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20  
21 **UNITED STATES DISTRICT COURT**  
22  
23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
24  
25 **SAN FRANCISCO DIVISION**

26	ELECTRONIC FRONTIER FOUNDATION, )	C 08-02997-JSW
27		)
28	Plaintiff, )	<b>FIRST AMENDED COMPLAINT FOR</b>
		)
	v. )	<b>INJUNCTIVE RELIEF</b>
		)
	OFFICE OF THE DIRECTOR OF NATIONAL )	
	INTELLIGENCE )	
		)
	and )	
		)
	DEPARTMENT OF JUSTICE, )	
		)
	Defendants. )	
		)

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1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief. Plaintiff seeks the expedited processing and release of records requested from the Office of the Director of National Intelligence and Department of Justice concerning a lobbying campaign to amend federal surveillance law and ensure that

1 telecommunications companies are not held responsible for their role in warrantless government  
2 surveillance activities. There is no dispute that the requested records concern a matter about which  
3 there is “[a]n urgency to inform the public about an actual or alleged federal government activity,”  
4 and were “made by a person primarily engaged in disseminating information.” 5 U.S.C. §  
5 552(a)(6)(E)(v)(II); 32 C.F.R. § 1700.12(c)(2) & 28 C.F.R. § 16.5(d)(1)(ii). Therefore, Plaintiff is  
6 statutorily entitled to the expedited treatment it seeks.

### 7 PARTIES

8 2. Plaintiff Electronic Frontier Foundation (“EFF”) is a not-for-profit corporation  
9 established under the laws of the State of California, with offices in San Francisco, California and  
10 Washington, DC. EFF is a donor-supported membership organization that works to inform  
11 policymakers and the general public about civil liberties issues related to technology, and to act as  
12 a defender of those liberties. In support of its mission, EFF uses the FOIA to obtain and  
13 disseminate information concerning the activities of federal agencies.

14 3. Defendant Office of the Director of National Intelligence (“ODNI”) is an  
15 Independent Establishment of the Executive Branch of the United States Government. ODNI is an  
16 “agency” within the meaning of 5 U.S.C. § 552(f)(1).

17 4. Defendant Department of Justice (“DOJ”) is a Department of the Executive Branch  
18 of the United States Government. DOJ is an “agency” within the meaning of 5 U.S.C. §552(f)(1).  
19 The Office of the Attorney General, Office of Legislative Affairs, Office of Legal Policy, Office of  
20 Legal Counsel, and National Security Division are components of Defendant DOJ.

### 21 JURISDICTION

22 5. This Court has both subject matter jurisdiction over this action and personal  
23 jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court  
24 also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

### 25 VENUE AND INTRADISTRICT ASSIGNMENT

26 6. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §  
27 1391(e).

28 7. Assignment to the San Francisco division is proper pursuant to Local Rule 3-2(c)

1 and (d) because a substantial portion of the events giving rise to this action occurred in this district  
2 and division, where Plaintiff is headquartered.

3 **FACTUAL ALLEGATIONS**

4 **The Administration's Campaign to Shield Telecommunications Companies**  
5 **From Liability for Their Role in Unlawful Surveillance Activity**

6 8. On December 15, 2005, the *New York Times* reported:

7 Months after the Sept. 11 attacks, President Bush secretly authorized the National  
8 Security Agency to eavesdrop on Americans and others inside the United States to  
9 search for evidence of terrorist activity without the court-approved warrants  
ordinarily required for domestic spying, according to government officials.

10 Under a presidential order signed in 2002, the intelligence agency has monitored the  
11 international telephone calls and international e-mail messages of hundreds, perhaps  
12 thousands, of people inside the United States without warrants over the past three  
years in an effort to track possible "dirty numbers" linked to Al Qaeda, the officials  
said.

13 James Risen and Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. TIMES, Dec.  
14 15, 2005 at A1, available at <http://www.nytimes.com/2005/12/16/politics/16program.html>. The  
15 following day, President Bush confirmed in a radio address that he had authorized a surveillance  
16 program to intercept international communications in which one participant was suspected of  
17 having a connection to the terrorist organization al Qaeda. President's Radio Address, Dec. 17,  
18 2005, <http://www.whitehouse.gov/news/releases/2005/12/20051217.html>.

