

EXHIBIT 2

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

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

DECLARATION OF GAYLA D. SESSOMS

I, GayLa D. Sessoms, do hereby state and declare as follows:

1. I am the Freedom of Information Act (FOIA) Coordinator for the National Security Division (NSD), of the United States Department of Justice (DOJ). In that capacity, I manage day-to-day FOIA operations including the receipt, review, search, and records processing in connection with all incoming access requests.

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 letter dated December 21, 2007, the Electronic Frontier Foundation (“EFF”) submitted a request to NSD under the Freedom of Information Act (“FOIA”) 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 discussions or immunizing telecommunications companies or holding them otherwise unaccountable for their role in government surveillance activities.”

4. On April 4, 2008, the Court in the above-captioned matter granted plaintiff’s request for a preliminary injunction requiring defendants to provide “an initial release of documents no later than April 17, 2008, . . . and a final release of all responsive, non-exempt documents no later than April 21, 2008.” The Court also directed defendants to provide “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 the plaintiff and the Court consistent with the Court’s order.¹

5. Pursuant to the Court’s order, by letter dated April 8, 2008, six documents, totaling 24 pages were released to plaintiff in full. (See attached Exhibit 1). Today, plaintiff is being provided with a final response. Sixteen documents, totaling ninety-five pages are being released in full. (See attached Exhibit 2).

6. Additionally, two documents, totaling sixty-two pages are being released in part, with excisions of information pursuant to Exemption 1, 5 U.S.C. §552 (b)(1). The withheld information is currently and properly classified under Executive Order 12958, as amended. Specifically, the withheld information contained in these documents 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 information concerning "intelligence activities

¹ This declaration is provided to plaintiff without prejudice to the NSD’s rights to provide additional information regarding the processing of plaintiff’s request and/or the reasons for any withholdings. The NSD specifically reserves the right to submit additional information, as appropriate, in the context of summary judgement or other subsequent proceedings in this case.

(including special activities), intelligence sources or methods, or cryptology," and "vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection systems relating to nation 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, it is my understanding that 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 is therefore also withheld pursuant to Exemption 3 of the FOIA, 5 U.S.C. §552 (b)(3).

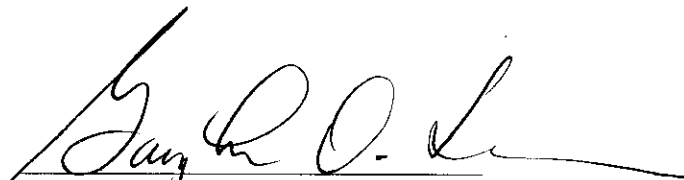
7. One document, totaling two pages, is being withheld pursuant to FOIA Exemption 5 and because the remaining portions were not responsive to the request. It is my understanding that this document is a duplicate of a document that is accounted for in paragraph 12 of the declaration of Thomas E. Hitter, Department of Justice, Office of Information and Privacy ("OIP").

8. Twelve documents, totaling 57 pages were referred by the NSD to the Office of the Director of National Intelligence ("ODNI") and/or OIP for review and direct response to plaintiff. It is my understanding that these documents are addressed in the declarations submitted herewith by John F. Hackett of ODNI and Thomas E. Hitter of OIP.

9. Finally, in response to plaintiff's request, OIP referred six documents to the NSD for review and direct response to plaintiff. This material consists of five final *Statements* and *Written Testimony* by the Assistant Attorney General for National Security before Congress and a duplicate of a record already in NSD's possession. All of the referred material is being released in full.

10. In sum, the NSD has completed processing Plaintiff's FOIA request, releasing twenty-two documents in full, and portions of two documents. One document has been withheld in its entirety, and the ODNI and OIP are responding with respect to the remaining twelve documents. Six additional documents referred to the NSD by OIP are being released in full.

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



GayLa D. Sessoms
FOIA Coordinator
National Security Division

Executed on this 21st day of April, 2008.



U.S. Department of Justice

National Security Division

Washington, D.C. 20530

APR 8 2008

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

Re: FOIA #08-060

Dear Ms. Hofmann:

This is in further reference to your Freedom of Information Act (FOIA) request seeking access to "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."

