

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

PATRICK EDDINGTON,)	
)	
Plaintiff,)	
)	
v.)	
)	
OFFICE OF INSPECTOR GENERAL)	
DEPARTMENT OF DEFENSE,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Patrick Eddington brings this suit to overturn Defendant Department of Defense’s refusal, in violation of the Freedom of Information Act, to produce records in a timely manner relating to ThinThread and Trailblazer, signals intelligence (SIGINT) collection programs which were designed by the NSA to conduct global SIGINT surveillance and collection on analog and digital networks, including networks and communications modalities used by American citizens. Trailblazer was cancelled after major cost overruns and was the subject of a DOD investigation.

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the United States to foster democracy and allow any person to obtain copies of the records of agencies for any public or private purpose consistent with the terms of the federal Freedom of Information Act, 5 U.S.C. § 552.

PARTIES

2. The Plaintiff in this case is PATRICK EDDINGTON. EDDINGTON is a Policy Analyst in Homeland Security and Civil Liberties at the Cato Institute. EDDINGTON

previously worked for Representative Rush Holt for a decade, with a focus on intelligence community oversight.

3. Defendant DOD is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because a plaintiff may always bring suit in the District of Columbia.

THINTHREAD AND TRAILBLAZER

6. The ThinThread project was undertaken by the NSA in the 1990s. ThinThread was designed to gather data and records including financial transactions, travel records, and phone and email communications and process it all as it was gathered, which was revolutionary at the time.

7. In order to protect the privacy rights of American citizens, protections were built into ThinThread to anonymize and encrypt all collected data on Americans. In the event that a link between a foreign power or agent of a foreign power (as defined in 50 U.S.C. § 1801, as amended) and a U.S. Person was detected, the communications of the U.S. Person in question could be decrypted pursuant to a judicial order, and a preliminary investigation opened to determine whether a threat to national security existed.

8. All of this occurred before the September 11 terrorist attacks, and despite successful internal tests at NSA and limited research and development testing against real-world targets that showed the viability of ThinThread as a constitutionally-compliant intelligence tool,

NSA's lawyers blocked operational deployment of ThinThread, claiming the system was not sufficient in preventing potential violations of American's privacy rights.

9. During this same time frame, then-NSA Director Michael Hayden opted to create Trailblazer, a competitor to the ThinThread concept developed by an outside contractor. Trailblazer never produced a single piece of intelligence and was subsequently both cancelled after major cost overruns and the subject of a Department of Defense Inspector General investigation, the results of which plaintiff has sought through the Freedom of Information Act.

10. After the September 11 attacks, with approval from the White House, the NSA started using a modified version of ThinThread, lacking its privacy and civil liberties protection algorithms to conduct warrantless surveillance of American citizens under the Stellar Wind program.

11. NSA crypto-mathematician William Binney, the creator of ThinThread, along with other ThinThread program staff and one staff member of the House Permanent Select Committee on Intelligence, Diane Roark, subsequently filed a whistleblower waste, fraud, and abuse complaint with the Department of Defense's Inspector General office regarding the Trailblazer program. That investigation resulted in at least one classified DoD IG report being issued in December 2004.

12. According to public statements by Binney and other former ThinThread program staff, a leak from the Defense Department's Inspector General office to the Department of Justice falsely accused Binney, other ThinThread program staff, and Roark of leaking classified information to the press. As a result of the false classified leak allegation, armed FBI agents raided the homes of Binney, other former ThinThread program staff, NSA Senior Executive Service member and ThinThread proponent Thomas Andrews Drake, and Diane Roark.

13. Binney and the other whistleblowers who signed the Defense Department IG complaint, along with Drake, were threatened with prosecution. The government ultimately only prosecuted Drake under the Espionage Act. Eventually all felony charges against Drake were dropped. Drake pled guilty to a misdemeanor, “exceeding authorized use of a computer.”

14. The United States Office of Special Counsel is investigating the conduct of the Department of Defense’s Inspector General office for its handling of the Drake case as a whistleblower reprisal action.

EDDINGTON’S FOIA REQUEST

15. On March 23, 2015, EDDINGTON requested records related to ThinThread and Trailblazer, including but not limited to the full declassified report for the Trailblazer and ThinThread systems, full declassified versions of any other DOD records related to the ThinThread and Trailblazer programs, and full declassified versions of any DOD records relating to investigations of civil liberties or privacy rights violations by NSA personnel from September 12, 2001, to March 23, 2015. Eddington also requested expedited processing. A true and correct copy of EDDINGTON’s March 23 request is attached as Exhibit A.

16. On March 31, 2015, DOD denied EDDINGTON’s request for expedited processing and produced a copy of the minimally declassified 2004 DOD report on ThinThread/Trailblazer. A true and correct copy of the March 31 email is attached as Exhibit B.

17. On April 13, 2015, EDDINGTON appealed DOD’s denial of his request for expedited processing. A true and correct copy of the April 13 appeal is attached as Exhibit C.

18. On August 5, 2015, EDDINGTON faxed a follow-up letter to DOD regarding his request. A true and correct copy of the August 5 fax is attached as Exhibit D.

19. On September 11, 2015, upon appellate review, DOD granted EDDINGTON’s request for expedited processing. DOD also stated that it forwarded the relevant material to the

appropriate original classification authority and requested it to conduct a review to see if additional information could be released. A true and correct copy of the September 11 letter from DOD is attached as Exhibit E.

20. On September 15, 2015, having not yet received the September 11 letter, EDDINGTON sent a request for a status update. A true and correct copy of the September 15 follow-up is attached as Exhibit F.

21. On November 10, 2015, EDDINGTON requested an update and an expected completion date. A true and correct copy of the November 10 follow-up is attached as Exhibit G.

22. As of January 4, 2016, DOD had not responded.

23. On January 4, 2016, EDDINGTON reiterated his request that DOD provide an estimated date of completion. A true and correct copy of the January 4 follow-up is attached as Exhibit H.

24. On January 11, 2016, DOD replied to EDDINGTON stating that the estimated completion date for his request was April 30, 2016. A true and correct copy of the January 11 email is attached as Exhibit I.

25. As of June 23, 2016, EDDINGTON had not received any further communication from DOD.

26. On June 23, 2016, EDDINGTON sent DOD an email inquiring about his request. A true and correct copy of the June 23 email is attached as Exhibit J.

27. As of the date of filing of this Complaint, EDDINGTON has not received any further communication from DOD.

COUNT I – VIOLATION OF FOIA

28. The above paragraphs are incorporated by reference.
29. Defendant DOD is an agency subject to FOIA.
30. The requested records are not exempt under FOIA.
31. Defendant DOD has refused to produce the requested records in a timely manner.

