



Laura Rótolo
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-- FREEDOM OF INFORMATION APPEAL --

March 31, 2010

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 Nos. 1141763-000 through 1141771-000

Dear Sir or Madam:

This letter constitutes an appeal pursuant to 5 U.S.C. § 552(a)(6) and 6 C.F.R. § 5.9 of the determination made on February 2, 2010 in response to requests number 1141763-000 through 1141771-000. The underlying requests, made jointly by the American Civil Liberties Union Foundation of Massachusetts (ACLUM) and Political Research Associates (PRA) on December 30, 2009, asked for various documents relating to the Anti-Terrorist Advisory Councils (ATACs) in Massachusetts. Exhibit A.

On February 2, 2010, David M. Hardy, Section Chief, Record/Information Dissemination Section, Records Management Division of the Federal Bureau of Investigation denied these requests, citing that the ATAC “is a Department of Justice entity” and that requests “should be directed at the Department of Justice.” Exhibit B. For the following reasons, we appeal that determination.

The ATAC is inextricably linked to the Joint Terrorism Task Forces (JTTFs), which the FBI runs. The ATACs were started in 2001 as “Anti-Terrorism Task Forces” (ATTFs) and were designed to be a “complement to the operational counterterrorism efforts of the Federal Bureau of Investigations (FBI) and other Joint Terrorism Task Forces (JTTFs).”¹ In 2003, then Attorney General John Ashcroft sent a memorandum to all U.S. Attorneys reconstituting the ATTFs as ATACs and seeking to “ensure that [the US Attorneys’] activities are fully integrated with the operations of the JTTFs.”²

Ashcroft further clarified:

“Regarding the core operational aspects of terrorism investigations, the ATACs will work in partnership with the JTTFs, who will retain primary responsibility for terrorism investigations, continuing to coordinate among FBI field offices and their respective counterparts in federal, state, and local law enforcement and intelligence agencies in conducting international and domestic investigations”³

Today, according to the Department of Justice, the JTTFs continue to be “the operational arm” of ATAC.”⁴ As such, the FBI continues to collaborate with the ATACs in this region, and would have documents regarding those collaborations.

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

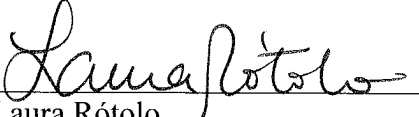
² *Id.*

³ *Id.*

⁴ Dep’t of Justice Website at <http://www.justice.gov/usao/ma/atac.html>

For these reasons, we urge you to reconsider the agency's response regarding these requests and perform a "reasonable" and "adequate" search for the requested documents. *Krikorian v. Dep't of State*, 984 F.2d 461 (D.C. Cir. 1993).

Thank you for your consideration.



Laura Rótolo
ACLUM Staff Attorney

Thomas R. Cincotta
PRA Civil Liberties Project Director

**FOIA APPEAL
114763-000 THROUGH 1141771-000**

EXHIBIT A



Laura Rótolo
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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 30, 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) and Political Research Associates (PRA).

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

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.
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.

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

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.

Requesters are entitled to a fee waiver

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

- 1. ACLUM and PRA are representatives of the news media as defined in the statute and regulations.**

PRA's overall goal is to advance progressive thinking and action by providing social justice allies – individual and organizational activists/organizers/advocates at the grassroots and national levels, journalists, social scientists, and other stakeholders – with in-depth research, analysis, and referrals related to our major issue areas identified in its strategic plan:

- Civil Liberties
- Reproductive Justice
- LGBT and Gender Equality and Justice
- Racial and Economic justice (with special attention to immigrant right under both of these categories)
- Understanding the Right

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 ... I[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 requesters have not been charged fees associated with responding to FOIA requests on numerous occasions.⁹

2. The records sought are in the public interest and the requesters have no commercial interest in the disclosure.

Therequesters are 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).

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.

material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information” (internal citation and quotation marks omitted)).¹⁰

As stated above, gathering and disseminating current information to the public is a critical and substantial component of PRA and 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. 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.

ACLUM regularly publishes reports about government activity and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. Many ACLUM reports include a description and analysis of government documents obtained through FOIA.¹¹

As the state affiliate of the national ACLU organization, ACLUM also disseminates information through the ACLU. Since 2007 alone, ACLU national projects have published and disseminated over 30 reports. The ACLU also regularly publishes books, “know your rights” publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.¹²

The ACLU operates a widely-read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily.¹³ The ACLU also creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features.¹⁴ The ACLU has also produced an in-depth television series on civil liberties called “The Freedom Files.”¹⁵

The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the

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

¹¹ *See Detention and Deportation in the Age of ICE*, available at www.aclum.org/ice and the accompanying document gallery of FOIA documents at <http://aclum.org/ice/gallery.php>.

¹² A recent search of Amazon.com produced over 60 books published by the ACLU.

¹³ *See* <http://www.aclu.org/blog>.

¹⁴ *See* <http://www.aclu.org/multimedia/index.html>.

¹⁵ *See* <http://aclu.tv/>.

PRA fuses journalistic reporting techniques and reliable, even-handed research to disseminate quality analytical content. See Exhibits G – I. Its in-depth research reports, press interviews, e-updates, library of primary and secondary materials about right-wing and anti-democratic movements, quarterly magazine, and website are all aimed at helping our allies craft more effective, non-demonizing language and strategies that further social justice. PRA’s researchers respond to daily telephone inquiries from journalists and advocates, supply customized information packets, offer advice on organizing strategies, and serve as nationally known public speakers for workshops and conferences.

