

**UNITED STATES DISTRICT COURT
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.

24 Civ. 5722 (JSR)

DECLARATION OF CATRINA M. PAVLIK-KEENAN

I. Introduction

I, Catrina M. Pavlik-Keenan, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Chief Freedom of Information Act (“FOIA”) Officer for the Privacy Office of the U.S. Department of Homeland Security (“DHS” or the “Department”). I have held my current position since July 4, 2021. Prior to holding this position, I was the U.S. Immigration and Customs Enforcement FOIA Officer from December 18, 2006, until July 3, 2021. Prior to holding that position, I worked for approximately four years in the FOIA office at the Transportation Security Administration (“TSA”), first as a Supervisory FOIA Analyst, then as Deputy Director for two years, and finally as Director. Prior to working at TSA, I worked for approximately nine years as a FOIA Analyst at the Department of Transportation, holding positions at the Federal Highway Administration, Office of Pipeline Safety, and Office of the Secretary from 1993 to 2002. In total, I have 30 years of experience processing FOIA requests.

2. In this capacity, I am the DHS Official responsible for implementing FOIA policy across DHS and responding to requests for records under the FOIA, 5 U.S.C. § 552, the Privacy

Act, 5 U.S.C. § 552a, and other applicable records access provisions. The Privacy Office enables the Department to accomplish its mission while enforcing privacy protections in all DHS activities. DHS systems, technology, forms, and programs that collect personally identifiable information or have a privacy impact are subject to the oversight of the Chief Privacy Officer and the requirements of federal data privacy and disclosure laws.

3. DHS's FOIA Division ("DHS-FOIA") sits within the Department's Privacy Office. As the Deputy Chief FOIA Officer for the Privacy Office, I act as DHS's principal point of contact and agency representative on FOIA-related matters for DHS Headquarters ("DHS-HQ") and all the DHS components. My official duties and responsibilities include the implementation of consistent FOIA management across DHS in collaboration with DHS components. In accordance with this responsibility, I maintain expert knowledge of the DHS FOIA regulations and routinely provide regulatory and policy guidance, technical advice, and assistance across the Department on all FOIA-related matters.

4. I make this declaration in support of Defendant DHS's Motion for Summary Judgment. The statements contained in this declaration are based upon my personal knowledge, my review of the documents kept by the DHS-PRIV in the ordinary course of business, and information provided to me by other DHS Headquarters ("DHS-HQ") employees in the course of my official duties. Through the exercise of my official duties, I am familiar with DHS-PRIV's receipt and handling of the nine-part FOIA request dated May 21, 2024 (the "FOIA Request") submitted by the American Civil Liberties Union and American Civil Liberties Union Foundation ("ACLU" or "Plaintiffs"), and the steps taken to respond to the FOIA Request.

5. In February of 2025, DHS Chief Privacy Officer and DHS Chief FOIA Officer Roman Jankowski issued guidance notifying DHS-HQ that in order to streamline FOIA activities, DHS-FOIA would assume responsibility for all FOIA work that was being handled by components located at DHS-HQ. DHS-FOIA would serve as the only FOIA office for DHS-HQ. Accordingly, DHS determined that the management and operations of the FOIA office located within the Office for Civil Rights and Civil Liberties ("CRCL-FOIA") would be transferred to DHS-FOIA by March

31, 2025. Shortly thereafter, CRCL-FOIA began to migrate its FOIA operations to DHS-FOIA. CRCL-FOIA had two full time employees facilitate the migration process to ensure DHS-FOIA could handle the processing of CRCL-FOIA requests and accompany litigation. Currently, all CRCL FOIA matters are processed by my office.

II. Procedural History of the Plaintiffs' FOIA Request

6. The FOIA Request, which was dated May 21, 2024, sent via Secure Release, was received by DHS-PRIV on May 21, 2024, and assigned number 2024-HQFO-01500. The request states in pertinent part:

“REQUEST FOR INFORMATION

“The Requestor seeks:

(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";
- b. "Anti-Government or Anti-Authority Violent Extremism";
- c. "Animal Rights or Environmental Violent Extremism";

- d. "All Other Domestic Terrorism Threats";
- e. "Abortion-Related Violent Extremism";
- f. "Domestic violent extremism";
- g. "Domestic terrorism";
- h. "Anarchist violent extremism";
- i. "Radical agitators";
- j. "Criminal organizers and instigators";
- k. "Violent instigators";
- l. "Antifa"; and
- m. "Far-left extremists."