WHEREFORE, EDDINGTON asks that the Court:

- i. declare that DOD has violated FOIA;
- ii. order DOD to produce the requested records;
- iii. enjoin DOD from withholding non-exempt public records under FOIA;
- iv. award Plaintiff reasonable attorneys fees and costs;
- v. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Karen J. Gray

Attorneys for Plaintiff
PATRICK EDDINGTON

Matthew Topic
Joshua Burday
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
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Karen J. Gray (DC Bar No. 488760)
Government Accountability Project
1612 K Street, NW, Suite 1100
Washington, DC 20006
Ph: (202)457-0034 ext. 122
Fax: (202) 457-0059
Eml: kareng@whistleblower.org

March 23, 2015

Department of Defense Office of Inspector General
DoD IG FOIA Requester Service Center
ATTN: FOIA/PA Chief, Suite 17F18
4800 Mark Center Drive
Alexandria, VA 22350-1500

Submitted electronically on 3/23/2015

To the responsible FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the following information from the Department of Defense Office of Inspector General (hereinafter referred to as "DoD IG"):

- The full declassified version of Report 05-INTEL-03, "Requirements for the TRAILBLAZER and THINTHREAD Systems", dated December 15, 2004, as well as all internal NSA correspondence, and documentation supplied by the whistleblowers filing the complaint, that were examined or utilized by the DoD IG in preparing Report 05-INTEL-03 referenced above..
- The full declassified versions of any other DoD IG reports, audits or other memoranda relating to the THINTHREAD or TRAILBLAZER programs.
- The full declassified versions of any DoD IG reports, audits or other memoranda, including criminal referrals to the Department of Justice, relating to investigations of civil liberties or privacy rights violations by NSA personnel from September 12, 2001 to the date of this request under applicable federal law or executive orders, including the Foreign Intelligence Surveillance Act (as amended), as well as Executive Order 12333 (as amended).

In order to help to determine my status to assess fees, you should know that I am a policy analyst and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. **I request a waiver of all fees for this request.** Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. The NSA's conduct in this episode is of high public interest from a Constitutional and civil liberties perspective, particularly in light of the fact that the Congress must, before June 1, 2015, vote on whether to continue to authorize NSA surveillance activities that, according to the whistleblowers who filed the original complaint, employ technology and techniques derived from THINTHREAD and related programs, and that also, according to the same whistleblowers as well as multiple civil liberties and privacy organizations, have violated the Fourth Amendment rights of millions of American citizens.

Whenever possible, please provide the requested information in electronic format on either CD/DVD or other portable electronic storage device(s) such as "thumb drives".

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would appreciate your communicating with me by email or telephone, rather than by mail. My email address is peddington@cato.org and my direct line is 202-216-1440.

Please provide expedited processing of this request which concerns a matter of urgency.

As a civil liberties policy analyst, I am primarily engaged in disseminating information. The public has an urgent need for information about the NSA's conduct in this episode, which is of high public interest from a Constitutional and civil liberties perspective, particularly in light of the fact that the Congress must, before June 1, 2015, vote on whether to continue to authorize NSA surveillance activities that, according to the whistleblowers who filed the original complaint, employ technology and techniques derived from THINTHREAD and related programs, and that also, according to the same whistleblowers as well as multiple civil liberties and privacy organizations, have violated the Fourth Amendment rights of millions of American citizens. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires.

Thank you for your assistance.

Sincerely,

Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001-5403
202-216-1440 (direct)



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

MAR 31 2015

Ref: FOIA-2015-00466

Mr. Patrick G. Eddington
Cato Institute
1000 Massachusetts Avenue, NW
Washington, DC 20001

Dear Mr. Eddington:

This is in response to your March 23, 2015, Freedom of Information Act (FOIA) request. A copy of your request is enclosed for your reference. You also requested expedited processing. We received your request on the same date and assigned it case number FOIA-2015-00466.

You requested expedited processing on the basis of an urgency to inform the public concerning the use of the THINTHREAD and TRAILBLAZER systems. We interpreted your request for expedited processing as being made on the basis of a compelling need, which under Department of Defense FOIA regulations means that failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or the information is needed by an individual primarily engaged in disseminating information who demonstrates that an urgency exists to inform the public concerning an actual or alleged Federal government activity, beyond the public's right to know about the government activity generally. See 32 C.F.R. § 286.4(d)(3)(i) & (ii).

Expedited processing is granted when the requester demonstrates a compelling need for the information and shows that the information has a particular value that would be lost if not disseminated quickly, that is, it is the subject of a breaking news story of general public interest. The requested report and supporting documents were produced over ten years. This office does not consider the requested information as part of a breaking news story or that the information will lose value if not processed on an expedited basis. For these reasons, your request for expedited processing is denied.

Please note that the requested report, 05-INTEL-03 was previously processed and released under the FOIA. A copy of the report as released in 2011 is enclosed. This office will continue to process and release any remaining responsive records as they become available.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should be

Exhibit B

postmarked within 30 days of the date of this letter, should cite to case number FOIA-2015-00466, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Jeanne Miller

for Chief, Freedom of Information and
Privacy Office

Enclosure(s)
As stated

From: peddington@cato.org
Sent: Monday, March 23, 2015 11:09 AM
To: foiarequests
Subject: Freedom of Information Act Request - Expedited Processing

Your Expedited FOIA request has been sent to the FOIA Office. Thank you!

Date: 3/23/2015
Name: Patrick G. Eddington
Phone Number: 202-216-1440
E-mail Address: peddington@cato.org
Organization: Cato Institute
Address 1: 1000 Massachusetts Avenue, NW
Address 2:
City: Washington
State: District of Columbia
Zip Code: 20001
Country: United States of America

Your Request: To the responsible FOIA Officer: Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the following information from the Department of Defense Office of Inspector General (hereinafter referred to as "DoD IG"): • The full declassified version of Report 05-INTEL-03, "Requirements for the TRAILBLAZER and THINTHREAD Systems", dated December 15, 2004, as well as all internal NSA correspondence, and documentation supplied by the whistleblowers filing the complaint, that were examined or utilized by the DoD IG in preparing Report 05-INTEL-03 referenced above. • The full declassified versions of any other DoD IG reports, audits or other memoranda relating to the THINTHREAD or TRAILBLAZER programs. • The full declassified versions of any DoD IG reports, audits or other memoranda, including criminal referrals to the Department of Justice, relating to investigations of civil liberties or privacy rights violations by NSA personnel from September 12, 2001 to the date of this request under applicable federal law or executive orders, including the Foreign Intelligence Surveillance Act (as amended), as well as Executive Order 12333 (as amended). In order to help to determine my status to assess fees, you should know that I am a policy analyst and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. The NSA's conduct in this episode is of high public interest from a Constitutional and civil liberties perspective, particularly in light of the fact that the Congress must, before June 1, 2015, vote on whether to continue to authorize NSA surveillance activities that, according to the whistleblowers who filed the original complaint, employ technology and techniques derived from THINTHREAD and related programs, and that also, according to the same whistleblowers as well as multiple civil liberties and privacy organizations, have violated the Fourth Amendment rights of millions of American citizens. Whenever possible, please provide the requested information in electronic format on either CD/DVD or other portable electronic storage device(s) such as "thumb drives". If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees. I would appreciate your communicating with me by email or telephone, rather than by mail. My email address is peddington@cato.org and my direct line is 202-216-1440. Please provide expedited processing of this request which concerns a matter of urgency. As a civil liberties policy analyst, I am primarily engaged in disseminating information. The public has an urgent need for information about the NSA's conduct in this episode, which is of high

public interest from a Constitutional and civil liberties perspective, particularly in light of the fact that the Congress must, before June 1, 2015, vote on whether to continue to authorize NSA surveillance activities that, according to the whistleblowers who filed the original complaint, employ technology and techniques derived from THINTHREAD and related programs, and that also, according to the same whistleblowers as well as multiple civil liberties and privacy organizations, have violated the Fourth Amendment rights of millions of American citizens. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief. I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires. Thank you for your assistance. Sincerely, Patrick G. Eddington Policy Analyst in Civil Liberties and Homeland Security Cato Institute 1000 Massachusetts Ave., NW Washington, DC 20001-5403 202-216-1440 (direct) peddington@cato.org

Please provide a brief explanation to assist us in determining your qualification to receive expedited processing: The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Department of Defense activity.

