UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY)	
AND ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No: 07-cv-01707
)	
EXECUTIVE OFFICE OF THE)	
PRESIDENT, et al.,)	
)	
Defendants.)	
)	
NATIONAL SECURITY ARCHIVE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No: 1:07-cv-01577
)	
EXECUTIVE OFFICE OF THE)	
PRESIDENT, et al.,)	
)	
Defendants.)	
)	

SECOND DECLARATION OF THERESA PAYTON

I, Theresa Payton, declare as follows:

1.   My name is Theresa Payton and I currently hold the position of Chief

Information Officer (CIO) in the Office of Administration (OA), Executive Office of the

President (EOP). In this capacity, I am responsible for providing strategic and

operational leadership within the Office of the Chief Information Officer (OCIO). I have

held the position of CIO in OA since May 2006.

2.   I submit this Second Declaration pursuant to the Order of Magistrate Judge John M. Facciola dated March 18, 2008. The statements contained herein are based on my personal knowledge and upon information made available to me by members of my staff in the performance of my official duties.

3.   The Court has ordered the EOP to "show cause in writing . . . why it should not be ordered to create and preserve a forensic copy of any media that has been used or is being used by any former or current employee who was employed at any time between March 2003 and October 2005." The Court states that "forensic copies" of workstations currently and formerly used by employees of EOP FRA components could capture (1) any e-mail data that was not "properly archived between March 2003 and October 2003, during which time no back-up tapes exist"; or (2) any email data that was not properly archived between October 2003 and October 2005 "to the extent that those e-mails are not, as plaintiffs allege, contained on the back-up tapes." In responding, the defendants have been directed to "describ[e] the costs that would be incurred and any other facts that would bear on the burden of such an obligation."

Regular Replacement of Computer Workstations

4.   As an initial matter, computer workstations used by EOP Federal Records Act (FRA) component employees during the relevant time period covering March 2003 to October 2005 are unlikely to be in use today.[1] Subject to, among other things, budgetary considerations and customer scheduling conflicts, it has been OA's goal to conduct an IT "refresh" program to replace up to one-third of EOP workstations each

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[1] The Court's Order also mentions hardware other than workstations (*e.g.* "hard or external drives, CDs, DVDs, jump, zip, hard, or floppy disks"). OCIO does not have a formal process to provide such media to its customers or users, nor does it have any process in place for tracking or monitoring the use of such media. This is left to the discretion of the user and the components to track and manage.

year. The replacement is necessary in order to run updated software, reduce ongoing

maintenance, and enhance security assurance. When workstations are at the end of their

lifecycle and retired from the EOP Network under the refresh program, the hard drives

are generally sent offsite to another government entity for physical destruction in

accordance with Department of Defense guidelines. As stated below in paragraph 8, as

part of a refresh, OCIO will make a copy of the current user's active data on the current

computer hard drive to move to the new computer hard drive. This may include the data

contained in a profiles folder[2]. In addition, if a user saved .pst files in their profile, those

.pst files should be copied over.

5.   Although there may be exceptions, it is expected then, that the vast

majority of computer workstations used during the relevant time period would have been

replaced approximately every three years in connection with this refresh program. A

small number of EOP computers in use before October 2005 may nonetheless still be in

use today. Identifying, locating, and surveying these computers presents significant

logistical challenges for OA. As I understand it, the OCIO does not maintain a detailed

historical log or other record tracking the precise user or location history of any given

EOP computer workstation.

6.   The OCIO is, however, able to remotely query computer workstations

currently in use on the EOP Network to detect technical characteristics from which it may

infer generally how long a particular workstation has been available for use in the EOP,

and whether it may have been used before October 2005. The query process is time

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[2] A Microsoft Windows user "profile" describes the Windows configuration for a specific user, including
the user's environment and preference settings. The user profile contains those settings and configuration
options specific to the user, such as installed applications, desktop icons, and color options.

consuming and labor intensive and even then the results of the query process will be

difficult to use to identify the user history of that particular computer workstation.

Burden of Providing "Forensic Copies"

7.   Even if computer workstations used during the relevant time period are

identifiable and locatable, making "forensic copies" (as that term is defined by the Court)

of the workstations that may or may not contain residual data of emails would impose a

significant burden on OA. The OCIO has not had a practice of making "forensic copies"

of computer workstations. Ordering a "forensic copy" of electronic media would require

OA to outsource the project and commence what would likely be a lengthy and costly

government procurement process for one or more outside contractors possessing the

requisite technical resources and capabilities. And, as with any procurement project, in

addition to outside resources, OA resources would be needed in order to effectively

manage the effort. The precise duration of the procurement process, as well as costs

associated with that process, are not presently knowable, but they must be expected to be

substantial given the sensitivity and significance of such a project.

8.   Moreover, putting aside "forensic copies", I am aware that OCIO is able to

copy the active data on a computer hard drive, which may include the data contained in a

profile folder[3] as well as any .pst files saved on the hard drive. Copying the hard drive as

described here would usually require less effort than a "forensic copy". Even so, the hard

drive copy process, which the OCIO is equipped to perform, can be complex and time

consuming, depending on the volume of material within each folder on the hard drive and

the number of folders to be copied.

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[3] See footnote 2.

9.   An Order that the OCIO must copy potentially relevant active data from the cited time period, would require it to survey each and every workstation that potentially could contain "profile" folders and other active files of users, or identify and approach each and every user of a subject workstation during the relevant time period. These steps would be necessary in order to ascertain whether any users may have saved .pst files to a hard drive for that relevant time period. To complete this effort, it might require contacting and using the workstations currently assigned to individual users, which likely would adversely impact the ability of the users to perform their duties.

10.   As I understand it, an Order requiring defendants to make a copy of all active data on workstations containing profiles from the relevant time period would require hundreds of hours of work by OCIO staff and management personnel. Such an effort would inevitably divert significant resources from the OCIO functions and projects relating to core administration operations such as user support, monitoring information security, providing application support, project management, federal records management, and continuing with the current email inventory re-baseline efforts for the Presidential transition.
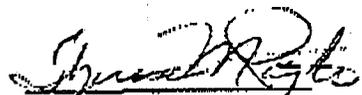
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Executed the _21_ day of March , 2008.

THERESA PAYTON
Chief Information Officer
Office of Administration, Executive
Office of the President