

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No. 96-1285 (JR)
	)	
v.	)	
	)	
DIRK KEMPTHORNE, Secretary of	)	
the Department of the Interior,	)	
et al.,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS'  
FEBRUARY 12, 2007 REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendants provide this response ("Response") to Plaintiffs' February 12, 2007 Request for Production Of Documents ("Requests"). This Response reflects Defendants' good faith diligent efforts to consider and investigate the subjects covered by the Requests and to respond to each of the Requests within the allotted time. The statements made herein are based upon the information known as of the date of this response and are subject to correction, modification and supplementation if and when additional relevant information becomes known to a Defendant.

The Requests as propounded seek production of documents responsive to one or more of seventeen enumerated individual requests denominated as "categories." All of these requests are subject to one or more objections, which are asserted below. The section entitled "General Objections to the Requests of February 12, 2007" contains objections that apply to each and

every one of these Requests and are to be read as forming an integral part of the response to each individual request.

**General Objections to the Requests of February 12, 2007**

1. These Requests are objectionable in their entirety, because each and every Request seeks production of documents beyond the proper scope of discovery established by Federal Rule of Civil Procedure 26. Subparagraph 26(b)(1) of said Rule provides in pertinent part that:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to *the claim or defense* of any party. . . . Relevant information need not be admissible at trial if the discovery appears *reasonably calculated* to lead to discovery of admissible evidence.”

Fed. R. Civ. P. 26(b)(1) (emphasis added). None of these Requests seek discovery concerning a “claim or defense” in this action, nor is any Request reasonably calculated to lead to discoverable evidence.

The District Court has ruled that Plaintiffs’ “claim for an accounting is the only ‘live’ claim in this litigation.” Cobell v. Norton, 226 F.R.D. 67, 76 (D.D.C. 2005). Consequently, the “current scope of this case, and thus of general discovery under Rule 26, is limited to matters relevant to Plaintiffs’ statutory claim that defendants have breached their statutory duty to provide an accurate accounting of all money in the IIM trust held in trust for the benefit of plaintiffs . . . .” Id. at 79. All of the Requests seek information concerning plans, evaluations, investigations, discussions, and other programmatic activities of the Department of the Interior with respect to its Information Technology (“IT”) systems. The Department’s programmatic activities with respect to the operation and management of its IT systems are not relevant to a

“claim or defense” in the case. With almost no exception, these Requests seek production of documents concerning nearly all aspects of IT system management and operations across several agencies in the Department, without limiting the inquiry to systems that house or access Individual Indian Trust Data (“IITD”), and without there being any demonstrable relationship to any security risk that is “likely” to occur and that “would substantially harm the class members’ ability to receive an accounting.” Cobell v. Kempthorne, 455 F.3d 301, 317 (D.C. Cir. 2006). Thus, the Requests improperly seek discovery that lies beyond the permitted scope set by Rule 26.

2. Moreover, it is well-established law of the case that the District Court’s jurisdiction is rooted in the Administrative Procedure Act. See 455 F.3d at 304. The APA routinely confines judicial review of agency action to the administrative record. E.g., Commercial Drapery Contractors, Inc. v. United States, 133 F.3d 1, 7 (D.C. Cir. 1998). “The focal point for judicial review” of agency action “should be the administrative record already in existence, not some new record made initially in the reviewing court.” Camp v. Pitts, 411 U.S. 138, 142 (1973) (per curiam). Here Plaintiffs have already been afforded vast discovery into the Department’s efforts to secure and protect its IT systems – well beyond that countenanced in any APA case – and there is nothing that warrants further departure from the firm rule that APA cases are decided on the administrative record. Indeed, in vacating the District Court’s most recent order on IT security in this case, the Court of Appeals cautioned that a “court cannot order programmatic supervision of an agency’s operations, nor can it displace an agency . . . by prescribing ‘particular tasks for Interior to perform based on policies developed’” by the court. 455 F.3d at 317 (quoting Cobell v. Norton, 391 F.3d 251, 258 (D.C. Cir. 2004)). Even as a

general matter of trust law, a court will not interfere “to control [trustees] in the exercise of discretion vested in them by the instrument under which they act.” Id. at 305 (quoting Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 111 (1989)). To the extent the District Court had previously permitted some discovery in this APA case, see Cobell v. Norton, 226 F.R.D. 67 (D.D.C. 2005), that decision is neither instructive nor controlling, because it pre-dates the massive discovery that has already been afforded to Plaintiffs and its underlying rationale has been rejected by the Court of Appeals, Cobell v. Kempthorne, 455 F.3d 301, 317 (D.C. Cir. 2006). Thus, these Requests fall entirely beyond the scope of discovery permitted for cases brought under the APA.

