



Homeland Security

JUL 15 2011

Ms. Julia H. Mass
American Civil Liberties Union
of Northern California
39 Drumm Street
San Francisco, CA 94111

Subject: Freedom of Information Act Request No. 2011-126 – Final Response

Dear Ms. Mass:

This responds to your Freedom of Information Act (FOIA) request to the Federal Bureau of Investigation (FBI) dated March 9, 2010, and seeking records pertaining to the investigation and surveillance of Muslim communities in Northern California (copy attached for reference). While searching for records responsive to your request, the FBI located one document entitled, *Role of the No Fly and Selectee Lists in Securing Commercial Aviation*, which originated with the Department of Homeland Security (DHS) Office of Inspector General (OIG). I understand the FBI already provided you with a redacted version of this document that is available on the OIG's website; however, those redactions do not include the applicable FOIA exemptions. As such the FBI referred the 63-page report to DHS-OIG for appropriate FOIA processing and direct response to you. This office received the FBI referral on May 24, 2011.

Our June 16, 2011 acknowledgment letter notified you of our need to consult with multiple entities regarding the referred document. Those consultations are now complete. As such, this office is providing the following:

24 page(s) are being released in full (RIF);
39 page(s) are being released in part (RIP);
_____ page(s) are withheld in full (WIF).

The exemptions cited for withholding records or portions of records are marked below.

Freedom of Information Act, 5 U.S.C. § 552			Privacy Act, 5 U.S.C. § 552a
☐ 552(b)(1)	☐ 552(b)(4)	☐ 552(b)(7)(B)	☐ 552a(j)(2)
☐ 552(b)(2)	☒ 552(b)(5)	☐ 552(b)(7)(C)	☐ 552a(k)(2)
☒ 552(b)(3)	☐ 552(b)(6)	☒ 552(b)(7)(D)	☐ 552a(k)(5)
	☐ 552(b)(7)(A)	☒ 552(b)(7)(E)	☐ Other:

Exemption 3, 5 U.S.C. § 552(b)(3)

Exemption 3 protects “information specifically exempted from disclosure by [another] statute.” *See* 5 U.S.C. § 552 (b)(3). In this instance, one of the applicable statutes is the National Security Act, which protects information pertaining to sources and methods. The Office of the Director of National Intelligence (ODNI), therefore, asked DHS-OIG to withhold information which would lead to the revelation of such information.

Additionally, 49 U.S.C. § 114(r)(1)(C) exempts from disclosure information that would be “detrimental to the security of transportation.” Accordingly, the Transportation Security Administration (TSA) has promulgated regulations that define such information as Sensitive Security Information (SSI). *See* 49 C.F.R. § 1520.5. TSA, therefore, asks DHS-OIG to withhold information which would lead to the revelation of information designated as SSI.

Exemption 5, 5 U.S.C. § 552(b)(5)

Exemption 5 of the FOIA protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” *See* 5 U.S.C. § 552(b)(5). The U.S. Customs and Border Protection (CBP), and ODNI ask DHS-OIG to invoke the deliberative process privilege of Exemption 5 to protect information that falls within that privilege’s domain.

Exemption 7(D), 5 U.S.C. § 552(b)(7)(D)

Exemption 7(D) protects records or information compiled for law enforcement purposes, the release of which could reasonably be expected to disclose the identities of confidential sources. *See* 5 U.S.C. § 552(b)(7)(D). The FBI asks DHS-OIG to invoke Exemption 7(D) to protect any information that could reasonably be expected to identify such sources.

Exemption 7(E), 5 U.S.C. § 552(b)(7)(E)

Exemption 7(E) protects all law enforcement information that “would disclose techniques and procedures for law enforcement investigation or prosecution, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law.” *See* 5 U.S.C. § 552(b)(7)(E). FBI, CBP, TSA and ODNI ask DHS-OIG to withhold from disclosure specific information which could reasonably be expected to risk circumvention of the law.

Appeal

I am aware that your request is the subject of ongoing litigation in the United States District Court of Northern California. Pursuant to departmental regulations an administrative appeal ordinarily will not be acted upon if the request is the subject of FOIA litigation. *See* 6 C.F.R. § 5.9(a)(3). If you choose to file an administrative appeal, however, it must be in writing and received within 60 days of the date of this response.

