

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

ELECTRONIC PRIVACY INFORMATION
CENTER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE

Defendant.

Civil Action No. 1:13-cv-01961-KBJ

DECLARATION OF MARK A. BRADLEY

I, Mark A. Bradley, do hereby state and declare as follows:

1. I am the Director of the Freedom of Information Act (“FOIA”) and Declassification Unit of the Office of Law and Policy in the National Security Division (“NSD”) of the United States Department of Justice (“DOJ” or “Department”). NSD is a component of the Department. NSD formally began operations on October 2, 2006, by, inter alia, consolidating the resources of the Department’s Office of Intelligence Policy and Review (“OIPR”)¹ and the Counterterrorism Section (“CTS”) and Counterespionage Section (“CES”) of the Department’s Criminal Division. I make this declaration based on my personal knowledge and information provided to me in my official capacity.

2. On October 18, 2013, NSD FOIA received a FOIA request dated October 3, 2013 from the Electronic Privacy Information Center (“EPIC”) seeking the following:

¹ OIPR is now known as the Office of Intelligence (“OI”).

- (1) All reports made to the Permanent Select Committee on Intelligence in the House of Representatives and the Select Committee on Intelligence in the Senate, total number of orders for pen registers or trap and trace devices granted or denied, and detailing the total number of pen registers or trap and trace devices installed pursuant to 50 U.S.C. § 1843.
- (2) All information provided to the aforementioned committees concerning all uses of pen registers and trap and trace devices.
- (3) All records used in preparation of the above materials, including statistical data.

EPIC also requested expedited processing of its request.

3. By letter dated October 29, 2013, NSD FOIA acknowledged receipt of EPIC's request. On November 5, 2013, EPIC was informed that its request had been granted expedited processing. EPIC served its Complaint in this lawsuit on the United States Attorney for the District of Columbia on December 23, 2013.

4. When a request is granted expedited processing it is given priority status and moved to the front of the NSD request queue, generally ahead of non-expedited requests that receive "first-in, first-out" treatment. An expedited request is not, however, moved ahead of other requests that have previously also been granted expedited processing. Prior to granting expedited processing for this request, NSD had granted expedited processing of thirteen other still-pending requests which are ahead of this one in the NSD FOIA queue.

5. The amount of work that can be completed on a given request depends on a variety of factors, including the complexity of the request, the amount of classified material contained in responsive documents, and how much coordination with other agencies is required. When a request is granted expedited processing, it means that NSD FOIA begins processing that request before it begins processing non-expedited requests.² But that does not mean that the

² Processing of a request begins when it is logged into the NSD FOIA tracking system, given an NSD FOIA tracking number, and an acknowledgment letter is sent to the requester. Processing ends when the requester

processing of an expedited request will be completed within a particular time period, or even necessarily before the processing or completion of a non-expedited request. FOIA and Department regulations require that requests which meet certain criteria be expedited, as this one was; and that they then be processed as soon as practicable. What is practicable will depend on a variety of factors including the complexity of the request, volume of responsive documents, and need for consultation with or referral to other components or agencies. Many of the currently pending expedited requests are complicated, involve volumes of sensitive, classified information, and require that NSD coordinate with multiple intelligence community agencies.

6. To promote administrative efficiency, NSD FOIA employees work on more than one matter at a given time. Sometimes, work on a given matter, even if expedited, cannot proceed continuously or must be halted. This can occur for a number of reasons, including the need to locate material, need to consult with other offices within NSD, the Department of Justice, or elsewhere, such as Intelligence Community agencies; location of additional material or resolution of classification issues in a higher-priority matter (if any); and availability of staff. In the interests of efficiency, when there is a waiting period in one request, (even an expedited one), NSD FOIA employees will turn to other requests and will sometimes be able to quickly finish processing and close simpler requests, even if those requests have not been expedited.

7. Upon carefully reading this request, NSD FOIA determined that the Office of Intelligence ("OI," formerly OIPR) is likely to possess all of the responsive records. NSD FOIA provided the request to OI and has begun consulting with appropriate OI staff. OI informed NSD FOIA that there are approximately 50 documents responsive to category 1 of the request. All of these records are classified as containing national security information under Executive

receives a final disposition of responsive records, which may include any combination of the following: (1) records released in full and/or (2) records released in part and/or (3) a schedule of records denied.

