



Federal Bureau of Investigation

Washington, D.C. 20535

May 31, 2011

MS. JENNIFER LYNCH
STAFF ATTORNEY
ELECTRONIC FRONTIER FOUNDATION
454 SHOTWELL STREET
SAN FRANCISCO, CA 94110

Subject: COMMUNICATIONS COMPLIANCE WITH FBI
ELECTRONIC SURVEILLANCE FROM JANUARY 1, 2006

FOIPA No. 1154593- 000

Dear Ms. Lynch:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Table with 3 columns: Section 552, Section 552a, and checkboxes for exemptions (b)(1)-(9) and (d)(5), (j)(2), (k)(1)-(7).

437 pages were reviewed and 15 pages are being released.

Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:

- referred to the OGA for review and direct response to you.
referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown,

when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D Hardy", with a stylized flourish at the end.

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

Enclosures

This is an interim release. More documents will be mailed to you once they are processed.

FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

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DATE 05-13-2011 BY 65179/DMH/BAW/STP/bls

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From: Kelly, Stephen

Sent: Tuesday, September 21, 2010 2:30 PM

To: [redacted] (SMO)

Cc: Kortan, Michael P.; Beers, Elizabeth R.; Sabol, Sherry E.; DiClemente, Anthony P.; [redacted]
[redacted] (SMO); Caproni, Valerie E.; [redacted] (SMO); [redacted] (SMO)

Subject: NY Times Story - [redacted]

Attachments: Going Dark TPs.doc

[redacted]

It appears that the NY Times story related to Going Dark may run as early as the weekend or even Friday. As we've discussed, [redacted]

[redacted]

Please advise promptly if you want to take this forward; alternatively, I'm happy to do it, but that's really your call. We will need to get this set up by Friday, in case the story runs over the weekend. The TPs are attached.

Thanks.

- Stephen

Stephen D. Kelly
Assistant Director
Office of Congressional Affairs
Federal Bureau of Investigation

[redacted]

EFF/Lynch-649

From: Kortan, Michael P.
Sent: Friday, September 24, 2010 6:02 PM
To: [REDACTED]
Subject: Fw: NY Times information

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From: Sabol, Sherry E.
To: Kortan, Michael P.
Cc: Caproni, Valerie E.; [REDACTED] Thomas, Marcus C.; DiClemente, Anthony P.; Grever, Louis E.
Sent: Fri Sep 24 17:56:10 2010
Subject: FW: NY Times information

Mike – the following bullets were cleared by OGC and OTD for release to [REDACTED]

From late 2008-2009 a major telecommunications carrier currently subject to CALEA was unable to implement lawful electronic surveillance pursuant to more than 100 court orders. An initial outage during which law enforcement received no information lasted for 8 months. A second outage lasted 9 days. FBI dedicated significant engineering resources to assist the company in development of an effective solution.

A second major telecommunications carrier currently subject to CALEA was unable to implement court authorized electronic surveillance pursuant to 14 court orders for periods ranging from 9 days to 1 ½ month. Through 2010 the FBI continued to work with this carrier to effect surveillance on numerous court orders. While the carrier has a CALEA solution in place, the solution works sporadically and typically fails [REDACTED]. Each time its solution fails, FBI engineers contact the company to inquire as to the nature of the problem and provide assistance when necessary.

The FBI has been working with an internet communications service provider for more than three years to develop a capability to conduct lawfully authorized electronic surveillance. To date, the FBI has been unable to fully implement lawful surveillance on more than 150 occasions. The provider is not subject to CALEA and had no lawful intercept capability in place until contacted by law enforcement. To the extent the FBI has been able to effect any level of surveillance, the surveillance has been sporadic and has provided the FBI with only a portion of information the FBI is authorized to collect in accordance with the relevant legal authority. The FBI has dedicated significant engineering resources to assist this internet communications service provider in development of an effective solution.

EFF/Lynch-662

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From: [REDACTED]
Sent: Monday, September 27, 2010 3:16 PM
To: Thomas, Marcus C.; DiClemente, Anthony P.; Kortan, Michael P.; Grever, Louis E.; [REDACTED]
Subject: Fw: WP article on G.D.
Peter Modafferi was interviewed today by Ellen Nakishima, Washington Post, NBC Nightly News, CNN, and National Public Radio.

From: [REDACTED]
To: Sabol, Sherry E.; [REDACTED]
Sent: Mon Sep 27 14:49:44 2010
Subject: WP article on G.D.