Explanations/Reasons: The public has an urgent need for information about the NSA's conduct in this episode, which is of high public interest from a Constitutional and civil liberties perspective, particularly in light of the fact that the Congress must, before June 1, 2015, vote on whether to continue to authorize NSA surveillance activities that, according to the whistleblowers who filed the original complaint, employ technology and techniques derived from THINTHREAD and related programs, and that also, according to the same whistleblowers as well as multiple civil liberties and privacy organizations, have violated the Fourth Amendment rights of millions of American citizens. The information sought should be declassified and made available to me for dissemination prior to any Congressional vote to reauthorize the PATRIOT Act's Sec. 215 provision.

Willingness to Pay: \$100

"I declare under penalty of perjury that I am Patrick G. Eddington and that the statements contained in this document are true and correct."

April 13, 2015

Department of Defense
Office of Inspector General
ATTN: FOIA Appellate Authority
Suite 17F18
4800 Mark Center Drive
Alexandria, VA 22350-1500

VIA FACSIMILIE

Ref: FOIA-2015-00466 Freedom of Information Act Appeal

To the responsible official,

I hereby appeal the denial of expedited process for the above referenced FOIA case.

Please review all withheld information for release, including a declassification review to ensure that all withheld information is currently and properly classified.

When considering this appeal, please note that while this document was ostensibly withheld to prevent damage to national security, the citation of its information has been publicly available for over a decade, including multiple direct references in public documents¹, thus making it highly unlikely that full disclosure would cause genuine, articulable and documentable harm. Indeed, in preparing its court case against former NSA Senior Executive Service member and national security whistleblower Thomas Drake, the Department of Defense compiled and provided to the Department of Justice multiple responsive documents dealing with the THINTHREAD/TRAILBLAZER controversy. Moreover, as the DoD IG investigated Mr. Drake's own whistleblower complaint², the DoD IG itself has multiple responsive documents that could easily be provided on an expedited basis.

Further, I take direct issue with the DoD IG's refusal to acknowledge the June 1, 2015 expiration date of three key PATRIOT Act surveillance authorities, and the pending vote in Congress on this subject, as "a breaking news story" or otherwise being worthy of expedited processing.

During my tenure as Rep. Rush Holt's staff detailee to the National Commission on Research and Development in the United States Intelligence Community, I personally requested and subsequently reviewed the full classified version of the 2004 DoD IG THINTHREAD/TRAILBLAZER report which I am seeking through this FOIA request and appeal. Accordingly, I know that the withheld portions of the report contain further corroborating evidence of the charges of waste, fraud, abuse and threatened retaliation against those NSA employees who first made those charges to the DoD IG over a decade ago. The DoD IG's continued refusal to fully declassify and make public all reports and related internal correspondence on the THINTHREAD/TRAILBLAZER programs seems designed not to protect legitimately classified sources and methods, but instead to protect NSA, the DoD IG and the Defense Department

¹ <http://en.m.wikipedia.org/wiki/ThinThread>

² Thomas A. Drake, Whistleblower Reprisal Investigation, Case 20121205-001567, March 19, 2014.

from public embarrassment.

Additionally, as much of the technology developed during the THINTHREAD demonstration project was subsequently incorporated³ into the mass surveillance programs such as the PATRIOT Act Sec. 215 telephony metadata program set to expire June 1, 2015 absent Congressional reauthorization, failure to make fully public the documents and history associated with these programs will deny the public and Members of Congress critical information they need in order to make a fully informed decision about what PATRIOT Act-related surveillance programs should be continued, modified, or terminated prior to any vote in Congress on this matter, which must take place before the Memorial Day Congressional District Work Period begins on May 21, 2015.

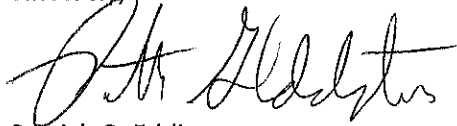
Executive Order 13526 states that "no information may remain classified indefinitely." This has previously led to the declassification of a host of important documents, once tightly held.

Director of National Intelligence, James Clapper, recently stated, citing E.O. 13526 3.1(d), that documents may be declassified when "the harm to national security [] is outweighed by the public interest."⁴ Director of National Intelligence General Counsel, Robert S. Litt, recently cited the importance of that same "harm versus public interest" test provision when he argued that classifiers and declassifiers must now "focus not on whether we can protect information, but whether we should."⁵

With this in mind, I ask that you conduct a line by line review and release all reasonably segregable portions of this material which no longer merits protection because it could harm US national security.

For all of the aforementioned reasons, I appeal the denial of expedited processing and ask that the responsive documents be supplied to me forthwith so I can disseminate them to the public and Members of Congress prior to any vote on the above referenced soon-to-expire PATRIOT Act provisions.

Sincerely,



Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001

³ <http://www.newyorker.com/magazine/2011/05/23/the-secret-sharer>

⁴ <http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/927-draft-document>

⁵ <http://www.fas.org/sgp/eprint/litt.pdf>

HP Color LaserJet CM2320fxi MFP

Fax Confirmation Report

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2028423490
Apr-13-2015 14:56

Job	Date	Time	Type	Identification	Duration	Pages	Result
5387	4/13/2015	14:54:10	Send	15713727498	2:32	3	OK



FAX COVER SHEET

DATE: 4/13/2015
TO: DoJ OFG FOIA Appeal
FAX: 571-372-7498
FROM: Patrick Eddowes
Cato Institute
1000 Massachusetts Avenue, NW
Washington, D.C. 20002

Phone: (202) 842-0200
Fax: (202) 842-3490

Total Number of Pages (including cover sheet): 3

Please Call Immediately IF You Do Not Receive All the Pages

Comments: FOIA Appeal Attached



FAX COVER SHEET

DATE: 8 / 5 / 2015
TO: DoD IG FOIA office & Appellate Authority
FAX: 571-372-7499
FROM: Patrick Edinger
Cato Institute
1000 Massachusetts Avenue, NW
Washington, D.C. 20001

Phone: (202) 842-0200
Fax: (202) 842-3490

Total Number of Pages (including cover sheet): 12

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Comments:

1. Renewal of expedited processing request & status request (4 pages)
2. Status request to FOIA Appellate Authority (7 pages)

August 5, 2015

Department of Defense Office of Inspector General
DoD IG FOIA Requester Service Center
ATTN: FOIA/PA Chief, Suite 17F18
4800 Mark Center Drive
Alexandria, VA 22350-1500

Ref: FOIA-2015-00466 Freedom of Information Act Request; Renewed request for expedited processing, notice of deadline violation, request for estimated decision date/offer to assist.