3. The Requests are patently unreasonable under Rule 26, because they are cumulative (and to some extent duplicative) of massive document productions made in response to the Order of April 25, 2005. As such, the Requests are unduly burdensome and expensive, because they seek to reinvestigate IT security at the Department of the Interior. From April through July, 2005, Plaintiffs participated in a 59-day evidentiary hearing before the District Court, during which they had more than ample opportunity to explore virtually any aspect of the Department’s IT security efforts. During this hearing, the Department produced over four and one-half million pages of documents, plus several gigabytes of e-mail messages and other information in electronic format, covering virtually every aspect of the Department’s IT security. The government spent millions of dollars to produce a huge volume of records, and the Department incurred other substantial costs, including thousands of man hours lost and delays on other important projects, including trust reform. See generally Department of the Interior, Status Report to the Court Number Twenty-Three at 15-16 (Nov. 1, 2005) (“effort required for this

document production resulted in significant backlogs and rescheduling that will hamper Interior's efforts for months to come"). The lengthy proceeding in 2005 yielded no evidence of a probable risk of any substantial harm to class members. 455 F.3d at 317. These Requests merely seek to continue a fishing expedition prohibited by Rule 26 in order to impose "perpetual judicial oversight of Interior's computer systems," a circumstance that the Court of Appeals considers undesirable, if not wholly untenable. *Id.* at 315. In light of this history, the Requests are improper as cumulative, duplicative, and unduly burdensome. Moreover, although the Requests specify August 1, 2005 as an end date, they nevertheless seek a needlessly burdensome duplicate production of documents already produced, because every request seeks documents "maintained" after August 1, 2005, which necessarily includes documents created prior to that date and maintained thereafter.

4. In light of the history summarized in General Objection No. 3 above, these Requests also constitute an undue burden, because they seek continual inquiry into subject areas that Plaintiffs have already "had ample opportunity" to discover, *see* Fed. R. Civ. P. 26(b)(2)(ii), and, alternatively, because "the burden or expense of the proposed discovery outweighs its likely benefit . . . ." Fed. R. Civ. P. 26(b)(iii). Less than two years ago, Plaintiffs received more than 4.4 million pages of documents and obtained hundreds of hours of testimony, on virtually every aspect of IT security at the Department of the Interior as it relates to Individual Indian Trust Data ("IITD"). Plaintiffs have had more than ample access to such documents, which renders de minimis the benefit of any further discovery sought by these Requests.

Moreover, continued discovery on IT security matters would place an immense and wholly unnecessary burden and expense upon the Department of the Interior, exacerbating the

adverse effects of the massive document production in 2005 upon numerous IT security efforts within the Department. Continued discovery is inappropriate, and its expense and burden outweigh any benefit of such discovery.

5. These Requests are also objectionable because the Requests articulate demands for production that the Court has already ruled to be patently unreasonable and, hence, improper in this case. Plaintiffs improperly demand an unbounded swath of “all versions” of documents “that in whole or part embody, refer, or relate to” several broad topics. When Plaintiffs previously used similar sweeping language, the Court denied Plaintiffs’ motion to compel production, stating:

Similarly meritorious are defendants’ objections that plaintiffs’ requests, in many instances, are overly broad, vague, and impose an undue burden. For example, Plaintiffs’ first request is for ‘[a]ll documents . . . which directly or indirectly relate to, refer to, or embody material regarding the appraisal of individual Indian allotted land and tribal land.’ Notice of Dep. and Req. for Produc. of Docs. at 2 (Aug. 21, 2003). It is the view of this Court that such a request is unreasonable on its face.

Cobell v. Norton, 222 F.R.D. 106, 109 (D.D.C. 2004).

