

CAUSING EXCEPTIONALLY GRAVE HARM TO NATIONAL SECURITY BY FOIAING FOIA PROCESS

Jason Leopold has a new article at the Guardian based off a FOIA of NSA's FOIA process. Perhaps the funniest part of the documents he received, however, is the number of times the NSA claimed its own discussion of FOIA process – including praise for the FOIA responders! – was Top Secret, suggesting revealing details would cause exceptionally grave harm to national security.

Phillips Pamela N NSA-DJ4 USA CIV

From: Phillips Pamela N NSA-DJ4 USA CIV
Sent: Thursday, June 27, 2013 10:55 AM
To: DL_04_gov (ALIAS) DJ4
Subject: FW: (U) Risk/Threat – Media Leaks: Strategic Guidance Needed on Engaging FOIA Requesters
Signed By: prphl@nsa.civ

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ALL

(U//FOUO) Thought you'd like to see Dave's vote of confidence for the entire FOIA/PA Staff! Dave and I and OSC met with Rich Legend yesterday afternoon to go over the 602MSA process, and he was totally comfortable with it after the meeting, as well as everything else the FOIA Office is doing.

Pamela

(U)
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Federation of Information Act/Privacy Act Office
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966-4071a (U)

From: Sherman David J Dr NSA-DJ USA CIV
Sent: Wednesday, June 26, 2013 6:57 PM
To: Phillips Pamela N NSA-DJ4 USA CIV
Cc: Waskowski Paul J NSA-DJ4 USA CIV; [redacted] NSA-DJ8 USA CIV
Subject: RE: (U) Risk/Threat – Media Leaks: Strategic Guidance Needed on Engaging FOIA Requesters (b) (3) - P.L. 86-36

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(U//FOUO) I have not said this enough: each of you and the entire team that is working this is OIA and OSC is doing an absolutely super job under difficult and rapidly changing conditions. It's confirming every day why NSA's FOIA program is called out as best-in-class. I'm the new guy and the amateur at all this, but for what it is worth I am extraordinarily proud and glad that I was offered the opportunity to be here with you at this time and see what is exceptional public service, in the true sense of the words, in action.

David J. Sherman
Associate Director for Policy and Records

That said, I think there's a missing piece to this puzzle (and hope Leopold pursues it when he makes his inevitable appeal of some of these redaction decisions).

On June 11, NSA's Chief of FOIA Office Pamela Phillips raised the possibility of having "a paper or sheet of unclassified facts that could be provided to the public." (See PDF 1) She repeated that request on June 17. (See PDF 3) I believe that is separate from the efforts to

come up with a standard Glomar letter (that discussion, incidentally, is redacted in some enormously interesting ways).

But I'm particularly interested in a redaction in an email from Deputy Chief of Staff Trumbull Soule to Associate Director for Policy and Records David Sherman and then Media Leaks Task Force head and now Deputy Director of NSA Richard Ledgett, and cc'ed to Phillips and (among at least 12 others) NSA General Counsel Raj De on June 26.

That's because that email got sent on the day after the NSA had to pull what I believe was that unclassified fact sheet, which NSA first posted on June 18, after Ron Wyden and Mark Udall wrote a letter, on June 24, to Keith Alexander noting two problems with the letter, in that it misleadingly suggested,

- NSA had the ability to determine how many Americans had been collected under Section 702
- NSA may not search on the records of Americans (back door searches)

In addition, the letter had a classified attachment that, *I suspect*, noted that John Bates' response to the upstream problems did not require the destruction of entirely domestic communications.

NSA withdrew the fact sheet from its website sometime before 1 PM on June 25.

Now, it may just be a coinkydink that the highest level of discussion among these emails come on that particular day (though I assume NSA withheld a bunch of emails). But I do find the timing rather interesting.