The Washington Post has its own piece now on plans to amend CALEA. Refreshingly, the Post's Ellen Nakashima did some of her own reporting rather than just parroting the NYT's article (which the AP article did). This one is more accurate regarding the status of the proposal within the government, saying that it is "still in the discussion stages among federal bodies" and that "no draft language or clear timeline exists." She is also more accurate than Savage in describing what is not subject to CALEA (specifying Facebook and Twitter rather than "communication service providers," a term that any layperson would think includes phone companies, broadband providers, and interconnected VoIP services, which are in fact subject to CALEA). There's also a quote from an unnamed "federal law enforcement official", so she apparently conducted at least some of her own background interviews today.

<http://www.washingtonpost.com/wp-dyn/content/article/2010/09/27/AR2010092703244.html>

Administration seeks ways to monitor Internet communications

By Ellen Nakashima
Washington Post Staff Writer
Monday, September 27, 2010; 1:41 PM

Federal officials are planning to seek legislation that would require social networking companies and voice-over-Internet service providers to adapt their technology so law enforcement agents can monitor users' communications to catch suspected terrorists and other criminals.

The proposal arises out of concern that technology and social customs have outpaced the law and that law enforcement authorities lack the means to monitor new methods of communication, administration officials said. But the initiative has also revived the debate over the proper balance between national security and personal privacy as well as what industry can be reasonably asked to do without stifling innovation.

"This is about lawfully authorized intercepts," said Valerie E. Caproni, FBI general counsel. "This is not about expanding authority, but about preserving the ability to carry out existing authorities in order to protect the national security and public safety."

The idea, which has been percolating for at least two years, is still in the discussion stages among federal bodies, including the FBI, the Justice Department and the National Security Council. Congressional and administration officials said no draft language or clear timeline exists. The administration's plans were first reported by the New York Times.

At issue is a 1994 telecommunications law called the Communications Assistance to Law Enforcement Act, which requires phone and broadband companies to build interception capabilities into their

EFF/Lynch-005

networks for law enforcement. An agent must have a court order based on probable cause to gain access to a provider's network.

Social networking companies such as Facebook and Twitter are not covered under CALEA. Their technologies were not built to provide law enforcement with real-time access to content.

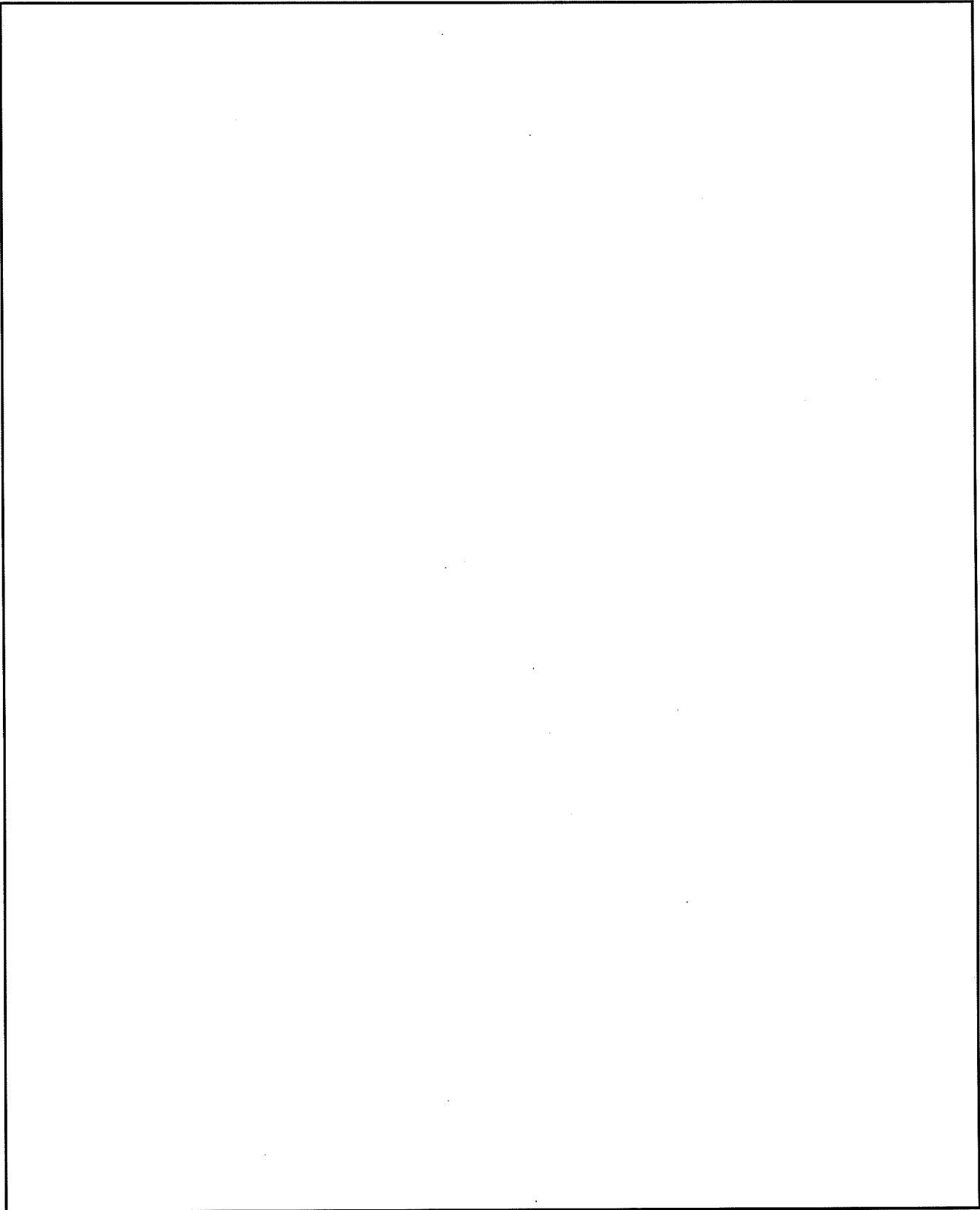
Law enforcement would also like firms that offer encrypted communications to be able to provide them decrypted "clear text," as well as design a service to allow interception of peer-to-peer communications, such as Skype.

