FOIA Hacking

How to Dox Public Records

Caitlin Kelly Henry, Esq.
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Intro to FOIA hacking

Steps to a successful FOIA

15

Items to put in your request

?

Questions

Why Should Hackers Use FOIA?

Protect privacy. Expose surveillance.

Educate the public, especially the non-technical public.

Be A Whistleblower.

And…..


Information
wants to be
FREE

FOIA - A Lawful Attack Vector Against Government Data Collection Systems, Pervasive Data Collection, and Mass Surveillance

Uncovering How Agencies Store Data Helps Us Understand How They Are Thinking, Making Decisions, and Organizing Information That May Be Used Against Us.

Of Interest: The Information the Agencies Keep & The Ways In Which They Keep It

Understanding Data Management Is A Task Of Reverse Engineering

By extracting information from the agency we can deduce information about its systems then make more effective requests (Mosaic Theory).

Understanding Agency Data Architecture Improves Requests

Agency Systems and Search Methods May Be Designed to Fail

Agency may not use its most powerful system for FOIA search.

May instead use system designed to conduct non-responsive search.

What Can I Request? "Agency Records"

FOIA Enumerates Categories of Records
The "Electronic Data" Category Includes:

File Directories

How do Agencies try to Avoid Responding?

- Obfuscation!

How do Agencies Try to Avoid Releasing?

- To the untrained eye, agency response letters make it seem like agency conducted search. However, with training you may find that the agency didn't search where records were most likely to be found.
- Agencies aren't required to use their most powerful data system to perform FOIA searches. Agencies may have a dedicated indexing type system that is used for fulfilling FOIAs. The staff may not enter records in that system at all, or may not use a method of indexing the records that would make finding the records easy.

What Outcomes Can Requesters Expect?

- Depends on the agency and type of record requested.
- FBI easier than CIA or NSA.
- DOJ report (2015)
  - Nearly 68,000 requests processed
  - Claimed release rate 93.4% (didn't define rate)
  - Simple track requests - 69% - average response time 29.83 days.
  - Complex track requests = 31%
  - Appeals processed 4,109
  - Use of Law Enforcement Exclusions - 154 requests (0.22% of all requests processed).
  - Exemption 5 counted for less than 5% of invoked exemptions.

Aaron Swartz

- FBI said it did not index a “main file” to his name (search using UNI/ACS/ CRS).
- FBI’s policy is to limit its search to a name search of its main files unless court orders otherwise.
- FBI initially released 23 records that mentioned him, but were not indexed to his name as the “main index.”
- Later journalists and researchers found his files through cross referenced materials and case numbers. Court ordered release.
  - File Number 228A-WF-238943.
  - Case number 315T-HQ-C1475879

Understanding Agency Default Searches:

FBI Case Study

- FBI Default search doesn't use modern tools
  - uses IBM green screen which is a terminal connected to a main frame
  - not web-application based search method
  - developed in 1995
- Decision to index records to this system is discretionary.
- Obstructing FOIA is to agency advantage
- Not system agents use in field
- caitlinkellyhenry.com/foia has detailed training on this topic.



Image Used In Case Challenging FBI Searches

Understanding Agency Default Searches:

FBI Case Study

Reverse Engineering to Make Agency Go Beyond

- CRS Central Records System (Data Management System)
  - ACS Automated Case Support (Portal)
    - UNI Universal Name Index (Search Method)
    - ICM Investigative Case Management (Search Method)
    - ECF Electronic Case File (Search Method)

Understanding Agency Default Searches: FBI Case Study

Reverse Engineering to Make Agency Go Beyond

- **CRS (Central Records System) -** Data System.
  - **ACS (Automated Case Support)** “Portal” to search CRS up to “secret” classification level (IBM terminal to main frame, not web-application based).
    - **UNI (Universal Name Index)** Default ACS search of CRS. Only searches names and cross references with identifiers Agents must choose to index the names as a main file or cross referenced name. Can search main and cross referenced indexes. Can’t search key words but index is recorded with identifying information such as DOB, birthplace, race, sex, locality, SSN, address, date of event.
    - **ICM (Investigative Case Management)** Case management tool for documents involved in an ongoing investigation. Must specifically request and provide details
    - **ECF (Electronic Case File)** Capable of *text search* for key words. Can be searched by both structured (i.e., formatted fields such as From/To) and unstructured (i.e., full text) means. FBI refuses to use.

Can Regular People Succeed In FOIAs?

- Yes, but
  - It is likely for agency to send a letter that seems like it searched and found nothing.
    - EX. FBI will say it searched CRS but not mention that it didn't search the FOIA Document Processing System ("FDPS").
  - You must be prepared to research and fight for months or years to get agency to find records, then argue for exemptions/exclusions, then decide about release.
  - This takes preparation.

A Note On Using FOIA Drafting Websites

- Privacy/security
  - Privacy act requests require identifiers such as DOB/SSN. Research if concerned about electronic transmission.
- Template may be missing details on instructing the agency in record type and in search method.
  - Don’t write an “any and all” request. Once you know how the FBI structures its files and how it trains staff (see other slides), you know why you need to be specific.



Planning (research)

Drafting a request (15 items)

Anticipating responses

Tracking progress

Appealing and litigating

Planning (research)

Who? *Branches? Agencies? Bureaus?*

What? *Personal information? About someone else?*

When? *Creation? Time frames? Pertinent dates?*

Where? *Which systems?*

How? *Prove record existence? Letter? Attachment?*

1. Who:

What agency/agencies would have the information you want? FOIA applies to Executive branch agencies not the Legislative or Judicial branches.

2. What information do you want:

Who are you, and might any fee waivers apply?

Is it about you? Then you have a Privacy Act request, not a FOIA.

3. When:

When was the information created or produced?

What time period of records are you searching for?

4. Where:

Where/how might the agency store the information? Know particular agency's systems.

What format is that information in?

Might any exceptions/exemptions/exclusions apply? How might you anticipate and creatively avoid them?

5. How:

How can you prove these records exist?

What can you describe in a letter? What can you attach?

- You need to know what you are looking for and where the agency might find it.
- You should provide instructions to someone who is unfamiliar with the topic to be able to find it.
- The agency doesn’t have to create records for you.
- The agency doesn’t have to research for you.
- Make it easy for someone who doesn’t share your background knowledge, and for a judge later on.

Request Both

	FOIA	Privacy Act
Who can seek records?	Any person (broad)	Individual (narrow), citizen, lawful permanent resident
What can they seek?	“Agency Record” (broad), that already exists, if not subject to 9 exemptions, or 3 exclusions	“Systems record” (narrow) that already exists, with written consent, if not subject to 12 exemptions, or 12 exceptions

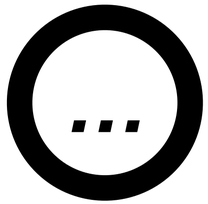
Plan for follow up

20 Business days following request delivery.

The agency legally owes a response. If it fails to meet this timeframe, appeal or begin litigation immediately.

FOIA is… Kafkaesque

Some agencies (ugh)



Won't even start searching until you file suit.



Require that you have proof that the things you're asking for exist.

Case Study
My FOIA requests RE: Hackers On Planet Earth (HOPE) - March 2016

CAITLIN KELLY HENRY, ESQ.
ATTORNEY AT LAW, CASBN #287949
1201 Martin Luther King Jr. Way, Suite 200, Oakland CA 94612
TEL:(510)277-2025 FAX:(510)578-6595 ckh@caitlinkellyhenry.com

March 28, 2016

David M. Hardy
Chief, Record/Information Dissemination Section, Records Management Division
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843
foiparequest@ic.fbi.gov

Transmitted Via Email

Re: Freedom of Information Act Request
Related to Hackers On Planet Earth (HOPE)

Dear FOIA Officer:

Under the Freedom of Information Act I hereby request the following records that mention Hackers On Planet Earth (HOPE).

Context For Search
I request records regarding intelligence gathering and law enforcement activities that mention or reference the HOPE conference, which takes place bi-annually in July. I request records beginning with the first conference held in August 1994 to the date the request is fulfilled.

Search Terms
Associated key words may include, but should not be limited to:

Key Words: HOPE, Hackers on Planet Earth, Hacking/Hackers; Conference; Con; White Hat; Gray Hat; Black Hat; Counterterrorism; Cyber
Entities: Hackers On Planet Earth (HOPE); 2600/The Hacker Quarterly
Subjects of Interest: Steven Rambam; Julian Assange; Edward Snowden; Thomas Drake; Daniel Ellsberg; William Binney; J. Kirk Wiebe
Addresses: 401 7th Avenue (15 Penn Plaza), Hotel Pennsylvania, New York, NY; 295-307 Lafayette Street, Puck Building, New York New York
Statutes: Computer Fraud and Abuse Act 18 U.S. Code §1030; Wiretap Act 18 U.S.C. § 2511(1); Unlawful Access to Stored Communications; 18 U.S.C. § 2701. Section 2701; Identity Theft and Aggravated Identity Theft: 18 U.S.C. § 1028A; Access Device Fraud: 18 U.S.C. § 1029; CAN-SPAM Act: 18 U.S.C. § 1037; Wire Fraud: 18 U.S.C. § 1343.; Communication Interference: 18 U.S.C. § 1362; Digital Millennium Copyright Act (17 U.S.C. §§ 512, 1201–1205, 1301–1332; 28 U.S.C. § 4001)

Types of Records Requested
Signals intelligence, Communication Intelligence, and Human Intelligence including: Special Events Readiness Level (SERL) assessments; Special Events Management Units Communications (SEMU) Special Event Supervisors communications; Field Intelligence Groups and SSA Communications; Cyber Division communications; Emails; Complaint Forms; Memorandums of Investigation; Reports of Investigation; Field Operation Worksheets; Arrest Reports; Agents' notes; arrest evaluations; and investigation documents.

Search Locations
I request the search be performed in the following locations: ELSUR, Sentinel, IDW, CRS, FBIHQ Human Intelligence Division and Field Office Confidential Human Source information. In CRS I request a search of both the automated and the older general (manual) indices for all records (in any form or format, including multimedia and all types of electronic records) related in whole or in part. I request that the CRS search not be limited to UNI index, but also include use of the ECF to search for associated keywords.

Fee Waiver or Reduction
I request a fee waiver on a public interest basis pursuant to the public's interest in knowing about surveillance privacy activists and security professionals. I anticipate that the requested documents will be made available to the general public free of charge as public information on the Internet and at the conference. This request is made in the process of news-gathering about surveillance of security and privacy professionals and anti-surveillance activists. It is not for commercial usage. Publication of information will contribute significantly to a public understanding of how federal agencies monitor the conference.

Release
As FOIA requires the release of all reasonably segregable portions of records, please release all segregable information and do not withhold an entire document if only a portion is exempt.

Cost
Please inform me of the total charges in advance of fulfilling my request. I am willing to pay up to $50 initially, and I would prefer the request filled electronically, by e-mail attachment if available, or CD-ROM if not. Likewise, if documents are not available electronically, please indicate the approximate cost of copying and shipping.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request by April 18, 2016 (within 20 business days) as the statute requires. Please feel free to contact me for any clarifications.