(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.

7. DHS-PRIV carefully reviewed the FOIA Request, and in accordance with DHS regulations, at 6 C.F.R. § 5.3(a)(2), determined that DHS Headquarters Office of Intelligence and Analysis (I&A), U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) are the DHS components most likely to maintain responsive records. On May 30, 2024, DHS-PRIV provided Plaintiff with a final response in which DHS-PRIV acknowledged receipt of the FOIA request and notified Plaintiff of its determination that “the records sought, should they exist, would not be under purview of the DHS Privacy Office. Any responsive records would be held by the DHS Headquarters Office of Intelligence and Analysis (I&A), U.S. Customs and Border Protection (CBP) and Immigration Customs Enforcement (ICE).” The notification explained that “As you have already submitted your request to the aforementioned office[s], we are closing your Privacy Office request and will defer to the I&A, CBP and ICE’s response(s). We have included contact information for the I&A, CBP and ICE FOIA offices below for your convenience.”

8. Having properly determined that responsive records, should they exist, would most likely be held by the I&A, CBP and ICE, and with the understanding that Plaintiff had already submitted its request to those offices, DHS-PRIV administratively closed this case on May 30, 2024, with no further action.

9. On June 26, 2024, Plaintiffs submitted an appeal in SecureRelease challenging DHS's decision not to search DHS's Privacy Office and other DHS components' records for responsive materials. On July 12, 2024, DHS-PRIV sent an appeal acknowledgement letter to the requestor and assigned it number 2024-HQAP-00656.

10. On July 29, 2024, Plaintiffs filed the Complaint in this action concerning FOIA request 2024-HQFO-01500.

11. As part of this litigation, Plaintiffs alleged that the request also should have been referred to CRCL. After receiving confirmation from CRCL that it would potentially have responsive records, the complaint was referred to CRCL on October 23, 2024, and CRCL assigned the referral request as 2025-CRFO-00028

12. CRCL-FOIA conducted a search in response to Plaintiffs' FOIA Request. In approximately March 2025, CRCL-FOIA reported that it had identified 916 potentially responsive records (a total of 11,323 pages). CRCL-FOIA determined that 8,103 pages originated from the DHS Office of Intelligence and Analysis ("I&A"). CRCL-FOIA then referred 8,103 pages to I&A for processing and release to Plaintiffs.

13. On March 21, 2025, the majority of CRCL employees, including those working in CRCL-FOIA, were notified that they would be placed on administrative leave until their final date of employment of May 23, 2025. As a result, and despite CRCL-FOIA's best efforts, CRCL FOIA was unable to determine what searches had been performed or how they were constructed.

14. Accordingly, on April 11, 2025, Defendants requested that the Court bifurcate their summary judgment motion with respect to CRCL, such that CRCL could re-do its search for documents responsive to Plaintiffs' FOIA request. The Court granted Defendants' request.

III. DHS-FOIA's Records Search

15. On April 30th, 2025, DHS-FOIA initiated an automated DHS Office of Chief Information ("OCIO") search of four CRCL employees' emails who were determined to be most likely to have responsive records. These four CRCL employees were selected because they worked within CRCL's Security, Intelligence and Information Policy Section ("SIIP") for CRCL's

Programs Division, their roles included advising the DHS intelligence community, as well as monitoring and ensuring compliance with civil rights and civil liberties standards, and providing training and technical assistance to fusion centers. Two of the employees were senior managers with several years of experience and the other two employees were longstanding members of the SIIP team. The following searches of these employees' e-mails were performed using the time frame of January 20, 2017, to the date of the search:

Search 1: ((JTTF or fusion center) and "collect" or "monitor" or "surveil" or "observe" or "interrogate" or "investigate")

