

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSAN B. LONG)
and)
DAVID BURNHAM,)
)
Plaintiffs,) Civil Action No. 1:02CV02467 PLF
)
v.)
)
DEPARTMENT OF JUSTICE,)
)
Defendant.)
_____)

DECLARATION OF SUSAN LONG

I, Susan Long, declare as follows:

1. My name is Susan Long. I am currently an associate professor of Management Information and Decision Sciences at Syracuse University and co-director with Professor David Burnham of the Transactional Records Access Clearinghouse (TRAC). I am competent to make this declaration and the statements in this declaration are based on my personal knowledge.

2. TRAC is a non-profit research organization affiliated with Syracuse University. Its mission is to compile and disseminate comprehensive information about the functioning of federal enforcement and regulatory agencies, in addition to information on federal staffing and expenditures. To accomplish this mission, TRAC collects detailed data on law enforcement efforts from the federal government. TRAC analyzes and, where possible, verifies this data, and distributes the data on the World Wide Web and by creating various information products including tabular analyses, graphical summaries and reports. Users of TRAC's information

include news organizations, businesses, United States congressional committees, the federal court systems, scholars, public interest groups, law libraries, and government agencies.

3. Since 1989, TRAC has requested data from the Executive Office for United States Attorneys (EOUSA) on civil and criminal cases handled by each United States Attorney's Office, and has received some of the data that it requested. TRAC has also obtained copies of EOUSA case management data that has been deposited at the National Archives and Records Administration. TRAC has also collected documentation concerning the databases of the EOUSA and the United States Attorneys' Offices from both the Department of Justice and the National Archives. This documentation describes how the databases are structured, the types of information entered in each database, and other information on the contents and operation of the databases.

4. TRAC has used the data obtained from the EOUSA to analyze law enforcement activities within the federal government and identify trends in the prosecution of cases, allocation of resources, and establishment of priorities. Examples of the reports that TRAC has produced using this data include the TRAC report on "Criminal Enforcement Against Terrorists and Spies in the Year After the 9/11 Attacks," (attached as *Exhibit A*), the TRAC report on "INS - New Findings on INS Guarding the Borders" (attached as *Exhibit B*), and the TRAC report on "Federal Prosecutors: Wide Variation Found in Handling of Criminal Referrals for Prosecution" (attached as *Exhibit C*). TRAC's recent reports on trends in law enforcement activities in the wake of the September 11, 2001 attacks have been cited by, among others, members of the Senate Committee on the Judiciary. See *Exhibit D*, Letter of Patrick J. Leahy and Charles E. Grassley to the Hon. John Ashcroft, November 27, 2002.

5. I have personally been responsible for analyzing the EOUSA case management data and the documentation released to TRAC concerning the EOUSA databases for over a decade. The statements in this declaration are based on my personal examination and review of the data produced by EOUSA since 1989, and the accompanying documentation. I have extensive experience working with computerized databases as a result of my statistical expertise and the work that I have performed as co-director of TRAC, which has involved collecting, analyzing and creating software to interpret data collected by the Department of Justice, the Internal Revenue Service, the Office of Personnel Management and many other government agencies.

6. The documentation that TRAC has obtained about the EOUSA databases shows that these databases are updated monthly. The EOUSA database files are compiled from data that is extracted from the databases at the 94 United States Attorneys' Offices each month and sent to the EOUSA.

7. TRAC has submitted FOIA requests for data compiled through the end of May, June, July and August 2002 by EOUSA in six specific files of the EOUSA case management system. These six files are known as the civil flagged master, civil delete history file, criminal charge file, criminal flagged master, criminal immediate declination file, and criminal delete history file. Each record (or set of related records) in these files is composed of a number of fields, such as the identity of the federal agency that conducted the investigation, the identity of the United States Attorneys' Office responsible for the matter, or the name of the defendant or other adverse party.