Sincerely,
/s/
Caitlin Kelly Henry

Responses to My Requests (FBI, Secret Service, US Attorney, US Marshals) Re: HOPE

U.S. Department of Justice
Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W.
Suite 7300, Bicentennial Building
Washington, DC 20530-0001
(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/usao)

July 5, 2016

Caitlin Henry, Esq.
1201 Martin Luther King Jr. Way
Ste. 200
Oakland, California 94612

Re: Request Number: FOIA-2016-02004
Date of Receipt: March 30, 2016
Subject of Request: Hackers On Planet Earth (HOPE)/Northern District of New York

Dear Ms. Henry, Esq.:

The purpose of this letter is to acknowledge receipt of your Freedom of Information Act/Privacy Act request dated **March 28, 2016** and received in the Executive Office for United States Attorneys (EOUSA) on March 30, 2016. You requested records concerning Hackers On Planet Earth (HOPE). Your request has been assigned Tracking Number FOIA-2016-02004.

For your information, EOUSA assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. As an estimate, the likely median response time for simple requests is approximately 30 business days, whereas complex requests necessarily take longer. At this time, your request has been assigned to the Complex track.

Please be advised that there may be certain costs associated with processing your request. Consequently, you may be responsible for paying those costs, unless you have requested and been granted a waiver or reduction in fees. In most instances, the first 100 pages to duplicate and the first two hours to search for records responsive to your request, will be provided to you free of charge. Thereafter, search and review fees by professional personnel are charged at $40 per hour and duplication fees are assessed at five cents per page.

Requests that are specific, concrete and of limited scope (in time and/or subject matter) generally enable us to respond to you more quickly and possibly assess less fees. You may decide to limit or reduce the estimated fees, or obtain a quicker response, by modifying your request in one or more ways specified in the attachment to this letter. If after making those allowances we determine that the cost to process your request will amount to more than $25.00, we will notify you in writing at a later date.

Federal Bureau of Investigation
Washington, D.C. 20535

April 14, 2016

MS. CAITLYN KELLY HENRY
SUITE 200
1201 MARTIN LUTHER KING JR. WAY
OAKLAND, CA 94612

FOIPA Request No.: 1347776-000
Subject: Hackers On Planet Earth Conference

Dear Ms. Henry:

This is in response to your Freedom of Information Act (FOIA) request.

Based on the information you provided, we conducted a search of the Central Records System, to include any Electronic Surveillance (ELSUR) records. We were unable to identify main file records responsive to the FOIA. If you have additional information pertaining to the subject that you believe was of investigative interest to the Bureau, please provide us the details and we will conduct an additional search.

It is unnecessary to adjudicate your request for a fee waiver as no responsive main files were located.

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.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline.regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within sixty (60) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI Fact Sheet.

Sincerely,

David M. Hardy
Section Chief,
Record/Information

FBI

1. Acknowledgement email (March 29)
2. Denial Letter (April 14)

-Assigned request number.

-Conducted a search of the CRS to include any Electronic Surveillance (ELSUR).

-Unable to identify “main file” records.

-Request for additional information about the subject of interest (note, the request mentioned names)

Federal Bureau of Investigation
Washington, D.C. 20535

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Sincerely,

David M. Hardy
Section Chief,
Record/Information

Secret Service

1. Acknowledgement Letter (April 5)
- Assigns file number
- Assigns fee category (“all other”)

2. Denial Letter (July 8)



DEPARTMENT OF HOMELAND SECURITY
UNITED STATES SECRET SERVICE
WASHINGTON, D.C. 20223

Freedom of Information Act & Privacy Act Branch
Communications Center
245 Murray Lane, SW, Building T-5
Washington, D.C. 20223

Date: APR 5 2016

Caitlin Henry, Esquire
1201 Martin Luther King Jr. Way, Suite 200
Oakland, CA 94612

File Number: 20160726

Dear Requester:

This letter is intended to acknowledge the receipt of your recent Freedom of Information Act/Privacy Acts (FOIA/PA) request, received by the United States Secret Service (USSS) on March 29, 2016, for information pertaining to intelligence gathering and law enforcement activities that mention or reference the HOPE conference, which takes place bi-annually in July, from August 2004 to March 29, 2016.

Please be advised, your request for a fee waiver will be held in abeyance pending the quantification of responsive records. The FOIA regulations, Title 6 C.F.R., Chapter I, Part 5 § 5.11(k)(2)(3), set forth six factors to examine when determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

1) Whether the subject of the requested records concerns “the operations or activities of the government;”
2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
4) Whether the contribution of public understanding of government operations or activities will be “significant;”
5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

In the event that your fee waiver is denied, we shall charge you for the records in accordance with Interim FOIA regulations as they apply to non-commercial (“all other”) requesters. The first 100 pages of duplication are free of charge. As an “all other” requester, you will be charged .10 cents a

Secret Service

2. Denial Letter (July 8)
-Conducted a reasonable search
-Reviewed main indices for references

DEPARTMENT OF HOMELAND SECURITY
UNITED STATES SECRET SERVICE
WASHINGTON, D.C. 20223

Freedom of Information Act & Privacy Act Program
Communications Center
245 Murray Lane, SW, Building T-5
Washington, D.C. 20223

Date: JUL 8 2016

Caitlin Henry
1201 Martin Luther King Jr. Way, Suite 200
Oakland, CA 94612

File Number: 20160726

Dear Requester:

This letter is intended to acknowledge the receipt of your recent Freedom of Information Act/Privacy Act (FOIA/PA) request, received by the United States Secret Service (Secret Service) on March 29, 2016, for information pertaining to intelligence gathering and law enforcement activities that mention or reference the HOPE conference, which takes place bi-annually in July, from August 2004 to March 29, 2016.

In response to your request, the Secret Service has conducted a reasonable search for responsive records. It appears, from a review of Secret Service main indices, that there are no records pertaining to your request that are referenced in these indices. This is the final response. Enclosed is a copy of your original request.

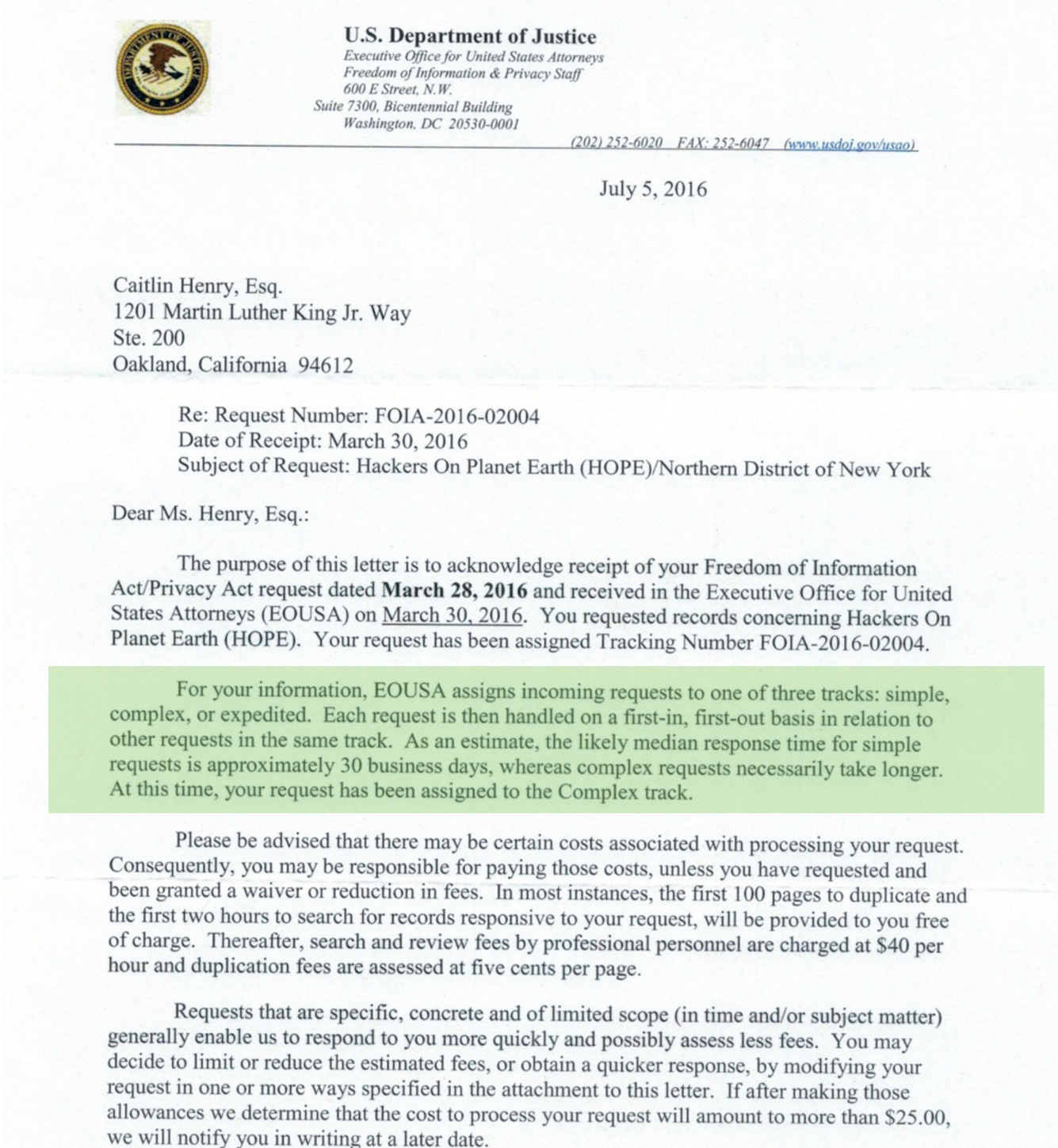
Alternatively, if you deem our decision an adverse determination, you may exercise your appeal rights. Should you wish to file an administrative appeal, your appeal should be made in writing and received within sixty (60) days of the date of this letter, by writing to: Freedom of Information Appeal, Deputy Director, U.S. Secret Service, Communications Center, 245 Murray Lane, S.W., Building T-5, Washington, D.C. 20223.

Your request has been assigned FOIA File No. 20160726. If you choose to file an administrative appeal, please explain the basis of your appeal and reference the assigned file number.

