

17-3399

IN THE
United States Court of Appeals
FOR THE
Second Circuit

AMERICAN CIVIL LIBERTIES UNION and AMERICAN CIVIL LIBERTIES UNION FOUNDATION,
Plaintiffs–Appellants,

– v. –

NATIONAL SECURITY AGENCY, CENTRAL INTELLIGENCE AGENCY, UNITED STATES
DEPARTMENT OF DEFENSE, UNITED STATES DEPARTMENT OF JUSTICE, and
UNITED STATES DEPARTMENT OF STATE,
Defendants–Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX: VOLUME 1 OF 2 (JA001–JA242)

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*American Civil Liberties Union, et al. v. National Security Agency, et al.,
No. 17-3399 (2d Cir.)*

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U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:13-cv-09198-KMW

American Civil Liberties Union et al v. National Security Agency
et al
Assigned to: Judge Kimba M. Wood
Cause: 05:552 Freedom of Information Act

Date Filed: 12/30/2013
Date Terminated: 08/22/2017
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: Federal Question

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JA003

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Date Filed	#	Docket Text
12/30/2013	1	COMPLAINT against Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Filing Fee \$ 350.00, Receipt Number 1084393) Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (laq) Modified on 1/17/2014 (jd). (Entered: 01/07/2014)
12/30/2013		SUMMONS ISSUED as to Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (laq) Modified on 1/17/2014 (jd). (Entered: 01/07/2014)
12/30/2013		Magistrate Judge Michael H. Dolinger is so designated. (laq) (Entered: 01/07/2014)
12/30/2013		Case Designated ECF. (laq) (Entered: 01/07/2014)
01/10/2014	2	INITIAL PRETRIAL CONFERENCE ORDER: Initial Conference set for 3/31/2014 at 04:00 PM in Courtroom 15D, 500 Pearl Street, New York, NY 10007 before Judge Analisa Torres. The parties are directed to submit a joint letter by 2/21/2014, addressing the information further set forth in this Order. (Signed by Judge Analisa Torres on 1/10/2014) (tn) (Entered: 01/10/2014)
01/16/2014	3	NOTICE OF APPEARANCE by Jonathan Matthew Manes on behalf of American Civil Liberties Union, American Civil Liberties Union Foundation. (Manes, Jonathan) (Entered: 01/16/2014)
01/16/2014	4	NOTICE OF APPEARANCE by David A.. Schulz on behalf of American Civil Liberties Union, American Civil Liberties Union Foundation. (Schulz, David) (Entered: 01/16/2014)
01/16/2014	5	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Abdo, Alexander) (Entered: 01/16/2014)
01/16/2014	6	AFFIDAVIT OF SERVICE of Summons served on Eric H. Holder, Attorney General of the United States on 1/3/2014. Service was made by Mail. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Abdo, Alexander) (Entered: 01/16/2014)
01/16/2014	7	AFFIDAVIT OF SERVICE of Summons served on Central Intelligence Agency on 1/3/2014. Service was made by Mail. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Abdo, Alexander) (Entered: 01/16/2014)
01/16/2014	8	AFFIDAVIT OF SERVICE of Summons served on United States Department of Defense on 1/3/2014. Service was made by Mail. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Abdo, Alexander) (Entered: 01/16/2014)
01/16/2014	9	AFFIDAVIT OF SERVICE of Summons served on United States Department of Justice on 1/3/2014. Service was made by Mail. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Abdo, Alexander) (Entered: 01/16/2014)
01/16/2014	10	AFFIDAVIT OF SERVICE of Summons served on United States Department of State on

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		1/3/2014. Service was made by Mail. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Abdo, Alexander) (Entered: 01/16/2014)
01/16/2014	11	AFFIDAVIT OF SERVICE of Summons served on National Security Agency on 1/3/2014. Service was made by Mail. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Abdo, Alexander) (Entered: 01/16/2014)
01/16/2014	12	AFFIDAVIT OF SERVICE of Summons served on United States Attorney for the Southern District of New York on 1/3/2014. Service was made by Mail. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Abdo, Alexander) (Entered: 01/16/2014)
02/03/2014	13	CONSENT LETTER MOTION for Extension of Time <i>to file Answer and joint letter</i> addressed to Judge Analisa Torres from Jonathan M. Manes dated 02/03/2014. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Attachments: # 1 Text of Proposed Order)(Manes, Jonathan) (Entered: 02/03/2014)
02/03/2014	14	ORDER granting 13 Letter Motion for Extension of Time: that Defendants' current deadline of February 5, 2014 to Answer the original Complaint, filed December 30, 2013, is adjourned and Defendants shall file their Answer to Plaintiffs' Amended Complaint by no later than February 21, 2014; the parties' current deadline of February 21, 2014, to submit to the Court their joint letter and proposed Case Management Plan and Scheduling Order is adjourned to February 28, 2014; and the initial pretrial conference, scheduled for March 31, 2014 at 4:00 p.m., will not be disturbed. (Signed by Judge Analisa Torres on 2/3/2014) (tn) Modified on 2/3/2014 (tn). (Entered: 02/03/2014)
02/03/2014		Set/Reset Hearings: Initial Conference set for 3/31/2014 at 04:00 PM before Judge Analisa Torres. (tn) (Entered: 02/03/2014)
02/07/2014	15	CONSENT LETTER MOTION for Extension of Time <i>to file Answer and joint letter</i> addressed to Judge Analisa Torres from Jonathan M. Manes dated 02/07/2014. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Attachments: # 1 Text of Proposed Order)(Manes, Jonathan) (Entered: 02/07/2014)
02/07/2014	16	ORDER granting 15 Letter Motion for Extension of Time: Not later than February 18, 2014, Plaintiffs shall file any Amended Complaint. Not later than March 3, 2014, Defendants shall file their Answer to the Amended Complaint. Not later than March 10, 2014, the parties shall submit to the Court the joint letter and proposed Case Management Plan and Scheduling Order currently due on February 28, 2014. The initial pretrial conference, scheduled for March 31, 2014 at 4:00 p.m., will not be disturbed. Amended Pleadings due by 2/18/2014. (Signed by Judge Analisa Torres on 2/7/2014) (tn) (Entered: 02/10/2014)
02/18/2014	17	FIRST AMENDED COMPLAINT amending 1 Complaint, against Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. Related document: 1 Complaint, filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(cd) (ca). (Entered: 02/19/2014)
02/18/2014		***NOTE TO ATTORNEY TO E-MAIL PDF. Note to Attorney Alex Abdo for noncompliance with Section 14.3 of the S.D.N.Y. Electronic Case Filing Rules & Instructions. E-MAIL the PDF for Document 17 Amended Complaint, to: caseopenings@nysd.uscourts.gov. (cd) (Entered: 02/19/2014)
03/03/2014	18	ANSWER to 17 Amended Complaint,. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Barnea, Jean-David) (Entered: 03/03/2014)

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03/11/2014	19	FILING ERROR - WRONG PDF FILE ASSOCIATED WITH DOCKET ENTRY - INITIAL REPORT OF PARTIES BEFORE PRETRIAL CONFERENCE. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Manes, Jonathan) Modified on 3/18/2014 (lb). (Entered: 03/11/2014)
03/11/2014	20	INITIAL REPORT OF PARTIES BEFORE PRETRIAL CONFERENCE. <i>Corrected</i> Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Manes, Jonathan) (Entered: 03/11/2014)
03/11/2014	21	LETTER MOTION for Extension of Time to File <i>Initial Report of Parties Before Pretrial Conference, nunc pro tunc</i> addressed to Judge Analisa Torres from Jonathan M. Manes dated 03/11/2014. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Manes, Jonathan) (Entered: 03/11/2014)
03/12/2014	22	NOTICE OF APPEARANCE by Patrick Christopher Toomey on behalf of American Civil Liberties Union, American Civil Liberties Union Foundation. (Toomey, Patrick) (Entered: 03/12/2014)
03/12/2014	23	ORDER granting 21 Letter Motion for Extension of Time to File: Plaintiffs' late filing is EXCUSED. (HEREBY ORDERED by Judge Analisa Torres)(Text Only Order) (Torres, Analisa) (Entered: 03/12/2014)
03/31/2014	24	ORDER: The initial pre-trial conference scheduled for March 31, 2014 is ADJOURNED to April 16, 2014 at 4:30 p.m. (Signed by Judge Analisa Torres on March 31, 2014) (Torres, Analisa) (Entered: 03/31/2014)
04/14/2014	25	LAW STUDENT INTERN APPEARANCE FORM. Consent of Judge. I authorize this student, Conor Clarke: (a) to appear in court or other proceedings on behalf of the above client, and (b) to prepare documents on behalf of the above client, and as further set forth. (Signed by Judge Analisa Torres on 4/14/2014) (rjm) (Entered: 04/15/2014)
04/16/2014		Minute Order Proceedings held before Judge Analisa Torres: Initial Pretrial Conference held on 4/16/2014. (mo) (Entered: 04/17/2014)
04/18/2014	26	LETTER MOTION for Conference addressed to Judge Analisa Torres from David A. Schulz dated 4/18/2014. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Schulz, David) (Entered: 04/18/2014)
04/18/2014	27	ORDER granting 26 LETTER MOTION for Conference addressed to Judge Analisa Torres from David A. Schulz dated 4/18/2014. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. So ordered. (Signed by Judge Analisa Torres on 4/18/2014) (rjm) (Entered: 04/21/2014)
05/07/2014	28	CONSENT LETTER MOTION for Extension of Time to File <i>Joint Stipulation</i> addressed to Judge Analisa Torres from Jonathan M. Manes dated 05/07/2014. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Manes, Jonathan) (Entered: 05/07/2014)
05/08/2014	29	ORDER granting 28 Letter Motion for Extension of Time to File Joint Stipulation. ENDORSEMENT: The parties' request to extend the deadline to submit a joint stipulation to May 9, 2014 is GRANTED. SO ORDERED. (Signed by Judge Analisa Torres on 5/8/2014) (kgo) (Entered: 05/08/2014)
05/09/2014	30	STIPULATION AND ORDER REGARDING DOCUMENT SEARCHES. It is hereby STIPULATED and AGREED between the Parties as follows: The searches the Agencies agree to undertake that are described herein are deemed to fulfill in full the Agencies' search obligations under the respective Requests. OLC will continue to search for and process only those documents encompassed by the agreement it reached with Plaintiffs

		during the administrative processing of the relevant Request. NSA, CIA, DIA, FBI, and State will search for and process only the categories of documents as further specified herein, and as further set forth in this Stipulation and Order Regarding Document Searches. (Signed by Judge Analisa Torres on 5/9/2014) (rjm) (Entered: 05/12/2014)
05/21/2014	31	ENDORSED LETTER addressed to Judge Analisa Torres from Jonathan M. Manes dated 5/21/2014 re: The parties hereby request that the Court endorse this letter to set deadlines by when the defendant agencies are to complete any required remaining searches for potentially responsive documents in connection with Plaintiffs' FOIA requests, as those requests have been modified or construed by so-ordered stipulation of the parties (Dkt. No. 30). The parties' agreed-upon deadlines are as further specified in this letter. ENDORSEMENT: So ordered. (Signed by Judge Analisa Torres on 5/21/2014) (rjm) (Entered: 05/22/2014)
06/23/2014	32	ENDORSED LETTER addressed to Judge Analisa Torres from Jonathan M. Manes dated 6/20/2014 re: As directed by the Court's so-ordering of an April 18 joint letter of the parties (Dkt. No. 27), the parties hereby request that the Court endorse this letter to set deadlines by when the defendant agencies are to complete any required review and processing of potentially responsive documents in connection with Plaintiffs' FOIA requests, as those requests have been modified or construed by so-ordered stipulation of the parties (Dkt. No. 30). ENDORSEMENT: So ordered. (Signed by Judge Analisa Torres on 6/23/2014) (lmb) (Entered: 06/23/2014)
08/08/2014	33	LETTER MOTION for Extension of Time <i>to extend deadline for completion of CIA's search for records to August 27, 2014, and to extend to September 5, 2014 the last date for parties to propose modification of the CIA's processing completion date</i> , addressed to Judge Analisa Torres from AUSA David S. Jones dated 08/08/2014. Document filed by Central Intelligence Agency.(Jones, David) (Entered: 08/08/2014)
08/11/2014	34	LETTER addressed to Judge Analisa Torres from Patrick Toomey dated August 11, 2014 re: Opposition to CIA Motion for Extension of Search Deadline. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Toomey, Patrick) (Entered: 08/11/2014)
08/12/2014	35	ORDER. Having reviewed the parties' letters dated August 8, 2014 and August 11, 2014, it is ORDERED that Defendant's request for an extension is GRANTED, and Plaintiffs' requests are DENIED. By August 27, 2014, the CIA shall complete its search for potentially responsive documents. By September 3, 2014, the parties shall submit any proposed modifications to the February 9, 2015 deadline for the CIA to complete its review and processing of responsive documents. Granting 33 Letter Motion for Extension of Time. (Signed by Judge Analisa Torres on 8/12/2014) (rjm) (Entered: 08/13/2014)
09/03/2014	36	LETTER addressed to Judge Analisa Torres from AUSA Jean-David Barnea dated 9/3/14 re: CIA Production Schedule. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Barnea, Jean-David) (Entered: 09/03/2014)
09/05/2014	37	ORDER: Defendant's request is GRANTED. By February 27, 2015, the CIA shall complete its review and processing of all potentially responsive documents. SO ORDERED. (Signed by Judge Analisa Torres on 9/4/2014) (ajs) (Entered: 09/05/2014)
09/16/2014	38	NOTICE OF APPEARANCE by David Stuart Jones on behalf of Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Jones, David) (Entered: 09/16/2014)
09/16/2014	39	LETTER MOTION for Extension of Time <i>as to NSA's review and processing of potentially responsive records</i> addressed to Judge Analisa Torres from David S. Jones

JA007

		dated September 16, 2014. Document filed by National Security Agency.(Jones, David) (Entered: 09/16/2014)
09/17/2014	40	MEMO ENDORSED ORDER granting 39 Letter Motion for Extension of Time. ENDORSEMENT: Defendant's request is GRANTED. SO ORDERED. (Signed by Judge Analisa Torres on 9/17/2014) (ajs) (Entered: 09/17/2014)
10/09/2014	41	NOTICE OF APPEARANCE by Ashley Marie Gorski on behalf of American Civil Liberties Union, American Civil Liberties Union Foundation. (Gorski, Ashley) (Entered: 10/09/2014)
10/30/2014	42	LETTER addressed to Judge Analisa Torres from Ashley Gorski dated October 30, 2014 re: Joint Stipulation and Proposed Order. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Attachments: # 1 Text of Proposed Order)(Gorski, Ashley) (Entered: 10/30/2014)
10/30/2014	43	JOINT STIPULATION AND ORDER: Plaintiffs may file a Second Amended Complaint in the form attached hereto as Exhibit A. Within two weeks of the date of this Joint Stipulation, the parties will submit to the Court an agreed upon schedule for the search and processing of records responsive to the FOIA request submitted by Plaintiffs on July 29, 2014 to the National Security Division of the Department of Justice. In the event that that the parties cannot reach an agreement as to the search and processing schedule, they will each submit their respective proposed schedules to the Court for a decision. Defendants will file their Answer to the Second Amended Complaint no later than thirty days after it is filed. Nothing in this Stipulation shall affect existing orders of the Court setting certain deadlines for Defendants' search, review, and processing of potentially responsive documents. SO ORDERED. (Signed by Judge Analisa Torres on 10/30/2014) (ajs) (Entered: 10/31/2014)
10/31/2014	44	SECOND AMENDED COMPLAINT amending 17 Amended Complaint, against Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. Related document: 17 Amended Complaint, filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Gorski, Ashley) (Entered: 10/31/2014)
11/14/2014	45	LETTER addressed to Judge Analisa Torres from David S. Jones dated November 14, 2014 re: proposed schedule for processing documents responsive to plaintiffs' July 2014 FOIA request to the DOJ National Security Division. Document filed by Department of Justice.(Jones, David) (Entered: 11/14/2014)
11/17/2014	46	MEMO ENDORSEMENT on re: 45 Letter, filed by Department of Justice. ENDORSEMENT: GRANTED. SO ORDERED. (Signed by Judge Analisa Torres on 11/17/2014) (ajs) (Entered: 11/17/2014)
11/24/2014	47	ANSWER to 44 Amended Complaint,. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Barnea, Jean-David) (Entered: 11/24/2014)
02/27/2015	48	CONSENT LETTER MOTION for Extension of Time <i>for CIA to complete production</i> addressed to Judge Analisa Torres from AUSA Jean-David Barnea dated 2/27/15. Document filed by Central Intelligence Agency.(Barnea, Jean-David) (Entered: 02/27/2015)
03/02/2015	49	ORDER granting 48 Letter Motion for Extension of Time. Defendant's request is GRANTED. By April 30, 2015, the CIA shall complete its review and processing of all potentially responsive documents. SO ORDERED. (Signed by Judge Analisa Torres on 3/2/2015) (ajs) (Entered: 03/02/2015)

JA008

03/16/2015	50	STIPULATION AND ORDER REGARDING NSD DOCUMENT SEARCHES FOR PRODUCTION: 1. Date Limitations for Document Searches. a. With respect to the categories of documents described in Paragraphs 1-3 of the Second Request, NSD will search for and process only documents that are currently in use or effect, or that were created or modified on or after September 11, 2001. b. With respect to the categories of documents described in Paragraph 4 of the Second Request, NSD will search for and process only documents that are currently in use or effect. c. With respect to the categories of documents described in Paragraph 5 of the Second Request, NSD will initially search for and process only documents created or modified on or after September 11, 2001; after the completion of NSD's production of these documents, the parties agree to continue their discussions regarding whether searches for documents created before September 11, 2001 will be undertaken, including whether conducting such searches would be unduly burdensome to NSD. 2. Document Production Deadlines. By May 1, 2015, NSD shall complete its processing of the Second Request and produce all documents, or portions thereof, it deems to be responsive and non-exempt. By March 13, 2015, NSD shall make an interim production that includes any documents for which it does not need to consult with other agencies. 3. Nothing in this Stipulation and Order, including the fact of its entry, should be taken as a concession by NSD that Plaintiffs have "substantially prevailed" in this action in whole or in part, as that term is used in 5 U.S.C. § 552(a)(4)(E). SO ORDERED. (Signed by Judge Analisa Torres on 3/16/2015) (ajs) (Entered: 03/16/2015)
12/02/2015	51	FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU - LETTER MOTION for Leave to File Cross Motions for Partial Summary Judgment addressed to Judge Analisa Torres from Jonathan Manes dated 12/2/2015. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Manes, Jonathan) Modified on 12/8/2015 (ldi). (Entered: 12/02/2015)
12/08/2015		***NOTICE TO ATTORNEY TO RE-FILE DOCUMENT - EVENT TYPE ERROR. Notice to Attorney Jonathan Matthew Manes to RE-FILE Document 51 LETTER MOTION for Leave to File Cross Motions for Partial Summary Judgment addressed to Judge Analisa Torres from Jonathan Manes dated 12/2/2015. Use the event type Letter found under the event list Other Documents. (ldi) (Entered: 12/08/2015)
12/08/2015	52	LETTER addressed to Judge Analisa Torres from Jonathan Manes dated 12/2/2015 re: Proposed Schedule for Cross Motions for Summary Judgment. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Manes, Jonathan) (Entered: 12/08/2015)
12/09/2015	53	ORDER re: 52 LETTER addressed to Judge Analisa Torres from Jonathan Manes dated 12/2/2015 re: Proposed Schedule for Cross Motions for Summary Judgment. Having reviewed the parties' joint letter dated December 2, 2015, it is ORDERED that: 1. By January 15, 2016, the Defendants shall submit their motion for partial summary judgment; 2. By February 16, 2016, Plaintiffs shall submit their cross-motion for partial summary judgment and opposition to the Defendants' motion; 3. By March 18, 2016, the Defendants shall submit their opposition to Plaintiffs' cross-motion and reply in support of partial summary judgment; and 4. By April 8, 2016, Plaintiffs shall submit their reply in support of partial summary judgment. In addition, the parties' request to forego the exchange of Local Civil Rule 56.1 Statements is GRANTED. (Motions due by 1/15/2016. Cross Motions due by 2/16/2016. Responses due by 3/18/2016. Replies due by 4/8/2016.) (Signed by Judge Analisa Torres on 12/9/2015) (adc) (Entered: 12/10/2015)
01/11/2016	54	CONSENT LETTER MOTION for Extension of Time to File <i>Partial Summary Judgment Motion</i> addressed to Judge Analisa Torres from AUSA Jean-David Barnea dated 1/11/16. Document filed by Central Intelligence Agency, Department of Defense, Department of

		Justice, Department of State, National Security Agency.(Barnea, Jean-David) (Entered: 01/11/2016)
01/12/2016	55	ORDER granting 54 Letter Motion for Extension of Time to Partial Summary Judgment Motion. Having reviewed the parties' joint letter dated January 11, 2016, it is ORDERED that: 1. By February 5, 2016, the Defendants shall submit their motion for partial summary judgment; 2. By March 8, 2016, Plaintiffs shall submit their cross-motion for partial summary judgment and opposition to the Defendants' motion; 3. By April 8, 2016, the Defendants shall submit their opposition to Plaintiffs' cross-motion and reply in support of partial summary judgment; and 4. By April 29, 2016, Plaintiffs shall submit their reply in support of partial summary judgment. (Signed by Judge Analisa Torres on 1/12/2016) (kko) (Entered: 01/12/2016)
01/12/2016		Set/Reset Deadlines: Motions due by 2/5/2016. Cross Motions due by 3/8/2016. Responses due by 4/8/2016. Replies due by 4/29/2016. (kko) (Entered: 01/12/2016)
01/29/2016	56	CONSENT LETTER MOTION for Extension of Time <i>on briefing for summary judgment</i> addressed to Judge Analisa Torres from David S. Jones dated January 29, 2016. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Jones, David) (Entered: 01/29/2016)
02/02/2016	57	ORDER granting 56 Letter Motion for Extension of Time on briefing for summary judgment. GRANTED. The parties shall adhere to the schedule set forth above. SO ORDERED. (Motions due by 2/26/2016. Cross Motions due by 4/20/2016.) (Signed by Judge Analisa Torres on 2/2/2016) (kko) (Entered: 02/02/2016)
02/02/2016		Set/Reset Deadlines: Responses due by 5/18/2016. Replies due by 6/8/2016. (kko) (Entered: 02/02/2016)
02/26/2016	58	MOTION for Partial Summary Judgment . Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	59	MEMORANDUM OF LAW in Support re: 58 MOTION for Partial Summary Judgment . . Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Attachments: # 1 Addendum: Document Index)(Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	60	DECLARATION of Antoinette B. Shiner (CIA) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Attachments: # 1 Exhibit A - Vaughn, # 2 Exhibit B, # 3 Exhibit C)(Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	61	DECLARATION of Arthur R. Sepeta (DHS) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	62	DECLARATION of Alesia Y. Williams (DIA) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Attachments: # 1 Exhibits A-E, # 2 Exhibit F)(Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	63	DECLARATION of David M. Hardy (FBI) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of

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		Defense, Department of Justice, Department of State, National Security Agency. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	64	DECLARATION of David J. Sherman (NSA) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Attachments: # 1 Declaration (part 2), # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17, # 19 Exhibit 18)(Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	65	DECLARATION of John Bradford Wiegmann (NSD) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Attachments: # 1 Exhibits)(Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	66	DECLARATION of Christina M. Butler (OIP) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	67	DECLARATION of Paul P. Colborn (OLC) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit E-1, # 7 Exhibit E-2 (part 1), # 8 Exhibit E-2 (part 2), # 9 Exhibit E-3, # 10 Exhibit F, # 11 Exhibit G)(Barnea, Jean-David) (Entered: 02/26/2016)
02/26/2016	68	DECLARATION of John F. Hackett (State) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Attachments: # 1 Exhibits)(Barnea, Jean-David) (Entered: 02/26/2016)
04/20/2016	69	CROSS MOTION for Partial Summary Judgment . Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Gorski, Ashley) (Entered: 04/20/2016)
04/20/2016	70	MEMORANDUM OF LAW in Support re: 69 CROSS MOTION for Partial Summary Judgment . <i>and in Opposition to Defendants' Motion for Partial Summary Judgment.</i> Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Gorski, Ashley) (Entered: 04/20/2016)
04/20/2016	71	DECLARATION of Jonathan Manes in Support re: 69 CROSS MOTION for Partial Summary Judgment .. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D-Part 1, # 5 Exhibit D-Part 2, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O-Part 1, # 17 Exhibit O-Part 2, # 18 Exhibit P, # 19 Exhibit Q)(Gorski, Ashley) (Entered: 04/20/2016)
05/11/2016	72	JOINT LETTER MOTION for Extension of Time to File Response/Reply as to 57 Order on Motion for Extension of Time, <i>on cross-motions for summary judgment (ECF Nos. 59, 70), also to extend plaintiff's time to reply in support of their cross-motion</i> addressed to Judge Analisa Torres from DAVID S. Jones dated 05/11/2016. Document filed by Central

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		Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Jones, David) (Entered: 05/11/2016)
05/11/2016	73	ORDER granting 72 Letter Motion for Extension of Time to File Response/Reply re 58 MOTION for Partial Summary Judgment, 69 CROSS MOTION for Partial Summary Judgment. GRANTED. Defendants shall file their opposition and reply by June 8, 2016. Plaintiffs shall file their reply by July 1, 2016. No further extensions shall be granted. SO ORDERED. (Replies due by 6/8/2016. Responses due by 6/8/2016. Replies due by 7/1/2016.) (Signed by Judge Analisa Torres on 5/11/2016) (kko) (Entered: 05/11/2016)
06/08/2016	74	NOTICE of filing of classified document on 2/29/2016 re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Jones, David) (Entered: 06/08/2016)
06/08/2016	75	REPLY MEMORANDUM OF LAW in Support re: 58 MOTION for Partial Summary Judgment . <i>and in Opposition to Plaintiffs' Cross-Motion</i> . Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 06/08/2016)
06/08/2016	76	DECLARATION of Antoinette B. Shiner (CIA) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 06/08/2016)
06/08/2016	77	DECLARATION of Alesia Y. Williams (DIA) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 06/08/2016)
06/08/2016	78	DECLARATION of David M. Hardy (FBI) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 06/08/2016)
06/08/2016	79	DECLARATION of David J. Sherman (NSA) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 06/08/2016)
06/08/2016	80	DECLARATION of John Bradford Wiegmann (NSD) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Attachments: # 1 Exhibit Transmittal Letter)(Barnea, Jean-David) (Entered: 06/08/2016)
06/08/2016	81	DECLARATION of Eric F. Stein (State) in Support re: 58 MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 06/08/2016)
07/01/2016	82	REPLY MEMORANDUM OF LAW in Support re: 69 CROSS MOTION for Partial Summary Judgment . . Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Gorski, Ashley) (Entered: 07/01/2016)
08/17/2016		Magistrate Judge James C. Francis IV is so redesignated. (wb) (Entered: 08/17/2016)
08/18/2016	83	ORDER. It is ORDERED that by September 30, 2016, State shall complete its review of the materials for responsiveness to Plaintiffs' requests, whereupon Defendants shall

		submit a letter informing the Court as to the number of responsive documents found and proposing a date by which Defendants will produce the responsive documents and a Vaughn index justifying any withholdings. By October 5, 2016, Plaintiffs shall respond to Defendants' letter. Decision on the parties' cross-motions for partial summary judgment is held in abeyance pending Defendants' review of these additional materials. The Clerk of Court is directed to terminate the motions at ECF Nos. 58 and 69. SO ORDERED. Terminating 58 Motion for Partial Summary Judgment; Terminating 69 Motion for Partial Summary Judgment. (Signed by Judge Analisa Torres on 8/18/2016) (rjm) (Entered: 08/19/2016)
08/23/2016	84	MOTION for Hannah Corey Bloch-Wehba to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number 0208-12682205. Motion and supporting papers to be reviewed by Clerk's Office staff. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Attachments: # 1 Text of Proposed Order, # 2 Exhibit Certificate of Good Standing for District of Columbia Bar, # 3 Exhibit Certificate of Good Standing for State Bar of Texas)(Bloch-Wehba, Hannah) (Entered: 08/23/2016)
08/23/2016		>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 84 MOTION for Hannah Corey Bloch-Wehba to Appear Pro Hac Vice . Filing fee \$ 200.00, receipt number 0208-12682205. Motion and supporting papers to be reviewed by Clerk's Office staff.. The document has been reviewed and there are no deficiencies. (wb) (Entered: 08/23/2016)
08/25/2016	85	ORDER granting 84 Motion for Hannah Corey Bloch-Wehba to Appear Pro Hac Vice (HEREBY ORDERED by Judge Analisa Torres)(Text Only Order) (Torres, Analisa) (Entered: 08/25/2016)
09/26/2016	86	LETTER addressed to Judge Analisa Torres from David S. Jones dated September 26, 2016 re: outcome of supplemental review of additional files (submitted as directed by order dated August 18, 2016 (ECF No. 83)). Document filed by Department of State. (Jones, David) (Entered: 09/26/2016)
09/29/2016	87	LETTER addressed to Judge Analisa Torres from Ashley Gorski dated September 29, 2016 re: outcome of supplemental review of additional files (submitted as directed by order dated August 18, 2016 (ECF No. 83)). Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Gorski, Ashley) (Entered: 09/29/2016)
09/30/2016	88	LETTER addressed to Judge Analisa Torres from David S. Jones dated 09 30 2016 re: response and non-objection to plaintiffs' September 29 letter; request for simultaneous reinstatement of defendants' motion for partial summary judgment. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Jones, David) (Entered: 09/30/2016)
11/22/2016		NOTICE OF CASE REASSIGNMENT to Judge Kimba M. Wood. Judge Analisa Torres is no longer assigned to the case. (wb) (Entered: 11/22/2016)
12/19/2016	89	JOINT LETTER addressed to Judge Kimba M. Wood from Ashley Gorski dated 12/19/2016 re: Status Update and Request to Reinstate Cross-Motions. Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Gorski, Ashley) (Entered: 12/19/2016)
12/21/2016	90	MEMO ENDORSEMENT on re: 89 Letter filed by American Civil Liberties Union, American Civil Liberties Union Foundation. ENDORSEMENT SO ORDERED. (Signed by Judge Kimba M. Wood on 12/21/2016) (cf) (Entered: 12/21/2016)
01/03/2017	91	MOTION for Alex Abdo to Withdraw as Attorney . Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation.(Abdo, Alexander)