19 9. Shortly thereafter, the *New York Times* reported that the NSA's surveillance activity  
20 was far more extensive than the operation President Bush had described. According to the *Times*:

21 The National Security Agency has traced and analyzed large volumes of telephone  
22 and Internet communications flowing into and out of the United States as part of the  
eavesdropping program that President Bush approved after the Sept. 11, 2001,  
23 attacks to hunt for evidence of terrorist activity, according to current and former  
government officials.

24 The volume of information harvested from telecommunication data and voice  
25 networks, without court-approved warrants, is much larger than the White House  
has acknowledged, the officials said. It was collected by tapping directly into some  
of the American telecommunication system's main arteries, they said.

26 As part of the program approved by President Bush for domestic surveillance  
27 without warrants, the N.S.A. has gained the cooperation of American  
telecommunications companies to obtain backdoor access to streams of domestic  
28 and international communications, the officials said.

1 Eric Lichtblau, *Spy Agency Mined Vast Data Trove*, N.Y. TIMES, Dec. 24, 2005, available at  
2 <http://www.nytimes.com/2005/12/24/politics/24spy.html>.

3 10. On February 6, 2006, *USA Today* reported, “[t]he National Security Agency has  
4 secured the cooperation of large telecommunications companies, including AT&T, MCI and  
5 Sprint, in its efforts to eavesdrop without warrants on international calls by suspected terrorists,  
6 according to seven telecommunications executives.” Leslie Cauley and John Diamond, *Telecoms*  
7 *Let NSA Spy on Calls*, USA TODAY, Feb. 6, 2006, available at  
8 [http://www.usatoday.com/news/washington/2006-02-05-nsa-telecoms\\_x.htm](http://www.usatoday.com/news/washington/2006-02-05-nsa-telecoms_x.htm).

9 11. Approximately 41 lawsuits have been filed throughout the United States seeking to  
10 hold the government and cooperating telecommunications carriers responsible for violating the law  
11 and the privacy of individuals through the illegal warrantless spying program. An additional seven  
12 suits have arisen from attempts by state public utility commissioners and attorneys general to seek  
13 information from telecommunications carriers about their involvement in warrantless surveillance  
14 activities. Most of these lawsuits have been consolidated and are currently pending in the United  
15 States District Court for the Northern District of California. *In re NSA Telecommunications*  
16 *Records Litigation* (MDL Docket No. 06-1791 VRW).<sup>1</sup>

17 12. On August 5, 2007, President Bush signed into law the Protect America Act of  
18 2007, legislation that amended the Foreign Intelligence Surveillance Act (“FISA”) to expand the  
19 government’s power to intercept overseas communications of Americans without warrants. Pub.  
20 L. No. 110-55, 121 Stat. 552. Among other things, the law provided protection for  
21 telecommunications companies against future legal liability for participating in certain government  
22 surveillance activity.

23 13. In an article published the same day, the *New York Times* reported:

24 [The Protect American Act] gave the administration greater power to force  
25 telecommunications companies to cooperate with such spying operations. The  
26 companies can now be compelled to cooperate by orders from the attorney general  
and the director of national intelligence.

27 Democratic Congressional aides said Sunday that some telecommunications  
company officials had told Congressional leaders that they were unhappy with that

28 <sup>1</sup> Plaintiff is Co-Lead Coordinating Counsel in this litigation.

1 provision in the bill and might challenge the new law in court. The aides said the  
2 telecommunications companies had told lawmakers that they would rather have a  
court-approved warrant ordering them to comply.

3 In fact, pressure from the telecommunications companies on the Bush  
4 administration has apparently played a major hidden role in the political battle over  
the surveillance issue over the past few months.

5 James Risén, *Bush Signs Law to Widen Reach for Wiretapping*, N.Y. TIMES, Aug. 5, 2007,  
6 available at <http://www.nytimes.com/2007/08/06/washington/06nsa.html>. On information and  
7 belief, the assertions quoted above are substantially correct.

8 14. Congress included a sunset provision in the Protect America Act stating that the law  
9 would expire in February 2008 without further legislative action, which guaranteed further debate  
10 over foreign intelligence surveillance law. President Bush indicated that the Administration  
11 intended to push for even greater legal immunity for the telecommunications industry:

12 When Congress returns in September the Intelligence committees and leaders in  
13 both parties will need to complete work on the comprehensive reforms requested by  
14 Director [of National Intelligence Mike] McConnell, including the important issue  
of providing meaningful liability protection to those who are alleged to have  
assisted our Nation following the attacks of September 11, 2001.

15 Signing Statement, *President Bush Commends Congress on Passage of Intelligence Legislation*,  
16 Aug. 6, 2007, available at <http://www.whitehouse.gov/news/releases/2007/08/20070805.html>.

