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-- FREEDOM OF INFORMATION APPEAL --

October 17, 2011

Director, Office of Information Policy
U.S. Dep't of Justice
1425 New York Avenue, NW
Suite 11050
Washington, DC 20530-0001

Re: Appeal of FOIA Request No. 1141750-01 (appeal no. 2010-1752)

Dear Sir or Madam,

This letter constitutes an appeal pursuant to 6 C.F.R. § 5.9 of the determination in response to request number 1141754-01.

Our original request, dated December 29, 2009, sought “records indicating the purpose and organization of the JTTF, its membership and command structure and relationship with the FBI and the Office of the U.S. States Attorney,” On February 22, 2010, the FBI responded that it was “unable to identify responsive main file records.” We appealed that determination, showing evidence that such documents must exist. On July 14, 2011, this office agreed with our appeal and remanded the request to the FBI for further search for responsive records.

By letter dated September 29, 2011 the FBI responded that information responsive to our request was already reviewed and released under FOIA Request Nos. 1141754-00 and 1141754-01.

This response confuses requests number 1141750-000 with request number 1141754-000. These are separate requests, given separate FOIA numbers by the Department of Justice because of the distinct documents they seek. While the former asks for “records indicating the purpose and organization of the JTTF, its membership and command structure and relationship with the FBI and the Office of the U.S. States Attorney,” the latter asks for Memoranda of Understanding with agencies in Massachusetts. These are fundamentally different questions.

The FBI released the Memoranda of Understanding that we sought, but these do not reflect the issues addressed by request number **1141750-00**.

We therefore appeal the determination made by the FBI on September 29, 2011 that the responsive records have already been released.

Thank you for your consideration.



Laura Rótolo
ACLUM Staff Attorney



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

JUL 14 2011

Laura Rotolo, Esq.
ACLU of Massachusetts
3rd Floor
211 Congress Street
Boston, MA 02110

Re: Appeal Nos. 2010-1749 &
2010-1752
Request Nos. 1141758 & 1141750
ADW:MTC

Dear Ms. Rotolo:

You appealed from the action of the Federal Bureau of Investigation on your requests for access to records pertaining to the budget and sources of funding, purpose, and organization of the Massachusetts Joint Terrorism Task Force. I regret the delay in responding to your appeals.

After carefully considering your appeal, and as a result of discussions between FBI personnel and a member of my staff, I am remanding your requests for a further search for responsive records. If the FBI locates additional records, it will send any and all releaseable records to you directly, subject to any fees. You may appeal any future adverse determination made by the FBI. If you would like to inquire about the status of your remanded requests, please contact the FBI directly.

Please be advised that this Office's decision was taken only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeals, your underlying requests, and the actions of the FBI in response to your requests.

If you are dissatisfied with my action on your appeals, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Janice Galli McLeod
Associate Director



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

September 29, 2011

MS. LAURA ROTOLO
ACLU OF MASSACHUSETTS
3RD FLOOR
211 CONGRESS STREET
BOSTON, MA 02110

Request No.: 1141750-001
Appeal No.: 2010-1752
Subject: JTTF/PURPOSE AND ORGANIZATION

Dear Ms. Rotolo:

This is in response to OIP's letter dated July, 14, 2011, regarding Appeal Number 2010-1752 in which FOIA Request Number 1141750-000 was remanded for an additional search.

Our records indicate that information responsive to your request was reviewed and released to you in FOIA request numbers 1141754-000 and 1141754-001 on December 13, 2010, and July 12, 2011, respectively. The records you currently seek have already been properly reviewed and withheld to the provisions of the Freedom of Information and Privacy Acts, Title 28, Sections 552 and 552A.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned below the closing.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 22, 2010

MS. LAURA ROTOLO
ACLU OF MASSACHUSETTS
211 CONGRESS STREET
BOSTON, MA 02110

Request No.: 1141750-000

Subject: JTTF/Records indicating the purpose and organization of the JTTF, its membership and command structure and relationship with the Federal Bureau of Investigation and the Office of the United States Attorney.

Dear Ms. Rotolo:

This responds to your Freedom of Information/Privacy Acts (FOIPA) request.

