

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

_____)	
ELECTRONIC FRONTIER FOUNDATION,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. 08-1023 JSW
)	
OFFICE OF THE DIRECTOR OF NATIONAL)	
INTELLIGENCE and UNITED STATES)	
DEPARTMENT OF JUSTICE)	
)	
Defendants,)	
_____)	

DECLARATION OF JAMES M. KOVAKAS

I, James M. Kovakas, make the following declaration under penalty of perjury.

1. I am Attorney-In-Charge of the Freedom of Information and Privacy Acts (FOI/PA) Office, Civil Division, Department of Justice. The FOI/PA Office responds to FOI/PA requests for records of the Civil Division, Department of Justice, made under the Freedom of Information Act (FOIA), 5 U.S.C. §552 (1994), as amended by the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C.A. §552, and/or the Privacy Act (PA), 5 U.S.C. §552a (1994). Pursuant to Civil Division Directive No. 137-80, I am authorized to exercise the authority of the Assistant Attorney General, Civil Division, to deny requests for records under 5 U.S.C. §§ 552 and 552a. My official duties include the supervision of all processing of such requests for Civil Division records. Pursuant to my duties I am familiar with the administrative

procedures used in the processing of record requests under the FOIA and the PA at the Department of Justice. My knowledge of the processing of plaintiffs' request which is at issue in this case results from my personal review of the documents as well as information obtained in my official capacity.

2. By letter dated December 21, 2007, plaintiff Electronic Frontier Foundation submitted a Freedom on Information Act request to the Department of Justice, Office of Information and Privacy (OIP) for "all agency records from September 1, 2007 to the present concerning briefings, discussions, or other exchanges that Justice Department 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 telecommunications companies or holding them otherwise unaccountable for their role in government surveillance activities."

3. On April 4, 2008, the Court in the above-captioned case granted plaintiff's motion for a preliminary injunction. The Court, *inter alia*, ordered defendants "to provide a final release of all responsive, non-exempt documents no later than April 21, 2008" and "to file with the Court and serve upon Plaintiff's counsel[] an affidavit or declaration attesting to Defendants' compliance and setting forth the basis for withholding any responsive documents it does not release." This declaration is provided to plaintiff and the Court in accordance with the Court's April 4, 2007 order¹.

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The Civil Division 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. The Civil Division specifically reserves the right to submit additional information in summary judgment or other subsequent proceedings in this case.

4. On April 8, 2008 the Civil Division received the OIP referral of three records consisting of emails and attachments which had been identified as originating in or received in the Civil Division. I reviewed the records which consisted of a single email (1 page) an email chain (1 page with a 5 page attachment) and an email chain (2 pages) and determined that they were exempt from disclosure under 5 U.S.C. 552 (b)(5) as they constituted pre-decisional deliberative process, the disclosure of which would chill future deliberations within the Civil Division. I also determined that the records met the (b)(5) threshold as they were inter/intra agency records that had not been disclosed outside the executive branch. Finally, I determined that there were no non-exempt portions that could be disclosed.

5. By letter dated April 17, 2008 I advised the requester/plaintiff of my administrative determination. A copy of that letter is attached as Exhibit A.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on this 17th day of April, 2008.



James M. Kovakas
Attorney-In-Charge
FOI/PA Office, Civil Division
Department of Justice



U.S. Department of Justice

Civil Division

Washington, D.C. 20530

JMK:jmk#145-FOI-9502

April 17, 2008

Marcia Hofmann
Staff Attorney
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Hofmann:

This is in response to your December 21, 2007 Freedom of Information Act (FOIA) request addressed to the Office of Information and Privacy (OIP), for records from September 1, 2007 through the present concerning briefings, discussions, or other exchanges between the Department of Justice (DOJ) and members of Congress or representative of telecommunications companies about amendments to FISA. Your request was received in OIP on December 27, 2007.

During the processing of your request, OIP identified three email records and attachments, consisting of nine pages that originated in or were received by the Civil Division. Pursuant to DOJ regulations, these records were referred to this office on April 4, 2008 for review and direct response to you.

The subject records include a single email and two email chains, one with attachments. Pursuant to my review of these records under the FOIA, I have determined that they are exempt from disclosure under 5 U.S.C. 552 (b)(5) as they are pre-decisional internal deliberations disclosure of which would likely have a chilling effect on agency deliberations. These records were not exchanged outside of the executive branch and were reviewed to determine if non-exempt portions could be released.

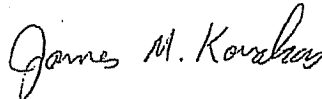
I am aware that the this FOIA request is the subject of pending litigation, however, I am required to provide you with your administrative appeal rights as follows. You may appeal my denial of access to records as outlined above by writing within 60 working days of the receipt of this letter to Director, Office of Information and Privacy, 1425 New York Avenue, Suite 11050, United States Department of Justice, Washington, D.C. 20530. Both the letter appealing the decision and the envelope should be clearly marked "FOIA APPEAL."

EXHIBIT A

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Thereafter, judicial review would be available in the U.S. District Court in the district in which you reside or have your principal place of business or in the United States District Court for the District of Columbia.

Sincerely,

A handwritten signature in cursive script that reads "James M. Kovakas".

James M. Kovakas
Attorney In Charge
FOI/PA Unit, Civil Division