

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC PRIVACY INFORMATION	)	
CENTER,	)	
	)	Civil Action No. 06-0096 (HHK)
Plaintiff,	)	
	)	
v.	)	
	)	
DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT’S UNOPPOSED MOTION FOR A PARTIAL STAY OF THE COURT’S  
FEBRUARY 16, 2006, ORDER PENDING RESOLUTION OF THE  
DEFENDANT’S FORTHCOMING MOTION SEEKING RELIEF  
FROM THAT ORDER**

On February 16, 2006, the Court entered an order granting the motion of plaintiff Electronic Privacy Information Center (“EPIC”) for a preliminary injunction and requiring defendant the Department of Justice (“DOJ”) to (1) complete the processing of EPIC’s December 16, 2005, FOIA requests and to produce or identify all responsive records within 20 days of the date of that order; and (2) provide EPIC with a document index and declaration, as specified in Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), stating its justification for the withholding of any documents responsive to EPIC’s requests within 30 days of the date of that order. Defendant will be able to comply with certain portions of that Order within the time frames described therein. Defendant intends, however, to seek relief from certain other portions of that Order.

Specifically, by March 8, 2006, twenty days from the date of the entry of the Court’s February 16, 2006, order, defendant will have completed processing virtually all unclassified

documents responsive to EPIC's FOIA request,<sup>1</sup> and will release any non-exempt documents identified as a result of this processing effort. By March 20, 2006, thirty days following the date of the Court's February 16, 2006, order, defendant will provide EPIC with a document index identifying those unclassified documents that have been withheld along with the FOIA exemption(s) that justifies their withholding. This effort will complete the response from two of the four Department components that are the recipients of EPIC's FOIA request, the Office of the Attorney General and the Office of Legal Policy, and, with the one exception described in note 1, supra, will comprise a complete response with respect to the unclassified documents maintained by the remaining two components, the Office of Intelligence and Policy Review ("OIPR") and the Office of Legal Counsel ("OLC").

For reasons to be set out in defendant's forthcoming motion and the declarations to be provided in support, however, the processing of classified documents maintained by OIPR and OLC cannot be completed within the time frame set out in the February 16, 2006, Order. Thus, defendant intends to seek relief from the provisions of the February 16, 2006, Order of the Court, that would require such processing to be completed, and from certain other provisions of that Order. As required by the Local Rules of this Court, defendant has consulted with EPIC in an effort to reach agreement on the relief to be sought. The parties have been unable to reach complete agreement on the contours of that relief, and thus defendant anticipates filing a motion

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<sup>1</sup> One small set of unclassified documents maintained by OIPR cannot be processed within the time frame set forth in the Court's order. That small set of documents consists of responsive documents which might exist within the electronic mail traffic of James A. Baker, the head of OIPR. As will be described in full in the declarations filed in support of defendant's forthcoming motion for relief, Mr. Baker must search these messages personally and manually in an effort to identify potentially responsive documents, and due to Mr. Baker's extensive other duties, critical to the operation of OIPR, he requires additional time in which to complete this search.

seeking such relief on March 7, 2006.

The parties are in agreement that, in order to allow the Court to fully consider the defendant's motion, a partial stay of the February 16, 2006, order is warranted for a brief period. Accordingly, defendant, with plaintiff's consent, hereby moves the Court for an order staying the operation of the Court's February 16, 2006, Order as it relates to documents maintained by OIPR and to classified documents maintained by OLC pending the Court's resolution of defendant's forthcoming motion for relief plus an additional three days. The additional three days is intended to allow the Solicitor General's Office to make a determination as to whether a stay pending appeal will be necessary in the event that the Court's resolution of defendant's forthcoming motion for relief warrants an appeal by defendant. The parties, moreover, jointly request expedited consideration of defendant's forthcoming motion for relief, and in order to facilitate such expedited consideration, have agreed to brief the motion for relief on an expedited basis, with defendant filing its motion on March 7, 2006, plaintiff filing an opposition on March 15, 2006, and defendant filing a reply brief on March 20, 2006.

WHEREFORE, for the reasons stated herein, defendant, with plaintiff's consent, seeks an order partially staying the operation of the Court's February 16, 2006, Order, as described herein, pending the Court's resolution of defendant's forthcoming motion for relief, plus an additional three days. The parties further seek expedited resolution of that forthcoming motion, to be filed March 7, 2006. A proposed order is provided for the convenience of the Court.

Respectfully submitted,

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Dated: March 6, 2006.