8. Between October 17, 2002 and December 11, 2002, TRAC received a series of packages from the EOUSA with copies of data files that are responsive to these requests. On

January 27, 2003, TRAC received from the EOUSA a package with computer programs that describe which portions of the EOUSA data for May, June July and August 2002 have been withheld from the data files released to TRAC.

Lead Charge Redactions

9. **Lead Charge.** In the May-August 2002 files delivered to TRAC between October 17 and December 11, the EOUSA has withheld the lead charge field in certain records of the criminal flagged master files. The “lead charge” field in the EOUSA's master files for criminal data describes the principal charge against a suspect or defendant by the title and section number of the criminal statute in the U.S. Code. In some instances, the lead charge entry also includes the subsection of the code. The EOUSA’s program for redacting the lead charge entries provides that the lead charge is to be removed from the criminal flagged master file if the EOUSA database entries in the file being redacted do not indicate that the record relates to a matter that is closed or has been filed in court. Although the lead charge field also appears in the criminal delete history file, it has not been removed from the records in that file.

10. The lead charge entries that have been redacted appear in files known as the criminal flagged master. These files do not identify names of witnesses or informants for the investigations. These files do not contain a field for entering information that would identify the location of the suspect or target of the investigation by city, state, district, zip code or any other means. These files also do not contain a field for entering information that would identify the location of the offense that is the subject of the investigation. Nothing in the data that the EOUSA has released from these files, nor in the lead charge and program category information that it has withheld, describe the characteristics of the suspect, such as gender, height, ethnicity, name or even address.

11. The criminal flagged master files for May - August 2002 contain several fields in which certain entries indicate that the record relates to a defendant who is already aware of the investigation. For example, these files include codes that indicate that the defendant has been enrolled in a pretrial diversion program, that the suspect is involved in plea negotiations, and that the suspect has been arrested or has been released on bond. I examined the EOUSA case management files from May-August 2002 to determine whether the records from which the EOUSA has redacted the lead charge and program category entries include records that contain codes indicating that the defendant is in a pretrial diversion program, is involved in plea negotiations, or has been arrested or released on bond. I found that the records from which the lead charge entries have been redacted include records with these codes.

Program Category Redactions

12. In the May-August 2002 files delivered to TRAC between October 17 and December 11, the EOUSA has withheld from TRAC certain entries in a field that was disclosed to TRAC in all of the records at issue in *Long v. Department of Justice*, Civil Action No. 1:00CV00211 (PLF), and all of the EOUSA database records released to TRAC prior to October 2002. The EOUSA redacted the “program category” field from certain records in the criminal flagged master file and the criminal delete history file. The EOUSA has treated these two files differently in redacting program category information. In the criminal flagged master file, the EOUSA’s program for redacting the program category entries provides for redacting the program category entry from the same records in which the lead charge entry is redacted, namely those records in which the file being redacted does not indicate that the record relates to a matter that is closed or has been filed in court. See above paragraph 9. In the criminal delete history file, the EOUSA redacted *only* program category information in records that satisfy these criteria; it

released the information recorded on lead charge for the records in which the program category is redacted and for all other records in the criminal delete history file.

13. The “program category” information in the EOUSA case management database files contains a code that corresponds to one of the program categories defined by the Department of Justice. For example, the Department has identified domestic terrorism, tax fraud, drug trafficking, violations of the immigration and nationality act, and bank robbery as program categories, and it has assigned a numerical code to each category. See Exhibit E, Appendix A-LIONS Codes, A-43-51 (Updated September 2002).

14. Program categories cover violations of multiple statutes and charges under a particular statute may fall under more than one program category. For example, the manual describing the program category codes states that category “020”, “Organized Crime - Traditional Organizations” may involve violations of 18 U.S.C. §§ 371, 664, 1084, 1951, 1952, 1953, 1955, 1959, 1962 and “similar statutes.” Investigations of violations of all of these statutes may also be classified as program category “021,” “Organized Crime - Emerging Organizations.” Other categories in the list of 90 program categories also include offenses under one or more of the statutes listed under categories 020 and 021.

