

Electronic Frontier Foundation v. U.S. Department of Justice

Civil Action No. 08-CV-2997

U.S. District Court, Northern District of California

National Security Division (NSD) Vaughn Index

This index contains a description of the records protected either in full or in part by Freedom of Information Act Exemptions 1, 3, and 5 by the Department of Justice, National Security Division.

Part I: Description of documents protected in full. With one exception, all documents withheld in full were protected pursuant to Exemption 5. Privileges associated with this exemption may include all or some of the following: deliberative process, presidential communications, and attorney work product. Portions of these documents may have also been withheld pursuant to Exemption 1. This Exemption has been asserted to protect information properly classified in the interest of national security pursuant to Executive Order 12958, as amended. Portions of these documents may have also been withheld pursuant to Exemption 3. This Exemption has been asserted in conjunction with the National Security Act of 1947, which protects sensitive intelligence sources and methods. In this instance Exemption 3 has been asserted to protect the names and/or e-mail addresses of certain staff within the federal intelligence community, and material identifying any telecommunication companies (telecoms).

Part II: Description of documents withheld in part. Portions of these documents were withheld pursuant to Exemptions 1, 3 and 5 as referenced above.

Categories of documents:

Group 1: Draft legislation transmitted between Congress (including staff members) and the NSD

Group 2: E-mails between NSD, other Executive Branch (EB) offices, and White House (WHO)

Group 3: E-mails between DOJ components

Group 4: E-mails between DOJ and Congress (including staff members)

Group 5: E-mails between NSD, EB and Congress (including staff members)

Group 6: Draft Talking Points, QFR's (Congressional questions & answers), and notes

Group 7: Classified records

Group 8: Telecom-related records

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	10/16/07	Draft House FISA Amendments	5 – deliberative process privilege, presidential communications	68
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	6/17/08	Draft House FISA Amendments	5 – deliberative process privilege, presidential communications	85
	10/6/08	Draft Senate FISA Amendments	5 – deliberative process privilege, presidential communications	45
	6/18/08	Draft House FISA Amendments	5 – deliberative process privilege, presidential communications	113
	6/18/08	Draft House FISA Amendments	5 – deliberative process privilege, presidential communications	114
	9/26/08	Draft Senate FISA Amendments	5 – deliberative process privilege, presidential communications	41
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GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
2	10/13/07	E-mail from NSD to OLP, OLA, CIV ODNI, NSA, and WHO discussing an SSCI proposal to replace the PAA	5 - deliberative process privilege, presidential communications	3
	12/6/07	E-mail from NSD to OLA, CIA, WHO, ODNI, FBI regarding comments on a draft FISA amendment	3 & 5 – National Security Act, deliberative process privilege, presidential communications	1
	1/23/08	E-mail from SSCI to WHO, ODNI, NSA, and NSD requesting points of contact on the FISA amendments	3 & 5 - National Security Act, presidential communications	1
	2/9/08 2/12/08	E-mail from WHO to NSD, ODNI, SSCI and other congressional staff concerning a revised version of certain language in a draft FISA amendment	3 & 5 - National Security Act, presidential communications, deliberative process privilege	2
	2/9/08 2/11/08 2/12/08	Four e-mails from SSCI to NSD, ODNI, WHO and other congressional staff concerning a revised version of certain language in a draft FISA amendment	3 & 5 – National Security Act, presidential communications, deliberative process privilege	4
	2/9/08	E-mail from NSD to SSCI, ODNI, WHO and other congressional staff concerning a revised version of certain language in a draft FISA amendment	3 & 5 – National Security Act, deliberative process privilege, presidential communications	1
	2/15/08	E-mail from SSCI to WHO, ODNI and NSD discussing House and Senate versions of FISA amendments	5 – presidential communications	1