6. The Requests are objectionable to the extent that they seek discovery – not for the purpose of obtaining admissible evidence to further a claim or defense on the merits as permitted by Rule 26 – but for the improper purpose of compiling an investigative record to support motions for contempt, both civil and criminal, a strategy that Plaintiffs have previously pursued against several civil servants and government officials. In particular, several of these Requests seek to investigate the conduct of certain named and unnamed employees of the Department of the Interior, including matters that are or may become the subject of internal investigation by the

Department's Inspector General. It is law of the case that Plaintiffs are not permitted such investigative discovery. See Memorandum and Order of Sept. 2, 2004.

7. The Requests are objectionable and improper to the extent the Requests seek, or could be construed as seeking, information or documents protected by the attorney-client privilege, work product privilege, deliberative process privilege, the right to privacy under applicable law, any joint defense, common interest or party communications privilege, investigative privilege, or any other applicable privilege, doctrine or right that would make the information or documents immune from discovery. Based on the other numerous objections set forth herein, Defendants do not presently intend to produce any documents and so object to conducting any privilege review or providing a privilege log in lieu of production but fully reserve their right to do so if circumstances later warrant. (Notwithstanding the foregoing, should Defendants make any inadvertent production hereunder of information protected by any of these privileges, doctrines, or rights, Defendants reserve their right to assert a privilege and such production shall not be deemed a waiver of the protections that those privileges, doctrines, or rights afford.)

8. The Requests are objectionable and improper, because the Requests seek disclosure of confidential personal, trade and security-sensitive information. First, unrestricted production of any information concerning the Department of the Interior's IT systems and any security measures or countermeasures relating to such systems, would place the security of such systems at risk. Second, the Requests are improper to the extent they seek information covered by the Privacy Act of 1971 but outside the scope of the Order entered November 27, 1996, or the scope of any other applicable statute or order. Third, the Requests are improper to the extent that

they seek documents containing confidential business or trade information belonging to third parties, tribes, contractors or the regulated community, or information that, if publicly released, could compromise Defendants' regulatory or enforcement activities. Defendants, therefore, object to requests for such documents and refuse to produce them unless and until an appropriate protective order is entered.

9. To the extent the Requests seek any electronic data, including but not limited to e-mail records, that are stored on system back-up tapes, such back-up tapes are used for restoration of information in case of system failure and are not designed nor used to archive or retrieve selected information, and it would be unduly burdensome to attempt to search such tapes. Furthermore, Defendants object to conducting any search of the ZANTAZ e-mail archive for any responsive documents, because such a search, together with the resulting production (1) would duplicate, for the most part, other e-mail stored on the Department's e-mail systems or would be merely cumulative of any hard copy document production, and (2) would impose an undue burden and expense on the Department to complete. Actual experience acquired during the 2005 hearing on IT security teaches that the ZANTAZ e-mail productions were expensive and time consuming to undertake and resulted in enormous duplication of other e-mail records that were produced by the Department. Moreover, production of any data from back-up tapes or from the ZANTAZ archive would largely be cumulative of data produced during the 2005 hearing. Defendants, therefore, object to searching for or producing any records stored on back-up media or any documents from the ZANTAZ archive in response to these Requests.

10. The Requests are improper to the extent they seek to require any Defendant to contact and/or discuss issues in this litigation with class members contrary to Court order.



11. The Requests are objectionable and improper to the extent they can be construed to require the production of documents in the possession of third parties (including without limitation other governmental agencies or departments, such as NARA), or in the possession, custody or control of a government official or employee other than in his or her official capacity. Documents in the personal possession, custody or control of such entities or individuals – who are not parties – are not discoverable pursuant to these requests. Fed. R. Civ. P. 34.

12. Defendants object to the words “beneficiary” and “beneficiaries” as used in and defined by these Requests as over broad. The class certification order in this case specifies class membership as “present and former beneficiaries of Individual Indian Money accounts (exclusive of those who prior to the filing of the Complaint herein had filed actions on their own behalf alleging claims included in the Complaint).” Order of February 4, 1997, at 2-3. This definition necessarily excludes persons: (1) who filed actions on their own behalf prior to June 10, 1996; (2) who have never had an IIM account; and (3) who never had an IIM account until after February 4, 1997. To the extent these Requests seek to include matters relating to persons not in the defined class, the Requests are over broad.

