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RICHARD M. WELLS JR.
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

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E-FILED

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

LB

ELECTRONIC FRONTIER FOUNDATION,

Plaintiff,

v.

U.S. DEPARTMENT OF TRANSPORTATION,

Defendant.

CV 12 0164
Case No.:

**COMPLAINT FOR INJUNCTIVE
RELIEF FOR VIOLATION OF THE
FREEDOM OF INFORMATION ACT,
5 U.S.C. § 552**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for injunctive and other appropriate relief. Plaintiff Electronic Frontier Foundation seeks the processing and release of records that Plaintiff requested from Defendant Department of Transportation's component Federal Aviation Administration concerning certifications and authorizations the agency issues to public and private entities interested in flying unmanned aircraft or drones.

PARTIES

2. Plaintiff Electronic Frontier Foundation (EFF) is a not-for-profit corporation established under the laws of the Commonwealth of Massachusetts, with offices in San Francisco, California and Washington, D.C. EFF is a donor-supported membership organization that works to inform policymakers and the general public about civil liberties issues related to technology and to

1 act as a defender of those liberties. In support of its mission, EFF uses the FOIA to obtain and
2 disseminate information concerning the activities of federal agencies.

3 3. Defendant Department of Transportation (DOT) is a Department of the Executive
4 Branch of the United States Government. DOT is an “agency” within the meaning of 5 U.S.C.
5 § 552(f). The Federal Aviation Administration (FAA) is a component of Defendant DOT.

6 JURISDICTION

7 4. This Court has both subject matter jurisdiction over this action and personal
8 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(6)(C)(i).
9 This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

10 VENUE AND INTRADISTRICT ASSIGNMENT

11 5. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C.
12 § 1391(e).

13 6. Assignment to the San Francisco division is proper pursuant to Local Rule 3-2(c)
14 and (d) because a substantial portion of the events giving rise to this action occurred in this district
15 and division, where Plaintiff is headquartered.

16 FACTUAL ALLEGATIONS

17 **Use of Drones or Unmanned Aircraft in the United States**

18 7. Unmanned aircraft or drones come in many shapes and sizes, from as large as a
19 commercial airplane¹ to as small as a hummingbird.²

20 8. Unmanned aircraft are designed to carry various types of equipment that allow them
21 to conduct highly sophisticated and almost constant surveillance, including video cameras, infrared

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23 ¹ See Associated Press, “Israel Unveils Drones Able to Hit Iran,” *N.Y. Times* (Feb. 21, 2010)
24 <https://www.nytimes.com/2010/02/22/world/middleeast/22mideast.html> (noting Israel owns a fleet
25 of drones, each the size of a Boeing 737); see also W.J. Hennigan, “Air Force buys souped-up,
26 stealthy version of Predator drone,” *L.A. Times* (Dec. 31, 2011)

27 http://latimesblogs.latimes.com/money_co/2011/12/drone-general-atomics-air-force-.html (noting
28 the Air Force recently purchased a drone with a 66 foot wingspan and a top speed of 460 mph).

² W.J. Hennigan, “It’s a Bird! It’s a Spy! It’s Both,” *L.A. Times Blog* (Feb. 17, 2011)

<http://articles.latimes.com/2011/feb/17/business/la-fi-hummingbird-drone-20110217>; Jason Paur,
“Video: Hummingbird Drone Does Loop-de-Loop,” *Wired Danger Room Blog* (Feb. 18, 2011)

<http://www.wired.com/dangerroom/2011/02/video-hummingbird-drone-can-perform-loops/>.