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
	2/15/08	E-mail from SSCI to WHO, ODNI and NSD discussing a proposed meeting to identify questions and explore issues related to FISA amendments	5 – presidential communications	2
	3/11/08	Three e-mails from SSCI to WHO, ODNI, NSD, and other congressional Staff discussing House and Senate versions of FISA amendments	3 & 5 – National Security Act, presidential communications, deliberative process privilege	3
	4/19/08	E-mails from SSCI to WHO, ODNI, DOJ and other congressional staff discussing House and Senate versions of FISA amendments and upcoming meetings	3 & 5 – National Security Act, presidential communications	1
	5/8/08	E-mails between SSCI, WHO, and NSD discussing three provisions within the Senate version of FISA amendments	3 & 5 – National Security Act, presidential communications deliberative process privilege	2
	5/9/08	E-mail from NSD to SSCI, WHO, ODNI, and OAG discussing three provisions within the Senate version of FISA amendments	3 & 5 – National Security Act, deliberative process privilege, presidential communications	1
	5/9/08	E-mails between SSCI, WHO, ODNI and NSD discussing three provisions within the Senate version of FISA amendments	3 & 5 – National Security Act, deliberative process privilege, presidential communications,	3

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
	5/11/08	E-mails between SSCI, WHO, ODNI and NSD discussing certain provisions within the FISA amendments and a proposed intra-agency conference call	3 & 5 – National Security Act, deliberative process privilege, presidential communications,	3
	5/12/08	Two e-mails from WHO to NSD and ODNI discussing technical edits to FISA amendments	3 & 5 – National Security Act, presidential communications deliberative process privilege	3
	5/13/08	E-mails between WHO, ODNI and NSD discussing one provision of the Senate version of FISA amendments	3 & 5 – National Security Act, presidential communications, deliberative process privilege,	1
	6/14/08	E-mails between WHO, ODNI, NSD, SSCI and other congressional staff discussing technical edits to FISA amendments	3 & 5 – National Security Act, presidential communications, deliberative process privilege,	3
	6/16/08 6/18/08	Nine e-mails between Congress, WHO, ODNI, NSD, and other Congressional staff discussing technical edits to FISA amendments	3 & 5 – National Security Act, presidential communications, deliberative process privilege,	13
	6/17/08	E-mail from congressional staff to WHO, NSD, ODNI, NSA and other congressional staff regarding a proposed meeting to discuss key issues in the current draft bill	3 & 5 – National Security Act,	1
	6/26/08	E-mail from SSCI to WHO, NSD, ODNI and other congressional staff discussing	3 & 5 – National Security Act,	1

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
		upcoming votes on three FISA amendments		
3	11/14/07	E-mail from NSD to OLA, OLP and other NSD staff regarding the preparation of talking points in support of DOJ's position on a version of the House amendments to FISA	5 – deliberative process privilege	1
	12/6/07	E-mail from NSD to ODAG and other NSD staff regarding specific language that DOJ recommends be included in a Senate version of FISA amendments	5 – deliberative process privilege	1
	12/17/07	E-mail from ODAG to NSD, OAG and CIV discussing a provision of the FISA amendments.	5 – deliberative process privilege	1
	5/19/08	E-mails between NSD and OAG discussing whether DOJ supports a particular proposal within FISA amendments	5 - deliberative process privilege	1
	6/24/08	E-mail from NSD to OAG, and ODAG discussing technical edits to FISA amendments	5 - deliberative process privilege,	1

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
4	10/19/07	E-mail from NSD to SSCI, OAG, ODAG and other NSD staff regarding whether existing practices would comply with proposed FISA amendments	5 – deliberative process privilege, presidential communications	1
	11/27/07 -- 1/10/08	Twenty-six e-mails between SSCI and NSD regarding re-drafts of proposed amendments to FISA, including technical edits; discussions concerning the pros and cons of amendments versus a stand alone bill; and a discussion about scheduling a meeting to clarify the issues	5 – deliberative process privilege, presidential communications	39
	1/16/08	Two e-mails from SSCI to DOJ discussing the review of proposed FISA amendments	5 – presidential communications	2
	1/23/07 -- 1/29/08	Five e-mails between SSCI and NSD regarding additional language for proposed FISA amendments, including technical edits	5 - deliberative process privilege, presidential communications	6
	2/4/08	E-mail from SSCI to NSD and other congressional staff discussing modifications to proposed FISA amendments	5 – presidential communications	2
	2/5/08	E-mail from SSCI to DOJ discussing the application of proposed amendments to existing practices	5 – presidential communications	1
	2/5/08	Four e-mails between SSCI and NSD regarding additional language for proposed FISA amendments and a FISA meeting scheduled on the Hill	5 – deliberative process privilege	4
	4/1/08	E-mail from NSD to SSCI regarding a proposed FISA meeting in a secured area within DOJ	low 2	1