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		(Entered: 01/03/2017)
01/04/2017	92	ORDER granting 91 MOTION OF ALEX ABDO TO WITHDRAW AS COUNSEL. SO ORDERED. Attorney Alexander Abraham Abdo terminated. (Signed by Judge Kimba M. Wood on 1/04/2017) (ama) (Entered: 01/04/2017)
03/27/2017	93	MEMORANDUM OPINION AND ORDER: The parties each move for partial summary judgment on the adequacy of certain agencies' searches and the applicability of certain FOIA exemptions to 150 responsive documents that were partially or fully withheld by Defendants. (As further set forth in this Order.) For the reasons stated above, Defendants' motion is GRANTED in part and DENIED in part, and Plaintiffs' motion is DENIED without prejudice. The parties are directed to confer and jointly submit a proposed briefing schedule on any further motions on or before April 26, 2017. The Clerk of Court is directed to terminate the motions at ECF Nos. 58 and 69. (Signed by Judge Kimba M. Wood on 3/27/2017) (cf) (Entered: 03/27/2017)
03/27/2017	94	INTERNET CITATION NOTE: Material from decision with Internet citation re: 93 Memorandum & Opinion. (Attachments: # 1 Internet Citation, # 2 Internet Citation, # 3 Internet Citation, # 4 Internet Citation, # 5 Internet Citation, # 6 Internet Citation, # 7 Internet Citation, # 8 Internet Citation, # 9 Internet Citation) (vf) (Entered: 04/19/2017)
04/25/2017	95	JOINT LETTER addressed to Judge Kimba M. Wood from AUSA Jean-David Barnea dated 4/25/17 re: Schedule for Supplemental Filings. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Barnea, Jean-David) (Entered: 04/25/2017)
04/26/2017	96	MEMO ENDORSEMENT on re: 95 Letter, filed by Department of Defense, Department of State, Department of Justice, Central Intelligence Agency, National Security Agency. ENDORSEMENT: SO ORDERED. (Cross Motions due by 7/10/2017. Motions due by 6/12/2017. Responses due by 7/10/2017. Replies due by 7/24/2017.) (Signed by Judge Kimba M. Wood on 4/25/2017) (ras) (Entered: 04/26/2017)
06/07/2017	97	CONSENT LETTER MOTION for Extension of Time <i>for submissions on motion for partial summary judgment</i> addressed to Judge Kimba M. Wood from David S. Jones dated June 7, 2017. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Jones, David) (Entered: 06/07/2017)
06/08/2017	98	ORDER granting 97 Letter Motion for Extension of Time. GRANTED. The parties shall follow the schedule set forth above. (Cross Motions due by 7/14/2017. Motions due by 6/14/2017.) (Signed by Judge Kimba M. Wood on 6/8/2017) (ras) (Entered: 06/08/2017)
06/08/2017		Set/Reset Deadlines: Responses due by 7/14/2017. Replies due by 7/28/2017. (ras) (Entered: 06/08/2017)
06/14/2017	99	SECOND MOTION for Partial Summary Judgment . Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. Responses due by 7/14/2017(Jones, David) (Entered: 06/14/2017)
06/14/2017	100	MEMORANDUM OF LAW in Support re: 99 SECOND MOTION for Partial Summary Judgment . . Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Jones, David) (Entered: 06/14/2017)
06/14/2017	101	DECLARATION of Antoinette B. Shiner (CIA) in Support re: 99 SECOND MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency,

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		Department of Defense, Department of Justice, Department of State, National Security Agency. (Jones, David) (Entered: 06/14/2017)
06/14/2017	102	DECLARATION of David M. Hardy (FBI) in Support re: 99 SECOND MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Jones, David) (Entered: 06/14/2017)
06/14/2017	103	DECLARATION of David J. Sherman (NSA) in Support re: 99 SECOND MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Jones, David) (Entered: 06/14/2017)
06/14/2017	104	DECLARATION of Kevin G. Tiernan (NSD) in Support re: 99 SECOND MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Jones, David) (Entered: 06/14/2017)
07/07/2017	105	DECLARATION of David M. Hardy (FBI) (Supplemental) in Support re: 99 SECOND MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 07/07/2017)
07/14/2017	106	SECOND MOTION for Partial Summary Judgment . Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. Responses due by 7/28/2017(Gorski, Ashley) (Entered: 07/14/2017)
07/14/2017	107	MEMORANDUM OF LAW in Support re: 106 SECOND MOTION for Partial Summary Judgment . <i>and in Opposition to Defendants' Second Motion for Partial Summary Judgment</i> . Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. (Gorski, Ashley) (Entered: 07/14/2017)
07/25/2017	108	LETTER MOTION for Extension of Time to File Response/Reply as to 99 SECOND MOTION for Partial Summary Judgment . addressed to Judge Kimba M. Wood from AUSA Jean-David Barnea dated 7/25/17. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency.(Barnea, Jean-David) (Entered: 07/25/2017)
07/25/2017	109	ORDER granting 108 Letter Motion for Extension of Time to File Response/Reply. GRANTED. Defendants' reply brief shall be filed no later than August 4, 2017. SO ORDERED. (Replies due by 8/4/2017.) (Signed by Judge Kimba M. Wood on 7/25/2017) (ras) (Entered: 07/25/2017)
08/04/2017	110	REPLY MEMORANDUM OF LAW in Support re: 99 SECOND MOTION for Partial Summary Judgment . <i>and in Opposition to Plaintiffs' Cross-Motion</i> . Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 08/04/2017)
08/04/2017	111	REPLY AFFIRMATION of David J. Sherman (NSA) in Support re: 99 SECOND MOTION for Partial Summary Judgment .. Document filed by Central Intelligence Agency, Department of Defense, Department of Justice, Department of State, National Security Agency. (Barnea, Jean-David) (Entered: 08/04/2017)
08/17/2017	112	ORDER granting 99 Motion for Partial Summary Judgment; denying 106 Motion for Partial Summary Judgment. The parties now each move for partial summary judgment as to the remaining 46 documents that are contested. In accordance with the Order, the Government has conducted additional review and searches, and provided additional support for its motion. (As further set forth in this Order.) For the reasons stated above,

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		Defendants' motion is GRANTED and Plaintiffs' motion is DENIED. The Court believes that this order resolves all remaining issues. If the parties disagree, they shall file a letter on the docket within 30 days explaining any outstanding issues. The Clerk of Court is directed to terminate the motions at ECF Nos. 99 and 106 and to close the case. (Signed by Judge Kimba M. Wood on 8/17/2017) (cf) (Entered: 08/17/2017)
08/17/2017		Transmission to Judgments and Orders Clerk. Transmitted re: 112 Order to the Judgments and Orders Clerk. (cf) (Entered: 08/17/2017)
08/22/2017	113	CLERK'S JUDGMENT: It is, ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Order dated August 17, 2017, Defendants' motion is granted and Plaintiffs' motion is denied. The Court believes that the Order resolves all remaining issues. If the parties disagree, they shall file a letter on the docket within 30 days explaining any outstanding issues; accordingly, the case is closed. (Signed by Clerk of Court Ruby Krajick on 8/22/2017) (Attachments: # 1 Right to Appeal, # 2 Right to Appeal)(km) (Entered: 08/22/2017)
10/20/2017	114	NOTICE OF APPEAL from 113 Clerk's Judgment,, Document filed by American Civil Liberties Union, American Civil Liberties Union Foundation. Filing fee \$ 505.00, receipt number 0208-14269822. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Gorski, Ashley) (Entered: 10/20/2017)
10/20/2017		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 114 Notice of Appeal,. (nd) (Entered: 10/20/2017)
10/20/2017		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 114 Notice of Appeal, filed by American Civil Liberties Union, American Civil Liberties Union Foundation were transmitted to the U.S. Court of Appeals. (nd) (Entered: 10/20/2017)

PACER Service Center			
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01/18/2018 18:00:06			
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Jones, A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY,
CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF STATE,

Defendants.

USDC SDNY
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DOC #: _____
DATE FILED: <u>5/9/14</u>

13 Civ. 9198 (AT)

STIPULATION AND ORDER REGARDING DOCUMENT SEARCHES

WHEREAS, on May 13, 2013, Plaintiffs the American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively, "Plaintiffs") made requests (the "Requests") pursuant to the Freedom of Information Act ("FOIA") to various government agencies, including, as relevant here, the National Security Agency ("NSA"), the Central Intelligence Agency ("CIA"), the Defense Intelligence Agency ("DIA"), the Department of Justice's Office of Legal Counsel ("OLC"), the Department of Justice's National Security Division ("NSD"), the Federal Bureau of Investigation ("FBI") and the Department of State ("State") (collectively, the "Agencies") relating to the Agencies' respective authorities pursuant to Executive Order ("EO") 12,333, and activities undertaken pursuant to those authorities;

WHEREAS, over the course of the administrative processing of Plaintiffs' FOIA requests, Plaintiffs came to agreements with NSA and OLC regarding the scope of searches that

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these agencies would perform in full resolution of the relevant Requests, and these agencies thereafter began searching for and processing documents based on these agreements;

WHEREAS, on December 30, 2013, Plaintiffs filed a complaint in the instant action against the NSA, CIA, the Department of Defense (“DoD”), the Department of Justice (“DOJ”), and State (collectively, the “Defendants,” and together with Plaintiffs, the “Parties”) seeking judicial assistance in securing the Agencies’ responses to their Requests;

WHEREAS, on February 18, 2014, Plaintiffs filed an amended complaint in this action;

WHEREAS, on March 3, 2014, Defendants answered the amended complaint;

AND WHEREAS, the Parties have engaged in discussions in an attempt to reach agreement on the scope of searches that the Agencies will undertake in response to the Requests.

NOW, THEREFORE, it is hereby STIPULATED and AGREED between the Parties as follows:

1. The searches the Agencies agree to undertake that are described herein are deemed to fulfill in full the Agencies’ search obligations under the respective Requests.
2. OLC will continue to search for and process only those documents encompassed by the agreement it reached with Plaintiffs during the administrative processing of the relevant Request.
3. NSA, CIA, DIA, FBI, and State will search for and process only the following categories of documents:
 - a. Any formal regulations or policies relating to that Agency’s authority under EO 12,333 to undertake “Electronic Surveillance” (as that term is defined in EO 12,333) that implicates “United States Persons” (as that term is defined in EO 12,333), including regulations or policies relating to that Agency’s

acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.¹

- b. Any document that officially authorizes or modifies under EO 12,333 that Agency's use of specific programs, techniques, or types of Electronic Surveillance that implicate United States Persons, or documents that adopt or modify official rules or procedures for the Agency's acquisition, retention, dissemination, or use of information or communications to, from, or about United States persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
- c. Any formal legal opinions addressing that Agency's authority under EO 12,333 to undertake specific programs, techniques, or types of Electronic Surveillance that implicates United States Persons, including formal legal opinions relating to that Agency's acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
- d. Any formal training materials or reference materials (such as handbooks, presentations, or manuals) that expound on or explain how that Agency implements its authority under EO 12,333 to undertake Electronic Surveillance that implicates United States Persons, including its acquisition,

¹ For purposes of this Stipulation, surveillance that "implicates" United States Persons means surveillance that is reasonably believed to involve the interception, acquisition, scanning, or collection of information or communications to, from, or about a United States Person or persons even if the target of such surveillance is not a United States Person.

retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.

- e. Any formal reports relating to Electronic Surveillance under EO 12,333 implicating United States Persons, one of whose sections or subsections is devoted to (1) the Agency's compliance, in undertaking such surveillance, with EO 12,333, its implementing regulations, the Foreign Intelligence Surveillance Act, or the Fourth Amendment; or (2) the Agency's interception, acquisition, scanning, or collection of the communications of United States Persons, whether "incidental" or otherwise, in undertaking such surveillance; and that are or were:

- i. Authored by the Agency's inspector general or the functional equivalent thereof;
- ii. Submitted by the Agency to Congress, the Office of the Director of National Intelligence, the Attorney General, or the Deputy Attorney General; or
- iii. Maintained by the office of the Agency's director or head.

4. NSD will search for and process all documents responsive to the original FOIA Request submitted to it by Plaintiffs.

5. If, in the course of searching for the records described in Paragraphs 3 or 4, an Agency discovers responsive records of other Agencies, it shall refer those documents to the originating Agency for processing.

6. With respect to the categories of documents described in Paragraph 3(b) and 3(e)(ii) above, CIA will search for such materials only in the offices of the Director, Deputy

Director, and Executive Director of the CIA, as well as materials maintained at the directorate level. With respect to the categories of documents described in Paragraph 3(c) above, CIA will search for such materials only in the particular division of CIA's Office of General Counsel that is responsible for providing legal advice on complex or novel questions (the "CIA OGC Division"). With respect to the categories of documents described in Paragraph 3(d) above, CIA will search for such materials created by the CIA OGC Division or created or maintained at the directorate level.

7. Date limitations.

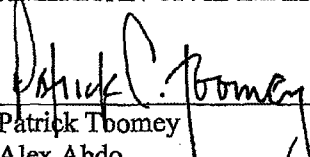
- a. Paragraphs 3(a)–(c). With respect to the categories of documents described in Paragraphs 3(a)–(c) above, each Agency will search for and process only documents that are currently in use or effect, or that were created or modified on or after September 11, 2001.
- b. Paragraph 3(d). With respect to the categories of documents described in Paragraph 3(d) above, each Agency will search for and process only documents that are currently in use or effect.
- c. Paragraph 3(e). With respect to the categories of documents described in Paragraph 3(e) above, each Agency will initially search for and process only documents created or modified on or after September 11, 2001; after the completion of the Agency's production of these documents, the parties agree to continue their discussions regarding whether searches for documents created before September 11, 2001 will be undertaken, including whether conducting such searches would be unduly burdensome to the Agencies.

8. Nothing in this Stipulation and Order, including the fact of its entry, should be taken as a concession by Defendants that Plaintiffs have "substantially prevailed" in this action in whole or in part, as that term is used in 5 U.S.C. § 552(a)(4)(E).

Dated: New York, New York
May 9, 2014

AMERICAN CIVIL LIBERTIES UNION

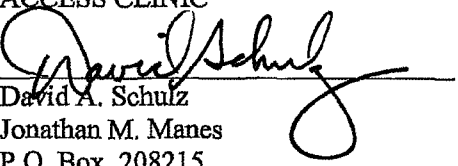
By:


Patrick Toomey
Alex Abdo
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New York, NY 10005
Phone: (212) 549-2500
Fax: (212) 549-2654
Email: ptoomey@aclu.org

Dated: New Haven, Connecticut
May 9, 2014

MEDIA FREEDOM AND INFORMATION
ACCESS CLINIC

By:

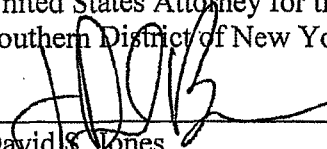

David A. Schulz
Jonathan M. Manes
P.O. Box. 208215
New Haven, CT 06520
(212) 850-6103

Counsel for Plaintiffs

Dated: New York, New York
May 9, 2014

PREET BHARARA
United States Attorney for the
Southern District of New York

By:



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Jean-David Barnea
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Counsel for Defendants

SO ORDERED:



ANALISA TORRES
United States District Judge

May 9, 2014

Date

gn

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY,
CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF STATE,

Defendants.

No. 13-cv-09198 (AT)
ECF Case

SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

Introduction

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking the release of records that describe the government’s understanding of its surveillance authority under Executive Order 12,333 (“EO 12,333”) as well as the rules that regulate the government’s acquisition, retention, use, and dissemination of the communications of Americans swept up in that surveillance.

2. During the last sixteen months, the true breadth of many of the government’s post-9/11 surveillance activities has been exposed to the light of day. The media has revealed that, for example, the National Security Agency (“NSA”) keeps a record of virtually every phone call made or received in the United States every day for the last five years. Reports have also disclosed that the NSA conducts sweeping surveillance of Americans’ international communications—by, for example, searching the contents of essentially all text-based

JA024

communications entering or leaving the country for specific keywords.

3. The discussion surrounding these disclosures has concentrated on the limitations imposed on the government's surveillance by several statutes—specifically, the Foreign Intelligence Surveillance Act (“FISA”), Section 215 of the Patriot Act (which amended the so-called “business records” provision of FISA), and the FISA Amendments Act of 2008. Considerably less attention has focused on surveillance undertaken pursuant to EO 12,333 and the protections in place under that executive order for Americans' communications.

4. EO 12,333, signed on December 4, 1981 and modified numerous times since, is the principal source of authority for electronic surveillance that does not fall within the scope of FISA. Whereas FISA applies primarily to surveillance conducted on American soil or to surveillance abroad that targets Americans, EO 12,333 appears to be the sole authority for and limitation on government surveillance abroad that targets foreigners. Unlike surveillance conducted pursuant to FISA, surveillance undertaken solely pursuant to EO 12,333 is not overseen by the Foreign Intelligence Surveillance Court.

5. Although EO 12,333 permits the government to target foreigners abroad for surveillance, recent revelations have confirmed that the government interprets that authority to permit sweeping monitoring of Americans' international communications. How the government conducts this surveillance, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great public significance and concern. While the government has released several documents describing the rules that govern its collection and use of Americans' international communications under statutory authorities regulating surveillance on U.S. soil, little information is publicly available regarding the rules that apply to surveillance of

Americans' international calls and emails under EO 12,333.

6. That gap in public knowledge is particularly troubling in light of recent revelations, which make clear that the NSA is collecting vast quantities of data worldwide pursuant to EO 12,333. For instance, recent news reports indicate that, relying on the executive order, the NSA is collecting: nearly 5 billion records per day on the location of cell phones, including Americans' cell phones; hundreds of millions of contact lists or address books from personal email and instant messaging accounts; and information from Google and Yahoo user accounts as that information travels between those companies' data centers located abroad.

7. Surveillance under EO 12,333 inevitably sweeps up the communications of U.S. persons. This FOIA suit seeks, in part, to determine what protections are afforded to those U.S. persons and whether those protections are consistent with the Constitution.

8. Disclosure of the records Plaintiffs seek through this action would greatly benefit the public and cause no harm to sensitive intelligence gathering. Plaintiffs seek legal standards and limitations, not operational details. The legal standards that govern surveillance, and the question of whether the government appropriately accommodates the constitutional rights of American citizens, are matters of enormous national significance and ongoing public concern.

Jurisdiction and Venue

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

10. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiffs' principal place of business is in Manhattan, New York, within this district.

Parties

11. Plaintiff American Civil Liberties Union ("ACLU") is a nationwide, non-profit,

nonpartisan 26 U.S.C. § 501(c)(4) organization with more than 500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that the American government complies with the Constitution and laws, including its international legal obligations, in matters that affect civil liberties and human rights. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. The ACLU is incorporated in New York State and has its principal place of business in New York City.

12. Plaintiff American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. It is incorporated in New York State and has its principal place of business in New York City.

13. Defendant National Security Agency (“NSA”) is an intelligence agency established within the executive branch of the U.S. government and administered through the Department of Defense. The NSA is an agency within the meaning of 5 U.S.C. § 552(f)(1).

14. Defendant Central Intelligence Agency (“CIA”) is an intelligence agency established within the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

15. Defendant Department of Defense is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Defense Intelligence Agency (“DIA”), from which the ACLU has requested records, is a component of the Department of Defense.

16. Defendant Department of Justice is a department of the executive branch of the

U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Federal Bureau of Investigation (“FBI”), National Security Division (“NSD”), and Office of Legal Counsel (“OLC”) are all components of the Department of Justice from which the ACLU has requested records.

17. Defendant Department of State (“DOS”) is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

Facts

The First Requests for Records

18. By letter dated May 13, 2013, Plaintiffs filed substantially similar FOIA requests with the CIA, DIA, NSA, FBI, NSD, OLC, and DOS (the “First Requests”). (True and correct copies of the First Requests are collectively annexed hereto as Exhibit A.)

19. Each of the ACLU’s First Requests sought, in substance:

- a. any records construing or interpreting the scope of Defendants’ authority to act under EO 12,333, and any regulations issued thereunder;
- b. any records describing the minimization procedures used by Defendants with regard to both intelligence collection and intelligence interception conducted pursuant to Defendants’ authority under EO 12,333 or any regulations issued thereunder; and
- c. any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as Defendants define these terms, pursuant to authority under EO 12,333 or any regulations issued thereunder.

20. Plaintiffs also sought a waiver of search, review, and duplication fees because the

requested records were not sought for commercial use, because the ACLU is a “representative of the news media” under 5 U.S.C. § 552(a)(4)(A)(ii)(II), and because the requested information is in the public interest as defined under 5 U.S.C. § 552(a)(4)(A)(iii).

Agency Responses

21. Four of the agencies—DIA, FBI, NSD, and DOS—acknowledged receipt of the First Request and indicated its placement in their FOIA processing queues, but provided no substantive response prior to the filing of this action.

22. By email dated June 28, 2013, the NSA memorialized an agreed-upon modification to the scope of Plaintiffs’ First Request, and by letter dated July 1, 2013, it disclosed two documents responsive to Plaintiffs’ First Request that were already publicly available. By email dated August 21, 2013, the NSA indicated that additional potentially responsive documents were to be posted on IContheRecord.tumblr.com, and indicated that a further response was forthcoming. By letter dated November 18, 2013, the NSA released two additional documents: a more recent version of U.S. Signals Intelligence Directive SP0018 than had been previously released and its annex, both with redactions. This letter also indicated that the review of additional documents responsive to the request was ongoing, though the NSA provided no further information prior to the filing of this action. (True and correct copies of these responses from the NSA are collectively annexed hereto as Exhibit B.)

23. By email and phone communications between June 25 and July 10, 2013, Plaintiffs and the OLC agreed upon a modification to the scope of Plaintiffs’ First Request, but the OLC did not release any responsive documents prior to the filing of this action. (True and correct copies of the communications between Plaintiffs and the OLC are collectively annexed hereto as Exhibit C.)

24. By letter dated July 26, 2013, the CIA denied Plaintiffs' First Request as requiring an "unreasonably burdensome search." (A true and correct copy of this denial from the CIA is annexed hereto as Exhibit D.)

25. Five of the agencies—CIA, DIA, FBI, NSA, and OLC—communicated no decision in response to Plaintiffs' requests for fee waivers or limitations of fees. Defendant DOS granted the fee waiver by letter dated June 5, 2013, as did NSD, by letter dated June 11, 2013.

Administrative Appeals

26. By letter dated November 1, 2013, Plaintiffs administratively appealed the CIA's denial of their First Request. (A true and correct copy of this appeal is annexed hereto as Exhibit E.)

27. Having received no further responsive records, Plaintiffs administratively appealed the constructive denials of their First Requests by the DIA, NSA, FBI, NSD, OLC, and DOS by letter dated November 8, 2013. (True and correct copies of these constructive denial appeals are collectively annexed hereto as Exhibit F.)

28. The NSA, FBI, DOJ, and DOS acknowledged receipt of Plaintiffs' administrative appeals. Plaintiffs received no determinations from any of the Defendants in connection with these appeals.

29. More than twenty working days have elapsed since Plaintiffs filed their administrative appeals of the Defendants' constructive denials. Plaintiffs have therefore exhausted their administrative remedies.

30. Separately, by letter dated January 9, 2014, Plaintiffs timely appealed the NSA's decision to redact the four documents it had released to date. That appeal concerned only the NSA's decision to redact and not its failure to produce additional responsive records, which was

the subject of the prior appeal filed on November 8, 2013.

31. By letter dated January 24, 2014, the NSA acknowledged that it received the appeal on January 17, 2014. Plaintiffs have received no further response from the NSA in connection with this appeal. More than twenty working days have elapsed since the NSA received the appeal. Plaintiffs have therefore exhausted their administrative remedies.

The Second Request for NSD Records

32. On May 15, 2014, after the conclusion of the parties' negotiations over the scope of each Defendant's search, NSD responded by letter to Plaintiffs' First Request and stated that it had no responsive records.

33. Shortly thereafter, on July 29, 2014, Plaintiffs filed a revised FOIA request with NSD (the "Second NSD Request") (together, with Plaintiffs' First Requests, the "Requests"). (A true and correct copy of the Second NSD Request is annexed hereto as Exhibit G.)

34. The Second NSD Request sought, in summary:

- a. Formal regulations or policies, legal opinions, training materials or reference materials relating to any agency's authority under EO 12,333 to undertake electronic surveillance that implicates U.S. persons.
- b. Records that officially authorize or modify under EO 12,333 any agency's use of specific programs, techniques, or types of electronic surveillance that implicate U.S. persons.
- c. Formal reports relating to electronic surveillance under EO 12,333 implicating U.S. persons that contain any meaningful discussion of (1) any agency's compliance, in undertaking such surveillance, with EO 12,333, its implementing regulations, the Foreign Intelligence Surveillance Act, or the Fourth

Amendment; or (2) any agency's interception, acquisition, scanning, or collection of the communications of U.S. persons, whether "incidental" or otherwise, in undertaking such surveillance.

35. The categories of documents sought in the Second NSD Request are similar in scope and substance to the categories that the parties negotiated in May 2014 as part of the search stipulation in this action. In keeping with that stipulation, NSA, CIA, DIA, FBI, and DOS have searched for and are currently processing documents within these categories. *See* Stipulation and Order Regarding Document Searches (May 9, 2014) (ECF No. 30) (so-ordering the parties' agreement concerning the scope of the agencies' searches).

