

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:10-cv-00196-BAH

ELECTRONIC PRIVACY INFORMATION CENTER v.
NATIONAL SECURITY AGENCY et al
Assigned to: Chief Judge Beryl A. Howell
Case in other court: USCA, 13-05369
Cause: 05:552 Freedom of Information Act

Date Filed: 02/04/2010
Date Terminated: 11/19/2013
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**ELECTRONIC PRIVACY
INFORMATION CENTER**

represented by **Marc Rotenberg**
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TERMINATED: 02/03/2014

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TERMINATED: 03/28/2012

V.

Defendant

NATIONAL SECURITY AGENCY

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TERMINATED: 05/22/2012

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TERMINATED: 07/08/2013

Defendant

NATIONAL SECURITY COUNCIL
TERMINATED: 07/07/2011

represented by **Joshua Ilan Wilkenfeld**
(See above for address)

TERMINATED: 05/22/2012

Date Filed	#	Docket Text
02/04/2010	1	COMPLAINT against NATIONAL SECURITY AGENCY, NATIONAL SECURITY COUNCIL (Filing fee \$ 350, receipt number 4616027382) filed by ELECTRONIC PRIVACY INFORMATION CENTER. (Attachments: # 1 Civil Cover Sheet)(rdj) (Entered: 02/05/2010)
02/04/2010		SUMMONS (4) Issued as to NATIONAL SECURITY AGENCY, NATIONAL SECURITY COUNCIL, U.S. Attorney and U.S. Attorney General (rdj) (Entered: 02/05/2010)
02/04/2010	2	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by ELECTRONIC PRIVACY INFORMATION CENTER identifying Corporate Parent NONE for ELECTRONIC PRIVACY INFORMATION CENTER. (rdj) (Entered: 02/05/2010)
03/25/2010	3	NOTICE of Appearance by Joshua Ilan Wilkenfeld on behalf of NATIONAL SECURITY AGENCY, NATIONAL SECURITY COUNCIL (Wilkenfeld, Joshua) (Entered: 03/25/2010)
03/25/2010	4	MOTION to Dismiss <i>Partial Motion to Dismiss</i> by NATIONAL SECURITY AGENCY, NATIONAL SECURITY COUNCIL (Attachments: # 1 Text of Proposed Order) (Wilkenfeld, Joshua) (Entered: 03/25/2010)
03/25/2010	5	ANSWER to 1 Complaint by NATIONAL SECURITY AGENCY.(Wilkenfeld, Joshua) (Entered: 03/25/2010)
03/25/2010	6	STANDING ORDER Signed by Judge Ricardo M. Urbina on 3/25/2010. Read this Standing Order carefully, it will govern this case. Failure to follow the Standing Order will result in sanctions.(tg,) (Entered: 03/25/2010)
04/08/2010	7	Memorandum in opposition to re 4 MOTION to Dismiss <i>Partial Motion to Dismiss</i> filed by ELECTRONIC PRIVACY INFORMATION CENTER. (Attachments: # 1 Text of Proposed Order)(Verdi, John) (Entered: 04/08/2010)
04/15/2010	8	REPLY to opposition to motion re 4 MOTION to Dismiss <i>Partial Motion to Dismiss</i> filed by NATIONAL SECURITY AGENCY, NATIONAL SECURITY COUNCIL. (Wilkenfeld, Joshua) (Entered: 04/15/2010)
01/20/2011		Case reassigned to U.S. District Judge Beryl A. Howell. Judge Ricardo M. Urbina no longer assigned to the case. (gt,) (Entered: 01/20/2011)
07/07/2011	9	MEMORANDUM OPINION regarding 4 defendants' partial motion to dismiss. Signed by Judge Beryl A. Howell on 7/7/2011. (lcbah2) (Entered: 07/07/2011)
07/07/2011	10	ORDER granting 4 Defendants' Partial Motion to Dismiss for the reasons set forth in the accompanying Memorandum Opinion. Signed by Judge Beryl A. Howell on 7/7/2011. (lcbah2) (Entered: 07/07/2011)
07/07/2011		Set/Reset Deadlines: Joint Report due by 7/20/2011. (zalg,) (Entered: 07/08/2011)
07/20/2011	11	STATUS REPORT <i>JOINT REPORT</i> by ELECTRONIC PRIVACY INFORMATION CENTER, NATIONAL SECURITY AGENCY. (Wilkenfeld, Joshua) (Entered: 07/20/2011)
07/21/2011		MINUTE ORDER (paperless) adopting the following proposed SCHEDULING ORDER:

		The last day for supplemental production of responsive documents shall be August 30, 2011. Defendant's motion for summary judgment and supporting materials shall be filed by October 11, 2011. Plaintiff's cross-motion for summary judgment and opposition to defendant's motion for summary judgment shall be filed by November 11, 2011. Defendant's reply in further support of its motion and opposition to plaintiff's cross-motion shall be filed by December 8, 2011. Plaintiff's reply in further support of its cross-motion shall be filed by December 22, 2011. Signed by Judge Beryl A. Howell on 7/21/2011. (lcbah2) (Entered: 07/21/2011)
07/21/2011		Set/Reset Deadlines: Supplemental production of responsive documents shall be filed by 8/30/11. Defendant's motion for summary judgment and supporting materials shall be filed by 10/11/11. Plaintiff's cross-motion for summary judgment and opposition to defendant's motion for summary judgment shall be filed by 11/11/11. Defendant's reply in further support of its motion and opposition to plaintiff's cross-motion shall be filed by 12/8/11. Plaintiff's reply in further support of its cross-motion shall be filed by 12/22/11. (zalg,) (Entered: 07/26/2011)
10/11/2011	12	MOTION for Summary Judgment by NATIONAL SECURITY AGENCY (Attachments: # 1 Memorandum in Support, # 2 Declaration Declaration of Diane M. Janosek, # 3 Tab A, # 4 Tab B, # 5 Tab C, # 6 Tab D, # 7 Tab E, # 8 Tab F, # 9 Tab G, # 10 Declaration Declaration of Mary Ronan, # 11 Statement of Facts, # 12 Text of Proposed Order) (Wilkenfeld, Joshua) (Entered: 10/11/2011)
11/11/2011	13	Cross MOTION for Summary Judgment <i>Combined Cross-Motion and Motion for Oral Hearing</i> by ELECTRONIC PRIVACY INFORMATION CENTER (Attachments: # 1 Memorandum in Support, # 2 Statement of Facts, # 3 Statement of Genuine Issues in Opposition to Defendant's Statement of Material Facts, # 4 Text of Proposed Order)(Verdi, John). Added MOTION for Hearing on 11/14/2011 (jf,). (Entered: 11/11/2011)
11/11/2011	14	Memorandum in opposition to re 12 MOTION for Summary Judgment <i>Combined Cross-Motion and Opposition</i> filed by ELECTRONIC PRIVACY INFORMATION CENTER. (Attachments: # 1 Statement of Facts, # 2 Statement of Genuine Issues in Opposition to Defendant's Statement of Material Facts, # 3 Text of Proposed Order)(Verdi, John) (Entered: 11/11/2011)
12/08/2011	15	REPLY to opposition to motion re 12 MOTION for Summary Judgment filed by NATIONAL SECURITY AGENCY. (Attachments: # 1 Statement of Genuine Issues in Opposition to Plaintiff's Statement of Material Facts)(Wilkenfeld, Joshua) (Entered: 12/08/2011)
12/08/2011	16	Memorandum in opposition to re 13 Cross MOTION for Summary Judgment <i>Combined Cross-Motion and Opposition</i> MOTION for Hearing <i>Combined reply in support of NSA's motion for summary judgment and opposition to Plaintiff's cross-motion for summary judgment</i> filed by NATIONAL SECURITY AGENCY. (Attachments: # 1 Statement of Genuine Issues in Opposition to Plaintiff's Statement of Material Facts)(Wilkenfeld, Joshua) (Entered: 12/08/2011)
12/22/2011	17	REPLY to opposition to motion re 13 Cross MOTION for Summary Judgment <i>Combined Cross-Motion and Opposition</i> MOTION for Hearing filed by ELECTRONIC PRIVACY INFORMATION CENTER. (Verdi, John) (Entered: 12/22/2011)
03/28/2012	18	NOTICE of Appearance by Marc Rotenberg on behalf of ELECTRONIC PRIVACY INFORMATION CENTER (Rotenberg, Marc) (Entered: 03/28/2012)
03/28/2012	19	NOTICE OF WITHDRAWAL OF APPEARANCE as to ELECTRONIC PRIVACY INFORMATION CENTER. Attorney John Arthur Verdi terminated. (Verdi, John) (Entered: 03/28/2012)