13. Defendants object to the word “trust” as used in and defined by these Requests as over broad. The only trust corpus relevant to this case are funds held in IIM accounts. Monies that have not been in an IIM account are not part of this case nor are allotted lands held in trust by the United States for individual Indians. To the extent these Requests seek discovery relating to such other assets, the Requests are over broad.

14. The Requests are also objectionable, unduly burdensome and improper on their face to the extent they attempt to impose any other obligation on Defendants that exceeds those

specified for document discovery in Federal Rules of Civil Procedure 26 and 34, including without limitation Plaintiffs' demand that documents be produced and delivered to Plaintiffs' counsel's offices by March 15, 2007, which is less than the thirty days permitted for a response under Rule 34, when read in conjunction with the additional allowance of three-days and the provision for weekend deadlines under Fed. R. Civ. P. 6(a) & (e). Although Defendants object to these Requests in their entirety on numerous grounds, should the Defendants determine that any documents will be produced, they will be produced in a manner and on a date that is reasonable to both sides in this case. To the extent Plaintiffs seek to impose on any Defendant the full cost of retrieving, producing and/or duplicating responsive documents, Defendants – as a prerequisite to producing or making available for inspection and copying responsive documents – may require Plaintiffs to advance their reasonable and fair share of the cost of that undertaking, in an amount and manner agreeable to both sides.

#### **Responses to Numbered Requests of February 12, 2007**

Without waiving the foregoing objections and expressly subject to them, Defendants respond to each individual Request as follows:

**Category No. 1:** ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created, on or after August 1, 2005, that in whole or part embody, refer, or relate to the status and effectiveness of BIA, OST, OTFM, OHTA, SOL, and OHA IT security technical controls on systems and applications, including without limitation the status and effectiveness or ineffectiveness of security and technical controls regarding firewalls, applications, equipment, patch management, anti-virus issues, spam, spyware, router access control lists, vulnerability scanning or the absence and infrequency thereof, management of contractors, identity ("ID") management and password controls, session locking and termination, intrusion prevention and detection, audit tools and audit management practices, as well as exceptions, vulnerabilities and weaknesses relating thereto (e.g., servers known or believed to be unstable and that may or would break down when scanned).

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it seeks all versions of all documents that in any part refer or relate to the described subjects; (2) it seeks discovery of all IT security information from multiple bureaus and offices within the Department of the Interior ("Department") without regard to whether it concerns or relates to the security of Individual Indian Trust Data ("IITD") and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery of virtually every possible topic on the subject of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case.

**Category No. 2:** ALL VERSIONS of DOCUMENTS in the custody and control of, or created or maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, including without limitation DOCUMENTS that in whole or part embody, refer, or relate to BIA's IT operations and security posture, vulnerabilities, and obstacles, including without limitation power point or other presentations made to James Cason, the departmental CIO, or CIO's of BIA, OST, OHA, SOL, and OHTA on or about January 26, 2007, regarding each bureau's or office's operations and security posture, including a comparison of operating conditions in 2001 and each subsequent year and 2007, operating tools post 2001, all currently identified vulnerabilities, including SANS Top 20 and otherwise and obstacles to remediation or correction, independent vulnerabilities and obstacles to remediation or correction, Enterprise Information Managed vulnerabilities and obstacles to remediation or correction, vulnerabilities in bureau and office LANs to Proxy Gateway (Internet connectivity) and obstacles to remediation or correction, and any and all directed or recommended employee, agent, or contractor responses to questions regarding the adequacy of IT security – on-line and off-line – for reconnection of each such bureau or office.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad.

The Request is over broad, in addition to the reasons set forth in the General Objections, because:

(1) it seeks all versions of all documents that in any part refer or relate to the described subjects;

(2) it seeks broad discovery concerning the IT operations at BIA without regard to whether any topic concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery of virtually every possible topic on the subject of IT systems "operations and security" without there being any demonstrable relevance of any topic to a claim or defense in this case. The Request is ambiguous and vague, because of its unclear syntax and use of undefined terms that may be subject to multiple interpretations, including but not limited to its demand for documents concerning the "BIA's IT operations and security posture," while at the same time requesting documents regarding "each bureau's . . . operations and security posture." (Emphasis added.)