36. Plaintiffs also sought a waiver of search, review, and duplication fees because the requested records were not sought for commercial use, because the ACLU is a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II), and because disclosure of the requested information is in the public interest, as defined under 5 U.S.C. § 552(a)(4)(A)(iii).

37. Additionally, Plaintiffs sought expedited processing because the ACLU is "primarily engaged in disseminating information" within the meaning of the FOIA statute and regulations, 5 U.S.C. § 552(a)(6)(E)(v)(II), 28 C.F.R. § 16.5(d)(1)(ii); and because the requested records relate to 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), and to a matter where there is "urgency to inform the public about an actual or alleged federal government activity." 28 C.F.R. § 16.5(d)(1)(ii).

38. By letter dated September 2, 2014, NSD acknowledged receipt of the Second NSD Request and indicated its placement in the agency's FOIA processing queue, but it provided no substantive response. The twenty-day statutory period for NSD to make a

determination with respect to the Second NSD Request has elapsed with no determination. Plaintiffs have therefore constructively exhausted their administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

Causes of Action

39. Defendants' failure to timely respond to the Requests violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and Defendants' corresponding regulations.

40. Defendants' failure to make promptly available the records sought by the Requests violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

41. Defendants' wrongful withholdings of specific responsive records, or portions thereof, violates the FOIA, 5 U.S.C. § 552(a)(3)(A), (6)(A), and Defendants' corresponding regulations.

42. Defendants' failure to make a reasonable effort to search for records responsive to the Requests violates the FOIA, 5 U.S.C. § 552(a)(3)(C), and Defendants' corresponding regulations.

43. The failure of CIA, DIA, NSA, FBI, and OLC to grant a public interest fee waiver for the First Request, and the failure of NSD to grant a public interest fee waiver for the Second NSD Request, violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and Defendants' corresponding regulations.

44. The failure of CIA, DIA, NSA, FBI, and OLC to grant a limitation of fees for the First Request, and the failure of NSD to grant a limitation of fees for the Second NSD Request, violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), and Defendants' corresponding regulations.

45. The failure of NSD to grant expedited processing for the Second NSD Request

violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendant's corresponding regulations.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Order Defendants to conduct a thorough search for all responsive records;
2. Order Defendants to immediately process and release all records responsive to the Requests;
3. Enjoin Defendants from charging Plaintiffs search, review, or duplication fees for processing the Requests;
4. Award Plaintiffs their costs and reasonable attorney's fees incurred in this action; and
5. Grant such other relief as this Court deems just and proper.

Respectfully submitted,



Ashley Gorski
Patrick Toomey
Alex Abdo

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MEDIA FREEDOM AND INFORMATION ACCESS
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(212) 850-6103

Dated: October 30, 2014

American Civil Liberties Union v. National Security Agency
No. 1:13-cv-09198-AT

Index of Exhibits to Plaintiffs' Second Amended Complaint

Exhibit	Document
A	Plaintiffs' FOIA requests submitted to the CIA, DIA, NSA, FBI, NSD, OLC, and DOS on May 13, 2013
B	Responses from the NSA to Plaintiffs' FOIA request
C	Communications between Plaintiffs and the OLC in response to Plaintiffs' FOIA request
D	CIA's denial of Plaintiffs' FOIA request
E	Plaintiffs' administrative appeal from the CIA's denial of their FOIA request
F	Plaintiffs' administrative appeals from the denials of their FOIA request by the DIA, NSA, FBI, NSD, OLC, and DOS
G	Plaintiffs' FOIA request submitted to NSD on July 29, 2014

Exhibit A



May 13, 2013

BY USPS MAIL

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the Central Intelligence Agency (“Agency”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the Agency defines these terms, pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder.

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

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SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the Agency. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the Agency's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(1) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g., United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

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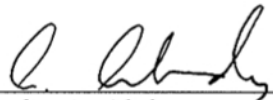
image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR



May 13, 2013

BY USPS MAIL

Margaret A. Bestrain, Chief, FOIA and Declassification Services Branch
 Defense Intelligence Agency
 U.S. Department of Defense
 ATTN: DAN-1A (FOIA)
 200 MacDill Blvd.
 Washington, DC 20340-5100

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Bestrain,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

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3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the Agency defines these terms, pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder.

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

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The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the Agency. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

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recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the Agency's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.*, Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(1) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

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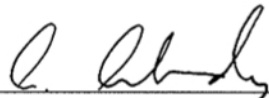
image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



A handwritten signature in black ink, appearing to read 'A. Abdo', is written over a horizontal line.

Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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May 13, 2013

BY USPS MAIL

Attn: Cindy Blacker
 NSA FOIA Requester Service Center/DJ4
 9800 Savage Road, Suite 6248
 Ft. George G. Meade, MD 20744-6248

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Blacker,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the National Security Agency (“Agency”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the Agency defines these terms, pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder.

¹ Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

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Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the Agency. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

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recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the Agency's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(1) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g., United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided

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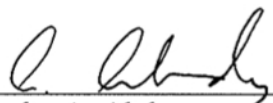
electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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May 13, 2013

BY USPS MAIL

Federal Bureau of Investigation
 Attn: FOI/PA Request
 Record/Information Dissemination Section
 170 Marcel Drive
 Winchester, VA 22602-4843

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the Federal Bureau of Investigation (“FBI”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the FBI with regard to both intelligence collection and intelligence interception conducted pursuant to the FBI’s authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the FBI defines these terms, pursuant to the FBI’s authority under EO 12,333 or any regulations issued thereunder.

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First, the requested material concerns “the operations or activities” of the FBI. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the FBI, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

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Moreover, the requested materials will "contribute significantly to the public understanding" of the FBI's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

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For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

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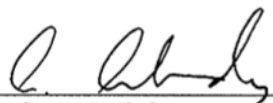
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We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
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Phone: (212) 549-2517
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May 13, 2013

BY USPS MAIL

Arnetta Mallory, FOIA Initiatives Coordinator
 National Security Division
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Room 6150
 Washington, DC 20530-0001

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Mallory,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the National Security Division (“NSD”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the NSD with regard to both intelligence collection and intelligence interception conducted pursuant to the NSD’s authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the NSD defines these terms, pursuant to the NSD’s authority under EO 12,333 or any regulations issued thereunder.

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ANTHONY D. ROMERO
 EXECUTIVE DIRECTOR

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the NSD. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the NSD, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

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before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the NSD's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(1) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g., United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

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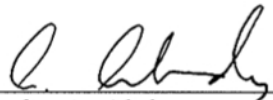
JA055

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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JA056



May 13, 2013

BY USPS MAIL

Elizabeth Farris, Supervisory Paralegal
Office of Legal Counsel
Room 5515, 950 Pennsylvania Avenue, NW
Department of Justice
Washington, DC 20530-0001

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Farris,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records in which the Office of Legal Counsel (“OLC”) construes or interprets the authority of the Department of Justice (“DOJ”) or any executive agencies under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the government with regard to both intelligence collection and intelligence interception conducted pursuant to EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as those terms are defined in EO 12,333 or any regulations issued thereunder.

¹ Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

² Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

JA057

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Moreover, the requested materials will "contribute significantly to the public understanding" of the intelligence community's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

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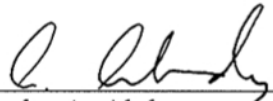
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We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



A handwritten signature in black ink, appearing to read 'A. Abdo', is written over a horizontal line.

Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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May 13, 2013

BY USPS MAIL

Office of Informational Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

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1. Any records construing or interpreting the authority of the United States Department of State (“Department”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the Department with regard to both intelligence collection and intelligence interception conducted pursuant to the Department’s authority under EO 12,333 or any regulations issued thereunder; and
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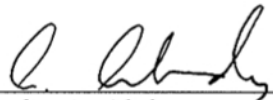
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Exhibit B

"Phillips, Pamela" <pnphill@nsa.gov>
NSA FOIA Clarification
June 28, 2013 10:29 AM

Mr. Abdo,

Thank you for speaking to me this morning about your FOIA request and helping us to scope it into a manageable search. We will continue to work with the organizations conducting the searches, and if we need any additional information to further clarify as we proceed, I will give you another call or email you. For the record, here is what we decided about your request today:

Case 70809 – for records construing or interpreting the authority of NSA under O.E. 12333; records describing the minimization procedures used by the Agency; records describing the standards that must be satisfied for collection, acquisition, or interception of communications

You agreed to limit the request to formally issued guidance (of which I mentioned various types, such as DoD Directions, NSA USSID, NSA Policies, various issuances relating to FISA, compliance training, and advisories). You agreed to omit guidance that simply reiterates or includes pieces and excerpts from the formal guidance. You also agreed that you are not seeking emails. Finally, you indicated that you would want any separate legal opinions that interpret the standards or define terms collection, acquisition, or interception to the extent that that opinion/interpretation is not included in the formal guidance.

Please let me know if I have mischaracterized or misunderstood our conversation in any way. You will be receiving a formal interim response from us soon with two previously released documents. Thanks again.

Pamela

Pamela N. Phillips
Chief, FOIA/PA Office (DJ4)
FOIA Public Liaison Officer
National Security Agency
(301) 688-6527
pnphill@nsa.gov

JA066



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 70809
1 July 2013

American Civil Liberties Union
ATTN: Mr. Alexander Abdo
National Office
125 Broad Street, 18th Fl.
New York, NY 10004-2400

Dear Mr. Abdo:

This is an initial response to your Freedom of Information Act (FOIA) request dated 13 May 2013, which was received by this office on 30 May 2013, for access to documents relating to Executive Order 12333, 3 C.F.R. 200, specially the following records:

1. Any records construing or interpreting the authority of the National Security Agency ("Agency") under Executive 12333 or any regulations issues thereunder;
2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12333 or any regulations issued thereunder.

In a telephone conversation on 28 June 2013, you agreed to narrow your request to allow us to process it more quickly and to avoid search fees, since we have already begun processing several requests for similar information. You agree to limit your request (as relates to the above three items) to formally issued guidance, omitting emails and omitting guidance that reiterates or includes excerpts from the formal guidance. In addition, you indicated that you still desire any separate legal opinions that interpret the

JA067

FOIA Case: 70809

standards or define the terms in item 3 above, to the extent that it is not included in the formal guidance.

Your request has been assigned Case Number 70809. This letter indicates that we have begun to process your request. There is certain information relating to this processing about which the FOIA and applicable Department of Defense (DoD) and NSA/CSS regulations require we inform you. For purposes of this request, you are considered an "all other" requester. However, as we already indicated, the search is being conducted in response to other requests, so there will be no search fees assessed for this request. In addition, we do not plan to charge the duplication fees for the responsive material for any of the requesters. Therefore, we have not addressed your request for a waiver of fees.

With this response, we enclose two documents (USSID 18 and NSA/CSS Policy 1-23, 81 pages in total) that were previously released under the FOIA. We are continuing our search for responsive materials and will contact you again as information becomes available.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office (DJ4), 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248 or may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA office is 301-688-6527.

Sincerely,

A handwritten signature in black ink, appearing to read "Pamela N. Phillips". The signature is fluid and cursive, written over a faint circular stamp or watermark.

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Encls:
a/s

JA068

"Phillips, Pamela" <pnphill@nsa.gov>
NSA FOIA 70809
August 21, 2013 4:40 PM

Mr. Abdo,

You may already be already aware, but my understanding is that the ODNI is going to post several documents this afternoon related to Section 702 were released today in a FOIA litigation case, some of which may also be responsive to your FOIA request to this agency for minimization procedures. They are to be posted to the ODNI website, and then later to the IContheRecord.tumblr.com website. We are continuing the processing of your request to this Agency and will respond further when documents are complete.

Pamela

Pamela N. Phillips
Chief, FOIA/PA Office (DJ4)
FOIA Public Liaison Officer
National Security Agency
(240) 373-1434
pnphill@nsa.gov
pnphill@nsa.smil.mil

JA069



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 70809A
18 November 2013

American Civil Liberties Union
ATTN: Mr. Alexander Abdo
National Office
125 Broad Street, 18th Fl.
New York, NY 10004-2400

Dear Mr. Abdo:

This further responds to your Freedom of Information Act (FOIA) request dated 13 May 2013 for access to documents relating to Executive Order (EO) 12333, 3 C.F.R. 200, specifically the following records:

1. Any records construing or interpreting the authority of the National Security Agency ("Agency") under EO 12333 or any regulations issues thereunder;
2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12333 or any regulations issued thereunder.

You agreed to narrow your request (as relates to the above three items) to formally issued guidance, omitting emails and omitting guidance that reiterates or includes excerpts from the formal guidance. In addition, you indicated that you still desire any separate legal opinions that interpret the standards or define the terms in item 3 above, to the extent that it is not included in the formal guidance.

JA070

FOIA Case: 70809A

Two additional documents responsive to your request (USSID SP0018 and Annex J) have been processed under the FOIA and are enclosed. Certain information, however, has been deleted from the enclosures.

Some of the information deleted from the documents was found to be currently and properly classified in accordance with Executive Order 13526. This information meets the criteria for classification as set forth in Subparagraphs (c) and/or (d) of Section 1.4 and remains classified SECRET as provided in Section 1.2 of the Executive Order. The information is classified because its disclosure could reasonably be expected to cause serious damage to the national security. Because the information is currently and properly classified, it is exempt from disclosure pursuant to the first exemption of the FOIA (5 U.S.C. Section 552(b)(1)).

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. We have determined that such information exists in these documents. Accordingly, those portions are exempt from disclosure pursuant to the third exemption of the FOIA which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are Title 18 U.S. Code 798; Title 50 U.S. Code 3024(i) (formerly Title 50 U.S. Code 403-1(i)); and Section 6, Public Law 86-36 (50 U.S. Code 3605, formerly 50 U.S. Code 402 note).

The Initial Denial Authority for NSA information is the Associate Director for Policy and Records, David J. Sherman. Since these deletions may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days from the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJ4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes release of the information is required. The NSA/CSS Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

The State Department has also asked that we protect information pursuant to 5 U.S.C. 552(b)(1). We will coordinate any appeal of the denial of that information with the State Department.

JA071

FOIA Case: 70809A

Review of additional documents responsive to your request continues; they will be provided to you as they are completed. In addition, documents related to NSA collection activities and procedures continue to be released in litigation on behalf of the Intelligence Community (IC) by the Office of the Director of National Intelligence (ODNI). You will find those documents posted on the ODNI web page, as well as on IC on the Record (IContheRecord.tumblr.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Pamela N. Phillips". The signature is fluid and cursive, with the first name being the most prominent.

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Encls:
a/s

JA072

Exhibit C



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

June 25, 2013

Alexander Abdo
National Security Project
ACLU
125 Broad St.
18th Fl.
New York NY 10004-2400

Re: FOIA Tracking No. FY13-051

Dear Mr. Abdo:

This letter acknowledges receipt of your Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC"), dated May 13, 2013. We received your request on May 29, 2013, and assigned it FOIA tracking number **FY13-051**.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

Finally, pursuant to your conversation with my colleague David Lehn on June 20, 2013, we propose that your request be revised as follows:

- 1) All OLC final legal advice concerning the scope and application of the authority of the United States Government to conduct electronic surveillance of the communications of United States persons pursuant to Executive Order 12333 or its implementing regulations, regardless of whether the United States person is the target of the electronic surveillance or is in the United States at the time of the electronic surveillance, except to the extent that the electronic surveillance is conducted pursuant to the Foreign Intelligence Surveillance Act. For purposes of this request, "electronic surveillance" and "United States person" have the meaning given in Executive Order 12333.
- 2) All OLC final legal advice concerning the meaning of the terms "collection", "acquisition", and "interception" as applied to electronic surveillance conducted pursuant to Executive Order 12333 or its implementing regulations. For purposes of this request, "electronic surveillance" has the meaning given in Executive Order 12333.

Please let us know whether you agree to this proposal, so that the processing of your request may proceed, consistent with its position in OLC's FOIA queue. To do so, or to discuss any other aspect of your request, you may contact Elizabeth Farris, our Supervisory Paralegal and FOIA contact, at usdoj-officeoflegalcounsel@usdoj.gov, (202) 514-2038, or Office of Legal

JA074

Counsel, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul P. Colborn". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Paul P. Colborn
Special Counsel

"Lehn, David (OLC)" <David.Lehn@usdoj.gov>
RE: OLC FOIA Request 13-051
July 10, 2013 12:34 PM

Great - thanks, Alex.

From: Alexander Abdo [mailto:aabdo@aclu.org]
Sent: Wednesday, July 10, 2013 12:23 PM
To: Lehn, David (OLC)
Subject: RE: OLC FOIA Request 13-051

David, this looks great. Thanks so much.

From: Lehn, David (OLC) [mailto:David.Lehn@usdoj.gov]
Sent: Monday, July 08, 2013 3:27 PM
To: Alexander Abdo
Subject: RE: OLC FOIA Request 13-051

Hi, Alex. Thanks for getting back to me. I carved out FISA in light of my understanding of what you were seeking based on our conversation. But we can eliminate the carve-out given that the application of EO 12333 to elsur under FISA is fairly within the scope of your original request. So, how about this?

- 1) All OLC final legal advice concerning Executive Order 12333 or its implementing regulations with respect to electronic surveillance by the United States Government of communications of United States persons, regardless of whether the United States person is the target of the electronic surveillance or is in the United States at the time of the electronic surveillance. For purposes of this request, "electronic surveillance" and "United States person" have the meaning given in Executive Order 12333.
- 2) All OLC final legal advice concerning the meaning of the terms "collection", "acquisition", and "interception" as used in Executive Order 12333 or its implementing regulations with respect to electronic surveillance by the United States Government of communications of United States persons. For purposes of this request, "electronic surveillance" has the meaning given in Executive Order 12333.

From: Alexander Abdo [mailto:aabdo@aclu.org]
Sent: Saturday, June 29, 2013 1:18 PM
To: Lehn, David (OLC)
Subject: Re: OLC FOIA Request 13-051

David,

Thanks so much for memorializing this. I have a few modifications I'd like to make, just to make sure the request is targeted at what we're interested in.

In the first bullet point, can we change "pursuant to Executive Order 12,333" to "governed by Executive Order 12,333," and can we delete the phrase "except to the extent that the electronic surveillance is conducted pursuant to the Foreign Intelligence Surveillance Act"? My understanding is that the executive order often imposes additional requirements on surveillance conducted pursuant to other authorities (such as FISA or the FISA Amendments Act). I think the language you proposed would cover those situations as well, but I just want to make sure it's clear.

For the same reason and in the second bullet point, can we change "pursuant to" to "governed by"?

Thanks so much,

Alex

On Jun 25, 2013, at 3:42 PM, "Lehn, David (OLC)" <David.Lehn@usdoj.gov> wrote:

Alex, following up on our call last week, please see the attached letter. Notwithstanding what the letter says, you can respond directly to me. Thanks

JA076

David Lehn
Attorney-Adviser
Office of Legal Counsel
U.S. Department of Justice
202-514-5572

<13-051 ack 2013-06-25.pdf>

JA077

Exhibit D

Central Intelligence Agency



Washington, D.C. 20505

26 July 2013

Mr. Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004-2400

Reference: F-2013-01775

Dear Mr. Abdo:

This is a final response to your 13 May 2013 Freedom of Information Act (FOIA) request, submitted on behalf of the American Civil Liberties Union, received in the office of the Information and Privacy Coordinator on 23 May 2013, for:

1. Any records construing or interpreting the authority of the Central Intelligence Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

We cannot accept your FOIA request in its current form because it would require the Agency to perform an unreasonably burdensome search. The FOIA requires requesters to "reasonably describe" the information they seek so that professional employees familiar with the subject matter can locate responsive information with a reasonable amount of effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks
Information and Privacy Coordinator

JA079

Exhibit E



November 1, 2013

BY USPS MAIL

Agency Release Panel (ARP)
c/o Coordinator
Information and Privacy Coordinator
Central Intelligence Agency (CIA)
Washington, DC 20505

Re: FREEDOM OF INFORMATION ACT APPEAL – NO. F-2013-01775

AMERICAN CIVIL LIBERTIES
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NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
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WWW.ACLU.ORG

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Dear Panelists:

The American Civil Liberties Union and the American Civil Liberties Foundation (collectively “ACLU”) write to appeal from the response of the Central Intelligence Agency (“CIA”) to FOIA Request No. F-2013-01775, in which the ACLU seeks the following records:

1. Any records construing or interpreting the authority of the Central Intelligence Agency (“Agency”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the Agency defines these terms, pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder. *See* FOIA Request of May 13, 2013 (“Request”) (Exhibit 1, attached).

In a letter dated July 26, 2013 (“Response Letter”) (Exhibit 2, attached), Information and Privacy Coordinator Michele Meeks of the CIA denied the ACLU’s Request in its entirety stating, that “The FOIA requires requesters to ‘reasonably describe’ the information they seek so that professional employees [sic] can locate responsive documents with a reasonable amount of effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems.”

JA081

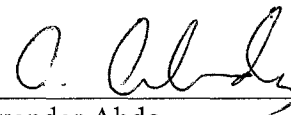
The CIA's denial of the ACLU's Request was premised entirely on its determination that the records sought exceed what is required by the FOIA—i.e., that the Request is “extremely broad or vague” and “would require the Agency to perform an unreasonably burdensome search.” *See* Response Letter. This determination is inaccurate and without basis.

The Request is specific in what it seeks. The second and third paragraphs of the request seek discrete categories of records: those describing the Agency's minimization procedures under EO 12,333 and those articulating the standards that the Agency must satisfy before collecting, acquiring, or intercepting communications under EO 12,333. The first paragraph of the request, though comprehensive, nonetheless specifies a discrete category of records for processing: those construing or interpreting the Agency's authority under EO 12,333. Although the ACLU is not in a position to be more specific without additional information from the Agency, the first paragraph of the request includes, at a minimum, rules, policies, or legal opinions describing the Agency's authority to conduct—or analyze, use, retain, and disseminate the fruits of—electronic surveillance under EO 12,333.

These specific categories of documents must be processed by the CIA under FOIA. Indeed, at least four other government agencies—the United States Air Force, the Department of the Army, the Department of Homeland Security, and the National Security Agency—have already processed and produced documents in response to identical FOIA requests. In addition, at least three other government agencies—the Department of State, the Department of the Army, and the Department of Justice National Security Division—have already granted fee waivers to the ACLU with respect to identical FOIA requests.

For the reasons stated above, the CIA's determination to deny the Request was erroneous and should be reversed.

Sincerely,



Alexander Abdo
Staff Attorney
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212 549 2517
Fax: 212 549 2629
E-mail: aabdo@aclu.org

Exhibit 1

JA083

LEGAL DEPARTMENT



May 13, 2013

BY USPS MAIL

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the Central Intelligence Agency (“Agency”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the Agency defines these terms, pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder.

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

JA084

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the Agency. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will “contribute significantly to the public understanding” of the Agency’s operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333’s limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.*, Dep’t of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat’l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

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SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

JA086


image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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WWW.ACLU.ORG

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SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Exhibit 2

Central Intelligence Agency



Washington, D.C. 20505

26 July 2013

Mr. Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004-2400

Reference: F-2013-01775

Dear Mr. Abdo:

This is a final response to your 13 May 2013 Freedom of Information Act (FOIA) request, submitted on behalf of the American Civil Liberties Union, received in the office of the Information and Privacy Coordinator on 23 May 2013, for:

1. Any records construing or interpreting the authority of the Central Intelligence Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

We cannot accept your FOIA request in its current form because it would require the Agency to perform an unreasonably burdensome search. The FOIA requires requesters to "reasonably describe" the information they seek so that professional employees familiar with the subject matter can locate responsive information with a reasonable amount of effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks

Information and Privacy Coordinator

JA089

Exhibit F

NATIONAL SECURITY
PROJECT



November 8, 2013

BY UPS

Defense Intelligence Agency
ATTN: DAN-1A (FOIA)
200 MacDill Blvd
Washington, DC 20340-5100

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
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RE: FREEDOM OF INFORMATION ACT APPEAL

Dear Sir or Madam,

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 6, 2013 in a letter signed by Alesia Y. Williams. The request was assigned the following identification number: F-2013-09022.

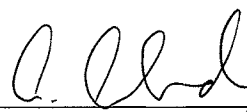
Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5 U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time and the ten-day extension have elapsed without a substantive response, the Defense Intelligence Agency has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

JA091

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
Phone: (212) 549-2517
Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

JA092

LEGAL DEPARTMENT



May 13, 2013

BY USPS MAIL

Margaret A. Bestrain, Chief, FOIA and Declassification Services Branch
Defense Intelligence Agency
U.S. Department of Defense
ATTN: DAN-1A (FOIA)
200 MacDill Blvd.
Washington, DC 20340-5100

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Bestrain,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the Defense Intelligence Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

¹ Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

² Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

JA093

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the Agency. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the Agency's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.*, Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(1) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

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SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

NATIONAL SECURITY
PROJECT



November 8, 2013

BY UPS

NSA/CSS FOIA Appeal Authority (DJ4)
National Security Agency
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20755-6248

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RE: FREEDOM OF INFORMATION ACT APPEAL

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

Dear Sir or Madam,

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated July 1, 2013 in a letter signed by Pamela N. Philips. The request was assigned the following identification number: 70809.

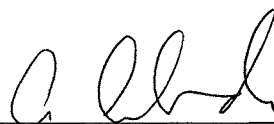
Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5 U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time has elapsed without a substantive response, the National Security Agency has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

JA097

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
Phone: (212) 549-2517
Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

JA098

LEGAL DEPARTMENT



May 13, 2013

BY USPS MAIL

Attn: Cindy Blacker
NSA FOIA Requester Service Center/DJ4
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20744-6248

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Blacker,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the National Security Agency (“Agency”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the Agency defines these terms, pursuant to the Agency’s authority under EO 12,333 or any regulations issued thereunder.

¹ Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

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JA099

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SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

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SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the Agency. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will “contribute significantly to the public understanding” of the Agency’s operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333’s limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.*, Dep’t of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat’l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(i) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

NATIONAL SECURITY
PROJECT



November 8, 2013

BY UPS

Office of Information Policy
U.S. Department of Justice, Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530

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RE: FREEDOM OF INFORMATION ACT APPEAL
FEDERAL BUREAU OF INVESTIGATION

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

Dear Sir or Madam,

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 7, 2013 in a letter signed by David M. Hardy. The request was assigned the following identification number: 1216886-000.

Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5 U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time has elapsed without a substantive response, the Federal Bureau of Investigation has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

JA103

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
Phone: (212) 549-2517
Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

LEGAL DEPARTMENT



May 13, 2013

BY USPS MAIL

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the Federal Bureau of Investigation (“FBI”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the FBI with regard to both intelligence collection and intelligence interception conducted pursuant to the FBI’s authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the FBI defines these terms, pursuant to the FBI’s authority under EO 12,333 or any regulations issued thereunder.

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

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Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the FBI. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the FBI, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will “contribute significantly to the public understanding” of the FBI’s operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333’s limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep’t of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat’l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g., United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and in separate, Bates-stamped files.

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT


ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

NATIONAL SECURITY
PROJECT



November 8, 2013

BY UPS

Office of Information Policy
U.S. Department of Justice, Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

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RE: FREEDOM OF INFORMATION ACT APPEAL
[NATIONAL SECURITY DIVISION]

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Dear Sir or Madam,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 11, 2013 in a letter signed by Arnetta Mallory. The request was assigned the following identification number: 13-175.

Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5 U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time has elapsed without a substantive response, the Department of Justice, National Security Division has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

JA109

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
Phone: (212) 549-2517
Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

JA110

LEGAL DEPARTMENT



May 13, 2013

BY USPS MAIL

Arnetta Mallory, FOIA Initiatives Coordinator
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Room 6150
Washington, DC 20530-0001

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OFFICERS AND DIRECTORS
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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Mallory,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the National Security Division (“NSD”) under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the NSD with regard to both intelligence collection and intelligence interception conducted pursuant to the NSD’s authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as the NSD defines these terms, pursuant to the NSD’s authority under EO 12,333 or any regulations issued thereunder.