Based on the information you provided, we conducted a search of the indices to our Central Records System. We were unable to identify responsive main file records. If you have additional information pertaining to the subject and you believe it was of investigative interest to the Bureau, please provide us the details and we will conduct an additional search.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be identified easily.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned above the typed name.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure

Carmen M. Ortiz
United States Attorney for the District of Massachusetts
John Joseph Moakley
United States Federal Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210

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

Warren T. Bamford
Special Agent in Charge
Federal Bureau of Investigation
One Center Plaza
Boston, MA 02108

December 29, 2009

To whom it may concern:

This letter constitutes a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 made jointly to the U.S. Attorney for the District of Massachusetts and the Federal Bureau of Investigations. The Request is submitted on behalf of the American Civil Liberties Union of Massachusetts and its educational arm, the American Civil Liberties Union Foundation of Massachusetts (jointly referred to as ACLUM).

Background

Over the past nine years, the federal government has implemented or expanded various programs that have resulted in an unprecedented degree of information sharing between federal and state law enforcement agencies and in the increased federalization of law enforcement activities in general and anti-terrorism activity in particular. This request seeks documents regarding the nature and extent of the cooperative efforts of federal, state and local law enforcement agencies through three federal programs: the Massachusetts Joint Terrorism Task Force (JTTF); the National Joint Terrorism Task Force (NJTTF); and the Massachusetts Anti-Terrorism Advisory Council (ATAC).

In September 2001, Attorney General Ashcroft directed every U. S. Attorney district to establish an Anti-Terrorism Task Force to coordinate the dissemination of

information and the development of investigative and prosecutorial strategy in dealing with terrorism throughout the country. On September 24, the Attorney General reconstituted each of the ATTFs as an Anti-Terrorism Advisory Council (ATAC) chaired by the U.S. Attorney.¹ Its responsibilities were defined as: (1) coordinating specific antiterrorism initiatives; (2) initiating training programs; and (3) facilitating information sharing. The operational arm of the ATAC is the JTTF, but ATAC retains, at least in theory, operational responsibility for some investigations.²

The U.S. Department of Justice has stated that the mission of the JTTF, which was formed in some districts as early as 1990, is to “detect and investigate terrorists and terrorist groups and prevent them from carrying out terrorist acts directed against the United States.”³ Operating from the FBI’s field office, the JTTF has primary responsibility for terrorism investigations. It is the “operational unit that conducts field investigations of actual or potential terrorism.”⁴ JTTF has also been described by the FBI as providing “one stop shopping for information.”⁵ JTTF is not limited to FBI agents and includes members from other federal, state, and local law enforcement agencies that have signed a Memorandum of Understanding (MOU) with JTTF. Non-FBI personnel are subject to security clearance and are specially deputized as federal agents.

The NJTTF was established by the FBI in 2002 to support the JTTFs and provide enhanced communication and coordination.⁶ Located at FBI headquarters in Washington, it is comprised of representatives of every U.S. agency that collects and processes terrorist intelligence and provides intelligence coordination and support for JTTFs throughout the United States.⁷

In tandem with this expanded operational capacity and focus, the federal government has created a national Information Sharing Environment (ISE), which was defined in Section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 as “an approach that facilitates the sharing of terrorism information.” The FBI later created eGuardian, a database where local law enforcement agencies can enter

¹ *Memorandum for All United States Attorneys*, September 24, 2003. <http://www.justice.gov/ag/readingroom/ag-092403.pdf>

² *Id.* See also <http://www.justice.gov/usao/ma/atac.html>.

³ Dep’t of Justice, *DOJ Terrorism task Force, Evaluation and Inspections Report I-2005-007*, June 2005, <http://www.justice.gov/oig/reports/plus/e0507/background.htm>

⁴ *Id.*

⁵ FBI website, “PROTECTING AMERICA AGAINST TERRORIST ATTACK A Closer Look at Our Joint Terrorism Task Forces,” http://www.fbi.gov/page2/may09/jtfts_052809.html

⁶ *Id.*

⁷ <http://www.fbi.gov/page2/july04/njttf070204.htm>

“suspicious activity reports, potential terrorism threats (like a phoned-in bomb threat), and terrorist incidents (like actual bombings).”⁸ At the same time, state and local government agencies in Massachusetts have separately established intelligence units which are reported to be linked both to these national intelligence sharing systems and to JTTF.

