

## Sample Request for Expedited Processing

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BY MESSENGER DELIVERY

Myron Marlin  
Director of Public Affairs  
Office of Public Affairs  
U.S. Department of Justice  
Room 1128  
950 Pennsylvania Avenue, NW.  
Washington DC 20530-0001

REQUEST FOR EXPEDITED FOIA PROCESSING

Dear Mr. Marlin:

This is a request for expedited processing of a Freedom of Information Act ("FOIA") request, made pursuant to 28 CFR 16.5(d)(1). On July 12, 2000, I submitted an FOIA request (copy attached) to the Federal Bureau of Investigation ("FBI") seeking the disclosure of "all FBI records concerning the system known as 'Carnivore' and a device known as 'EtherPeek' for the interception and/or review of electronic mail (e-mail) messages."

I believe this request meets the criteria for expedited processing under 28 CFR 16.5(d)(1)(iv), as "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 CFR 16.5(d)(1)(iv).

Through use of the Carnivore system, the FBI reportedly obtains a vast amount of private communications, far in excess of the material it is lawfully authorized to obtain. Release of the requested records would indicate the scope of material Carnivore intercepts and whether the Bureau has any mechanisms in place to limit data collection in keeping with Fourth Amendment and statutory requirements.

There can be no question that the FBI's use of the Carnivore system to intercept electronic mail messages has engendered "widespread and exceptional media interest" since the Wall Street Journal first disclosed the activity on July 11. Accordingly to Lexis-Nexis, more than 50 articles have appeared in the U.S. press since that disclosure, and the Attorney General was closely questioned on the matter at her weekly news briefing on July 13. CNN has reported that "[a]n FBI spokesman says the Bureau has been so inundated with requests on this issue, it may call a news briefing to answer everybody's questions all at once."

It is equally clear that "there exist possible questions about the government's integrity which affect public confidence." Such questions are exemplified in a St. Petersburg Times editorial of July 17:

The FBI. . . is trying to take a bite out of Americans' privacy on the Internet. It has started using a rapacious computer program known as "Carnivore" to do cyberspace snooping on investigative targets.

## Appendix F

The program is attached to the target's Internet service provider. There, it absorbs and analyzes all the traffic or "packets" traveling through the ISP, not just the communications of the suspect. The FBI claims Carnivore can be programmed to spit out as little information as the addresses of those receiving the suspect's e-mails. The problem is, Carnivore also could be used to retain much more, and no one but the government would know.

. . . The FBI says, "Trust us: We'll only collect what we should." But there is little reassuring about the way Carnivore may snack on our electronic conversations. The agency might sound like a protective parent, but its newest snooping tool is all Big Brother.

Likewise, the Christian Science Monitor notes in an editorial published today, "The potential for abuse is greater with Carnivore than with a simple phone tap. The program's capabilities are potentially sweeping."

The American public is deeply concerned about potential government intrusions into personal affairs, particularly private communications. While the Attorney General and FBI spokesmen have acknowledged and addressed these concerns, there is no substitute for the disclosure of internal Bureau records concerning the use of the Carnivore system. Indeed, the very purpose of the FOIA is to lessen the public's dependence on official agency statements and open the underlying documentation to public scrutiny. This is clearly an instance in which expedited processing of an FOIA request is warranted.

For your information, the Electronic Privacy Information Center ("EPIC") is a non-profit educational organization that disseminates information on privacy issues to the public. We accomplish that mission through our heavily-visited Web site and a bi-weekly electronic newsletter that is sent to more than 13,000 recipients, many of whom cover Internet privacy issues for a variety of news outlets. Indeed, EPIC has been recognized as a "representative of the news media" for fee assessment purposes by every federal agency that has received our FOIA requests.

Thank you for your consideration of this request. As applicable Department regulations provide, I will anticipate your determination within ten (10) calendar days.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

David L. Sobel  
General Counsel  
Electronic Privacy Information Center