¹ Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

² Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

JA111

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

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OFFICERS AND DIRECTORS
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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the NSD. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the NSD, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the NSD's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. See Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. See, e.g., Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. See, e.g., *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org



November 8, 2013

BY UPS

Office of Information Policy
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20530 0001

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RE: FREEDOM OF INFORMATION ACT APPEAL
OFFICE OF LEGAL COUNSEL

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Dear Sir or Madam,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 25, 2013 in a letter signed by Paul P. Colborn. The request was assigned the following identification number: FYI13-051.

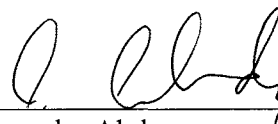
Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5 U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time has elapsed without a substantive response, the Office of Legal Counsel has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

JA115

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
Phone: (212) 549-2517
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AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

JA116

LEGAL DEPARTMENT



May 13, 2013

BY USPS MAIL

Elizabeth Farris, Supervisory Paralegal
Office of Legal Counsel
Room 5515, 950 Pennsylvania Avenue, NW
Department of Justice
Washington, DC 20530-0001

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Farris,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”). Specifically, we request the following records¹:

1. Any records in which the Office of Legal Counsel (“OLC”) construes or interprets the authority of the Department of Justice (“DOJ”) or any executive agencies under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the government with regard to both intelligence collection and intelligence interception conducted pursuant to EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the “collection,” “acquisition,” or “interception” of communications, as those terms are defined in EO 12,333 or any regulations issued thereunder.

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

JA117

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

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EXECUTIVE DIRECTOR

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the OLC. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the OLC, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the intelligence community's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. See Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. See, e.g., Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. See, e.g., *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

NATIONAL SECURITY
PROJECT



November 8, 2013

BY CERTIFIED MAIL

Chairman, Appeals Review Panel
c/o Information and Privacy Coordinator/Appeals Officer
U.S. Department of State
A/GIS/IPS/PP, SA-2
Washington, DC 20522-8100

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RE: FREEDOM OF INFORMATION ACT APPEAL

Dear Mr. Chairman,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 5, 2013 in a letter signed by Mary Therese Casto. The request was assigned the following identification number: F-2013-09022.

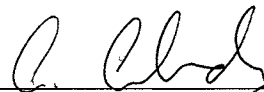
Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5 U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time limit has elapsed without a substantive response, the Department of State has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

JA121

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
Phone: (212) 549-2517
Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
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JA122

LEGAL DEPARTMENT



May 13, 2013

BY USPS MAIL

Office of Informational Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records¹:

1. Any records construing or interpreting the authority of the United States Department of State ("Department") under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures² used by the Department with regard to both intelligence collection and intelligence interception conducted pursuant to the Department's authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Department defines these terms, pursuant to the Department's authority under EO 12,333 or any regulations issued thereunder.

¹ Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

² Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

JA123

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Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

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The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the Department. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the Department, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the Department's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.*, Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(1) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

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EXECUTIVE DIRECTOR

image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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Exhibit G

NATIONAL SECURITY PROJECT



July 29, 2014

BY CERTIFIED MAIL

Arnetta Mallory, FOIA Initiatives Coordinator
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Room 6150
Washington, DC 20530-0001

**Re: REQUEST UNDER FREEDOM OF INFORMATION ACT /
Expedited Processing Requested**

Dear Ms. Mallory,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) (“EO 12,333”).

I. Requested Records

Specifically, we request the following records:

1. Formal regulations or policies relating to any agency’s authority under EO 12,333 to undertake “Electronic Surveillance” (as that term is defined in EO 12,333) that implicates “United States Persons” (as that term is defined in EO 12,333), including regulations or policies relating to the acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.¹
2. Records that officially authorize or modify under EO 12,333 any agency’s use of specific programs, techniques, or types of Electronic Surveillance that implicate United States Persons, including official rules or procedures for the acquisition, retention, dissemination, or use of information or communications to, from, or about United States persons

¹ For purposes of this Request, surveillance that “implicates” United States Persons means surveillance that is reasonably believed to involve the interception, acquisition, scanning, or collection of information or communications to, from, or about a United States Person or persons even if the target of such surveillance is not a United States Person.

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RICHARD ZACKS
TREASURER

under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.

3. Formal legal opinions addressing any agency's authority under EO 12,333 to undertake specific programs, techniques, or types of Electronic Surveillance that implicates United States Persons, including formal legal opinions relating to the acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
4. Formal training materials or reference materials (such as handbooks, presentations, or manuals) that expound on or explain how any agency implements its authority under EO 12,333 to undertake Electronic Surveillance that implicates United States Persons, including the acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.
5. Formal reports relating to Electronic Surveillance under EO 12,333 implicating United States Persons that contain any meaningful discussion of (1) any agency's compliance, in undertaking such surveillance, with EO 12,333, its implementing regulations, the Foreign Intelligence Surveillance Act, or the Fourth Amendment; or (2) any agency's interception, acquisition, scanning, or collection of the communications of United States Persons, whether "incidental" or otherwise, in undertaking such surveillance; and that are or were:
 - a. Authored by an inspector general or the functional equivalent thereof;
 - b. Submitted to Congress, the Office of the Director of National Intelligence, the Attorney General, or the Deputy Attorney General; or
 - c. Maintained by the office of the Assistant Attorney General for National Security.

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UNION FOUNDATION

The Request is intended to supplement a FOIA request filed on May 13, 2013, which is the subject of *ACLU v. NSA*, No. 13 Civ. 9198 (AT) (S.D.N.Y.). To the extent that this Request involves records being processed in response to the ACLU's previous request, we are available to discuss ways of avoiding any unnecessary duplication of effort.

II. Request for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). *See also* 28 C.F.R. § 16.5(d). There is a "compelling need" for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual

or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 28 C.F.R. § 16.5(d)(1)(ii). In addition, the records sought relate to 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).

A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(d)(1)(ii). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public is a critical and substantial component of the ACLU’s work and one of its primary activities. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information” (internal citation omitted)).²

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU’s regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; and a widely read blog. The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.³ ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁴

² *See also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005).

³ *See, e.g.*, Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement*, Sept. 14, 2012, <http://www.aclu.org/node/36742>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering*, Mar. 27, 2012, <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>.

⁴ *See, e.g.*, Peter Finn & Julie Tate, *CIA Mistaken on ‘High-Value’ Detainee, Document Shows*, Wash. Post, June 16, 2009 (quoting ACLU attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosures by C.I.A.*, N.Y. Times, June 10, 2009 (quoting ACLU attorney Jameel Jaffer).

In addition, the ACLU website includes features that provide information about actual or alleged government activity obtained through FOIA.⁵ For example, the ACLU maintains an online “Torture Database,”⁶ a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.⁷ Similarly, the ACLU’s webpage about the Office of Legal Counsel (“OLC”) torture memos obtained through FOIA contains commentary and analysis of the memos; an original, comprehensive chart summarizing the memos; links to web features created by ProPublica (an independent, non-profit, investigative-journalism organization) based on the ACLU’s information gathering, research, and analysis; and ACLU videos about the memos.⁸ Beyond its website and online features, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through FOIA.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The records sought are urgently needed to inform the public about actual or alleged federal government activity. In particular, the records sought pertain to the conduct and oversight of intelligence activities undertaken pursuant to EO 12,333. Recent reports in the media indicate that the scope of the government’s surveillance under EO 12,333 may be far broader than Americans currently understand, and may operate without the same privacy protections applied to surveillance conducted under other statutory authorities. *See, e.g.,* John Napier Tye, *Meet Executive Order 12333: The Reagan Rule that Lets the NSA Spy on Americans*, Wash. Post (July 18, 2014), <http://wapo.st/Ug0kLS>. Moreover, an independent report issued by the President’s Review Group last December suggested that information collected to, from, or about U.S. persons should receive greater protection—a recommendation that would apply to EO 12,333 surveillance. *See* President’s Review Group on Intelligence and Communications Technologies, *Report and Recommendations 28-29* (Dec. 12, 2013), <http://bit.ly/1cBj5vG>. Despite these urgent calls for reform, the public has few details about the policies, rules, or procedures that currently govern the collection, use, and dissemination of Americans’ information under EO 12,333.

⁵ *See, e.g.*, <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/mappingthefbi>.

⁶ <http://www.torturedatabase.org>.

⁷ The ACLU also maintains a “Torture FOIA” webpage (<http://www.aclu.org/torturefoia>) containing commentary about the ACLU’s FOIA request, press releases, and analysis of the FOIA documents. That webpage also notes that the ACLU, in collaboration with Columbia University Press, has published a book about the documents obtained through FOIA. *See* Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007).

⁸ http://www.aclu.org/safefree/general/olc_memos.html.

The requested records also relate to 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), and to a matter where there is “urgency to inform the public about an actual or alleged federal government activity.” 28 C.F.R. § 16.5(d)(1)(ii).

The government’s electronic surveillance powers have been a significant matter of public concern and media interest for many years, particularly after the revelation of the NSA’s warrantless wiretapping program. The legislation that emerged out of that controversy—the FAA—has been the subject of widespread interest and debate since the moment it was introduced in 2008. *See, e.g.*, Sean Lengell, *House Approves Update of Bipartisan Spy Laws*, Wash. Times, June 21, 2008; Editorial, *Mr. Bush v. the Bill of Rights*, N.Y. Times, June 18, 2008; Editorial, *Compromising the Constitution*, N.Y. Times, July 8, 2008 (stating that the FAA would “make it easier to spy on Americans at home, reduce the courts’ powers and grant immunity to the companies that turned over Americans’ private communications without warrant”); Editorial, *Election-Year Spying Deal is Flawed, Overly Broad*, USA Today, June 25, 2008.

This public debate has only grown with the disclosure of information about the scope and intrusiveness of government surveillance. Scores of articles published during the past year have addressed the government’s surveillance activities—including those under EO 12,333. *See, e.g.*, Zack Whittaker, *Legal Loopholes Could Allow Wider NSA Surveillance, Researchers Say*, CBS News (June 30, 2014), <http://cbsn.ws/1ticymy>; Mike Masnick, *Privacy Oversight Board Turns Its Sights on the Real Problem: Executive Order 12333*, Techdirt (July 23, 2014), <http://bit.ly/1rS7Ud8>; Naomi LaChance, *Should Executive Order 12333 Be Repealed?*, U.S. News (July 21, 2014), <http://bit.ly/1qav5Mz>; John Napier Tye, *Meet Executive Order 12333: The Reagan Rule that Lets the NSA Spy on Americans*, Wash. Post (July 18, 2014), <http://wapo.st/Ug0kLS>.

Many of these articles have highlighted pressing concerns about whether Americans’ privacy is adequately protected when the government engages in surveillance under EO 12,333. The Request seeks information bearing directly on this matter of public interest.

As the sustained media interest concerning the scope and privacy implications of the government’s electronic surveillance power clearly shows, the impact of EO 12,333 on Americans’ privacy constitutes 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). The Request will inform urgent and ongoing debate about the government’s surveillance and wiretapping activities.

Accordingly, expedited processing should be granted.

III. Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, as described in Part II.B, the requested material concerns “the operations or activities” of the Department of Justice. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the government to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case before the Supreme Court of the United States, the government emphasized its authority to conduct surveillance of Americans’ foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Br. for

Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance. This question is a matter of pressing public concern. *See, e.g.*, John Napier Tye, *Meet Executive Order 12333: The Reagan Rule that Lets the NSA Spy on Americans*, Wash. Post (July 18, 2014), <http://wapo.st/Ug0kLS>.

Moreover, the requested materials will “contribute significantly to the public understanding” of the intelligence community’s operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the Department of Justice construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government made no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See Br. for Petitioners, Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45 (U.S. 2012). Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333’s limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.*, Nat’l Sec. Agency, *United States Signals Intelligence Directive 18* (Jan. 2011); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(1) (2007); Dep’t of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

* * *

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty business-day statutory time limit.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Sincerely,



Patrick Toomey
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 519-7816
Email: ptoomey@aclu.org

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY,
CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF STATE,

Defendants.

No. 13-CV-9198 (AT)

DECLARATION OF DAVID J. SHERMAN

I, DAVID J. SHERMAN, hereby declare and state:

1. I am the Associate Director for Policy and Records at the National Security Agency (“NSA” or “Agency”), an intelligence agency within the Department of Defense. I have been employed with NSA since 1985. Prior to my current assignment, I held various senior and supervisory positions at NSA and elsewhere in the Executive Branch, to include serving as the Deputy Chief of Staff in the Agency’s Signals Intelligence Directorate, its representative to the Department of Defense, Deputy Associate Director for Foreign Affairs, and Director for Intelligence Programs at the National Security Council. As the Associate Director for Policy and Records, I am responsible for, among other things, the processing of all requests made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for NSA records.

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2. In addition, I am a TOP SECRET original classification authority pursuant to Section 1.3 of Executive Order (EO) 13526, dated 29 December 2009 (75 Fed. Reg. 707). It is my responsibility to assert FOIA exemptions when warranted over NSA information in the course of litigation. Through the exercise of my official duties, I have become familiar with the current litigation arising out of a FOIA request for information filed by the Plaintiffs, the American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively, "Plaintiffs" or "ACLU").

3. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA request. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

4. I submit this declaration in support of the Defendants' Motion for Partial Summary Judgment. The purpose of this declaration is to explain the search undertaken by NSA in response to Plaintiffs' FOIA request, and to explain and justify, to the extent possible on the public record, the withholdings taken by NSA in responding to Plaintiffs' request for information under the FOIA, 5 U.S.C. § 552, and the withholdings taken by the National Security Division (NSD) of the U.S. Department of Justice on behalf of NSA. Additionally, I have submitted to the Court an *in camera, ex parte* classified declaration to more fully explain certain withholdings than could be addressed on the public record. To the extent that the Court requires additional information regarding particular withholdings, the Agency will submit a supplemental *in camera, ex parte* classified declaration upon request to provide further explanation of the harm to the national security that could reasonably be expected to occur if certain information were to be released.

ORIGIN AND MISSION OF NSA

5. The NSA was established by Presidential Directive in October 1952 as a separately-organized agency within the Department of Defense under the direction, authority, and control of the Secretary of Defense. NSA's foreign intelligence mission includes the responsibility to collect, process, analyze, produce, and disseminate signals intelligence ("SIGINT") information for foreign intelligence and counterintelligence purposes to support national and departmental missions and for the conduct of military operations. *See* EO 12333, section 1.7(c), as amended.

6. In performing its SIGINT mission, NSA exploits foreign electromagnetic signals to obtain intelligence information necessary to the national defense, national security, or the conduct of foreign affairs. NSA has developed a sophisticated worldwide SIGINT collection network that acquires foreign and international electronic communications. The technological infrastructure that supports NSA's foreign intelligence information collection network has taken years to develop at a cost of billions of dollars and untold human effort. It relies on sophisticated collection and processing technology.

IMPORTANCE OF SIGINT TO THE NATIONAL SECURITY

7. There are two primary reasons for gathering and analyzing intelligence information. The first, and most important, is to gain the information required to direct U.S. resources as necessary to counter threats to the nation and its allies. The second reason is to obtain the information necessary to direct the foreign policy of the United States. Foreign intelligence information provided by the NSA is routinely distributed to a wide variety of senior Government officials, including the President; the President's National Security Advisor; the Director of National Intelligence; the Secretaries of Defense, State, Treasury, and Commerce; U.S. ambassadors serving in posts abroad; the Joint Chiefs of Staff; and the Unified and

Specified Commanders. In addition, SIGINT information is disseminated to numerous agencies and departments, including, among others, the Central Intelligence Agency; the Federal Bureau of Investigation; the Drug Enforcement Administration; the Departments of the Army, Navy, and Air Force; and various intelligence components of the Department of Defense. Information provided by NSA is relevant to a wide range of important issues, including, but not limited to, military order of battle, threat warnings and readiness, arms proliferation, terrorism, and foreign aspects of international narcotics trafficking. This information is often critical to the formulation of U.S. foreign policy and the support of U.S. military operations around the world. Moreover, intelligence produced by NSA is often unobtainable by other means.

THE ADMINISTRATIVE PROCESSING OF PLAINTIFFS' FOIA REQUEST

8. On 13 May 2013, Plaintiffs, via Mr. Abdo, submitted a request for documents under the FOIA to NSA. Plaintiffs specifically requested the following records:

1. Any records construing or interpreting the authority of the National Security Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder. **Agency Exhibit (AEX) 1.**

9. On 28 June 2013, NSA's FOIA Office contacted Mr. Abdo for clarification about the records Plaintiffs were seeking and the scope of the records at issue. NSA's FOIA Office and Mr. Abdo agreed to narrow the scope of the request, in an agreement that was formalized by the NSA's FOIA Office in an email to Mr. Abdo sent on this same day, 28 June 2013. **AEX 2.** Mr. Abdo agreed to limit the request to "formally issued guidance . . . such as DoD Directi[ves],

NSA USSID, NSA Policies, various issuances related to FISA, compliance training, and advisories” and “separate legal opinions that interpret the standards or define the terms collection, acquisition, or interception to the extent that opinion/interpretation is not included in the formal guidance.” **AEX 2.** On 1 July 2013, NSA provided its initial response to Plaintiffs’ FOIA request wherein NSA reiterated the scoping agreement reached on 28 June 2013, and informed Mr. Abdo, among other things, that his request was assigned case number 70809, that the Agency had begun to process this request, and that he was considered an “all other requester” for fee purposes, but there would be no fees as searches for similar records were already being conducted in response to other FOIA requests. **AEX 3.** Further, the NSA’s FOIA Office provided Mr. Abdo with two documents that were previously released under the FOIA, totaling 81 pages: United States Signals Intelligence Directive (USSID) 18 and NSA/CSS Policy 1-23. **AEX 3.**

10. On 21 August 2013, NSA’s FOIA Office sent Mr. Abdo a follow-up email informing him that the Office of the Director of National Intelligence (ODNI) would be posting documents on its IContheRecord website that were related to Sec. 702 of the FISA Amendments Act but which may be responsive to his request for NSA’s minimization procedures. **AEX 4.** In this email, the NSA’s FOIA Office informed Mr. Abdo that the Agency was continuing to process his FOIA request and that it would provide additional responses when processing of responsive documents was complete. **AEX 4.** Mr. Abdo replied to this email on the same day and informed the Agency’s FOIA Office that Plaintiffs had downloaded the documents from the ODNI website. **AEX 4.** Plaintiffs did not specify the documents that they had downloaded from IContheRecord. **AEX 4.**

11. Despite being informed that the Agency was processing his request and receiving NSA documents from both the NSA directly and through the ODNI website, Plaintiffs filed an appeal dated 8 November 2013, which was received by the NSA's Appeal Authority on 18 November 2013. **AEX 5.** In the appeal, Plaintiffs alleged that they had not received a substantive response within twenty days and that the Agency had constructively failed to meet its legal obligations to disclose the requested records. **AEX 5.**

12. By email dated 18 November 2013 and without knowing that Plaintiffs had filed an appeal, the NSA's FOIA Office provided Mr. Abdo with two additional documents, which were more recent versions of USSID 18-USSID SP0018 and Annex J to this USSID. **AEX 6.** In this email, the NSA's FOIA Office informed Mr. Abdo that the ODNI was releasing approximately 2000 pages of information related to Section 501 of the USA PATRIOT Act on that day, which could be found at the ODNI's website as well as the IContheRecord Tumblr site. **AEX 6.** In this email, the FOIA Office inquired as to whether the documents released by the ODNI satisfied the FOIA request. **AEX 6.** Plaintiffs did not respond to this inquiry. The NSA's FOIA Office followed up on this email with a formal response that included hard copies of the two recently-processed documents. **AEX 7.** NSA's FOIA Office also informed Plaintiffs of their right to appeal the withholdings in these two documents. **AEX 7.**

13. By letter dated 22 November 2013, NSA's FOIA/PA Appeals Program Manager acknowledged Plaintiffs' appeal dated 8 November 2013, which was received by the Agency on 18 November 2013. **AEX 8.**

14. On December 30, 2013, Plaintiffs filed a civil action under the FOIA against NSA and several other agencies that received requests that were substantially similar to Plaintiffs' FOIA request to NSA.

15. Despite filing a civil action on 30 December 2013, Plaintiffs, by letter dated 9 January 2014, also filed a second appeal, this time appealing the withholdings in the four initial documents provided by NSA in response to Plaintiffs' FOIA request. **AEX 9.** NSA acknowledged this appeal by letter dated 24 January 2014 as it was not yet aware of the Plaintiffs' civil action. **AEX 10.**

16. NSA continued to process Plaintiffs' FOIA request based on the stipulation (limiting the request to formally issued guidance) it had reached with Mr. Abdo on 21 June 2013, and determined that all of the documents responsive to the request as stipulated were on the ODNI's IContheRecord website, or were provided by NSA except for one additional document, SID Management Directive 424. NSA released this document with redactions of information exempt from release based on Exemptions 1 and 3 of the FOIA to Plaintiffs by letter dated 1 May 2014. **AEX 11.**

17. Following the filing of Plaintiffs' civil action, Plaintiffs and the various defendants began negotiating a stipulation that, among other things, would define the scope of the records to be searched. Each of the agencies reached an identical agreement on the scope, with some variations for the Central Intelligence Agency (CIA) and the Office of Legal Counsel (OLC). As a result of this agreement, Plaintiffs sought substantially different information than that which had been originally agreed upon by the Plaintiffs and NSA on 21 June 2013. In essence, the agreement on the scope of the agencies' searches was a new request for records as Plaintiffs' FOIA request to NSA sought only three categories of records (records construing or interpreting the authority of NSA under EO 12333; records describing the minimizations procedures used by the agency; and records describing the standards that must be satisfied for collection, acquisition, or interception of communications), all of which were limited by

stipulation to formally issued guidance such as directives, USSIDs, policies, compliance training, etc. In the spirit of transparency, NSA, although it had already completed its processing of Plaintiffs' FOIA request as construed by the agreement of 21 June 2013, agreed to be governed by this stipulation, which as stated previously was essentially a new FOIA request. On 9 May 2014, the parties, including NSA, formally entered into a stipulation with Plaintiffs that would govern the scope of NSA's search for responsive records. The parties agreed that NSA would search for and process records in the following categories:

1. Any formal regulations or policies relating to that Agency's authority under EO 12,333 to undertake "Electronic Surveillance" (as that term is defined in EO 12,333) that implicates "United States Persons" (as that term is defined in EO 12,333), including regulations or policies relating to that Agency's acquisition, retention, dissemination or use of information or communications to, from, or about United States persons under such authority.[fn1]
2. Any document that officially authorizes or modifies under EO 12,333 that Agency's use of specific programs, techniques, or types of Electronic Surveillance that implicate United States Persons, or documents that adopt or modify official rules or procedures for the Agency's acquisition, retention, dissemination, or use of information or communications to, from, or about United States persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
3. Any formal legal opinions addressing that Agency's authority under EO 12,333 to undertake specific programs, techniques, or types of Electronic Surveillance that implicates United States Persons, including formal legal opinions relating to that Agency's acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
4. Any formal training materials or reference materials (such as handbooks, presentations, or manuals) that expound on or explain how that Agency implements its authority under EO 12,333 to undertake Electronic Surveillance that implicates United States Persons, including acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.
5. Any formal reports relating to Electronic Surveillance under EO 12,333 implicating United States Persons, one of whose sections or subsections is devoted to (1) the Agency's compliance, in undertaking such surveillance, with

EO 12,333, its implementing regulations, the Foreign Intelligence Surveillance Act, or the Fourth Amendment; or (2) the Agency's interception, acquisition, scanning, or collection of the communications of United States Persons, whether "incidental" or otherwise, in undertaking such surveillance; and that are or were:

- a. Authored by the Agency's inspector general or the functional equivalent thereof;
- b. Submitted by the Agency to Congress, the Office of the Director of National Intelligence, the Attorney General, or the Deputy Attorney General; or
- c. Maintained by the office of the Agency's director or head. **AEX12.**

[Footnote 1: For purposes of this Stipulation, surveillance that "implicates" United States Persons means surveillance that is reasonably believed to involve the interception, acquisition, scanning, or collections of information or communications to, from, or about a United States Person or Persons even if the target of such surveillance is not a United States Person.]

18. The Agency conducted a search for documents responsive to this request, described more fully below, and located over 1200 pages of responsive material, of which over 850 pages were released in whole or in part to the Plaintiffs.

AGENCY'S SEARCH FOR RESPONSIVE DOCUMENTS

19. Relying on the specificity of the information sought by Plaintiffs in the stipulation (**AEX 12**), NSA conducted searches in its directorates and organizations that NSA determined were most likely to have responsive records if such responsive records existed. NSA relied upon its FOIA Office, which is staffed with a cadre of intelligence professionals, including intelligence analysts, to direct and assist in the search for responsive records. Additionally, NSA assigned the following personnel to assist with the searches within their respective organizations: the Signals Intelligence Directorate assigned three senior employees who are well-versed in the Directorate's missions, functions, and activities, particularly those undertaken pursuant to EO 12333; the Office of General Counsel assigned a senior attorney with extensive experience in its

Intelligence Law practice group drafting legal opinions concerning EO 12333; and the Office of the Inspector General assigned its counsel (collectively, "Senior Staff"). As explained in Paragraph 21 of this declaration, NSA FOIA Office professionals determined, based on their familiarity with NSA's organization and operations, that no other components of NSA were likely to possess additional responsive materials.

20. The Senior Staff reviewed NSA activities and programs, to include the sources and methods undertaken in these EO 12333 activities and programs, for records that were responsive to the requested five categories of information about electronic surveillance implicating United States Persons (USPs). The Senior Staff also searched the holdings of the Signals Intelligence Directorate and relevant organizations within that Directorate; the Office of the General Counsel; the Office of the Inspector General; the Legislative Affairs Office; and the Associate Directorate for Education and Training. This Senior Staff was fully aware of the nature of the filing systems of each organization and relied on their experience at NSA to identify the relevant repositories most likely to contain responsive materials. Once these repositories were identified, the Senior Staff conducted searches both electronically and manually. The Senior Staff conducted its electronic searches using the term "EO 12333" and other terms unique to the Directorate/organizations being searched.¹ In the Office of the General Counsel, the Senior Staff searched electronic records of current and former General Counsels, Deputy General Counsels, and Associate General Counsels for Intelligence Law. NSA also searched its repository of serialized legal opinions, which are formal legal guidance issued by individuals occupying those senior legal positions, using the search term "EO 12333" and the

¹ ACLU, in its requests and in the stipulation, referred to the Executive Order as EO 12,333 (with a comma). NSA and the U.S. Intelligence Community typically render the Executive Order as EO 12333 (with no comma). NSA's search was reasonably calculated to recover responsive material regardless of the manner in which the number was written.

titles of senior NSA legal officials likely to have created and received responsive documents. The Senior Staff also conducted manual searches based on the filing systems of each organization likely to have responsive documents to identify and locate records responsive to the stipulation. For instance, the Senior Staff searched for documents responsive to Plaintiffs' requests in the electronic repositories of the Signals Intelligence Directorate's policy organization, which contain NSA and IC policies governing the conduct of signals intelligence activities under EO 12333. Likewise, the Senior Staff searched for responsive documents in the electronic repositories of the Associate Directorate for Education and Training, which contain formal training courses and exams. Finally, the Senior Staff manually retrieved from the files of the Office of the Inspector General all quarterly reports filed with the Intelligence Oversight Board for the time period specified in the stipulation, and using the search term "EO 12333" electronically searched the Office of the Inspector General's repositories containing intelligence oversight reports, and then manually reviewed the results for records responsive to the stipulation.