"If you're in an ongoing situation, where we had hostages and the suspects are communicating with one another calling out their plan or next move, you'd want real-time access," said one federal law enforcement official, noting that the issue concerns state and local police, too.

Greg Nojeim, senior counsel at the Center for Democracy and Technology, said that government already has enormous electronic surveillance powers, and that the proposal could impede the creation of new products. "The whole power of the Internet grows out of the fact that anyone in a garage can innovate and develop a new service," he said. "[Under the proposal], you wouldn't be able to build some products unless you complied with the government mandate. We could lose our competitive edge if the government gets into the design process."

Michael A. Sussmann, a former Justice Department lawyer who advises social networking and communications services providers, said that the proposal to expand CALEA "could be extremely difficult" from a technical point of view. "In some cases networks would need to be re-engineered," he said. "Where even possible, that can require a lot of time and huge costs."

EFF/Lynch-666



From: Kelly, Stephen (FBI)

Sent: Wednesday, September 22, 2010 10:27 PM

EFF/Lynch-669

To: [redacted] (SMO)
Cc: Kortan, Michael P. (FBI); Beers, Elizabeth R. (FBI); Sabol, Sherry E. (FBI); DiClemente, Anthony P. (FBI);
 [redacted] (FBI); [redacted] (SMO); Caproni, Valerie E. (FBI); [redacted] (SMO); [redacted] (SMO);
 [redacted] (SMO); [redacted] (OLA); [redacted] (SMO); [redacted] (OLP);
 [redacted] (SMO); [redacted] (ODAG); [redacted] (OLP); [redacted] (SMO)
Subject: Re: NY Times Story - Plan to Brief the Hill

