



From: [Heath, Brad](#)
To: "[Fallon, Brian \(OPA\)](#)"
Subject: RE: Catching up
Date: Wednesday, September 18, 2013 11:03:00 AM

If we were planning to run it regardless, we would have done it Friday. If the premise is wrong, I want to know. I asked these questions – and waited for answers – because I'm interested in the answers. You can't seriously ask me not to publish something on the basis of information you won't share.

From: Fallon, Brian (OPA) [mailto:Brian.Fallon@usdoj.gov]
Sent: Wednesday, September 18, 2013 10:55 AM
To: Heath, Brad
Subject: RE: Catching up

You are not actually open-minded to the idea of not writing the story. You are running it regardless. I have information that undercuts your premise, and would provide it if I thought you were able to be convinced that your story is off base. Instead, I think that to provide it to you would just allow you to cover your bases, and factor it into a story you still plan to write. So I prefer to hold onto the information and use it after the fact, with a different outlet that is more objective about whether an OPR inquiry was appropriate.

From: Heath, Brad [mailto:bheath@usatoday.com]
Sent: Wednesday, September 18, 2013 10:29 AM
To: Fallon, Brian (OPA)
Subject: RE: Catching up

Your call. For the record, I'm not trying to negotiate. I'm trying to get answers to basic questions.

From: Fallon, Brian (OPA) [mailto:Brian.Fallon@usdoj.gov]
Sent: Wednesday, September 18, 2013 10:10 AM
To: Heath, Brad
Subject: Re: Catching up

I'm done negotiating. Go forward if you want, and I will work with someone else afterwards explaining why what you reported is off base.

From: Heath, Brad [mailto:bheath@usatoday.com]
Sent: Wednesday, September 18, 2013 10:04 AM
To: Fallon, Brian (OPA)
Subject: RE: Catching up

Last try: I spoke to my editors again this morning; our view is that we've been more than patient on this. If you have answers to my questions, please share them. If not, I don't see that we have any alternative but to write what we have been told. Please let me know by noon.

Brad

From: Fallon, Brian (OPA) [<mailto:Brian.Fallon@usdoj.gov>]
Sent: Tuesday, September 17, 2013 11:11 PM
To: Heath, Brad
Subject: Re: Catching up

I have an answer from OPR, and a FISC judge. I am not providing it to you because all you will do is seek to write around it because you are biased in favor of the idea that an inquiry should have been launched. So I will save what I have for another outlet after you publish.

From: Heath, Brad [<mailto:bheath@usatoday.com>]
Sent: Tuesday, September 17, 2013 11:02 PM
To: Fallon, Brian (OPA)
Subject: Catching up

Can we expect anything from you on the OPR question?

If there are facts that you have (and that I don't) that you think should cause us to re-evaluate, I need to have them tomorrow morning, even if only as background. Barring that, my editors are inclined to publish what we know. (FWIW, I've talked to a former OPR attorney who says the office would ordinarily review a case in which a judge used that type of language, and that it should have at least opened an inquiry into these.)

I'll be around all morning if you want to catch up.

Brad Heath

[USA TODAY](#)

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U.S. Department of Justice



Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530
(202) 514-3365

September 11, 2013

Brad Heath
USA Today
7950 Jones Branch Drive
McLean, VA 22108

Via e-mail: bheath@usatoday.com

Re: FOIA No. F13-00109

Dear Mr. Heath:

This is a further response to your August 22, 2013 Freedom of Information Act (FOIA) request to the Office of Professional Responsibility (OPR) for records related to declassified Foreign Intelligence Surveillance Court (FISC) opinions indicating that government lawyers had made material misrepresentations to the court about the scope of its electronic surveillance efforts on several occasions. On September 3, the Office of Public Affairs granted your request for expedited processing.

A thorough search of OPR's system of records failed to locate any documents responsive to your request. For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you are not satisfied with this response, you may appeal in writing within sixty days of the date of this letter to the Director, Office of Information Policy. Your letter and envelope should be marked "FREEDOM OF INFORMATION APPEAL" and addressed to:

Office of Information Policy
United States Department of Justice
1425 New York Ave., N.W.
Suite 11050
Washington, D.C. 20530-0001

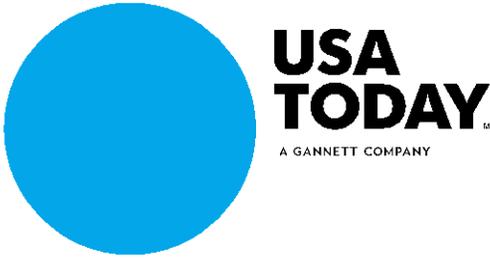
You may also appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>.

If you are dissatisfied with the result of any appeal you make, judicial review may thereafter be available to you in the United States district court for the judicial district in which you reside, or in which you have your principal place of business, or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "Lyn Hardy", with a large circular flourish at the end.

Lyn Hardy
Special Counsel
for Freedom of Information and Privacy Acts



August 22, 2013

VIA ELECTRONIC MAIL

Lyn Hardy
Special Counsel for Freedom of Information and Privacy Acts
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Suite 3529
Washington, D.C. 20530

Re: Freedom of Information Act request

Dear Ms. Hardy:

This is a request under the Freedom of Information Act for records related to declassified Foreign Intelligence Surveillance Court (FISC) opinions indicating that government lawyers had made material misrepresentations to the Court about the scope of its electronic surveillance efforts on several occasions.¹ Please provide me with copies of the following records:

1. A complete copy of any records from the Office's case management database pertaining to any referral, complaint, inquiry, or investigation related to the now declassified FISC orders.
2. A complete copy of any reports prepared as part of any inquiry or investigation related to the now declassified FISC orders.

¹ The FISC orders were declassified on August 21, 2013, and are available for review at <http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/915-dni-declassifies-intelligence-community-documents-regarding-collection-under-section-702-of-the-foreign-intelligence-surveillance-act-fisa>. In a memorandum opinion issued October 3, 2011, Judge Bates indicated that he was "troubled" that a government disclosure "marks the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program."

Where possible, please furnish the records in an electronic format pursuant to 5 U.S.C. §§ 552(a)(3)(B)-(C).

Further, because this request relates to matters that are of ongoing public interest, I respectfully ask that you release responsive records on a rolling basis as they are located, rather than waiting until all of the relevant offices complete their searches.

Because this is a request by the news media for information of significant public interest, I ask that you waive any search fees in accordance with § 552(a)(4)(A)(ii)(II). If the cost of reproducing these records will exceed fifty dollars (\$50.00), please notify me before filling this request. I may be reached at (703) 854-6505, or by electronic mail at bheath@usatoday.com.

If for any reason any portion of this request is denied, please provide written notice of the specific records or portions of records that were withheld, and the specific statutory basis for the withholding. Please also provide the name and address of the officer or body to which my appeal may be directed.

As you know, the Act, in § 552(a)(6), grants an agency no more than twenty working days in which to respond to this request. *See Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990) ("Congress adopted the time limit provision in the FOIA in order to 'contribute to the fuller and faster release of information, which is the basic objective of the Act.'" (quoting H.R. Rep. No. 93-876, March 5, 1974., reprinted (1974) U.S. Code Cong. & Ad. News 6267 at 6271)).

I therefore look forward to your prompt reply.

Sincerely,

Brad Heath