21. NSA's decision to search only the repositories of the five above-listed organizations was reasonable because all originals of materials responsive to the five categories of records requested by the Plaintiff were most likely to reside there. The repositories of other organizations would hold only copies of these original documents. This is because the NSA organizations that were searched are those responsible for (a) conducting signals intelligence activities under EO 12333; (b) ensuring the compliance of these activities with EO 12333 authorities; (c), reporting to higher authorities which oversee NSA signals intelligence activities (such as the Intelligence Oversight Board), and (d) training NSA personnel in the compliant conduct of signals intelligence activities. For example, the Office of the General Counsel and

the Signals Intelligence Directorate were the organizations that could be most reasonably presumed to have documents in Category 1 (formal regulations and policies relating to NSA authorities under EO 12333) and Category 2 (documents that officially authorized or modified NSA policies or procedures that implicate USPs); the Office of the General Counsel was the organization that would have documents responsive to Category 3 (formal legal opinions); the Associate Directorate for Education and Training and the Signals Intelligence Directorate were the organizations that would have documents responsive to Category 4 (formal training and reference materials); and the Office of the General Counsel, the Signals Intelligence Directorate, the Legislative Affairs Office, and the Office of the Inspector General, collectively, were the organizations that would have documents responsive to Category 5 (formal reports to Congress or authored by the NSA IG relating to compliance in undertaking surveillance pursuant to EO 12333).

22. Over 1200 pages of responsive material were located and referred to the NSA FOIA Office for processing. NSA identified and searched all NSA components that were likely to possess records responsive to the FOIA request, and identified and used search methods that were reasonably likely to identify all responsive NSA records.

APPLICABLE EXEMPTIONS TO THE FOIA

23. NSA withheld certain information, as set forth below, because it is properly exempt from disclosure under the FOIA based on Exemptions 1, 3 and 5, 5 U.S.C. §§ 552(b)(1), (3), and (5), respectively. This information remains currently and properly classified in accordance with EO 13526 and protected from release by statute, specifically Section 6 of the National Security Agency Act of 1959 (Pub. L. No. 86-36) (codified at 50 U.S.C. § 3605 (“NSA Act”), 18 U.S.C. § 798, and Section 102A(i)(1) of the National Security Act of 1947, as amended (codified at 50 U.S.C. § 3024(i)(1)). Moreover, some of the information withheld

constitutes privileged communications between government attorneys and their clients. All information withheld pursuant to Exemption 5 is also exempt from public release based on Exemptions 1 or 3 of the FOIA.

24. For each document released in part, NSA used “exemption codes” to indicate which FOIA exemption(s) apply to each redacted portion of the document. For instance, if information is exempt under FOIA Exemption 3, NSA redacted it and marked the redaction with “(b)(3).” Additionally, several of the released documents have sections or paragraphs which are “portion marked” to indicate their classification, with the specific level of classification is listed in parentheses. The letters in parentheses – “C,” “S,” and “TS” – indicate that the information is currently and properly classified CONFIDENTIAL, SECRET, or TOP SECRET, respectively, pursuant to the provisions of EO 13526.

25. ACLU has indicated that it is challenging each defendant agency’s withholdings as to a subset of documents that would serve as a narrow “litigation sample” over which the parties could litigate. Specifically, ACLU has indicated that it is challenging (1) NSA’s withholdings as to NSA Documents 5, 28, and 79 (Bates Number 4165220, which is a sample selected by ACLU from among 47 quarterly reports and 4 annual reports submitted by NSA to the President’s Intelligence Oversight Board (IOB)), which were released in part, and NSA’s determination to withhold Documents 7, 9, and 11-23 in full. ACLU has also selected for the litigation sample two NSA documents that were not assigned document numbers: USSID SP0018 (Bates number 4086222) and USSID SP0018 Appendix J (Bates number 4086223), which were both released in part to ACLU as part of the administrative processing of the request.² Finally, ACLU has indicated that it is challenging certain withholdings claimed by the

² Attached to this declaration is a *Vaughn* Index listing those NSA documents that were selected

Department of Justice National Security Division (NSD), the Federal Bureau of Investigation (FBI), and OLC on behalf of NSA. The documents in this category are NSD Documents 4, 7, 12, 13, 14, 17, 18, 23, 30, 31, 33, 36, 37, 42, 44, 47, and 48, NSD Bates Numbers 094-125, FBI Bates Numbers 30-35, and OLC Documents 2, 3, 4, 6, 8, 9, and 10.³ With respect to some of these documents from other agencies, this Declaration addresses only certain of the exemptions justifying the withheld or redacted information while the other agency's declaration addresses the remaining exemptions. With respect to the NSA documents at issue, it is my understanding that NSD will justify the applicability of the Attorney-Client and Deliberative Process Privileges under FOIA Exemption 5 to NSA Documents 11 and 12, and that the Department of Justice Office of Information Policy will justify the applicability of the Presidential Communications Privilege under FOIA Exemption 5 to NSA Document 12.

26. The justification for the withholding of some of the challenged information that the Agency withheld under FOIA Exemptions 1 and 3 can only be addressed in an *in camera, ex parte* classified declaration that will accompany this unclassified declaration, addressing NSA Documents 11, 12, 13, and 22, and NSD Documents 4, 7, 12, 13, 14, 17, 18, 23, 30, 33, 36, 37, 42, 44, 47, and 48. This is so because any description of the information withheld beyond that given below would reveal information that is currently and properly classified in accordance with EO 13526 and protected from release by statute as this information would reveal the intelligence sources, methods, activities, and functions of SIGINT collection and exploitation.

for the litigation sample in response to ACLU's request, **AEX 13**, as well as copies of the documents listed in that index that were released in part. **AEX 14-18**.

³ Documents listed in other agencies' *Vaughn* Indexes are referred to by their document numbers or Bates numbers in the respective *Vaughns*.

FOIA Exemption 1

27. Section 552(b)(1) of the FOIA provides that the FOIA does not require the release of matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy, and are in fact properly classified pursuant to such Executive Order. The current Executive Order that establishes such criteria is EO 13526.

28. Section 1.1 of EO 13526 provides that information may be originally classified if: 1) an original classification authority is classifying the information; 2) the information is owned by, produced by or for, or is under the control of the Government; 3) the information falls within one or more of the categories of information listed in section 1.4 of the Executive Order; and 4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, and the original classification authority is able to identify or describe the damage.

29. Section 1.2(a) of EO 13526 provides that information shall be classified at one of three levels. Information shall be classified at the TOP SECRET level if its unauthorized disclosure reasonably could be expected to cause exceptionally grave damage to the national security. Information shall be classified at the SECRET level if its unauthorized disclosure reasonably could be expected to cause serious damage to the national security. Information shall be classified at the CONFIDENTIAL level if its unauthorized disclosure reasonably could be expected to cause damage to the national security.

30. Section 1.4 of EO 13526 provides that information shall not be considered for classification unless it falls within one (or more) of eight specifically enumerated categories of information. The categories of classified information in the documents at issue here are those found in Section 1.4(c), which includes intelligence activities (including covert action),

intelligence sources and methods, or cryptology; Section 1.4(d), which includes foreign relations or foreign activities of the United States, including confidential sources; and Section 1.4(g), which includes vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security.

31. In my role as a TOP SECRET original classification authority (“OCA”), I am authorized to make classification determinations at the TOP SECRET, SECRET, and CONFIDENTIAL levels. As set out more fully below, I reviewed the categories of information withheld pursuant to this FOIA request and determined that those categories are currently and properly classified in accordance with EO 13526. Based on that determination, I have further determined that the responsive material at issue was properly withheld, as all of this information is currently and properly classified in accordance with EO 13526. Accordingly, the release of this intelligence information could reasonably be expected to cause damage to the national security. The damage to national security that reasonably could be expected to result from the unauthorized disclosure of this classified information is described below. Finally, in accordance with Section 1.7 of EO 13526, no information was classified or withheld in order to conceal violations of law, or to prevent embarrassment to the Agency.

FOIA Exemption 3

32. Exemption 3, 5 U.S.C. § 552(b)(3), provides that FOIA does not require the production of records that are:

specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.⁴

⁴ The OPEN FOIA Act of 2009 was enacted on October 28, 2009, Pub. L. 111-83, 123 Stat.

33. The challenged information at issue in this litigation falls squarely within the scope of three statutes. The first applicable statute is a statutory privilege unique to NSA. As set forth in section 6 of the NSA Act, Pub. L. No. 86-36 (50 U.S.C. § 3605), “[n]othing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency, [or] of any information with respect to the activities thereof”. Congress, in enacting the language in this statute, decided that disclosure of any information relating to NSA activities is potentially harmful. Federal courts have held that the protection provided by this statute is, by its very terms, absolute. Section 6 states unequivocally that, notwithstanding any other law, including the FOIA, NSA cannot be compelled to disclose any information with respect to its activities. To invoke this privilege, the U.S. Government must demonstrate only that the information it seeks to protect falls within the scope of Section 6. Further, while in this case the harm would be exceptionally grave or serious, the U.S. Government is not required to demonstrate specific harm to national security when invoking this statutory privilege, but only to show that the information relates to its activities. NSA’s functions and activities are therefore protected from disclosure regardless of whether or not the information is classified.

34. The second statute is Section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i)(1), which provides that “the Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” Like the protection afforded to core NSA activities by section 6 of the NSA Act, the protection afforded to intelligence sources and methods is absolute. Whether the sources and methods at issue are classified is irrelevant for purposes of the protection afforded by 50 U.S.C. § 3024(i)(1).

2142, 2184, 5 U.S.C. § 552(b)(3)(B), after the applicable provisions were enacted, and therefore is not applicable to the analysis in this case.

35. Finally, the third statute is 18 U.S.C. § 798. This statute prohibits the unauthorized disclosure of classified information: (i) concerning the communications intelligence activities of the United States, or (ii) obtained by the process of communications intelligence derived from the communications of any foreign government. The term “communications intelligence,” as defined by Section 798, means the “procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients.” 18 U.S.C. § 798(b).

36. As described above, these statutes protect the fragile nature of the United States’ intelligence sources, methods, and activities, to include but not limited to the existence and depth of signals intelligence-related successes, weaknesses, and exploitation techniques. These statutes recognize the vulnerability of intelligence sources and methods, including to countermeasures, and the significance of the loss of valuable intelligence information to national policymakers and the Intelligence Community (“IC”). Given that Congress specifically prohibited the disclosure of the sources and methods used by the IC, as well as any information related to NSA’s functions and activities, I have determined that the information was properly withheld under FOIA Exemption 3.

FOIA Exemption 5

37. Exemption 5 provides that FOIA does not require the release of “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than the agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). This exemption incorporates multiple privileges, including the traditional attorney-client privilege into the FOIA. As a result, an agency does not have to produce “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead Data Cent., Inc., v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977).

CATEGORIES OF INFORMATION WITHHELD

Documents Related to Classified NSA Intelligence Sources and Methods

38. NSA withheld from disclosure information concerning particular intelligence sources, and related methods used to collect and process foreign communications, including legal analyses, approval documentation, an NSA OIG report, and compliance incident reports. The documents in this category include NSA Documents 11, 12, 13, and 22 and NSD Documents 7, 12, 13, 14, 17, 18, 23, 30, 33, 37, 42, 44, 47, and 48. Other than the documents' dates and number of pages, no information from these documents can be released because the very fact of these intelligence sources and methods is currently and properly classified. Additionally, the documents contain myriad details regarding the types of communication data NSA is able to collect and how that data is collected. Disclosure of this information would reveal core NSA foreign intelligence activities, sources, and methods, including technical tradecraft, to the benefit of our adversaries. NSA has also filed a classified, *ex parte*, *in camera* declaration more fully explaining the nature of these documents and why no portion of them can be released.⁵

39. Disclosure of any information about these sources and the methods by which NSA effects collection, as well as the scope of that collection, would demonstrate the capabilities and limitations of the U.S. SIGINT system, and the success (or lack of success) in acquiring certain types of communications. The collection of communications intelligence is central to NSA's mission and allows NSA to provide unique and timely insight into the activities

⁵ Additionally, it is my understanding that NSD will file a declaration justifying the withholding the Department of Justice, Office of Information Policy, will justify the withholding in full of NSA Document 12 and NSD Document 18 pursuant to the Presidential Communications Privilege incorporated into FOIA Exemption 5, and that NSD will further justify the withholding in full of NSA Documents 11 and 12 pursuant to the Deliberative Process and Attorney-Client Privileges also incorporated into FOIA Exemption 5.

of foreign adversaries for U.S. policymakers. Public disclosure of NSA's capabilities to acquire specific types of communications, and the technical means and methods by which such acquisition is effected, would alert targets to the vulnerabilities of their communications (and which of their communications are not vulnerable). Details regarding compliance incidents reported to the NSA Inspector General and to NSD, including the number of such incidents related to particular collection methodologies, would similarly reveal the nature and scope of these intelligence sources. Release of this information would also disclose details regarding NSA's capability to collect certain types of foreign communications, and the gaps or limits of that capability. Once alerted, adversaries could develop additional countermeasures to thwart collection of their communications. Such a reaction may result in denial of access to targets' communications and therefore result in a loss of information critical to the national security and defense of the United States.

40. I have reviewed this matter and determined that all information owned by, produced by, or under the control of the U.S. Government regarding this source and the details of the methods used is currently and properly classified at the TOP SECRET level in accordance with EO 13526, because the release of this information could reasonably be expected to cause exceptionally grave damage to the national security. Revealing the existence of these sources themselves would disclose information regarding the technical means by which NSA effects collection of the communications of valid foreign intelligence targets. Therefore, this information meets the criteria for classification set forth in Sections 1.4(c), 1.4(d), and 1.4(g) of EO 13526. *See supra*, ¶ 30. Moreover, because the nature of the sources themselves is currently and properly classified, a release of any portion of the referenced documents would tend to

reveal classified information. As a result, I have determined that no portion of the documents could be reasonably segregated and released.

41. The withheld information is also protected from release by statute and is exempt from release based on FOIA Exemption 3, 5 U.S.C. § 552(b)(3). Specifically, there are three Exemption 3 statutes that protect from public release the technical means by which NSA effects its collection operations: 50 U.S.C. § 3605, 18 U.S.C. § 798, and 50 U.S.C. § 3024(i)(1).

42. The withheld information clearly relates to a “function of the National Security Agency.” 50 U.S.C. § 3605. Indeed, this information relates to one of NSA’s primary functions, its SIGINT mission. Any disclosure of the withheld information regarding this intelligence source, and information regarding related methods would reveal NSA’s capabilities and the tradecraft used to carry out this vital mission. Further, revealing these details would disclose “information with respect to [NSA’s] activities” in furtherance of its SIGINT mission. 50 U.S.C. § 3605.

43. Moreover, this information is protected from public release pursuant to 50 U.S.C. § 3024(i)(1), which states that “[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” The withheld information concerns the intelligence sources and methods used by NSA to carry out its core foreign intelligence mission — *i.e.*, the means by which NSA acquires communications and derives useful foreign intelligence therefrom. Therefore, this information falls squarely within the protection of § 3024(i)(1) and should be afforded absolute protection from release.

44. Finally, the information is protected from release under 18 U.S.C. § 798, which protects from disclosure classified information concerning the communications intelligence activities of the United States, or information obtained by communications intelligence

processes. Disclosure of the withheld information about this intelligence source, and the related methods, would reveal key information about the means through which NSA collects and processes communication intelligence, thereby falling within the scope of protection offered by this statute.

Legal Opinions

45. NSA withheld from disclosure information relating to legal analyses of NSA collection and analysis programs and activities written by the NSA OGC or NSD. The documents in this category include NSA Documents 7, 9, 14, 15, 16, 17, 18, 19, 20, 21, and 28, and NSD Document 31. Each of these documents contains details regarding SIGINT sources and methods and legal analysis relating to those sources and methods. For most of the documents, the titles themselves are classified because the titles alone would reveal information about intelligence sources, such as the technical means by which communications are collected, and methods, such as analytic techniques applied to collected data. Unclassified descriptions of each document, including the date, number of pages, and serial numbers (where applicable) were released. NSA withheld details regarding the manner in which NSA selects its foreign intelligence targets, the technical means by which NSA collects communications intelligence, as well as the analytical tools and processes employed by NSA analysts to extract useful foreign intelligence from raw data.

46. With respect to NSA Documents 7, 9, 14, 15, 18, and 21, as well as NSD Document 31, I have determined that each document is currently and properly classified in its entirety at the TOP SECRET level in accordance with EO 13526, because the release of this information could reasonably be expected to cause exceptionally grave damage to the national security. Information contained in these documents pertains to intelligence activities, intelligence

sources or methods, or cryptology, or the vulnerabilities or capabilities of systems or projects relating to the national security and therefore meets the criteria for classification set forth in Sections 1.4(c) and 1.4(g) of EO 13526.

47. With respect to NSA Documents 16, 17, 19, and 20, and the withheld portions of NSA Document 28 (**AEX 14**) marked with a (b)(1) exemption code, I have determined that each is currently and properly classified at the SECRET level in accordance with EO 13526, because the release of this information could reasonably be expected to cause serious damage to the national security. Information contained in these documents pertains to intelligence activities, intelligence sources or methods, or cryptology, or the vulnerabilities or capabilities of systems or projects relating to the national security and therefore meets the criteria for classification set forth in Sections 1.4(c) and 1.4(g) of EO 13526. *See supra*, ¶ 30.

48. Disclosure of the operational information withheld here would reveal a wide variety of details that could be used to counter NSA foreign intelligence activities, and cause serious harm to national security. As discussed above, disclosure of the technical details by which NSA effects SIGINT collection, the scope of that collection, and the analytic techniques applied to the collected data would demonstrate the capabilities and limitations of the U.S. SIGINT system, the success (or lack of success) in acquiring certain types of communications, and the ability (or lack thereof) of NSA to derive useful foreign intelligence information from particular categories of data. Once alerted to these methods, adversaries could develop additional countermeasures to thwart collection of electronic communications or hinder NSA's ability to derive useful foreign intelligence therefrom. Such a reaction may result in denial of access to targets' communications and loss of information critical to the national security and defense of the United States.

49. The information withheld in the documents listed in paragraph 45 is also protected from release by statute and exempt from release based on FOIA Exemption 3, 5 U.S.C. § 552(b)(3), and specifically, the three Exemption 3 statutes discussed above: 50 U.S.C. § 3605, 50 U.S.C. § 3024(i)(1), and 18 U.S.C. § 798.

50. Information regarding NSA's collection of communications and analytic capabilities relate to a "function of the National Security Agency," 50 U.S.C. § 3605. Indeed, such information relates to one of NSA's primary functions, its SIGINT mission. The withheld operational information, if revealed, would also disclose "information with respect to [NSA's] activities" in furtherance of its SIGINT mission. 50 U.S.C. § 3605.

51. Moreover, this information is protected from public release pursuant to 50 U.S.C. § 3024(i)(1), which states that "[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure." The withheld operational details, such as the technical means of collection and analytic methodology, constitute the sources and methods used by NSA to carry out its SIGINT mission. Therefore, this information falls squarely within the protection of § 3024(i)(1) and should be afforded absolute protection from release.

52. Additionally, this information is protected from release under 18 U.S.C. § 798, which protects from disclosure classified information concerning the communications intelligence activities of the United States, or information obtained by communications intelligence processes. Disclosure of the means by which NSA collects communications, and the analytic techniques applied to collected data, would reveal the sources and methods at the core of the U.S. Government's communications intelligence activities, thereby falling within the scope of protection offered by this statute.

53. Finally, NSA Documents 7, 14, 15, 16, 17, 18, 19, 20, 21, and 28 contain correspondence between NSA OGC and its internal clients, such as the Signals Intelligence Directorate, the NSA organization tasked with carrying out NSA's SIGINT mission, which is protected under Exemption 5 of the FOIA because this correspondence includes privileged communications between Agency attorneys and Agency clients.⁶ "The attorney-client privilege protects communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were kept confidential (3) for the purpose of obtaining or providing legal assistance." *Brennan Center for Justice at New York Univ. Sch. of Law v. U.S. Department of Justice*, 697 F.3d 184, 203 (2d Cir. 2012). The communications at issue were made in order to provide legal advice to Agency clients on a variety of operational issues that arose under EO 12333, the communications were made in confidence, and have not since been used to publically justify NSA actions or expressly adopted as Agency policy.

54. The legal analyses in all of the documents listed in Paragraph 45, with the exception of NSA Document 28, are inextricably intertwined with the factual descriptions of NSA functions and activities and classified operational details that gave rise to the questions being considered, so there are no reasonably segregable, non-exempt portions of those documents.

55. Unlike the other documents listed in Paragraph 45, NSA determined that Document 28 was reasonably segregable, and therefore released it in part. I have reviewed this decision and determined that it remains correct. The withholdings in Document 28 were narrowly tailored to protect operational details regarding the SIGINT activities of NSA and privileged legal analysis and advice provided by NSA attorneys to NSA clients, as described

⁶ NSA is not claiming that any portion of NSA Document 9 or NSD Document 31 is exempt from release under Exemption 5.

above. The limited information withheld in this document is exempt from release under Exemptions 1, 3, and 5 (as indicated by the exemption codes listed in the document) for the reasons described above.⁷ All information withheld pursuant to Exemption 5 is independently exempt from public release based on Exemptions 1 and/or 3 of the FOIA.

NSD Document 4

56. NSD fully withheld Document 4 on its *Vaughn* index in part because the release of any portion of that document would disclose classified information about functions or activities of NSA. The document is a 20-page document dated 20 November 2007 and is described as “NSD Legal Memo on Amending DoD Procedures and Accompanying Documentation.” This document, including its full title, was withheld in full under Exemption 1 and Exemption 3. I have reviewed the information withheld and determined that the information is currently and properly classified at the SECRET level in accordance with EO 13526 because the release of this information could reasonably be expected to cause serious damage to the national security. The information withheld pertains to intelligence activities, intelligence sources or methods, or cryptology, or the vulnerabilities or capabilities of systems or projects relating to the national security and therefore meets the criteria for classification set for in Sections 1.4(c) and 1.4(g) of EO 13526. The harm to national security of releasing any portion of this document and the reasons that no portion of this document can be released without disclosing classified information cannot be fully described on the public record. As a result, my *ex parte, in camera* classified declaration more fully explains why this document was withheld in full.

⁷ Certain paragraphs withheld in NSA Document 28 were mistakenly marked with only Exemption 5 codes (*see* pgs. 3 and 7). Nevertheless, those paragraphs are also exempt from disclosure under Exemption 3, specifically 50 U.S.C. § 3605, because they describe NSA functions or activities. A properly marked copy of NSA Document 28 is included in the set of documents attached hereto.

57. The information withheld in NSD Document 4 also relates to a “function of the National Security Agency,” 50 U.S.C. § 3605. Indeed, this information relates to one of NSA’s primary functions, its SIGINT mission. Any disclosure of the withheld information would reveal NSA’s capabilities and the tradecraft used to carry out this vital mission. Further, revealing these details would disclose “information with respect to [NSA’s] activities” in furtherance of its SIGINT mission. 50 U.S.C. § 3605. Therefore, the information withheld is also protected from release by statute and is exempt from release based on FOIA Exemption 3, 5 U.S.C. § 552(b)(3).

OIG Report ST-09-0019

58. NSA fully withheld NSA OIG Report ST-09-0019, NSA Document 23, because it is fully exempt from disclosure pursuant to FOIA Exemptions 1 and 3. The document is an 84-page report by the NSA OIG concerning particular intelligence activities of the NSA, including the dissemination of communications intelligence to partner agencies. The report contains granular detail regarding the nature of NSA’s intelligence partnerships, the types and amount of communications intelligence it collects and disseminates, the names of particular NSA targets, the structure of NSA’s SIGINT databases, and suggestions by the OIG on how to improve the dissemination of SIGINT to partner agencies. NSA determined that there is no reasonably segregable, non-exempt information in the report.

59. I have reviewed NSA’s withholding in full of this document and determined both that this decision was correct and that the entirety of this document remains currently and properly classified at the TOP SECRET level in accordance with EO 13526 as its release of this could reasonably be expected to cause exceptionally grave damage to the national security. The information withheld pertains to intelligence activities, intelligence sources or methods, or cryptology, foreign activities of the United States, or the vulnerabilities or capabilities of systems

or projects relating to the national security and therefore meets the criteria for classification set forth in Sections 1.4(c), 1.4(d) and 1.4(g) of EO 13526.

60. Disclosure of the types and amount of communications intelligence NSA collects and disseminates, and the names of particular NSA targets whose information has been disseminated, would demonstrate the capabilities and limitations of the U.S. SIGINT system, and the success (or lack of success) in acquiring certain types of communications. The collection of communications intelligence is central to NSA's mission and allows NSA to provide unique and timely insight into the activities of foreign adversaries for U.S. policymakers. Public disclosure of NSA's capabilities to acquire specific types of communications would alert targets to the vulnerabilities of their communications (and conversely, which of their communications are not vulnerable). Foreign intelligence targets know how they communicate, so disclosure of this information would permit foreign adversaries to more effectively craft their communications security efforts to frustrate the Government's collection of information crucial to the national security.

61. Additionally, all of the information described above relates to a "function of the National Security Agency," 50 U.S.C. § 3605, and is therefore also protected from release by FOIA Exemption 3. Indeed, this information relates to one of NSA's primary functions, its SIGINT mission. A crucial part of NSA's SIGINT mission involves the dissemination of communications intelligence to partner agencies. In addition, NSA further protected this information based on 50 U.S.C. § 3024(i)(1), which states that the Director of National Intelligence "shall protect intelligence sources and methods from unauthorized disclosure." Finally, this information is protected from release under 18 U.S.C. § 798, which protects from disclosure information concerning the communications intelligence activities of the United

States, or information obtained by communications intelligence processes. Any disclosure of the withheld information would reveal NSA's capabilities and the tradecraft used to carry out its vital communications intelligence mission.

Intelligence Oversight Board Report-Fiscal Year 2013, 1st Quarter

62. NSA released, in part, 47 quarterly reports and 4 annual reports to the IOB from the 4th quarter of Fiscal Year ("FY") 2001 to the 2nd quarter of FY2013.⁸ The release of these reports totaled 617 pages. NSA conducted a line-by-line review of each report and released all reasonably segregable, non-exempt information. Of these 51 reports, Plaintiffs selected the quarterly report covering the 1st quarter of FY2013 for inclusion in the litigation sample.⁹ **AEX 15.**

63. The IOB reports discuss NSA intelligence activities undertaken pursuant to a variety of legal authorities, including EO 12333 and various portions of the Foreign Intelligence Surveillance Act (FISA), as amended. Plaintiffs' FOIA request only sought information pertaining to electronic surveillance undertaken pursuant to EO 12333. Therefore, none of the information concerning NSA activities undertaken pursuant to FISA authority is responsive to Plaintiffs' request. Nevertheless, NSA processed all portions of the document for release, consistent with Department of Defense policy.

64. The limited information withheld from disclosure concerns technical details regarding the methods by which NSA collects communications intelligence, information regarding the structure of NSA's SIGINT databases, including the means by which U.S.

⁸ Executive Order 12333, as amended, requires IC elements to report to the IOB intelligence activities they have reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. In general, each NSA report contains similar categories of information, including an overview of recent oversight activities conducted by NSA's OIG and OGC; signals intelligence activities affecting certain protected categories; and descriptions of specific incidents which may have been unlawful or contrary to applicable policies.

⁹ This IOB report is NSA Document 79 and Bates Number 4165220.

Intelligence Community personnel query NSA SIGINT databases, information that would tend to reveal when a particular collection or analytic activity took place, information regarding the scope of NSA's collection activities, and information regarding the internal organization of NSA, including names of the offices involved in these programs. *See supra*, ¶ 33.

65. I have reviewed NSA's withholding of this limited information, which is owned by, produced by, or under the control of the U.S. Government, and determined both that this decision was correct and that the withheld information remains currently and properly classified at levels ranging from CONFIDENTIAL to TOP SECRET in accordance with EO 13526, because the release of this information could reasonably be expected to cause either damage, serious damage, or exceptionally grave damage to the national security. Each paragraph is marked with the level of classification appropriate for that section. Revealing technical details regarding the methods by which NSA collects communications intelligence, information regarding the structure of NSA's SIGINT databases, including the means by which U.S. IC personnel query NSA SIGINT collection systems,¹⁰ information that would tend to reveal when a particular collection or analytic activity took place, and information regarding the scope of NSA's collection activities could permit adversaries to develop countermeasures to frustrate NSA's collection of their communications or hinder NSA's ability to develop useful foreign intelligence from collected data. Moreover, information regarding the scope of NSA's collection activities, and the dates associated with collection, analysis, and deletion of collected communications, would reveal the ability of NSA to collect certain foreign intelligence information and the gaps in NSA's abilities.

