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[AT&T documents to stay sealed](#)

- Bob Egelko, Chronicle Staff Writer

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(05-17) 13:04 PDT SAN FRANCISCO - A federal judge maintained a lid of secrecy today on AT&T documents that allegedly show the company's cooperation with a government electronic surveillance program, and put a privacy-rights group's suit on hold while he considers the Bush administration's request to dismiss the case.

The documents were obtained by Marc Klein, a former AT&T technician, who said in a statement that he had seen equipment installed at the company's San Francisco facility in 2003 that would allow the National Security Agency to screen huge volumes of customers' Internet messages.

Klein's testimony and supporting documents are the heart of a lawsuit accusing AT&T of illegally turning over phone and Internet data to the federal agency without a warrant or proof of wrongdoing. The Justice Department says the suit must be dismissed because it would expose military secrets.

At today's hearing in San Francisco, the first since the suit was filed in January, Chief U.S. District Judge Vaughn Walker refused AT&T's request to require Klein and the plaintiffs to return their copies of the documents. But Walker also denied requests by the plaintiffs, joined by The Chronicle and other media organizations, to unseal the documents and make them available to the public.

The documents may contain trade secrets, as the company contends, and should remain under wraps for now, the judge said. He left the door open for the disclosure of other sealed material, including declarations by Klein and an expert witness, but said the next order of business would be a hearing June 23 on motions by AT&T and the government to dismiss the suit.

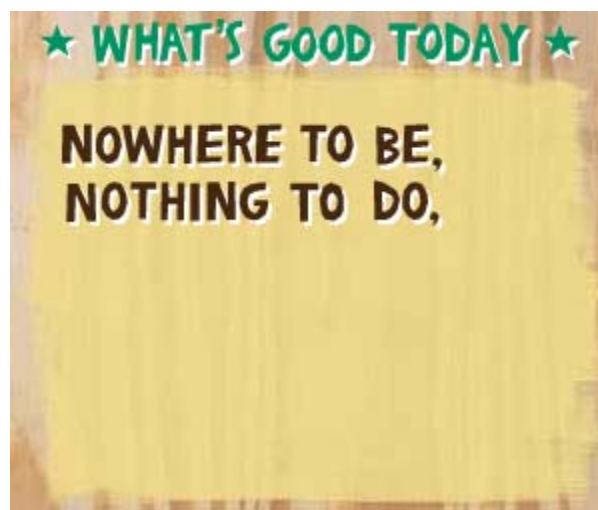
"These are motions that may very well terminate the litigation at an early stage," Walker said. He rejected arguments by the Electronic Frontier Foundation, which filed the suit on behalf of AT&T customers, that he should at the same time consider an injunction that would prohibit the company from turning over any more customer information to the government.

The Bush administration's motion to dismiss the case, which the government filed at 1 a.m. Saturday, was based largely on secret arguments and evidence about the surveillance program that have been kept in a government facility and have not yet been presented to Walker.

When Justice Department lawyer Carl Nichols urged Walker to read the classified material before ruling on the dismissal motion, the judge asked whether that would be fair to the plaintiffs, who will not have access to that material when they argue against the motion.

"That is how it has to be done," Nichols replied. "To do otherwise would be to disclose facts, the result of which would be harmful to national security."

Electronic Frontier Foundation lawyer Cindy Cohn contended that the suit against AT&T could be decided without delving into state secrets, by determining whether the company had disclosed customer information to the government without legal authority.



But AT&T lawyer Bradford Berenson -- who described the company as "an innocent bystander" in a dispute between the plaintiffs and the government -- said the question of whether the government had authorized the alleged disclosures may also involve state secrets.

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