US Attorney

4 Letters

-Assigning tracking number
-Assigning to Different Geographical Divisions,
-Assigning to Complex Track,
-Asking If I wanted to Continue
-Asking How Much I'd Pay



U.S. Department of Justice
Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W.
Suite 7300, Bicentennial Building
Washington, DC 20530-0001
(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/usao)

July 5, 2016

Caitlin Henry, Esq.
1201 Martin Luther King Jr. Way
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Date of Receipt: March 30, 2016
Subject of Request: Hackers On Planet Earth (HOPE)/Northern District of New York

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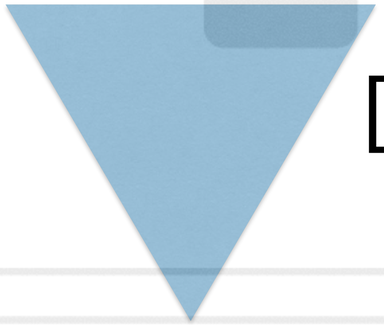
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US Marshals

Nothing



Drafting a request (15 items)

1. Requester contact information
2. Date of request receipt
3. Agency addressee information
4. Method of transmission (e.g., mail, email, fax)
5. Subject line (FOIA/PA request; Re: _____)
6. Request is on behalf of
7. Subject matter (context and keywords)
8. Indication of record types
9. Likely location of records
10. Record date ranges
11. Fee waiver eligibility information
12. Costs you're willing to incur
13. Date of expected response
14. Signature
15. Enclosures and attachments

Generally self-explanatory

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14. ***Signature***
15. ***Enclosures and attachments***

Potentially a bit trickier

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12. ***Costs you're willing to incur***
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15. Enclosures and attachments

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March 28, 2016

David M. Hardy
Chief, Record/Information Dissemination Section, Records Management Division
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843
foiparequest@ic.fbi.gov

Transmitted Via Email

Re: Freedom of Information Act Request
Related to Hackers On Planet Earth (HOPE)

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Entities: Hackers On Planet Earth (HOPE); 2600: The Hacker Quarterly

Subjects of Interest: Steven Rombom; Jullian Assange; Edward Snowden; Thomas Drake; Daniel Ellsberg; William Binney; J. Kirk Weibe

Addresses: 401 7th Avenue (15 Penn Plaza), Hotel Pennsylvania, New York, NY; 295-307 Lafayette Street, Puck Building, New York New York

Statutes: Computer Fraud and Abuse Act 18 U.S. Code §1030; Wiretap Act 18 U.S.C. § 2511(1); Unlawful Access to Stored Communications: 18 U.S.C. § 2701. Section 2701; Identity Theft and Aggravated Identity Theft: 18 U.S.C. § 1028A; Access Device Fraud: 18 U.S.C. § 1029; CAN-SPAM Act: 18 U.S.C. § 1037; Wire Fraud: 18 U.S.C. § 1343.; Communication Interference: 18 U.S.C. § 1362; Digital Millennium Copyright Act (17 U.S.C. §§ 512, 1201–1205, 1301–1332; 28 U.S.C. § 4001)

1 Requester contact information

Be overly inclusive

1 Requester Contact Information

- **Mailing address**
  - If you send it by mail, you are likely to get a mail response, make sure someone is checking the address.
- **Email address**
  - If you send it by email, or if you want to the agency to follow up with emails, which may expedite the request.
  - Think about privacy/security implications of electronic transmission.
- **Phone number**
  - If you want to accept agency calls clarifying the scope of the request

Cost
Please inform me of the total charges in advance of fulfilling my request. I am willing to pay up to $50 initially. I would prefer the request filled electronically, by e-mail attachment if available, or CD-ROM if not. Likewise, if documents are not available electronically, please indicate the approximate cost of copying and shipping.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request by April 18, 2016 (within 20 business days), as the statute requires. Please feel free to contact me for any clarifications.

Sincerely,
/s/
Caitlin Kelly Henry

2

CAITLIN KELLY HENRY, ESQ.
ATTORNEY AT LAW, CASBN #287949
1201 Martin Luther King Jr. Way, Suite 200, Oakland CA 94612
TEL:(510)277-2025 FAX:(510)578-6595 ckh@caitlinkellyhenry.com

March 28, 2016

David M. Hardy
Chief, Record/Information Dissemination Section, Records Management Division
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843
foiparequest@ic.fbi.gov

Transmitted Via Email

Re: Freedom of Information Act Request
Related to Hackers On Planet Earth (HOPE)

Dear FOIA Officer:

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Search Terms
Associated key words may include, but should not be limited to:

Key Words: HOPE, Hackers on Planet Earth, Hacking/Hackers; Conference; Con; White

2 13 Date of Request & Date Anticipate Receipt

- ***Deadline clock starts running upon agency receipt.***
- ***On the letter indicate day you***
  - ***transmit it.***
  - ***anticipate agency will receive .***
  - ***you anticipate response by.***

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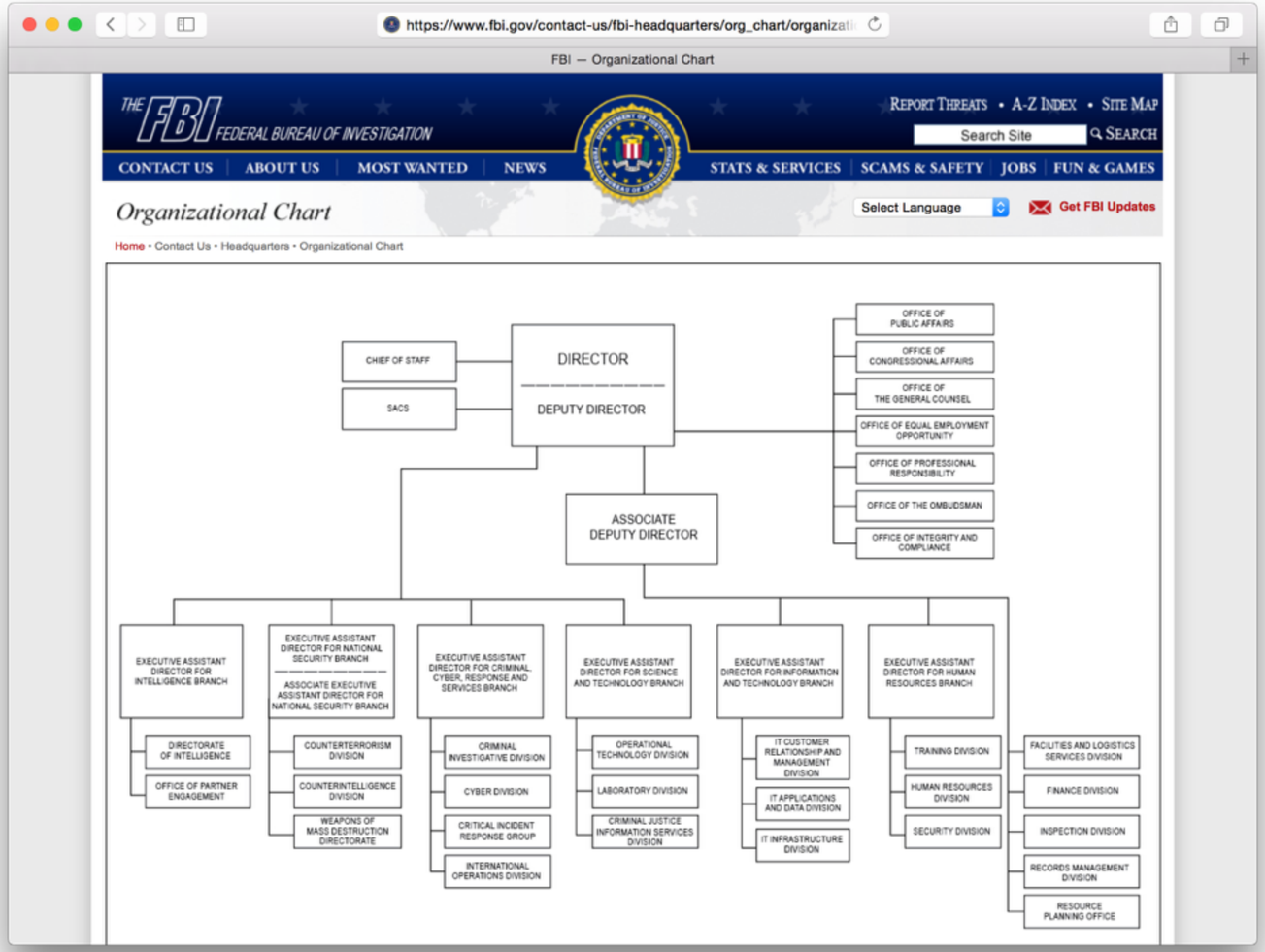
Statutes: Computer Fraud and Abuse Act 18 U.S. Code §1030; Wiretap Act 18 U.S.C. § 2511(1); Unlawful Access to Stored Communications: 18 U.S.C. § 2701. Section 2701; Identity Theft and Aggravated Identity Theft: 18 U.S.C. § 1028A; Access Device Fraud: 18 U.S.C. § 1029; CAN-SPAM Act: 18 U.S.C. § 1037; Wire Fraud: 18 U.S.C. § 1343.; Communication Interference: 18 U.S.C. § 1362; Digital Millennium Copyright Act (17 U.S.C. §§ 512, 1201–1205, 1301–1332; 28 U.S.C. § 4001)

3 Agency addressee information



https://www.foia.gov/report-makerequest.html

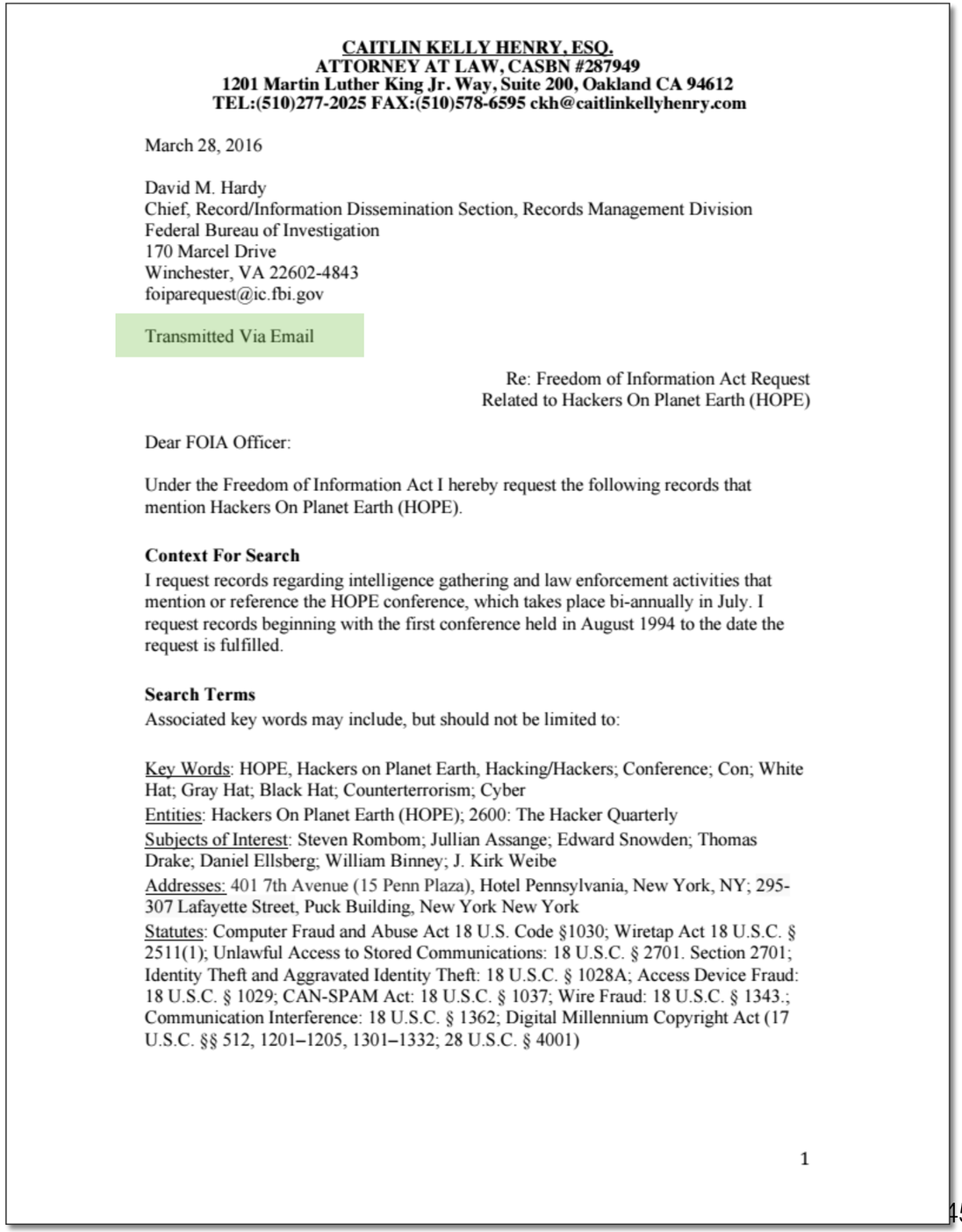

Know your agency!
And your sub-agency. And organization. And directorate. And branch. And office. And, and, and…



https://www.fbi.gov/contact-us/fbi-headquarters/org_chart/organizational_chart

Do your research!

