

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC FRONTIER FOUNDATION)
1875 Connecticut Avenue NW)
Suite 650)
Washington, DC 20009,)
)
)
)
Plaintiff,)

v.

DEPARTMENT OF JUSTICE)
950 Pennsylvania Avenue NW)
Washington DC 20530,)
)
)
)
Defendant.)
_____)

CASE NUMBER 1:06CV01708
JUDGE: Colleen Kollar-Kotelly
DECK TYPE: FOIA/Privacy Act
DATE STAMP: 10/03/2006

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff Electronic Frontier Foundation seeks injunctive and other appropriate relief for the release of agency records requested by Plaintiff from the Federal Bureau of Investigation, a component of Defendant Department of Justice. Specifically, Plaintiff seeks disclosure of records concerning DCS-3000 and Red Hook, which are tools the Bureau has developed to conduct electronic surveillance.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Electronic Frontier Foundation (“EFF”) is a not-for-profit corporation established under the laws of the State of California, with offices in San Francisco, California and Washington, DC. EFF is a donor-supported membership organization that works to inform policymakers and the general public about civil liberties issues related to technology, and to act as a defender of those liberties. In support of its mission, EFF uses the FOIA to obtain and disseminate information concerning the activities of federal agencies.

4. Defendant Department of Justice (“DOJ”) is a Department of the Executive Branch of the United States Government. DOJ is an “agency” within the meaning of 5 U.S.C. § 552(f). The Federal Bureau of Investigation (“FBI”) is a component within Defendant DOJ.

The Carnivore Internet Monitoring System and the New Generation of Electronic Surveillance Tools

5. On July 11, 2000, the Wall Street Journal reported that the FBI had deployed a surveillance system known as “Carnivore,” which monitored traffic at Internet service provider facilities to intercept information in the electronic mail of criminal suspects. The Journal reported that Carnivore “can scan millions of e-mails a second” and “would give the government, at least theoretically, the ability to eavesdrop on all customers’ digital communications, from e-mail to online banking and Web surfing.” Neil King Jr. and Ted Bridis, FBI's Wiretaps To Scan E-Mail Spark Concern, *Wall Street Journal*, July 11, 2000 at A3. This system, later known as DCS-1000, raised substantial concerns on the part of Congress and the general public about the potential overcollection of personal information in the course of FBI surveillance.

6. Documents subsequently released under the FOIA played a significant role in educating the public and decisionmakers about the scope, technical details, and capabilities of

Carnivore. FBI reports to Congress, also disclosed under the FOIA, revealed that the Bureau did not use DCS-1000 to conduct Internet surveillance in fiscal years 2002 or 2003.

7. In March 2006, the DOJ Inspector General issued a report concerning the implementation of the Communications Assistance for Law Enforcement Act (“CALEA”), which contained, *inter alia*, information about two electronic surveillance systems developed by the FBI. Specifically, the report stated:

System DCS-3000. The FBI has spent nearly \$10 million on this system. The FBI developed the system as an interim solution to intercept personal communications services delivered via emerging digital technologies used by wireless carriers in advance of any CALEA solutions being deployed. Law enforcement continues to utilize this technology as carriers continue to introduce new features and services.

* * *

Red Hook. The FBI has spent over \$1.5 million to develop a system to collect voice and data calls and then process and display the intercepted information in the absence of a CALEA solution.

Plaintiff's Freedom of Information Act Request

8. By letter sent to the FBI via facsimile on August 11, 2006, Plaintiff requested under the FOIA “all agency records (including, but not limited to, electronic records) concerning electronic surveillance systems known as DCS-3000 and Red Hook.” Plaintiff specifically asked that its request be interpreted to include FBI reports to Congress on the Bureau’s use of these systems.

9. On information and belief, Plaintiff’s request was received by the FBI on August 11, 2006.

10. By letters dated August 22, 2006, the FBI acknowledged receipt of Plaintiff’s request to the Bureau.

11. To date, the FBI has failed to disclose any records responsive to Plaintiff’s request.

12. The FBI has violated the generally applicable statutory time limit for the processing of a FOIA request.

13. Plaintiff has exhausted all applicable administrative remedies.

14. The FBI has wrongfully withheld the requested records from Plaintiff.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

15. Plaintiff repeats and realleges paragraphs 1-14.

16. The FBI has wrongfully withheld agency records requested by Plaintiff by failing to comply with the statutory time limit for the processing of FOIA requests.

17. Plaintiff has exhausted the applicable administrative remedies with respect the FBI's wrongful withholding of the requested records.

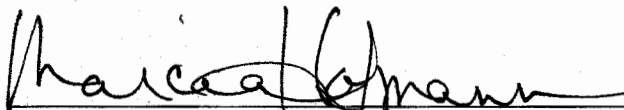
18. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

Requested Relief

WHEREFORE, Plaintiff prays that this Court:

- A. order Defendant DOJ and its component FBI to disclose the requested records in their entireties and make copies available to Plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award Plaintiff its costs and reasonable attorneys fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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