

NATIONAL SECURITY PROJECT



August 19, 2014

By ECF
Honorable William H. Pauley III
United States District Court for the
Southern District of New York
500 Pearl Street, Room 2210
New York, NY 10007

Re: *American Civil Liberties Union et al. v. FBI et al.*
Case No. 11 Civ 7562 (WHP)

AMERICAN CIVIL LIBERTIES
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Dear Judge Pauley:

Plaintiffs write in response to the government's August 15, 2014 letter (ECF No. 107), which refers the Court to a recent decision of the United States District Court for the Northern District of California in *Electronic Frontier Foundation v. Department of Justice*, No. 11-cv-05221-YGR (N.D. Cal.) ("*EFF v. DOJ*"). That decision sustained the government's withholding in full of two FISC opinions also at issue in this FOIA litigation.

As the Court knows, the *EFF* decision is not binding authority in this District. Moreover, it does not address all of the documents and claims before this Court. The government here has withheld in full an unknown number of FISC opinions and orders that were not at issue in the *EFF* case. (The number is unknown because the government has failed to identify or describe the records on its Vaughn Index.) The government has defended this response with an extreme claim of secrecy that was neither raised nor addressed in *EFF v. DOJ*. Here, it says that FOIA permits it to conceal even the existence of judicial opinions analyzing whether the government may collect in bulk information other than phone records—including information like financial data, which the government has acknowledged it regularly collects under both Section 215 and many other legal authorities. *See* Pl. Reply 1–7 (ECF No. 98).

In short, the *EFF* decision is not a substitute for the Court's review of the documents at issue here, and it does not resolve the core issue in *this* case—whether the government may conceal the very existence of court opinions interpreting the government's power to collect Americans' information in bulk.

Respectfully submitted,

/s/ Patrick Toomey

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