05/22/2012	20	NOTICE OF SUBSTITUTION OF COUNSEL by Judson Owen Littleton on behalf of NATIONAL SECURITY AGENCY Substituting for attorney Joshua Wilkenfeld (Littleton, Judson) (Entered: 05/22/2012)
10/10/2012	21	NOTICE of Appearance by Ginger P. McCall on behalf of ELECTRONIC PRIVACY INFORMATION CENTER (McCall, Ginger) (Entered: 10/10/2012)
12/22/2012	22	STATUS REPORT by ELECTRONIC PRIVACY INFORMATION CENTER. (Rotenberg, Marc) (Entered: 12/22/2012)
07/08/2013	23	NOTICE OF SUBSTITUTION OF COUNSEL by Gregory Peter Dworkowitz on behalf of NATIONAL SECURITY AGENCY Substituting for attorney Judson O. Littleton (Dworkowitz, Gregory) (Entered: 07/08/2013)
08/02/2013	24	NOTICE OF WITHDRAWAL OF APPEARANCE as to ELECTRONIC PRIVACY INFORMATION CENTER. Attorney Ginger P. McCall terminated. (McCall, Ginger) (Entered: 08/02/2013)
09/09/2013		MINUTE ORDER (paperless) Pending before the Court are the 12 Defendant's Motion for Summary Judgment and the 13 Plaintiff's Cross-Motion for Summary Judgment, in which the parties dispute whether the "National Security Presidential Directive 54 ("NSPD 54") and related agency records," are exempt from disclosure under the Freedom of Information Act ("FOIA"). The parties assume in their briefing that the requested documents are "agency records" subject to FOIA disclosure, unless one of nine specific exemptions applies. See 5 U.S.C. § 552(b)(1)-(9); Pl's Mem. in Supp. of Cross-Mot. for Summ. J ("Pl's Mem.") at 2, ECF No. 13-1; Def's Mem. in Supp. of Mot. for Summ. J. ("Def's Mem.") at 3, ECF No. 12-1. In <i>Judicial Watch v. United States Secret Service</i> , Civil No. 11-5282, 2013 U.S. App. LEXIS 18119 (D.C. Cir. August 30, 2013), the United States Court of Appeals for the District of Columbia Circuit determined that certain White House Access Control System ("WHACS") records, which were "arguably created by White House staff... in the course of carrying out the constitutional, statutory, official, and ceremonial duties of the President," <i>id.</i> at 54-55 (internal quotations and citations omitted), were not "agency records" subject to the FOIA. In reaching this conclusion, the D.C. Circuit applied the modified control test set forth in <i>United We Stand America, Inc. v. IRS</i> , 359 F.3d 595 (2004), which had previously been applied only to Congressional records, 2013 U.S. App. LEXIS 18119 at 40-41 n. 21. A critical focus of the modified control test is whether "the non-covered entity here, the White House has manifested a clear intent to control the documents." <i>Id.</i> at 37. If the parties would like the opportunity to address the relevance, if any, of the D.C. Circuit's recent decision in <i>Judicial Watch</i> to the issues raised by the withholding of the requested documents in the instant case, the parties are directed to submit jointly, by September 16, 2013, a schedule for supplemental briefing. Signed by Judge Beryl A. Howell on 09/09/2013. (lcbah2) (Entered: 09/09/2013)
09/09/2013		Set/Reset Deadlines: Joint schedule for supplemental briefing due by 9/16/2013. (tg,) (Entered: 09/09/2013)
09/16/2013	25	NOTICE of Appearance by Amie L. Stepanovich on behalf of ELECTRONIC PRIVACY INFORMATION CENTER (Stepanovich, Amie) (Entered: 09/16/2013)
09/16/2013	26	STATUS REPORT <i>JOINT STATUS REPORT</i> by ELECTRONIC PRIVACY INFORMATION CENTER. (Stepanovich, Amie) (Entered: 09/16/2013)
10/21/2013	27	MEMORANDUM AND OPINION regarding the defendant's 12 Motion for Summary Judgment and the plaintiff's 13 Cross-Motion for Summary Judgment. Signed by Judge Beryl A. Howell on October 21, 2013. (lcbah1) (Entered: 10/21/2013)
10/21/2013	28	ORDER GRANTING in part and DENYING in part the defendant's 12 Motion for Summary Judgment; GRANTING in part and DENYING in part the plaintiff's 13 Motion

