

Freedom of Information Act Request for FBI Records on So-Called “Black Identity Extremists”

Analysis of Deficient February 2019
Disclosure of Records



On October 6, 2017, [Foreign Policy](#) published an article disclosing the existence of an FBI Counterterrorism Division Intelligence Assessment titled “[Black Identity Extremists Likely Motivated to Target Law Enforcement Officers](#)” (Aug. 3, 2017) (“the Intelligence Assessment”). The Intelligence Assessment was disseminated to [at least 18,000 law enforcement agencies](#) across the country.

On October 31, 2018, the Center for Media Justice (“CMJ”) and the ACLU submitted a [Freedom of Information Act \(“FOIA”\) request](#) (“Request”) for records about the Intelligence Assessment. The Request seeks:

- (1) all records created since January 1, 2014, that use any of the following terms or abbreviations: “Black Identity Extremist” (“BIE”), “Black Nationalist” (“BN”), “Black Separatist” (“BS”), or “Black Supremacist Extremists” (“BSE”);
- (2) all records referencing, or created in response to, public and Congressional inquiries or reactions to the existence or contents of the FBI Intelligence Assessment titled “Black Identity Extremists Likely Motivated to Target Law Enforcement Officers”; and
- (3) all records created since January 1, 2014, that reference “extremist” violence committed by Black people in the United States, including but not limited to individuals described as “Black Identity Extremists,” “Black Nationalists,” “Black Separatist Extremists,” “Black Separatists,” or “Black Supremacist Extremists.”

The FBI sent letters indicating its refusal to search for records responsive to Request paragraphs [1](#) and [3](#). By [letter dated February 15, 2019](#), the Bureau disclosed [320 pages](#) of highly redacted FBI e-mails in response to paragraph 2 and indicated that it is withholding information from the e-mails and 202 pages of records in their entirety under FOIA Exemptions 5, 6, 7C and 7E.

The FBI’s February 15, 2019, disclosure fails to satisfy the request for records about inquiries and reactions by the public and Congress to the FBI’s creation of a so-called “Black Identity Extremist” threat category. The FBI has failed to explain why any of the identified FOIA exemptions permit keeping secret entire documents or information redacted from the e-mails provided. As described in more detail below, the disclosure itself suggests the FBI has additional responsive records it has failed to disclose.

The FBI’s “Black Identity Extremists” Intelligence Assessment

The Intelligence Assessment contains troubling revelations about the FBI’s targeting of Black people for surveillance, investigation, and prosecution based on conclusory allegations that a group of so-called “Black Identity Extremists” exists and poses a threat to public safety. It asserts that six isolated incidents of violence against police officers by Black people purportedly

demonstrate the existence of a group espousing a shared ideology motivating violence against law enforcement.

The Intelligence Assessment's creation of a BIE threat designation appears to wrongly group together Black people who, in the FBI's own words, "perceive[] racism and injustice in American society." It also discloses the FBI's focus on First Amendment protected activity and associations in determining who is a so-called "Black Identity Extremist," including through social media surveillance.

The FBI's creation of a "Black Identity Extremist" threat designation adds to the long list of terms the FBI has historically used to group unconnected Black people together for the purpose of surveillance, infiltration, and disruption of their racial justice advocacy. The Intelligence Assessment itself notes that it builds from prior bulletins about so-called "Black Separatist Extremists."

The FBI's use of resources to target so-called "Black Identity Extremists" appears to build on a shameful history of unlawful surveillance and efforts to discredit and disrupt the advocacy of Black activists and Black-led organizations. At the turn of the Twentieth century, law enforcement targeted [Ida B. Wells](#) and [Marcus Garvey](#) as "race agitators." The FBI's notorious Counterintelligence Program ("COINTELPRO") involved covert activities directed against [Martin Luther King, Jr.](#), the [Southern Christian Leadership Conference](#), the [Student Nonviolent Coordinating Committee](#), the [Black Panther Party](#), [el-Hajj Malik el-Shabazz](#) (previously known as "Malcolm X"), [Gloria Richardson](#), [Robert F. Williams](#), [Ella Baker](#), and other Black people involved in the civil rights movement of the 1950s and 1960s. Similarly, in the late 1960s and 1970s, the FBI surveilled and investigated [Black-owned bookstores](#) on the grounds that the stores were purportedly centers of extremism. And as recently as 2009, the FBI tracked population increases among [Black people in Georgia](#) under the guise of learning about a purported terrorist threat from "Black Separatist" groups.

Congressional Concern

Members of Congress have expressed significant concern that the government is unlawfully spying on Black people and Black-led organizations under the Intelligence Assessment's guidance. In November 2017, [Congressional Black Caucus Chairman Cedric Richmond](#) denounced the BIE label as "inaccurate" and expressed concern that it would be used to target Black Lives Matter ("BLM") activists. [Representative Karen Bass](#) raised similar concerns that the Intelligence Assessment would promote government targeting of BLM activists in a manner akin to COINTELPRO.

In March 2018, members of Congress convened a hearing to discuss the BIE designation. [Representative Bass](#) noted that the "Black Identity Extremist" label "could be applied to 'all protesters demonstrating for an end to police violence against black people,'" demanded a "total retraction" of the Intelligence Assessment, and criticized the FBI for [improperly grouping together](#) any individuals who have a sense of "Black identity." The Congressional Black Caucus has asked FBI Director Christopher Wray to [rescind the Intelligence Assessment](#).

The Solution

The public deserves to know why the FBI created and supported the “Black Identity Extremist” threat designation, how this designation is being used, and what guidance (if any) has been provided to law enforcement to guard against illegal racial profiling and targeting of First Amendment protected activity. The FBI’s February 19, 2019, disclosure is incomplete and even signals that the bureau is withholding responsive documents, as detailed below.

The FBI should immediately disclose all of the requested records about the Intelligence Assessment, including documents shedding light on how the Intelligence Assessment is being used and which organizations and activists have been targeted for surveillance, investigation, or prosecution as so-called “Black Identity Extremists.”

If the FBI refuses to provide this information, Congress should use every tool at its disposal to ensure this information is made public.

The FOIA Documents

- **An FBI official explicitly acknowledged that the FBI created the term “Black Identity Extremist” to repurpose an old threat designation to include Black people with divergent views.**

Michael Paul of the FBI Counterterrorism Division wrote in [an October 7, 2017, e-mail](#) that in creating the “Black Identity Extremist” threat category, the FBI was “simply documenting [the] redefinition of ‘Black Separate Extremism,’ to broaden beyond simply those seeking ‘separatism.’” Mr. Paul asserted that “[t]he threat or movement has simply evolved and many are seeking more than/other than separation”—reasoning that itself contradicts the assertion that there even is a cohesive group of so-called “Black Identity Extremists” and raises questions about the validity of the prior categorizations of Black activists under terms like “Black Separatist Extremism.”

Mr. Paul also confirmed that the Intelligence Assessment “did go external to state and locals, and LEEP.” “LEEP” refers to the [Law Enforcement Enterprise Portal](#).

- **Several FBI e-mails from October 2017, in conjunction with publicly available information, show that the National Organization of Black Law Enforcement Executives (“NOBLE”) continued to have concerns about the “Black Identity Extremist” designation even following agency explanations.**

The FBI spoke with NOBLE leadership [several times](#) after the Intelligence Assessment was made public. In an [October 31, 2017, e-mail](#), an FBI official explained that the Bureau’s Office of Partner Engagement and Counterterrorism Division had sought “to communicate to the National Organization of Black Law Enforcement Executives (NOBLE) partners the purpose and intent behind the Black Identity Extremist product.” The official asserted that these efforts “resulted in an effective understanding of why we produced the product and an

appreciation by NOBLE for our collective communication efforts.” The official acknowledged, “NOBLE is now requesting a follow-up meeting in Atlanta with the Director next month to extend the dialogue to a broader set of advocacy groups.”

