

1 Jennifer Lynch (SBN 240701)
jlynch@eff.org
2 Mark Rumold (SBN 279060)
mark@eff.org
3 ELECTRONIC FRONTIER FOUNDATION
4 454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333
5 Facsimile: (415) 436-9993

6 Attorneys for Plaintiff
7 ELECTRONIC FRONTIER FOUNDATION

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**

12 ELECTRONIC FRONTIER FOUNDATION,)
13 Plaintiff,)
14 v.)
15 DEPARTMENT OF JUSTICE,)
16 Defendant.)
17 _____)

Case No. 4:11-cv-05221-YGR
**STIPULATION AND [PROPOSED]
ORDER REGARDING PROCESSING OF
FOIA REQUESTS**
The Honorable Yvonne Gonzalez Rogers
Oakland Courtroom

18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff Electronic Frontier Foundation and Defendant Department of Justice and its
2 components Office of Information Policy, Office of Legal Counsel, National Security Division,
3 and Federal Bureau of Investigation hereby stipulate to the following regarding Plaintiff's requests
4 made pursuant to the Freedom of Information Act ("FOIA"), dated June 2, 2011 (the "FOIA
5 Requests"), and the subject of the above-captioned action:

6 1. The processing and production of records responsive to Plaintiff's FOIA Requests
7 will occur in three phases. On or before the date of completion for each phase, Defendant will
8 process and produce records according to the schedule set forth below, or notify Plaintiff of the
9 complete or partial withholding of responsive records, if any, pursuant to any applicable FOIA
10 exemptions.

11 2. The first two stages concern only the following categories of documents:

12 a. Legal opinions or memoranda concerning or interpreting Section 215 of the
13 USA PATRIOT Act ("Section 215");

14 b. Guidelines for government personnel regarding the use of Section 215;

15 c. Reports provided to Congress by the Federal Bureau of Investigation or
16 Department of Justice concerning or memorializing the Executive Branch's interpretation or use of
17 Section 215.

18 d. Reports, opinions, or memoranda of the Foreign Intelligence Surveillance
19 Court ("FISC") concerning or interpreting Section 215; and

20 e. Legal opinions or memoranda concerning or interpreting rulings, opinions,
21 or memoranda of the FISC interpreting Section 215.

22 3. On or before March 15, 2012, Defendant will process and produce to Plaintiff those
23 responsive records listed in Paragraph 2 and created from March 9, 2006 to the date Defendant
24 began its search for responsive records.

25 4. On or before May 15, 2012, Defendant will endeavor to process and produce to
26 Plaintiff those responsive records listed in Paragraph 2 and created from January 1, 2004 to March
27 8, 2006.
28

1 5. On or before July 1, 2012, Defendant will endeavor to process and produce to
2 Plaintiff the following categories of records:

- 3 a. All email responsive to Plaintiff's FOIA Requests
4 b. All copies of invoices, receipts, bills, or any other similar document sent to
5 the Department of Justice or any of its components by any business or organization in order to be
6 reimbursed for the cost of compliance with a Section 215 order from January 1, 2004 to June 2,
7 2011

8 6. The following categories of documents are excluded from the FOIA Requests:

9 a. Drafts of documents listed in Paragraph 2 for which a final version is either
10 identified and withheld, or partially released, pursuant to a valid FOIA exemption, or released in
11 full;

12 b. Emails concerning the drafts of documents described in Paragraph 6(a) for
13 which a final version is either identified and withheld, or partially released, pursuant to a valid
14 FOIA exemption, or released in full;

15 c. Records that are purely logistical, such as emails between officials
16 attempting to schedule a meeting.

17 7. For email responsive to Plaintiff's FOIA Requests, only one version of every
18 responsive email need be processed and released or withheld in full pursuant to a valid FOIA
19 exemption.

20 8. Acquisition applications and supporting documentation submitted to the Foreign
21 Intelligence Surveillance Court are excluded from the FOIA Request.

22 9. With respect to the Office of Legal Counsel ("OLC"), OLC need only process and
23 release, or withhold pursuant to a valid FOIA exemption, OLC legal opinions and memoranda
24 concerning or interpreting Section 215.

25 10. Within 21 days of the completion of the productions and/or notifications set forth in
26 Paragraphs 1 – 5, above, the parties will meet and confer regarding the documents withheld in
27 whole or in part by Defendant, and Plaintiff will notify Defendant whether it wishes to object to
28

1 any of the withholdings. In the event Plaintiff objects, the parties will discuss a scheduling order
2 for whether, how, or when Defendant will provide an index or other description of partially or
3 completely withheld documents pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

4 11. Within 30 days of the completion of productions and/or notifications set forth in
5 Paragraphs 1 – 5, above, the parties will submit a joint statement to the Court describing the status
6 of the case.

7 12. Defendant enters into this stipulation based on the information available to it at this
8 time. In the event unforeseen circumstances arise, such as an unexpectedly high volume of
9 responsive material or problems processing Plaintiff’s FOIA Requests, Defendant reserves the right
10 to seek an extension of time after meeting and conferring with Plaintiff through counsel.

11 DATED: February 10, 2012

Respectfully submitted,

12 By /s/ Mark Rumold

13 Mark Rumold
14 Jennifer Lynch
15 ELECTRONIC FRONTIER FOUNDATION
16 454 Shotwell Street
17 San Francisco, CA 94110

18 Attorneys for Plaintiff
ELECTRONIC FRONTIER FOUNDATION

19 DATED: February 10, 2012

20 TONY WEST
21 Assistant Attorney General
22 MELINDA HAAG
23 United States Attorney

24 By: /s/ Steven Y. Bressler (by permission)

25 STEVEN Y. BRESSLER
26 Senior Counsel
27 U.S. Department of Justice
28 Civil Division, Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044
Telephone: (202) 305-0167
Facsimile: (202) 616-8470
Steven.Bressler@usdoj.gov

Attorneys for Defendant
U.S. DEPARTMENT OF JUSTICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GENERAL ORDER NO. 45(X) CERTIFICATION

I attest that I have obtained the concurrence of Steven Y. Bressler, counsel for Defendant,
in the filing of this document.

/s/ Mark Rumold
MARK RUMOLD

* * * * *

CERTIFICATE OF SERVICE


I hereby certify that on February 10, 2012, I caused a copy of the foregoing to be served on
counsel for Defendant via the Court's ECF system.

/s/ Mark Rumold
MARK RUMOLD

* * * * *

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: February 16, 2012


Hon. Yvonne Gonzalez Rogers
United States District Judge