Notwithstanding the scale of these changes, little information about how these cross-agency programs work in practice is readily available to the public. Given the checkered history of internal security investigations in this country and the inherent threat to personal privacy posed by nationwide intelligence information sharing, the creation of a domestic intelligence and security apparatus requires the highest level of transparency and public oversight. This request seeks basic information about the workings of the three federal programs described above, including how authority is divided, how information is shared, and what safeguards are in place to ensure the civil liberties of those whom it targets.

Documents Sought

JTTF

1. Records indicating the purpose and organization of the JTTF, its membership and command structure and relationship with the Federal Bureau of Investigation and the Office of the United States Attorney.
2. Documents containing the location of all JTTF offices in New England.
3. Records indicating the number of FBI personnel assigned to JTTF and, of that number, how many are (a) field agents or investigators, (b) intelligence analysts and (c) support personnel.
4. Records identifying each federal, state or local agency other than the FBI that participates in the JTTF and the number of employees of each such agency assigned to JTTF.
5. Memoranda of understanding, contracts or agreements between the Massachusetts Joint Terrorism Task Force (JTTF) and (a) any federal agency, (b) the Commonwealth of Massachusetts or any department, agency, authority or official of the Commonwealth, and (c) any Massachusetts city or town or any department, agency or official of a Massachusetts city or town providing for the assignment of personnel to JTTF.

⁸ http://www.fbi.gov/page2/sept08/eguardian_091908.html

6. Records showing the number of JTTF personnel whose responsibilities require them to be physically present at the Commonwealth Fusion Center or the Boston Regional Intelligence Center.
7. Records describing the formal structure of information sharing between JTTF and (a) e-Guardian, (b) the Information Sharing Environment, and (c) local intelligence agencies in Massachusetts, including the Boston Regional Intelligence Center (BRIC), the Commonwealth Fusion Center (CFC) and the Massachusetts Bay Transportation Authority (MBTA) or the Massachusetts Department of Transportation (Mass DOT).
8. Records describing the procedure and standards for sharing of information or intelligence with the Commonwealth Fusion Center (CFC) and with the Boston Regional Intelligence Center (BRIC); records of communications between JTTF and BRIC and CFC concerning access to information and operational responsibility for investigation.
9. Memoranda of understanding, contracts or agreements between the JTTF and (a) any federal agency, (b) the Commonwealth of Massachusetts or any department, agency, authority or official of the Commonwealth, and (c) any Massachusetts city or town or any department, agency or official of a Massachusetts city or town providing for the collection, disclosure or sharing of information or intelligence concerning individuals or organizations;
10. Records, other than technical standards and requirements, describing information or intelligence that is disclosed or shared through the national Information Sharing Environment or e-Guardian.
11. Documents showing the budget of the Massachusetts JTTF, including sources of funding from 2005 to present.
12. Documents describing prosecutorial priorities for the Massachusetts JTTF; any documents showing rules, regulations and procedures regarding the operation of the Massachusetts JTTF;
13. Documents discussing rules or guidelines for JTTF compliance with 28 CFR Part 23.

NJTTF

14. Documents describing the relationship between the National Joint Terrorism Task Force (NJTTF) and the Massachusetts JTTF.
15. Documents describing the relationship between the NJTTF and the Commonwealth of Massachusetts, any of its cities, towns, agencies, police departments or other law enforcement units in Massachusetts, colleges or universities.

ATAC

16. Records indicating the present structure, purpose and membership of the Massachusetts Anti-Terrorism Advisory Council;
17. Records created after January 1, 2005 of the agenda, attendees and minutes of the Massachusetts ATAC.
18. Records describing investigative and prosecutorial priorities or strategies recommended or approved by Massachusetts ATAC.
19. Records of communication between the Office of the United States Attorney and members of Massachusetts ATAC;
20. Records of communications between the Massachusetts JTTF and members of Massachusetts ATAC;
21. Records of communications between the Boston Office of the FBI and members of Massachusetts ATAC
22. Documents describing the relationship between ATAC and the Massachusetts JTTF including records describing specific measures recommended or approved by ATAC to (1) coordinate specific antiterrorism initiatives; (2) initiate training programs; and (3) facilitate information sharing.;
23. Documents describing the relationship between ATAC and the Commonwealth of Massachusetts, any of its cities, towns, state or local agencies, police departments or other law enforcement units or officials in Massachusetts, colleges or universities.
24. Documents showing the budget for the Boston ATAC, including funding sources for the years 2005 to present.

