

August 21, 2002

Melanie Ann Pustay, Deputy Director  
Office of Information and Privacy  
Suite 570, Flag Building  
Department of Justice  
Washington, DC 20530-0001  
Attention: FOIA Request

Chief FOIA & Privacy Act Section  
Federal Bureau of Investigation  
Room 6296 JEH  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535  
Attention: FOIA Request

**RE: FREEDOM OF INFORMATION ACT**

Dear Freedom of Information Officer:

This letter constitutes a request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). It is submitted on behalf of the American Civil Liberties Union ("ACLU"), the Electronic Privacy Information Center ("EPIC"), and the American Booksellers Foundation for Free Expression ("ABFFE").

Records Sought

We seek disclosure of the following agency records:

1. All records prepared and/or collected by the Department of Justice ("DOJ") and/or the Federal Bureau of Investigation ("FBI") in connection with the DOJ's response to Questions 8, 10, 11, 12, 15, and 27 of the letter sent by Reps. Sensenbrenner and Conyers, in their capacities as Chairman and Ranking Member of the House Committee on the Judiciary, to the DOJ and FBI on June 13, 2002 (copy attached). This request includes all such records, whether or not they have been (or are expected to be) provided to Reps. Sensenbrenner and Conyers, the House Committee on the Judiciary, the House Permanent Select Committee on

Intelligence, or any other individual or entity. For your information, the DOJ's Office of Legislative Affairs responded to the letter from Reps. Sensenbrenner and Conyers on July 26 and may have knowledge of records responsive to this request.

2. All policy directives or guidance issued since the effective date of the USA PATRIOT Act ("Act") to DOJ and/or FBI employees, or any subset of DOJ employees, regarding the use of authority granted by Section 214 of the Act.
3. All policy directives or guidance issued since the Act's effective date to DOJ and/or FBI employees, or any subset of DOJ and/or FBI employees, regarding the use of authority granted by Section 215 of the Act.
4. All policy directives or guidance issued since the Act's effective date to DOJ and/or FBI employees, or any subset of DOJ and/or FBI employees, regarding the use of National Security Letters to obtain records from libraries, bookstores, or newspapers.
5. All policy directives or guidance issued since the Act's effective date to DOJ and/or FBI employees, or any subset of DOJ and/or FBI employees, regarding the use of authority granted by the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. § 1801 et seq., as amended by the Act.
6. All policy directives or guidance issued since the Act's effective date to DOJ and/or FBI employees, or any subset of DOJ and/or FBI employees, regarding the use of authority granted by the Electronic Communications Privacy Act ("ECPA"), 18 U.S.C. § 2510 et seq., as amended by the Act.

We further request disclosure of any agency records containing the following information, if such information is not contained in the records disclosed pursuant to paragraphs 1 through 6 above:

7. The number of times since the Act's effective date that the DOJ and/or FBI has relied on authority provided by Section 206 of the Act to seek an order from the FISA court requiring that persons not specifically identified in the order provide assistance.
8. The number of times since the Act's effective date that the DOJ and/or FBI has sought orders under 50 U.S.C. § 1842 et seq., as amended by Section 214 of the Act, authorizing the use of pen registers and trap and trace devices. Of this number, (i) the number of times the order related to a United States citizen, (ii) the number of times the order related to a permanent resident, and (iii) the number of times the order was sought at least in part on the basis of activities protected by the First Amendment to the United States Constitution.

9. The number of times since the Act's effective date that the DOJ and/or FBI has sought orders under 50 U.S.C. § 1861 et seq., as amended by Section 215 of the Act, directing the production of “tangible things.”
10. The number of times since the Act's effective date that the DOJ and/or FBI has sought orders, under 50 U.S.C. § 1861 et seq., as amended by Section 215 of the Act, directing a library, bookstore, or newspaper to produce tangible things. Of this number, (i) the number of times the order related to a specific book or other specifically identified content; (ii) the number of times the order related to a named individual, (iii) the number of times the order related to a named United States citizen, (iv) the number of times the order related to a named permanent resident, and (v) the number of times the order was sought at least in part on the basis of activities protected by the First Amendment to the United States Constitution.
11. The number of times since the Act's effective date that the DOJ and/or FBI has sought records or any other materials, including electronic communication transactional records, from libraries, bookstores, or newspapers by means of a National Security Letter. Of this number, (i) the number of times the request related to a specific book or other specifically identified content; (ii) the number of times the request related to a named individual, (iii) the number of times the request related to a named United States citizen, (iv) the number of times the request related to a named permanent resident, and (v) the number of times the request was sought at least in part on the basis of activities protected by the First Amendment to the United States Constitution.
12. The number of times since the Act's effective date that the DOJ and/or FBI has sought electronic communication transactional records from an electronic communications or remote computing service provider by means of a National Security Letter. Of this number, (i) the number of times the request related to a named individual, (ii) the number of times the request related to a named United States citizen, (iii) the number of times the request related to a named permanent resident, and (iv) the number of times the request was sought at least in part on the basis of activities protected by the First Amendment to the United States Constitution.
13. The number of times since the Act's effective date that the DOJ and/or FBI has relied on authority granted by Section 213 of the Act to delay notice of a search.
14. The number of times since the Act's effective date that the DOJ and/or FBI has invoked 18 U.S.C. § 2703 to require a provider of electronic communication or remote computing service to disclose the contents of any electronic communication. Of this number, (i) the number of times that notice to the subscriber or customer was not provided; (ii) the number of times that notice to the subscriber or customer was delayed pursuant to 18 U.S.C. § 2705(a); and (iii)

the number of times that the DOJ applied for a preclusion-of-notice order under 18 U.S.C. § 2705(b).

