



**U.S. Department of Justice**

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August 25, 2004

Mr. Mark J. Langer  
Clerk, United States Court of Appeals  
for the District of Columbia Circuit  
United States Courthouse  
Room 5423  
Third & Constitution Avenue, N.W.  
Washington, D.C. 20001

Re: Cobell v. Norton, No. 03-5314  
(Oral Argument scheduled for September 15, 2004, before Judges Sentelle, Tatel and Williams)

Dear Mr. Langer:

The government hereby responds to plaintiffs' August 9 letter submitted under Rule 28(j).

Plaintiffs' letter notes two publications. The first is a June 2004 General Accounting Office(GAO) report entitled "Information Security–Agencies Need to Implement Consistent Processes in Authorizing Systems for Operation." The second is a May 2004 National Institute of Standards(NIST) publication entitled "Information Security– Guide for the Security Certification and Accreditation of Federal Information Systems."

Plaintiffs suggest that these reports provide evidence relevant to the propriety of the district court's injunction. Like the reports plaintiffs previously cited in Nos.03-5262/04-5084, these reports address broad issues pertaining to government information security in general. They do not address the security of Indian trust data and have no relevance to this appeal, or the related IT security appeals.

We note, also, that plaintiffs appear to misunderstand the cited reports. These publications concern the general topic of "certification and accreditation" of government information systems, an internal agency process involving risk identification and assessment. Plaintiffs mistakenly believe that only agency systems with full security "certification and accreditation" may be approved for

operation, and also believe that point is significant. Apart from the fact plaintiffs' argument on this score has no bearing on this litigation, it is incorrect. As NIST explains, agency officials may issue interim authorization to operate a system even when they determine that full certification and accreditation of that system is not yet warranted. NIST Guide 20, 41. Thus, while Interior as of March 2004 had fully certified and accredited 30 systems, it had also issued interim approval to operate an additional 108 systems. JA1820 (Nos.03-5262/04-5084).

Plaintiffs also point to an agency-by-agency chart reflecting that, as of the first half of FY2004, only 19% of Interior's information systems had received full "certification and accreditation," as compared to a government-wide average of 63%. See GAO Report 24. Again, plaintiffs' argument not only lacks relevance but misunderstands the cited documents. GAO's analysis expressly "highlighted inconsistencies in the way agencies report such certification and accreditation performance data," id. at 22, and comparisons among agencies based on this data are correspondingly problematic.

Respectfully submitted,

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