To appeal the redactions made by other entities you may write to:

1. **FBI redactions** - Director, Office of Information and Policy; U.S. Department of Justice; 1425 New York Ave., NW, Suite 11050; Washington, DC 20530
2. **ODNI redactions** - Office of the Director of National Intelligence; Information Management Office; Washington, DC 20511
3. **CBP redactions** - FOIA Appeals; Policy and Litigation Branch; U.S. Customs and Border Protection; 799 Ninth St., NW; Washington, DC 20229
4. **TSA redactions** – Kimberly Walton, Special Counselor; Office of the Special Counselor; Transportation Security Administration; 601 South 12th Street; East Building, E7-121S; Arlington, VA 20598

Additionally, should you wish to appeal DHS-OIG's action on your request you may write to: FOIA/PA Appeals Unit; DHS/Inspector General; STOP 2600; 245 Murray Drive, SW, Building 410; Washington, DC 20528.

Both the envelope and letter of appeal must be clearly marked, "Freedom of Information Act Appeal." Your appeal letter must also clearly identify DHS-OIG's response and the appropriate entity's redactions. Additional information on submitting appeals to DHS entities is set forth in the DHS regulations at 6 C.F.R. § 5.9. If you have any questions about this response please contact Stephanie Kuehn, FOIA/PA Disclosure Specialist, at 202-254-4389.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine R. Gallo", written in a cursive style.

Katherine R. Gallo
Assistant Counsel to the Inspector General

Enclosure

FOIA Request



Asian Law Caucus

GUARDIAN
THE SAN FRANCISCO BAY GUARDIAN

March 9, 2010

Via Certified Mail, Return Receipt Requested

Federal Bureau of Investigation
Record Information/Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Federal Bureau of Investigation – San Francisco
450 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102-9253

Federal Bureau of Investigation – Sacramento
4500 Orange Grove
Sacramento, CA 95841

Re: Freedom of Information Act Request
Expedited Processing Requested

Attention:

The Asian Law Caucus (“ALC”), the American Civil Liberties Union of Northern California (including the ACLU Foundation of Northern California) (“ACLU-NC”), and the *San Francisco Bay Guardian* (“Guardian”) submit this expedited Freedom of Information Act (“FOIA”) request for records to the Federal Bureau of Investigation (“FBI”) pertaining to the investigation and surveillance of Muslim communities in Northern California. The ALC, ACLU-NC, and the *Guardian* submit this request pursuant to the FOIA, 5 U.S.C. § 552, implementing regulations 8 C.F.R. § 103.10 and 6 C.F.F. § 5 and any other applicable regulations.

Community members, civil rights organizations, and mainstream media have reported that the FBI is surveilling and infiltrating Muslim American communities and building a dragnet that is detrimentally affecting the lives of innocent Americans. As a December 18, 2009 article

NANCY PEMBERTON, CHAIRPERSON | M. QUINN DELANEY, LINDA LYE, PHILIP MONRAD, VICE CHAIRPERSONS | DICK GROSBOLL, SECRETARY | URL
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STEPHEN V. BOMSE, GENERAL COUNSEL

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA
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ACLURM008027

in the *New York Times* explained, "Several high-profile cases in which informers have infiltrated mosques and helped promote plots . . . have sown a corrosive fear among [Muslim-Americans] that F.B.I. informers are everywhere, listening." Paul Vitello and Kirk Semple, "Muslims Say FBI Tactics Sow Anger and Fear," *New York Times*, December 17, 2009. The "corrosive fear" and widespread anxiety felt among Muslim Americans not only has a chilling effect on civic and religious participation in these communities, but also undermines FBI-community relations essential to national security.

Further, this widely-reported surveillance of Muslim communities by the federal government erodes the values and constitutional principles upon which the United States stands. Improper government intrusion and discrimination experienced by Muslim Americans may violate the privacy rights of United States residents and amount to racial and religious profiling. Given these implications for national security and civil rights, is imperative that the public gain a better understanding of the methods and scope of FBI surveillance and infiltration of Muslim communities in the United States.

