ELECTRONIC FRONTIER FOUNDATION
Protecting Rights and Promoting Freedom on the Electronic Frontier

June 19, 2009

**BY FACSIMILE** — (202) 586-0575

Abel Lopez
Director of the FOIA/Privacy Act Group
Office of the Executive Secretariat
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

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SCIENTIFIC/EDUCATIONAL/NEWS MEDIA
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RE: Freedom of Information Act Request

Dear Mr. Lopez:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Department of Energy ("Energy") 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.

We are seeking copies of all Energy records, including but not limited to electronic records, as follows:

1.) ~~All~~ reports submitted to the Intelligence Oversight Board ("IOB")[1] pursuant to Section 2.4 of Executive Order 12863 from February 25, 2008 to February 29, 2008.[2] That section provides, in pertinent part, as follows:

> Inspectors General and General Counsel of the Intelligence Community, to the extent permitted by law, shall report to the IOB at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.[3]

2.) All reports submitted to the IOB or the Director of National Intelligence ("DNI") pursuant to Section 1.7(d) of Executive Order 12333 from February 29, 2008 to the present. That section, incorporated by reference by Section 8(b)(i)(A) of Executive Order 13462,[4] provides that heads of departments shall "[r]eport to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning

[1] On February 25, 2008, EFF requested all reports submitted to the IOB from January 1, 2001 through the date of the request. On January 12, 2009, Energy released documents responsive to that request, number F2008-000156.
[2] Executive Order 12863 was explicitly revoked by Executive Order 13462 on February 29, 2008.
[3] Energy is a member of the "Intelligence Community." *See* http://www.intelligence.gov/1-members.shtml.
[4] Executive Order 13462, Section 8(b)(i)(A) provides that all heads of department shall ensure that the DNI receives "copies of reports submitted to the IOB pursuant to section 1.7(d) of Executive Order 12333[.]"

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FOIA-2009-000468

any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive."

3.) All reports of any assessments or reviews of intelligence activities by the President's Intelligence Advisory Board ("PIAB") to Energy pursuant to Sec. 4(a)(ii) of Executive Order 13462 from February 29, 2008 to the present.

4.) All recommendations concerning intelligence matters identified by the PIAB to Energy pursuant to Sec. 4(b) of Executive Order 13462 from February 29, 2008 to the present.

5.) All reports and recommendations by the IOB to Energy pursuant to Sec. 6(c) of Executive Order 13462 concerning the performance of Energy under Executive Order 13462 from February 29, 2008 to the present.

6.) All records containing information and all recommendations for corrective action submitted by the IOB to Energy pursuant to Sec. 6(d) of Executive Order 13462 from February 29, 2008 to the present.

7.) All requests for investigations of intelligence activities by the IOB to Energy and reports by Energy to the IOB of the results of those investigations pursuant to Sec. 6(e) of Executive Order 13462 from February 29, 2008 to the present.

8.) All reports made by Energy to the IOB or PIAB pursuant to Sec. 8(c) of Executive Order 13462, concerning the reasons for not implementing a PIAB or IOB recommendation from February 29, 2008 to the present.

**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 10 C.F.R. § 1004.2(m). In requesting this classification, we note that the National Security Agency, Department of Justice, 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 NSA letter, DOJ letter, DHS stipulation, and Sate Department 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).

EFF is a non-profit public interest organization that works "to protect and enhance our core civil liberties in the digital age."[5] One of EFF's primary objectives is "to educate

[5] Guidestar Basic Report, Electronic Frontier Foundation, http://www.guidestar.org/pqShowGsReport.do?npoId=561625 (last visited June 12, 2009).

the press, policymakers and the general public about online civil liberties."[6] 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 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.

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 and feed://www.eff.org/rss/linenoiseogg.xml.

**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

[6] *Id.*

10 C.F.R. § 1004.9(a)(8). To determine whether a request meets this standard, the agency determines whether disclosure 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." 10 C.F.R. § 1004.9(a)(8). This request clearly satisfies these criteria.

First, the agency's submission of reports to the IOB clearly concerns "the operations or activities of the government." 10 C.F.R. § 1004.9(a)(8)(i)(A).

Second, disclosure of the requested information will "contribute to an understanding of government operations or activities." 10 C.F.R. § 1004.9(a)(8)(i)(B). EFF has requested information that will shed light on the agency's interpretation of laws governing intelligence activities, and how well it conforms to those laws.

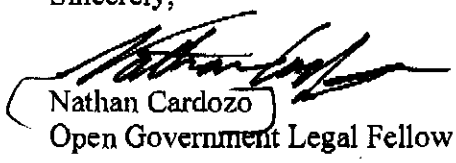
Third, the requested material will "contribute to public understanding" of how the agency interprets applicable laws and monitors internal compliance. 10 C.F.R. § 1004.9(a)(8)(i)(C). This information will contribute not only to EFF's understanding of the agency's interpretation and use of legal authority, 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 how the agency seeks compliance with laws governing intelligence activities. 10 C.F.R. § 1004.9(a)(8)(i)(D) (internal quotation marks omitted). Disclosure of the requested information will help inform the public about the agency's actions, as well as contribute to the public debate about how intelligence activities should be conducted.

Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. 10 C.F.R. § 1004.9(a)(8)(ii). 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 (415) 436-9333 x. 136. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,



Nathan Cardozo
Open Government Legal Fellow

Enclosures

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

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 Stupar

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

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

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

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

Katrina M. Wood
Requester Communications Branch

Enclosure: As stated.

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

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

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San Francisco, CA 94110
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# FAX COVER SHEET

DATE: June 19, 2009

TO: Abel Lopez, Director of the FOIA/PA Group, Dept. of Energy

Fax Number: 202-586-0575

FROM: Nathan Cardozo

RE: Freedom of Information Act Request

Pages sent including this page: 14

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 (415) 436-9333 x 117 IF THERE IS A PROBLEM*