To the responsible official,

By faxed letter of March 23, 2015, I filed the above referenced FOIA request and sought expedited processing. By letter dated March 31, 2015, your office denied my expedited processing request and provided a heavily redacted copy of a Report 05-INTEL-03, "Requirements for the TRAILBLAZER and THINTHREAD Systems", dated December 15, 2004. You further indicated that "[t]his office will continue to process and release any remaining responsive records as they become available." Since that time, I have received no communication from your office regarding the status of that request.

I am sure that you are aware that the FOIA requires an agency to make a determination on a request within 20 workdays after its receipt. 5 U.S.C. § 552(a)(6)(A)(i). This deadline elapsed long ago. Further, FOIA's limited provision allowing an extension of a decision deadline beyond 20 days requires an agency to provide explicit "written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. . . ." 5 U.S.C. § 552(a)(6)(B)(i). I have received no such written notice from your office. Accordingly, your office is now and has been for several months in material breach of FOIA.

While I am within my legal right to exercise my option under the FOIA to file suit to compel compliance with the FOIA's time limits (5 U.S.C. § 552(a)(6)(C)), I am deferring that course of action at this time. However, be informed that time remains of the essence in this matter and my patience is not without limits. That being said, I do not initiate litigation at this point because I feel a cooperative approach is better suited to resolving this situation. Therefore, I am offering to assist your office in any way possible to facilitate the prompt release of the requested documents.

As I noted in my appeal of April 13, 2015, while the 2004 DoD IG report was ostensibly withheld almost in its entirety to prevent damage to national security, the citation of its information has been publicly available for over a decade, including multiple direct references in public documents¹, thus making it highly unlikely that full disclosure would cause genuine, articulable

¹ <http://en.m.wikipedia.org/wiki/ThinThread>

and documentable harm. Indeed, in preparing its court case against former NSA Senior Executive Service member and national security whistleblower Thomas Drake, the Department of Defense compiled and provided to the Department of Justice multiple responsive documents dealing with the THINTHREAD/TRAILBLAZER controversy. Moreover, as the DoD IG investigated Mr. Drake's own whistleblower complaint², the DoD IG itself has multiple responsive documents that could easily be provided on an expedited basis.

Further, I take direct issue with the DoD IG's refusal to acknowledge the June 1, 2015 expiration date of three key PATRIOT Act surveillance authorities, and the then-pending vote in Congress on this subject, as "a breaking news story" or otherwise being worthy of expedited processing. The failure of the DoD IG to provide the requested information prior to that vote denied the public and members of Congress as a whole critical information about NSA activities of direct relevance to the debate over the executive branch's use of surveillance authorities and technologies, including technologies derived from the THINTHREAD/TRAILBLAZER episode that are still being employed today.

The issue of the scope and legality of executive branch surveillance programs and activities remains a matter of extremely high public and Congressional interest and concern. As I compose this letter, the United State Senate is debating the Cybersecurity Information Sharing Act (S. 754), a bill that would vastly expand government surveillance authorities. The collection technologies utilized by NSA to support cybersecurity and other forms of domestic surveillance activities involve technologies developed off of the THINTHREAD and TRAILBLAZER programs. As the Senate alone cannot pass legislation, the House of Representatives will have to weigh in on this bill when Congress returns from the August 2015 recess. Further, the FISA Amendments Act (P.L. 110-261³), which also involves technologies developed off of the THINTHREAD and TRAILBLAZER programs, is set to expire in December 2017⁴. Thus, the programs covered under this request remain an issue of ongoing public concern and Congressional action, making timely action on this request imperative.

During my tenure as Rep. Rush Holt's staff detailee to the National Commission on Research and Development in the United States Intelligence Community, I personally requested and subsequently reviewed the full classified version of the 2004 DoD IG THINTHREAD/TRAILBLAZER report which I am seeking through this FOIA request and appeal. Accordingly, I know that the withheld portions of the report contain further corroborating evidence of the charges of waste, fraud, abuse and threatened or feared retaliation against those NSA employees who first made those charges to the DoD IG over a decade ago. The DoD IG's continued refusal to fully declassify and make public all reports and related internal correspondence on the THINTHREAD/TRAILBLAZER programs seems designed not to protect legitimately classified sources and methods, but instead to protect NSA, the DoD IG and the Defense Department

² Thomas A. Drake, Whistleblower Reprisal Investigation, Case 20121205-001567, March 19, 2014.

³ <https://www.congress.gov/110/plaws/publ261/PLAW-110publ261.pdf>

⁴ <https://www.congress.gov/112/plaws/publ238/PLAW-112publ238.pdf>

from public embarrassment.

Further, the failure of the DoD IG to fully declassify and make public the reports and related documents, correspondence, emails, etc. associated with the THINTHREAD/TRAILBLAZER controversy is denying the public and the Congress as a whole the ability to understand and inquire as to whether the past failures of NSA management in the mishandling of these programs and related whistleblower retaliation complaints have been corrected or are ongoing and impacting current agency operations.

These are issues that I write about and publish on regularly as a Cato scholar and news maker, as you can see from my publications page on the Cato website:

<http://www.cato.org/people/patrick-g-eddington>

Cato's website, Cato@Liberty blog, podcasts and other multimedia products and activities are news-generating and press activities and are recognized as such by policymakers and the public. My work on the issue of government surveillance was explicitly recognized by Senator Rand Paul (R-KY) during the Senate debate on the PATRIOT Act renewal, which you can view here:

<http://www.cato.org/multimedia/media-highlights-tv/kentucky-senator-rand-paul-cites-patrick-g-eddingtons-blog-post>

As I am, as defined in 32 CFR Sec. 264 (3)(ii) "An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public," I renew my request for expedited processing as a member of the media with a compelling need for this information.

Executive Order 13526 states that "no information may remain classified indefinitely." This has previously led to the declassification of a host of important documents, once tightly held.

Director of National Intelligence, James Clapper, recently stated, citing E.O. 13526 3.1(d), that documents may be declassified when "the harm to national security [] is outweighed by the public interest."⁵ Director of National Intelligence General Counsel, Robert S. Litt, recently cited the importance of that same "harm versus public interest" test provision when he argued that classifiers and declassifiers must now "focus not on whether we can protect information, but whether we should."⁶ With this in mind, I reiterate my request from April 13, 2015 that you conduct a line by line review and release all reasonably segregable portions of this material which no longer merits protection because it could harm US national security.

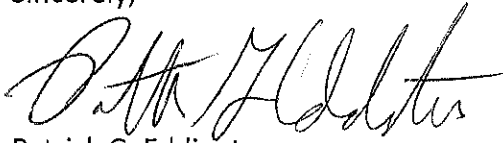
⁵ <http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/927-draft-document>

⁶ <http://www.fas.org/sgp/eprint/litt.pdf>

Additionally, beyond the estimated decision date mandate imposed by 5 U.S.C. § 552(a)(6)(B)(i) noted above, for any request taking longer than ten days to process, the Agency must inform the requester of “an estimated date on which the agency will complete action on the request.” *Id.* at § 552(a)(7)(B)(ii). To date, I have received no such estimate from your office. Accordingly, I ask that you immediately inform me of the date you received this request. I further ask that you provide an estimated date by which I can expect completion of the Agency’s unlawfully delayed response to our FOIA request.