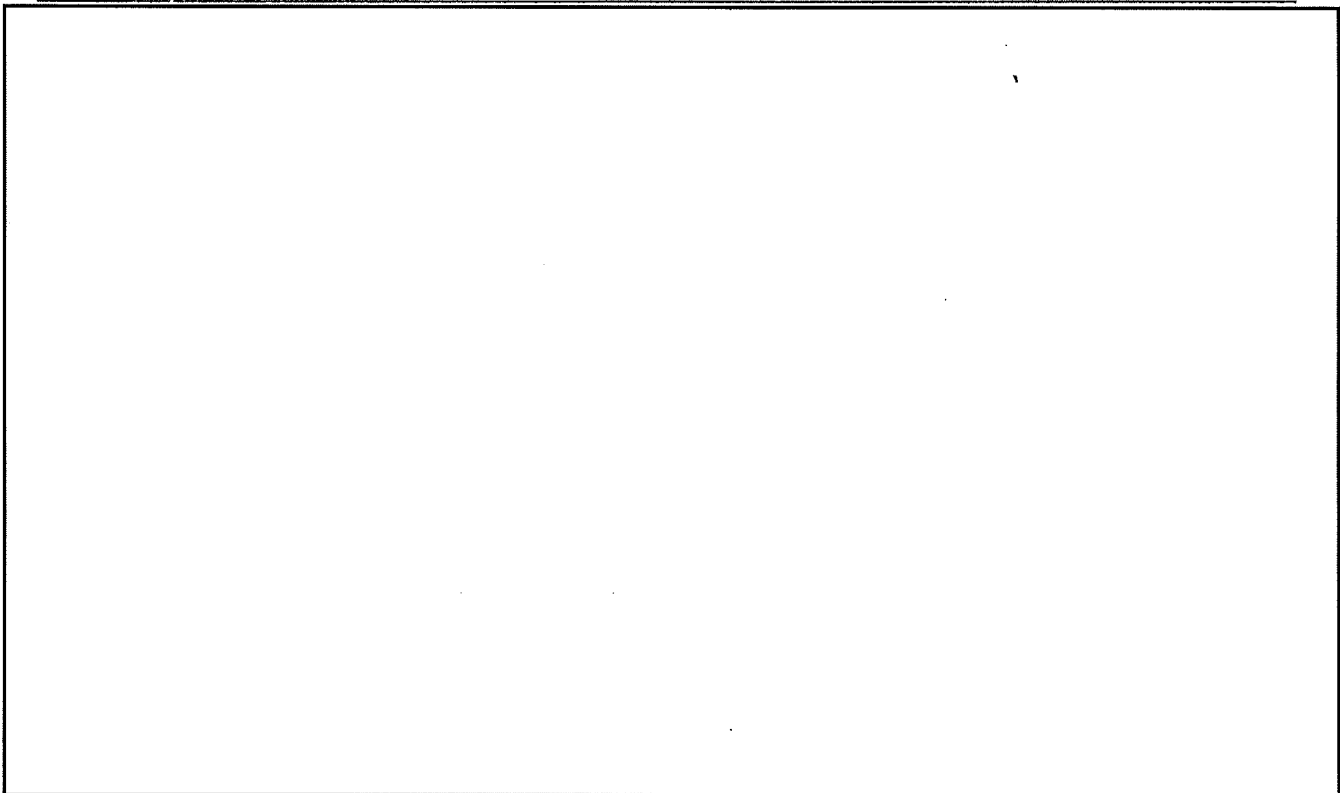
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Agreed on all counts.

We'll report in after the call with NYTM

- Stephen

Referral/Direct



From: Kelly, Stephen (FBI)
Sent: Tuesday, September 21, 2010 2:30 PM
To: [redacted] (SMO)
Cc: Kortan, Michael P. (FBI); Beers, Elizabeth R. (FBI); Sabol, Sherry E. (FBI); DiClemente, Anthony P. (FBI);
 [redacted] (FBI); [redacted] (SMO); Caproni, Valerie E. (FBI); [redacted] (SMO); [redacted] (SMO)
Subject: NY Times Story - Plan to Brief the Hill

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[redacted]
 It appears that the NY Times story related to Going Dark may run as early as the weekend, or even Friday. As we've discussed [redacted]



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[Redacted]

Please advise promptly if you want to take this forward; alternatively, I'm happy to do it, but that's really your call. We will need to get this set up by Friday, in case the story runs over the weekend. The TPs are attached.

Thanks.

- Stephen

Stephen D. Kelly
Assistant Director
Office of Congressional Affairs
Federal Bureau of Investigation

[Redacted]

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From: [redacted]
Sent: Tuesday, August 31, 2010 1:55 PM
To: Sabol, Sherry E.; [redacted] DiClemente, Anthony P.; [redacted]
M.: [redacted]
Subject: [redacted]

[redacted]

That, my friends, is Darkness. Anyone want to approach the company and ask that they require buyers to show some form of ID before getting an account?

PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT
[redacted] EBL Science & Technology Law Unit (OGC)

Voice: [redacted]
Unclass: [redacted]
SIPRNet: [redacted]
JWICS: [redacted]

EFF/Lynch-755

[Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-13-2011 BY 65179/DMH/BAW/STP/bls

From: DiClemente, Anthony P.
Sent: Friday, June 04, 2010 5:29 PM
To: [Redacted] Sabol, Sherry E. [Redacted] (DEA-US)
Subject: Fw: [Redacted]

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Sensitivity: ~~Confidential~~
Below is the example [Redacted] forwarded today. I received several case examples from [Redacted] last week. Those examples were forwarded to [Redacted] last week.

