

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

ELECTRONIC PRIVACY INFORMATION)	
CENTER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-333 (GK)
)	
U.S. DEPARTMENT OF HOMELAND)	
SECURITY)	
)	
Defendant.)	
_____)	

**DEFENDANT’S MOTION TO CONTINUE STAY OF PROCEEDINGS
FOR 10 ADDITIONAL DAYS**

Defendant, the Department of Homeland Security (DHS), by and through undersigned counsel, respectfully requests that the Court continue the stay of proceedings by 10 additional days, until Friday, September 14. As noted below, EPIC agreed this past Friday, just prior to the Labor Day holiday, to a partial narrowing of its FOIA request. DHS is working to assess how the limited revisions to the FOIA request will impact the volume of approximately 10,000 potentially responsive documents that DHS previously identified. DHS expects that there will still be a significant volume of potentially responsive documents and that it may need to ask EPIC to further clarify and/or narrow the scope of its request, particularly in light of the potential volume of classified documents that will require careful review by multiple federal agencies. Extending the existing stay is necessary to provide DHS with a short period in which to assess EPIC’s revised request and to propose an appropriate modification to the current scheduling order, and to allow the parties to continue discussions about the scope of the FOIA request in this action.

On August 24, 2012, DHS asked the Court for a 10-day stay of proceedings, to allow the parties to discuss a potential narrowing of the FOIA request.¹ This Court granted DHS's request by Minute Order on August 27, 2012, issuing a stay of proceedings up to and including September 4, 2012. Following the Court's order, on August 30, 2012, DHS furnished EPIC with a) more information about the DIB Cyber Pilot that is the subject of EPIC's FOIA request; b) information about which of the categories of EPIC's request constitute the majority of the approximately 10,000 pages of potentially responsive documents that DHS had identified; c) a list of the types/categories of documents DHS had identified as potentially responsive; and d) suggestions on how the request could be narrowed. On August 31, 2012, EPIC agreed to narrow the scope of its request by limiting the third category of its request to "all legal and technical analyses, including legal memoranda, regarding the DIB cyber pilot," and by excluding draft documents from the record request.² The request still includes within its scope a significant volume of classified materials.

DHS is working with its FOIA officers to provide EPIC with a revised estimate of the volume of documents that are potentially responsive to EPIC's request and a revised estimate of how much time will be required to process the documents. DHS intends to provide this

¹ As DHS explained in its August 24 motion, DHS had recently identified approximately 10,000 pages of documents potentially responsive to EPIC's request. DHS had asked EPIC to consider narrowing the scope of its request, given the burden the request presents, especially given the fact that a significant number of documents potentially responsive to the request are classified and will require significant review by DHS and likely other agencies.

² The revised request now seeks the following, excluding draft documents: a) all contracts and communications with Lockheed Martin, CSC, SAIC, Northrop Grumman or other defense contractors regarding the DIB Cyber Pilot; b) all contracts and communications with AT&T, Verizon, and CenturyLink or any other Internet Service Providers regarding the DIB Cyber Pilot; c) all legal and technical analyses, including legal memoranda, regarding the DIB Cyber Pilot; and d) any memoranda of understanding between NSA and DHS or any other government agencies or corporations regarding the DIB Cyber Pilot.

information to EPIC so that EPIC may further consider the scope of its request. DHS has already sought clarification from EPIC regarding one term in EPIC's narrowed request—specifically, what EPIC means by the phrase “technical analysis”—and may have additional questions for EPIC after reviewing with its FOIA officers the impact that EPIC's proposed narrowing will have on the collection of potentially responsive documents. It will take several days for DHS to develop an estimate of how the thus-far-agreed-upon narrowing will impact the volume of documents that are potentially responsive to EPIC's request, given that multiple offices at DHS possess potentially responsive documents on both classified and unclassified information systems. Thereafter, DHS will provide this information to EPIC with the goal of allowing EPIC to consider further narrowing the scope of its request and so that the parties can discuss a revised litigation schedule.

Accordingly, DHS requests that this Court extend the current stay for an additional 10 days, until Friday, September 14, 2012. Pursuant to Local Civil Rule 7(m), counsel for defendant met and conferred with counsel for plaintiff about the subject of this motion. Plaintiff's counsel indicated that EPIC would not consent to DHS's requested stay. Nonetheless, DHS believes that this short period of time could be used productively by the parties to assess the current scope and corresponding burden of EPIC's request, and to discuss the potential revised schedule that DHS will propose in light of the recently revised scope of EPIC's request.

For the above stated reasons, and good cause shown, this Court should extend the stay of proceedings by 10 additional days to allow the parties to engage in additional discussions about the scope of the FOIA request in this action.

Dated: September 4, 2012

Respectfully submitted,

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