

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELECTRONIC FRONTIER FOUNDATION	)	
Plaintiff,	)	
	)	Civil Action No. 07-1023 JSW
v.	)	
	)	
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE	)	
Defendant.	)	

**DECLARATION OF JOHN F. HACKETT**

Pursuant to 28 U.S.C. § 1746, I, John F. Hackett, declare the following to be true and correct:

1. I am the Director of the Information Management Office (IMO) for the Office of the Director of National Intelligence ("ODNI"). I have been in this position since April 2006. Prior to my arrival in the ODNI, I held similar positions in the National Counterterrorism Center and the Terrorist Threat Integration Center. I am the final decision-making authority for the IMO, which receives, processes, and responds to requests for ODNI records under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

2. I make the statements herein on the basis of personal knowledge, as well as on information acquired by me in the course of performing my official duties.

3. By facsimile dated December 21, 2007, plaintiff Electronic Frontier Foundation submitted a FOIA request to ODNI for "all agency records from September 1, 2007 to the present concerning briefings, discussions, or other exchanges that Director McConnell or other ODNI officials have had with 1) members of the Senate or House of Representatives and 2) representatives or agents of telecommunications companies concerning amendments to FISA, including any discussion of immunizing such companies or holding them otherwise unaccountable for their role in government surveillance activities." ODNI received the request

on December 26, 2007. (A copy of plaintiff's initial request letter is attached as Exhibit A to my March 18, 2008 declaration, previously submitted in this case).<sup>1</sup>

4. On April 4, 2008, the Court in the above-captioned matter granted plaintiff's motion for a preliminary injunction and ordered ODNI "to respond to plaintiff's FOIA request and provide an initial release of documents no later than April 17, 2008." The Court further ordered ODNI "to provide a final release of all responsive, non-exempt documents no later than April 21, 2008." Finally, the Court directed ODNI "to file with the Court and serve upon plaintiff's counsel, an affidavit or declaration attesting to Defendant's compliance and setting forth the basis for withholding any responsive document it does not release." This declaration is provided to the Court and plaintiff consistent with the Court's order.<sup>2</sup>

5. In the course of processing plaintiff's FOIA request ODNI located 226 pages of responsive documents. In addition, 11 documents were referred to ODNI by the Department of Justice for direct response to the requester. ODNI determined that two of those documents were not responsive to this request and four of them are duplicates of documents located by the ODNI. In sum, ODNI processed 250 pages of responsive material.

6. Pursuant to the Court's order, by letter dated April 17, 2008, 19 documents, totaling approximately 77 pages, were released to the plaintiff. Redactions were made on 11 pages pursuant to FOIA Exemption 2, 5 U.S.C. § 552(b)(2), which protects information related solely to the internal personnel rules and practices of an agency. The information that was redacted from these documents consists exclusively of non-public ODNI fax numbers and phone numbers. Because the internal phone numbers and fax numbers relate solely to ODNI's internal

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<sup>1</sup> Plaintiff's request seeks information pertaining to, among other things, "any discussion of immunizing telecommunications companies or holding them otherwise unaccountable for their role in government surveillance activities." Nothing in this declaration should be construed to confirm or deny any role that telecommunications companies may or may not have in any government surveillance activities.

<sup>2</sup> ODNI submits this declaration without prejudice to its rights to provide additional information regarding the processing of plaintiff's FOIA request or the reasons for any withholdings. ODNI specifically reserves the right to submit additional information in summary judgment or other subsequent proceedings in this case.

practices, because disclosure would not serve any public interest, and because disclosure could impede ODNI's effectiveness in carrying out its official business (*i.e.*, subject ODNI employees to harassing communications that could disrupt official business), the information was properly withheld on the basis of FOIA Exemption 2.

7. Today, April 21, 2008, plaintiff is being provided with a final response to its FOIA request. Twelve documents, totaling 80 pages, are being released in full. 14 documents, totaling 58 pages, are being released in part and 11 documents, totaling 31 pages, are being withheld in full pursuant to FOIA Exemptions 1, 2, 3, 5, and 6, 5 U.S.C. § 552(b)(1), (2), (3), (5), and (6).<sup>3</sup>

8. There are five categories of documents responsive to the plaintiff's request that are being withheld either in full or in part: (1) correspondence between ODNI and Members of Congress and classified attachments to that correspondence; (2) classified portions of briefing slides used by ODNI to brief Members of Congress regarding national security and intelligence matters; (3) calendar entries and database print-outs reflecting briefings or meetings with Members of Congress; (4) fax cover sheets and one letter exchanged between ODNI and representatives of telecommunication companies; and (5) one email chain and 15 pages of memorandums discussing meetings and briefings with Members of Congress.