It would be useful as I evaluate the need to seek judicial review of this matter if you could inform me if you have implemented a “first-in/first-out” system for processing a backlog of FOIA requests and — if so — how many requests are in line ahead of this one. Although I do not resort to litigation at this time, because of the time sensitive nature of the requested data, legal action will be required if a determination is not promptly forthcoming.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick G. Eddington', written in a cursive style.

Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001

August 5, 2015

Department of Defense
Office of Inspector General
ATTN: FOIA Appellate Authority
Suite 17F18
4800 Mark Center Drive
Alexandria, VA 22350-1500

Ref: FOIA-2015-00466 Freedom of Information Act Appeal

To the responsible official,

By faxed letter of April 13, 2015 (see attached), I appealed the denial of expedited processing for the above referenced FOIA case and requested a review of all withheld information for release, including a declassification review to ensure that all withheld information is still properly and currently classified. Since that time, I have received no communication from your office regarding the status of that request.

I am sure that you are aware that the FOIA requires an agency to make a determination on a request within 20 workdays after its receipt. 5 U.S.C. § 552(a)(6)(A)(i). This deadline elapsed long ago. Further, FOIA's limited provision allowing an extension of a decision deadline beyond 20 days requires an agency to provide explicit "written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. . . . "5 U.S.C. § 552(a)(6)(B)(i). I have received no such written notice from your office. Accordingly, your office is now and has been for several months in material breach of FOIA.

While I am within my legal right to exercise my option under the FOIA to file suit to compel compliance with the FOIA's time limits (5 U.S.C. § 552(a)(6)-(C)), I am deferring that course of action at this time. However, be informed that time remains of the essence in this matter and my patience is not without limits.

As I noted in my appeal of April 13, 2015, while the 2004 DoD IG report was ostensibly withheld almost in its entirety to prevent damage to national security, the citation of its information has been publicly available for over a decade, including multiple direct references in public documents¹, thus making it highly unlikely that full disclosure would cause genuine, articulable and documentable harm. Indeed, in preparing its court case against former NSA Senior Executive Service member and national security whistleblower Thomas Drake, the Department of Defense compiled and provided to the Department of Justice multiple responsive documents dealing with the THINTHREAD/TRAILBLAZER controversy. Moreover, as the DoD IG investigated

¹ <http://en.m.wikipedia.org/wiki/ThinThread>

Mr. Drake's own whistleblower complaint², the DoD IG itself has multiple responsive documents that could easily be provided on an expedited basis.

Further, I take direct issue with the DoD IG's refusal to acknowledge the June 1, 2015 expiration date of three key PATRIOT Act surveillance authorities, and the then-pending vote in Congress on this subject, as "a breaking news story" or otherwise being worthy of expedited processing. The failure of the DoD IG to provide the requested information prior to that vote denied the public and members of Congress as a whole critical information about NSA activities of direct relevance to the debate over the executive branch's use of surveillance authorities and technologies, including technologies derived from the THINTHREAD/TRAILBLAZER episode that are still being employed today.

The issue of the scope and legality of executive branch surveillance programs and activities remains a matter of extremely high public and Congressional interest and concern. As I compose this letter, the United State Senate is debating the Cybersecurity Information Sharing Act (S. 754), a bill that would vastly expand government surveillance authorities. The collection technologies utilized by NSA to support cybersecurity and other forms of domestic surveillance activities involve technologies developed off of the THINTHREAD and TRAILBLAZER programs. As the Senate alone cannot pass legislation, the House of Representatives will have to weigh in on this bill when Congress returns from the August 2015 recess. Further, the FISA Amendments Act (P.L. 110-261³), which also involves technologies developed off of the THINTHREAD and TRAILBLAZER programs, is set to expire in December 2017⁴. Thus, the programs covered under this request remain an issue of ongoing public concern and Congressional action, making timely action on this request imperative.

As stated in my April 13, 2015 appeal, I noted that during my tenure as Rep. Rush Holt's staff detailee to the National Commission on Research and Development in the United States Intelligence Community, I personally requested and subsequently reviewed the full classified version of the 2004 DoD IG THINTHREAD/TRAILBLAZER report which I am seeking through this FOIA request and appeal. Accordingly, I know that the withheld portions of the report contain further corroborating evidence of the charges of waste, fraud, abuse and threatened or feared retaliation against those NSA employees who first made those charges to the DoD IG over a decade ago. The DoD IG's continued refusal to fully declassify and make public all reports and related internal correspondence on the THINTHREAD/TRAILBLAZER programs seems designed not to protect legitimately classified sources and methods, but instead to protect NSA, the DoD IG and the Defense Department from public embarrassment.

Further, the failure of the DoD IG to fully declassify and make public the reports and related documents, correspondence, emails, etc. associated with the THINTHREAD/TRAILBLAZER

² Thomas A. Drake, Whistleblower Reprisal Investigation, Case 20121205-001567, March 19, 2014.

³ <https://www.congress.gov/110/plaws/publ261/PLAW-110publ261.pdf>

⁴ <https://www.congress.gov/112/plaws/publ238/PLAW-112publ238.pdf>

controversy is denying the public and the Congress as a whole the ability to understand and inquire as to whether the past failures of NSA management in the mishandling of these programs and related whistleblower retaliation complaints have been corrected or are ongoing and impacting current agency operations.

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Additionally, beyond the estimated decision date mandate imposed by 5 U.S.C. § 552(a)(6)(B)(i) noted above, for any request taking longer than ten days to process, the Agency must inform the requester "(i) the date on which the agency originally received the request; and (ii) an estimated date on which the agency will complete action on the request." Id. at § 552(a)(7)(B).

⁵ <http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/927-draft-document>

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It would be useful as I evaluate the need to seek judicial review of this matter if you could inform me if you have implemented a "first-in/first-out" system for processing a backlog of FOIA requests and — if so — how many requests are in line ahead of this one. Although I do not resort to litigation at this time, because of the time sensitive nature of the requested data, legal action will be required if a determination is not promptly forthcoming.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick G. Eddington". The signature is fluid and cursive, with a large initial "P" and "G".

Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001

April 13, 2015

Department of Defense
Office of Inspector General
ATTN: FOIA Appellate Authority
Suite 17F18
4800 Mark Center Drive
Alexandria, VA 22350-1500

VIA FACSIMILIE

Ref: FOIA-2015-00466 Freedom of Information Act Appeal

To the responsible official,

I hereby appeal the denial of expedited process for the above referenced FOIA case.

Please review all withheld information for release, including a declassification review to ensure that all withheld information is currently and properly classified.