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
	4/4/08 -- 7/8/08	Five e-mails between SSCI and NSD discussing additional language for proposed FISA amendments and questions raised by the Hill	5 – deliberative process privilege, presidential communications	6
	4/29/08	E-mail from NSD to SSCI, OLA, OAG and ODAG discussing alternative language for proposed FISA amendments	5 – deliberative process privilege, presidential communications	1
	5/12/08	E-mail from Congress to NSD providing alternative language for proposed FISA amendments	5 – presidential communications, deliberative process privilege	1
	6/16/08	E-mail from NSD to SSCI circulating modifications to FISA amendments	5 – deliberative process privilege, presidential communications	1

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
5	9/10/07	E-mails between NSD, OLP, SSCI and ODNI discussing the review of a White Paper and FISA Talking Points	3 & 5 – National Security Act, deliberative process privilege, presidential communications	2
	10/9/07 10/15/07 10/22/07	Three e-mails from SSCI to ODNI, OLP, NSD, OAG and other congressional staff discussing revisions to a section of a draft bill	3 & 5 – National Security Act, presidential communications, deliberative process privilege	3
	10/16/07 11/7/07	Two e-mails from SSCI to OLP, ODNI, OAG, NSD, NSA and FBI discussing amendments that are being considered on particular issues, and summarizing modified language in the SSCI bill	5 – presidential communications deliberative process privilege	2
	11/13/07 11/30/07 12/3/07	Three e-mails from SSCI to ODNI, OLP, ODAG, NSD, and CIV scheduling a meeting and discussing amendments prior to FISA floor proceedings	3 & 5 – National Security Act, presidential communications	3
	11/15/07	E-mail from SSCI to OLP, ODNI, ODAG and NSD requesting review/edit of ten enumerated issues in a proposed bill	5 – presidential communications	1
	11/20/07	E-mails between NSD and SSCI, ODNI, ODAG, NSA and FBI discussing compromise language in proposed amendments	5 – deliberative process privilege, presidential communications	1
	12/3/07 12/14/07 12/17/07	Three e-mails from SSCI to ODNI, NSD, OLP ODAG discussing amendment options	3 & 5 – National Security Act, presidential communications, deliberative process privilege	3

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
	12/7/07 12/10/07 12/13/07	Three e-mails between SSCI, NSD, and ODNI assessing status of current amendments, requesting alternate language, and preparing for questions	5 – deliberative process privilege, presidential communications	2
	12/16/07 1/23/08	E-mails between NSD, SSCI, OLP, ODAG, ODNI, NSA and other congressional staff discussing technical edits to FISA amendments and identifying additional issues that require follow-up	3 & 5 – National Security Act, deliberative process privilege, presidential communications	6
	1/22/08	E-mails from SSCI to ODNI and NSD discussing the status of FISA amendments and requesting the administration's position	5 – presidential communications	2
	1/24/08 – 1/31/08	Seven e-mails between SSCI, NSD, and ODNI discussing the status of proposed amendments and the impact on current practices	3 & 5 – National Security Act, deliberative process privilege,	13
	1/25/08 -- 2/5/08	Nine e-mails between SSCI, NSD, and ODNI discussing efforts to resolve outstanding issues, and proposing technical edits to FISA amendments	5 – deliberative process privilege, presidential communications	16
	2/1/08 -- 2/5/08	Eleven e-mails between SSCI, NSD, ODNI and OAG, raising outstanding issues and discussing modified language for FISA amendments	3 & 5 – National Security Act, deliberative process privilege, presidential communications	14
	2/5/08	E-mail from SSCI to OAG and NSD raising questions regarding certain standards within the proposed FISA amendments	5 – presidential communications deliberative process privilege	1