**Category No. 3:** ALL VERSIONS of DOCUMENTS in the custody and control of or created or maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, that in whole or part embody, refer, or relate to memoranda of understandings and use agreements between tribes and Interior defendants and all attachments thereto, including without limitation such agreements involving the Morongo Band of Mission Indians, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and the Colville Reservation, that provide such tribes access to one or more of the following: TrustNet, OST, OTFM, OHTA, SOL, and OHA systems and IITD housed therein, and, thereby, permit tribes, oil companies, States, and other PERSONS to read and input IITD regarding land title and realty; leasing; probate; trust funds; collections; deposits; withdrawals; accruals; redemptions; distributions; disbursements; trust account set-offs or off-sets (e.g., pursuant to tribal credit programs); historical, current, and prospective accountings; and similar such trust information.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons stated in the General Objections, the Request is over broad because it seeks discovery of plans, discussions and deliberations concerning potential agreements between sovereign Tribes and the United States without regard to whether activities pose any risk to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department of the Interior's ability to discharge its accounting duties as prescribed by statute. Moreover, although the Department has studied the possibility of permitting certain Tribes limited access to some Department IT systems, no such program has been implemented to date and, therefore, such activities are clearly pre-decisional and not a proper subject of discovery.

**Category No. 4:** ALL VERSIONS of DOCUMENTS in the custody and control of, or created and maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, that in whole or part embody, refer, or relate to risks associated with tribal and other contractor access to TrustNet, OTFM and OHA systems and IITD, including without limitation memoranda and email to James Cason, the departmental CISO and CIO, CISO's and CIO's of BIA, OST, OTFM, OHA, SOL, OHTA and Kevin Tucker, Enterprise Architecture Division, from any Cyber Security Division, Trust Security Officers regarding any and all reviews or assessments of proposals for Morongo Tribal or any other tribal or other contractor connectivity to TrustNet, including without limitation knowledge, concern or risk (a) that hackers can exploit such connectivity to access, destroy or modify trust data (including IITD), (b) that OIG or GAO will discover the vulnerable back door into TrustNet and report such access as a serious vulnerability, and (c) that breaches of security have occurred involving tribes and data theft as well as the liability and impact of such theft, both determined and unresolved (as well as instructions, general or specific, to withhold such information from the Court, Cobell plaintiffs, OIG, or the GAO).

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because it

seeks discovery of IT security information concerning multiple bureaus and offices within the Department without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute. The Request is also confusing and ambiguous in its reference to a "Kevin Tucker," as Defendants are aware of an employee named Keith Tucker but not aware of an IT employee known as Kevin Tucker.

**Category No. 5:** ALL VERSIONS OF DOCUMENTS in the custody and control of, or created and maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, that in whole or part embody, refer, or relate to risks associated with contractors' and Interior defendants' employees' authorized and unauthorized access to BIA, OST, OTFM, OHTA, SOL, and OHA, TrustNet, and other networks and the Internet, risks identified in shared tribal and bureau and office facilities relating to the Northern Idaho, Yakima and Flathead agencies, risks associated with BIA and other Interior defendants' employees' use of administrative and fire laptop and desktop computers to access the Internet, all actions taken to enforce compliance with Interior defendants' policies, procedures, protocols related thereto, actions taken to correct or remediate ineffective compliance, and identified risks associated with each such bureau's and office's employees' remote access to IITD from their homes, tribal offices, libraries, or from any other off-site location.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because it seeks discovery of IT security information concerning multiple bureaus and offices within the Department without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute. The Request improperly seeks discovery

on numerous topics on IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case.

**Category No. 6:** ALL VERSIONS of DOCUMENTS in the custody and control of, or created and maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, that in whole or part embody, refer, or relate to plans to reconnect to the Internet DEFENDANTS' off-line bureaus and offices, including without limitation POA&M items that require correction or remediation prior to reconnection and each off-line bureau's and office's organization, information system and IT security program that identifies vulnerabilities, including by way of example, the absence of monitoring devices inside each such bureau's and office's LANs, the inability of each bureau and office to detect and respond to incidents inside its sites, the failure of each such bureau and office to activate attack prevention capabilities of NFR's, the shortage of essential Sygate licenses and the impact of such shortage on the effectiveness of intrusion detection for servers and workstations, the inability of each such bureau and office to secure its web presence, and the justification for each bureau's and office's overwriting of audit logs.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad.