¹⁰ "Querying" refers to the process of searching NSA's signals intelligence systems. The process of constructing and executing queries is tightly regulated and subject to rigorous technical and human audit controls.

66. Adversaries are known to study publicly released information about NSA activities. If those adversaries were made aware of the tradecraft employed by NSA, they could copy or mimic such tradecraft and direct it against the United States and its interests. Additionally, foreign intelligence targets know how they communicate, so disclosure of this information would permit foreign adversaries to more effectively craft their communications security efforts to frustrate the Government's collection of information crucial to the national security. Such a reaction may result in a loss of information critical to the national security and defense of the United States. Therefore, this information meets the criteria for classification set forth in Sections 1.4(c) and 1.4(g) of EO 13526.

67. All of the withheld information, including information regarding dates of specific NSA activities, and the names of NSA personnel or organizations, is also protected from release by statute and is exempt from release based on FOIA Exemption 3, 5 U.S.C. § 552(b)(3), and specifically, the three Exemption 3 statutes discussed previously: 50 U.S.C. § 3605, 18 U.S.C. § 798, and 50 U.S.C. § 3024(i)(1).

68. The information described above relates to a "function of the National Security Agency." 50 U.S.C. § 3605. Indeed, this information relates to one of NSA's primary functions, its SIGINT mission. Any disclosure of the withheld intelligence sources and related methods would reveal NSA's capabilities and the tradecraft used to carry out this vital mission. Further, revealing these details would disclose "information with respect to [NSA's] activities" in furtherance of its SIGINT mission. 50 U.S.C. § 3605. All of the information withheld under Exemption 3 (as indicated by the exemption codes) is protected from release by this statute.

69. Moreover, portions of the withheld information, as indicated by the specific exemption codes included in the released version of the report, is protected from public release

pursuant to 50 U.S.C. § 3024(i)(1), which states that “[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” The withheld information constitutes the sources and methods used by NSA to carry out its SIGINT mission. Therefore, this information falls squarely within the protection of 50 U.S.C. § 3024(i)(1) and should be afforded absolute protection from release.

70. Finally, as indicated by the exemption codes applied to portions of the IOB report, parts of the document are protected from release under 18 U.S.C. § 798, which protects from disclosure classified information concerning the communications intelligence activities of the United States, or information obtained by communications intelligence processes. Disclosure of the withheld information about NSA’s intelligence sources and methods would reveal key information about the means through which NSA collects and processes communication intelligence, thereby falling within the scope of protection offered by this statute.

Classified Annex to DoD Procedures, United States Signals Intelligence Directive 18,
and SMD 432

71. NSD produced the 1988 Classified Annex to the DoD Procedures under EO 12333, which had been previously processed and released in part by NSA and ODNI in September 2014.¹¹ Further, NSA released, in part, the 2011 version of USSID SP0018,¹² Appendix J to USSID SP0018,¹³ and Signals Intelligence Directorate Management Directive (SMD) 432.¹⁴ Each of these documents implements EO 12333 and prescribes policies and procedures for ensuring that SIGINT is conducted in accordance with the EO and applicable law. The Classified Annex to the DoD Procedures under EO 12333 supplements the rules for SIGINT collection, retention, and dissemination established by DoD Directive 5240.01 and DoD 5240.1-

¹¹ The Classified Annex is NSD Bates Number NSD094-125.

¹² USSID SP0018 is Bates Number 4086222 and attached to this declaration at **AEX 16**.

¹³ Appendix J is Bates Number 4086223 and attached to this declaration at **AEX 17**.

¹⁴ SMD 432 is NSA Document 5 and attached to this declaration at **AEX 18**.

R, which govern intelligence activities conducted by DoD components, such as NSA, that affect United States persons. USSID SP0018 prescribes policies and procedures and assigns responsibilities to ensure that the missions and functions of the United States SIGINT System (USSS) are conducted in a manner that safeguards the rights of U.S. persons, consistent with the Constitution, federal statutes, and EO 12333. Appendix J to USSID SP0018 establishes the procedures for USSS monitoring of radio communications of suspected international narcotics traffickers. SMD 432 is a policy of NSA's SIGINT Directorate that establishes procedural guidelines for collection and dissemination of SIGINT connected to U.S. field exercises. NSA redacted only limited information in these four documents and released all reasonably segregable, non-exempt information. The information withheld from these documents pertains to details of how NSA targets certain communications for collection, the types of facilities that NSA may target, and the types of communications that NSA can collect in specific circumstances.

72. I have reviewed the withholding of information in these documents and determined both that this decision was correct and that the information withheld remains currently and properly classified at the CONFIDENTIAL or SECRET levels in accordance with EO 13526, as indicated by the various portion markings in the documents, because the release of this information could reasonably be expected to cause damage, or serious damage, to the national security. Information contained in these documents pertains to intelligence activities, intelligence sources or methods, or cryptology, or the vulnerabilities or capabilities of systems or projects relating to the national security and therefore meets the criteria for classification set forth in Sections 1.4(c) and 1.4(g) of EO 13526.

73. Disclosure of the methods by which NSA determines which persons and facilities are of foreign intelligence value and the procedures by which particular communications are targeted would reveal information from which targets could derive countermeasures to evade NSA surveillance by masquerading as persons whose communications either explicitly are not or may not be authorized for collection. Appropriately targeting communications remains a primary requirement under all of NSA's authorities. As a result, revealing the precise methods and procedures by which NSA determines that it is authorized to target particular communications could encourage adversaries to adopt countermeasures that would make it more difficult for NSA to determine accurately the nature of their communications, such as the foreignness of those communications, thereby hindering the Government's collection of information crucial to the national security of the United States. Additionally, disclosure of the specific sources from which communications may be collected would alert the targets to which communications NSA did and did not collect, as well as reveal the nature and scope of NSA communications intelligence activities. Disclosure of this information would allow targets to discern which of their communications may have been collected, as well as gaps in collection that could reveal that particular communications were "safe."

74. Finally, disclosure of the technical details regarding the types of communications that NSA may collect would demonstrate the capabilities and limitations of the U.S. SIGINT system, and the success (or lack of success) in acquiring certain types of communications. The collection of communications intelligence is central to NSA's mission and allows NSA to provide unique and timely insight into the activities of foreign adversaries for U.S. policymakers. Public disclosure of NSA's capabilities to acquire specific types of communications, and the technical means and methods by which such acquisitions are effected,

would alert targets to the vulnerabilities of their communications (and conversely, which of their communications are not vulnerable). Once alerted, adversaries could develop additional countermeasures to thwart collection of electronic communications. Such a reaction may result in denial of access to targets' communications and therefore result in a loss of information critical to the national security and defense of the United States.

75. Much of this information, as indicated by unique exemption codes applied to each withholding, is also protected from release by statute and therefore is exempt from release based on the FOIA Exemption 3, 5 U.S.C. § 552(b)(3), statutes: 50 U.S.C. § 3605, 18 U.S.C. § 798, and 50 U.S.C. § 3024(i)(1).

76. The information described above relates to a "function of the National Security Agency." 50 U.S.C. § 3605. Indeed, this information relates to one of NSA's primary functions, its SIGINT mission. Any disclosure of the withheld operational details would reveal NSA's capabilities and the tradecraft used to carry out this vital mission. Further, revealing these details would disclose "information with respect to [NSA's] activities" in furtherance of its SIGINT mission. 50 U.S.C. § 3605.

77. Moreover, portions of the withheld information, as indicated by the specific exemption codes included in the released version of the documents, is protected from public release pursuant to 50 U.S.C. § 3024(i)(1), which states that "[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure." The withheld information constitutes the sources and methods used by NSA to carry out its SIGINT mission. Therefore, this information falls squarely within the protection of 50 U.S.C. § 3024(i)(1) and should be afforded absolute protection from release.

78. Finally, as indicated by the exemption codes claims for portions of the documents, some of the withheld information is protected from release under 18 U.S.C. § 798, which protects from disclosure classified information concerning the communications intelligence activities of the United States, or information obtained by communications intelligence processes. Disclosure of the withheld information about NSA's intelligence sources and methods would reveal key information about the means through which NSA collects and processes communication intelligence, thereby falling within the scope of protection offered by this statute.

Records Referred by the Federal Bureau of Investigation (FBI)

79. FBI referred a number of documents to NSA for review in connection with this litigation. Of those, it is my understanding that Plaintiffs have challenged only the document identified at FBI Bates Numbers 30-35 and described by FBI as "Electronic Communication from the FBI's Office of General Counsel, National Security Law Branch to all FBI Offices setting out the policy and procedure for requesting Attorney General authority under Executive Order 12333, Section 2.5 to collect intelligence on U.S. persons overseas." NSA requested that FBI withhold a portion of page 3 of that document on behalf of NSA. I have determined that the information that NSA requested be withheld is exempt from disclosure pursuant to FOIA Exemptions 1 and 3. The portion of that document withheld at NSA's request concerns information about an intelligence target that is operationally useful to NSA in effecting communications surveillance. That information is currently and properly classified at the SECRET level in accordance with EO 13526, because the release of this information could reasonably be expected to cause serious damage to the national security, as described in greater detail above in Paragraphs 73 and 74. The operational details of NSA communications

intelligence activities constitute information about intelligence activities, intelligence sources or methods, or cryptology, or the vulnerabilities or capabilities of systems or projects relating to the national security and therefore meet the criteria for classification set for in Sections 1.4(c) and 1.4(g) of EO 13526. *See supra* ¶ 30. Moreover, these classified operational details of NSA communications intelligence activities, including intelligence sources and methods, are also protected from release by statute and therefore are exempt from release based on the FOIA Exemption 3 statutes: 50 U.S.C. § 3605, 18 U.S.C. § 798, and 50 U.S.C. § 3024(i)(1). *See supra*, ¶¶ 32-36.

Records Referred by the DOJ Office of Legal Counsel (OLC)

80. OLC, in response to its separate stipulation with Plaintiffs, identified several documents that contain NSA information and referred those documents to NSA for review. Of those, it is my understanding that Plaintiffs have challenged certain OLC documents containing NSA information, identified on the OLC Index as OLC 2, 3, 4, 6, 8, 9, and 10, and NSD Document 36, which is also an OLC memorandum. I have reviewed this matter and determined that each of these documents contains some information that is exempt from release pursuant to Exemptions 1 and 3, because the information is currently and properly classified under EO 13526 and because its disclosure would reveal intelligence sources and methods protected by the National Security Act and the NSA Act of 1959. This information is currently and properly classified at the levels ranging from SECRET to TOP SECRET in accordance with EO 13526 because the release of this information could reasonably be expected to cause either serious or exceptionally grave damage to the national security. Information withheld from these documents concerns the identities of NSA surveillance targets and the scope of NSA collection, including specific types of communications the NSA can and cannot collect under particular

surveillance programs. This information pertains to intelligence activities, intelligence sources or methods, or cryptology, or the vulnerabilities or capabilities of systems or projects relating to the national security and therefore meets the criteria for classification set forth in Sections 1.4(c) and 1.4(g) of EO 13526. Disclosure of the identities of NSA targets and the scope of NSA collection would reveal the capability of NSA and the IC to collect information about these targets and alert our adversaries about whether certain past communications are, or are not, likely to have been targeted and captured. Additionally, this classified information, which relates to NSA communications intelligence activities, including intelligence sources and methods, is also protected from release by statute and therefore is exempt from release based on the FOIA Exemption 3 statutes: 50 U.S.C. § 3605, 18 U.S.C. § 798, and 50 U.S.C. § 3024(i)(1).

81. Because DOJ OLC has withheld in full documents OLC 2, 3, 4, 6, and 8, and NSD Document 36 pursuant to FOIA Exemption 5, as described in more detail in the Declaration of Paul Colborn (“Colburn Declaration”) filed contemporaneously in connection with this motion, I have not attempted to determine whether and to what extent the classified information in those documents is reasonably segregable. In the event the Court determines that the information in these documents was not properly withheld in full under Exemption 5, NSA and other agencies will undertake a line-by-line review to segregate and release any non-exempt information in these documents.

82. NSA has conducted a line-by-line review of OLC 9, and all reasonably segregable, non-exempt portions of that document have been released. The limited information withheld is exempt from release under FOIA Exemptions 1 and 3. The information concerns NSA foreign intelligence activities, including information concerning communications intelligence targets, the scope of NSA collection against those targets, and specific collection and

processing methods employed. This information pertains to intelligence activities, intelligence sources or methods, or cryptology, or the vulnerabilities or capabilities of systems or projects relating to the national security and therefore meets the criteria for classification set forth in Sections 1.4(c) and 1.4(g) of EO 13526. Some of the withheld information concerns communications intelligence targets, the scope of NSA collection, and certain collection methods. The unauthorized disclosure of this information could be reasonably expected to cause serious damage to the national security for the reasons described in paragraph 80, *supra*. Accordingly, I have determined that this information is currently and properly classified at the SECRET level in accordance with EO 13526. Some of the other information withheld concerns particularly sensitive intelligence collection and processing techniques, the unauthorized disclosure of which could be reasonably expected to cause exceptionally grave damage to the national security. Once alerted to these collection and processing methods, adversaries could develop additional countermeasures to thwart collection and effective analysis of electronic communications. Such a reaction may result in a loss of information critical to the national security and defense of the United States. Therefore, I have determined that this information is currently and properly classified at the TOP SECRET level in accordance with EO 13526.

83. Finally, all of the classified information withheld from OLC 9 relates to NSA communications intelligence activities, including intelligence sources and methods. Therefore, the withheld information is also protected from release by statute, specifically: 50 U.S.C. § 3605, 18 U.S.C. § 798, and 50 U.S.C. § 3024(i)(1). *See supra*, ¶¶ 32-36. Therefore, the information withheld from that document is exempt from release under both FOIA Exemptions 1 and 3.

SEGREGABILITY

84. All of these documents have been reviewed for purposes of complying with FOIA's segregability provision, which requires the Government to release "any reasonably

segregable portion of a record” after proper application of the FOIA exemptions. 5 U.S.C. § 552(b). An intensive, line-by-line review of each document was performed,¹⁵ redactions were surgically applied to protect information exempted from release under the FOIA, and all reasonably segregable, non-exempt information has been released.

85. Further, in accordance with EO 13526 § 1.7(e), with respect to all of the information withheld under Exemption 1, it is my judgment that any information that, viewed in isolation, could be considered unclassified, is nonetheless classified in the context of this case because it can reasonably be expected to reveal (directly or by implication) classified national security information concerning the timing or nature of intelligence activities, sources, and methods when combined with other information that might be available to the public or adversaries of the United States. In these circumstances, the disclosure of even seemingly mundane information, such as document titles, when considered in conjunction with other publicly available information, could reasonably be expected to assist a sophisticated adversary in deducing particular intelligence activities or sources and methods, and possibly lead to the use of countermeasures that may deprive the United States of critical intelligence.

¹⁵ As noted above in paragraph 81, because all of NSA’s withholdings in OLC Documents 2, 3, 4, 6, and 8, and NSD Document 36 are subsumed within OLC’s Exemption 5 withholdings, NSA has not conducted a segregability review of these documents at this time. In the event the Court determines that information was not properly withheld under Exemption 5, NSA and other agencies will undertake a review to segregate and release any non-exempt information.

CONCLUSION

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Fort Meade, Maryland, this 27th day of February, 2016, pursuant to 28 U.S.C.

§ 1746.

A handwritten signature in cursive script, reading "David J. Sherman", is written over a horizontal line.

Dr. David J. Sherman
Associate Director for Policy and Records,
National Security Agency

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American Civil Liberties Union et. al. v. National Security Agency et. al.Civil Action No. 13-9198 (AT)
U.S. District Court
Southern District of New York(U) Vaughn Index

(U) This index contains a description of the 20 records released in full, denied in full or released in part by the NSA that have been included in Defendants' litigation sample. The disposition of the document(s) is noted with "RIF" which means released in full, "RIP" which means released-in-part, and "DIF" which means denied in full.

Documents Challenged by ACLU							
Doc No.	Doc. Date	Title	Description	Disposition	Exemption(s)	Pages	Production Date
5	05 May 10	SID Management Directive (SMD) 432, Procedural Guidelines for SIGINT Production on U.S. [Redacted] Field Exercises	A Signals Intelligence Directorate Management Directive that provides guidance to U.S. SIGINT System elements for issues related to SIGINT production on certain field exercises. The withheld information includes details of classified NSA activities, including communications intelligence (COMINT) sources and methods.	RIP	1 - classified information; 3 - 50 USC 3024(i), 18 USC 798, 50 USC 3605	10	22 Sep 14
7	10 Nov 10	OGC Legal Memorandum (Information Memorandum; AGC(IL)-756-2010)	A legal memorandum written by a senior NSA intelligence law attorney for the Deputy General Counsel analyzing a classified NSA SIGINT activity under EO 12333 and USSID 18. The analysis includes non-segregable details of classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605 5 - privilege	6	22 Sep 14

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Documents Challenged by ACLU							
Doc No.	Doc. Date	Title	Description	Disposition	Exemption(s)	Pages	Production Date
9	22 Jan 08	OGC Legal Background Paper [TITLE CLASSIFIED]	A background paper on NSA authority under EO 12333 written by a senior NSA intelligence law attorney regarding a particular SIGINT activity. The paper includes non-segregable details of classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605	2	22 Sep 14
11	13 Jan 12	Legal Memorandum and Associated Approval Documentation [TITLE CLASSIFIED]	A legal memorandum written by DOJ concerning classified SIGINT activities undertaken pursuant to EO12333 and supporting documentation providing non-segregable details of classified NSA COMINT activities, sources, and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605 5 - privilege	45	22 Sep 14
12	09 Jan 12	Approval Package for an NSA Program [TITLE CLASSIFIED]	Approval package for a classified NSA program, including a formal legal memorandum written by DOJ concerning classified COMINT activities undertaken pursuant to EO12333 and supporting documentation providing non-segregable details of classified NSA COMINT activities, sources, and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605 5 - privilege	87	22 Sep 14
13	13 Jan 12	Memo Approving NSA Program [TITLE CLASSIFIED]	Documentation of approval for a classified NSA program undertaken pursuant to EO12333. The memo includes non-segregable details of classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 3024(i), 18 USC 798, 50 USC 3605	1	22 Sep 14

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Documents Challenged by ACLU							
Doc No.	Doc. Date	Title	Description	Disposition	Exemption(s)	Pages	Production Date
14	14 Jun 13	OGC Legal Memorandum [TITLE CLASSIFIED]	A legal memorandum written by a senior NSA intelligence law attorney concerning classified SIGINT activities. The analysis includes non-segregable details of classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605 5 - privilege	5	22 Sep 14
15	16 May 12	OGC Legal Memorandum to SID Director [TITLE CLASSIFIED]	A legal memorandum written by a senior NSA intelligence law attorney for the Director of NSA's Signals Intelligence Directorate. The analysis includes non-segregable details of classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605 5 - privilege	1	22 Sep 14
16	04 Feb 11	OGC Legal Memorandum [TITLE CLASSIFIED]	A legal memorandum written by a senior NSA intelligence law attorney providing legal guidance to the Signals Intelligence Directorate on classified activities undertaken pursuant to EO12333 in support of NSA's SIGINT mission. The analysis includes non-segregable details of classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 3024(i), 18 USC 798, 50 USC 3605 5 - privilege	3	22 Sep 14
17	13 Feb 13	OGC Legal Memorandum, AGC(IL): 2013-4626 [TITLE CLASSIFIED]	A legal memorandum written by a senior NSA intelligence law attorney for the Director of NSA's Signals Intelligence Directorate regarding audits of SIGINT activities undertaken pursuant to EO12333. The analysis includes non-segregable details of classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605 5 - privilege	6	22 Sep 14

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Documents Challenged by ACLU							
Doc No.	Doc. Date	Title	Description	Disposition	Exemption(s)	Pages	Production Date
18	14 Feb 13	OGC Legal Memorandum, AGC(IL): 2013-4640 [TITLE CLASSIFIED]	A legal memorandum written by a senior NSA intelligence law attorney for NSA senior leaders regarding the protection of US Person information under EO12333 and related regulations. The analysis includes non-segregable details of classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605 5 - privilege	7	22 Sep 14
19	28 Sep 11	OGC Legal Memorandum, Serial: GC/051/11 [TITLE CLASSIFIED]	A legal memorandum written by a senior NSA intelligence law attorney for the Signals Intelligence Directorate regarding the protection of US Person information during classified SIGINT activities undertaken pursuant to EO12333. The analysis includes non-segregable details of classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605 5 - privilege	4	22 Sep 14
20	25 May 12	OGC Legal Memorandum, AGC(IL): 2012-2912 [TITLE CLASSIFIED]	A legal memorandum written by a senior NSA intelligence law attorney for the Signals Intelligence Directorate regarding querying data collected pursuant to EO12333. The analysis includes non-segregable details of classified NSA SIGINT activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 3024(i), 18 USC 798, 50 USC 3605 5 - privilege	8	22 Sep 14

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Documents Challenged by ACLU							
Doc No.	Doc. Date	Title	Description	Disposition	Exemption(s)	Pages	Production Date
21	11 Feb 11	OGC Legal Memorandum [TITLE CLASSIFIED]	A legal memorandum written by a senior NSA intelligence law attorney for the Signals Intelligence Directorate regarding NSA's authority to conduct certain classified SIGINT activities. The analysis includes non-segregable details of classified NSA SIGINT activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 403, 18 USC 798, 50 USC 3605 5 - privilege	5	22 Sep 14
22	01 Dec 07	IG Report on an NSA Program; IG-10853-07 [TITLE CLASSIFIED]	A report by the NSA Office of Inspector General on the intelligence oversight process connected to a classified NSA program. The report details classified NSA activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 3024(i), 18 USC 798, 50 USC 3605	40	22 Sep 14
23	20 Sep 10	IG Report ST-09-0019 [TITLE CLASSIFIED]	A report by the NSA Office of Inspector General on classified NSA SIGINT activities. The report details such activities, including COMINT sources and methods.	DIF	1 - classified information; 3 - 50 USC 3024(i), 18 USC 798, 50 USC 3605	84	22 Sep 14
28	12 Jul 07	OGC Memorandum for the Deputy Chief of Staff, Subject: Sharing of "RAW SIGINT" Through Database Access	A legal memorandum from the NSA Associate General Counsel for Operations to the NSA Deputy Chief of Staff regarding the sharing of raw SIGINT through database access. The withheld information includes privileged legal analysis and details regarding NSA's organization, functions, and activities, including classified COMINT sources and methods.	RIP	1 - classified information; 3 - 50 USC 3024 (i), 18 USC 798, 50 USC 3605 5 - privilege	8	22 Oct 14

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Documents Challenged by ACLU							
Doc No.	Doc. Date	Title	Description	Disposition	Exemption(s)	Pages	Production Date
79	4 March 2013	Quarterly Report to the President's Intelligence Oversight Board, 1 st Quarter FY2013.	One of 47 quarterly reports to the Intelligence Oversight Board (4Q 2001-2Q 2013) and 4 annual reports to the Intelligence Oversight Board (2007, 2008, 2009, 2010). The reports detail compliance issues reported to the IOB by the NSA Office of Inspector General and the Office of General Counsel.	RIP	1 - classified information; 3 - 50 USC 3024(i), 18 USC 798, 50 USC 3605	21	22 Dec 14
N/A (Bates No. 4086222)	25 January 2011	USSID SP0018: Legal Compliance and U.S. Persons Minimization Procedures	U.S. Signals Intelligence Directive that prescribes policies and procedures and assigns responsibilities to ensure that the missions and functions of the United States SIGINT system are conducted in a manner that safeguards the constitutional rights of U.S. persons.	RIP	1 - classified information; 3 - 50 USC 3024(i), 18 USC 798, 50 USC 3605	52	18 Nov 13
N/A (Bates No. 4086223)	24 April 1986	USSID SP0018J: Procedures for Monitoring Radio Communications of Suspected International Narcotics Traffickers	An Annex to USSID SP0018 that regulates certain SIGINT activities against the radio communications of suspected international narcotics traffickers.	RIP	1 - classified information; 3 - 50 USC 3024(i), 18 USC 798, 50 USC 3605	8	18 Nov 13

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION
and AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY,
CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF STATE,

Defendants.

Civil Action No. 13-CV-9198 (AT)

DECLARATION OF JOHN BRADFORD WIEGMANN

I, John Bradford Wiegmann, declare as follows:

1. I am a Deputy Assistant Attorney General in the National Security Division (“NSD”) of the United States Department of Justice (“DOJ” or “Department”). NSD is a component of the Department which formally began operations on October 2, 2006, by consolidating the resources of the Office of Intelligence Policy and Review (“OIPR”) and the Criminal Division’s Counterterrorism Section (“CTS”) and Counterespionage Section (“CES”).

2. In my capacity as Deputy Assistant Attorney General, I supervise the Freedom of Information (“FOIA”) and Declassification Unit, which is responsible for responding to requests for access to NSD records and information pursuant to the FOIA, 5 U.S.C. § 552 and the Privacy Act of 1974. The FOIA and Declassification Unit also processes the NSD records which are responsive to FOIA requests received by other Executive Branch agencies. In addition, I am

responsible for overseeing NSD's Law and Policy Office, which implements Department of Justice policies with regard to intelligence, counterterrorism, and other national security matters and provides legal assistance and advice on matters of national security law. The statements contained in this declaration are based upon my personal knowledge, information provided to me in the course of my official duties, and determinations I have made following a review of NSD's potentially responsive documents.

3. In a letter dated, May 13, 2013, plaintiff, the American Civil Liberties Union ("ACLU") requested the following:

- (1) Any records construing or interpreting the authority of the National Security Division ("NSD") under Executive Order 12,333 or any regulations issued thereunder;
- (2) Any records describing the minimization procedures used by the NSD with regard to both intelligence collection and intelligence interception conducted pursuant to the NSD's authority under EO 12,333 or any regulations issued thereunder; and
- (3) Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the NSD defines these terms, pursuant to the NSD's authority under EO 12,333 or any regulations issued thereunder.

This request was assigned NSD FOI/PA #13-175.

4. ACLU served its complaint in this lawsuit on the United States Attorney for the Southern District of New York on December 30, 2013.

5. In a letter dated, May 14, 2014, NSD informed plaintiff that Executive Order 12333 governs intelligence collection by intelligence agencies, and that because NSD is not an intelligence agency, it does not collect intelligence. In addition, NSD stated that it has no authority under Executive Order 12333, and, as a result, NSD possessed no responsive records.

6. In a letter dated July 29, 2014, ACLU submitted a new request for the following information:

- (1) Formal regulations or policies relating to any agency's authority under EO 12,333 to undertake "Electronic Surveillance" (as that term is defined in EO 12,333) that implicates "United States Persons" (as that term is defined in EO 12,333), including regulations or policies relating to the acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.
- (2) Records that officially authorize or modify under EO 12,333 any agency's use of specific programs, techniques, or types of Electronic Surveillance that implicate United States Persons, including official rules or procedures for the acquisition, retention, dissemination, or use of information or communications to, from, or about United States persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
- (3) Formal legal opinions addressing any agency's authority under EO 12,333 to undertake specific programs, techniques, or types of Electronic Surveillance that implicates United States Persons, including formal legal opinions relating to the acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
- (4) Formal training materials or reference materials (such as handbooks, presentations, or manuals) that expound on or explain how any agency implements its authority under EO 12,333 to undertake Electronic Surveillance that implicates United States Persons, including the acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.
- (5) Formal reports relating to Electronic Surveillance under EO 12,333 implicating United States Persons that contain any meaningful discussion of (1) any agency's compliance, in undertaking such surveillance, with EO 12,333, its implementing regulations, the Foreign Intelligence Surveillance Act, or the Fourth Amendment; or (2) any agency's interception, acquisition, scanning, or collection of the communications of United States Persons, whether "incidental" or otherwise, in undertaking such surveillance; and that are or were:

- (a) Authored by an inspector general or the functional equivalent thereof;
- (b) Submitted to Congress, the Office of the Director of National Intelligence, the Attorney General, or the Deputy Attorney General;
- or
- (c) Maintained by the office of the Assistant Attorney General for National Security.