15. The “criminal delete history file,” is one of the two files from which the EOUSA has redacted program category information. It contains the same substantive fields of information as in the criminal flagged master but differs in that it consists entirely of records that have been “deleted” from the EOUSA’s master files. A record is “deleted” when no corresponding record has been submitted by the United States Attorney Offices for seven consecutive months. Each month, the records in the EOUSA case management system are checked against the data received from the United States Attorneys Offices to determine if there

is a corresponding record. If there is no corresponding record for seven consecutive update cycles, the EOUSA removes the record from the master files and places it in the criminal delete history file. This effectively closes out the matter from EOUSA's master files. See Exhibit F, "Central Criminal System: Program Maintenance Manual, Section 3.1 Delete History File." As noted above, the EOUSA has redacted program category information from the criminal delete history file, but has *not* redacted entries in the lead charge field of this file.

16. Information on program category and lead charge is important to research that TRAC and others perform using the EOUSA data because this information allows the public to determine current agency priorities by examining which types of criminal enforcement matters agencies are actually handling. It is to my knowledge the only systematic data available anywhere that allows the public to assess current national law enforcement priorities for specific federal agencies and to compare agency contributions to broad national law enforcement programs. This information allows researchers to examine questions such as to what extent has the Federal Bureau of Investigation transferred its attention to protecting the nation against terrorism as compared with enforcing the nation's criminal laws against bank robbers, white collar crooks and drug offenders? Is the ATF recommending prosecution for greater numbers of weapons cases, as compared to other types of offenses it handles? What role has the Social Security Administration played in criminal enforcement under the Department of Justice's terrorism program? After Enron, how has the volume of referrals for federal criminal enforcement against white collar fraud changed? TRAC's web sites covering the FBI, the IRS, DEA, ATF, INS and Customs have all relied on these information in these fields to analyze the activities of federal enforcement agencies, and it has been central to each of the reports on federal criminal

enforcement that TRAC has issued, including reports referred to earlier in paragraph 4 of this declaration.

17. Numerous reports and articles from others apart from TRAC have also relied upon this information. Some examples include reports covering the effectiveness of the Massachusetts office of the FBI (*Boston Globe*, February 23, 2002), national FBI priorities (*Washington Times*, June 17, 2002), cutbacks in IRS enforcement efforts (*CNN, ABC, and NPR*, April 9, 2001), effectiveness of the U.S. Attorney Offices in Northern California (*San Jose Mercury News*, April 11, 1999) and Eastern District of California (*News and Observer*, February 1, 2001), inconsistent environmental enforcement (*Washington Post*, June 19, 1998). Public interest groups have also utilized this information for their reports, from Morality in Media (enforcement of obscenity and pornography laws, October 1999) to Public Citizens for Environmental Responsibility (enforcement of environmental laws, December 1998). Congressional committees, including the Senate Judiciary Committee and Senate Appropriations Committee (regarding FBI priorities), the House Government Reform Committee (on ATF weapons enforcement), the Senate Finance Committee (on IRS tax fraud enforcement), as well as the General Accounting Office (measurement of terrorism enforcement activity) have all relied upon this information.

18. On March 5, 2003, I received a letter from the EOUSA stating that it was changing its position on redaction of the criminal delete history file to withhold additional information. The letter accompanied a CD containing the monthly case management files for December 2002. In redacting these files, the EOUSA redacted both the lead charge and program category entries in records that do not contain an entry that shows that the matter described by the record has been closed or has been filed in court. As described above, the criminal delete history file contains records that have been deleted from the criminal master file because there have been

no matching entries from the United States Attorneys Offices for at least seven months. Consequently, the absence of an entry in the delete history file indicating that the matter described by the record has been closed or has been filed in court does not indicate that the record in fact relates to an ongoing investigation, or that the charges being investigated have not been revealed in court filings. Any information in the delete history file on the status of a matter is at least seven months out of date.