1 cameras and heat sensors, and radar.³ Some newer drones even carry super high resolution
2 “gigapixel” cameras that can “track people and vehicles from altitudes above 20,000 feet[,] . . .
3 [can] monitor up to 65 enemies of the State simultaneously[, and] . . . can see targets from almost
4 25 miles down range.”⁴ And one drone unveiled this year can crack Wi-Fi networks and intercept
5 text messages and cell phone conversations—without the knowledge or help of either the
6 communications provider or the customer.⁵ Drones may also carry weapons.⁶

7 9. The market for unmanned aircraft in the United States is expanding rapidly, and
8 companies, public entities, and research institutions are developing newer, faster, stealthier, and
9 more sophisticated drones every year. According to a July 15, 2010 Fact Sheet produced by the
10 FAA, “[i]n the United States alone, approximately 50 companies, universities, and government
11 organizations are developing and producing some 155 unmanned aircraft designs.”⁷ According to
12 one market research firm, approximately 70% of global growth and market share of unmanned
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15 ³ Brian Bennett, “Police Employ Predator Drone Spy Planes on Home Front,” *L.A. Times* (Dec. 10,
16 2011) <http://articles.latimes.com/2011/dec/10/nation/la-na-drone-arrest-20111211> (describing
17 Predator drones used to aid local law enforcement that contain “high-resolution cameras, heat
18 sensors and sophisticated radar” as well as live video feed).

19 ⁴ Andrew Munchbach, “US Army’s A160 Hummingbird Drone-Copter to Don 1.8 Gigapixel
20 Camera,” *Engadget* (Dec. 27, 2011) <http://www.engadget.com/2011/12/27/us-armys-a160-hummingbird-drone-copter-to-don-1-8-gigapixel-cam/>.

21 ⁵ See Andy Greenberg, “Flying Drone Can Crack Wi-Fi Networks, Snoop On Cell Phones,” *Forbes*
22 (July 28, 2011) <http://www.forbes.com/sites/andygreenberg/2011/07/28/flying-drone-can-crack-wifi-networks-snoop-on-cell-phones/>.

23 ⁶ Eric Schmidt, “In the Skies Over Iraq, Silent Observers Become Futuristic Weapons,” *N.Y. Times*
24 (April 17, 2003) <http://www.nytimes.com/2003/04/18/world/nation-war-military-aircraft-skies-over-iraq-silent-observers-become-futuristic.html>; Jane Perlez and Pir Zubair Shah, “Drones Batter
25 Al Qaeda and Its Allies Within Pakistan,” *N.Y. Times* (April 4, 2010)

26 <https://www.nytimes.com/2010/04/05/world/asia/05drones.html>; David Axe, “New Armed Stealth
27 Drone Heads to Afghanistan (And Maybe Iran, Too),” *Wired Danger Room Blog* (Dec. 13, 2011)
28 <http://www.wired.com/dangerroom/2011/12/stealth-drone-afghanistan/>; Robert Stanton, “Texas
Civil Libertarians Have Eye on Police Drones,” *Houston Chronicle* (Oct. 31, 2011)

<http://www.chron.com/news/houston-texas/article/Texas-civil-libertarians-have-eye-on-police-drones-2245644.php>; Stephen Dean, “New Police Drone Near Houston Could Carry Weapons,”
Click2Houston.com (Nov. 10, 2011) <http://www.click2houston.com/news/New-Police-Drone-Near-Houston-Could-Carry-Weapons/-/1735978/4717922/-/59xnnez/-/index.html>.

⁷ FAA, *Fact Sheet: Unmanned Aircraft Systems (UAS)*, 1, available at:
http://www.faa.gov/about/initiatives/uas/media/UAS_FACT_Sheet.pdf.

1 aircraft systems is in the United States.⁸ In 2010 alone, expenditures on unmanned aircraft “reached
2 more than US \$3 billion and constituted a growth of more than 12%.”⁹ The market for these
3 systems is only expected to increase: over the next 10 years the total expenditure for unmanned
4 aircraft “is expected to surpass US \$7 billion.”¹⁰ And some have forecast that by the year 2018
5 there will be “more than 15,000 [unmanned aircraft systems] in service in the U.S., with a total of
6 almost 30,000 deployed worldwide.”¹¹

7 10. In the past, unmanned aircraft have been used almost exclusively by military and
8 security organizations.¹² However, that is changing rapidly. In December 2011, U.S. Customs and
9 Border Protection (CBP) purchased its ninth drone, and it uses these drones inside the United
10 States to patrol the U.S. Borders.¹³ In the last year or so, interest has also grown in using unmanned
11 aircraft domestically for a broad range of other uses, including “aerial photography, surveying land
12 and crops, [and] monitoring forest fires and environmental conditions.”¹⁴