The FBI alone defines an organizational hierarchy with deep complexity.



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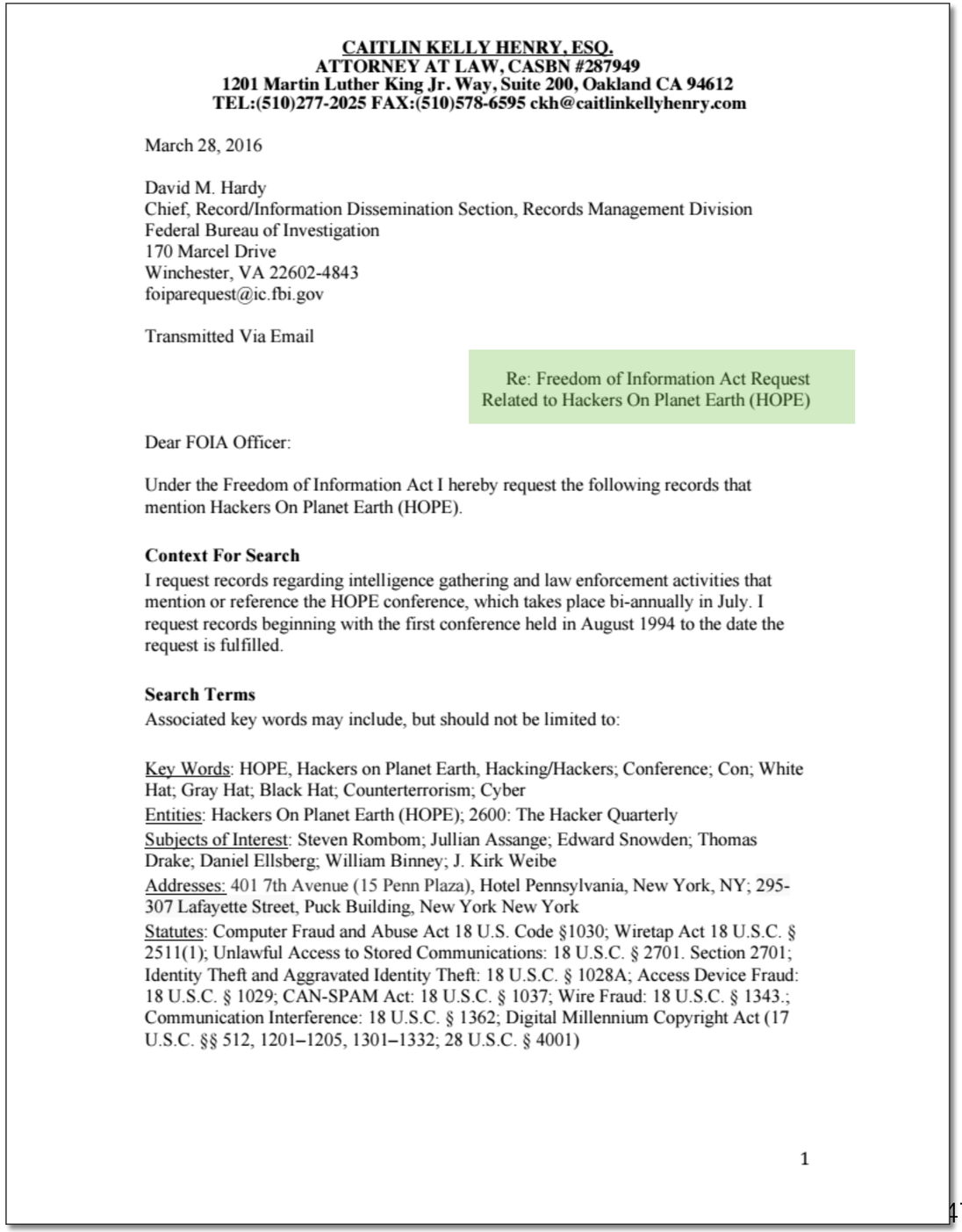
1

4 Method of transmission

Important for tracking multiple requests

4 Method of Transmission

- **List how you sent it, so you can track each request you make whether by mail, email, or fax. You can then confirm receipt with agency if it denies receiving it.**
- **Keep a spreadsheet of certified mail log numbers, and when you receive a response to that request number, and what date you receive the response.**
- **If you send a fax, print a confirmation of transmission.**
- **If you send an email, make a PDF of the sent transmission and keep it it in a folder with your other documents.**
- **You may need these copies later, especially if you are going to litigate.**



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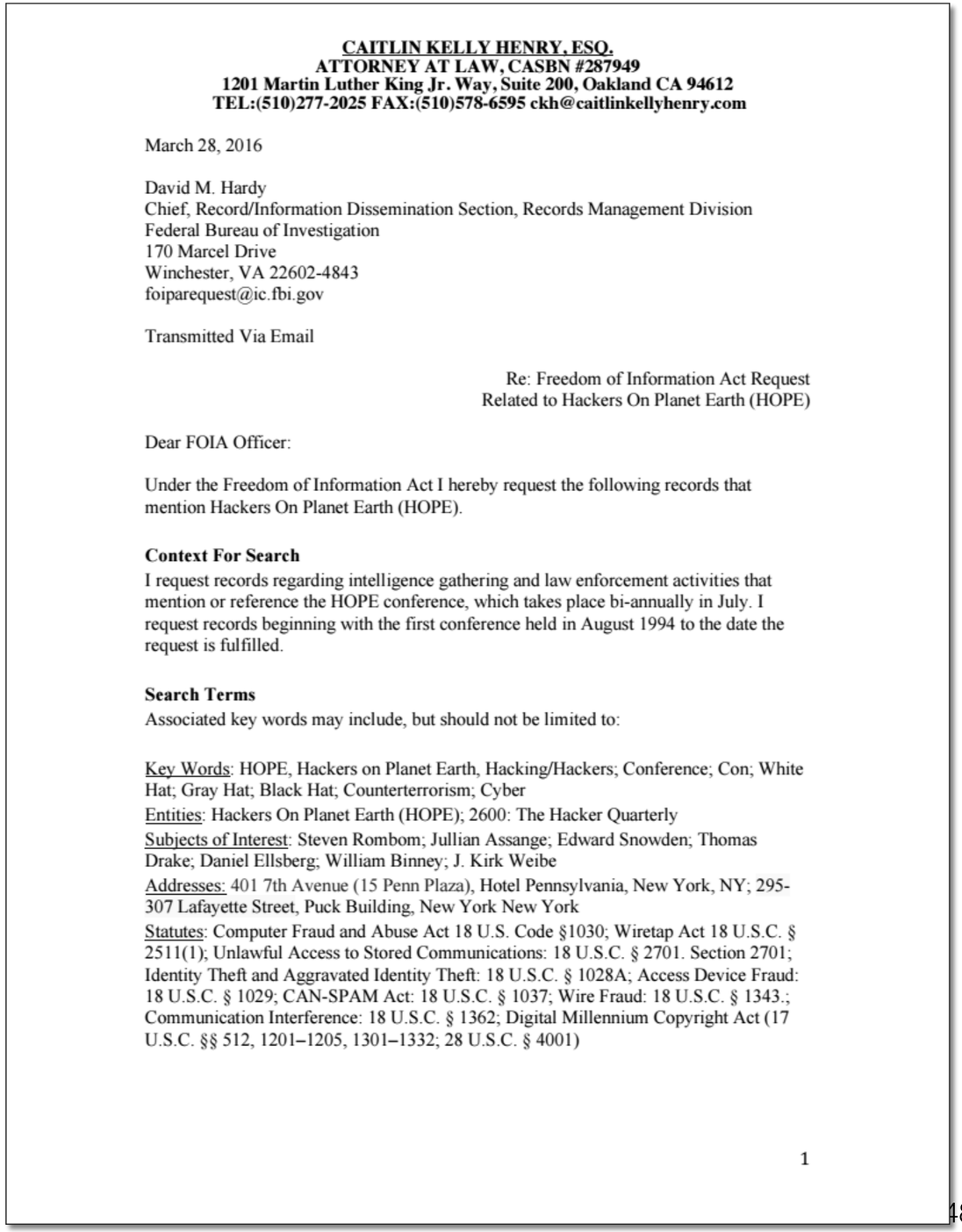
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1

5 Subject Line (context)

- In letter heading
- Use RE: format
  - List whether it is FOIA or Privacy Act or FOIA/PA (both) request.(Restate this in the first sentence).
  - Once you have reference number, include it.
- List a brief summary of your request topic:
  - Topic may make it into the annual report.
  - Note: Your request is itself public information. So your adversaries or colleagues can request your requests or see that you made a request. Your name will be on file with the agency as having created an agency record.



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1

6 Who Is Making/Subject of Request

- For Self
  - Include a Privacy Act Certification of Identity.
- For Other
  - If living & have consent,
    - Include their Certification of Identity/Authorization to Release.
  - If deceased
    - Submit proof of death (obituary, death certificate, etc.)

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7 Subject matter (narrative context)

The agency will decide ***how the narrative fits*** *into its systems and search methods.*

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7 Subject matter (narrative context)

Provide a sentence or two that generally describes records you are looking for.

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7 Subject matter (keywords)

The agency is not obligated to use keywords.

But you should provide it with the terms you want used.

It goes a long way in appeals and litigation.

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7 Subject matter (keywords)

Make it easy for a staff person unfamiliar to the subject to type relevant terms into a data management system.

⊗ Exclusions

⊘ Exemptions

<u>Exclusions: FOIA Doesn't Apply</u>

<u>Exemptions: FOIA Applies but Agency Isn't Obligated to Release</u>

- Release is discretionary, and new laws "presume" disclosure
- Read the exclusions and exemptions and try to anticipate what arguments the agency might make in order to not release.
- Provide an example of how someone else overcame an argument in a similar matter.
- Each agency has online "FOIA Reading Room" for research.

Will exclusions or exemptions swallow the releases?

- Not necessarily!
- Agency may exclusion/ exemption.
- You can fight it!
  - Find cases that are similar to your case, and show how the agency was force to release records in those circumstances.