Public documents suggest, however, that the ensuing conversations between NOBLE and FBI Director Christopher Wray did not satisfy the organization’s concerns about the Intelligence Assessment. A November 27, 2017, [NOBLE press release](#) stated the organization was “concerned and alarmed” by the Intelligence Assessment, and that “NOBLE officials do not feel that the investigative merits of the report warrant the belief that an ideology movement exists among African Americans that predisposes them to negatively target law enforcement officers.”

In [an interview with Mic](#) that same day, NOBLE president Clarence Cox reported that that Director Wray “seemed to agree on principle with his concerns about the BIE report.” Mr. Cox explained that he communicated to Director Wray that he “didn’t see the value of law enforcement safety with that [Intelligence Assessment]” and “didn’t feel that this BIE intelligence was healthy for the conscience of our country and, particularly, of African-Americans.” Mr. Cox stated, “It reminds me so much of what we went through as African-Americans, or what civil rights leaders went through, when they were unconstitutionally targeted by state, federal and local agencies.”

- **None of the disclosed documents address the FBI’s response and reaction to a highly-publicized March 2018 hearing held by the Congressional Black Caucus (CBC) to air concerns about the FBI’s creation of a “Black Identity Extremist” threat designation, although such documents likely exist.**

Numerous [FBI e-mails](#) from August to December 2017 underscore the CBC’s [concern](#) about the Intelligence Assessment and show that FBI officials sought to develop a [response](#). The FBI failed to disclose any documents from 2018, however, even though the CBC held a highly-publicized hearing in March 2018 to address concerns about the “Black Identity Extremist” threat designation. It is highly implausible that the FBI did not know about or discuss this hearing, which suggests the FBI has failed to disclose records responsive to the ACLU and Center for Media Justice’s FOIA request.

- **The February 2019 disclosure suggests that the FBI is withholding documents responsive to the Request, including FBI talking points about the Intelligence Assessment, guidance provided to the more than 18,000 law enforcement agencies that received the Intelligence Assessment, and documents that are already publicly available.**

Numerous e-mails disclosed by the FBI also refer to internal bureau talking points about the Intelligence Assessment that have not been disclosed to CMJ and the ACLU.

- [E-mail dated October 11, 2017](#) referring to an attachment addressing “internal talking points prepared for the DD and DAG, via red-side”);
- [E-mail dated October 25, 2017](#) referring to redacted talking points drafted after FBI public statements about BIE on October 12, 2017);

- E-mails dated [October 16, 2017](#); [October 17, 2017](#); and [October 17, 2017](#) (referring to FBI Director’s talking points concerning questions anticipated at a meeting with the International Association of Chiefs of Police)
- E-mail dated [November 29, 2017](#) (referring to an attachment titled the FBI “Directors Opening Statement CBC Roundtable November 2017 [redacted] edits.docx”).

After the Intelligence Assessment became public, local law enforcement offices received public inquiries about how they would use the Intelligence Assessment and sought guidance from the FBI on how to respond, but no such guidance documents have been disclosed to CMJ and the ACLU.

- In an [October 26, 2017, e-mail](#), an FBI official noted that “a field office said it got an inquiry from a local police department about what we are saying. The police department is being asked what it did after seeking the BIE document.”
- In another [e-mail of the same date](#), an FBI official wrote to another agency member, “Can I have the guidance on the black extremist bulletin. Our Local law enforcement partner is looking for information on what we released as they are getting questioned about our bulletins and how they use them.”

The February 2019 disclosure also suggests the FBI is withholding documents that are already publicly available. In an [e-mail dated November 20, 2017](#), an FBI official drafted a response to an inquiry by an Al Jazeera reporter and attached six documents, none of which were disclosed to CMJ and the ACLU. The initial e-mail from the reporter, however, suggests the attachments are internal FBI and DHS documents that were already disclosed to “the Center for Constitutional Rights and Color of Change through a FOIA lawsuit regarding surveillance of Black Lives Matter,” and are therefore public information.