When considering this appeal, please note that while this document was ostensibly withheld to prevent damage to national security, the citation of its information has been publicly available for over a decade, including multiple direct references in public documents¹, thus making it highly unlikely that full disclosure would cause genuine, articulable and documentable harm. Indeed, in preparing its court case against former NSA Senior Executive Service member and national security whistleblower Thomas Drake, the Department of Defense compiled and provided to the Department of Justice multiple responsive documents dealing with the THINTHREAD/TRAILBLAZER controversy. Moreover, as the DoD IG investigated Mr. Drake's own whistleblower complaint², the DoD IG itself has multiple responsive documents that could easily be provided on an expedited basis.

Further, I take direct issue with the DoD IG's refusal to acknowledge the June 1, 2015 expiration date of three key PATRIOT Act surveillance authorities, and the pending vote in Congress on this subject, as "a breaking news story" or otherwise being worthy of expedited processing.

During my tenure as Rep. Rush Holt's staff detailee to the National Commission on Research and Development in the United States Intelligence Community, I personally requested and subsequently reviewed the full classified version of the 2004 DoD IG THINTHREAD/TRAILBLAZER report which I am seeking through this FOIA request and appeal. Accordingly, I know that the withheld portions of the report contain further corroborating evidence of the charges of waste, fraud, abuse and threatened retaliation against those NSA employees who first made those charges to the DoD IG over a decade ago. The DoD IG's continued refusal to fully declassify and make public all reports and related internal correspondence on the THINTHREAD/TRAILBLAZER programs seems designed not to protect legitimately classified sources and methods, but instead to protect NSA, the DoD IG and the Defense Department

¹ <http://en.m.wikipedia.org/wiki/ThinThread>

² Thomas A. Drake, Whistleblower Reprisal Investigation, Case 20121205-001567, March 19, 2014.

from public embarrassment.

Additionally, as much of the technology developed during the THINTHREAD demonstration project was subsequently incorporated³ into the mass surveillance programs such as the PATRIOT Act Sec. 215 telephony metadata program set to expire June 1, 2015 absent Congressional reauthorization, failure to make fully public the documents and history associated with these programs will deny the public and Members of Congress critical information they need in order to make a fully informed decision about what PATRIOT Act-related surveillance programs should be continued, modified, or terminated prior to any vote in Congress on this matter, which must take place before the Memorial Day Congressional District Work Period begins on May 21, 2015.

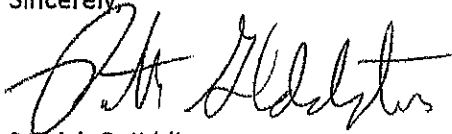
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With this in mind, I ask that you conduct a line by line review and release all reasonably segregable portions of this material which no longer merits protection because it could harm US national security.

For all of the aforementioned reasons, I appeal the denial of expedited processing and ask that the responsive documents be supplied to me forthwith so I can disseminate them to the public and Members of Congress prior to any vote on the above referenced soon-to-expire PATRIOT Act provisions.

Sincerely,



Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001

³ <http://www.newyorker.com/magazine/2011/05/23/the-secret-sharer>

⁴ <http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/927-draft-document>

⁵ <http://www.fas.org/sgp/eprint/litt.pdf>

HP Color LaserJet CM2320fxi MFP

Fax Confirmation Report

CATO INSTITUTE
2028423490
Apr-13-2015 14:56

Job	Date	Time	Type	Identification	Duration	Pages	Result
5387	4/13/2015	14:54:10	Send	15713727498	2:32	3	OK



FAX COVER SHEET

DATE: 4/13/2015
TO: DoJ E.G. Foster Appeal
FAX: 571-372-7498
FROM: Patrick Edlin
Cato Institute
1000 Massachusetts Avenue, NW
Washington, D.C. 20001

Phone: (202) 842-0200
Fax: (202) 842-3490

Total Number of Pages (including cover sheet) 3

Please Call Immediately If You Do Not Receive All the Pages

Comments: Foster Appeal Attached

HP Color LaserJet CM2320fxi MFP

Fax Confirmation Report

CATO INSTITUTE
2028423490
Aug-5-2015 15:12

Job	Date	Time	Type	Identification	Duration	Pages	Result
5824	8/ 5/2015	15:04:50	Send	15713727498	7:04	12	OK



FAX COVER SHEET

DATE: 8 / 5 / 2015
TO: DoD IG Post office & appellate Authority
FAX: 571-372-7498
FROM: Patrick Eldredge
Cato Institute
1000 Massachusetts Avenue, NW
Washington, D.C. 20001

Phone: (202) 842-0200
Fax: (202) 842-3490

Total Number of Pages (including cover sheet): 12

Please Call Immediately if You Do Not Receive All the Pages

Comments:

1. Renewal of expedited processing request & status request (4 pages)
2. Status request to Post appellate Authority (7 pages)



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

SEP 11 2015

Ref: FOIA-2015-00466

Mr. Patrick G. Eddington
Cato Institute
1000 Massachusetts Ave, NW
Washington, DC 20001

Dear Mr. Eddington:

This is in response to your April 13, 2015, letter appealing our determination to deny expedited processing on your March 23, 2015, Freedom of Information Act (FOIA) request for a copy of 05-INTEL-03, Requirements for the TRAILBLAZER and THINTHREAD Systems, and all records related to the report. We received your appeal on April 16, 2015.

You requested expedited processing on the basis "compelling need" and provided the following justification: "The June 1, 2015[,] expiration date of three key PATRIOT Act surveillance authorities, and the pending vote in Congress on this subject." Upon appellate review, I determined your request should be granted, and it has been placed in the expedited processing queue and will be processed as soon as practicable. This action closes your appeal.

Your appeal also requested that DoD OIG conduct a "line by line review and release all reasonably segregable portions of this material which no longer merits protection because it could harm US national security." DoD OIG is not the original classification authority (OCA) of this material and is therefore unable to perform such a review itself. However, we have forwarded the material to the appropriate OCA and requested it be reviewed to see if additional information can be released. We will inform you of the results of the OCA's review.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian G. Yonish".

Brian G. Yonish
Appellate Authority

HP Color LaserJet CM2320fxi MFP

Fax Confirmation Report

CATO INSTITUTE
2028423490
Sep-15-2015 12:42

Job	Date	Time	Type	Identification	Duration	Pages	Result
5955	9/15/2015	12:37:03	Send	15713727498	5:28	9	OK



FAX COVER SHEET

DATE: 9/15/2015
TO: DoD IG FOIA Office + Appellate Authority
FAX: 571-322-7498
FROM: Patrick Eddington
Cato Institute
1000 Massachusetts Avenue, NW
Washington, D.C. 20001

Phone: (202) 842-0200
Fax: (202) 842-3490

Total Number of Pages (including cover sheet): 9

Please Call Immediately IF You Do Not Receive All the Pages

Comments:

Follow ups to my letters of Aug 15, 2015



FAX COVER SHEET

DATE: 9/15/2015

TO: DoD IG FOIA office + Appellate Authority

FAX: 571-372-7498

FROM: Patrick Eddington
Cato Institute
1000 Massachusetts Avenue, NW
Washington, D.C. 20001

Phone: (202) 842-0200

Fax: (202) 842-3490

Total Number of Pages (including cover sheet): 9

Please Call Immediately IF You Do Not Receive All the Pages

Comments:

Follow ups to my letters of Aug. 5, 2015

September 15, 2015

Department of Defense
Office of Inspector General
ATTN: FOIA Appellate Authority
Suite 17F18
4800 Mark Center Drive
Alexandria, VA 22350-1500

Ref: FOIA-2015-00466 Freedom of Information Act Appeal

To the responsible official,

By faxed letter of April 13, 2015, I appealed the denial of expedited processing for the above referenced FOIA case and requested a review of all withheld information for release, including a declassification review to ensure that all withheld information is still properly and currently classified. By faxed letter dated August 5, 2015, I requested an update on the status of my request and asked for an estimated completion date. To date, I have received no communication from your office regarding the status of my prior appeal or status update and estimated completion date requests.