Exclusions

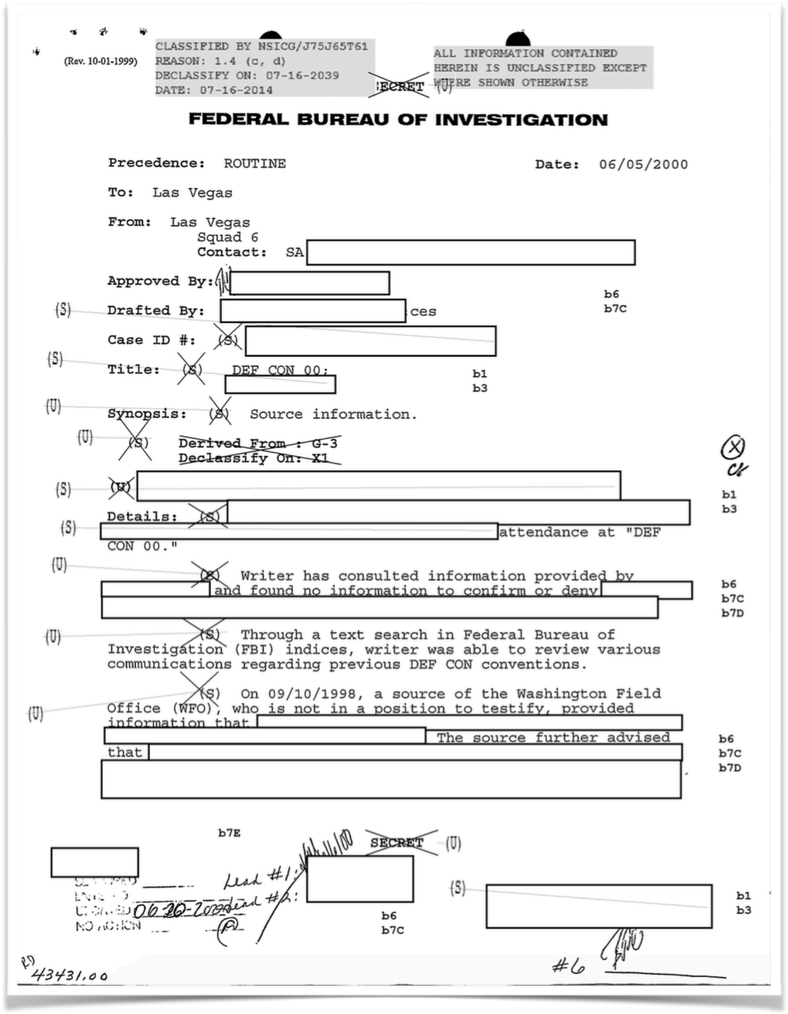
<u>FOIA Doesn't Apply</u>

- Ongoing criminal law proceedings
- Law enforcement information on confidential informants
- **Certain** classified materials, counterintelligence, and international terrorism

Exemptions

<u>FOIA Applies, But Agency Doesn't Have to Release</u>

- National defense
- Internal personnel regulations*
- Other law
- Trade secrets*
- Inter/intra-agency communications*
- Personal privacy
- Law enforcement
- Audits and reports
- Geological, geophysical data & maps



(Rev. 10-01-1999)

CLASSIFIED BY NSICG/J75J65T61
REASON: 1.4 (c, d)
DECLASSIFY ON: 07-16-2039
DATE: 07-16-2014

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

SECRET (U)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE **Date:** 06/05/2000

To: Las Vegas

From: Las Vegas
Squad 6
Contact: SA

Approved By:

(S) **Drafted By:** ces

Case ID #: (S)

(S) **Title:** (S) DEF CON 00:

(U) **Synopsis:** (S) Source information.

(U) (S) ~~Derived From : G-3~~
~~Declassify On: X1~~

(S) (U)

Details: (S)

(S) attendance at "DEF CON 00."

(U) (S) Writer has consulted information provided by and found no information to confirm or deny

(U) (S) Through a text search in Federal Bureau of Investigation (FBI) indices, writer was able to review various communications regarding previous DEF CON conventions.

(U) (S) On 09/10/1998, a source of the Washington Field Office (WFO), who is not in a position to testify, provided information that The source further advised that

b7E

SECRET (U)

Lead #1:

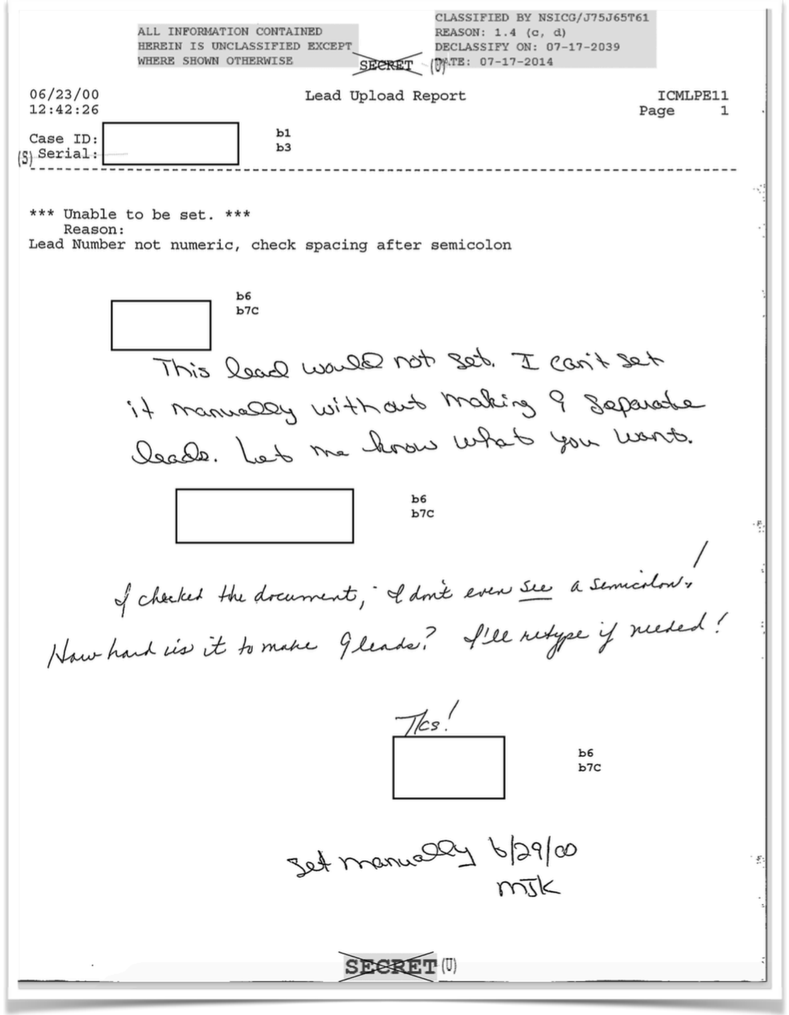
Lead #2:

06-20-2000

(S)

#6

43431.00



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HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

CLASSIFIED BY NSICG/J75J65T61
REASON: 1.4 (c, d)
DECLASSIFY ON: 07-17-2039
DATE: 07-17-2014

SECRET (U)

06/23/00 12:42:26 Lead Upload Report ICMLPE11 Page 1

Case ID:
(S) Serial:

*** Unable to be set. ***
Reason:
Lead Number not numeric, check spacing after semicolon

This lead would not set. I can't set it manually without making 9 separate leads. Let me know what you want.

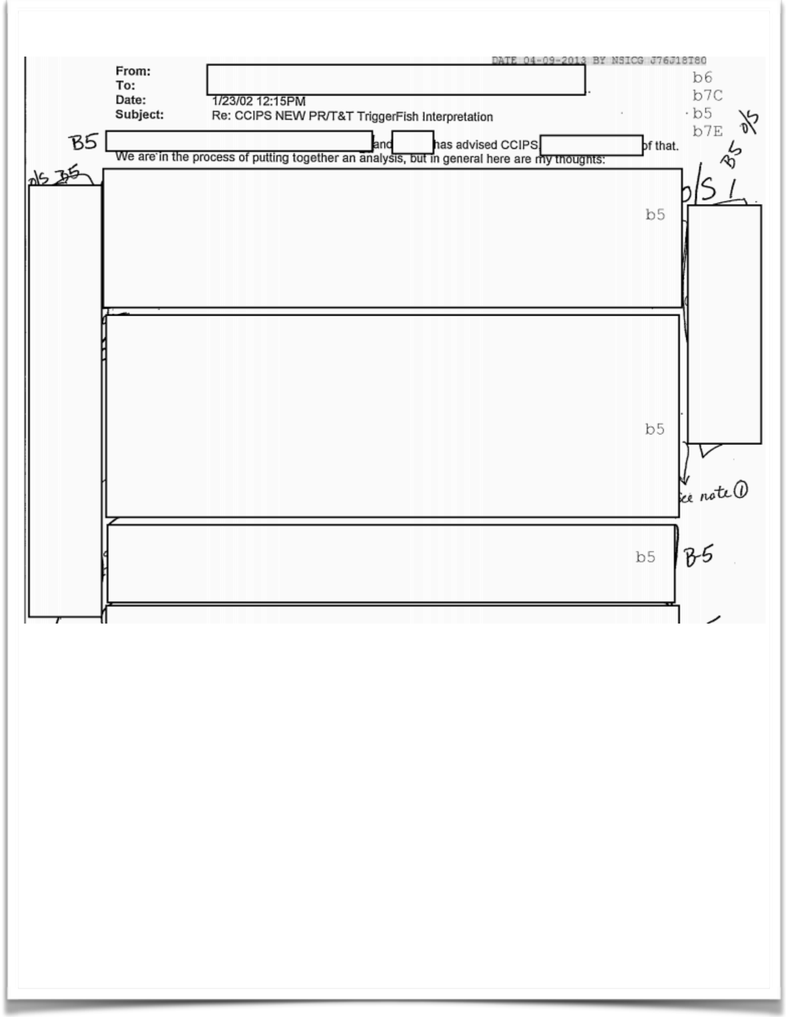
I checked the document, I don't even see a semicolon!

How hard is it to make 9 leads? I'll retype if needed!

Tks!

Set manually 6/29/00 MJK

SECRET (U)



DATE 04-09-2013 BY NSICG J76J18I80

From:
To:
Date: 1/23/02 12:15PM
Subject: Re: CCIPS NEW PR/T&T TriggerFish Interpretation

and has advised CCIPS of that.

We are in the process of putting together an analysis, but in general here are my thoughts:

b5

b5

b5

see note①

?

!

...