17 15. In an interview discussing the government's warrantless surveillance activities  
18 published by the *El Paso Times* on August 22, 2007, Director McConnell stated:

19 [U]nder the president's program, the terrorist surveillance program, the private  
20 sector had assisted us. Because if you're going to get access you've got to have a  
21 partner and they were being sued. Now if you play out the suits at the value they're  
claimed, it would bankrupt these companies. So my position was that we have to  
provide liability protection to these private sector entities.

22 Chris Roberts, *Transcript: Debate on the Foreign Intelligence Surveillance Act*, EL PASO TIMES,  
23 Aug. 22, 2007, available at [http://www.elpasotimes.com/news/ci\\_6685679.html](http://www.elpasotimes.com/news/ci_6685679.html).

24 16. On information and belief, the assertions quoted in paragraph 15 above are  
25 substantially correct.

26 17. According to an article published by *Newsweek*, "[t]he nation's biggest  
27 telecommunications companies, working closely with the White House, have mounted a secretive  
28 lobbying campaign to get Congress to quickly approve a measure wiping out all private lawsuits

1 against them for assisting the U.S. intelligence community's warrantless surveillance programs.”  
2 Michael Isikoff and Mark Hosenball, *Case Dismissed? The Secret Lobbying Campaign Your*  
3 *Phone Company Doesn't Want You to Know About*, NEWSWEEK, Sept. 20, 2007, available at  
4 <http://www.newsweek.com/id/41142>.

5 18. On information and belief, the assertions quoted in paragraph 17 above are  
6 substantially correct.

7 19. On information and belief, in 2007 and 2008, lobbyists working on behalf of AT&T,  
8 Verizon and/or Sprint/Nextel lobbied DOJ with respect to legislation to amend FISA.

9 20. On information and belief, in 2007 and 2008, lobbyists working on behalf of AT&T,  
10 Verizon and/or Sprint/Nextel lobbied ODNI with respect to legislation to amend FISA.

11 21. In February 2008, both DOJ and ODNI contended that the telecommunications  
12 companies who faced liability in *In re NSA Telecommunications Records Litigation* told the  
13 government that the companies require immunity from such claims or the companies would not  
14 cooperate with future requests for assistance in surveillance.

15 22. In testimony before the Senate Select Committee on Intelligence on February 14,  
16 2008, the following exchange occurred between Senator Evan Bayh and Director of National  
17 Intelligence Mike McConnell:

18 SENATOR EVAN BAYH: ... One of the – the key point that you brought out was  
19 that without the power to compel, without protection or retroactive protection, the  
20 carriers which may be involved in this program realize that they are suffering  
21 serious threats to their business livelihood and perhaps even their facilities and  
22 personnel if we don't give them retroactive immunity for the work that they've  
23 done. And thus, it is my assumption that general counsels of the carriers would be  
24 telling you, you show us a court order or we're not going to cooperate on anything  
25 which is not covered by a court order. Is that a fair assumption?

26 DIRECTOR McCONNELL: Sir, it fair and I would take it a step further. This has to  
27 be willing relationship, partnership, and so where we find ourselves now, even with  
28 a court order, some are saying we'll take it to court to verify.

29 23. In a February 15, 2008 interview with Jim Angle on Fox News, ODNI Director  
30 McConnell said, “The companies are telling us if you can't protect us, the cooperation you need is  
31 not going to be there.”

32 24. In a February 17, 2008 interview on Fox News Sunday, ODNI Director McConnell,

1 during a discussion of immunity for the telecommunications carriers, said, “And the private sector,  
2 although willingly helped us in the past, are now saying, ‘You can't protect me. Why should I help  
3 you?’” During the interview, McConnell clarified that he was referring to “the telecommunications  
4 companies that you get some data from.”

5 25. In a February 22, 2008 press conference transcript published on ODNI’s website, a  
6 “Senior Administration Official” said, “And sure enough, since the expiration [of the Protect  
7 America Act] we’ve been talking to a number of the carriers and they have expressed all these  
8 concerns and others.”

9 26. A February 23, 2008 press release from ODNI said, “In addition, although our  
10 private partners are cooperating for the time being, they have expressed understandable misgivings  
11 about doing so in light of the on-going uncertainty and have indicated that they may well  
12 discontinue cooperation if the uncertainty persists.”