We appreciate your agreement to narrow the scope of your request removing the *Statements* and *Written Testimony* by the Assistant Attorney General for National Security before Congress (including the multiple drafts that were generated during the course of finalizing these statements). Six unclassified documents (totaling 24 pages) are being released to you in their entirety. This material is enclosed. We are currently reviewing the remaining thirty-four documents (totaling 191 pages) and completing consults with other agencies and Department of Justice components. We will notify you as soon as our consults are completed. Feel free to contact me at 202-616-5460, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'GayLa D. Sessoms', written in a cursive style.

GayLa D. Sessoms
FOIA Coordinator

Enclosures (6)

EXHIBIT 1



U.S. Department of Justice

National Security Division

Washington, D.C. 20530

APR 21 2008

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

Re: FOIA #08-060

Dear Ms. Hofmann:

This is our final response to your Freedom of Information Act (FOIA) request seeking access to "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."

In response to your request, this Office released six documents in full, (totaling 24 pages) on April 8, 2008, and we have completed our review of the remaining records. Sixteen documents, (totaling 95 pages) are being released to you in full. Portions of two documents, (totaling 62 pages) are being released to you with excisions pursuant to Exemptions 1 and 3, 5 U.S.C. §552 (b)(1), and (b)(3), and one document is being withheld in full pursuant to the deliberative process privilege embodied in Exemption 5, 5 U.S.C. §552 (b)(5). Exemption 1 pertains to national security information which is properly classified pursuant to Executive Order 12958, as amended. Specifically, 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. Exemption 3 permits the withholding of information specifically exempted from disclosure by statute. The applicable statute is the National Security Act of 1947, as amended, 50 U.S.C. § 403-1(1), which protects sensitive intelligence sources and methods. None of the information being withheld is appropriate for discretionary disclosure.

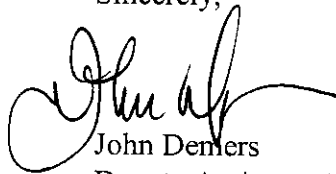
EXHIBIT 2

Twelve documents, totaling 57 pages were referred to the Office of the Director of National Intelligence and/or the Office of Information and Privacy, DOJ for review and direct response to you.

Finally, in response to your request, the Office of Information & Privacy referred six documents to this office for review and direct response to you. We have reviewed this material which consists of five *Statements* and *Written Testimony* by the Assistant Attorney General for National Security before Congress and a duplicate of NSD document #11. All of this material is appropriate for release without excision, and has been enclosed. For your convenience, we have also enclosed the remaining *Statements* and *Written Testimony* referenced in our April 8th correspondence to you.

Although your access request is the subject of litigation, you may administratively appeal this determination by writing to the Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Avenue, NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. Both the letter and envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "John Demers", with a long, sweeping horizontal flourish extending to the right.

John Demers
Deputy Assistant Attorney General
Law and Policy

Enclosures: (24) documents
Document Index

EFF (HOFMANN) FOIA LITIGATION (FISA AMENDMENTS)
DISPOSITION OF NSD DOCUMENTS

<u>DOCUMENT #</u>	<u>DISPOSITION</u>
1	Released in full 4/21/08
2	Released in full 4/21/08
3	Referred to OIP/ODNI for direct response
4	Referred to OIP/ODNI for direct response
5	Referred to OIP/ODNI for direct response
6	Referred to ODNI for direct response
7	Referred to OIP/ODNI for direct response
8	Released in full 4/21/08
9	Released in full 4/8/08
10	Referred to ODNI for direct response
11	Released in full 4/21/08
12	Released in part 4/21/08
13	Released in part 4/21/08
14	Referred to OIP for direct response
15	Referred to OIP for direct response
16	Referred to OIP/ODNI for direct response
17	Released in full 4/21/08
18	Released in full 4/21/08
19	Referred to OIP for direct response
20	Released in full 4/21/08
21	Referred to ODNI for direct response
22	Released in full 4/21/08
23	Released in full 4/8/08
24	Released in full 4/21/08
25	Referred to OIP for direct response
26	Released in full 4/8/08
27	Released in full 4/8/08
28	Released in full 4/21/08
29	Released in full 4/8/08
30	Released in full 4/8/08
31	Withheld in full 4/21/08
32	Released in full 4/21/08
33	Released in full 4/21/08
34	Released in full 4/21/08
35	Released in full 4/21/08
36	Released in full 4/21/08
37	Released in full 4/21/08