+ Discretion

÷ Segregability

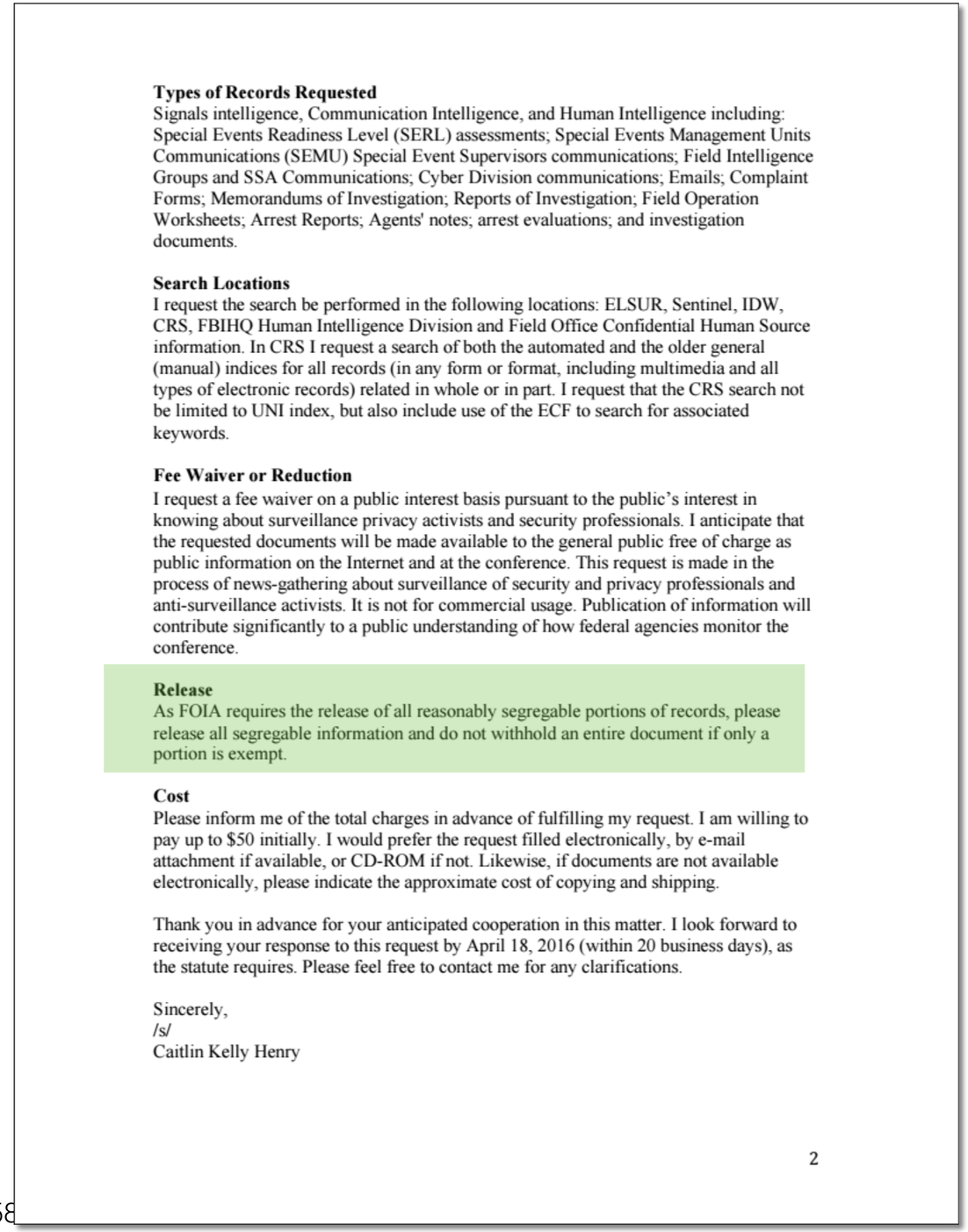
! Urgency

Remind agency
*1. it has **discretion** to release.*
*2. it must **segregate** releasable portions of records (not withhold entire document)*
*3. If qualify for **expediting** (due process interest, matters of government integrity)*

Discretion & Presumption of Release

Remind Agency

- 2016 FOIA Reform Act presumes openness and release.



Types of Records Requested
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Cost
Please inform me of the total charges in advance of fulfilling my request. I am willing to pay up to $50 initially. I would prefer the request filled electronically, by e-mail attachment if available, or CD-ROM if not. Likewise, if documents are not available electronically, please indicate the approximate cost of copying and shipping.

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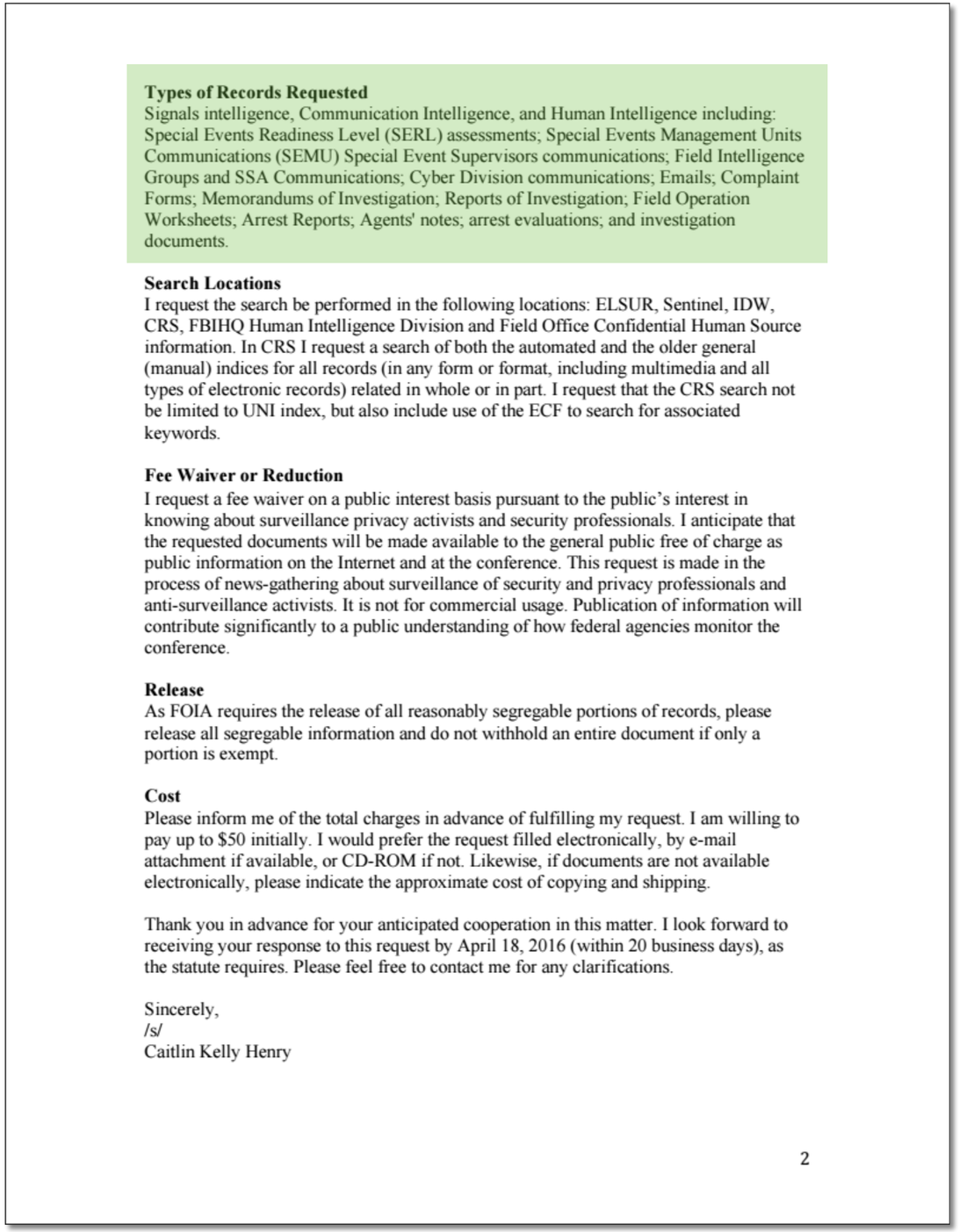
Sincerely,
/s/
Caitlin Kelly Henry

2

8 Indication of record types

Examples from the FBI

- Emails
- Complaint forms
- Memorandum of investigation
- Field notes
- Report of investigation
- Field operation worksheets
- Arrest reports
- Agent's notes
- Arrest evaluations
- Investigations



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2

Record Types:
Electronic Data
Software
Database
File Directory
Products of Data Compilation

Decision to Release Electronic Data is 2 part

- Question 1: Is electronic data agency record?
  - Records and information created, stored, and retrievable by electronic means (my exclude software, source code, and object code)
- Question 2: Does exclusion or exemption apply?

Question 1: Is electronic data agency record? Examples

Yes - agency record (per statute)

- Products of data compilation
- Underlying data processed/produced by software and/or stored in software
- Data is embedded within software and can't be extracted without software (maybe)
- Software reveals information about organizations, policies, functions, decisions (e.x. budgeting models, optimization models) (maybe)

Yes - agency record (per cases)

- Computer programs unique to underlying database used by scientific researcher
- Agency computer's file directory
- Agency software program used to determine how to perform audits
- Data tapes created by firms acting on behalf of agency
- Computer tape and tabulations prepared by agency for non-profit

Question 1: Is electronic data agency record? Examples

- **No - not agency record (per statute)**
  - Tools for creating records (unless a source of information about policies)
  - Information in a computer where no program can retrieve it
  - Commercial or financial information received in confidence (related to loans, bids, contracts, proposals, trade secrets, proprietary data)
  - Scientific research in grant applications
  - Privately funded technical or scientific data.
- **No - not agency record (from cases)**
  - Video conferencing software created by a contractor and licensed to Agency
  - Underlying medical research data used by researchers funded by government
  - University collected tomography and pulmonary function testing data
  - Commercial GPS software used by agency
  - If no screenshot exists, agency is not obligated to create screen shot
  - Entirety of legal case records in electronic database agency has access to, but has not used, transferred, assigned, or stored.

Question 2: Should record be released (case examples)

Yes

- Not exempt under deliberative process exemption (b)(5).
  - Court rejected argument that inter- and intra-agency memorandums and letters exemption applied to data tapes created on behalf of agency.