In addition to the reasons set forth in the General Objections, the Request is over broad because:

(1) it seeks all versions of the referenced POA&M-related documents that in any part refer or relate to the described subjects; (2) it seeks broad discovery of IT security information from multiple bureaus and offices within the Department without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery on broadly stated subjects of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case. Because POA&M documents serve as running narrative for system changes, improvements and requirements that are subject to repeated, multiple on-going revisions, the Request would impose

an inordinate burden on Defendants to satisfy; to ask for every document relating to a POA&M is tantamount to requesting virtually every document for a particular IT system. Moreover, although the Department has studied the possibility of reconnecting certain bureaus and offices to the Internet, no such action has been authorized or implemented, and, therefore, such activities are clearly pre-decisional and not a proper subject of discovery.

**Category No. 7:** All VERSIONS of DOCUMENTS in the custody and control of or created and maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, that in whole or part embody, refer, or relate to Interior defendants' Internet reconnect project, BIA's, OST's, OTFM's, OHTA's, OHA's, and SOL's sponsors, and execution phases that identify each such bureau's and office's vulnerabilities, actions taken to correct or remediate such vulnerabilities, including without limitation such vulnerabilities as the failure to log access or attempted access, the failure to identify security violations, and the failure to conduct timely and regular reviews of extant audit trails.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it seeks all versions of all documents that in any part refer or relate to the described subjects across multiple bureaus and offices within the Department; (2) it seeks this vast discovery from multiple bureaus and offices without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case. Moreover, although the Department has studied the possibility of reconnecting certain bureaus and offices to the Internet, no such action has been



authorized or implemented, and, therefore, such activities are clearly pre-decisional and not a proper subject of discovery.

**Category No. 8:** ALL VERSIONS of DOCUMENTS in the custody and control of or created or maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, that in whole or part embody, refer, or relate to security threats posed by Interior employees and contractors, including without limitation memoranda and all attachments from Michael J. Howell, Acting CIO Interior, regarding security threats posed by trusted insiders, the vulnerability of DOI's Enterprise Services Network ("ESN") to internal threats, and the need for each bureau and office connected to ESN to take action to mitigate such risks.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it seeks all versions of all documents that in any part refer or relate to the described subjects across multiple bureaus and offices within the Department; (2) it seeks this vast discovery from multiple bureaus and offices without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case.

**Category No. 9:** ALL VERSIONS OF DOCUMENTS in the custody and control of, or created or maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, that in whole or part embody, refer, or relate to vulnerabilities and weaknesses identified in the Active Directory; BIA, OST, OTFM, OHTA, SOL, and OHA reconnection activities; the certification and accreditation of off-line systems; the adequacy of, and the need for, timely patching of servers and desktops; risks created and exacerbated by Interior defendants' implementation of Voice Over Internet Protocol

("VOIP"); the need for, and concerns relating to, departmental firewall replacement; Navajo and other router replacements for NFRs; switch replacement; the status of printer cleanup; the testing and implementation of "Blue Zones"; "TAC ACS" implementation and licenses; draft reconnection papers; POA&M's for each of the offline bureaus and offices that report weaknesses identified, priorities, and mitigation activity as well as all updates to such POAM's [sic] relevant to each system, server, and computer utilized by BIA, OST, OTFM, OHTA, SOL, and OHA.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it seeks all versions of all documents that in any part refer or relate to at least 13 broad subject areas across multiple bureaus and offices within the Department; (2) it seeks this vast discovery from multiple bureaus and offices without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case. Defendants also incorporate their objections and response to Request No. 6 above to the extent this Request seeks production of any POA&Ms or documents relating thereto.