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
	2/5/08 -- 2/6/08	Seven e-mails between SSCI, NSD, and ODNI discussing a specific proposal in the FISA amendments and providing technical edits	3 & 5 – National Security Act, deliberative process privilege, presidential communications	7
	2/15/08	E-mail from SSCI to NSD, ODNI CIV and NSA discussing efforts to resolve outstanding issues through a joint meeting	3 & 5 – National Security Act, presidential communications	1
	2/22/08 2/23/08	Two e-mails from SSCI to ODNI, NSD and CIA discussing written correspondence with Congress	3 & 5 – National Security Act, presidential communications	2
	3/4/08 – 3/18/08	Four e-mails from SSCI to ODNI, NSA, NSD, and CIV regarding a proposed meeting to discuss outstanding issues related to FISA amendments	3 & 5 - National Security Act, presidential communications, deliberative process privilege	6
	4/6/08	Two e-mails from SSCI to NSD and ODNI regarding a proposed meeting to discuss outstanding issues related to FISA amendments	3 & 5 – National Security Act, presidential communications, deliberative process privilege	2
	4/11/08 -- 4/16/08	Five e-mails from SSCI to NSD, ODNI and other congressional staff regarding comparisons between Senate and House bills and discussing a proposed intra-agency meeting to resolve outstanding issues	3 & 5 - National Security Act, presidential communications	7
	4/16/08	E-mail from SSCI to CIV, ODNI, NSD and other congressional staff discussing a proposed intra-agency meeting to resolve outstanding	3 & 5 – National Security Act, presidential communications, deliberative process privilege	3

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
		issues and summarizing the content of two draft bills including pros and cons		
	4/17/08	E-mail from NSD to SSCI and CIV regarding alternative approaches to FISA amendments	3 & 5 – National Security Act, deliberative process privilege, presidential communications	1
	4/22/08	Two e-mails from SSCI to ODNI and NSD discussing technical edits to proposed amendments	3 & 5 – National Security Act, presidential communications, deliberative process privilege	2
	5/6/08	E-mail from SSCI to ODNI, NSD, NSA, and CIV concerning resolution of House and Senate versions of proposed amendments	3 & 5 – National Security Act, presidential communications	1
	5/7/08	E-mail from SSCI to ODNI and NSD identifying outstanding issues related to FISA amendments	5 – presidential communications	1
	5/10/08	E-mails between ODNI, SSCI and NSD concerning a meeting to discuss three specific provisions in the proposed amendments	3 & 5 – National Security Act, deliberative process privilege, presidential communications	1
	5/13/08	E-mail from SSCI to NSD and ODNI comparing two FISA amendment proposals	3 & 5 – National Security Act, presidential communications	1
	5/19/08	E-mails between NSD, OLP, CIV and ODNI regarding a meeting to discuss a specific proposal in the FISA amendments	3 & 5 – National Security Act, deliberative process privilege, attorney work product	2

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
	6/16/08	E-mail from SSCI to NSD, ODNI and other congressional staff circulating comments and technical edits to FISA amendments	3 & 5 – National Security Act, presidential communications	1
	6/16/08	E-mail from SSCI to NSD and ODNI discussing and circulating comments and technical edits to FISA amendments	3 & 5 – National Security Act, presidential communications, deliberative process privilege	3
	6/16/08 – 6/24/08	Seven e-mails between SSCI, NSD, ODNI discussing outstanding issues related to FISA amendments, providing alternate language and technical edits, and canvassing positions on the proposals	3 & 5 - National Security Act, deliberative process privilege, presidential communications	8
6	undated	Talking points regarding FISA Modernization (four documents)	5 – deliberative process privilege, presidential communications	17
	10/9/07	Talking points regarding FISA Modernization	5 - deliberative process privilege, presidential communications	13
	11/27/07	Handwritten notes regarding FISA Modernization	5 - deliberative process privilege presidential communications	6
	12/15/07	Handwritten notes regarding FISA	5 - deliberative process privilege presidential communications	1
	12/17/07	Talking points for meeting regarding liability protection	5 - deliberative process privilege presidential communications	6
	3/26/08	Talking points regarding FISA Modernization	5 - deliberative process privilege presidential communications	12