Search 2: ((JTTF or fusion center and protests) and "group names" or individuals)

Search 3: ((JTTF or fusion center and extremism) and "racially" or "ethnically" or "animals rights" or "environmental violent" or "domestic terrorism" or "abortion-related" or "terrorism" or "Antifa" or "far-left")

16. When the above-referenced searches were run across the accounts of the four CRCL employees, the search yielded approximately 102,537 pages of potentially responsive records. DHS-FOIA did not do a manual search of any hard copy documents because all potentially responsive records would have been captured electronically through emails captured from the OCIO search. In addition, CRCL does not have central repositories for final policies relating to JTTFs and/or fusion centers, or central repositories for the types of records that would be potentially responsive to Plaintiffs' request.

17. On May 12, 2025, DHS notified the Court that CRCL's search was complete, but that due to the reduction in force and several technical issues, DHS needed additional time to complete its processing work. The Court granted DHS' request.

18. DHS-FOIA began its processing work by reviewing and processing 545 pages of potentially responsive records. On May 15, 2025, the first release to Plaintiff was made. DHS-FOIA released 285 pages in full, released 228 pages in part, and withheld 32 pages in full. DHS-FOIA withheld some or all of certain pages under Exemptions 5 and 6. However, after further review, DHS-FOIA determined that a significant portion of these records should have been

deemed non-responsive. For example, Part 1 of Plaintiffs' FOIA request seeks "final" versions of documents. However, the May 15, 2025, release contained draft documents, which are not responsive to Plaintiffs' request.

19. In order to identify documents within the search results most likely to be responsive, DHS-FOIA applied additional search terms to the record set. These included the following:

Search 1: ((Policy OR Guidance OR Directive OR Memorandum OR Agreements OR "Training Materials" OR "Legal Opinions") AND ("JTTF" OR "Fusion Center"))

Search 2: (("Protest") AND ("Investigate" OR "Investigation")) AND (("Groups" OR "individuals"))

Search 3: ("racially or ethnically motivated violent extremism" OR "anti-government or anti-authority violent extremism" OR "animal rights or environmental extremism" OR "abortion-related violent extremism" OR "domestic violent extremism" OR "domestic terrorism" OR "anarchist violent extremism" OR "antifa" OR "far-left extremists") AND (("training materials" OR "training material" OR "legal opinions" OR "legal opinion") OR (("intelligence products" OR "intelligence product" OR "alerts" OR "alert" OR "bulletins" OR "bulletin" OR "assessments" OR "assessment" OR "intelligence reports" OR "intelligence report" OR "Intelligence in Brief") AND ("JTTF" OR "fusion center")))) AND "defin!"

20. When these additional terms were applied, the set of potentially responsive records was narrowed to 10,524 potentially responsive pages. Following review of those pages, DHS FOIA determined that only 358 pages were responsive. Of those pages, DHS-FOIA released 326 pages in full, withheld 32 pages in part, and withheld 0 in full on June 10, 2025. DHS-FOIA withheld portions of 36 pages under Exemptions 6, and 7(e).

21. DHS-FOIA did not run a search to identify documents responsive to part 4 of Plaintiffs' FOIA request. DHS-FOIA does not have a specific procedure for requesting/amending records that applies solely to Joint Terrorism Task Forces or Fusion Centers. Requests for copies or amendments of these records should be submitted in accordance with the conventional FOIA / Privacy Act procedures.

IV. FOIA EXEMPTIONS 5, 6 and 7(E)

a. Exemption 5

22. Exemption 5 protects “inter-agency and intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). The documents described below all satisfy the first prong of FOIA Exemption 5 since they consist of intra-agency communications internal to DHS. The documents have also been withheld pursuant to the second prong of FOIA pursuant to the deliberative process privilege, the attorney-client privilege, and the attorney work-product privilege, as further described below.