**Category No. 10:** ALL VERSIONS OF DOCUMENTS in the custody and control of, or created or maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, that in whole or part embody, refer, or relate to the theft, loss, corruption, removal, or destruction of IITD housed in systems managed, administered, or operated by BIA OST, OTFM, OHA, OHTA, SOL, and contractors or agents in their behalf, including without limitation CNI's removal of four personal computers from the Eastern Region containing confidential probate information. Such DOCUMENTS shall include without limitation all relevant email of each Interior employee and contractor identified as sender and receiver, including cc's and bcc's, Randal Trickey, Robert Impson, Bud Brown,

Mike Croyley, Tim Martinez, Kyle Dwyer, Paul Robertson, Sharon Clark-Begaye, Gil Wake, Joan Tyler, Ross Swimmer, James Cason, Wendell Schubert, and their secretaries, clericals, subordinates, and administrative staff.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it seeks all versions of all documents that in any part refer or relate to any loss or destruction of IITD, when basic operation of every IT system involves copying and rewriting of data in and out of memory and in and out of storage media as a necessary part of the secure operation of such systems; (2) it seeks this vast discovery from multiple bureaus and offices without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks this sweeping discovery of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case. Although already asserted in the General Objections above, Defendants note that this Request is improper to the extent it appears to call for confidential personnel documents and/or investigative materials.

**Category No. 11:** ALL VERSIONS OF DOCUMENTS in the custody and control of or created or maintained by, the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created on or after August 1, 2005, that in whole or part embody, refer, or relate to internal and external security testing of IT systems managed, administered, or operated by BIA, OST, OTFM, OHTA, OHA, SOL, and contractors or agents in their behalf, including without limitation penetration testing and scanning.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it indiscriminately seeks all versions of all documents that in any part refer or relate to internal and external testing of every IT system used by multiple bureaus and offices without limitation (except as to date); (2) it seeks this vast discovery from multiple bureaus and offices without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks this sweeping discovery of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case.

**Category No. 12:** ALL VERSIONS OF DOCUMENTS in the custody and control of the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created or maintained on or after August 1, 2005, that in whole or part embody, refer, or relate to any investigations performed regarding unauthorized access, or attempts to gain unauthorized access, to any IT system administered, managed, or operated by BIA, OST, OTFM, OHTA, OHA, SOL, and contractors or agents in their behalf and any theft: attempted or suspected theft, misappropriation, or compromise of IITD or trust funds or information that can be used by internal and external hackers to gain access to IITD housed in such systems.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it seeks all versions of all documents that in any part refer or relate to any investigations of any incident concerning "unauthorized access" or "attempts to gain" such access to "any IT

system” operated or used by multiple bureaus and offices of the Department; (2) it seeks this vast discovery from multiple bureaus and offices without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department’s ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case. Furthermore, the Request is also over broad, because it seeks discovery concerning (1) any theft or misappropriation of “trust funds” and (2) theft or compromise of information that might be used by a hacker, but this case is not about asset management issues, Cobell v. Norton, 226 F.R.D. 67, 77 (D.D.C. 2005), nor is it about FISMA compliance or computer security, see Cobell v. Kempthorne, 455 F.3d 301, 314 (D.C. Cir. 2006), so neither of these topics are relevant to any claim or defense in this case. Without limiting any of the foregoing objections, Defendants also note that this Request, because it expressly seeks documents relating to any “investigations,” is objectionable because it includes within its scope documents that may be subject to an investigative privilege.

**Category No. 13:** ALL VERSIONS OF DOCUMENTS in the custody and control of the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created or maintained on or after August 1, 2005, that in whole or part embody, refer, or relate to vulnerabilities that exist or may exist in IT systems administered, managed, or operated by BIA, OST, OTFM, OHTA, OHA, SOL, and contractors or agents in their behalf and actions planned, taken, or completed to correct or remediate such vulnerabilities, including each vulnerability identified in every POAM for each such system.

RESPONSE: Defendants object to this request as unnecessarily cumulative and duplicative of other Requests. Defendants incorporate by reference their General Objections and their objections and responses to Request Nos. 1 and 6 above.

**Category No. 14:** ALL VERSIONS OF DOCUMENTS in the custody and control of the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created or maintained on or after August 1, 2005, that in whole or part embody, refer, or relate to investigations made by any PERSON or entity, including any Interior departmental, bureau or office employee, contractor, auditor, accountant or the OIG, of the internal and external security of IT systems administered, managed, or operated by BIA, OST, OTFM, OHTA, OHA, SOL, and contractors or agents in their behalf.