This request was assigned NSD FOI/PA #14-177.

7. On October 31, 2014, ACLU filed an amended complaint, which made the July 29, 2014 request a part of the December 30, 2013 lawsuit.

8. A person with knowledge of NSD record systems and activities relating to the intelligence community's electronic surveillance under Executive Order 12333 considered what search was possible and likely to recover records responsive to plaintiff's request(s). There is no central NSD record repository or searchable database that contains all responsive records. Therefore, in order to locate and retrieve responsive records, NSD identified individuals whose work involved the use of Executive Order 12333. NSD attorneys who are familiar with NSD operations, personnel, and areas of responsibility, and who obtained input from relevant additional NSD personnel, identified six attorneys in the NSD's Office of Intelligence¹ and one attorney in the NSD's Office of Law and Policy² who have worked on issues concerning electronic surveillance under Executive Order 12333 described in the request. Due to the nature of their duties, no other NSD personnel were likely to have responsive records that these seven attorneys did not also have.

¹ NSD's Office of Intelligence ensures that the Intelligence Community agencies have the legal authorities necessary to conduct intelligence operations, particularly operations involving the Foreign Intelligence Surveillance Act (FISA); that the office exercises meaningful oversight over various national security activities of Intelligence Community agencies; and that it can play an effective role in FISA-related litigation.

² NSD's Law and Policy Office develops and implements Department of Justice policies with regard to intelligence, counterterrorism, and other national security matters and provides legal assistance and advice on matters of national security law.

9. Each of these seven attorneys searched for responsive records by searching their email files, any other electronic files, and paper files, as well as anywhere else they thought responsive records might have been stored. In addition, NSD FOIA staff also conducted searches of OIPR's policy files. As noted above, OIPR was the predecessor organization of the Division's Office of Intelligence. These searches captured all the systems and types of files that were likely to contain responsive records possessed by each attorney. The attorneys who performed these searches were unaware of other locations or personnel that would be likely to yield additional responsive information, and NSD believes there are no additional locations that are likely to contain additional responsive records beyond those located through the searches that NSD personnel performed.

10. NSD located 68 responsive records; eight of those records were released in full to plaintiffs, nine were released in part, and the remaining 51 were withheld in full. Plaintiffs indicated that they wished to challenge only some of the documents withheld in full: NSD Document Numbers 2, 4, 7, 9, 12, 13, 14, 17, 18, 23, 30, 31, 33, 36, 37, 42, 44, 47, and 48. See NSD's *Vaughn* index, attached as Exhibit A. Plaintiffs are also challenging the partial withholding of the documents Bates numbered NSD 94-125 and NSD 202-207. The documents Bates numbered NSD 94-125 and NSD 202-207 are attached as Exhibits B and C, respectively.

11. This declaration addresses the withholding of certain portions of NSD Documents 4, 12, 13, 14, 17, 23, 31, 33, and 49³ and NSA Documents 11 and 12 under FOIA Exemption (b)(5). The withholding in full of Document 2 is addressed in the declaration of Arthur R. Sepeta of the U.S. Department of Homeland Security. The withholding of NSD Documents 9 and 36 under Exemption (b)(5) is discussed in the declaration of Paul B. Colborn of DOJ's

³A description of NSD Document 49 was not previously provided to Plaintiffs. In preparing its summary judgment briefing, the government identified NSD Document 49 as an additional responsive document, and because Plaintiffs did not have an opportunity to determine whether they challenge its withholding, it is addressed herein.

Office of Legal Counsel. The withholding in full of NSD Documents 7, 31, 37, 42, 44, 47, and 48 is addressed in the declaration of David J. Sherman of the National Security Agency, as are the (b)(1) and (b)(3) withholdings of NSD Documents 4, 12, 13, 14, 17, 18, 23, 30, 31, 33, and 36, and the partial withholding of the NSD document Bates-numbered NSD 94-125. The withholding of NSD document 18 under Exemption (b)(5) pursuant to the presidential communications and deliberative process privileges is discussed in the declaration of Christina M. Butler. The (b)(1) and (b)(3) withholdings of NSD Document 49 are discussed in the declaration of Antoinette Shiner. The partial withholding of the NSD document Bates-numbered NSD 202-07 is discussed in the declaration of David M. Hardy of the Federal Bureau of Investigation.

Exemption (b)(5)

12. NSD has determined that certain withheld portions of the documents at issue are exempt from disclosure pursuant to FOIA Exemption (b)(5). FOIA Exemption (b)(5) 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.” 5 U.S.C. § 552(b)(5). This exemption protects records which would normally be privileged in the civil discovery context.

13. Among the privileges incorporated into Exemption 5 is the attorney-client privilege. The attorney-client privilege protects confidential communications between an attorney and his/her client pertaining to a legal matter for which the client has sought the attorney’s counsel. The purpose of this privilege is to encourage attorneys and their clients to communicate fully and honestly without fear of embarrassment and other harms. Particularly in the context of government attorneys, the privilege further serves to promote the public interest in the observance of law and administration of justice.

14. NSD Document 17, the vast majority of a certain memorandum in NSD Document 4, and an email message in NSD Document 31 are protected by the attorney-client privilege. These documents discuss legal issues pertaining to an NSA program, set forth legal advice prepared by NSD lawyers for other attorneys to assist those other attorneys in representing the Government, and were sought by a decision-maker for the Government to obtain legal advice on questions of law and indeed reflect such advice. As such, NSD Document 17, the vast majority of a certain memorandum in NSD Document 4, and an email message in NSD Document 31 are protected from disclosure under the attorney-client privilege. More information about NSD Document 17 and a certain memorandum in NSD Document 4 is provided in the Classified Declaration of David J. Sherman. More information about the email message in NSD Document 31 is provided in the Unclassified Declaration of David J. Sherman.

15. NSD Documents 12, 13, 14, 23, 33, and 49 and NSA Documents 11 and 12 contain memoranda from NSD attorneys to other Government attorneys, and they provide advice with respect to one or more NSA programs or other intelligence activities. These memoranda were sought by decision-makers for the Government to obtain legal advice on questions of law and indeed reflect such advice. The vast majority of these memoranda constitute legal advice prepared by NSD lawyers to assist other attorneys who represented the Government. As a result, the vast majority of the memoranda are protected from disclosure under the attorney-client privilege. More information about NSD Documents 12, 13, 14, 23, and 33 and NSA Documents 11 and 12 is provided in the Classified Declaration of David J. Sherman. More information about NSD Document 49 is provided in the Declaration of Antoinette Shiner.

16. NSD Document 17 and the vast majority of the memoranda contained in NSD Documents 4, 12, 13, 14, 23, 33, and 49 and NSA Documents 11 and 12 are also protected by the

deliberative process privilege, and exempt under Exemption 5 for this additional reason. The purpose of this privilege is to prevent injury to the quality of agency decision-making. Thus, certain material that contains or was prepared in connection with the formulation of opinions, advice, evaluations, deliberations, proposals, conclusions, or recommendations may properly be withheld. Disclosure of this type of information would have an inhibiting effect upon agency decision-making and the development of policy because it would chill full and frank discussions between agency personnel and decision-makers. If agency personnel know that their preliminary impressions, opinions, evaluations, or comments will be released for public consumption, they will be less candid and more circumspect in expressing their thoughts, which will impede the full discussion of issues necessary to reach well-reasoned decisions.

17. In order to invoke the deliberative process privilege, the protected information must be both “pre-decisional” and “deliberative.” Information is “pre-decisional” if it temporally precedes the decision or policy to which it relates. It is “deliberative” if it played a direct part in the decision-making process because it consists of recommendations or opinions on legal or policy matters, or reflects the give-and-take of the consultative process.

18. In this case, NSD Document 17 and the vast majority of a certain memorandum in NSD Document 4 are “pre-decisional” because they related to and preceded a final decision regarding one or more NSA programs or other intelligence activities. In addition, the vast majority of the memoranda contained in NSD Documents 12, 13, 14, 23, 33, and 49 and NSA Documents 11 and 12 are also “pre-decisional” because they related to and preceded a final decision regarding one or more NSA programs or other intelligence activities. Further, NSD Document 17 and the vast majority of the memoranda contained in NSD Documents 4, 12, 13, 14, 23, 33, and 49 and NSA Documents 11 and 12 are “deliberative” because they reflect

ongoing deliberations by government attorneys on DOD procedures and one or more NSA programs. These documents describe the views and recommendations of Department attorneys as part of a process to assist the Government's decision-making prior to an ultimate decision, and as part of the exchange of ideas and suggestions that accompanies careful and reasoned decision-making. These documents have not been expressly adopted or incorporated by reference by any Government decision-maker. Additionally, I am not aware of any public statement by any Government official referring to these documents, much less expressly adopting them as agency policy. As a result, NSD Document 17 and the vast majority of the memoranda contained in NSD Documents 4, 12, 13, 14, 23, 33, and 49 and NSA Documents 11 and 12 are protected from disclosure under the deliberative process privilege.

19. There is no segregable, non-exempt material in NSD Document 17, in the email message contained in NSD Document 31, or in the memoranda in NSD Documents 4, 12, 13, 14, 23, 33, and 49 and in NSA Documents 11 and 12.

CONCLUSION

I certify, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of February 2016, Washington, DC

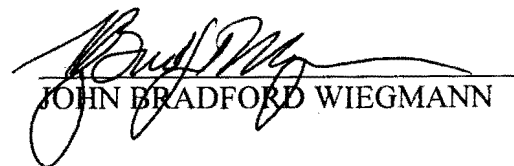

JOHN BRADFORD WIEGMANN

Exhibit A

UNCLASSIFIED

National Security Division's Responsive Documents in ACLU v. NSA et al., 13 Civ. 9198 (AT) (SDNY)

Document Number	Document Date	Title/Description	Disposition	Exemptions	Pages
2	February 3, 2006	Draft Department of Homeland Security (DHS) Procedures Governing Activities of the Office of Intelligence and Analysis that Affect United States Persons	Withheld in Full	(b)(5) – The withholding under this exemption is defended in the declaration of Arthur R. Sepeta.	24
4	November 20, 2007	NSD Legal Memo on Amending DoD Procedures and Accompanying Documentation	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(5) – The withholding under this exemption pursuant to the attorney/client and deliberative process privileges is defended in the declaration of John Bradford Wiegmann.	20
7	October 30, 2013	Compliance Incidents Report on an NSA Program	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman.	2

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				(b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.	
9	January 8, 2010	OLC Legal Advice Memorandum to FBI General Counsel	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David M. Hardy. (b)(3) – The withholding under this exemption is defended in the declaration of David M. Hardy. (b)(5) – The withholding under this exemption pursuant to the attorney/client and deliberative process privileges is defended in the declaration of Paul B. Colborn.	11
12	August 3, 2012	NSD Memo on an NSA Program and Accompanying Documentation	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(5) – The withholding under this exemption	36

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				pursuant to the attorney/client and deliberative process privileges is defended in the declaration of John Bradford Wiegmann.	
13	March 25, 2011	NSD Memo on an NSA Program and Accompanying Documentation	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(5) – The withholding under this exemption pursuant to the attorney/client and deliberative process privileges is defended in the declaration of John Bradford Wiegmann.	111
14	January 13, 2012	NSD Memo on an NSA Program and Accompanying Documentation	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.	45

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				(b)(5) – The withholding under this exemption pursuant to the attorney/client and deliberative process privileges is defended in the declaration of John Bradford Wiegmann.	
17	2003	OIPR Memo on an NSA Program	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(5) – The withholding under this exemption pursuant to the attorney/client and deliberative process privileges is defended in the declaration of John Bradford Wiegmann.	36
18	June 20, 2003	Memo Approving an NSA Program	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration	3

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				of David J. Sherman. (b)(5) – The withholding under this exemption pursuant to the presidential communications and deliberative process privileges is defended in the declaration of Christina M. Butler.	
23	January 12, 2009	NSD Memo re: an NSA Program	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(5) – The withholding under this exemption pursuant to the attorney/client and deliberative process privileges is defended in the declaration of John Bradford Wiegmann.	4
30	January 9, 2014	Interim Report on an NSA Program	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding	7

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				under this exemption is defended in the declaration of David J. Sherman.	
31	November 12, 2013	E-mails Between NSD and NSA OGC	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.	7
33	December 18, 2013	NSD Memo on an Intelligence Activity and Accompanying Documentation	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(5) – The withholding under this exemption pursuant to the attorney/client and deliberative process privileges is defended in the declaration of John Bradford Wiegmann.	52
36	February 4, 2005	OLC Legal Advice Memorandum on an NSA Program	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration	34

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				<p>of David J. Sherman.</p> <p>(b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.</p> <p>(b)(5) – The withholding under this exemption pursuant to the attorney/client and deliberative process privileges is defended in the declaration of Paul B. Colborn.</p>	
37	October 9, 2014	Compliance Incidents Report on an NSA Program	Withheld in Full	<p>(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman.</p> <p>(b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.</p>	4
42	2012	Compliance Incidents Report on an NSA Program	Withheld in Full	<p>(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman.</p> <p>(b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.</p>	21

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44	February 12, 2013	Compliance Incidents Report on an NSA Program	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.	7
47	2012	Compliance Incidents Report on an NSA Program	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.	10
48	2012	NSA Responses to DOJ Questions re: an NSA Program	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman. (b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.	3
49	December 17, 2013	NSD Memo on an Intelligence Activity and Accompanying Documentation	Withheld in Full	(b)(1) – The withholding under this exemption is defended in the declaration of Antoinette B. Shiner. (b)(3) – The withholding	22

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				<p>under this exemption is defended in the declaration of Antoinette B. Shiner.</p> <p>(b)(5) – The withholding under this exemption pursuant to the attorney/client and deliberative process privileges is defended in the declaration of John Bradford Wiegmann.</p>	
NSD 94 – NSD 125	April 4, 1988	Annex to DOD procedures pursuant to Executive Order 12333	Withheld in Part	<p>(b)(1) – The withholding under this exemption is defended in the declaration of David J. Sherman.</p> <p>(b)(3) – The withholding under this exemption is defended in the declaration of David J. Sherman.</p>	32
NSD 202 – NSD 207	September 4, 2015	Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence	Withheld in Part	<p>(b)(1) – The withholding under this exemption is defended in the declaration of David M. Hardy.</p> <p>(b)(3) – The withholding under this exemption is defended in the declaration of David M. Hardy.</p> <p>(b)(7)(E) – The withholding under this exemption is defended in</p>	6

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				the declaration of David M. Hardy.	
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Exhibit B



Approved for public release by the DNI 20140909

FEDERAL SECURITY SERVICE
FORT GEORGE G MEADE MARYLAND 20755-6000



Serial: J-107-88
4 April 1988

APR 23 1988
15/12PT
FEDERAL SECURITY SERVICE

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: CLASSIFIED ANNEX TO DEPARTMENT OF DEFENSE
PROCEDURES UNDER EXECUTIVE ORDER 12333 - ACTION
MEMORANDUM

1. Attached is a proposed replacement for the Classified Annex to Department of Defense Regulation 5240.1, "Activities of DoD Intelligence Components that Affect U.S. Persons". The Regulation implements Executive Order 12333, "United States Intelligence Activities", which requires that certain collection techniques including electronic surveillance be conducted in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. The attached replacement Classified Annex has been negotiated with and approved by the Department of Justice's Office of Intelligence Policy and Review, and it reflects numerous improvements in form and substance which ensure both efficiency of operations and proper regard for constitutional and other legal rights.

2. I recommend that you sign the attached Annex. I will then forward it to the Attorney General for his approval as required by Executive Order 12333.

William E. Odom

WILLIAM E. ODOM
Lieutenant General, USA
Director, NSA/Chief, CSS

Encl:
a/s

PREPARED BY: [REDACTED]

Declassify Upon Removal of Enclosures
and Physical Removal of Caveat Notation.

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COORDINATION
Kathleen Arick
General Counsel
William E. Odom
ATSD (20) 18 APR 88

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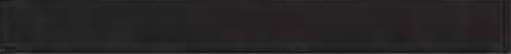
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CLASSIFIED ANNEX TO
DEPARTMENT OF DEFENSE
PROCEDURES UNDER EXECUTIVE ORDER 12333

Sec. 1: Applicability and Scope (U)

~~(S-CCO)~~ These procedures implement sections 2.3, 2.4, and 2.6(c) of Executive Order 12333 and supplement Procedure 5 of DoD Regulation 5240.1-R, previously approved by the Secretary of Defense and the Attorney General. They govern the conduct by the United States Signals Intelligence System of signals intelligence activities that involve the collection, retention and dissemination of communications originated or intended for receipt in the United States, and signals intelligence activities that are directed intentionally against the communications of a United States person who is outside the United States. These procedures also govern the collection, retention and dissemination of information concerning United States persons that is collected by the United States Signals Intelligence System including such activities undertaken by the

 These procedures do not apply to signals intelligence activities that are not required under Executive Order 12333 to be conducted pursuant to procedures approved by the Attorney General. Further, these procedures do not apply to signals intelligence activities directed against the

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radio communications [REDACTED] for the purpose of collecting foreign intelligence regarding international narcotics trafficking or in support of federal law enforcement efforts to interdict such trafficking. Such signals intelligence activities are subject to a separate classified annex approved earlier by the Attorney General (See Annex J to United States Signals Intelligence Directive 18). Except for matters expressly authorized herein, the limitations contained in Department of Defense Regulation 5240.1-R also apply to the United States Signals Intelligence System. Reference should be made to those procedures with respect to matters of applicability and scope, definitions, policy and operational procedures not covered herein.

Sec. 2: Definitions (U)

(U) The following additional definitions or supplements to definitions in DoD Regulation 5240.1-R apply solely to this Classified Annex:

~~(S-CCO)~~ Agent of a Foreign Power. For purposes of signals intelligence activities which are not regulated by the Foreign Intelligence Surveillance Act (FISA), the term "agent of a foreign power" means:

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(a) a person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities, sabotage, or international terrorist activities, or activities in preparation for international terrorist activities, or who conspires with, or knowingly aids and abets such a person engaging in such activities;

(b) a person who is an officer or employee of a foreign power;

(c) a person unlawfully acting for, or pursuant to the direction of, a foreign power. The mere fact that a person's activities may benefit or further the aims of a foreign power is not enough to bring that person under this subsection, absent evidence that the person is taking direction from, or acting in knowing concert with, the foreign power;

(d) a person in contact with or acting in collaboration with an intelligence or security service of a foreign power for the purpose of providing access to information or material classified by the United States to which such person has or has had access; or

(e) a corporation or other entity that is owned or controlled directly or indirectly by a foreign power.

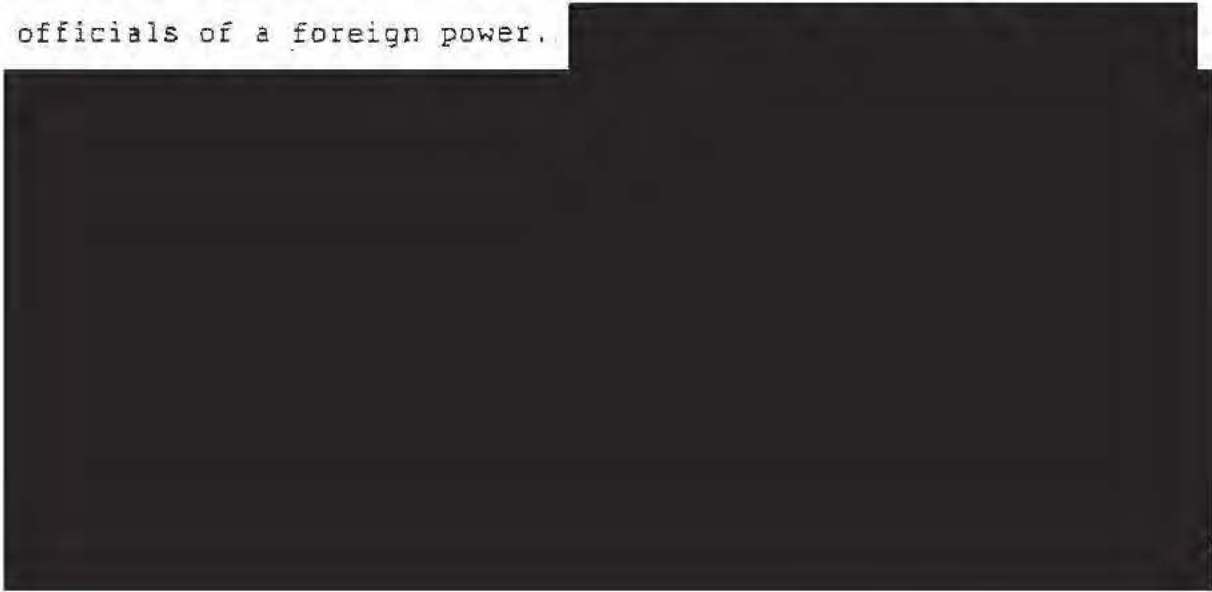
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(U) Communicant. The term "communicant" means a sender or intended recipient of a communication.

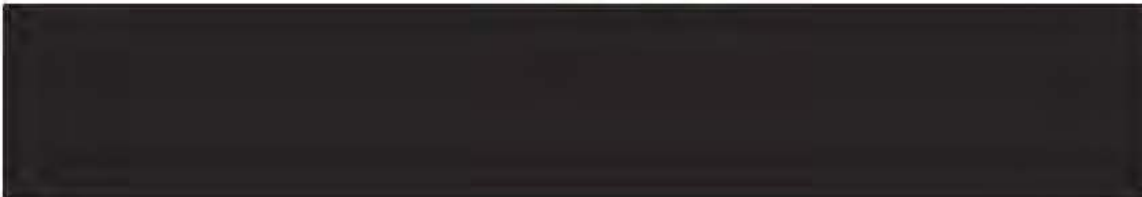
(U) Consent. For purposes of signals intelligence activities, an agreement by an organization with the National Security Agency to permit collection of information shall be deemed valid consent if given on behalf of such organization by an official or governing body determined by the General Counsel, National Security Agency, to have actual or apparent authority to make such an agreement.

~~(S-CCO)~~ Foreign Communication. The term "foreign communication" means a communication that involves a sender or an intended recipient who is outside the United States or that is entirely among foreign powers or between a foreign power and officials of a foreign power.



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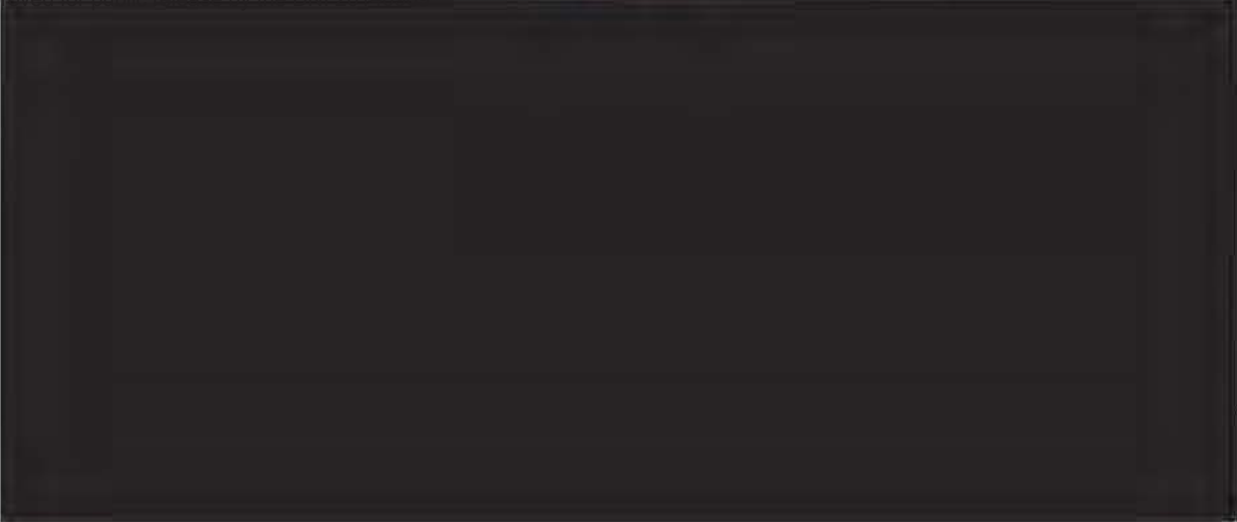
(U) Foreign Intelligence. The term "foreign intelligence" includes both positive foreign intelligence and counterintelligence.

~~(C)~~ Illicit Communication. The term "illicit communication" means a communication transmitted in violation of the Communications Act of 1934 and regulations thereunder or of international agreements which because of its explicit content, message characteristics, or method of transmission is reasonably believed to be a communication to or from an agent or agents of foreign powers, whether or not United States persons.

(U) Interception. The term "interception" means the acquisition by the United States Signals Intelligence System through electronic means of a nonpublic communication to which it is not an intended party, and the processing of the contents of that communication into an intelligence form but not including the display of signals on visual display devices intended to permit the examination of the technical characteristics of the signal without reference to the information content carried by the signal.

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~~(C)~~ Selection. The term "selection," as applied to manual and mechanical processing activities, means the intentional insertion of a [redacted] [redacted] into a computer

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scan dictionary or manual scan guide for the purpose of identifying messages of interest and isolating them for further processing.

~~(S)~~ Selection Term. The term "selection term" means the composite of individual terms used to effect or defeat selection of particular communications for the purpose of interception. It comprises the entire term or series of terms so used, but not any segregable term contained therein. It applies to both mechanical and manual processing.

(U) Technical Data Base. The term "technical data base" means information retained for cryptanalytic or traffic analytic purposes.

(U) Transiting Communications. The term "transiting communications" includes all communications that neither originate nor terminate in the United States, but which transit the United States during transmission.

~~(S)~~ United States Person. For purposes of intentionally collecting the communications of a particular person, the term "United States person," in addition to the meaning in the Appendix to DoD Regulation 5240.1-R, includes:

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any alien known to be presently in the United States; any unincorporated association of such aliens or American citizens; the United States operations, office, branch, or representative of a corporation incorporated abroad; any corporation or corporate subsidiary incorporated in the United States; and any U.S. flag non-governmental aircraft or vessel: Provided, however, that the term "U.S. person" shall not include

[REDACTED]

[REDACTED] a foreign power or powers as defined in Section 101(a)(1)-(3) of FISA.

Sec. 3: Policy (U)

(U) The Director, National Security Agency, is assigned responsibility for signals intelligence collection and processing activities and communications security activities. In order to assure that these activities are conducted in accordance with the provisions of Executive Order 12333, the Director, or his designee, will issue appropriate directives and instructions implementing these procedures and governing the conduct of the United States Signals Intelligence System and the activities of communications security entities.

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~~(C)~~ It is the policy of the United States Signals Intelligence System to collect, retain, and disseminate only foreign communications and military tactical communications. It is recognized, however, that the United States Signals Intelligence System may incidentally intercept non-foreign communications, including those of or concerning United States persons, in the course of authorized collection of foreign communications. The United States Signals Intelligence System makes every reasonable effort, through surveys and technical means, to reduce to the maximum extent possible the number of such incidental intercepts acquired in the conduct of its operations. Information derived from these incidentally intercepted non-foreign communications may be disseminated to the Federal Bureau of Investigation when the information is foreign intelligence or counterintelligence or indicates a threat to the physical safety of any person. Dissemination of such information is also governed by these procedures and applicable minimization procedures approved in accordance with FISA. Specific communications sent from or intended for receipt by United States persons are not intercepted deliberately by the United States Signals Intelligence System unless specific authorization for such interception has been obtained in accordance with these procedures.