13 27. In a February 26, 2008 interview with J.J. Green of WTOP Radio in Washington  
14 D.C., Director McConnell said, “This past week, we engaged with some private-sector partners,  
15 and they weren’t so sure they were ready to engage with us.”

16 28. On February 26, 2008, in a press conference transcript also posted on ODNI’s web  
17 site as well as DOJ’s [www.lifeandliberty.gov](http://www.lifeandliberty.gov) website, a “Senior Administration Official” said:

18 ... I, and colleagues of ours, both in ODNI and DOJ, have been working very  
19 closely with general counsels offices in the various providers, because they've been  
20 asking about this looming potential expiration [of the Protect America Act] for some  
21 time and what its implications will be.

22 29. In the February 26, 2008 press conference, the Senior Administration Official also  
23 said:

24 Most providers were complying, but as of the time that we sent the letter, not all.  
25 And then soon after that -- we've been in intense discussion, back and forth, with a  
26 number of different parties, we achieved full compliance -- just with that, with the  
27 compliance with our request to go up on new surveillances under those PAA  
28 directives. However, they've made it very clear that this isn't a permanent situation,  
and they're concerned about it and they might -- they may well withdraw that  
cooperation if the situation doesn't get cleared up with permanent legislation.

30. On February 27, 2008, Director McConnell testified before the Senate Armed  
Services Committee. The following exchange took place:

1 SEN. LEVIN: The -- Senator Inhofe raised the FISA issue. I want to just get some  
2 facts straight on this. As I understand it, last Friday night the last of the private  
sector partners, the telecom partners, agreed to cooperate with us. Was that true?

3 MR. McCONNELL: We negotiated for six days and came to closure on Friday  
4 night, yes, sir.

5 SEN. LEVIN: And so is it true then that as of last Friday night they agreed to  
6 cooperate with us?

7 MR. McCONNELL: They did, sir.

8 SEN. LEVIN: On a voluntary basis?

9 MR. McCONNELL: For the subject matter as a part of the debate, the question is  
10 the uncertainty going forward. Will they do it again or --

11 SEN. LEVIN: But as to what we were asking them to do, they agreed to do it?

12 MR. McCONNELL: Yes, sir.

13 31. Congress is currently considering whether to make additional changes to FISA. The  
14 House of Representatives has passed the RESTORE Act of 2007, which would not protect  
15 telecommunications companies from civil liability for their role in the government's warrantless  
16 surveillance program. On February 12, 2008, however, the Senate passed its own version of  
17 legislation to amend FISA, which purports to require dismissal of any state or federal lawsuit  
18 against a carrier for facilitating government surveillance if the Attorney General certifies to the  
19 court that the company was assisting in certain intelligence activity authorized by the President.  
20 Congress allowed the Protect America Act to expire on February 16, 2008 without reaching an  
21 agreement to extend the controversial law. *See generally* Tim Starks, *House Allows FISA Law to*  
*Expire*, CONGRESSIONAL QUARTERLY, February 17, 2008, *available at*  
<http://www.cqpolitics.com/wmspage.cfm?docID=weeklyreport-000002672840>.

22 32. On February 28, 2008, President Bush urged the House to pass the Senate bill,  
23 saying, "Allowing these lawsuits to proceed could make it harder to track the terrorists, because  
24 private companies besieged by and fearful of lawsuits would be less willing to help us quickly get  
25 the information we need." He also said, "You cannot expect phone companies to participate if they  
26 feel like they're going to be sued."

27 33. On June 9, 2008, *The Hill* reported on ongoing negotiations on the FISA bills  
28



1 involving the White House, the Director of National Intelligence, House Majority Leader Steny  
2 Hoyer and Senators Kit Bond and John Rockefeller:

3 Bond, with support from the White House and House Republicans, offered a  
4 compromise proposal before Memorial Day, saying that phone companies would  
5 have to make their case for immunity before a secret court established by the 1978  
6 FISA. Republicans say immunity is needed so phone companies would continue to  
7 cooperate with the government.

8 Democrats responded with their own proposal last week, but spokeswomen for  
9 Hoyer and Rockefeller would not characterize its contents.

10 Manu Raju, *FISA Measure Tests Relationship Between Rockefeller and Bond*, THE HILL, June 9,  
11 2008, available at [http://thehill.com/leading-the-news/fisa-measure-tests-relationship-between-](http://thehill.com/leading-the-news/fisa-measure-tests-relationship-between-rockefeller-and-bond-2008-06-09.html)  
12 [rockefeller-and-bond-2008-06-09.html](http://thehill.com/leading-the-news/fisa-measure-tests-relationship-between-rockefeller-and-bond-2008-06-09.html).