RESPONSE: Defendants object to this request as unnecessarily cumulative and duplicative of other Requests, especially Nos. 6 and 12. Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the Request is over broad, because: (1) it seeks all versions of all documents that in any part refer or relate to any investigations of any aspect of the internal or external security of any "IT system" operated or used by multiple bureaus and offices of the Department or its contractors; (2) it seeks this vast discovery from multiple bureaus and offices without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case. Without limiting any of the foregoing objections, Defendants also note that this Request, because it expressly seeks documents relating to any "investigations," is objectionable because it includes within its scope documents that may be subject to an investigative privilege.

**Category No. 15:** ALL VERSIONS OF DOCUMENTS in the custody and control of the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created or maintained on or after August 1, 2005, that in whole or part embody, refer, or relate to any audit or similar review conducted by the OIG or its contractors of IT systems administered, managed, or operated by

BIA, OST, OTFM, OHTA, OHA, SOL, and contractors or agents who administer, manage or operate such systems in their behalf.

RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it seeks all versions of all documents that in any part refer or relate to any "audit or similar review" of IT systems operated or used by multiple bureaus and offices of the Department; (2) it seeks this vast discovery from multiple bureaus and offices without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department's ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case. Without limiting any of the foregoing objections, Defendants also note that this Request, because it expressly seeks documents relating to actions by the Department's Office of the Inspector General, is objectionable because it includes within its scope documents that may be subject to an investigative privilege.

**Category No. 16:** ALL VERSIONS OF DOCUMENTS in the custody and control of the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created or maintained on or after August 1, 2005, that in whole or part embody, refer, or relate to any actions taken or planned to be taken to certify and accredit, or any such similar procedure, off-line and on-line operations for each IT system administered, managed, or operated by BIA, OST, OTFM, OHTA, OHA, SOL, and contractors or agents in their behalf.

RESPONSE: Defendants object to this request as unnecessarily cumulative and duplicative of other Requests. Defendants incorporate by reference their General Objections and their objections and response to Request Nos. 1 and 9 above. Defendants further object to this

Request as confusing and ambiguous, because it refers to “actions . . . to certify and accredit . . . off-line or on-line operations”; however, the C&A process does not certify or accredit “operations,” only systems and major applications.

**Category No. 17:** ALL VERSIONS OF DOCUMENTS in the custody and control of the Interior defendants or their REPRESENTATIVES and all DOCUMENTS transmitted to, or received by, the Interior defendants or their REPRESENTATIVES, created or maintained on or after August 1, 2005, that in whole or part embody, refer, or relate to the existence, installation, use, adequacy, effectiveness, and review of audit logs and other intrusion prevention and detection devices and controls, audit and otherwise, for each IT system administered, managed, or operated by BIA, OTFM, OHA, OHTA, SOL, and contractors or agents in their behalf.

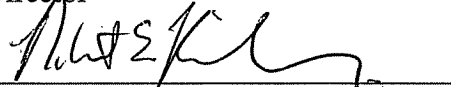
RESPONSE: Defendants incorporate by reference their General Objections above and further object to this request on the grounds that the request is vague, ambiguous and over broad. In addition to the reasons set forth in the General Objections, the Request is over broad because: (1) it seeks all versions of all documents that in any part refer or relate to “audit logs” and similar devices for IT systems operated or used by multiple bureaus and offices of the Department; (2) it seeks this vast discovery from multiple bureaus and offices without regard to whether it concerns or relates to the security of IITD and without regard to whether there is or would be any adverse impact upon the Department’s ability to discharge its accounting duties as prescribed by statute; (3) it seeks sweeping discovery of IT systems management without there being any demonstrable relevance of any topic to a claim or defense in this case. Without limiting any of the foregoing objections, Defendants also object to this Request as over broad and unduly burdensome, because it seems to include within its scope audit log files, which are enormous and, for the most part, contain entirely irrelevant data.



Dated: March 19, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on March 19, 2007 I served the foregoing *Defendants' Response to Plaintiffs' February 12, 2007 Request for Production of Documents* by facsimile in accordance with their written request of October 31, 2001 upon:

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Per the Court's Order of April 17, 2003,

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