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~~(S-CCO)~~ The President has authorized, and the Attorney General hereby specifically approves, interception by the United States Signals Intelligence System of:



- Illicit Communications;
- United States and Allied Military exercise communications;
- Signals collected during the search of the signals environment for foreign communications that may be developed into sources of signals intelligence;
- Signals collected during the monitoring of foreign electronic surveillance activities directed at United States communications consistent with the Foreign Intelligence Surveillance Act of 1978; and
- Signals collected during the testing and training of personnel in the use of signals intelligence collection equipment in the United States consistent with the Foreign Intelligence Surveillance Act of 1978.

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~~SECRET~~Sec. 4: Procedures (U)

A. ~~(C)~~ Signals Intelligence: Communications of, or concerning, United States persons. The United States Signals Intelligence System may collect, process, retain and disseminate foreign communications that are also communications of, or concerning, United States persons. Communications of, or concerning, United States persons will be treated in the following manner.

1. Collection

(a) ~~(S-CCO)~~ Communications of or concerning a United States person may be intercepted intentionally or selected deliberately through use of a selection term or otherwise only:

(1) with the consent of such United States person. Where a United States person has consented, by completion of the appropriate Consent Agreement appended hereto, to the use of a selection term intended to intercept communications originated by or referencing that person, the National Security Agency may use such a selection term to select foreign communications; or

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(2) with specific prior court order pursuant to the Foreign Intelligence Surveillance Act of 1978 where applicable. All United States Signals Intelligence System requests for such court orders or approvals shall be forwarded by the Director, National Security Agency for certification by the Secretary of Defense or the Deputy Secretary of Defense (in case of the unavailability of both of these officials and in emergency situations, certification may be granted by another official authorized by executive order to certify such requests), and thence to the Attorney General; or.

(3) with the specific prior approval of the Director, National Security Agency, in any case in which the United States person is reasonably believed to be held captive by a foreign power or by a group engaged in international terrorist activities. The Attorney General will be notified when the Director authorizes selection of communications concerning a United States person pursuant to this provision; or

(4) with specific prior approval by the Attorney General based on a finding by the Attorney General that there is probable cause to believe the United States person is an agent of a foreign power and that the purpose of the interception or selection is to collect significant foreign

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intelligence. Such approvals shall be limited to a period of time not to exceed ninety days for individuals and one year for entities.

(b) ~~(S-CCO)~~ Communications of, or concerning [REDACTED]

[REDACTED]
[REDACTED] any corporation, corporate subsidiary, or other business entity in the United States that is openly acknowledged by a foreign government, or governments, to be directed and controlled by such foreign government, or governments, may be intercepted intentionally, or selected deliberately (through the use of a selection term or otherwise), upon certification in writing by the Director, NSA, to the Attorney General. Such certification shall take the form of the Certification Notice appended hereto. An information copy shall be forwarded to the Deputy Secretary of Defense. Collection may commence upon the Director, NSA's certification. In addition, the Director, NSA shall advise the Attorney General and the Deputy Secretary of Defense on an annual basis of all such collection.

(c) ~~(S)~~ For purposes of the application of Parts 1, 2 and 3 of Procedure 5 (and subsection 4.A.1(a) of this annex) to the activities of the United States Signals Intelligence System, any deliberate interception, selection or use of a

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selection term shall be deemed to constitute electronic surveillance; and, "significant foreign intelligence" shall mean not only those items of information that are in themselves significant, but also items that are reasonably believed, based on the experience of the United States Signals Intelligence System, when analyzed together with other items, to make a contribution to the discovery of "significant foreign intelligence."

(d) ~~(S-CCO)~~ Emergencies:

(1) The emergency provision in Section D of Part 2, Procedure 5, of DoD 5240.1-R, may be employed to authorize deliberate selection of communications of, or concerning, a United States person as defined in the Appendix to DoD Regulation 5240.1-R, when that person is outside the United States.

(2) If the United States Signals Intelligence System is intentionally collecting the communications of or concerning a non-resident alien abroad who enters the United States in circumstances that suggest that the alien is an agent of a foreign power, collection of the communications of that alien may continue for a period not to exceed seventy-two hours after it is learned that the alien is in the United States

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while the United States Signals Intelligence System seeks authority to continue the surveillance from the Attorney General pursuant to these procedures. In the case of [REDACTED] [REDACTED] efforts will be made to determine [REDACTED] If [REDACTED] is not obtained within seventy-two hours, collection of the international communications of [REDACTED] must be terminated until [REDACTED] appropriate Attorney General approval is obtained, or [REDACTED] leaves the United States. Communications acquired after the target is known to be in the United States, and that are not solely of, or concerning, U.S. citizens or permanent resident aliens, may be disseminated for foreign intelligence purposes until [REDACTED] [REDACTED] Attorney General approval is obtained. In those instances in which [REDACTED] [REDACTED] Attorney General approval for continued surveillance is obtained, communications of, or concerning, [REDACTED] may be disseminated in accordance with subsection 4.A.4 of these procedures.

(3) If the United States Signals Intelligence System is intentionally collecting communications of, or concerning, a United States citizen or permanent resident alien abroad, it must terminate the surveillance promptly upon learning that person is in the United States. Electronic

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surveillance may be reinstated only in accordance with FISA. In the event communications of, or concerning, the target continue to be collected before termination can be effected, processing and use of information derived from such communications shall be restricted to the greatest extent possible and special care shall be taken to ensure that such information is not disseminated for any purpose unless authorized in accordance with the provisions of FISA.



(f) ~~(S-CCO)~~ Provided the proposed monitoring is not otherwise regulated by Section 4.A.1(a)-(e), voice and facsimile

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communications with one communicant in the United States may be targeted for intercept only with the prior approval of the Attorney General or the Director, National Security Agency, as set forth below, unless [REDACTED]

[REDACTED] The Director, National Security Agency, may approve the targeting of such communications if technical devices (e.g., [REDACTED] [REDACTED] are employed that limit acquisition by the National Security Agency to communications where the target is a non-U.S. person located abroad or to specific forms of communications used by those targets, i.e., [REDACTED]

[REDACTED] In those cases in which it is not possible to use such technical devices, the Attorney General must approve the targeting. Approvals granted by the Director, NSA under this provision shall be available for review by the Attorney General.

[REDACTED]

(h) ~~(S-CCO)~~ Use of direction finding solely to determine the location of a transmitter does not constitute electronic surveillance or collection even if directed at transmitters believed to be used by United States persons. Unless collection of the communications is otherwise authorized

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pursuant to this annex, the contents of communications to which a United States person is a party monitored in the course of direction finding shall be used solely to identify the transmitter.

2. Retention (U)

~~(S-CCO)~~ Foreign communications of, or concerning, United States persons that are intercepted by the United States Signals Intelligence System may be retained in their original form or as transcribed only:

(a) if processed so as to eliminate any reference to United States persons;

(b) if necessary to the maintenance of technical data bases. Retention for this purpose is permitted for a period sufficient to allow a thorough exploitation and to permit access to data that are, or are reasonably believed likely to become, relevant to a current or future intelligence requirement. Sufficient duration may vary with the nature of the exploitation. In the context of a cryptanalytic effort, sufficient duration may consist of any period of time during which encrypted material is subject to, or of use in, cryptanalysis. In the case of international commercial communications that may contain

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the identity of United States persons and that are not enciphered or otherwise thought to contain secret meaning, sufficient duration is one year unless the Deputy Director for Operations, National Security Agency, determines in writing that retention for a longer period is required to respond to authorized foreign intelligence or counterintelligence requirements; or

(c) if dissemination of such communications without elimination of references to such United States persons would be permitted under subsection 4.A.4. below.

3. Processing (U)

(a) ~~(S-CCO)~~ Foreign communications of, or concerning, United States persons must be processed in accordance with the following limitations:

(1) When a selection term is intended to intercept a communication on the basis of encipherment or some other aspect of the content of the communication, rather than the identity of a communicant or the fact that the communication mentions a particular individual:

(a) No selection term may be used that is based on content and that is reasonably likely to result

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in the interception of communications to or from a United States person, or which has in the past resulted in the interception of a significant number of such communications, unless there is reasonable cause to believe that foreign intelligence or counter-intelligence will be obtained by use of such a selection term.

(b) All such selection terms shall be reviewed annually by the Deputy Director for Operations, National Security Agency, or his designee to determine whether there is reasonable cause to believe that foreign intelligence or counter-intelligence will be obtained by the use of these selection terms. The review of such selection terms shall include an examination of whether such selection terms have in the past resulted in the acquisition of foreign intelligence.

(c) Selection terms based on content that have resulted or that are reasonably likely to result in the interception of communications to or from a United States person shall be designed so as to defeat, to the extent practicable under the circumstances, the interception of such communications not containing foreign intelligence.

(2) Foreign communications collected by the United States Signals Intelligence System or other authorized entities may be forwarded to the National Security

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Agency as intercepted. This applies to forwarding to intermediate processing facilities, including those of authorized collaborating centers pursuant to written agreements, provided such forwarding does not result in the production by the United States Signals Intelligence System of information in violation of these procedures.

(b) ~~(S-CCO)~~ Except as provided in (b)(1), radio communications that pass over channels with a terminal within the United States must be processed by use of selection terms, unless those communications occur over channels used exclusively by a foreign power.

(1) Radio communications that pass over channels with a terminal in the United States may be processed without the use of selection terms only when necessary to determine whether a channel contains communications of foreign intelligence interest which the National Security Agency wishes to collect. Processing under this section may not exceed two hours without approval of the Deputy Director for Operations, National Security Agency, and shall in any event be limited to the minimum amount of time necessary to determine the nature of communications on the channel and the amount of such communications that include foreign intelligence. Once it is determined that the channel contains a sufficient amount of communi-

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cations of foreign intelligence interest to warrant collection and exploitation to produce foreign intelligence, additional processing of the channel must utilize selection terms.

4. Dissemination (U)

~~(C-CCO)~~ Dissemination of signals intelligence derived from foreign communications of, or concerning, United States persons is governed generally by Procedure 4 of DoD Regulation 5240.1-R. Dissemination of signals intelligence shall be limited to authorized signals intelligence consumers in accordance with requirements and tasking established pursuant to Executive Order 12333. Dissemination of information that is not pursuant to such requirements or tasking that constitutes foreign intelligence or counterintelligence or that is otherwise authorized under Procedure 4 shall be limited to those departments or agencies that have subject matter responsibility. Dissemination of the identity of a United States person is authorized if it meets one of the following criteria, each of which is also deemed to meet the standard of "necessary to understand or assess" the importance of foreign intelligence information (otherwise, the identity of the United States person must be replaced by a generic term, e.g., United States citizen or United States corporation):

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(a) the United States person has consented to the use of communications of or concerning him or her and has executed the applicable consent form;

(b) the information is available publicly;

(c) the identity of the United States person is that of a senior official in the Executive Branch. When this exemption is applied, the Deputy Director for Operations, National Security Agency, will ensure that domestic political or personal information is not retained or disseminated;

(d) the communication or information indicates that the United States person may be an agent of a foreign power;

(e) the communication or information indicates that the United States person may be:

(1) a foreign power as defined in Section 101(a)(4) or (6) of FISA;

(2) residing outside the United States and holding an official position in the government or military forces of a foreign power such that information about his or her activities would constitute foreign intelligence;

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(3) a corporation or other entity that is owned or controlled directly or indirectly by a foreign power; or

(4) acting in collaboration with an intelligence or security service of a foreign power and the United States person has, or has had, access to information or material classified by the United States;

(f) the communication or information indicates that the United States person may be the target of intelligence activities of a foreign power;

(g) the communication or information indicates that the United States person is engaged in the unauthorized disclosure of classified national security information;

(h) the communication or information indicates that the United States person may be engaging in international terrorist activities;

(i) the interception of the United States person's communication was authorized by a court order issued pursuant to Section 105 of FISA or by Attorney General approval

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issued pursuant to Section 4.A.1 of this annex and the communication may relate to the foreign intelligence or counterintelligence purpose of the surveillance;

(j) the communication or information indicates a possible threat to the safety of any person or organization, including those who are targets, victims, or hostages of international terrorist organizations;

(k) the communication or information indicates that the United States person may be engaged in international narcotics trafficking activities;

(l) the communication or information is evidence that a crime has been, is being, or is about to be committed, provided that dissemination is for law enforcement purposes; or

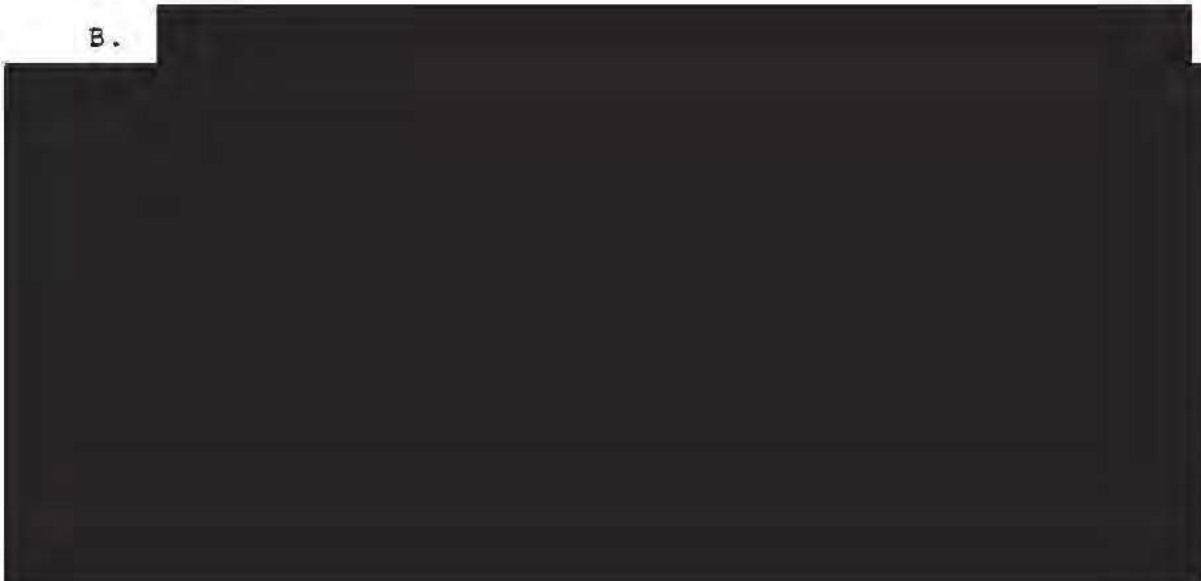
(m) the identity of the United States person is otherwise necessary to understand foreign intelligence or counterintelligence or assess its importance. Access to technical data bases will be restricted to signals intelligence collection and analytic personnel. Requests for access from other personnel or entities shall be referred to the Deputy Director for Operations, National Security Agency.

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Domestic communications in which all communicants are United States persons shall be disposed of upon recognition, provided that technical data concerning frequency and channel usage may be retained for collection avoidance purposes.

B.



C. ~~(C)~~ Signals Intelligence: Illicit Communications. The United States Signals Intelligence System may collect, retain, process, and disseminate illicit communications without reference to the requirements concerning United States persons.

D. ~~(C)~~ Signals Intelligence: Search and Development. The United States Signals Intelligence System may conduct search and development activities with respect to signals throughout the radio spectrum under the following limitations:

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1. Collection. Signals may be collected only for the purpose of identifying those signals that:

(a) may contain information related to the production of foreign intelligence or counterintelligence;

(b) are enciphered or appear to contain secret meaning;

(c) are necessary to ensure efficient signals intelligence collection or to avoid the collection of unwanted signals; or

(d) reveal vulnerability of United States communications security.

2. ~~(C)~~ Retention and Processing. Communications originated or intended for receipt in the United States, or originated or intended for receipt by United States persons, shall be processed in accordance with Section 4.A.3., provided that information necessary for cataloging the constituent elements of the signal environment may be produced and retained if such information does not identify a United States person. Information revealing a United States communications security vulnerability may be retained.

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3. ~~(S)~~ Dissemination. Information necessary for cataloging the constituent elements of the signal environment may be disseminated to the extent such information does not identify United States persons, except that communications equipment nomenclature may be disseminated. Information that reveals a vulnerability of United States communications security may be disseminated to the appropriate communications security authorities.

E. 


F. (U) Assistance to the Federal Bureau of Investigation.

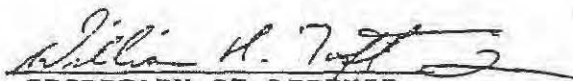
1. In accordance with the provisions of Section 2.6(c) of E.O. 12333, the National Security Agency may provide special-


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ized equipment and technical knowledge to the Federal Bureau of Investigation to assist the Bureau in the conduct of its lawful functions. When requesting such assistance, the Federal Bureau of Investigation shall certify to the General Counsel, National Security Agency, that such equipment or technical knowledge is necessary to the accomplishment of one or more of the Bureau's lawful functions...

2. The National Security Agency may also provide expert personnel to assist Bureau personnel in the operation or installation of specialized equipment when that equipment is to be employed to collect foreign intelligence or counterintelligence. When requesting the assistance of expert personnel, the Federal Bureau of Investigation shall certify to the General Counsel, National Security Agency, that such assistance is necessary to collect foreign intelligence or counterintelligence and that the approval of the Attorney General (and when necessary an order from a court of competent jurisdiction) has been obtained.


DEPUTY SECRETARY OF DEFENSE


ATTORNEY GENERAL

26 APR 1988
DATE

27 MAY 1988
DATE

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EXECUTIVE ORDER 12333

CONSENT AGREEMENT

SIGNALS INTELLIGENCE COVERAGE

I, \\\\\\\\\\\\\\\\(full name)\\\\\\\\\\\\\\\\, \\\\\\\\\\\\\\\\(title)\\\\\\\\\\\\\\\\,
hereby consent to the National Security Agency undertaking to
seek and disseminate references to me in foreign communications
for the purpose of _____
_____.

This consent applies to administrative messages alerting
elements of the United States Signals Intelligence System to
this consent as well as to any signals intelligence reports
which may relate to the purpose stated above.

Except as otherwise provided by Executive Order 12333 pro-
cedures, this consent covers only references to me in foreign
communications and information derived therefrom which relates
to the purpose stated above. This consent is effective for the
period: _____.

Signals intelligence reports containing information derived
from communications referencing me and related to the purpose
stated above may only be disseminated to me and to [names of
departments and agencies, e.g., DoD, CIA, etc.] except as other-
wise permitted by procedures under Executive Order 12333.

[UNCLASSIFIED until completed.
Classify completed form based
(SIGNATURE) on information added, but not
(TITLE) lower than CONFIDENTIAL.]

Exhibit C

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CLASSIFIED BY NSICG J89J28T90
REASON: 1.4 (c)
DECLASSIFY ON: 04-09-2031
DATE: 04-09-2015

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**(U) SUPPLEMENTAL GUIDELINES FOR COLLECTION, RETENTION,
AND DISSEMINATION OF FOREIGN INTELLIGENCE**

ALL INFORMATION
CONTAINED HEREIN IS
UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

I (U) PURPOSE OF GUIDELINES-

Pursuant to Executive Order 12333, as amended, the FBI is authorized to engage in the collection, retention, and dissemination of foreign intelligence. Part IV.A of the *Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection* (NSIG) establishes procedures through which the FBI may engage in the collection, retention, and dissemination of foreign intelligence. These Supplemental Guidelines establish additional procedures through which the FBI may engage in the collection, retention, and dissemination of foreign intelligence consistent with all existing interagency agreements and ensuring that its activities are integrated with other collection agencies. These Guidelines are specifically intended to supplement Part IV.A of the NSIG. They should be construed in conjunction with the provisions of the NSIG, and activities under these Supplemental Guidelines are subject to the provisions of the NSIG.

Executive Order 12333 provides that “[t]imely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons and their agents, is essential to the national security of the United States” and to “informed decisionmaking in the areas of national defense and foreign relations.” Hence, “[a]ll reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available,” and the “[c]ollection of such information is a priority objective that will be pursued in a vigorous, innovative...manner.” At the same time, intelligence gathering activities must be carried out in a “responsible manner that is consistent with the Constitution and applicable law.” When collecting foreign intelligence, the FBI may have the option to [REDACTED]

[REDACTED] In such situations, the Executive Order requires “use [of] the least intrusive collection techniques feasible within the United States or directed against United States persons abroad.” The FBI should consider such factors as the effect on privacy, civil liberties, and potential damage to reputation. Accordingly, the FBI will, whenever practical, and considering the totality of the circumstances, operate openly and consensually with U.S. persons when collecting foreign intelligence.

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II (U) *GENERAL PRINCIPLES*

A. (U) *DEFINITIONS*

1. ~~(S)~~

[REDACTED]

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2. (U) *OTHER TERMS DEFINED IN PART VIII OF THE NSIG*-All other terms defined in Part VIII of the NSIG that appear in these Supplemental Guidelines have the same definition as in the NSIG.

B. ~~(S//NF)~~

[REDACTED]

b1
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b7E

~~(S)~~

[REDACTED]

b1
b3
b7E

~~(S)~~

[REDACTED]

b1
b3
b7E

~~(S)~~

[REDACTED]

b1
b3
b7E

~~(S)~~

[REDACTED]

b1
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C. (U) *RESPECT FOR LEGAL RIGHTS*-These Supplemental Guidelines do not authorize investigating or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. Rather, all activities under these Guidelines must

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have a valid purpose consistent with these Guidelines, and must be carried out in conformity with the Constitution and all applicable statutes, executive orders, Department of Justice regulations and policies, and Attorney General guidelines.

III. ~~(S//NF)~~

[Redacted]

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IV. (U) NOTICE-

A. (U) A field office shall notify FBI Headquarters [Redacted]

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The notice of initiation, whether the collection is initiated by a field office or FBI Headquarters, shall identify the topical requirement or requirements addressed, if any, and describe any sensitive foreign intelligence matter that may be involved.

B. (U) FBI Headquarters shall provide the notice of initiation of foreign intelligence collection to the National Security Division of the Department of Justice (NSD), and the NSD shall notify the Attorney General and the Deputy Attorney General. The notice shall be provided to the [Redacted]

b7E

C. (U) The FBI shall notify the NSD and the Deputy Attorney General if FBI Headquarters disapproves a field office's initiation or request for initiation of foreign intelligence collection.

V. ~~(S//NF)~~

A. ~~(S//NF)~~

[Redacted]

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B. ~~(S//NF)~~

[Redacted]

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~~(S)~~

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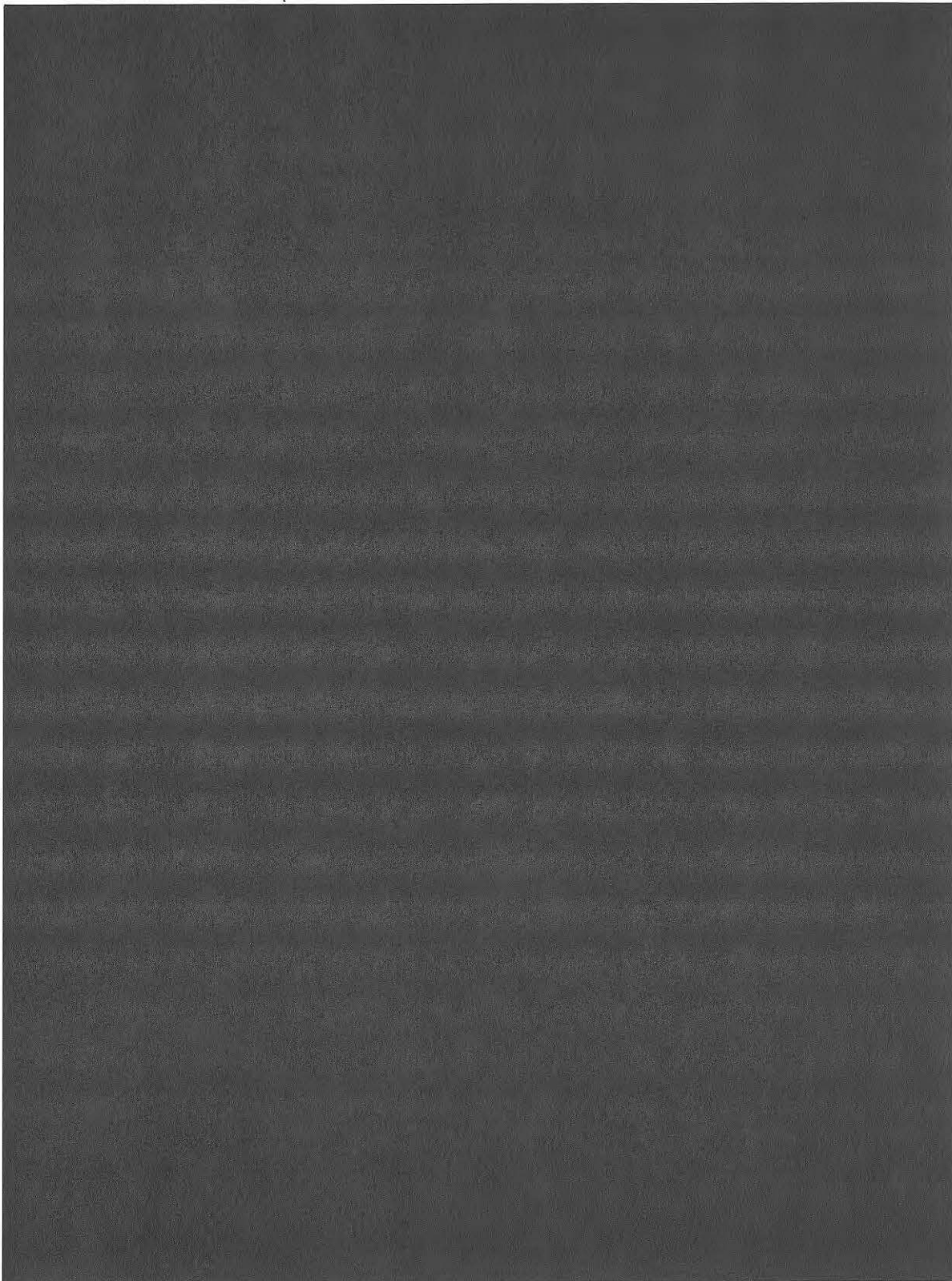
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VI. ~~(S//NF)~~



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A. ~~(S//NF)~~



B. ~~(S//NF)~~



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VII. ~~(S//NF)~~



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A. ~~(S//NF)~~



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B. ~~(S//NF)~~



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VIII. (U)



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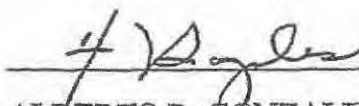
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IX. (U) CONSULTATION AND OVERSIGHT-The Director of the FBI, the Director of National Intelligence, and the Assistant Attorney General for National Security shall, whenever requested by any of them, consult concerning the operation of the foreign intelligence collection program under these guidelines so that the Assistant Attorney General for National Security, the Director of the FBI, and the Director of National Intelligence can review aspects of the program, including, but not limited to:

- A. (U) Topical areas in which foreign intelligence is being collected, and the quality and utility of the resulting information;
- B. (U) The nature of the collection techniques employed in foreign intelligence collection, and the types of persons and entities in relation to whom the techniques are used;
- C. (U) Training provided for FBI and NSD personnel who participate in the foreign intelligence collection program;
- D. (U) The quality and timeliness of assistance by NSD and FBI personnel in the collection of foreign intelligence, including obtaining or providing (authorizations required by law or Department of Justice policy for the use of collection techniques;
- E. (U) Any other matters that the Director of the FBI, the Director of National Intelligence or the Assistant Attorney General for National Security consider appropriate.

(U) The Director of the FBI shall provide such information as the Assistant Attorney General for National Security may request concerning the operation of the foreign intelligence collection program, which may include regular reviews by the NSD of the FBI's activities under these Guidelines. The information and/or reports to be provided upon request of the Assistant Attorney General for National Security include, but are not limited to, reports reflecting the information set forth in Part VII, FBI records and files, and other information pertaining to collection, retention, use, or dissemination of foreign intelligence.

Date: November 29, 2006


 ALBERTO R. GONZALES
 ATTORNEY GENERAL

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