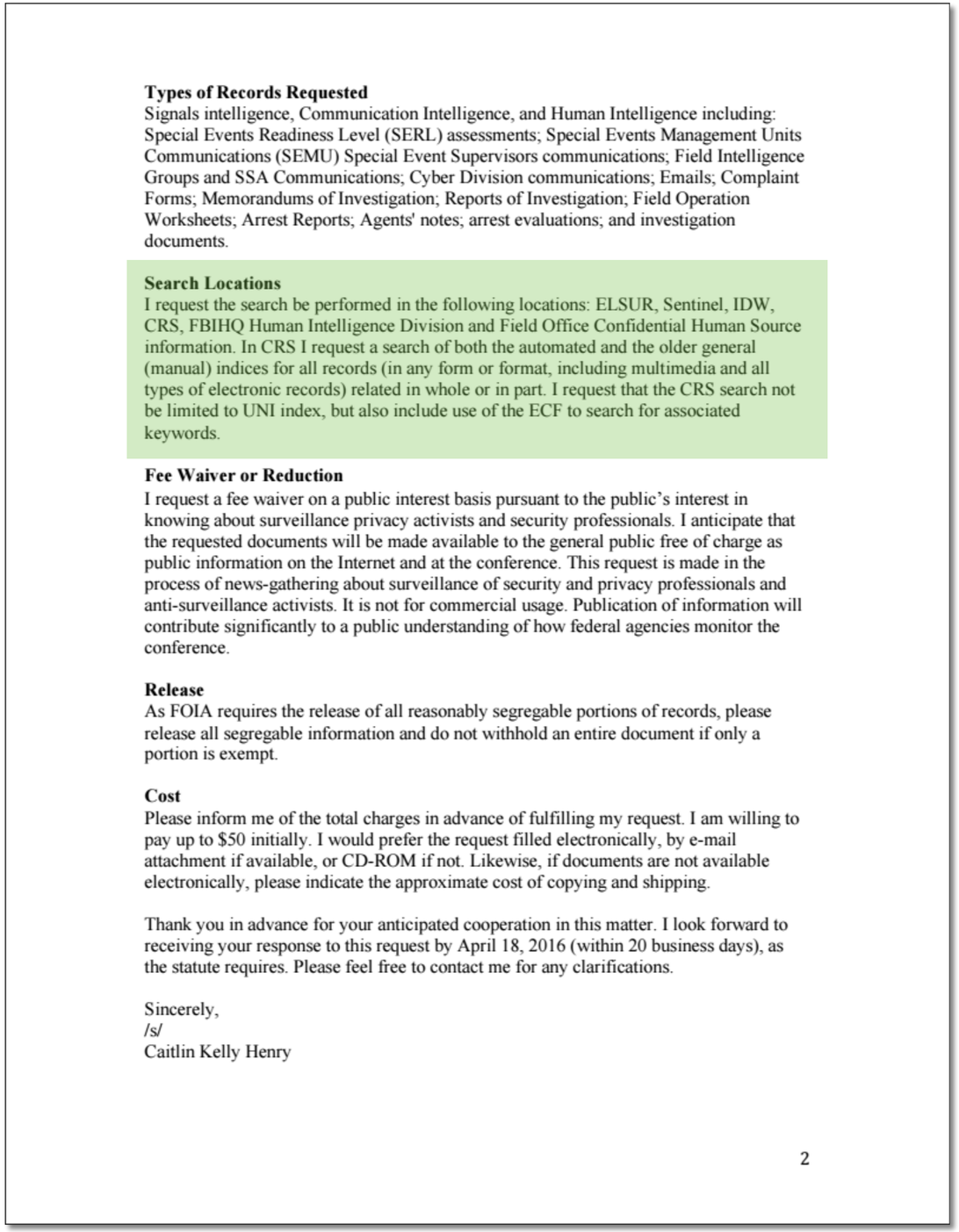
No

- Exempted for internal personnel rules and practices of agency (b)(2).
  - Program used to perform calculations to evaluate lawfulness during investigation.
- Exempted for trade secrets and commercial or financial information (b)(4).
  - Software and technical documentation related to video conferencing.
- Exempt under deliberative process exemption (b)(5).
  - Materials part of purely internal deliberative process discussing benefits, detriments, and suitability of implementing technological upgrades or enhancements to software programs.

9 Likely location of records

Tell the agency where to look and how.
Research "Systems of Records Notices" (SORNS).

This can get Kafkaesque again…



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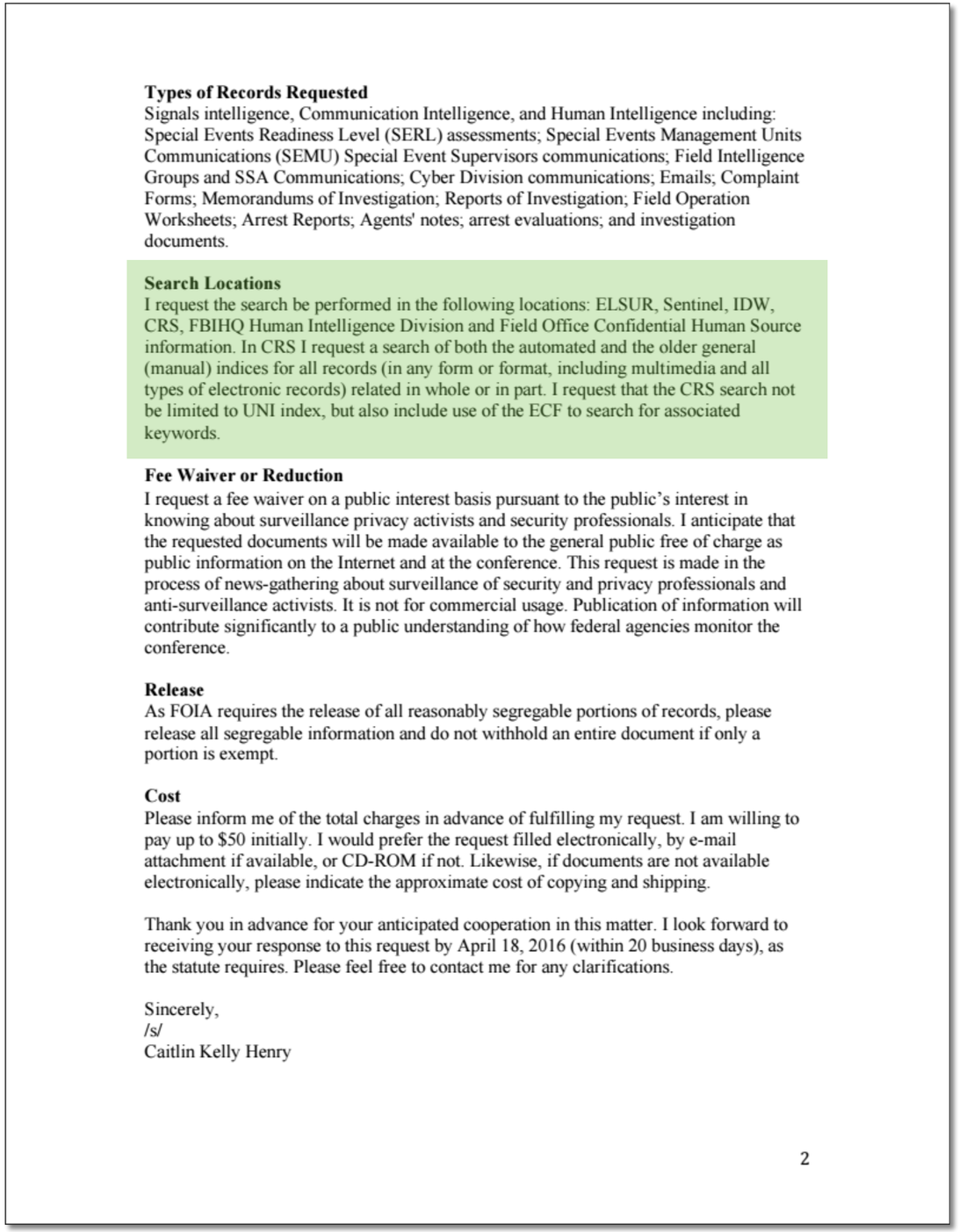
Sincerely,
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Caitlin Kelly Henry

2

9 Likely location of records

The Privacy Act requires agencies to publish information about data collection "Systems of Records Notices" (SORNS) in the Federal Register.

https://www.federalregister.gov/privacy-act-notices-regs



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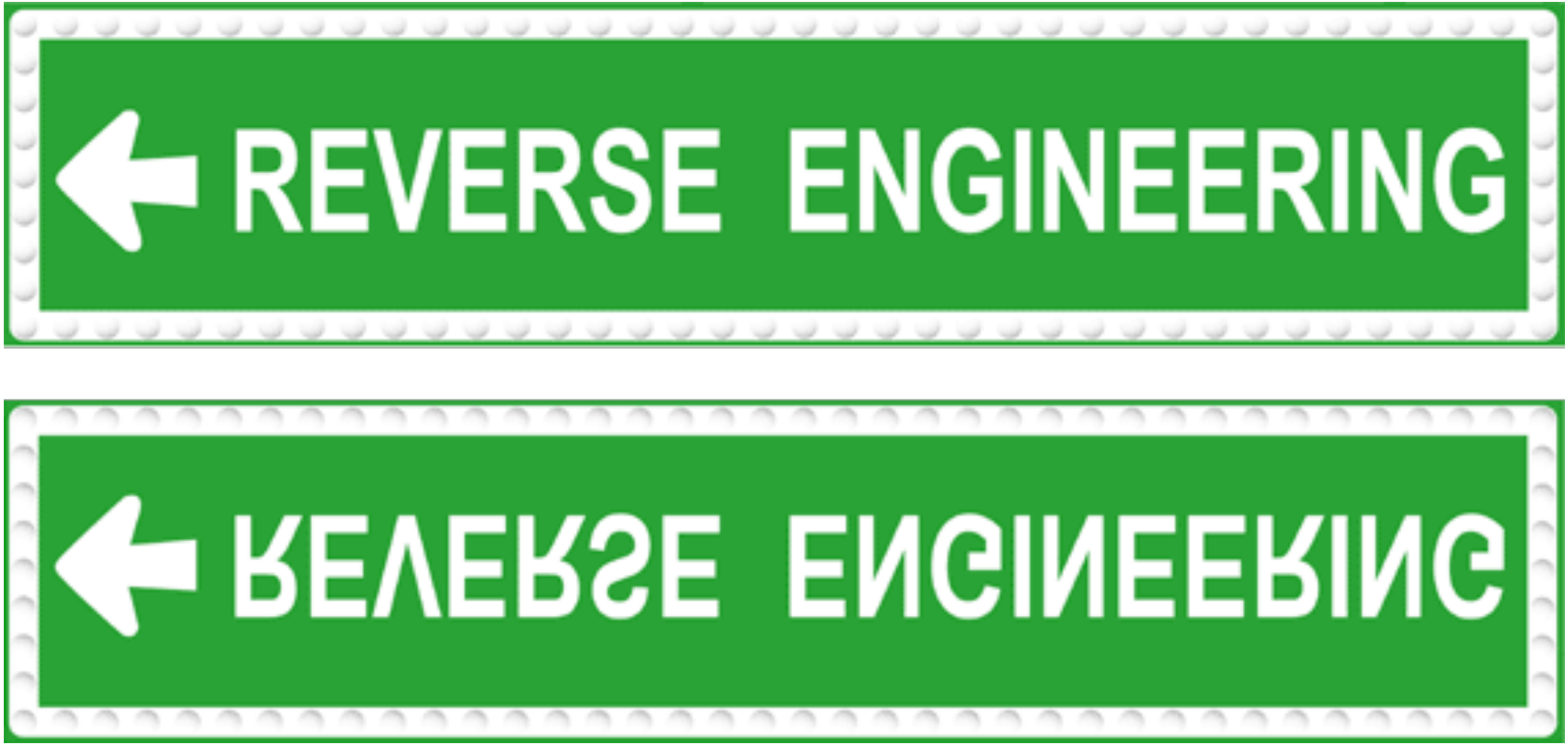
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2


REVERSE ENGINEERING
REVERSE ENGINEERING

9 Likely location of records



Research agency data management to find out how it stores records.

Examples:

FBI: By default the FBI uses the “CRS” (Central Records System) system and only does a “UNI” (Universal Name Index) name search.

US Attorney: By default searches its “LIONS” system with a “participant” name search.

If you want agency to search in other data systems and by a method other than a name search, you should indicate the other method of search performance you are requesting

CAITLIN KELLY HENRY, ESQ.
ATTORNEY AT LAW, CASBN #287949
1201 Martin Luther King Jr. Way, Suite 200, Oakland CA 94612
TEL:(510)277-2025 FAX:(510)578-6595 ckh@caitlinkellyhenry.com

March 28, 2016

David M. Hardy
Chief, Record/Information Dissemination Section, Records Management Division
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843
foiparequest@ic.fbi.gov

Transmitted Via Email

Re: Freedom of Information Act Request
Related to Hackers On Planet Earth (HOPE)

Dear FOIA Officer:

Under the Freedom of Information Act I hereby request the following records that mention Hackers On Planet Earth (HOPE).