### Waiver of Processing Fees

The requesters qualify as “representatives of the news media,” and 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) As we explain below, each of the requesters is a news media organization, that is, each is an entity that “gathers information of potential interest to a segment of the public” and “uses its editorial skills to turn raw materials into a distinct work, and distributes them to an audience.” National Security Archive v. Department of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

The ACLU publishes newsletters, news briefings, right-to-know handbooks, 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 through its public education department. The ACLU also disseminates information through its Web site ([www.aclu.org](http://www.aclu.org)). The Web site addresses civil liberties issues in depth, provides features on civil liberties issues in the news, and contains hundreds of documents that relate to the issues on which the ACLU is focused. Finally, the ACLU disseminates information through an electronic newsletter, which is distributed to subscribers by e-mail.

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. This is accomplished through several means. First, EPIC maintains a heavily visited Web site ([www.epic.org](http://www.epic.org)) that highlights the “latest news” concerning privacy and civil liberties issues. The site also features scanned images of documents EPIC obtains under the FOIA. Second, EPIC publishes a bi-weekly electronic newsletter that is distributed to thousands of readers, many of whom report on technology issues for major news outlets. The newsletter reports on relevant policy developments of a timely nature (hence the bi-weekly publication schedule). It has been published continuously since 1996, and an archive of past issues is available at the EPIC Web site. Finally, EPIC publishes and distributes printed books that address a broad range of privacy, civil liberties and technology issues.

ABFFE is the bookseller's voice in the fight against censorship. Founded by the American Booksellers Association in 1990, ABFFE's mission is to promote and protect the free exchange of ideas, particularly those contained in books, by opposing restrictions on the freedom of speech; issuing statements on significant free expression controversies; participating in legal cases involving First Amendment rights; collaborating with other groups with an interest in free speech; and providing education about the importance of free expression to booksellers, other members of the book industry, politicians, the press and the public. ABFFE disseminates information about dangers to free expression on its website ([www.abffe.com](http://www.abffe.com)). ABFFE also publishes a monthly newsletter, which it distributes to subscribers, and makes other publications available to the public through its

on-line store. Some of the materials are offered for sale; others are available without charge.

The records requested are not sought for commercial use, and the requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described above.

#### Waiver of Duplication Costs

Additionally, we request a fee waiver for duplication costs because disclosure of this information is in the public interest. The information we seek is likely to contribute significantly to the public understanding of government activity. The ACLU, EPIC, and ABFFE are nonprofit 501(c)3 research and education organizations working to increase citizen participation in governance issues. The requesters are making this request specifically to further the public's understanding of the government's use of surveillance powers inside the United States. This matter is particularly pertinent in light of the many changes to the surveillance laws effected by the Act.

News articles reflect the strong public interest in the materials we seek in our request. See, e.g., Adam Clymer, "Justice Dept. Balks at Effort to Study Antiterror Powers," New York Times (August 14, 2002) (discussing Department of Justice's failure to fully answer questions of the House Judiciary Committee relating to surveillance provisions of Patriot Act); J. Michael Kennedy, "Reading? Somebody May Be Watching: Librarians and booksellers want to know just how far the FBI has gone in its effort to root out terrorists," Los Angeles Times (July 29, 2002) (noting fear of librarians and booksellers that FBI has been basing law enforcement decisions on activity protected by the First Amendment); Nat Hentoff, "Remembering Why We Are Americans," Village Voice (July 5, 2002) (discussing growing concerns about surveillance tactics of FBI); Wayne Washington, "For 60s Activists, Fear of Old Abuses in New FBI Powers," Boston Globe (June 17, 2002) (interviewing activists who were targeted by the FBI in the 1960s and who are worried that the FBI will again abuse its powers); Susan Schmidt & Dan Eggen, "FBI Given More Latitude: New Surveillance Rules Remove Evidence Hurdle," Washington Post (May 30, 2002) (noting that new Justice Department guidelines allow FBI agents to monitor Internet sites, libraries, and religious institutions without having to offer evidence of criminal activities); Editorial, "On gag rules, spy tools and freedom of speech," Baltimore Sun (April 22, 2002) (characterizing surveillance implications of Patriot Act as "chilling"); Nat Hentoff, "Big John Wants Your Reading List," Village Voice (February 22, 2002) (expressing concern at FBI's use of surveillance powers to obtain library and bookstore records); Molly Ivins, Commentary, "We are all suspects, if Ashcroft has his way," Chicago Tribune (December 6, 2001) (expressing concern at the Attorney General's apparent contempt for civil liberties); Carrie Kirby, "Watchdogs say terror bill goes too far," San Francisco Chronicle (October 25, 2001) (describing particular provisions of Patriot Act that might easily be abused).

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please be advised that, by separate letter to Barbara Comstock, Director of Public Affairs for DOJ, we are requesting the expedited processing of this request. Notwithstanding Ms. Comstock's determination, we look forward to your reply within 20 business days, as the statute requires under Section 552(a)(6)(A)(I).

Thank you for your prompt attention to this matter.

Please respond to Ann Beeson, Litigation Director, Technology & Liberty Program, American Civil Liberties Union Foundation, 125 Broad Street, New York, NY 10004, telephone (212) 549-2601.

Signed by:

American Civil Liberties Union  
Electronic Privacy Information Center  
American Booksellers Foundation  
for Free Expression