Anthony DiClemente
Chief, Data Acquisition/Intercept Section
Operational Technology Division
Federal Bureau of Investigation

[Redacted] Office
[Redacted] Mobile

From: DiClemente, Anthony P.
To: [Redacted] (DEA-US)
Sent: Fri Jun 04 13:08:36 2010
Subject: Re: [Redacted]

Thanks [Redacted] I'll forward it to [Redacted] as another great case example.

Regards,

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Anthony DiClemente
Chief, Data Acquisition/Intercept Section
Operational Technology Division
Federal Bureau of Investigation

[Redacted] Office
[Redacted] Mobile

Referral/Direct

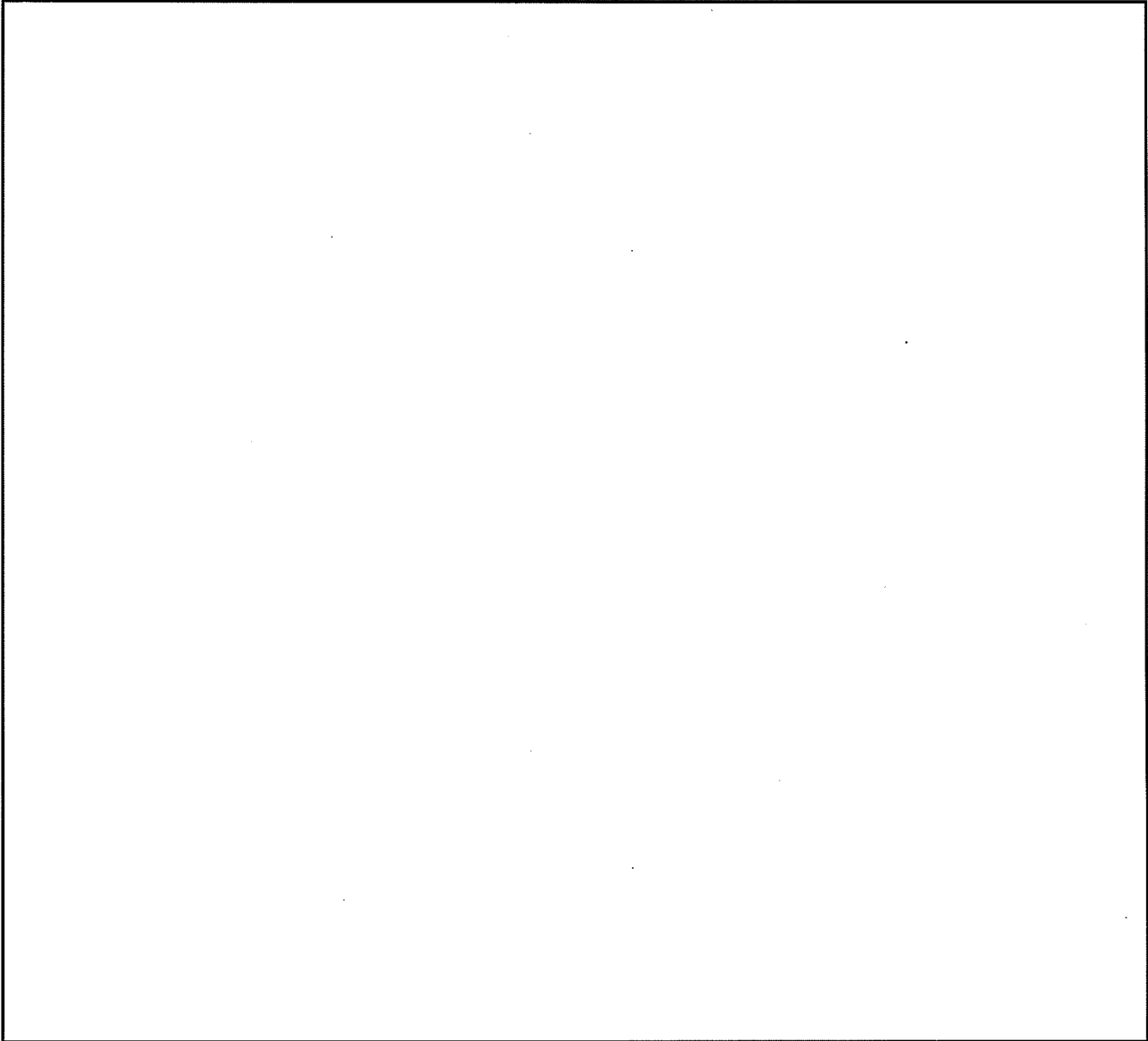
[Large Redacted Area]