		for Summary Judgment and DENYING the plaintiff's 13 Motion for Hearing as moot. The parties shall, by November 4, 2013, jointly file a proposed schedule to facilitate the timely production of records responsive to the second portion of the plaintiff's FOIA request and resolution of any disputes which may arise regarding their production. See Order for further details. Signed by Judge Beryl A. Howell on October 21, 2013. (lcbah1,) (Entered: 10/21/2013)
10/22/2013		Set/Reset Deadlines: Response to Order of the Court due by 11/4/2013. (tg,) (Entered: 10/22/2013)
11/04/2013	29	STATUS REPORT <i>JOINT STATUS REPORT</i> by ELECTRONIC PRIVACY INFORMATION CENTER. (Stepanovich, Amie) (Entered: 11/04/2013)
11/04/2013		MINUTE ORDER (paperless) entering the following SCHEDULING ORDER to control further proceedings in this matter. The defendant shall, by November 8, 2013, provide any remaining responsive records to the plaintiff or, in the alternative, submit a Vaughn index detailing the records or portions of records being withheld. The parties shall, by November 15, 2013, jointly file a proposed briefing schedule to resolve any outstanding disputes in this matter or advise the Court that this case should be closed. Signed by Judge Beryl A. Howell on November 4, 2013. (lcbah1) (Entered: 11/04/2013)
11/05/2013		Set/Reset Deadlines: Defendant's Responsive records or in the alternative a Vaughn Index due by 11/8/2013. Joint Briefing Schedule due by 11/15/2013. (tg,) (Entered: 11/05/2013)
11/15/2013	30	STATUS REPORT by ELECTRONIC PRIVACY INFORMATION CENTER. (Stepanovich, Amie) (Entered: 11/15/2013)
11/15/2013		MINUTE ORDER (paperless) CLOSING this matter. In light of the parties' 30 Joint Status Report, in which the parties state that there "are no further substantive issues to be resolved by this Court," the Clerk is directed to close this case. The Court retains jurisdiction of this matter for the purposes of determining appropriate allocation of fees and costs, if judicial intervention is warranted. The parties are ORDERED to jointly file, by December 16, 2013, a status report indicating whether briefing on fees and costs will be necessary and, if so, a proposed schedule for such briefing. Signed by Judge Beryl A. Howell on November 15, 2013. (lcbah1) (Entered: 11/15/2013)
11/19/2013		Set/Reset Deadlines: Joint Status Report due by 12/16/2013. (tg,) (Entered: 11/19/2013)
12/16/2013	31	STATUS REPORT <i>JOINT STATUS REPORT</i> by ELECTRONIC PRIVACY INFORMATION CENTER. (Stepanovich, Amie) (Entered: 12/16/2013)
12/17/2013		MINUTE ORDER (paperless) DIRECTING the parties, pursuant to their 31 Joint Status Report, jointly to file, by December 20, 2013, a status report advising the Court whether additional proceedings are necessary in this matter. Signed by Judge Beryl A. Howell on December 17, 2013. (lcbah1) (Entered: 12/17/2013)
12/17/2013		Set/Reset Deadlines: Joint Status Report due by 12/20/2013. (tg,) (Entered: 12/17/2013)
12/17/2013	32	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 28 Order on Motion for Summary Judgment,, Order on Motion for Hearing,,,,, 27 Memorandum & Opinion by ELECTRONIC PRIVACY INFORMATION CENTER. Filing fee \$ 505, receipt number 0090-3568134. Fee Status: Fee Paid. Parties have been notified. (Rotenberg, Marc) (Entered: 12/17/2013)
12/18/2013	33	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 32 Notice of Appeal to DC Circuit Court. (rdj) (Entered: 12/18/2013)
12/20/2013	34	STATUS REPORT (<i>Joint</i>) by NATIONAL SECURITY AGENCY. (Dworkowitz, Gregory)

