

Jones, A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY,
CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF STATE,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>5/9/14</u>

13 Civ. 9198 (AT)

STIPULATION AND ORDER REGARDING DOCUMENT SEARCHES

WHEREAS, on May 13, 2013, Plaintiffs the American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively, "Plaintiffs") made requests (the "Requests") pursuant to the Freedom of Information Act ("FOIA") to various government agencies, including, as relevant here, the National Security Agency ("NSA"), the Central Intelligence Agency ("CIA"), the Defense Intelligence Agency ("DIA"), the Department of Justice's Office of Legal Counsel ("OLC"), the Department of Justice's National Security Division ("NSD"), the Federal Bureau of Investigation ("FBI") and the Department of State ("State") (collectively, the "Agencies") relating to the Agencies' respective authorities pursuant to Executive Order ("EO") 12,333, and activities undertaken pursuant to those authorities;

WHEREAS, over the course of the administrative processing of Plaintiffs' FOIA requests, Plaintiffs came to agreements with NSA and OLC regarding the scope of searches that

these agencies would perform in full resolution of the relevant Requests, and these agencies thereafter began searching for and processing documents based on these agreements;

WHEREAS, on December 30, 2013, Plaintiffs filed a complaint in the instant action against the NSA, CIA, the Department of Defense (“DoD”), the Department of Justice (“DOJ”), and State (collectively, the “Defendants,” and together with Plaintiffs, the “Parties”) seeking judicial assistance in securing the Agencies’ responses to their Requests;

WHEREAS, on February 18, 2014, Plaintiffs filed an amended complaint in this action;

WHEREAS, on March 3, 2014, Defendants answered the amended complaint;

AND WHEREAS, the Parties have engaged in discussions in an attempt to reach agreement on the scope of searches that the Agencies will undertake in response to the Requests.

NOW, THEREFORE, it is hereby STIPULATED and AGREED between the Parties as follows:

1. The searches the Agencies agree to undertake that are described herein are deemed to fulfill in full the Agencies’ search obligations under the respective Requests.
2. OLC will continue to search for and process only those documents encompassed by the agreement it reached with Plaintiffs during the administrative processing of the relevant Request.
3. NSA, CIA, DIA, FBI, and State will search for and process only the following categories of documents:
 - a. Any formal regulations or policies relating to that Agency’s authority under EO 12,333 to undertake “Electronic Surveillance” (as that term is defined in EO 12,333) that implicates “United States Persons” (as that term is defined in EO 12,333), including regulations or policies relating to that Agency’s

acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.¹

- b. Any document that officially authorizes or modifies under EO 12,333 that Agency's use of specific programs, techniques, or types of Electronic Surveillance that implicate United States Persons, or documents that adopt or modify official rules or procedures for the Agency's acquisition, retention, dissemination, or use of information or communications to, from, or about United States persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
- c. Any formal legal opinions addressing that Agency's authority under EO 12,333 to undertake specific programs, techniques, or types of Electronic Surveillance that implicates United States Persons, including formal legal opinions relating to that Agency's acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
- d. Any formal training materials or reference materials (such as handbooks, presentations, or manuals) that expound on or explain how that Agency implements its authority under EO 12,333 to undertake Electronic Surveillance that implicates United States Persons, including its acquisition,

¹ For purposes of this Stipulation, surveillance that "implicates" United States Persons means surveillance that is reasonably believed to involve the interception, acquisition, scanning, or collection of information or communications to, from, or about a United States Person or persons even if the target of such surveillance is not a United States Person.

retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.

- e. Any formal reports relating to Electronic Surveillance under EO 12,333 implicating United States Persons, one of whose sections or subsections is devoted to (1) the Agency's compliance, in undertaking such surveillance, with EO 12,333, its implementing regulations, the Foreign Intelligence Surveillance Act, or the Fourth Amendment; or (2) the Agency's interception, acquisition, scanning, or collection of the communications of United States Persons, whether "incidental" or otherwise, in undertaking such surveillance; and that are or were:
 - i. Authored by the Agency's inspector general or the functional equivalent thereof;
 - ii. Submitted by the Agency to Congress, the Office of the Director of National Intelligence, the Attorney General, or the Deputy Attorney General; or
 - iii. Maintained by the office of the Agency's director or head.