[Redacted]

EFF/Lynch-761

[Redacted]

b7E



Referral/Direct

EFF/Lynch-762

[Redacted]

From: [redacted]
Sent: Friday, January 15, 2010 5:39 PM

ALL INFORMATION CONTAINED
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DATE 05-13-2011 BY 65179/DMH/BAW/STP/bls

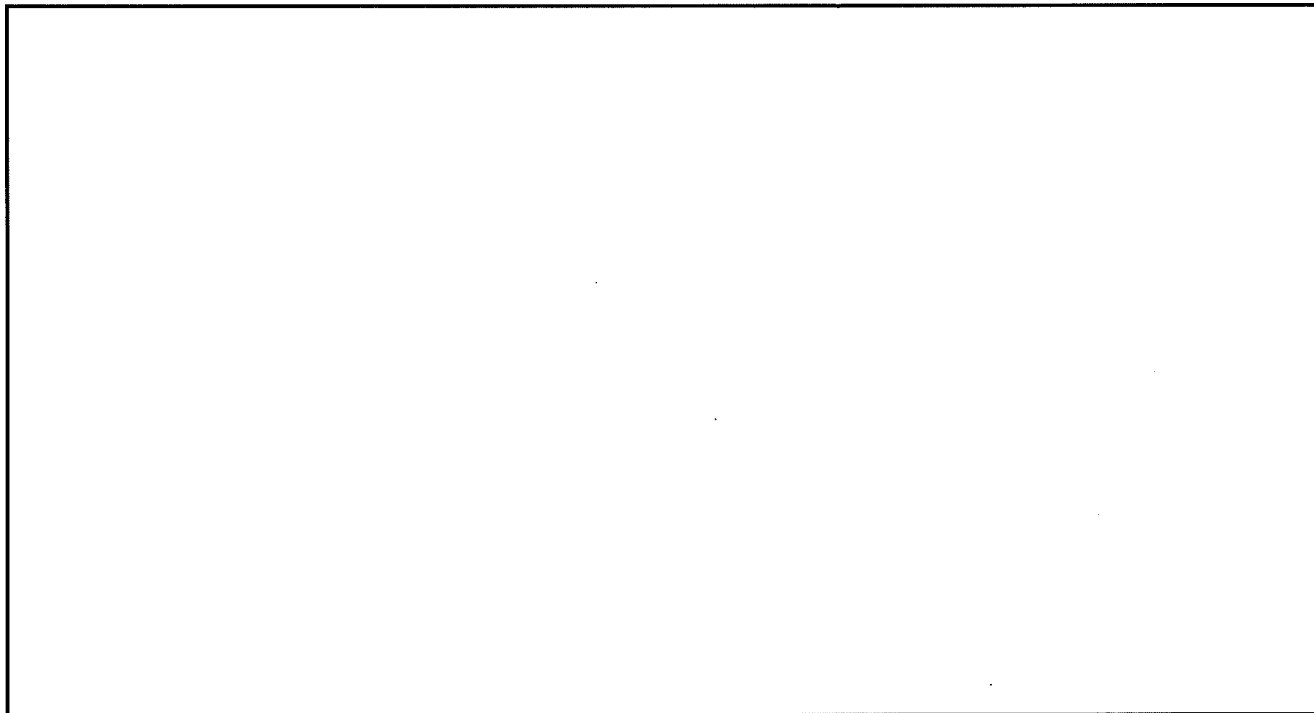
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To: [redacted]
Cc: DiClemente, Anthony P.
Subject: Fw: [redacted] Director's concerns
Here's input re [redacted]

[redacted]
Supervisory Special Agent
Unit Chief, CALEA Implementation Unit
Operational Technology Division
Federal Bureau of Investigation
[redacted]

From: [redacted]
To: [redacted]
Cc: [redacted]
Sent: Fri Jan 15 17:35:54 2010
Subject: RE: [redacted] Director's concerns

Here is what I was able to pull together based on [redacted] input:



[redacted]
Tridea Works, LLC
[redacted]

From: [redacted]
Sent: Friday, January 15, 2010 2:58 PM
To: [redacted]
Subject: Re: [redacted] Director's concerns

EFF/Lynch-763

Also ask if its a problem for state and locals

[redacted]
Supervisory Special Agent
Unit Chief, CALEA Implementation Unit
Operational Technology Division
Federal Bureau of Investigation
[redacted]

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From: [redacted]
To: [redacted]
Sent: Fri Jan 15 14:50:46 2010
Subject: Fw [redacted] Director's concerns

My phone is dying. There may be issues on the criminal side.