I am sure that you are aware that the FOIA requires an agency to make a determination on a request within 20 workdays after its receipt. 5 U.S.C. § 552(a)(6)(A)(i). This deadline elapsed long ago. Further, FOIA's limited provision allowing an extension of a decision deadline beyond 20 days requires an agency to provide explicit "written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. . . . "5 U.S.C. § 552(a)(6)(B)(i). I have received no such written notice from your office. Accordingly, your office is now and has been for several months in material breach of FOIA.

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Additionally, beyond the estimated decision date mandate imposed by 5 U.S.C. § 552(a)(6)(B)(i) noted above, for any request taking longer than ten days to process, the Agency must inform

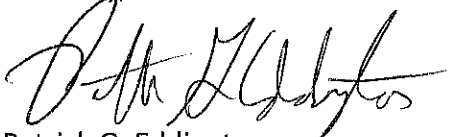
⁵ <http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/927-draft-document>

⁶ <http://www.fas.org/sgp/eprint/litt.pdf>

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Sincerely,

A handwritten signature in black ink, appearing to read "Patrick G. Eddington". The signature is fluid and cursive, with the first name being the most prominent.

Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001

September 15, 2015

Department of Defense Office of Inspector General
DoD IG FOIA Requester Service Center
ATTN: FOIA/PA Chief, Suite 17F18
4800 Mark Center Drive
Alexandria, VA 22350-1500

Ref: FOIA-2015-00466 Freedom of Information Act Request; Renewed request for expedited processing, notice of deadline violation, request for estimated decision date/offer to assist.

To the responsible official,

By faxed letter of March 23, 2015, I filed the above referenced FOIA request and sought expedited processing. By letter dated March 31, 2015, your office denied my expedited processing request and provided a heavily redacted copy of a Report 05-INTEL-03, "Requirements for the TRAILBLAZER and THINTHREAD Systems", dated December 15, 2004. You further indicated that "[t]his office will continue to process and release any remaining responsive records as they become available." By faxed letter dated August 5, 2015, I requested an update on the status of my request and asked for an estimated completion date. To date, I have received no communication from your office regarding the status of my prior appeal or status update and estimated completion date requests.

I am sure that you are aware that the FOIA requires an agency to make a determination on a request within 20 workdays after its receipt. 5 U.S.C. § 552(a)(6)(A)(i). This deadline elapsed long ago. Further, FOIA's limited provision allowing an extension of a decision deadline beyond 20 days requires an agency to provide explicit "written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. . . ." 5 U.S.C. § 552(a)(6)(B)(i). I have received no such written notice from your office. Accordingly, your office is now and has been for several months in material breach of FOIA.

While I am within my legal right to exercise my option under the FOIA to file suit to compel compliance with the FOIA's time limits (5 U.S.C. § 552(a)(6)(C)), I am deferring that course of action at this time. However, be informed that time remains of the essence in this matter and my patience is not without limits. That being said, I do not initiate litigation at this point because I feel a cooperative approach is better suited to resolving this situation. Therefore, I am offering to assist your office in any way possible to facilitate the prompt release of the requested documents.

As I noted in my appeal of April 13, 2015, while the 2004 DoD IG report was ostensibly withheld almost in its entirety to prevent damage to national security, the citation of its information has been publicly available for over a decade, including multiple direct references in public

documents¹, thus making it highly unlikely that full disclosure would cause genuine, articulable and documentable harm. Indeed, in preparing its court case against former NSA Senior Executive Service member and national security whistleblower Thomas Drake, the Department of Defense compiled and provided to the Department of Justice multiple responsive documents dealing with the THINTHREAD/TRAILBLAZER controversy. Moreover, as the DoD IG investigated Mr. Drake's own whistleblower complaint², the DoD IG itself has multiple responsive documents that could easily be provided on an expedited basis.

Further, I take direct issue with the DoD IG's refusal to acknowledge the June 1, 2015 expiration date of three key PATRIOT Act surveillance authorities, and the then-pending vote in Congress on this subject, as "a breaking news story" or otherwise being worthy of expedited processing. The failure of the DoD IG to provide the requested information prior to that vote denied the public and members of Congress as a whole critical information about NSA activities of direct relevance to the debate over the executive branch's use of surveillance authorities and technologies, including technologies derived from the THINTHREAD/TRAILBLAZER episode that are still being employed today.

The issue of the scope and legality of executive branch surveillance programs and activities remains a matter of extremely high public and Congressional interest and concern. As I compose this letter, the United State Senate is debating the Cybersecurity Information Sharing Act (S. 754), a bill that would vastly expand government surveillance authorities. The collection technologies utilized by NSA to support cybersecurity and other forms of domestic surveillance activities involve technologies developed off of the THINTHREAD and TRAILBLAZER programs. As the Senate alone cannot pass legislation, the House of Representatives will have to weigh in on this bill when Congress returns from the August 2015 recess. Further, the FISA Amendments Act (P.L. 110-261³), which also involves technologies developed off of the THINTHREAD and TRAILBLAZER programs, is set to expire in December 2017⁴. Thus, the programs covered under this request remain an issue of ongoing public concern and Congressional action, making timely action on this request imperative.

During my tenure as Rep. Rush Holt's staff detailee to the National Commission on Research and Development in the United States Intelligence Community, I personally requested and subsequently reviewed the full classified version of the 2004 DoD IG THINTHREAD/TRAILBLAZER report which I am seeking through this FOIA request and appeal. Accordingly, I know that the withheld portions of the report contain further corroborating evidence of the charges of waste, fraud, abuse and threatened or feared retaliation against those NSA employees who first made those charges to the DoD IG over a decade ago. The DoD IG's continued refusal to fully declassify and make public all reports and related internal correspondence on the

¹ <http://en.m.wikipedia.org/wiki/ThinThread>

² Thomas A. Drake, Whistleblower Reprisal Investigation, Case 20121205-001567, March 19, 2014.

³ <https://www.congress.gov/110/plaws/publ261/PLAW-110publ261.pdf>

⁴ <https://www.congress.gov/112/plaws/publ238/PLAW-112publ238.pdf>

THINTHREAD/TRAILBLAZER programs seems designed not to protect legitimately classified sources and methods, but instead to protect NSA, the DoD IG and the Defense Department from public embarrassment.

Further, the failure of the DoD IG to fully declassify and make public the reports and related documents, correspondence, emails, etc. associated with the THINTHREAD/TRAILBLAZER controversy is denying the public and the Congress as a whole the ability to understand and inquire as to whether the past failures of NSA management in the mishandling of these programs and related whistleblower retaliation complaints have been corrected or are ongoing and impacting current agency operations.

