

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

_____)	
ELECTRONIC PRIVACY)	
INFORMATION CENTER)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:13-cv-01961-KBJ
)	
UNITED STATES)	
DEPARTMENT OF JUSTICE)	
)	
Defendant.)	
_____)	

**PLAINTIFF’S RESPONSE TO DEFENDANT’S COUNTER-STATEMENT OF
ADDITIONAL MATERIAL FACTS NOT IN DISPUTE**

Pursuant to Local Civil Rule 7(h) and paragraph 5(d)(iv) of this Court’s Appendix to its Standing Order and Guidelines for Civil Cases, the Electronic Privacy Information Center (“EPIC”) hereby submits the following response to the United States Department of Justice’s counter-statement of additional material facts not in dispute.

1. EPIC agrees that the matter set forth in ¶ 98 of defendant’s counter-statement is not in dispute.
2. EPIC submits that ¶ 99 of defendant’s counter-statement contains a conclusion of law, which EPIC disputes.
3. EPIC agrees that the matters set forth in ¶¶ 100-103 of the defendant’s counter-statement describe the conclusions reached by Mr. Hardy in his Third Declaration.
4. EPIC submits that ¶ 104 of defendant’s counter-statement contains a conclusion of law, which EPIC disputes.

5. EPIC disputes the factual assertion made in ¶ 105 of defendant's counter-statement, and respectfully refers the Court to the redacted semiannual reports for a more complete description of the redacted material. *See, e.g.*, 3d Bradley Decl., Ex. ("Reprocessed Reports"), pt. 2 (ECF No. 27-4) at 15-16, 48, 57-61, 79-81.

6. EPIC submits that ¶ 106 of defendant's counter-statement contains a conclusion of law, which EPIC disputes.

7. EPIC agrees that Mr. Bradley has submitted a Third Declaration, as described in ¶¶ 107-111 of defendant's counter-statement, and respectfully refers the Court to that declaration for a complete review of its contents.

8. EPIC agrees that the matters set forth in ¶ 112 of defendant's counter-statement are not in dispute, but EPIC submits that they are not material.

9. EPIC agrees with ¶¶ 113-115 of defendant's counter-statement to the extent it describes the improper withholding of unclassified statistics in the initial versions of the semiannual reports, but EPIC submits that other statements in these paragraphs are not material.

10. EPIC disputes the factual assertion in ¶ 116 of defendant's counter-statement because portions of the reports are clearly labeled as summaries of FISC opinions. *See, e.g.*, Reprocessed Reports, pt. 2 at 15-16.

11. EPIC disputes the factual assertion in ¶ 117 of defendant's counter-statement to the extent that it implies that all none of the information withheld from the semiannual reports could be disclosed without revealing law enforcement techniques.

12. EPIC disputes the factual assertion in ¶ 118 of defendant's counter-statement because Document 68 contains publicly available Westlaw printouts of

published judicial opinions. *See* 2d Hardy Decl. ¶ 12; 3d Hardy Decl. ¶ 55.

13. EPIC does not dispute ¶ 119 of defendant's counter-statement but submits that it is not material because EPIC has already conceded the withholding of information pursuant to Exemption 3.

14. EPIC submits that ¶ 120 of defendant's counter-statement contains a conclusion of law, which EPIC disputes.

Dated: December 19, 2014

Respectfully submitted,

MARC ROTENBERG
EPIC President and Executive Director

GINGER P. MCCALL
Associate Director
EPIC Open Government Program Director

/s/ Alan Jay Butler
ALAN JAY BUTLER
Senior Counsel
Electronic Privacy Information Center
1718 Connecticut Ave., NW
Suite 200
Washington, DC 20009

Counsel for Plaintiff