23. DHS applied Exemption 5 to protect (1) three different versions of draft guidance document (each between 9-12 pages in length), (with redactions made on pages Bates Stamped DHS-001-05722-000142-148, DHS-001-05722-000159-166, and DHS-001-05722-000216-221) with track changes, describing privacy and civil rights and civil liberties functions for fusion centers, (2) a 33-page draft presentation by a fusion center describing privacy and civil rights and civil liberties principles to be applied to intelligence products, with draft comments by DHS (with redactions pursuant to Exemption 5 made on pages Bates Stamped DHS -001-05722-000172-203); (3) a 5-page draft DHS CRCL Compliance Programs Branch Impact Statement for a CRCL FY2022 Presidential Budget, which contained redactions on two pages consisting of tracked changes and comments about possible staff impacts (with redactions made on pages Bates Stamped DHS -001-05722-000214-215); (4) a 34-page draft Privacy, Civil Rights, Civil Liberties Policy from the Wyoming Information and Analysis Team (Fusion Center), with tracked changes and comments by DHS (with redactions made on pages Bates Stamped DHS -001-05722-000274-306); (5) a 12-page draft 2021 DHS Fusion Center Engagement and Information Strategy (which

was mistakenly marked as protected under FOIA Exemption 6) (with redactions made on pages Bates Stamped DHS-001-05722-000337-344); and (6) a draft 94-page DHS Center for Prevention Programs and Partnerships, Law Enforcement Awareness Brief on Targeted Violence/Terrorism Prevention, (with redactions made on pages Bates Stamped DHS -001-05722-000455-545) with tracked changes and comments.

24. DHS applied Exemption 5 to withhold and protect information pursuant to the deliberative process privilege because (a) the nature of the specific deliberative process involved tracked changes and comments presumably by low-level DHS employees without decision-making (b) the function and significance of these documents is that they provided CRCL with an opportunity to review documents at the staff level and served as a deliberation with proposed changes to such document, and (c) the nature of the decision-making authority was vested in the CRCL officer or other DHS Front Office employees to make a final decision on whether to accept proposed changes to these documents. The information withheld contained the thoughts, opinions, and pre-decisional impressions of low-level staff. The partial withholding of these documents satisfies both prongs of FOIA Exemption 5 because they contain intra-agency communications internal to DHS and is protected by deliberative process privilege.

25. In addition, the release of information currently withheld would cause foreseeable and identifiable harm to the Department. The identifiable and foreseeable harm in disclosing this information would be the chilling effect on the ability of low-level staff to effectively communicate its thoughts to effectively provide reports that represent the agency. In addition, the disclosure of any advice provided by agency employees, without the context of any final report or training documents related to the advice, would potentially mislead the public concerning the agency's actual position. Disclosure also would inhibit the candid discussion of issues between its employees, which would compromise the ability of the DHS Leadership to be fully informed in

order to make quality decisions about such issues. Deliberations amongst agency employees, in the past and the future, require total candor and confidentiality. Disclosure of such communications would significantly impair the decision-making process and have a strong chilling effect. Decisions will continue to be made in the future on such documents, and if any underlying pre-decisional deliberations are to be provided to the public, it is less likely the CRCL Officer or DHS Front Office will receive these comprehensive assessments in writing, which highly impairs the decision-making process at the Department.

b. Exemption 6

26. Exemption 6 protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Once an agency invokes privacy interest, a balancing test is used to determine if the privacy interest of an employee is outweighed by the requestor’s interest in the disclosure. It is well settled that when applying this balancing test, government agencies’ interest in employees’ privacy is stronger than public interest in the disclosure of the names and contact information of employees.

27. In the present matter, DHS-FOIA withheld employees’ contact information such as email and phone numbers of all employees but released the names of managerial employees. This is consistent with Department policy which seeks to protect information about employees. FOIA directs the disclosure of information about the conduct of federal agencies and not information about individual employees. These redactions satisfy Plaintiffs’ request about intelligence activities related to fusion centers and the Joint Terrorism Task Force (JTTF) and their allegation of discrimination. Redacting the names of non-managerial employees does not contravene the release of the requested information and protects the privacy of employees. CRCL employees have a strong interest in their privacy that is outweighed by any interest to know their identities. In addition, DHS-FOIA withheld some names and contact information of third-party non-DHS individuals, including those individuals that are employed at various State agency fusion centers. These individuals have a privacy right in their names and contact information and there is no public

interest in shedding light on government information in disclosing that information. Accordingly, the redacts meet the requirement set forth in exemption 6.

