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17 *Attorneys for Defendants*

18 **UNITED STATES DISTRICT COURT**
 19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 20 **SAN FRANCISCO DIVISION**

21 ELECTRONIC FRONTIER FOUNDATION,)
 22)
 23)
 24 Plaintiff,)
 25)
 26 v.)
 27)
 28 OFFICE OF THE DIRECTOR OF NATIONAL)
 INTELLIGENCE and UNITED STATES)
 DEPARTMENT OF JUSTICE)
)
)
)
 Defendants.)

Civil Action No. 3:08-cv-1023 JSW

**DEFENDANTS' RESPONSE
 TO COURT'S NOTICE OF
 TENTATIVE RULING AND
 QUESTIONS**

1 In response to the Court's notice of tentative ruling and questions, defendant United
2 States Department of Justice ("DOJ") hereby submits two recent letters sent on behalf of the
3 DOJ National Security Division and Office of Legal Counsel, respectively, in response to
4 plaintiff's Freedom of Information Act requests. In particular, the letter on behalf of the DOJ
5 National Security Division provides a partial response to the third question listed in the Court's
6 notice of tentative ruling and questions.
7

8
9 Dated: April 2, 2008

Respectfully submitted,

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11 JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General

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13 CARL J. NICHOLS
Deputy Assistant Attorney General

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18 /s/ Andrew I. Warden

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EXHIBIT 1



U.S. Department of Justice
Civil Division
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20 Massachusetts Ave., NW
Washington, D.C. 20530

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March 26, 2008

VIA ELECTRONIC MAIL

Marcia Hoffman (marcia@eff.org)
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Re: *Electronic Frontier Foundation v. Office of the Director of National Intelligence*,
Civil Action Number 08-1023 JSW.

Dear Ms. Hoffman:

I am writing in response to your March 24, 2008 letter. The Department of Justice's National Security Division ("NSD") gladly accepts your offer to narrow the scope of your December 21, 2007 FOIA request. Consistent with the terms of your letter, NSD will exclude all drafts of statements and written testimony by the Assistant Attorney General for National Security before Congress.

NSD also accepts your offer to remove from the scope of your FOIA request all final versions of the Assistant Attorney General's congressional statements and written testimony. As noted in your letter, your offer with respect to this material is contingent on NSD informing you of the location of this material in the public domain. NSD has identified four unclassified congressional statements by the Assistant Attorney General for National Security responsive to your FOIA request:

- Sept. 6, 2007 statement before the House Permanent Select Committee on Intelligence;
- Sept. 18, 2007 statement before the House Committee on the Judiciary;
- Sept. 20, 2007 statement before the House Permanent Select Committee on Intelligence; and
- Oct. 31, 2007 statement before the Senate Judiciary Committee.

All four statements are publicly available in PDF form at the following web page: <http://www.lifeandliberty.gov/paa-recent-ctl.html>. Classified congressional statements by the Assistant Attorney General for National Security are, of course, not publicly available. Any such statements responsive to your FOIA request will be processed by NSD accordingly.

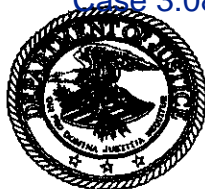
NSD appreciates your willingness to narrow the scope of your FOIA request. Please feel free to contact me with any questions about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew I. Warden". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andrew I. Warden

EXHIBIT 2



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

March 25, 2008

BY FACSIMILE AND FIRST-CLASS MAIL

Marcia Hoffmann
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Hoffmann:

I write to provide an interim response to your Freedom of Information Act ("FOIA" or the "Act") request dated December 21, 2007. We have completed searching the files of the Office of Legal Counsel, and we have identified nine unclassified records (totaling twenty-one pages) and four classified records (totaling fourteen pages) that are responsive to the request. We enclose copies of two of the unclassified documents (totaling two pages), with non-responsive information redacted. We are also withholding in full two of the unclassified records (totaling four pages) under FOIA Exemption Five, 5 U.S.C. § 552(b)(5), because they are protected by the deliberative process privilege and other privileges and are not appropriate for discretionary release. We will respond on the remaining records—both classified and unclassified—as soon as we complete consultations with other agencies and other components of the Department.

Although I understand that your request is in litigation, I am required by statute and regulation to inform you that you have the right to file an administrative appeal. You must submit any administrative appeal within 60 days of the date of this letter to the Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001. Both the appeal letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink that reads "Paul P. Colborn".

Paul P. Colborn
Special Counsel

Enclosures