9. With respect to the first category of materials (correspondence and classified attachments), 22 pages are being withheld in part pursuant to FOIA Exemptions 1, 2, and 3. The information being withheld pursuant to Exemption 2 consists of non-public telephone and fax numbers. The information withheld pursuant to Exemption 1 is currently and properly classified under Executive Order 12958, as amended. Specifically, the withheld information contained in these documents<sup>3</sup> meets the criteria for classification as set forth in subparagraphs (c) and (g) of Section 1.4 of Executive Order 12958, as amended, which authorizes the classification of

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<sup>3</sup> The Office of Legal Counsel's declaration explains that it located a December 18, 2007 letter that would be released in part by ODNI. That letter was included in today's release to the plaintiff.

information concerning "intelligence activities (including special activities), intelligence sources or methods or cryptology, and "vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection systems relating to the national security, which includes defense against transnational terrorism." The withheld information is classified at the secret and top secret levels, which means that its unauthorized disclosure could reasonably be expected to cause serious and in some instances exceptionally grave damage to the national security of the United States. Additionally, portions of the withheld information must be protected from disclosure pursuant to other statutes, in this instance, 50 U.S.C. § 403-1(i), 18 U.S.C. § 798 and 50 U.S.C. § 402 note and was therefore also withheld pursuant to Exemption 3.

10. With respect to the second category of materials (classified briefing slides), three pages are being released in full, three pages are being released in part, and 11 pages are being withheld in full. The withheld information is currently and properly classified under Executive Order 12958, as amended, for the same reasons described in paragraph nine. Additionally, portions of the withheld information must be protected from disclosure pursuant to other statutes, in this instance, 50 U.S.C. § 403-1(i), 18 U.S.C. § 798 and 50 U.S.C. § 402 note and was therefore also withheld pursuant to FOIA Exemption 3.

11. With respect to the third category of materials (calendar entries and database print-outs reflecting briefings and meetings with Members of Congress) five pages are being released in full and 10 pages are being released in part, pursuant to FOIA Exemptions 2 and 6. The withheld information consists of internal administrative information that is of no public interest such as database file numbers and certain logistical information. In addition, the names of certain ODNI employees have been withheld because disclosure of the names of certain Intelligence Community employees would result in an unwarranted invasion of personal privacy and would hamper the effectiveness of the ODNI and the Intelligence Community.

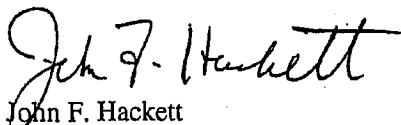
12. With respect to the fourth category of materials (exchanges with representatives of telecommunications companies) 13 pages are being withheld in full pursuant to FOIA Exemptions 2, 3 and 6. The withheld information consists of four fax cover sheets and one letter, all of which were exchanged between the ODNI and representatives of telecommunications companies. Certain non-public administrative information that is of no public interest such as telephone and fax numbers is being withheld. In addition, the name of an ODNI employee is being withheld because disclosure of the names of certain Intelligence Community employees would result in an unwarranted invasion of personal privacy and would hamper the effectiveness of the ODNI and the Intelligence Community. Finally, any information that could reveal the identity of telecommunication carriers that may have assisted, or may in the future assist, the United States Government in conducting electronic surveillance for foreign intelligence purposes has been withheld. Such information is properly withheld pursuant to FOIA Exemption 3 because it directly implicates sensitive intelligence sources and methods protected from unauthorized disclosure by the National Security Act of 1947, as amended. *See* 50 U.S.C. § 403-1(i).

13. With respect to the fifth category of materials (an email exchange between ODNI and other government agencies and internal memorandums discussing meetings and briefings with Members of Congress), 18 pages are being withheld in full pursuant to FOIA Exemptions 1, 2, 3, 5 and 6. The withheld information is currently and properly classified under Executive Order 12958, as amended, for the same reasons described in paragraph nine. Additionally, portions of the withheld information must be protected from disclosure pursuant to other statutes, in this instance, 50 U.S.C. § 403-1(i), 18 U.S.C. § 798 and 50 U.S.C. § 402 note and was therefore also withheld pursuant to FOIA Exemption 3. In addition, the email exchange and the internal memorandums consist of ODNI official's summaries, views and comments regarding various

briefings and meetings with Members of Congress. These documents contain deliberative information that if disclosed would hinder the frank exchange of information within the ODNI and other government agencies and is therefore properly withheld pursuant to FOIA Exemption 5 (deliberative process privilege). Furthermore, these documents contain telephone numbers, email addresses and other internal information as well as the names of various Intelligence Community employees.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 21st day of April, 2008.

A handwritten signature in black ink that reads "John F. Hackett". The signature is written in a cursive style with a large initial "J".

John F. Hackett  
Director, Information Management Office