[redacted]
Supervisory Special Agent
Unit Chief, CALEA Implementation Unit
Operational Technology Division
Federal Bureau of Investigation
[redacted]

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From: [redacted]
To: [redacted]
Sent: Fri Jan 15 14:30:40 2010
Subject: Fw [redacted] Director's concerns

Per Tony,
Can you get with DITU and write smthng up about this?

[redacted]
Supervisory Special Agent
Unit Chief, CALEA Implementation Unit
Operational Technology Division
Federal Bureau of Investigation
[redacted]

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From: [redacted]
To: Sabol, Sherry E.; DiClemente, Anthony P.; [redacted]
Cc: Grever, Louis E.; Thomas, Marcus C.
Sent: Fri Jan 15 14:27:50 2010
Subject: [redacted] Director's concerns

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[redacted] asked me to prepare a two-page memo [redacted] Can you please send me or give me background info on the problems we are having [redacted] It can be very rough. I'm just going to incorporate it into the memo. If at all possible, I need this today, so I can write the memo tonight or over the weekend. Thanks.

FYI I am looking for time on the Director's schedule after the Jan 20th hearing to present [redacted] Will let you know when I've got some dates.

[redacted]

EFF/Lynch-764

[Redacted]

From: Sabol, Sherry E.
Sent: Monday, June 07, 2010 7:56 PM

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 05-13-2011 BY 65179/DMH/BAW/STP/bls

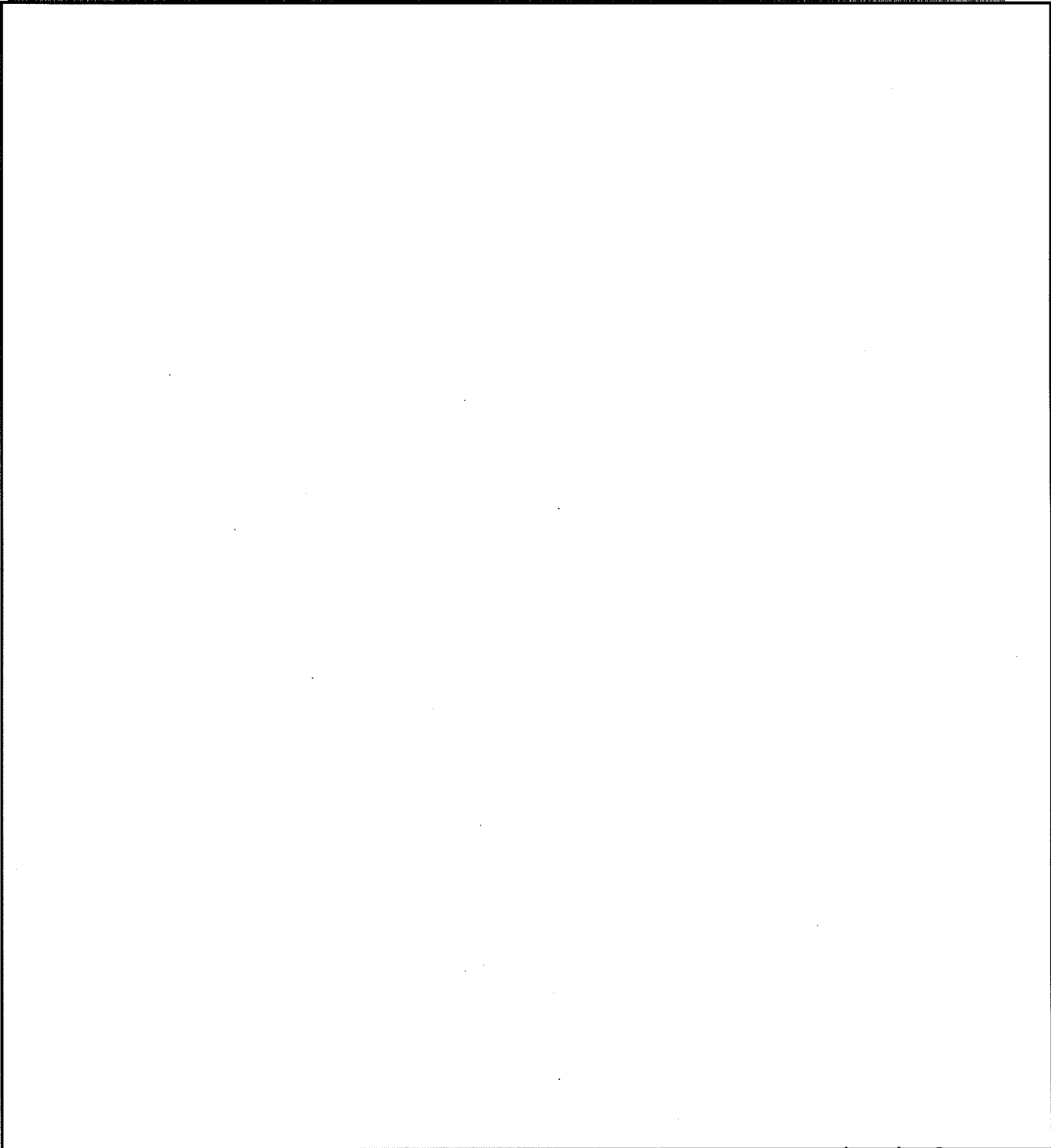
To: [Redacted]
Cc: [Redacted]