Requester is entitled to a fee waiver

ACLUM is entitled to a fee waiver under the FOIA statute and Department of Justice Regulations for two reasons. First, ACLUM qualifies as a representative of the news media. Second, release of the records requested is in the public interest and not in any commercial interest of the requestor.

1. ACLUM is a representative of the news media as defined in the statute and regulations.

ACLUM is entitled to a fee waiver because it is a representative of the news media under both the FOIA statute and the Department of Justice regulations regarding FOIA fees. 5 U.S.C §551(a)(4)(A)(ii); 28 CFR 16.11(d)(1). ACLUM is a representative of the news media in that it is an organization “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public,” where “news” is defined as “information that is about current events or that would be of current interest to the public.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 CFR § 16.11(b)(6).

In addition, ACLUM meets the statutory definition of a “representative of the news media” because it is “an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.” *Nat’s Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir 1989). *See also Electronic Privacy Information Ctr. v. Dep’t of Defense*, 241 F.Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA.)

ACLUM, a not-for-profit, non-partisan organization with over 22,000 members and supporters across Massachusetts is dedicated to the principles of liberty and equality. As the Massachusetts affiliate of the national ACLU, a not-for-profit, non-partisan organization with over 500,000 members nationwide, ACLUM distributes information outside of Massachusetts.

Gathering and disseminating current information to the public is a critical and substantial component of ACLUM’s mission and work. ACLUM publishes newsletters, news briefings, reports and other printed materials that are disseminated to the public. *See* Exhibits A – C. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, at no cost. ACLUM also disseminates information through its heavily subscribed website, www.aclum.org, a blog, <http://www.massrightsblog.org> and regular posts on social media sites such as Facebook and Twitter. *See* Exhibits D – F. Our web postings address civil liberties issues in depth, provide features on civil liberties issues in the news, and contain hundreds of documents

that relate to the issues addressed by ACLUM. The website includes features on information obtained through the FOIA. *See, e.g.,* www.aclum.org/ice.

These characteristics are typically sufficient to convey “representative of the news media” status on FOIA requesters. Courts have held that “[i]t is critical that the phrase ‘representative of the new media’ be broadly interpreted if the act is to work as expected ... [n] fact, any person or organization which regularly publishes or disseminates information to the public ... should qualify for waivers as a ‘representative of the news media.’” *Electronic Privacy Ctr. v. Dep’t of Defense*, 241 F.Supp, 2d 5, 10 (D.D.C. 2003).

On account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.⁹

2. The records sought are in the public interest and ACLUM has no commercial interest in the disclosure.

In addition, ACLUM is entitled to a waiver or reduction of fees because “[d]isclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and “[d]isclosure of the information is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 CFR § 16.11(k)(1)(i) and (ii).

This request aims at furthering public understanding of government conduct, and specifically to help the public determine the ways in which government agencies work together to share information and intelligence gathered through intra-agency initiatives involving law enforcement and other public and private entities. Recent media coverage of the growing concern about such initiatives demonstrates the public interest in the documents sought. *See e.g. Report: FBI paid controversial NJ blogger for help*, Associated Press, November 29, 2009; Stephanie Ebbert, *Fusion Center takes aim at terror, But secrecy alarms civil libertarians*, The Boston Globe, September 26, 2005; T.J. Greaney, *‘Fusion center’ data draws fire over assertions: Politics, banners seen as suspect*, Columbia Daily Tribune, March, 14, 2009; Hilary Hylton, *Fusion Centers:*

⁹ The following are examples of requests in which government agencies did not charge the ACLU or ACLUM fees associated with responding to a FOIA request: (1) Immigration and Customs Enforcement granted the ACLU of Massachusetts a waiver of all search fees for a request submitted on Jan. 25, 2007; (2) The Office of Science and Technology Policy in the Executive Office of the President told the ACLU that it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003; (3) The Federal Bureau of Investigation did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (4) The Office of Intelligence Policy and Review did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; and (5) The Office of Information and Privacy in the Department of Justice did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.