I. REQUEST FOR INFORMATION

We are seeking disclosure of agency records¹ in your² possession that fall within the following categories:

- (1) Final memoranda, policies, procedures, directives, guidance, protocols, legal analysis, training materials, and other documents reflecting policy pertaining to the following matters that were created or effective since September 2001:

- a. Use of informants by the FBI³;
- b. Opening or carrying out "assessments"⁴;

¹ The term "records" as used herein includes all records or communications preserved in written or electronic form, including but not limited to: correspondence, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, training materials, other manuals, or studies. With respect to privacy concerns for members of the public, we will accept copies that are redacted to protect identifying information such as names, social security numbers, and alien numbers, but we would object to the redaction of birthplaces that would interfere with our ability to determine the country of origin for members of the public. In addition, we request that members of the public whose identifying information is redacted be identified with an alphanumeric code so that multiple records related to the same individual will be recognized as such. This redaction agreement does not apply to identifying information such as names and badge numbers of federal agents.

² Requestors seek records in the possession or control of the parties in the above named FBI offices and any field offices within their jurisdictions.

³ By "FBI" the requestors mean the Federal Bureau of Investigation and its agents and employees as well as any other federal, state, or local agencies working in collaboration with the Federal Bureau of Investigation, such as local Joint Terrorism Task Force personnel. The term "informants" is intended to include "undisclosed participants" and "confidential human sources" as referenced in the FBI's Domestic Investigative Operations Guidelines.

⁴ "Assessments" and "domain management" are used here to refer to the activities referred to by the same terms in the FBI's Domestic Investigative Operations Guidelines.

- c. Written materials setting forth legal reasoning or authority relied upon by FBI in conducting investigations and assessments;
- d. Training for FBI agents regarding Islam, Muslim culture, and/or Muslim, Arab, South Asian, or Middle Eastern communities in the United States. This includes but is not limited to any training materials, outlines, instructions or other documents used or provided to agents, and records showing the names and titles of participants and trainers, dates, hours, and locations of trainings, and any evaluations or related material;
- e. The FBI's use of race, religion, ethnicity, language, or national origin for law enforcement purposes, including but not limited to the contexts of geo-mapping and domain management. The requestors also seek any draft documents that are responsive to this subparagraph;
- f. The FBI Citizenship Academy;
- g. The FBI Junior Agent Program; and
- h. Domain management.

(2) Individual records related to FBI activities in northern California⁵ from January 2005 to the present pertaining to:

- a. FBI investigations and assessments of mosques; Islamic centers; Muslim community centers; members of mosques, Islamic centers or Muslim community centers based on their membership or affiliation with such centers; Muslim leaders; and imams;
- b. Records related to the FBI Citizenship Academy, FBI Citizenship Academy Alumni activities, and FBI Junior Agent Program; and
- c. Domain management, including but not limited to maps or other records relating to or describing "domains," and records of "concentrated ethnic communities," "ethnic-oriented businesses" and any other records related to "community race and ethnicity" analyses or assessments in the FBI "domains" of northern California.

(3) Aggregate Data: We seek the following aggregate data, disaggregated by date, location, and/or as further designated below.⁶

- a. Number and names of mosques or Islamic centers in the United States with open assessments or investigations;
- b. Number and names of mosques or Islamic centers in northern California with open assessments or investigations;

⁵ For all purposes in this correspondence, "northern California" is defined to mean the counties of California north of and including Monterey, Kings, Tulare, and Inyo.

⁶ If accurate data are not available due to lack of consistent record-keeping, please so indicate in your response and provide data based on any available records, even if incomplete.