These are issues that I write about and publish on regularly as a Cato scholar and news maker, as you can see from my publications page on the Cato website:

<http://www.cato.org/people/patrick-g-eddington>

Cato's website, Cato@Liberty blog, podcasts and other multimedia products and activities are news-generating and press activities and are recognized as such by policymakers and the public. My work on the issue of government surveillance was explicitly recognized by Senator Rand Paul (R-KY) during the Senate debate on the PATRIOT Act renewal, which you can view here:

<http://www.cato.org/multimedia/media-highlights-tv/kentucky-senator-rand-paul-cites-patrick-g-eddingtons-blog-post>

As I am, as defined in 32 CFR Sec. 264 (3)(ii) "An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public," I renew my request for expedited processing as a member of the media with a compelling need for this information.

Executive Order 13526 states that "no information may remain classified indefinitely." This has previously led to the declassification of a host of important documents, once tightly held.

Director of National Intelligence, James Clapper, recently stated, citing E.O. 13526 3.1(d), that documents may be declassified when "the harm to national security [] is outweighed by the public interest."⁵ Director of National Intelligence General Counsel, Robert S. Litt, recently cited the importance of that same "harm versus public interest" test provision when he argued that classifiers and declassifiers must now "focus not on whether we can protect information, but whether we should."⁶ With this in mind, I reiterate my request from April 13, 2015 that you conduct a line by line review and release all reasonably segregable portions of this material

⁵ <http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/927-draft-document>

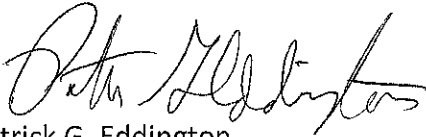
⁶ <http://www.fas.org/sgp/eprint/litt.pdf>

which no longer merits protection because it could harm US national security.

Additionally, beyond the estimated decision date mandate imposed by 5 U.S.C. § 552(a)(6)(B)(i) noted above, for any request taking longer than ten days to process, the Agency must inform the requester of “an estimated date on which the agency will complete action on the request.” *Id.* at § 552(a)(7)(B)(ii). To date, I have received no such estimate from your office. Accordingly, I ask that you immediately inform me of the date you received this request. I further ask that you provide an estimated date by which I can expect completion of the Agency’s unlawfully delayed response to our FOIA request.

It would be useful as I evaluate the need to seek judicial review of this matter if you could inform me if you have implemented a “first-in/first-out” system for processing a backlog of FOIA requests and — if so — how many requests are in line ahead of this one. Although I do not resort to litigation at this time, because of the time sensitive nature of the requested data, legal action will be required if a determination is not promptly forthcoming.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick G. Eddington". The signature is fluid and cursive, with the first name being the most prominent.

Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001

The Honorable Jon T. Rymer

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Thank you! Your Request has been sent to the FOIA Office. You provided the following information. Please print this page as a receipt.

Date: 11/10/2015

Request: Status Inquiry on Initial FOIA Request(s)

Name: Patrick Eddington

Phone: 571-215-3468

Email: peddington@cato.org

Comments: By letter dated Sep. 11, 2015, Brian G. Yonish informed me that my request for declassification review of the documents requested via FOIA-2015-00466 had been referred to NSA for expedited processing. As I have heard nothing further since then, I am requesting an update and expected completion date (ECD) per the FOIA statute. With thanks, Patrick G. Eddington Policy Analyst Cato Institute

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Office of Inspector General, United States Department of Defense, 4800 Mark Center Drive, Alexandria, VA 22350-1500

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The Honorable Jon T. Rymer

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Thank you! Your Request has been sent to the FOIA Office. You provided the following information. Please print this page as a receipt.

Date: 1/04/2016

Request: FOIA Liaison Officer

Name: Patrick Eddington

Phone: 202-216-1440

Email: peddington@cato.org

Comments: On November 10, 2015, I submitted a follow up inquiry regarding the status of my FOIA, case number FOIA-2015-00466, which per your office's letter to me of Sep. 11, 2015 had been referred to NSA for declassification review and action. Since Sep. 11, 2015, I have heard nothing from either your office or NSA regarding the status of my request. Per the requirements of the FOIA statute, I am reiterating my request that your office provide me with an estimated completion date (ECD) for FOIA-2015-00466. Sincerely, Patrick G. Eddington Policy Analyst Cato Institute 1000 Massachusetts Ave., NW Washington, DC 20001

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----- Forwarded message -----

From: foiarequests <foiarequests@dodig.mil>

To: Patrick Eddington <PEddington@cato.org>

Cc:

Date: Mon, 11 Jan 2016 16:42:59 +0000

Subject: RE: FOIA - Contact Us

Dear Mr. Eddington,

We received your request it is currently being processed. The estimated response date for your request is April 30, 2016. Please feel free to contact this office back at any time pertaining to your request.

Cordially,

FOIA Requester Service Center

Office of Inspector General

Department of Defense

----- Forwarded message -----

From: Patrick Eddington <PEddington@cato.org>

To: "foiarequests" <foiarequests@dodig.mil>

Cc:

Date: Thu, 23 Jun 2016 16:40:33 +0000

Subject: RE: for FOIA-2015-00466

To the DoD IG FOIA Staff:

In your January 11, 2016 email to me (see below), you stated the estimated completion date was April 30, 2016. To date, I've received no response, and thus no records. What is the status of this request?

Sincerely,

Patrick G. Eddington

Policy Analyst in Homeland Security and Civil Liberties

Cato Institute

peddington@cato.org

[202-216-1440](tel:202-216-1440) (office)

[571-215-3468](tel:571-215-3468) (cell)

CIVIL COVER SHEET

JS-44 (Rev. 7/16 DC)

I. (a) PLAINTIFFS (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Fairfax County, VA</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) <input type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Medical Malpractice 365 Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review 151 Medicare Act <u>Social Security</u> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) <u>Other Statutes</u> 891 Agricultural Acts 893 Environmental Matters 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other) OR <input type="radio"/> F. Pro Se General Civil			
<u>Real Property</u> 210 Land Condemnation 220 Foreclosure 230 Rent, Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property <u>Personal Property</u> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	<u>Bankruptcy</u> 422 Appeal 27 USC 158 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Conditions 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> 820 Copyrights 830 Patent 840 Trademark <u>Federal Tax Suits</u> 870 Taxes (US plaintiff or defendant) 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> 625 Drug Related Seizure of Property 21 USC 881 690 Other <u>Other Statutes</u> 375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 430 Banks & Banking 450 Commerce/ICC Rates/etc. 460 Deportation 462 Naturalization Application 465 Other Immigration Actions	470 Racketeer Influenced & Corrupt Organization 480 Consumer Credit 490 Cable/Satellite TV 850 Securities/Commodities/Exchange 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act 895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Labor Railway Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	<input type="radio"/> M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran’s Benefits 160 Stockholder’s Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	<input type="radio"/> N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
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 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: <input type="checkbox"/> YES <input type="checkbox"/> NO
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form

DATE: _____	SIGNATURE OF ATTORNEY OF RECORD _____
-------------	---------------------------------------

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: