

# Exhibit Z

### **TIMELINE REGARDING MAGNETIC TAPES**

- May 15, 2009:** Plaintiffs serve their First Request for Production of Documents to all Defendants, wherein they request as Request for Production No. 11: “Rosters, lists or other DOCUMENTS identifying the service personnel who were involved in the TEST PROGRAMS or any of them.” (Plaintiffs defined documents to include “computer tape.”) (Docket No. 129-1 at 10.)
- November 16, 2009:** Plaintiffs serve their First Set of Interrogatories to all Defendants, wherein they serve Interrogatory No. 14: “For each database YOU have used to record or preserve information CONCERNING TEST SUBJECTS or the TEST PROGRAMS, please IDENTIFY each, including the purpose, period of time it was active, and software and hardware requirements.” (Declaration of Ben Patterson (“Patterson Decl.”) ¶ 38, Ex. Z-1 at 10.)
- March 4, 2010:** Defendants’ Rule 26(a)(1) Disclosures identify the “magnetic tapes” containing, among other things, “Original human clinical data from Edgewood.” (Docket No. 291-1 at 14.)
- June 29, 2010:** Defendants respond to Plaintiffs’ Interrogatories, stating in response to Interrogatory No. 14 (labeling the response, however, as one to Interrogatory No. 9): “CIA has a copy of certain potentially responsive, classified DoD information contained on magnetic tapes that are unreadable to CIA. CIA also has printout of classified DoD information that it believes to be the contents of the magnetic tapes.” (Docket No. 192-1 at 15.)
- August 12, 2010:** Defendants amend its responses to Interrogatory No. 14 (labeling it again as Interrogatory No. 9), adding to their response that the “CIA will return both the tapes and the printout to DoD for a classification review and determination of whether DoD possesses the hardware to read the tapes.” (Docket No. 123-6 at 15.)
- September 29, 2010:** Plaintiffs’ counsel requests date as to when Plaintiffs can expect the production of the magnetic tapes. (Docket No. 192-7 at 4.)
- January 5, 2011:** Defendants amend and supplement responses to Plaintiffs’ Interrogatory No. 14 (labeling it again as Interrogatory No. 9), stating that “The CIA has located some magnetic computer tapes associated with Project OFTEN that CIA officers believe are copies of computer databases that the CIA received from DoD employees at Edgewood Arsenal in the early 1970s, and the CIA believes that some of the databases contain information about human testing.” (Docket No. 291-2 at 37.)

- February 24, 2011:** Plaintiffs' counsel again requests production of magnetic tapes immediately. (Docket No. 291-3 at 7.)
- March 11, 2011:** Defendants inform Plaintiffs that the CIA has transferred the magnetic tapes to the DoD. (Docket No. 291-4 at 5.)
- August 15, 2011:** Defendants inform Plaintiffs that they are unable to recover the data on the magnetic tapes and that the tapes will remain classified because DoD is unable to undertake a classification review. (Docket No. 291-5 at 2.)
- September 13, 2011:** Defendants finally list the tapes on a DoD privilege log even though the content on the tapes had not been reviewed. (Docket No. 291-6 at 2.)
- October 12, 2011:** Parties file a Joint Statement of Discovery Dispute Concerning the Magnetic Tapes, wherein Defendants state "it appears that it simply is not feasible to recover the information contained on these magnetic tapes." (Docket No. 300 at 4.)
- October 13, 2011:** The Court holds a discovery hearing addressing the magnetic tapes, wherein Defendants represent that they cannot access the tapes. The Court orders parties to meet and confer regarding the magnetic tapes. (Docket No. 306 at 30-31.)
- October 31, 2011:** Defendants post a Request for Information ("RFI") soliciting information regarding digitizing the magnetic tapes. (Docket No. 335 at 27.)
- November 7, 2011:** Parties file a Joint Letter Concerning Discovery Status and Disputes addressing, in part, the magnetic tapes, wherein Defendants state: "DoD [] was unable to convert and review these nearly forty-year-old tapes." (Docket No. 318 at 26.) In addition, DoD states that Defense Logistics Agency ("DLA") "could identify no current hardware capable of reviewing the tapes..." (*Id.* at 27.)
- November 18, 2011:** Responses to the RFI are due. (*Id.* at 27.)
- December 14, 2011:** Plaintiffs file a Supplemental Filing Concerning Magnetic Tapes and Expert Declaration, wherein a computer forensics expert opined that upon a number of assumptions, "the content of the magnetic tapes can be accessed today." (Docket No. 335 at 5.)

- December 15, 2011:** The Court holds a discovery hearing addressing the magnetic tapes, wherein Defendants state that the two contractors who responded to the RFI were not cleared to review classified information, so they would transfer the tapes to the DLA. However, “any kind of commitment [Defendants] would give you [with respect to retrieval] would be completely false.” The Court orders the parties to meet and confer regarding the magnetic tapes and for Defendants to provide information to Plaintiffs regarding the status of the conversion process on December 21 and again on January 3 to provide Plaintiffs with an update on the next steps with respect to the tapes. (Docket No. 345 at 70.)
- January 19, 2012:** After extensive correspondence, Defendants finally provide Plaintiffs with the Responses to the RFIs that were due to the DOD on November 18, 2011. (Patterson Decl. ¶ 39.)
- February 14, 2012:** During the meet and confer call, Defendants refused to provide Plaintiffs any material update on the magnetic tapes. (Patterson Decl. ¶ 47, Ex. FF at 3.)
- February 24, 2012:** Defendants provided Plaintiffs with the following information: DLA has both secured the funds for the part and ordered the part. They expect to receive it by close of business on Tuesday, February 28, and estimate it will take one week from that date to determine whether the part will allow them to access and review the information on the tapes. (Patterson Decl. ¶ 14, Ex. I at 2.)