

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
NATIONAL DAY LABORER ORGANIZING :
NETWORK, et al., :

Plaintiffs, :

- v - :

UNITED STATES IMMIGRATION AND CUSTOMS :
ENFORCEMENT, et al., :

Defendants. :

Civil Action No. 10-CV-3488

**DECLARATION
OF MARIA ROAT**

----- X
Maria Roat, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Chief of Staff for the Office of the Chief Information Officer (OCIO) at the Department of Homeland Security (DHS). I have been with DHS since 2004. Prior to joining the OCIO, I served as the Chief Information Officer's Chief of Staff as well as the Chief Information Security Officer for the United States Citizenship and Immigration Services (USCIS).
2. This declaration is submitted in support of defendants' motion for stay of the Court's February 7, 2011 Order¹ requiring the production of certain fields of metadata.
3. The statements I make in this declaration are based on my personal knowledge, my review of documents kept in the ordinary course of business, and my review of relevant documents

¹ The Court supplemented its February 7, 2011 Order with its February 15, 2011 Supplemental Order (collectively referred to as "the Court's Orders".)

and information provided to me by Department of Homeland Security (DHS) employees in the course of their official duties.

4. This declaration will describe DHS's technical capabilities with regard to the production of metadata in the FOIA context.

Current DHS FOIA Technology Within DHS Privacy, US-VISIT and DHS HQ

5. The DHS Privacy Office (DHS Privacy), US-VISIT (a Component of DHS) and DHS Headquarters (DHS HQ) are the three DHS entities that have been involved in the processing of records responsive to the FOIA request at issue in this lawsuit. These three DHS Components each process FOIA requests.
6. Currently, DHS Privacy has access to the programs available in Microsoft Office Suite 2007 and Adobe Acrobat Professional 9 (Adobe Pro) for the purposes of reviewing and processing (including redacting) FOIA requests.
7. US-VISIT—which is a part of the National Protection and Programs Directorate (NPPD) and which has its own FOIA Officer who supports NPPD—is using Microsoft Office Suite 2003 and Adobe Acrobat 7 for reviewing and processing its FOIA requests. With this version of Adobe Acrobat, US-VISIT uses the Adobe-Plug-In REDAX in order to make redactions. REDAX is a redaction tool developed by Appligent.
8. DHS HQ does not use a single consistent version of Adobe Acrobat software in all its offices, but rather uses various versions and combinations of Adobe Pro and other (earlier) versions of Adobe Acrobat software depending on the location of the office and the maturity of the particular office's technology. DHS HQ offices—with the exception of NPPD, including US-VISIT—do not use REDAX. When processing FOIA requests, those offices

use Adobe Pro. The DHS HQ offices within NPPD use Adobe Acrobat 7 and REDAX to process FOIA Requests.

9. The redaction tools in Adobe Pro, and in Adobe Acrobat 7 when using the Adobe Plug-In REDAX, allow for the permanent removal of visible text and images from PDF and TIFF files. Records responsive to FOIA requests must be converted to PDF or TIFF format to be compatible with the Adobe/REDAX processing software currently used by DHS Privacy, US-VISIT and DHS HQ. Those Components have no capability to process electronic documents unless the documents are first converted to PDF/TIFF format.

**Metadata in the Current DHS FOIA Environment
for DHS Privacy, DHS HQ, and US-VISIT**

10. A PDF or TIFF document, once created or converted from another format, will contain limited fields of metadata: (1) author; (2) date and time created; (3) date and time modified; and (4) software used. This metadata will reflect only information from and following the creation/conversion of the PDF or TIFF file, and not any metadata that might have been associated with the document that earlier existed in another electronic file format. The conversion of a document to PDF or TIFF format results in the elimination of all pre-existing metadata. For purposes of this case, there is no meaningful distinction between converting a document to PDF versus TIFF format. The conversion to either format results in the loss of all pre-existing metadata.
11. This post-conversion metadata for a PDF/TIFF document can be viewed in Adobe Acrobat software using the "Document Properties" tool.
12. It is possible to save this limited amount of post-PDF/TIFF metadata from a PDF/TIFF document as an Extensible Metadata Platform (.XMP) file that can then be imported into

.XML software or an .XML-supported file type. However, this is a manual process that can only be carried out on a document-by-document basis.

13. Currently, DHS Privacy, US VISIT NPPD, and DHS HQ do not have a mechanism for automating the saving of post-PDF/TIFF metadata as an .XMP file; to do so, DHS would have to incur the cost of purchasing and implementing additional software. DHS has not had reason to explore the use of this technology because, prior to this litigation, the Department had never received a request for metadata under FOIA. In any event, such technology would not assist with compliance with the Court's Orders here because it would merely enable the saving and transfer of post-PDF/TIFF metadata, not any potentially existing metadata associated with the earlier pre-PDF/TIFF electronic records.
14. The Adobe/REDAX software currently available to DHS Privacy, US-VISIT and DHS HQ does not allow for the preservation, review or production of metadata associated with the original, native document. Moreover, as explained below, these Components do not otherwise have access to software that would allow for the preservation, review or production of metadata.