Context For Search

I request records regarding intelligence gathering and law enforcement activities that mention or reference the HOPE conference, which takes place bi-annually in July. I request records beginning with the first conference held in August 1994 to the date the request is fulfilled.

Search Terms

Associated key words may include, but should not be limited to:

Key Words: HOPE, Hackers on Planet Earth, Hacking/Hackers; Conference; Con; White Hat; Gray Hat; Black Hat; Counterterrorism; Cyber

Entities: Hackers On Planet Earth (HOPE); 2600: The Hacker Quarterly

Subjects of Interest: Steven Rombom; Jullian Assange; Edward Snowden; Thomas Drake; Daniel Ellsberg; William Binney; J. Kirk Weibe

Addresses: 401 7th Avenue (15 Penn Plaza), Hotel Pennsylvania, New York, NY; 295-307 Lafayette Street, Puck Building, New York New York

Statutes: Computer Fraud and Abuse Act 18 U.S. Code §1030; Wiretap Act 18 U.S.C. § 2511(1); Unlawful Access to Stored Communications: 18 U.S.C. § 2701. Section 2701; Identity Theft and Aggravated Identity Theft: 18 U.S.C. § 1028A; Access Device Fraud: 18 U.S.C. § 1029; CAN-SPAM Act: 18 U.S.C. § 1037; Wire Fraud: 18 U.S.C. § 1343.; Communication Interference: 18 U.S.C. § 1362; Digital Millennium Copyright Act (17 U.S.C. §§ 512, 1201–1205, 1301–1332; 28 U.S.C. § 4001)

10 Record Date Range

Do you want to "catch 'em all?"

11 Fee waiver eligibility information

12 Costs you're willing to incur

This can be expensive. Figure out ahead of time what you're willing to spend.

Types of Records Requested
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11 Fee waiver eligibility information

12 Costs you're willing to incur

State the category you fall under.

Type of Request	Type of Charge	IRS Price
Commercial requesters	Copying charges	$.20 per page.
	Search charges	$41 per hour or fraction of an hour (charges for computer searches may include search time expended by employees plus the actual direct costs to the IRS for performing the electronic search such as computer search time, runs, and the operator's salary).
	Review charges	$45 per hour or fraction of an hour.
	Minimum charge	No fee charged if total charges are $25 or less.
Media requesters	Copying charges	No charge for first 100 pages; $.20 per page thereafter.
	Minimum charge	No fee charged if total charges are $25 or less.
Educational or Non-commercial Scientific institution requesters	Copying charges	No charge for first 100 pages; $.20 per page thereafter.
	Minimum charge	No fee charged if total charges are $25 or less.
Other requestors(Individuals seeking records for their own use)	Copying charges	No charge for first 100 pages; $.20 per page thereafter.
	Search charges	No charge for first 2 hours (or equivalent computer search cost); $41 per hour or fraction of an hour plus any direct electronic search costs thereafter.
	Minimum charge	No fee charged if total charges are $25 or less.
Other Charges	Fees may be assessed at actual cost for any request that requires special services or materials. These services are provided at the discretion of the IRS and may include: certification fees ($1 per certified document); shipping costs; employee transportation; contractor duplication costs; video tapes; computer disks; and shipping, etc. The charge for a copy of tax return as filed is $50.	

11 Fee waiver eligibility information

12 Costs you're willing to incur

State the category you fall under.

Additional Category

Public Interest Fee Waivers: all fees (including duplication) can be waived if the material requested

(1) "is likely to contribute significantly to public understanding of the operations or activities of government" and

(2) "is not primarily in the commercial interest of the requester."

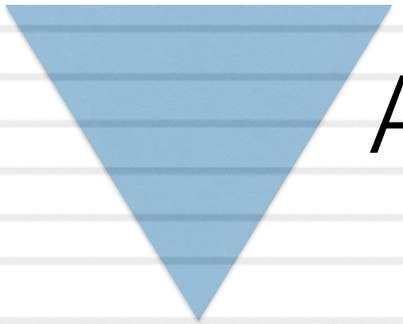
12 Signature & Proof…

FOIA	Privacy Act

Just Signature	• Sign your request and
	  • have it notarized, or
	  • include a statement under penalty of surgery about truth of your statements and understanding criminal penalties for false requests.

15 Attachments…

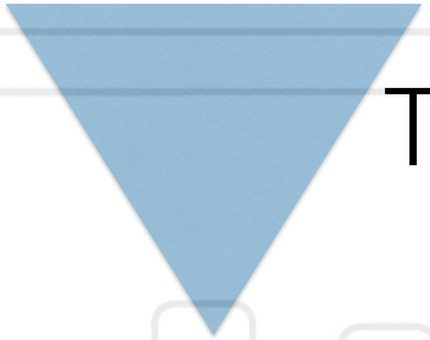
FOIA	Privacy Act
• Fee Waiver eligibility proof • Information to prove records exist • Information about the context of your search	• Proof of death (privacy rights end at death) • Certification of identity • Notary Statement



Anticipating responses


Know what you've sent!
Keep a log of requests including subjects, dates of delivery and receipt, and methods of transmission.

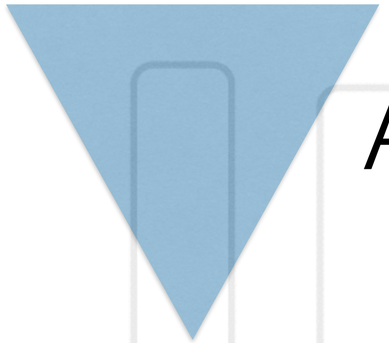
	Date Sent	Transmission Method	Contact Information	Tracking Number	Correspondence Log	Status	Deadlines/ To Do
US Attorney							
FBI							
CIA							



Tracking progress


Know what you've received!
Responses will include agency tracking numbers, dates, names and titles, and contact information.


Know all the steps you've walked!
Documenting and keeping a complete history of events will come in handy in the last step…



Appealing and litigating



When



What



How

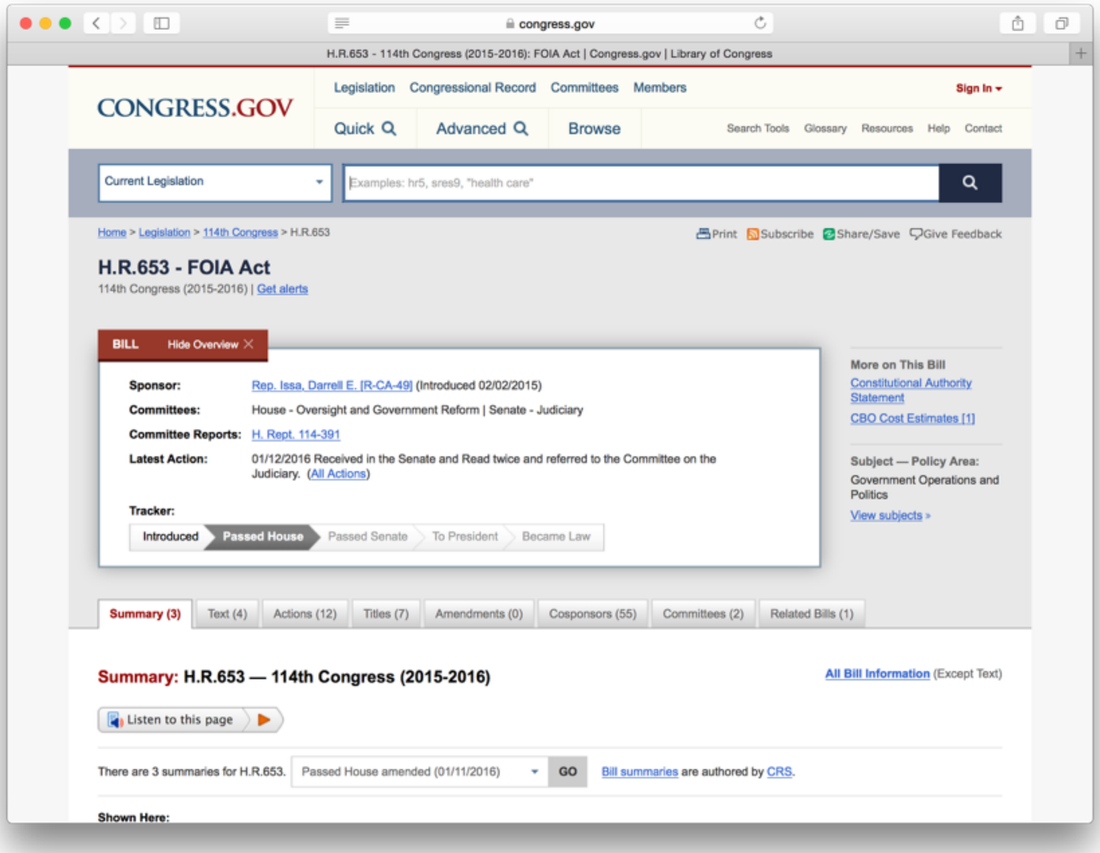
Always! You can't litigate until you appeal, and many agencies won't even search where you want them to until an appeal against their default search is filed.

? **When**

? **What**

? **How**

Appeal "any adverse determination," including full or partial denials of requests, procedural denials, and exemptions and exclusions.



H.R.653 - 114th Congress (2015-2016) - FOIA Act

https://www.congress.gov/bill/114th-congress/house-bill/653

FOIA is a living, changing thing.

1. Limits on search and publication fees
2. Presumption of proactive disclosure
3. Stricter timelines for agencies
4. More time to appeal
5. Greater request transparency
6. One portal for all agencies
7. Electronic formats for releases
8. Mediation available
9. Presumption of openness
10. Limits “draft materials” exemption

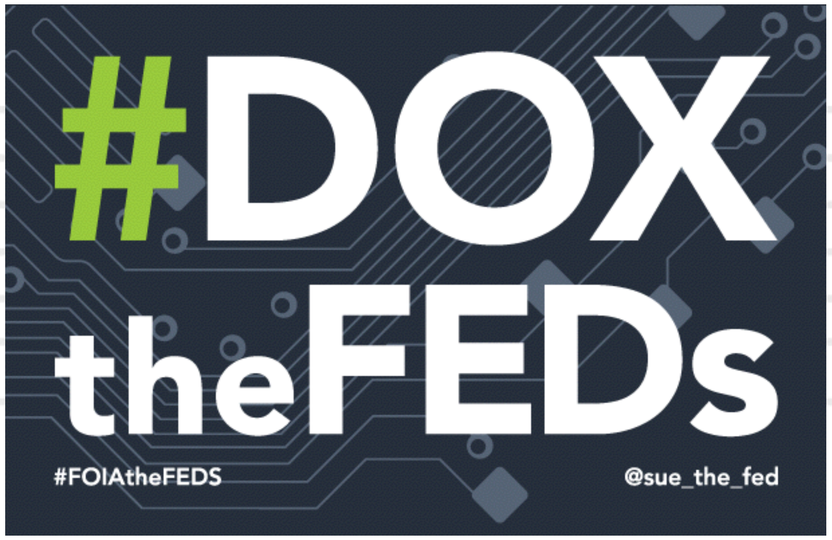
? Questions

I'm also available for training and representation!

Caitlin Kelly Henry, Esq.
@sue_the_fed
foia@caitlinkellyhenry.com

Stickers







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