

Brett Max Kaufman  
ACLU  
125 Broad Street – 18<sup>th</sup> Floor  
New York, NY 10004

JUN 23 2017

Reference: ODNI Case DF-2017-00314

Dear Mr. Kaufman:

This acknowledges receipt of your mail dated 13 June 2017 (Enclosure), received in the Information Management Division of the Office of the Director of National Intelligence (ODNI) on 21 June 2017. Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, you requested information related to agreements, memoranda of understanding, or other arrangements with foreign countries concerning the sharing between the United States and any other country of foreign-intelligence surveillance data.

We will contact you as soon as possible if additional information or clarification is needed to process your request.

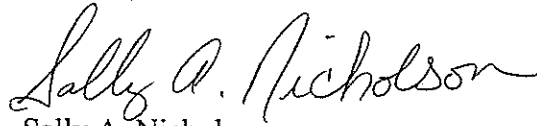
**Regarding your request for a fee waiver, all fees associated with the processing of this request have been waived.**

With respect to your request for expedited processing, please be advised that ODNI handles all requests in the order we received them on a “first-in, first-out” basis. We make exceptions to this rule only when a requester establishes a compelling need under the standards in our regulations. A “compelling need” exists: 1) when the matter involves an imminent threat to the life or physical safety of an individual, or 2) when a person primarily engaged in Disseminating information makes the request and the information relevant to a subject of Public urgency concerning an actual or alleged Federal government activity. Your request does not demonstrate a “compelling need” under these criteria and, therefore, we deny your request for expedited processing.

We may be unable to provide a response within the 20 working days stipulated by the FOIA. If we have not responded to you by the 20<sup>th</sup> working day, you have the right to consider our inability to meet the 20 day requirement for a response as a denial, and may appeal to the ODNI, Information Management Division, Washington, DC 20511 within 90 days of that date. **It would seem more reasonable, however, to allow us sufficient time to continue processing your request and respond as soon as we can.** You will have the right to appeal any denial of records/information at that time.

If you have any questions, please feel free to email our Requester Service Center at [DNI-FOIA@dni.gov](mailto:DNI-FOIA@dni.gov) or call us at (301) 243-1499. You can also contact ODNI's FOIA Liaison at [DNI-FOIA-Liaison@dni.gov](mailto:DNI-FOIA-Liaison@dni.gov).

Sincerely,

A handwritten signature in black ink that reads "Sally A. Nicholson". The signature is written in a cursive style with a large, flowing "S" and "N".

Sally A. Nicholson  
Chief, FOIA Branch  
Information Management Division

Enclosure



DF-2017-00314

JUN 21 2017

June 13, 2017

JUN 15 2017

National Security Agency  
Attn: FOIA/PA Office  
9800 Savage Road, Suite 6932  
Ft. George G. Meade, MD 20755-6932

Central Intelligence Agency  
Information and Privacy Coordinator  
Washington, D.C. 20505

Office of the Director of National Intelligence  
FOIA/Privacy Act Office  
Washington, DC 20511

Federal Bureau of Investigation  
Attn: FOI/PA Request  
Record/Information Dissemination Section  
170 Marcel Drive  
Winchester, VA 22602-4843

Department of Defense  
OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

Re: **Request Under Freedom of Information Act**  
**(Expedited Processing & Fee Waiver/Limitation Requested)**

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU")<sup>1</sup> submit this request under the

<sup>1</sup> The American Civil Liberties Union Foundation is a 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, directly lobbies legislators, and mobilizes the American Civil Liberties Union's members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

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TREASURER

Little is known, however, about these or other international information-sharing arrangements. The Five Eyes arrangements are not public but reportedly permit the sharing of raw data with minimal privacy safeguards. For example, the United Kingdom reportedly accesses raw NSA surveillance material without judicial authorization.<sup>6</sup> A memorandum of understanding between the United States and Israel has been disclosed by the press, but it also contains few protections. It permits the sharing of U.S. person information, contains no prohibition on the use of information to commit human rights abuses, allows sharing of non-U.S. person data with third parties, and contains no requirement that Israel adhere to U.S. policies regarding the treatment of non-U.S. person data.<sup>7</sup> Recently, both of these intelligence-sharing relationships have been the subject of widespread national attention and media controversy.<sup>8</sup>

The government has disclosed general policies that govern the dissemination of information collected under several of its foreign-intelligence surveillance authorities, but those policies impose few meaningful restrictions on the sharing of data with foreign governments. For example, Section 7 of U.S. Signals Intelligence Directive 18 limits the dissemination of data collected under Executive Order No. 12,333, but it imposes restrictions solely with respect to U.S.-person data, and even those restrictions are riddled with loopholes.<sup>9</sup> The same is generally true of the other policies that have been publicly disclosed.<sup>10</sup>

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Glenn Greenwald, Laura Poitras & Ewen MacAskill, *NSA Shares Raw Intelligence Including Americans' Data with Israel*, *The Guardian*, Sept. 11, 2013, <https://perma.cc/F78X-MCUM>.

<sup>6</sup> James Ball, *GCHQ Views Data Without a Warrant, Government Admits*, *The Guardian*, Oct. 28, 2014, <https://perma.cc/P6E7-4NQ3>.