- c. Number of churches in the United States with open assessments or investigations;
- d. Number of churches in northern California with open assessments or investigations;
- e. Number of synagogues in the United States with open assessments or investigations;
- f. Number of synagogues in northern California with open assessments or investigations;
- g. Number of imams in the United States with open assessments or investigations;
- h. Number of imams in northern California with open assessments or investigations;
- i. Number of imams in the United States contacted⁷ by the FBI since 2001 to the present, disaggregated by year;
- j. Number of imams in northern California contacted by the FBI since 2001 to the present, disaggregated by year;
- k. Number of criminal prosecutions in the United States arising from terrorism-related investigations involving the use of informants since 2001;
- l. Number of criminal prosecutions in northern California arising from terrorism-related investigations involving the use of informants since 2001;
- m. Number of criminal prosecutions in northern California arising from terrorism-related investigations not involving the use of informants since 2001;
- n. Number of criminal prosecutions in the United States arising from terrorism-related investigations not involving the use of informants since 2001;
- o. For subparagraphs k-n above, the number of cases in which terrorism-related charges were included in the prosecutions, disaggregated by subparagraph;
- p. For subparagraphs k-n above, the number of cases in which there was a guilty verdict on any terrorism-related criminal charge, disaggregated by subparagraph;
- q. Number of immigration proceedings in the United States arising from terrorism-related investigations involving the use of informants since 2001;
- r. Number of immigration proceedings in northern California arising from terrorism-related investigations involving the use of informants since 2001;

⁷ "Contact," as used herein, encompasses the breadth of law enforcement contact such as rebuffed requests for interviews, consensual encounters of persons approached by the FBI, ongoing relationships, and questioning of persons in custody.

- s. Number of immigration proceedings in the United States arising from terrorism-related investigations not involving the use of informants since 2001;
- t. Number of immigration proceedings in northern California arising from terrorism-related investigations not involving the use of informants since 2001;
- u. Number of individuals who have gone through the "Special Citizenship Academy," since its inception disaggregated by individuals' countries of origin;
- v. Number of "Junior Agent" Programs that have been implemented in the United States and their locations.

II. REQUEST FOR EXPEDITED PROCESSING.

Title 5 U.S.C. § 552(a)(6)(E) provides for expedited processing of requests for information in cases in which the person requesting the records demonstrates a compelling need. By statute, for requests made by persons primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged federal government activity constitutes a "compelling need." § 552(a)(6)(E)(v)(II). In addition, Department of Justice regulations state that FOIA requests are entitled to expedited processing when information requested involves "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). Here, the requestors of this information are primarily engaged in disseminating information and, for reasons made clear below, there is urgency to inform the public concerning federal government activity in connection with the FBI's investigation of Muslim communities.⁸ FBI activities which the instant FOIA request is intended to reveal have been widely reported, caused widespread anxiety, and raised widespread concerns about the federal government's misconduct, including racial and religious profiling and violations of the constitutional rights of United States residents, both aliens and citizens.

1. Requestors.

The Asian Law Caucus is a nonprofit public interest organization that works to promote, advance and represent the legal and civil rights of the Asian and Pacific Islander communities. Since its establishment in 1972, ALC has been dedicated to achieving its mission using a three prong strategy: (1) community education and organizing, (2) provision of direct legal services, and (3) strategic impact litigation. As such, a main component of ALC's work is to disseminate information of public interest to both the Asian Pacific American communities and the public-at-large.

⁸ In 2006, a federal court ordered the Department of Defense to comply with a request for expedited processing request by the ACLU-NC and the *Guardian*. *ACLU-NC, et. al. v. Dept. of Defense*, 2006 WL 1469418, Case No. 06-01698 (N.D. Cal. May 25, 2006). See also *American Civil Liberties Union v. Dept. of Defense*, 339 F.Supp. 2d 501 (S.D.N.Y. 2004) (setting schedule for disclosure of documents to ACLU under expedited processing request).

The American Civil Liberties Union of Northern California (including the ACLU Foundation of Northern California), is an affiliate of the ACLU, a national organization that works to protect the civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. The ACLU-NC is responsible for serving the population of northern California. The communications department of the ACLU-NC is the division of the ACLU-NC that is responsible for disseminating information to the public about issues of concern to the ACLU-NC and to the general public.

The *San Francisco Bay Guardian* is the largest circulation newsweekly in northern California, with an audited weekly distribution of 150,000. The paper is locally owned, independent, and has been published continuously since 1966.