		(Entered: 12/20/2013)
12/23/2013		MINUTE ORDER (paperless) DIRECTING the parties, upon consideration of their 34 Joint Status Report and the pendency of an appeal in this case, jointly to file, within 30 days of the disposition of the appeal, a status report advising the Court whether additional proceedings are necessary in this matter. Signed by Judge Beryl A. Howell on December 23, 2013. (lcbah1) (Entered: 12/23/2013)
12/24/2013		USCA Case Number 13-5369 for 32 Notice of Appeal to DC Circuit Court, filed by ELECTRONIC PRIVACY INFORMATION CENTER. (rdj) (Entered: 12/24/2013)
02/03/2014	35	NOTICE OF WITHDRAWAL OF APPEARANCE as to ELECTRONIC PRIVACY INFORMATION CENTER. Attorney Amie L. Stepanovich terminated. (Stepanovich, Amie) (Entered: 02/03/2014)
02/10/2014	36	NOTICE of Acceptance with Offer of Judgment by NATIONAL SECURITY AGENCY (Attachments: # 1 Exhibit A: Offer of Judgment, # 2 Exhibit B: Proof of Service) (Dworkowitz, Gregory) (Entered: 02/10/2014)
02/11/2014	37	CLERK'S JUDGMENT ON OFFER AND ACCEPTANCE in favor of ELECTRONIC PRIVACY INFORMATION CENTER against UNITED STATES NATIONAL SECURITY AGENCY (tg,) (Entered: 02/11/2014)
08/12/2014	38	ORDER of USCA (certified copy) as to 32 Notice of Appeal to DC Circuit Court, filed by ELECTRONIC PRIVACY INFORMATION CENTER ; USCA Case Number 13-5369. ORDERED that the joint motion be granted.(kb,) (Entered: 08/12/2014)
09/02/2014	39	NOTICE of Appearance by Ginger P. McCall on behalf of ELECTRONIC PRIVACY INFORMATION CENTER (McCall, Ginger) (Entered: 09/02/2014)
09/02/2014	40	NOTICE of Appearance by Alan Jay Butler on behalf of ELECTRONIC PRIVACY INFORMATION CENTER (Butler, Alan) (Entered: 09/02/2014)
09/02/2014	41	STATUS REPORT (<i>Joint</i>) by NATIONAL SECURITY AGENCY. (Dworkowitz, Gregory) (Entered: 09/02/2014)
09/02/2014		MINUTE ORDER (paperless) DIRECTING the parties, in light of their 41 Joint Status Report, to file jointly a status report with the Court by October 2, 2014, proposing a schedule to control further proceedings in this matter. Signed by Judge Beryl A. Howell on September 2, 2014. (lcbah1) (Entered: 09/02/2014)
09/03/2014		Set/Reset Deadlines: Joint Status Report due by 10/2/2014. (tg,) (Entered: 09/03/2014)
10/02/2014	42	STATUS REPORT (<i>Joint</i>) by NATIONAL SECURITY AGENCY. (Dworkowitz, Gregory) (Entered: 10/02/2014)
10/03/2014		MINUTE ORDER (paperless) DIRECTING the parties, in light of their 42 Joint Status Report, to file jointly a status report with the Court by October 16, 2014, proposing a schedule to control further proceedings in this matter. Signed by Judge Beryl A. Howell on October 3, 2014. (lcbah1) (Entered: 10/03/2014)
10/06/2014		Set/Reset Deadlines: Joint Status Report due by 10/16/2014 (tg,) (Entered: 10/06/2014)
10/16/2014	43	STATUS REPORT (<i>Joint</i>) by NATIONAL SECURITY AGENCY. (Dworkowitz, Gregory) (Entered: 10/16/2014)
10/17/2014		MINUTE ORDER (paperless) ISSUING the following SCHEDULING ORDER, in light of the parties' 43 Joint Status Report: the plaintiff shall, by October 31, 2014, file any motion for attorneys' fees; the defendant shall, by November 24, 2014, file any opposition;

