

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION
and AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,

Plaintiffs,

V.

DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION, and
DEPARTMENT OF HOMELAND SECURITY,

Defendants.

) No. 1:24-cv-05722

DECLARATION OF PATRICK HOWARD

I, Patrick A. Howard, declare the following to be true and correct:

1. I am a Branch Chief in the Freedom of Information Act (FOIA) Division, Privacy and Diversity Office, Office of the Commissioner, U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS). I have been a Branch Chief in the FOIA Division since February 8, 2015. In this capacity, I oversee a staff of Government Information Specialists and FOIA assistants as well as the processing of FOIA requests submitted to CBP pursuant to FOIA, 5 U.S.C. §552, the Privacy Act (PA), 5 U.S.C. §552a, and other activities conducted pursuant to the applicable records access provisions.

2. I am familiar with CBP's procedures for responding to FOIA requests. I provide technical and administrative supervision and direction to a group of FOIA specialists in processing FOIA requests and assist with FOIA/PA litigation matters, and I am personally familiar with the processing of FOIA/PA responses, including, at times, directly reviewing responses for adequacy and adherence to federal laws and regulations.

3. The statements I make in this declaration are based upon my personal knowledge, which includes knowledge acquired through information furnished to me in the course of my official duties and agency files that I have personally reviewed in the course of my official duties.

4. I am familiar with the May 21, 2024, FOIA request submitted by the American Civil Liberties Union Foundation (herein after referred to as “ACLU” or “Plaintiffs”) to CBP.

5. I submit this declaration in support of the Defendants’ Motion for Summary Judgment. The purpose of this Declaration is to summarize CBP’s FOIA procedures and the steps CBP took in conducting its search of CBP records that were potentially responsive to Plaintiff’s Request.

**CBP’S STANDARD PROCEDURE FOR INITIATING SEARCHES IN
RESPONSE TO FOIA REQUESTS**

6. CBP is a component law enforcement agency of DHS with statutory responsibility for safeguarding America’s borders and facilitating legitimate trade and travel. CBP is comprised of more than 60,000 employees charged with enforcing hundreds of federal statutes. CBP’s mission is to protect the borders of the United States against terrorists and instruments of terror, enforce the customs and immigration laws of the United States, and foster our Nation’s economy by facilitating lawful international trade and travel.

7. CBP’s FOIA Division is responsible for handling all FOIA request received by the Agency. As published in the DHS FOIA Annual Reports, during fiscal year 2024, CBP FOIA received 179,489 requests and processed 134,556 requests. During fiscal year 2023, CBP FOIA received 144,474 requests and processed 89,727 requests. During fiscal year 2022, CBP FOIA received 132,117 requests and processed 111,571 requests. During fiscal year 2021, CBP FOIA received 108,177 requests and processed 90,576 requests. Although the numbers have not yet

been finalized for fiscal year 2025, CBP FOIA has already received approximately 94,877 requests and processed approximately 65,589 requests as of March 29, 2025.

8. Broadly, the CBP's FOIA Division reviews FOIA requests, determines whether responsive records exist and, if so, whether they can be released in accordance with the FOIA. In processing such requests, the FOIA Division consults with CBP component agencies, CBP personnel and, when appropriate, with other components within DHS, as well as other Executive Branch agencies. Despite the large size of CBP as an organization, the FOIA Division currently consists of only 31 full-time staff, which includes 25 FOIA processors and 6 supervisory employees.

9. A Government Information Specialist (GIS), also known as a FOIA processor, is tasked with reviewing information and assisting managers and employees concerning FOIA issues, policies, and procedures. He or she is also responsible for processing FOIA requests for CBP records. A GIS is responsible for reviewing and preparing draft responses to requests for releases of information and, in so doing, must apply relevant statutes, regulations, agency rules, and/or executive orders as they pertain to FOIA requests.

10. A Branch Chief is responsible for managing policy formulation, advising agency management, and ensuring compliance with federal laws governing the release of information. Branch Chiefs oversee the release of CBP documents and information, assist with FOIA litigation matters, and oversee the processing of FOIA responses and adherence to federal laws and regulations.

11. Where the FOIA Division has no direct access to records that may be responsive to a request, it must determine which CBP component offices are likely to have responsive information and work with those offices to gather any potentially responsive records. Based on

the FOIA Division's familiarity, experience and knowledge with the types of records that each office maintains, an assessment is made as to where responsive records are likely to be maintained based on a review of the content of the request itself and the nature of the records sought, as well as discussions with knowledgeable agency personnel. Accordingly, when CBP receives a FOIA request that reasonably describes the records requested and complies with the agency's rules governing the procedures for FOIA requests, any office reasonably likely to have responsive information is tasked with searching for and retrieving potentially responsive records. Once those searches are completed, the request and any responsive records are returned to the FOIA office for processing of the records, appropriate redactions, and obtaining final authorization for release prior to production. The FOIA Division will also consult with CBP personnel, other components within DHS, or agencies outside of DHS, as necessary, prior to release. If a request is improper for any reason, the requester is notified, and the request is closed.

12. If the requested information is under the purview of a DHS component other than CBP, the FOIA Division will refer the request to the appropriate DHS component for processing and direct response to the requester. If the FOIA request seeks records under the purview of a government agency other than DHS, the FOIA Division informs the requester to contact the other government agency directly and the FOIA Division administratively closes the FOIA request.