2. Widespread Media Interest and Concerns Regarding Government Activities

According to media reports, testimony of civil rights organizations, and members of the community, the FBI has been engaged in a deliberate plan to infiltrate Muslim communities through the use of informants and other covert actions.⁹ Indeed, allegations of such activities have been the subject of numerous news articles that demonstrate the public interest and concerns about improper government intrusion and discrimination. See, e.g., Susan Saulny, "Inquiry Into F.B.I. Raid That Killed Cleric," *New York Times*, February 3, 2010 (Appendix A, Tab 2); Niraj Warikoo, "Deadly FBI raid of Detroit mosque prompts concern over informants: Muslims, civil rights advocates decry tactic," *Detroit Free Press*, January 17, 2010 (Appendix A, Tab 5); Paul Vitello and Kirk Semple, "Muslims Say FBI Tactics Sow Anger and Fear," *New York Times*, December 18, 2009 (Appendix A, Tab 11); Scott Shane, "American Sues F.B.I., Saying He Was Detained in Africa," *New York Times*, November 11, 2009 (Appendix A, Tab 16); David Matingly, Jeanne Meserve, and Mike Ahlers, "Wife and Mother of Terror Suspect Says FBI Tricked Her," *CNN*, July 29, 2009 (Appendix A, Tab 21); Salvador Hernandez, "Muslim groups disagree that relations with FBI are 'very good,'" *The Orange County Register*, June 9, 2009 (Appendix A, Tab 24); Sean Emery, "Rift Develops Between Muslims, FBI Over Mosque Surveillance," *The Orange County Register*, March 26, 2009 (Appendix A, Tab 32); Elliott C. McLaughlin, "FBI Planting Spies in U.S. Mosques, Muslim Groups Say," *CNN*, March 20, 2009 (Appendix A, Tab 33); Paloma Esquivel, "Some Influential Muslim Groups Question FBI's Actions," *L.A. Times*, April 20, 2009 (Appendix A, Tab 30); Scott Glover, "FBI Monitored Members of O.C. Mosques At Gyms, Alleged Informant Says," *L.A. Times*, April 28, 2009 (Appendix A, Tab 29).

The FBI's relationship with Muslim communities is a matter of great public concern due to the important role Muslim Americans can play in terrorist investigations. But, in large part due to intrusive FBI investigative practices, relations between the FBI and Muslim communities have been strained. Over the past two years, many Muslim religious and cultural organizations

⁹ The news articles mentioned in this letter, as well as several other articles that demonstrate wide-spread media interest in the matters that are the subject of this request, are attached hereto as Appendix A.

have considered cutting ties with the F.B.I., and the F.B.I. has affirmatively distanced themselves from one mainstream Muslim civil rights organization, the Council on American Islamic Relations. As Attorney General Eric Holder said recently during a keynote address to members of the Arab American community in Detroit, "This is simply intolerable, and the tension that arises [between the Muslim American community and the FBI] is unacceptable." Specifically, Attorney General Holder was speaking about the tensions that have risen since the death of Detroit Imam Luqman Ameen Abdullah, who was killed in an FBI raid under questionable circumstances. See, e.g., Alejandro Beutel, "Muslim Americans and U.S. law enforcement: not enemies, but vital partners," *Christian Science Monitor*, December 30, 2009 (Appendix A, Tab 8); Nick Mayer, "US Attorney General Eric Holder Addresses Detroit Community, Arabs, Muslims," *Arab American News*, November 24, 2009 (Appendix A, Tab 14); "FBI works with Arab community," *Detroit News*, October 8, 2009 (Appendix A, Tab 19); Teresa Watanabe and Paloma Esquivel, "L.A. area Muslims say FBI surveillance has a chilling effect on their free speech and religious practices," *Los Angeles Times*, March 1, 2009 (Appendix A, Tab 35); American Muslim Taskforce, "U.S. Muslim Coalition Considers Suspending Relations with FBI," March 17, 2009 (Appendix A, Tab 34); Jacqueline L. Salmon, "Muslim Americans at Odds Over FBI Contact," *Washington Post*, March 28, 2009 (Appendix A, Tab 31). Recruiting Muslim and Arabic children, as well as others, through the FBI's Junior Agent program has also been the subject of media attention. Michelle Toy, "FBI's Newest Recruits: Arabic-Speaking Kids," *NBC Bay Area*, January 8, 2010 (Appendix A, Tab 7); Candice Williams, "Green Elementary kids train to be FBI junior agents," *The Detroit News*, January 20, 2010 (Appendix A, Tab 3).