		the plaintiff shall, by December 8, 2014, file any reply. Signed by Judge Beryl A. Howell on October 17, 2014. (lcbah1) (Entered: 10/17/2014)
10/17/2014		Set/Reset Deadlines: Plaintiff's Motion for Attorney Fees due by 10/31/2014; Opposition due by 11/24/2014; Reply due by 12/8/2014. (tg,) (Entered: 10/17/2014)
10/31/2014	44	MOTION for Attorney Fees <i>and Costs</i> by ELECTRONIC PRIVACY INFORMATION CENTER (Attachments: # 1 Memorandum in Support, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Text of Proposed Order)(Butler, Alan) (Entered: 10/31/2014)
11/24/2014	45	Memorandum in opposition to re 44 MOTION for Attorney Fees <i>and Costs</i> filed by NATIONAL SECURITY AGENCY. (Attachments: # 1 Exhibit A: Parties' D.C. Circuit Joint Mot., # 2 Exhibit B: EPIC Nov. 2013 Draft Bills, # 3 Exhibit C: EPIC Sept. 2014 Draft Bills, # 4 Text of Proposed Order)(Dworkowitz, Gregory) (Entered: 11/24/2014)
12/08/2014	46	REPLY to opposition to motion re 44 MOTION for Attorney Fees <i>and Costs</i> filed by ELECTRONIC PRIVACY INFORMATION CENTER. (Attachments: # 1 Declaration of Alan Butler, # 2 Affidavit of Alan Butler, # 3 Affidavit of Marc Rotenberg, # 4 Affidavit of T. John Tran)(Butler, Alan) (Entered: 12/08/2014)
12/17/2014	47	MOTION for Leave to File <i>Surreply</i> by NATIONAL SECURITY AGENCY (Attachments: # 1 Exhibit A: Proposed Surreply, # 2 Text of Proposed Order)(Dworkowitz, Gregory) (Entered: 12/17/2014)
12/17/2014		MINUTE ORDER (paperless) GRANTING the defendant's 47 Motion for Leave to File Surreply. The defendant's Surreply, filed at Docket Number 47-1, is deemed filed as of this date. Signed by Judge Beryl A. Howell on December 17, 2014. (lcbah1) (Entered: 12/17/2014)
12/17/2014	48	SURREPLY to re 44 MOTION for Attorney Fees <i>and Costs</i> filed by NATIONAL SECURITY AGENCY. (rdj) (Entered: 12/17/2014)
12/18/2014	49	MOTION for Leave to File <i>a Sur-Surreply</i> by ELECTRONIC PRIVACY INFORMATION CENTER (Attachments: # 1 Exhibit 1: Proposed Sur-Surreply, # 2 Text of Proposed Order) (Butler, Alan) (Entered: 12/18/2014)
12/18/2014		MINUTE ORDER (paperless) GRANTING, over the objection of the defendant, the plaintiff's 49 Motion for Leave to File a Sur-Surreply. The plaintiff's sur-surreply, filed at Docket No. 49-1, is deemed filed as of this date. Signed by Judge Beryl A. Howell on December 18, 2014. (lcbah1) (Entered: 12/18/2014)
12/18/2014	50	Sur-SURREPLY to re 44 MOTION for Attorney Fees <i>and Costs</i> filed by ELECTRONIC PRIVACY INFORMATION CENTER. (rdj) (Entered: 12/18/2014)
04/08/2015	51	MEMORANDUM OPINION regarding the plaintiff's 44 Motion for Attorneys' Fees and Costs. Signed by Judge Beryl A. Howell on April 8, 2015. (lcbah1) (Per Order of the Court entered on 5/20/2015, Document 51 was modified on 5/21/2015 to correct a word.) (tg,). (Entered: 04/08/2015)
04/08/2015	52	ORDER GRANTING in part and DENYING in part the plaintiff's 44 Motion for Attorneys' Fees and Costs. The defendant shall, by May 11, 2015, pay the plaintiff \$31,180.00 for its reasonable attorneys' fees and costs incurred as a result of this litigation. See Order for further details. Signed by Judge Beryl A. Howell on April 8, 2015. (lcbah1) (Entered: 04/08/2015)
04/09/2015		Set/Reset Deadlines: Defendant's payment of \$31,180.00 to the Plaintiff due by 5/11/2015. (tg,) (Entered: 04/09/2015)