Prior Release of Lead Charge and Program Category Information

19. The Department's contention that it is necessary to redact lead charge and program category information to prevent interference with law enforcement investigations is inconsistent with its past and current practice of releasing this information. As described below, the lead charge and program category information has been released and is being released by the Department (a) under the FOIA; and (b) under Departmental programs for making statistical information available to the public. Because many of the matters covered by these past releases are still in the EOUSA database, the information that the Department is now withholding is identical to information that it has released, or currently is releasing, to the public.

20. The EOUSA released the lead charge information when it responded to each of TRAC's FOIA requests for these data from 1989, when the first request from TRAC was made, and continuing through the fall of 1999, when the EOUSA released files compiled at the close of fiscal year 1998 ("FY98"). EOUSA made no claim that lead charge entries were covered by any FOIA exemption, and did not indicate that it believed that the disclosure of this information could compromise law enforcement investigations.

21. The EOUSA released the program category information when it responded to each of TRAC's FOIA requests for these data from 1989, when the first request from TRAC was

made, and continuing through the fall of 2002, when it released files compiled from April 2002 data. EOUSA made no claim that program category entries were covered by any FOIA exemption, and did not indicate that it believed that the disclosure of this information could compromise law enforcement investigations.

22. The Department has, and still does, distribute data from the EOUSA case management databases with lead charge and program category information for the purpose of statistical research. The EOUSA participates in the Department's Federal Justice Statistics Program ("FJSP"), through which the Department distributes database records concerning criminal matters. See 66 Fed. Reg. 30008-09 (June 4, 2001). I have checked the copies of EOUSA case management data that have been released by the BJS and I have confirmed that the BJS released CD-ROMs with EOUSA case management data from FY94-FY98 that include the program category and lead charge entries for all matters in the database.

23. The most recent set of records that the Department has released without redacting lead charge information are the year-end master files for FY98. The EOUSA released a copy of these FY98 files to TRAC in October 1999 in response to a FOIA request. The Department also makes a copy of the FY98 files available to the public on CD through the FJSP.

24. The most recent set of records that the Department has released without redacting program category are the files for April 2002. The EOUSA released a copy of these files to TRAC in August 2002 in response to a FOIA request. Just last month (February 2003) it released a further series of files which serve as the monthly inputs to EOUSA's case management system. The EOUSA released all program category information on these monthly extracts through April 2002.

25. In releasing the program category and lead charge information to TRAC and through the FJSP, the Department has released the lead charge and program category information for matters that had not resulted in a court filing and had not been closed at the time that the records were released. For example, at the time that the year-end fiscal year 1998 files were first released to TRAC under the FOIA (October 1999) and the BJS CD (May 2000), tens of thousands of the records in these files concerned matters that had not resulted in any court proceeding and had not been closed. When the April 2002 criminal master file was released to TRAC (August 2002), the file contained records on over 75,000 matters that had not been closed or resulted in a court filing, and the Department released the program category information for all of these matters.

26. Many of the records for which the EOUSA has withheld the program category and lead charge information in the May-August 2002 files concern matters for which the Department has previously released and/or is currently releasing this very same information in files compiled prior to May 2002. This is so because the records for a particular matter should appear in the EOUSA's criminal flagged master files for each year from the year that the matter was first opened until the year that the matter is closed (or until the record is transferred to the delete history file). Thus, matters that were in the FY 1998 files will also have corresponding records in the EOUSA files for FY 1999 if they were not closed in FY 1998, will have corresponding records in the FY 2000 file if they were not closed in FY 1999; and will have corresponding records in the FY 2001 file if they were not closed in FY 2000. Because some of the matters for which the program category and lead charge information have been redacted were opened in prior periods, there will be corresponding records for these same matters in files in which the EOUSA did not redact the lead charge or program category information. For example, if a

matter in the current criminal master file was opened prior to the beginning of FY 1999, a record that discloses the lead charge and program category for this matter will appear in the FY 1998 file.

27. Thus, although the Department has redacted the lead charge information from the May-August 2002 files, the lead charge information for many of these matters is disclosed in (a) the FY 1998 files the EOUSA released to TRAC in October 1999; (b) the CDs that the Department issued in 2000 and is currently distributing through the BJS. Similarly, although the Department has redacted the program category information from the May-August 2002 files, the program category information for many of these matters is disclosed in the April 2002 file and each earlier file going back to the month that the matter was opened.