In response to widespread public and media scrutiny of the newly released FBI Domestic Investigative Operational Guidelines ("DIOG"), Valerie Caproni, the General Counsel for the F.B.I. wrote in a letter to Senate Select Committee on Intelligence Chairman John D. Rockefeller IV, dated December 15, 2008, "we understand that the expansion of techniques available . . . has raised privacy and civil liberties concerns [but] we believe that our policies and procedures will mitigate those concerns." Ms. Caproni stated that the FBI will "reassess the policy judgments made in the DIOG. . . ." She stated that the reassessment will be "informed by our experience in the coming year, as well as by comments and suggestions received from Congress and interested parties." More recently, in an interview posted on the FBI website, Ms. Caproni said, "to the extent that the public has comments and concerns, they should let us know because nothing is written in stone and we hope we've gotten it right but if we haven't gotten it right, our goal is to make it right." See Appendix A, Tab 37. See, e.g., "Investigative Guidelines Cement FBI Role as Domestic Intelligence Agency, Raising New Privacy Challenges," October 29, 2008 (Appendix A, Tab 38); Press Release, American Civil Liberties Union, "ACLU Condemns New FBI Guidelines," October 3, 2008 (Appendix A, Tab 40); American Civil Liberties Union, "Fact Sheet - New Attorney General Guidelines," October 8, 2008 (Appendix A, Tab 39).

The information requested herein is particularly important to the public's opportunity to provide accurate analyses and feedback regarding the DIOG and their implementation with respect to Muslim communities. Expedited processing is necessary to further the public's interest in providing comments in light of Ms. Caproni's December 2008 suggestion that any

review and changes to the DIOGs would be based on experience in implementation "in the coming year," in addition to the independent grounds that the subject of the request is a matter of wide-spread media attention and that there is an urgency to inform the public about government actions that intrude upon constitutional protections to be free from racial and religious profiling and rights to privacy, freedom of association, freedom of expression and the free exercise of religion.

III. REQUEST FOR WAIVER OF PROCESSING FEES UNDER FREEDOM OF INFORMATION ACT BY REPRESENTATIVES OF THE NEWS MEDIA.

The *Guardian* and the communications departments of the ALC and ACLU-NC are "representative[s] of the news media."¹⁰ Fees associated with the processing of this request should therefore be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II).

ALC regularly disseminates information regarding civil rights and civil liberties, including changes and developments in government policies in the areas of civil rights and immigration, to the Asian and Pacific Islander communities and public-at-large through several methods:

- Community education presentations in public forums: In the last twelve months, ALC has provided on average one community education forum per week, reaching a total audience of over 2500 individuals. Community education presentations have been held at community centers, senior citizen and low-income housing developments, community festivals and fairs, religious institutions, and universities. At these presentations, written materials in multiple languages are distributed to attendees and outside institutions for wider distribution.
- Publication of Newsletter, Issue Briefs and Reports: ALC regularly publishes a newsletter which is sent to a mailing list of approximately 4000 members and supporters. The newsletters are also available online at ALC's website. In addition to the newsletter, ALC communicates with its members and supporters through an e-mail listserv of approximately 2,100 members. ALC publishes approximately one to two in-depth reports or issue briefs per year.¹¹

¹⁰ Notably, courts have found that organizations with missions similar to that of the ACLU and ALC that also engage in similar information dissemination activities are "primarily engaged in disseminating information." See, e.g., *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (*Leadership Conference on Civil Rights*); *ACLU v. Dep't of Justice*, 321 F. Supp. 2d at 30 n.5 (*Electronic Privacy Information Center*).