13 11. Drones are also increasingly being used for routine state and local law enforcement
14 activities as well, from catching cattle rustlers¹⁵ and drug dealers¹⁶ to finding missing persons.¹⁷

16 ⁸ Lucintel, “Growth Opportunities in Global UAV Market” at p. 3 (March 2011), *available at*
17 *www.lucintel.com/LucintelBrief/UAVMarketOpportunity.pdf* (last visited January 6, 2011); *see also*
18 The Teal Group, “World Unmanned Aerial Vehicle Systems—Market Profile and Forecast
19 2011 Edition,” Table of Contents and Executive Summary *available at*
20 http://tealgroup.com/index.php?option=com_docman&task=doc_download&gid=395 (last visited
21 Jan. 6, 2011) (estimating on page 1 that “the market will double over the next decade from current
22 worldwide UAV [unmanned aerial vehicle] R&D and procurement expenditures of about \$5.9
23 billion to \$15.1 billion” and that the United States “will account for 77% of the R&D spending . . .
24 over the next decade, and about 69% of the procurement”).

25 ⁹ *Id.*

26 ¹⁰ *Id.* at 25.

27 ¹¹ Joint Planning and Development Office, “Operating Unmanned Aircraft Systems in 2018 and
28 Beyond: NextGen Challenges and Opportunities” (Jan. 4 2011) *available at*
<http://www.jpdo.gov/newsarticle.asp?id=146> (citing The Teal Group, “World Unmanned Aerial
Vehicle Systems, Market Profile and Forecast 2009-2010”).

¹² *See* FAA, *Fact Sheet* at 1.

¹³ “CBP Receives Fourth Predator-B in Arizona: Agency Now Operates 9 Unmanned Aircraft,”
U.S. Customs and Border Protection (Dec. 27, 2011) [http://www.cbp.gov/xp/cgov/newsroom/
news_releases/national/12272011.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/12272011.xml).

¹⁴ FAA, *Fact Sheet* at 1.

¹⁵ Bennett, “Police Employ Predator Drone Spy Planes on Home Front,” *supra*.

1 Some within law enforcement have even proposed using drones for recording traffic violations.¹⁸

2 Regulation of Drones

3 12. The FAA regulates the operation of unmanned aircraft in the United States. The
4 agency does so, both informally for the use of unmanned aircraft on a recreational basis where
5 operations are limited to flights “below 400 feet above ground level and away from airports and air
6 traffic,”¹⁹ and on a formal basis for flights within the National Airspace System.²⁰

7 13. If civil operators—defined by the FAA as anyone other than the United States
8 government, a state, the District of Columbia, or a territory or possession of the U. S. or a political
9 subdivision²¹—wish to operate an unmanned aircraft within the National Airspace System outside
10 of “restricted” airspace, the operator must seek from the FAA “a Special Airworthiness
11 Certificate—Experimental Category and a Certificate of Waiver or Authorization (COA).”²² This
12 “is the only certification available to civil operators of UAS[.]”²³ Currently, the FAA only issues
13 “experimental certificate[s] for the purposes of R&D, market survey and crew training.”²⁴ It does
14 not issue certificates to use unmanned aircraft in the national airspace for commercial purposes.²⁵
15 As of July 15, 2010, the FAA had “issued 71 experimental certificates since July 2005 to 17
16 different aircraft types, 14 of these are currently active.”²⁶

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18 ¹⁶ Peter Finn, “Domestic Use of Aerial Drones by Law Enforcement Likely to Prompt Privacy
19 Debate,” *Washington Post* (Jan. 23, 2011) [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204111.html)

20 ¹⁷ Robert Stanton, “Texas Civil Libertarians Have Eye on Police Drones,” *supra*.

21 ¹⁸ Finn, “Domestic Use of Aerial Drones by Law Enforcement Likely to Prompt Privacy Debate,”
22 *supra* (noting that a “senior officer in Houston then mentioned to reporters that drones might
23 ultimately be used for recording traffic violations”).

24 ¹⁹ See FAA Advisory Circular 91-57, *available at*
25 [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/1ACFC3F689769A](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/1ACFC3F689769A56862569E70077C9CC)
26 56862569E70077C9CC (last visited Jan. 6, 2012).

27 ²⁰ *FAA Fact Sheet* at 1.

28 ²¹ FAA, “Unmanned Aircraft (UAS)—Questions and Answers,” *available at*
http://www.faa.gov/about/initiatives/uas/uas_faq/#Qn5 (last visited Jan. 6, 2012).

²² *FAA Fact Sheet* at 1.

²³ *Id.*

²⁴ FAA, “Unmanned Aircraft (UAS)—Questions and Answers,” *available at*
http://www.faa.gov/about/initiatives/uas/uas_faq/#Qn7.

²⁵ *Id.*

²⁶ *FAA Fact Sheet* at 1.

1 14. Public entities—including government agencies, local law enforcement, and state
2 universities—that wish to fly an unmanned aircraft in civil airspace must seek from the FAA a
3 “Certificate of Authorization or Waiver (COA).”²⁷ The Washington Post reported in January 2011
4 that “[a]s of Dec. 1, [2010,] according to the FAA, there were more than 270 active authorizations
5 for the use of dozens of kinds of drones. Approximately 35 percent of these permissions are held
6 by the Department of Defense, 11 percent by NASA and 5 percent by the Department of Homeland
7 Security[.]”²⁸

8 15. According to other news sources, the FAA has been studying ways to further
9 integrate unmanned aircraft into the national airspace, in part because “the Defense Department,
10 State and local governments, industry and researchers are all pressuring the FAA to allow wider
11 use of unmanned aircraft.”²⁹ Congress has also been pushing the FAA to expand authorizations for
12 drones. The current version of the “FAA Air Transportation Modernization and Safety
13 Improvement Act” includes a section that requires the FAA to “develop a plan to accelerate the
14 integration of unmanned aerial systems into the National Airspace System” and requires the plan to
15 address “both military and nonmilitary unmanned aerial system operations.”³⁰ According to news
16 sources and the Federal Register, the FAA is planning to expand its Certificate of Authorization
17 program by loosening “rules for use of small unarmed Unmanned Aircraft Systems (sUAS)
18 because ‘that’s where the demand is.’”³¹ This may happen as early as January 2012.³²

19 ²⁷ See FAA, “Certificate of Authorization or Waiver (COA),” available at
20 [http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/aaim/organiza-](http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/aaim/organizations/uas/coa/)
21 [tions/uas/coa/](http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/aaim/organizations/uas/coa/) (last visited Jan. 6, 2012).

22 ²⁸ Finn, “Domestic Use of Aerial Drones by Law Enforcement Likely to Prompt Privacy Debate,”
supra.

23 ²⁹ See, e.g., Jason Paur, “FAA Experiments With Integrating Drones in Civil Airspace,” *Wired.com*
(June 14, 2010) <http://www.wired.com/autopia/2010/06/faa-uav-civil-airspace/>.

24 ³⁰ S.223 112th Cong. § 320 (2011-2012) available at: [http://thomas.loc.gov/cgi-](http://thomas.loc.gov/cgi-bin/query/F?c112:2:/temp/~c112wA41zo:e133459;)
25 [bin/query/F?c112:2:/temp/~c112wA41zo:e133459;](http://www.businessweek.com/ap/financialnews/D9LESGNO0.htm); see also Joan Lowy, “Senate Would Limit
Subsidies for Rural Air Service,” *Business Week*, (Feb. 17, 2011),
<http://www.businessweek.com/ap/financialnews/D9LESGNO0.htm>.