DHS Access to Clearwell

15. As explained in the Declaration of Ryan A. Law, U.S. Immigration and Customs Enforcement (ICE), a Component of DHS, has obtained a limited Clearwell license, and used that e-discovery platform to support the review and processing of certain documents requested by the Plaintiffs. Clearwell is a web-based application.
16. While ICE obtained permission to use Clearwell on a provisional basis to process a subset of records responsive to Plaintiffs' FOIA request, that type of access is not shared by the Privacy Office, US-VISIT or DHS HQ. ICE applications operate within the ICE secure

intranet. Only personnel with accounts used to access the ICE intranet can gain access to ICE applications and other information systems. Allowing personnel outside of the ICE secure accounts would require approval by the OCIO, including a waiver of security policies, which has not been given.

17. Moreover, the current licensing for the Clearwell product is limited to the current users at ICE. In order to obtain licensing permission for the Privacy Office, US-VISIT and DHS HQ to use Clearwell, the appropriate (and formal) acquisition process would need to be followed. This process is structured and can be time-consuming, and there is currently no money available for any of the above entities to acquire a Clearwell license.

DHS's Access to Additional Litigation and Document Management Technology

18. According to the DHS Technical Reference Model (TRM), the following additional litigation management products have been or are currently being used within DHS: Dataflight Concordance with Opticon (FEMA, United States Secret Service) and IPRO (Under Secretary for Management, Customs and Border Protection).
19. These litigation support tools cannot easily or quickly be leveraged for use by other Components for a variety of reasons, including technical, budgetary and regulatory concerns. Nor does it appear that any of these programs could be used to process documents under FOIA in a way that would allow for the preservation and production of metadata.
20. While the Department (i.e., ICE) is currently testing Clearwell for use in the litigation environment, this product is not currently authorized or available for use by DHS Privacy, US-VISIT or DHS HQ in this or any other case (FOIA or otherwise).

DHS's Inability to Process or Produce Metadata

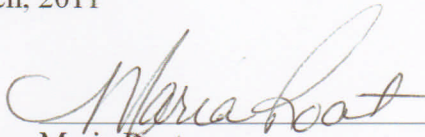
21. As explained above, DHS Privacy, US-VISIT and DHS HQ currently lack access to the software necessary to produce metadata in a manner that complies with the Court's order. In order to process and produce metadata in a manner responsive to the Court's requirements, these Components would need to acquire the necessary software and/or hardware that would allow metadata to be (1) extracted from electronic records; (2) reviewed to determine which of the FOIA exemptions may apply to exempt the metadata from disclosure; (3) redacted, as appropriate, under the relevant FOIA exemption(s); and (4) produced in the format as requested. The metadata would have to be reviewed before production because it is likely to contain exempt information. For example, the custodian field would contain information likely exempt from disclosure under FOIA Exemptions 6 and/or 7(C).
22. There is currently no budget to acquire such software/hardware. Moreover, the software/hardware would have to be tested to ensure that it allowed for the production of metadata in a manner compatible with DHS's obligations under FOIA. Specifically, the software/hardware would need to allow DHS to apply appropriate redactions to the metadata without subjecting DHS to undue burden and expense.
23. In addition, the production processes employed at the DHS Privacy Office, US-VISIT and DHS HQ would have to be changed in order to process metadata. IT resources would have to be identified and FOIA staff would have to be trained in the collection, processing and production of metadata. Neither DHS nor the above Components are currently equipped with the knowledge, information technology staff or additional FOIA staff necessary to prepare a response that includes metadata. Further, there is no funding available for such an

endeavor. OCIO is not aware of there being sufficient appropriations available to DHS to acquire and test the hardware and software that might enable the above Components to review and produce metadata pursuant to the Court's Orders.

24. Further, if the acquisition of new technology or new licensing was to be explored, the Federal Acquisition Regulations (FAR), and the Competition In Contracting Act (CICA) would require that the "acquisition process" be followed (i.e., need recognition and acquisition planning, contract formation, and contract administration) in order to assure fair competition and competitive pricing.
25. The Federal government must follow specific and detailed statutes and regulations without discretion to ensure the maximum competition practicable and to ensure the integrity of the procurement process.

JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 23 day of March, 2011



Maria Roat

Office of the Chief Information Officer
U.S. Department of Homeland Security