¹¹ For example, ALC published a recent report on Customs and Border Protection practices and two issue briefs regarding language access and chemical hazards in the nail salon industry. Other publications by ALC include "Sound Barriers: Asian Americans and Language Access in Elections 2004," detailing problems faced by Asian American voters discovered through poll monitoring conducted by ALC and its partner organizations; "Equal Justice, Unequal Access: Immigrants and America's Legal System" describing barriers legal services faced by immigrants; and "Reinforcing the Seams: Guaranteeing the Promise of California's Landmark Anti-Sweatshop

- Maintaining a frequently-visited website: <http://www.asianlawcaucus.org> contains in-depth information about legal and civil rights and policies of special interest to the Asian and Pacific Islander community, and makes ALC's newsletters and reports available on line. It receives an average of 1,196 hits per week.
- Producing written materials in multiple languages: ALC specifically targets monolingual and underserved communities that traditional news media organizations may not reach. Most of ALC's materials and presentations are provided in multiple languages and many are reproduced verbatim by ethnic media outlets, including ethnic newspapers, radio and television stations, for wider distribution.

Similarly, the ACLU-NC's communication department publishes newsletters, news briefings, right-to-know documents, and other materials that are disseminated to the public. Its material is widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee. The ACLU-NC's communication department also disseminates information through the website, <http://www.aclunc.org>, which had 142,000 visitors who viewed 472,000 pages in 2009. This website addresses civil liberties issues in depth and provides features on civil liberties issues on which the ACLU-NC is focused. ACLU-NC staff persons are frequent spokespersons in television and print media and make frequent public presentations at meetings and events. Finally, the ACLU-NC's communication department disseminates information through a newsletter, which is distributed to subscribers by mail. Due to these extensive publication activities, the ACLU-NC is a "representative of the news media" under the FOIA and agency regulations.

As noted above, the *Guardian* is the largest circulation newsweekly in northern California, with audited weekly distribution of 150,000 copies. The paper is locally owned, independent, and has been continuously published since 1966. The paper covers breaking news, does detailed investigative reporting, publishes editorials and covers arts, entertainment, and lifestyle issues. The *Guardian* has received more than 100 state, local and national awards for journalistic excellence. The *Guardian* is a member of the California Newspaper Publishers Association and the Association of Alternative Newsweeklies.

The records requested are not sought for commercial use. The ALC and the ACLU-NC plan to use the channels described above to disseminate the information disclosed as a result of this FOIA request.¹²

Law," evaluating the implementation of a state worker protection law. All are available online at <http://www.asianlawcaucus.org>.

¹² Courts have found similar 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.

IV. REQUEST FOR WAIVER OF PROCESSING FEES UNDER FREEDOM OF INFORMATION ACT BECAUSE DISCLOSURE OF THE REQUESTED INFORMATION IS IN THE PUBLIC INTEREST.

We also request a fee waiver for duplication costs pursuant to 5 U.S.C. § 552(a)(4)(ii)(II)-(iii). Disclosure of the requested information is in the public interest. It will further public understanding of government conduct, in particular the FBI's policies, practices, and methods of surveillance including the use of informants, the use of informants in terrorism-related prosecutions, the rate at which investigations and assessments of Muslim communities result in criminal and other prosecutions, and the extent to which the FBI is currently targeting Muslim communities for investigations and assessments compared to other faith communities.

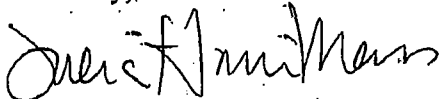
The ACLU-NC's communications department is a division of a nonprofit 501(c)(3) organization, and both the ACLU-NC's communications department and the *Guardian* are "representative[s] of the news media." The Asian Law Caucus is also a nonprofit 501(c)(3) organization. They are well situated to disseminate information gained through this request to the public, to affected communities, to organizations that protect immigrants' rights, and to political and religious organizations.

If the fee waivers are denied, the requesters are prepared to pay fees up to \$25, and request to be informed of further fees that may be charged, but reserve the right to appeal a denial of fee waivers. If this request for information is denied in whole or in part, we ask that you justify all deletions by reference to specific provisions of the Freedom of Information Act. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please furnish all applicable records to Julia Harumi Mass, American Civil Liberties Union of Northern California, 39 Drumm Street, San Francisco, California 94111, telephone (415) 621-2493.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Julia Harumi Mass
Staff Attorney, ACLU-NC



Veena Dubal
Staff Attorney, ALC



Tim Redmond
Executive Editor, *San Francisco Bay Guardian*