<sup>7</sup> Greenwald et al., *supra* note 5.

<sup>8</sup> See, e.g., Zachary Cohen, *How US Intelligence Leaks Upset Two Allies in One Week*, *CNN* (May 26, 2017, 11:40 AM), <http://www.cnn.com/2017/05/24/politics/manchester-us-leaks-allies/index.html>; Kathryn Watson, *U.K. Resumes Intelligence Sharing With U.S.*, *CBS News* (May 25, 2017, 5:58 PM), <http://www.cbsnews.com/news/u-k-rsumcs-intelligence-sharing-with-u-s/>; Ellen Mitchell, *Israel Alters US Intelligence-Sharing Rules After Trump's Russia Meeting: Report*, *The Hill* (May 24, 2017, 1:30 PM), <http://thehill.com/policy/defense/334952-israel-alters-us-intelligence-sharing-rules-after-trumps-russia-meeting>.

<sup>9</sup> U.S. Signals Intelligence Directive SP0018, *Legal Compliance and U.S. Persons Minimization Procedure* § 7 (Jan. 25, 2011), <https://perma.cc/FVW3-QP3G>.

<sup>10</sup> See, e.g., PPD-28 Section 4 Procedures § 7.2 (Jan 12, 2015) (permitting sharing of "unevaluated SIGINT" on the only apparent condition that the government "inform the recipient that the dissemination may contain personal information so that the recipient can take appropriate steps to protect that information"), <https://www.nsa.gov/news-features/declassified-documents/nsa-css-policies/asscts/files/PPD-28.pdf>; *Minimization Procedures Used by the NSA*

- e. Any limitations on the United States' retention, use, or dissemination of electronic-surveillance data requested or otherwise acquired from another country, including the use of such data (or data derived from it) in civil, criminal, administrative, or other proceedings.
- f. The circumstances, if any, in which the United States may request or otherwise acquire electronic-surveillance data from another country where the United States itself could not lawfully acquire the same data in the same manner.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

### **III. Application for Expedited Processing**

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).<sup>12</sup> There is a "compelling need" for these records, as defined in the statute, because the information requested is "urgen[tly]" needed by an organization primarily engaged in disseminating information "to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

*A. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>13</sup> Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU's work and are among its primary activities. *See ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged

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<sup>12</sup> *See also* 32 C.F.R. § 286.8(e); 32 C.F.R. § 1900.34; 32 C.F.R. § 1700.12; 28 C.F.R. § 16.5(e); 32 C.F.R. § 286.8(e).

<sup>13</sup> *See also* 32 C.F.R. § 286.8(e)(1)(i)(B); 32 C.F.R. § 1900.34(c)(2); 32 C.F.R. § 1700.12(c)(2); 28 C.F.R. § 16.5(e)(1)(ii); 32 C.F.R. § 286.8(e)(1)(i)(B).

civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.<sup>17</sup> The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. See <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, [www.aclu.org](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

The ACLU website includes many features on information obtained

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<sup>17</sup> See, e.g., Hugh Handeyside, *New Documents Show This TSA Program Blamed for Profiling Is Unscientific and Unreliable — But Still It Continues* (Feb. 8, 2017, 11:45 AM), <https://www.aclu.org/blog/speak-freely/new-documents-show-tsa-program-blamed-profiling-unscientific-and-unreliable-still>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ — Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; Nathan Freed Wessler, *ACLU- Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems* (Oct. 29, 2013), [https://www.aclu.org/sites/default/files/assets/eye\\_on\\_fbi\\_-\\_sars.pdf](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

FOIA request related to the FISA Amendments Act<sup>22</sup>; a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA requests<sup>23</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>24</sup>

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

*B. The records sought are urgently needed to inform the public about actual or alleged government activity.*

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>25</sup> Specifically, the requested records relate to the United States' international information-sharing arrangements. As discussed in Part I, *supra*, these arrangements are the subject of widespread public controversy and media attention, and the records sought relate to a matter of widespread and exceptional media interest.

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

#### **IV. Application for Waiver or Limitation of Fees**

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).<sup>26</sup> The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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<sup>22</sup> *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>23</sup> *Statistics on NSL's Produced by Department of Defense*, ACLU, <https://www.aclu.org/other/statistics-nsls-produced-dod>.

<sup>24</sup> Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

<sup>25</sup> *See also* 32 C.F.R. § 286.8(e)(1)(i)(B); 32 C.F.R. § 1900.34(c)(2); 32 C.F.R. § 1700.12(c)(2); 28 C.F.R. § 16.5(e)(1)(ii); 32 C.F.R. § 286.8(e)(1)(i)(B).

<sup>26</sup> *See also* 32 C.F.R. § 286.12(l)(1); 32 C.F.R. § 1900.13(b)(2); 32 C.F.R. § 1700.6(b)(2); 28 C.F.R. § 16.10(k)(2); 32 C.F.R. § 286.12(l)(1).

887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).<sup>29</sup>

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”<sup>30</sup> As was true in those instances, the ACLU meets the requirements for a fee waiver here.

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Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C.

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<sup>29</sup> Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53–54.

<sup>30</sup> In May 2017, CBP granted a fee-waiver request regarding a FOIA request for documents related to electronic device searches at the border. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists.