of certain information as exempt from disclosure under the FOIA.

6. Despite good faith and concerted efforts, the Department, in consultation with appropriate government officials, has been unable to complete its final segregability review of the documents in question and, therefore, respectfully requests that the Court extend by a brief period of nine days Defendant's deadline to produce further information to plaintiff from Monday, August 12, 2013, to Wednesday, August 21, 2013.

7. The documents responsive to Plaintiff's FOIA request, and particularly the lengthy opinion of the FISC, continue to contain highly sensitive information concerning intelligence sources and methods that is properly classified TOP SECRET because its disclosure could reasonably be expected to cause exceptionally grave damage to the

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the FISC opinion at issue in this case. *See* Opinion & Order, *In re Mot. for Consent to Disclosure of Court Records or, in the Alternative, a Determination of the Effect of the Court's Rules on Statutory Access Rights*, Misc. 13-01, June 12, 2013.

national security of the United States. Completing the government's determination of what portions of the documents may be released to Plaintiff consistent with national security requires a careful, line-by-line, word-by-word, interagency review of the documents. There are a limited number of individuals in the government with the expertise to conduct this review, which has received the considered attention of senior officials. In order to complete this careful review consistent with FOIA and national security, therefore, Defendant respectfully requests a nine-day extension of the August 12, 2013 deadline to August 21, 2013.

8. Defendant also respectfully asks the Court to extend by a corresponding nine days each of the subsequent summary judgment briefing deadlines previously set by the Court. This will permit the parties time to narrow the issues in dispute to the extent possible prior to Defendant's filing of its renewed motion for summary judgment. Undersigned counsel for Defendant has met and conferred with counsel for Plaintiff, Mark Rumold, and Mr. Rumold stated Plaintiff does not oppose the relief requested in this Status Report and Unopposed Motion. Plaintiff's counsel further stated that, while EFF reluctantly agrees to this extension, EFF will not consent to future extensions in this case.

WHEREFORE, for good cause shown, the Court should grant Defendant's Unopposed Motion to extend Defendant's deadline to produce further responsive material to Plaintiff by nine days, and to extend the parties' subsequent deadlines to brief renewed cross-motions for summary judgment by a corresponding nine days.

Date: August 9, 2013

Respectfully submitted,

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/s/ Steven Y. Bressler

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