28. ***Lead Charge Entries Previously Released.*** I have determined that approximately one in nine of the records in the May-August 2002 files from which the EOUSA has redacted the lead charge concern matters in which the Department of Justice has previously released records identifying the lead charge. By examining the files in which the lead charge information was redacted by the EOUSA, I determined that the following percentage and number of redacted records in each file were for matters in which the Department has already released records that disclose the lead charge information because these matters were first reported to the EOUSA database prior to the beginning of FY 1999.

May 2002	11.7%, 8,893 of redacted matters appear in FY98 files
June 2002	11.2%, 8,462 of redacted matters appear in FY98 files
July 2002	10.6%, 7,942 of redacted matters appear in FY98 files
Aug 2002	9.8%, 7,407 of redacted matters appear in FY98 files

29. ***Program Category Information Previously Released.*** I have determined that the vast majority of the records in the May-August 2002 files from which the EOUSA has redacted the program category concern matters in which the Department of Justice has already released records identifying the program category. By examining the April 2002 files in which the program category information was not redacted by the EOUSA and comparing them with the May-August 2002 files, I determined that the following percentage and number of redacted records in each file were for matters in which the Department has already released records that disclose the program category because these matters were first reported prior to May 2002.

May 2002	93.1%, 70,621 of redacted matters appear in April 2002 files
June 2002	87.7%, 66,383 of redacted matters appear in April 2002 files
July 2002	82.3%, 61,794 of redacted matters appear in April 2002 files
August 2002	77.9%, 58,730 of redacted matters appear in April 2002 files

Exemption Claims Applied To All Records

30. ***Court Docket Information.*** In the May-August 2002 files delivered to TRAC between October 17 and December 11, the EOUSA has withheld from the criminal and civil flagged master files, and the criminal and civil delete history files, all entries in the fields for court number, caption of the case, name of the defendant in criminal cases, and name of litigant in civil cases.

31. ***Entity Names.*** The records in the criminal and civil flagged master files, the criminal and civil delete history files and the criminal immediate declination files frequently identify property, corporations, businesses, governmental bodies, and other non-individual entities in the fields that contain the court caption and the name of the litigant. The EOUSA is able to distinguish records that identify an individual as the subject of a record from those that

identify a property, business, or other non-individual entity, but it has not made such a distinction in redacting these records. The data used to create the EOUSA case management data is extracted from a system called LIONS, and the LIONS system contains codes that distinguish case management entries that pertain to individuals from entries that do not. Specifically, the LIONS system contains a field called "PARTICIPANT TYPE." This field contains codes that identify whether the subject of a record is an individual, property, business or agency. The manual for the LIONS system shows that the codes used in this field are A for agency, B for business, I for individual, and P for property. *Exhibit E*, Appendix A- LIONS Codes, A-42 (Updated February 2002). The manual's instructions for entering information into LIONS state, "[i]f the participant is an Individual, enter Last Name, First Name. If the defendant is a Business or piece of Property, enter Business or Property name." LIONS Manual at 3-5 (civil), 5-6 (criminal). If a participant is identified as a business, the computer displays a different data form than the form used for individuals and calls for the person entering data to enter information about the business. *Id.* at 3-26 to 3-32 (civil records); 5-32- to 5-45 (criminal records). Similarly, if the participant is identified as property, a separate screen appears for information describing the property. *Id.* at 3-33; 5-50.

32. ***Tracking Numbers.*** In the May-August 2002 files delivered to TRAC between October 17 and December 11, the EOUSA has withheld from the criminal and civil flagged master files, the criminal and civil delete history files, and the criminal immediate declination files all entries in the fields for agency file number, investigative agency file number, and program agency file number. These fields are designed to store numbers that are used by agencies other than the United States Attorneys Offices to identify the matter addressed by a record.