26 ³¹ Jillian Rayfield, “One Nation Under the Drone: The Rising Number of UAVs in American
27 Skies,” *TPMMuckracker* (Dec. 22, 2011), [http://tpmmuckraker.talkingpointsmemo.com/2011/12/](http://tpmmuckraker.talkingpointsmemo.com/2011/12/one_nation_under_the_drone.php)
28 [one_nation_under_the_drone.php](http://tpmmuckraker.talkingpointsmemo.com/2011/12/one_nation_under_the_drone.php); see also Operation and Certification of Small Unmanned
Aircraft Systems (SUAS), 76 Fed. Reg. 40,107 (July 7, 2011), available at
<http://www.gpo.gov/fdsys/pkg/FR-2011-07-07/pdf/2011-15494.pdf#page=16>.

1 **Plaintiff's FOIA Requests and Requests for Expedited Processing**

2 16. There is currently no information available to the public on which specific public
3 and civil entities have applied for, been granted or been denied certificates or authorizations to fly
4 unmanned aircraft in the United States. To obtain this information and make it available to the
5 public, Plaintiff faxed a FOIA request to the FAA on April 13, 2011.

6 17. Via the April 13, 2011 letter, Plaintiff requested under the FOIA all agency records
7 (including, but not limited to, electronic records) discussing, concerning, or reflecting:

- 8 (1) any active certificates or authorizations issued by the FAA for any
9 type of drone or unmanned aircraft (UA), including public UAs and
10 private UAs, and all corresponding agency records;
- 11 (2) any expired certificates or authorizations issued by the FAA for any
12 type of drone or UA, including public UAs and private UAs, and all
13 corresponding agency records;
- 14 (3) any applications for UA certificates or authorizations that were denied
15 by the FAA, and all corresponding agency records.

16 18. On information and belief, FAA received Plaintiff's request letter, described in
17 paragraphs 16 and 17, on April 14, 2011.

18 19. By letter dated April 15, 2011, FAA acknowledged receipt of Plaintiff's FOIA
19 request and assigned it Request Number 2011-5126.

20 20. Despite FAA's acknowledgement, after nearly nine months the FAA has yet to
21 process and release records responsive to EFF's FOIA request. As such, the FAA has exceeded the
22 generally applicable twenty-day deadline for the processing of any FOIA request.

23 21. Plaintiff has exhausted the applicable administrative remedies with respect to its
24 FOIA request referenced herein.

25 22. Defendant has wrongfully withheld the requested records from Plaintiff.

26 ³² See "FAA poised to enable police departments to use UAVs domestically," *Public Radio*
27 *International* (Jan. 3, 2012), available at: [http://www.pri.org/stories/science/technology/faa-poised-](http://www.pri.org/stories/science/technology/faa-poised-to-enable-police-departments-to-use-uavs-domestically-7726.html)
28 [to-enable-police-departments-to-use-uavs-domestically-7726.html](http://www.pri.org/stories/science/technology/faa-poised-to-enable-police-departments-to-use-uavs-domestically-7726.html) ("In January, the FAA is
expected to issue new air space regulations allowing for the civilian use of unmanned aerial
vehicles.").

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

23. Plaintiff repeats and realleges paragraphs 1-22.

24. Defendant has wrongfully withheld agency records requested by Plaintiff by failing to comply with the statutory time limit for the processing of FOIA requests.

25. Plaintiff has exhausted the applicable administrative remedies with respect to Defendant's wrongful withholding of the requested records.

26. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

REQUESTED RELIEF

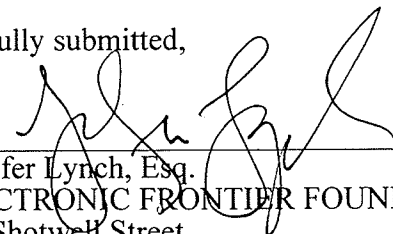
WHEREFORE, Plaintiff prays that this Court:

1. order Defendant and its component to disclose immediately the requested records in their entirety;
2. order Defendant and its component to waive all fees associated with the processing and release of the requested records;
3. award Plaintiff its costs and reasonable attorneys fees incurred in this action; and
4. grant such other relief as the Court may deem just and proper.

DATED: January 10, 2011

Respectfully submitted,

By: _____


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