28. In addition, the release of information currently withheld under Exemption 6 would cause foreseeable and identifiable harm to the Department. The identifiable and foreseeable harm in disclosing this information would be setting a precedent for revealing contact information for low-level, non-decisionmakers at DHS, along with third-party non-DHS individuals who support DHS at state-level fusion centers, to ensure privacy and civil rights and civil liberties are protected during federal and state law enforcement activities, that if revealed, would cause others to contact these individuals and interfere with law enforcement activities.

c. Exemption 7 (E)

29. FOIA Exemption 7(e) protects from disclosure law enforcement records “to the extent that the production of such . . . information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” *See* 5 U.S.C. § 552(7)(e).

30. Here, DHS-FOIA applied Exemption 7(E) to law enforcement sensitive information, specifically the procedures and techniques used by the intelligence community, including Fusion Centers and JTTF, to eradicate acts of domestic violent extremism. This includes redacting records that contain an assessment of certain activities, circumstances, and indicators that would indicate potential for violence by anarchist extremists at First Amendment-protected events, and real-world incidents demonstrating these indicators, as well as records containing detailed mitigation practices to reduce or eliminate violence that may occur at First Amendment-protected events. These redacted and withheld records can be found on the following Bates Stamped records: DHS-001-05722-000678-684; and DHS-001-05722-000796.

31. In addition, DHS-FOIA applied Exemption 7(E) to a source summary statement contained in an “Intelligence Note,” which is a DHS law enforcement sensitive document that provided insight on information regarding domestic terrorists’ exploitation of heightened tensions

during a First Amendment protected activity. This source summary statement contained detailed assessments on the confidence of the information and the sources of the analyses. These redacted and withheld records can be found on the following Bates Stamped record: DHS -001-05722-000868.

32. Disclosure of the information redacted would expose intelligence and law enforcement partners' techniques and procedures for law enforcement investigations into assessing the potential for violence at such events and how to mitigate such violence. The very detailed, but limited, information that was redacted in these assessments and intelligence notes are not for public consumption and could be used to undermine law enforcement activity if released. Specifically, disclosing which activities, circumstances, and indicators that would indicate potential for violence, and steps to mitigate and reduce or eliminate violence that may occur at First Amendment-protected events, could likely lead to individuals being able to avoid law enforcement from being able to adequately protect citizens during First Amendment-protected activities. In addition, disclosing detailed assessments on the confidence of the information and the sources of the law enforcement analyses would reveal sensitive techniques and procedures, unknown to the public, on how law enforcement evaluates information in conducting such investigations of potential violence at First Amendment-protected activities.

33. In addition, the release of information currently withheld under Exemption 7(E) would cause foreseeable and identifiable harm to the Department. The identifiable and foreseeable harm in disclosing this information would be that by revealing activities, circumstances, and indicators that would indicate potential for violence, and steps to mitigate and reduce or eliminate violence that may occur at First Amendment-protected events, individuals could avoid law enforcement from identify actions they take to conduct violence against citizens during First Amendment-protected activities. In addition, revealing detailed assessments on the credibility of law enforcement information it receives and collects, and the sources of information, that are unknown to the public, could allow individuals to avoid law enforcement in planning and conducting violent activities at First Amendment-protected activities.

V. Segregability

34. 5 U.S.C. § 552(b) requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.”

35. A line-by-line review was conducted to identify information exempt from disclosure or for which a discretionary waiver of exemption could be applied.

36. With respect to the records that were released, all information not exempted from disclosure pursuant to the FOIA exemptions specified above was correctly segregated and non-exempt portions were released. DHS FOIA did not withhold any non-exempt information on the grounds that it was non-segregable.

VI. Jurat Clause

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Signed this 12th day of June 2025.

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