PLAINTIFFS 'REQUEST AND CBP'S SEARCH FOR RESPONSIVE RECORDS

13. By letter dated May 21, 2024, Plaintiffs submitted a FOIA request to the Federal Bureau of Investigation's ("FBI") Record/Information Dissemination Section, Department of Justice's National Security Division, and DHS 'Privacy Office for copies of records pertaining to "the use of Joint Terrorism Task Forces ("JTTFs") and fusion centers to investigate, collect, and disseminate information on people engaged in protest and communities of color, and the adequacy

of the privacy, civil rights, and civil liberties safeguards that apply to them.” Specifically, Plaintiffs requested:

1. All final policies, guidance, procedures, directives, advisories, memoranda, agreements, training materials, and/or legal opinions created from January 20, 2017 to the present, pertaining to:
 - a. The use of JTTFs and/or fusion centers to collect information about, monitor, surveil, observe, question, interrogate, and/or investigate individuals or organizations engaged in protest;
 - b. The activities and/or predicate criteria that trigger JTTF and/or fusion center involvement, including the legal justification and/or factual showing required;
 - c. Intra-agency correspondence and correspondence among federal, state, and local law enforcement agencies pertaining to monitoring, surveilling, observing, questioning, interrogating, and/or otherwise investigating individuals or groups engaged in protest through or by JTTFs and/or fusion centers;
 - d. The collection, storage, use, and/or dissemination of data (including photographs, videos, and electronic surveillance records) obtained during and/or in connection with monitoring of individuals or groups engaged in protest through or by JTTFs and/or fusion centers; and
 - e. JTTFs and fusion centers’ protection of privacy, civil rights, and civil liberties.
2. Records created from January 20, 2017 to the present, indicating:
 - a. The number of individuals whose activities have been investigated through or by JTTFs and/or fusion centers in connection with protests; and
 - b. The number and names of groups whose activities have been investigated through or by JTTFs and/or fusion centers in connection with protests; and
3. Records created from January 20, 2017, to the present concerning the definition of the following terms as used and applied by JTTFs and/or fusion centers:
 - a. “Racially or Ethnically Motivated Violent Extremism”;²⁷
 - b. “Anti-Government or Anti-Authority Violent Extremism”;²⁸
 - c. “Animal Rights or Environmental Violent Extremism”;²⁹
 - d. “All Other Domestic Terrorism Threats”;³⁰
 - e. “Abortion-Related Violent Extremism”;³¹
 - f. “Domestic violent extremism”;³²
 - g. “Domestic terrorism”;³³
 - h. “Anarchist violent extremism”;³⁴
 - i. “Radical agitators”;³⁵
 - j. “Criminal organizers and instigators”;³⁶
 - k. “Violent instigators”;³⁷
 - l. “Antifa”;³⁸ and
 - m. “Far-left extremists.”³⁹
4. Records describing the process and/or procedures individuals may use to find out whether and what information about themselves has been collected and maintained by JTTFs and fusion centers, and the process by which any inaccurate information may be challenged and expunged.

14. On July 10, 2024, DHS's FOIA Office transferred Plaintiff's FOIA request to CBP's FOIA Office for processing and response.

15. On July 10, 2024, the request was entered into the CBP FOIA online tracking system under CBP-FO-2024-136290, and CBP sent a letter to the Plaintiffs acknowledging receipt of the FOIA request. *See* Ex. A.

16. Based on my FOIA expertise and experience, following an initial review of the request, it was determined that the office most likely to maintain information responsive to the Request was the National Targeting Center ("NTC"), which is the division within CBP responsible for, among other things, identifying threats to our Nation's security, such as terrorists and instruments of terror, and preventing them from entering the United States. The NTC is also responsible for overseeing CBP's participation in task forces.

17. Pursuant to the process described above, the CBP FOIA Division referred the request to the NTC on July 10, 2024, to conduct a search for potentially responsive records.

18. On July 17, 2024, the NTC responded to tasking via email, that they had no responsive records. Specifically, a subject matter expert within the NTC determined that a search would not be reasonably likely to identify any responsive documents because the NTC does not coordinate or direct operational efforts with JTTFs or fusion centers.

19. On July 29, 2024, Plaintiffs filed the instant action. In their complaint, Plaintiffs state that CBP "acknowledged receipt of the request and assigned it case number CBP-FO-2024-136290" (Plaintiffs 'Complaint, para. 40), and that "to date, no DHS component has released responsive records or explained any basis for withholding them" (Plaintiffs 'Complaint, para. 42).

20. By letter dated August 21, 2024, the FOIA unit sent the Plaintiffs a final response indicating that the records requested "are not under the purview of U.S. Customs and Border

Protection” and recommending that the ACLU direct their request to the FBI “as they maintain all records for the JTTF.”

21. No administrative appeal of the final response was filed.

22. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on 11th day of April, 2025

A handwritten signature in black ink that reads "Patrick Howard". The signature is written in a cursive, flowing style.

PATRICK A. HOWARD
Branch Chief
Freedom of Information Act Division
U.S. Customs and Border Protection
U.S. Department of Homeland Security