13 **PLAINTIFF'S FOIA REQUESTS AND REQUESTS FOR EXPEDITED PROCESSING**

14 34. In a April 24, 2008 letter sent by facsimile to ODNI, EFF requested under the FOIA  
15 all records:

- 16 A. from December 21, 2007 to the present concerning briefings, discussions, or  
17 other exchanges any ODNI official has had with representatives or agents of  
18 telecommunications companies<sup>2</sup> concerning amendments to FISA, including  
19 any discussion of immunizing telecommunications companies or holding  
20 them otherwise unaccountable for their role in government surveillance  
21 activities;
- 22 B. from December 21, 2007 to the present concerning briefings, discussions, or  
23 other communications from any ODNI official to any member of the Senate  
24 or House of Representatives or their staffs<sup>3</sup>;
- 25 C. from December 21, 2007 to the present concerning *any* communications,  
26 discussions, or other exchanges regardless of subject that any ODNI official  
27 has had with Charlie Black, Wayne Berman, Dan Coats, Tom Donilon,  
28 Jamie Gorelick or Brad Berenson; and

<sup>2</sup> The phrase "representatives or agents of telecommunications companies" was defined to include lobbyists and lawyers acting on behalf of such companies. According to *Newsweek*, these individuals may include, but are not limited to, "powerhouse Republican lobbyists Charlie Black and Wayne Berman (who represent AT&T and Verizon, respectively), former GOP senator and U.S. ambassador to Germany Dan Coats (a lawyer at King & Spaulding who is representing Sprint), former Democratic Party strategist and one-time assistant secretary of State Tom Donilon (who represents Verizon), former deputy attorney general Jamie Gorelick (whose law firm also represents Verizon) and Brad Berenson, a former assistant White House counsel under President George W. Bush who now represents AT&T." Mark Hosenball and Michael Isikoff, *Case Dismissed?*, NEWSWEEK, updated Sept. 26, 2007.

<sup>3</sup> EFF did *not* seek communications *from* members of Congress to ODNI officials.

1  
2 D. from January 1, 2007 to the present that are responsive to the categories  
3 above, and have not yet been produced in response to previous EFF FOIA  
4 requests.

5 35. In letters sent by facsimile on April 24, 2008 to the DOJ Office of the Attorney  
6 General, Office of Legislative Affairs, Office of Legal Policy, Office of Legal Counsel, and  
7 National Security Division, EFF requested under the FOIA all records:

8 A. from December 21, 2007 to the present concerning briefings, discussions, or  
9 other exchanges any [DOJ] official has had with representatives or agents of  
10 telecommunications companies<sup>4</sup> concerning amendments to FISA, including  
11 any discussion of immunizing telecommunications companies or holding  
12 them otherwise unaccountable for their role in government surveillance  
13 activities;

14 B. from December 21, 2007 to the present concerning briefings, discussions, or  
15 other communications from any [DOJ] official to any member of the Senate  
16 or House of Representatives or their staffs<sup>5</sup>;

17 C. from December 21, 2007 to the present concerning *any* communications,  
18 discussions, or other exchanges regardless of subject that any [DOJ] official  
19 has had with Charlie Black, Wayne Berman, Dan Coats, Tom Donilon,  
20 Jamie Gorelick or Brad Berenson; and

21 D. from January 1, 2007 to the present that are responsive to the categories  
22 above, and have not yet been produced in response to previous EFF FOIA  
23 requests.

24 36. In its April 24 letters, EFF formally requested that the processing of each request be  
25 expedited because it pertains to information about which there is “[a]n urgency to inform the public  
26 about an actual or alleged federal government activity,” and were “made by a person primarily  
27 engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1700.12(c)(2)  
28 & 28 C.F.R. § 16.5(d)(1)(ii).

37. By letter dated April 28, 2008, the DOJ National Security Division acknowledged  
receipt of EFF’s FOIA request, and by letter dated May 2, 2008 informed EFF that its request for  
expedited processing had been granted.

38. By letter dated May 2, 2008, the DOJ Office of Information and Privacy

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<sup>4</sup> The phrase “representatives or agents of telecommunications companies” is defined the same as noted above.

<sup>5</sup> EFF did *not* seek communications *from* members of Congress to DOJ officials.

1 acknowledged receipt of EFF's FOIA requests to the Office of the Attorney General, Office of  
2 Legislative Affairs, and Office of Legal Policy, and informed EFF that its requests for expedited  
3 processing had been granted.

4 39. By letter dated May 5, 2008, ODNI acknowledged receipt of EFF's FOIA request,  
5 and informed EFF that "In response to part A of your request, ODNI has located no additional  
6 responsive records beyond what was located in your two prior FOIA requests." By letter dated  
7 May 16, 2008, ODNI informed EFF that its request for expedited processing had been granted.

8 40. By letter dated May 5, 2008, the DOJ Office of Legal Counsel acknowledged  
9 receipt of EFF's FOIA request and informed EFF that its request for expedited processing had been  
10 granted.

11 41. ODNI responded to part A of EFF's FOIA request by claiming that the agency has  
12 no records responsive to that portion of EFF's request. By letter dated June 10, 2008, EFF  
13 administratively appealed ODNI's determination on part A. On July 10, 2008, ODNI  
14 acknowledged receipt of the appeal, advising EFF that it would "be advised of the determinations  
15 made." To date, EFF has received no determination on the June 10, 2008 appeal.

16 42. Collectively, EFF's April 24 FOIA requests are referred to as the "Unanswered  
17 FOIA Requests." Notwithstanding ODNI and DOJ's purported decisions to expedite the  
18 processing of all of EFF's April 24 FOIA requests, to date, the agencies have not completed the  
19 processing of the Unanswered FOIA Requests nor agreed to a specific date for the completion of  
20 the processing of the Unanswered FOIA Requests.

21 43. Not only have ODNI and DOJ failed to expedite the processing of the Unanswered  
22 FOIA Requests, they have also exceeded the generally applicable 20-day deadline for the  
23 processing of any FOIA request or appeal.

24 44. EFF has exhausted all applicable administrative remedies with respect to the  
25 Unanswered FOIA Requests.

26 45. Defendants ODNI and DOJ have wrongfully withheld the requested records from  
27 EFF.

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**CAUSE OF ACTION**

**Violation of the Freedom of Information Act for  
Wrongful Withholding of Agency Records**

46. Plaintiff repeats and realleges paragraphs 1-45.

47. ODNI and DOJ have wrongfully withheld agency records requested by Plaintiff by failing to comply with the statutory time limit for the processing of the Unanswered FOIA Requests.

48. Plaintiff has exhausted the applicable administrative remedies with respect to ODNI and DOJ's wrongful withholding of the records requested in the Unanswered FOIA Requests.

49. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

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**Requested Relief**

WHEREFORE, Plaintiff prays that this Court:

- A. order Defendants ODNI and DOJ to process immediately the records requested in the Unanswered FOIA Requests in their entirety;
  - B. order Defendants ODNI and DOJ, upon completion of such expedited processing, to disclose such requested records in their entirety and make copies available to Plaintiff;
  - C. provide for expeditious proceedings in this action;
  - D. award Plaintiff its costs and reasonable attorneys fees incurred in this action;
- and
- E. grant such other relief as the Court may deem just and proper.

DATED: July 11, 2008

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/s/

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Attorneys for Plaintiff  
ELECTRONIC FRONTIER FOUNDATION

**PROOF OF SERVICE**

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I, Kurt Opsahl, declare:

I am employed in the City and County of San Francisco, California by Electronic Frontier Foundation at 454 Shotwell Street, San Francisco, California 94110. I am over the age of eighteen years and am not a party to the within cause.

On July 11, 2008, at the above-referenced address, I served the attached FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF on the interested parties in said cause by

\_\_\_ personal delivery by messenger service of the document(s) above to the person(s) at the address(es) set forth below:

X placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in accordance with the firm's practice of collection and processing correspondence with the United States Postal Service, which in the normal course of business provides for the deposit of all correspondence and documents with the United States Postal Service on the same day they are collected and processed for mailing to the person(s) at the address(es) set forth below:

Adam D. Kirschner  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave, NW  
Washington, DC 20530

\_\_\_ facsimile transmission pursuant to Rule 2008 of the California Rules of Court on this date before 5:00 p.m. (PST) of the document(s) listed above from sending facsimile machine telephone number (415) 436-9993, and which transmission was reported as complete and without error (copy of which is attached), to facsimile number(s) set forth below:

\_\_\_ consigning the document(s) listed above to an express delivery service for guaranteed delivery on the next business day to the person(s) at the address(es) set forth below:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 11, 2008

\_\_\_\_\_  
/s/  
KURT OPSAHL