04/17/2015	53	MOTION to Alter Judgment as to 51 Memorandum & Opinion, 52 Order on Motion for Attorney Fees, by ELECTRONIC PRIVACY INFORMATION CENTER (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(Rotenberg, Marc) (Entered: 04/17/2015)
04/28/2015	54	Unopposed MOTION for Extension of Time to <i>Make Payment to Plaintiff</i> by NATIONAL SECURITY AGENCY (Attachments: # 1 Text of Proposed Order)(Dworkowitz, Gregory) (Entered: 04/28/2015)
04/28/2015		MINUTE ORDER (paperless) GRANTING the defendant's 54 Unopposed Motion for Extension of Deadline by Which it Must Make Payment to Plaintiff. The defendant shall pay the plaintiff any outstanding attorneys' fees within thirty days of the expiration of the period contemplated in Federal Rule of Appellate Procedure 4 for the defendant to notice an appeal or a cross-appeal. Signed by Judge Beryl A. Howell on April 28, 2015. (lcbah1) (Entered: 04/28/2015)
05/01/2015	55	Memorandum in opposition to re 53 MOTION to Alter Judgment as to 51 Memorandum & Opinion, 52 Order on Motion for Attorney Fees, filed by NATIONAL SECURITY AGENCY. (Attachments: # 1 Text of Proposed Order)(Dworkowitz, Gregory) (Entered: 05/01/2015)
05/08/2015	56	REPLY to opposition to motion re 53 MOTION to Alter Judgment as to 51 Memorandum & Opinion, 52 Order on Motion for Attorney Fees, filed by ELECTRONIC PRIVACY INFORMATION CENTER. (Rotenberg, Marc) (Entered: 05/08/2015)
05/20/2015		<p>MINUTE ORDER (paperless) DENYING in part and GRANTING in part the plaintiff's 53 Motion to Alter or Amend the Court's Memorandum Opinion and Order of April 8, 2015. The 53 Motion is GRANTED insofar as the Court's use of the word "judgment" in referencing the plaintiff's settlement offers on page 18 of this Court's 51 Memorandum Opinion is AMENDED to read "Disturbingly, both offers of settlement from the plaintiff were extended within 24 hours of a deadline for a submission to the Court regarding the status of settlement discussions." The 53 Motion is DENIED in all other respects.</p> <p>A motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e) "is an extraordinary remedy which should be used sparingly." <i>Mohammadi v. Islamic Republic of Iran</i>, 782 F.3d 9, 17 (D.C. Cir. 2015) (internal quotation marks omitted). Such motions "may not be used to... raise arguments or present evidence that could have been raised prior to the entry of judgment." <i>GSS Grp. Ltd. v. Nat'l Port Auth.</i>, 680 F.3d 805, 812 (D.C. Cir. 2012) (internal quotation marks omitted; alteration in original). The plaintiff's 53 Motion provides more factual context for the plaintiff's rejection (by counteroffer) of the defendant's offers of judgment, and the plaintiff's subsequent extension of "exploding" settlement offers that would expire fewer than 24 hours later. <i>See generally</i> 53 Motion. The defendant clearly raised the issue of the plaintiff's negotiating strategy in its opposition, <i>see</i> 45 Def.'s Opp'n Pl.'s Mot. Attys.' Fees at 5, 24-25, but the plaintiff, in its reply, failed to counter the factual assertions as outlined by the defendant. Instead of disputing or correcting any such facts, the plaintiff made the strategic decision to challenge the defendant's introduction of this information as violative of Federal Rule of Evidence 408, <i>see</i> 46 Pl.'s Reply Def.'s Opp'n Pl.'s Mot. Attys.' Fees (Pl.'s Reply) at 20-22 and 20 n.6, an argument this Court rejected, <i>EPIC v. NSA</i>, No. 10-196, 2015 WL 1570060, at *9 n.7 (D.D.C. Apr. 8, 2105).</p> <p>A Rule 59(e) motion "is not an opportunity for another bite at the apple." <i>SmartGene, Inc. v. Adv. Bio. Labs., SA</i>, 915 F. Supp. 2d 69, 78 (D.D.C. 2013) (internal quotation marks omitted). The plaintiff made a strategic choice not to challenge the factual underpinnings of the defendant's argument in favor of an attack on the admissibility of those facts in the first instance. 46 Pl.'s Reply at 20-22 and 20 n.6. The plaintiff's strategy did not succeed,</p>

but that is not a sufficient reason to reconsider the Court's decision, since the plaintiff had ample opportunity in its reply brief to raise the fact-based arguments it raises now. *See Wannall v. Honeywell, Inc.*, 775 F.3d 425, 430 (D.C. Cir. 2014) (affirming denial of motion for reconsideration based on plaintiff's failed strategic choice). Consequently, with the exception of the amendment on page 18 of the [51](#) Memorandum Opinion to clarify the Court's reference to the plaintiff's offers of settlement, the plaintiff's [53](#) Motion is DENIED. Signed by Judge Beryl A. Howell on May 20, 2015. (lcbah1) (Entered: 05/20/2015)

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