4. NSD will search for and process all documents responsive to the original FOIA Request submitted to it by Plaintiffs.

5. If, in the course of searching for the records described in Paragraphs 3 or 4, an Agency discovers responsive records of other Agencies, it shall refer those documents to the originating Agency for processing.

6. With respect to the categories of documents described in Paragraph 3(b) and 3(e)(ii) above, CIA will search for such materials only in the offices of the Director, Deputy

Director, and Executive Director of the CIA, as well as materials maintained at the directorate level. With respect to the categories of documents described in Paragraph 3(c) above, CIA will search for such materials only in the particular division of CIA's Office of General Counsel that is responsible for providing legal advice on complex or novel questions (the "CIA OGC Division"). With respect to the categories of documents described in Paragraph 3(d) above, CIA will search for such materials created by the CIA OGC Division or created or maintained at the directorate level.

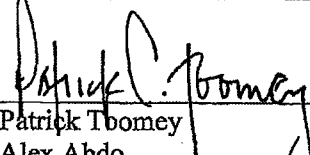
7. Date limitations.
 - a. Paragraphs 3(a)–(c). With respect to the categories of documents described in Paragraphs 3(a)–(c) above, each Agency will search for and process only documents that are currently in use or effect, or that were created or modified on or after September 11, 2001.
 - b. Paragraph 3(d). With respect to the categories of documents described in Paragraph 3(d) above, each Agency will search for and process only documents that are currently in use or effect.
 - c. Paragraph 3(e). With respect to the categories of documents described in Paragraph 3(e) above, each Agency will initially search for and process only documents created or modified on or after September 11, 2001; after the completion of the Agency's production of these documents, the parties agree to continue their discussions regarding whether searches for documents created before September 11, 2001 will be undertaken, including whether conducting such searches would be unduly burdensome to the Agencies.

8. Nothing in this Stipulation and Order, including the fact of its entry, should be taken as a concession by Defendants that Plaintiffs have "substantially prevailed" in this action in whole or in part, as that term is used in 5 U.S.C. § 552(a)(4)(E).

Dated: New York, New York
May 9, 2014

AMERICAN CIVIL LIBERTIES UNION

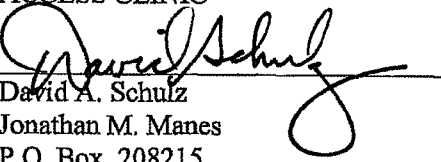
By:


Patrick Toomey
Alex Abdo
125 Broad Street, 18th Floor
New York, NY 10005
Phone: (212) 549-2500
Fax: (212) 549-2654
Email: ptoomey@aclu.org

Dated: New Haven, Connecticut
May 9, 2014

MEDIA FREEDOM AND INFORMATION
ACCESS CLINIC

By:

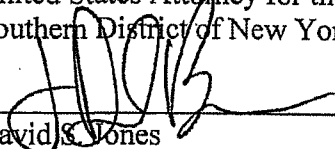

David A. Schulz
Jonathan M. Manes
P.O. Box. 208215
New Haven, CT 06520
(212) 850-6103

Counsel for Plaintiffs

Dated: New York, New York
May 9, 2014

PREET BHARARA
United States Attorney for the
Southern District of New York

By:



David S. Jones
Jean-David Barnea
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2739/2679
Facsimile: (212) 637-2730
E-mail: david.jones6@usdoj.gov
jean-david.barnea@usdoj.gov

Counsel for Defendants

SO ORDERED:



ANALISA TORRES
United States District Judge

May 9, 2014

Date

Jn