Order 13,256, and so as part of processing them pursuant to FOIA they must all be reviewed to determine if they remain properly classified at this time and what, if any, material can be segregated for release to plaintiff. Of course, they must also be reviewed to determine whether they contain information otherwise exempt from disclosure under FOIA, 552 U.S.C. § 552(b). NSD and OI are still searching their records to determine how many documents are responsive to categories 2 and 3 of the request, which are considerably broader than category 1.

8. Most if not all of the records responsive to plaintiff's request are highly likely to contain classified national security information. When such information was classified by another component or agency, applicable law, including Executive Order 13,526 and Department of Justice regulations, require NSD to consult with that original classifying entity before releasing the information under FOIA. Most FOIA requests directed to NSD involve records that contain classified information, including the other pending requests that were granted expedition prior to plaintiff's request that is the subject of this lawsuit.

9. Of the thirteen pending requests granted expedition prior to plaintiff's request discussed herein, at least seven involve particularly complex issues due to the subject matter, need for coordination with other agencies, or both.

10. NSD FOIA is a small office. NSD has experienced a surge in the number of FOIA requests received and the work necessary to complete them since the unauthorized disclosures of national security information in June 2013, but NSD's FOIA staff has not increased. Currently, the entire office consists of its director, one line attorney, one supervisor who also manages the Division's records, and four support personnel who handle the processing of FOIA requests. Since the start of the fiscal year, NSD FOIA has received approximately 40 FOIA requests. In addition to processing all of these requests which come into the office, NSD

FOIA is currently involved in at least seven other FOIA litigation matters. One of these cases pending in the Southern District of New York requires processing numerous documents for release next week. Because of the likelihood that responsive records in all of these matters contain classified national security information, release of responsive records requires extensive coordination with multiple agencies, and, as a result, preparing NSD records for release in response to all of the pending, expedited requests is complicated, labor-intensive, and time-consuming.

11. OI, the component which is searching for and gathering the responsive materials for this request, and which must be consulted, among others, concerning the classification of such materials, has multiple responsibilities critical to national security. Among other things, OI ensures that the Intelligence Community agencies have the legal authorities necessary to conduct intelligence operations, particularly operations involving the Foreign Intelligence Surveillance Act (FISA). Scheduling of such work is often dictated by events on the ground and developments in ongoing, national security investigations. In addition, the office exercises meaningful oversight over various national security activities of Intelligence Community agencies and plays a major role in FISA-related litigation. The time that OI employees can spend on plaintiff's FOIA request, including searching for and gathering the responsive records, is therefore constrained by the necessity that they perform their critical, and often time-sensitive, national security work.

12. We anticipate completing a review of those materials responsive to category 1 of the request and issuing a further response, including the production to plaintiff of any non-exempt portions, by no later than February 28, 2014. Based on the information available to me at this time, including the volume and complexity of those materials as well as the need to

consult with original classifying agencies in the Intelligence Community, I believe it is not practicable to complete processing of those category 1 materials any sooner. If we do, of course, we will provide plaintiff with a further response as soon as it is practicable to do so.

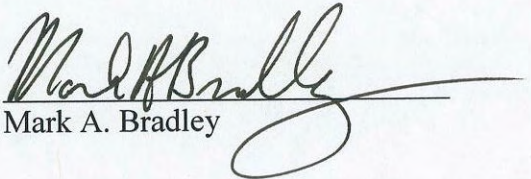
13. Categories 2 and 3 of plaintiff's request are considerably broader than category 1, and span nearly 13 years. Because OI is still searching its records to determine which ones are responsive to categories 2 and 3, we do not yet have an anticipated response date for those materials, but we will immediately update plaintiffs and the Court when we do.

14. For the reasons set forth above, plaintiff's request that NSD complete processing its FOIA request within twenty days is not practicable at this time. NSD is devoting appropriate resources and effort to processing plaintiff's FOIA request as soon as practicable. And as noted above, NSD FOIA anticipates providing plaintiff with a further response to category 1 of the request no later than February 28, 2014.

CONCLUSION

I certify, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of January 2014


Mark A. Bradley