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
	4/21/08	Handwritten notes regarding FISA Modernization	5 - deliberative process privilege presidential communications	5
	4/22/08	Handwritten notes regarding technical edits	5 - deliberative process privilege presidential communications	4
7	11/30/07	Handwritten notes from a classified meeting regarding FISA amendments.	1 & 5 - EO 12958, deliberative process privilege, presidential communications	4
	12/17/07	Classified note sent by secure fax from NSD official to SSCI staff regarding FISA amendments	1 & 5 – EO 12958, presidential communications	1
8	4/8/08	E-mail from NSD to CIV, OLP and ODAG forwarding an e-mail from a telecom with a redline version of one section of a FISA amendment draft attached	3 & 5 - National Security Act, deliberative process privilege, attorney work product	5
	4/22/08	E-mail from NSD to CIV forwarding e-mails from WHO and a telecom with redline versions of certain portions of a Senate bill	3 & 5 – National Security Act, deliberative process privilege, attorney work product	21
	5/10/08	E-mail from a telecom to NSD discussing technical edits to one section of a FISA amendment	3 & 5 – National Security Act, deliberative process privilege	1
	5/15/08	Six e-mails between a telecom, OAG and NSD discussing and circulating an attached	3 & 5 - National Security Act, deliberative process privilege,	44

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
		redline version of FISA amendments	attorney work product	
	5/16/08	E-mails between a telecom, NSD and OAG discussing standards of review	3 & 5 – National Security Act, deliberative process privilege, attorney work product	1
	6/11/08	E-mail from NSD to SSCI regarding standards of review	3 & 5 – National Security Act, deliberative process privilege, attorney work product	2

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
			PART 2	
3	5/1/08	Internal DOJ e-mail – withheld portion relates to a concurrence on meeting attendance	5 – deliberative process privilege	1
4	11/30/07 -- 6/15/08	Thirteen e-mails between DOJ and Congress - withheld portions relate to FISA amendments and contain deliberative comments; candid discussions about the most appropriate course of action, including pros and cons; technical edits; proposals with alternate language; reasons for attending (or not attending) scheduled meetings; topics of discussion at scheduled meetings; and, whether there is consensus on particular issues	5 – deliberative process privilege, presidential communications	16
5	11/29/07 -- 6/20/08	Twenty-three e-mails between NSD, EB and Congress – withheld portions include the names and/or e-mail addresses of certain staff within the federal intelligence community, but names of White House personnel were released on May 12, 2009 , and FISA amendment related information containing deliberative comments; candid discussions about the most appropriate course of action, including pros and cons; technical edits; proposals with alternate language; reasons for attending (or not attending) scheduled meetings; topics of discussion at	3 & 5 – National Security Act, deliberative process privilege, presidential communications	32

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
		scheduled meetings; and, whether there was consensus on particular issues		
7	9/20/07	Statement of Testimony of Kenneth Wainstein before SSCI – withheld portions of six pages contain sensitive sources and methods related to FISA activity	1 & 3 – EO 12958, National Security Act	34
	9/6/07	Statement of Testimony of Kenneth Wainstein before HPSCI – withheld portions of five pages contain sensitive sources and methods related to FISA activity	1 & 3 – EO 12958, National Security Act,	28
8	5/14/08	E-mails between NSD and a telecom - withheld portions identify a telecom and discuss edits to FISA amendments	3 & 5 – National Security Act, deliberative process privilege	1

GROUP #	DATE	DESCRIPTION	EXEMPTIONS	PAGES
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Legend

DOJ – Department of Justice

OAG – Office of the Attorney General

ODAG – Office of the Deputy Attorney General

OLA – Office of Legislative Affairs

OLP – Office of Legal Policy

NSD – National Security Division

CIV – Civil Division

ODNI – Office of the Director of National Intelligence

WHO – White House

NSA – National Security Agency

CIA – Central Intelligence Agency

SSCI – Senate Select Committee on Intelligence

FISA – Foreign Intelligence Surveillance Act

PAA – Protect America Act

HPSCI – House Permanent Select Committee on Intelligence