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Subject: Fw [Redacted] Case Example [Redacted]

Sensitivity: ~~Confidential~~

Referral/Direct



EFF/Lynch-765

[Redacted]

b7E

Page 2 of 3

[Redacted]

Referral/Direct

From: Sabol, Sherry E. [mailto:Sherry.Sabol@ic.fbi.gov]

Sent: Monday, June 07, 2010 2:33 PM

To: [Redacted]

Cc: [Redacted]

Subject: RE: [Redacted] Case Example [Redacted]

Sensitivity: Confidential

b6
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Thank you. We may need something on ELSUR if you have it. If not, we'll go with what we have.
Sherry.

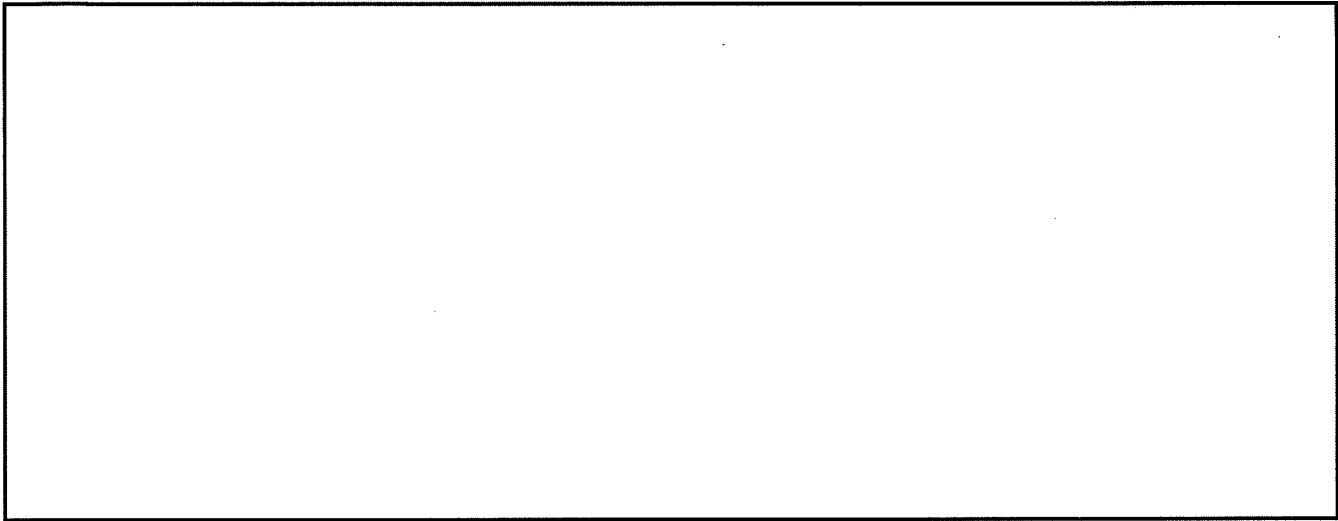
Referral/Direct

[Large Redacted Area]

EFF/Lynch-766

[Redacted]

b7E



Referral/Direct

EFF/Lynch-767