

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER)
666 Pennsylvania Avenue, S.E.)
Suite 301)
Washington, DC 20003,)
)
Plaintiff,)
)
v.) C.A. No. 99-3197
)
NATIONAL SECURITY AGENCY)
Fort George G. Meade, MD 20755,)
)
and)
)
DEPARTMENT OF DEFENSE)
The Pentagon)
Washington, DC 20301,)
)
Defendants.)
_____)

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant National Security Agency.

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).

3. Plaintiff Electronic Privacy Information Center ("EPIC") is a public interest research organization in Washington, DC.

EPIC is a project of the Fund for Constitutional Government ("FCG"). FCG is a non-profit charitable organization established in 1974 to protect civil liberties and constitutional rights. EPIC's activities include the review of federal agency activities to determine their possible impacts on civil liberties and privacy interests. Among its other activities, EPIC has prepared reports and presented Congressional testimony on Internet and privacy issues and has participated in numerous conferences in the United States and abroad on privacy policy.

4. Defendant National Security Agency ("NSA") was established by Presidential directive in 1952 as a separately organized agency within the Department of Defense. NSA is an agency within the meaning of 5 U.S.C. §552(e).

5. Defendant Department of Defense ("DOD") is an executive department of the United States government. DOD is an agency within the meaning of 5 U.S.C. §552(e).

Plaintiff's FOIA Request and
Defendant NSA's Failure to Respond

6. On or about May 7, 1999, the House Permanent Select Committee on Intelligence ("HPSCI") issued its report on the Intelligence Authorization Act for Fiscal Year 2000. H.R. Rep. No. 130, 106th Cong., 1st Sess., Part 1 (1999). Included in the report were the "additional views" of HPSCI Chairman Porter J. Goss concerning certain documents the Committee unsuccessfully had sought from NSA. Specifically, Chairman Goss cited "legal memoranda, opinions rendered, and other documents in the [NSA] General Counsel's Office" addressing the question of whether "NSA

was carrying out its signals intelligence mission in consonance with the law, relevant executive orders, guidelines, and policy directives." Id. at 35.

7. By letter to defendant NSA dated June 8, 1999, plaintiff submitted a Freedom of Information Act ("FOIA") request for "copies of all agency records that were located by the agency in response to a request from the House Permanent Select Committee on Intelligence, as described by Committee Chairman Porter J. Goss in . . . House Report 106-130." Plaintiff attached to its request a copy of the "additional views" of Chairman Goss cited in ¶ 6, supra. Plaintiff noted that it was specifically requesting all "'legal memoranda, opinions rendered, and other documents in the General Counsel's Office' sought by the Select Committee and addressing the question of whether 'NSA was carrying out its signals intelligence mission in consonance with the law, relevant executive orders, guidelines, and policy directives.'"

8. By letter to plaintiff dated July 6, 1999, defendant NSA provided an "initial response" to plaintiff's FOIA request. Defendant NSA stated, inter alia, that "[t]he material responsive to [the] request is not voluminous or complex," and that "[w]e anticipate providing a response to you by October 31, 1999."

9. To date, defendant NSA has not provided the records requested by plaintiff in its FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

10. Plaintiff has exhausted the applicable administrative remedies.

11. Defendant NSA has wrongfully withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendants 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,

DAVID L. SOBEL
D.C. Bar No. 360418

MARC ROTENBERG
D.C. Bar. No. 422825

ELECTRONIC PRIVACY INFORMATION CENTER

666 Pennsylvania Ave., S.E.
Suite 301
Washington, DC 20003
(202) 544-9240

Counsel for Plaintiff