

December 20, 2007

VIA FACSIMILE — (202) 616-6695

Joan Lapara
FOIA Contact
Justice Management Division
Department of Justice
Room 1111 RFK
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

RE: Freedom of Information Act Request

Dear Ms. Lapara:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the Department of Justice (“DOJ”) on behalf of Public.Resource.Org, Inc. (“Public.Resource.Org”) and the Electronic Frontier Foundation (“EFF”).

We are seeking the following agency records:

1. All records in the Justice Department Retrieval and Inquiry System (“JURIS”) database. Pursuant to 5 U.S.C. § 552(a)(3)(B), we ask that the DOJ provide these records in electronic form, preferably via CD-ROM.
2. Any communications between the DOJ and University of Pennsylvania Linguistic Data Consortium (“LDC”) concerning the JURIS database, which LDC currently offers the public in exchange for a licensing fee.
3. Any internal DOJ memoranda, opinion, statements or other documents discussing commercial restrictions on reuse of data in the JURIS database.

Request for News Media Fee Status

Public.Resource.Org and EFF asks that they not be charged search or review fees for this request because each organization qualifies as a “representative of the news media” pursuant to the FOIA and 28 C.F.R. § 16.11(b)(6).

Public.Resource.Org, Inc. is a 501(c)(3) public charity chartered to create public works projects on the Internet with a particular focus on making government information more broadly available without fee to any and all users. Public.Resource.Org has been certified as a “news media” requester for the purposes of obtaining and publishing high-resolution video from the United States Congress Recording Studio and we are engaged in a Joint Venture with the National Technical Information Service (“NTIS”) under Agreement No. NTIS-1832 to assist in

more broadly disseminating materials from NTIS onto the Internet. Our purpose in requesting the JURIS database and related documentation is to make this information available on the Internet for use by the general public at no charge.

EFF is a non-profit public interest organization that works “to protect and enhance our core civil liberties in the digital age.”¹ One of EFF’s primary objectives is “to educate the press, policymakers and the general public about online civil liberties.”² To accomplish this goal, EFF routinely and systematically disseminates information through its heavily visited web site, online newsletter, blog, white papers, books, and podcasts. We note that the Department of Homeland Security, Department of State, and National Security Agency have recognized that EFF qualifies as a “news media” requester, based upon the publication activities set forth below (see DHS stipulation, State Department letter, and NSA letter, attached hereto). We further note that the U.S. Court of Appeals for the D.C. Circuit has stressed that “different agencies [must not] adopt inconsistent interpretations of the FOIA.” *Al-Fayed v. CIA*, 254 F.3d 300, 307 (D.C. Cir. 2001), quoting *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1287 (D.C. Cir. 1983).

Due to their extensive publication activities, Public.Resource.Org and EFF are “representative[s] of the news media” under the FOIA and agency regulations. As such, this request is subject only to duplication fees after the first 100 pages. However, all duplication fees should be waived, as discussed below, because disclosure of the information requested above is in the public interest.

Request for a Public Interest Fee Waiver

Public.Resource.Org and EFF are entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 28 C.F.R. § 16.11(k). To determine whether a request meets this standard, Department of Justice components determine whether “[d]isclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government,” and whether such disclosure “is not primarily in the commercial interest of the requester.” 28 C.F.R. §§ 16.11(k)(i), (ii). This request clearly satisfies these criteria.

First, the JURIS database concerns “the operations or activities of the government.” 28 C.F.R. § 16.11(k)(2)(i). The agency’s collection, maintenance, and distribution of legal data constitutes government operations or activities.

Second, disclosure of the requested information will “contribute to an understanding of government operations or activities.” 28 C.F.R. § 16.11(k)(2)(ii) (internal quotation marks omitted). Public.Resource.Org and EFF have requested information that will publicly reveal the nature and contents of the JURIS database, as well as the DOJ’s policies on making that data

¹ Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited Nov. 27, 2007).

² *Id.*

available to third parties for redistribution.

Third, the requested material will “contribute to public understanding” of the information the DOJ collected in the JURIS database. 28 C.F.R. § 16.11(k)(2)(iii) (internal quotation marks omitted). This information will contribute not only to Public.Resource.org and EFF’s understanding of the contents of JURIS and government policies on redistribution of the database, but to the understanding of a reasonably broad audience of persons interested in the subject, since Public.Resource.Org and EFF intend to make the records they obtain available to the public at no cost.

Fourth, the disclosure will “contribute significantly” to the public’s knowledge and understanding of the JURIS database. 28 C.F.R. § 16.11(k)(2)(iv) (internal quotation marks omitted). Disclosure of the requested information will permit the public to access the requested records for free.

Furthermore, a fee waiver is appropriate here because Public.Resource.Org and EFF have no commercial interest in the disclosure of the requested records. 28 C.F.R. § 16.11(k)(3). EFF and Public.Resource.Org are 501(c)(3) nonprofit organizations and will derive no commercial benefit from the information at issue here.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x. 116. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,

Marcia Hofmann
Staff Attorney

Enclosures