According to a quarterly analysis done earlier this year, Political Research Associates’ online resources receive an average of 1.5 million hits a month from 600,000 visitors. It has a ranking of 6 out of 10 from Google, which indexes some 3,400 of its pages. There are over 1,110 known links to PRA’s home page.

The Public Eye, PRA’s quarterly magazine, is read by advocates, legislators, journalists, academics, donors, and many others, with a subscription base of over 1,000 subscribers. See Exhibit G. PRA is currently running investigative stories on a range of civil liberties issues, including government misconduct related to civil liberties, informants, fusion centers, and political spying. *The Public Eye’s* feature length analyses anchor the coverage of burning issues on our website and are picked up by numerous news aggregators, such as AlterNet.

PRA’s website, www.publiceye.org, which includes a dedicated “portal” page for civil liberties and other major issue areas. The civil liberties page is being designed to house our central repository for investigative research on civil liberties, domestic surveillance, racial profiling, and counterterrorism, for use by journalists, activists, the legal community, and others and will include research findings, primary documents, links to related information, and audio and video files. The site is promoted as go-to location for advocates, activists, and journalists.

Print Reports: PRA will be publishing reports based upon its civil liberties research with press conferences in several large cities. These reports will be released on the Web, as well as in print editions, to ensure broad circulation and availability and arrange cross-promotion with allied groups and bloggers. PRA regularly publishes reports, studies, and Activist Resource Kits, available at the website, www.publiceye.org/reports.html.

Radio: PRA is partnered with the National Radio Project (producer of the nationally syndicated radio show, *Making Contact*). PRA researchers are regularly interviewed on public radio shows, including *Democracy Now* and morning news shows, and we will promote interviews with lead and local civil liberties researchers.

Print articles and op-eds: PRA writes and places stories for outside outlets, including op-eds for their local newspapers as well as Web based news aggregators, and pitch features to national magazines.

Books: Books by PRA authors include:

2009) (testimony of Janet Napolitano, Sec. Dep't of Homeland Security); *Strategies for Terrorism Information Sharing, Hearing Before Senate Judiciary Comm.*, 111th Cong. (April 21, 2009) (testimony of Caroline Frederickson, Director, ACLU Washington Legislative Office).

As the sustained public interest concerning the FBI's work with local law enforcement clearly attests, the workings of the JTTFs constitute 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).

Accordingly, expedited processing is appropriate in this case.

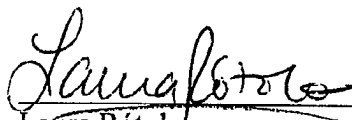
Conclusion

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

We look forward to your reply to the Request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). Please reply to this request to by contacting Laura Rótolo at (617) 482-3170 x311 or through email at lrotolo@aclum.org.

Thank you for your prompt attention to this matter.

Sincerely,



Laura Rótolo
ACLUM Staff Attorney

Thomas R. Cincotta
PRA Civil Liberties Project Director

**FOIA APPEAL
114763-000 THROUGH 1141771-000**

EXHIBIT B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 2, 2010

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

Request No.: 1141763- 000
Subject: ATAC/MASSACHUSETTS
ANTI-TERRORISM ADVISORY COUNCIL

Dear Ms. Rotolo:

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

Based on the information you provided, the Massachusetts Anti-Terrorism Advisory Council is a Department of Justice entity. Any requests for this subject should be directed to the Department of Justice. 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



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 2, 2010

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

Request No.: 1141765- 000
Subject: ATAC/MASSACHUSETTS ATAC
PROSECUTORIAL PRIORITIES

Dear Ms. Rotolo:

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

Based on the information you provided, the Massachusetts Anti-Terrorism Advisory Council is a Department of Justice entity. Any requests for this subject should be directed to the Department of Justice. 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.

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Sincerely yours,

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

Enclosure



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 2, 2010

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

Request No.: 1141767- 000
Subject: ATAC/COMMUNICATIONS BETWEEN
MASSACHUSETTS JTTF AND MEMBERS OF
MASSCHUSETTS ATAC

Dear Ms. Rotolo:

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

Based on the information you provided, the Massachusetts Anti-Terrorism Advisory Council is a Department of Justice entity. Any requests for this subject should be directed to the Department of Justice. 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.

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

Enclosure



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 2, 2010

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

Request No.: 1141769- 000
Subject: ATAC/RELATIONSHIP BETWEEN
ATAC AND MASSACHUSETTS JTTF ET AL.

Dear Ms. Rotolo:

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

Based on the information you provided, the Massachusetts Anti-Terrorism Advisory Council is a Department of Justice entity. Any requests for this subject should be directed to the Department of Justice. 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.

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Sincerely yours,

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

Enclosure



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 2, 2010

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

Request No.: 1141771- 000
Subject: ATAC/BOSTON ATAC BUDGET
AND FUNDING FROM 2005-PRESENT

Dear Ms. Rotolo:

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

Based on the information you provided, the Massachusetts Anti-Terrorism Advisory Council is a Department of Justice entity. Any requests for this subject should be directed to the Department of Justice. 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.

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David M. Hardy
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Records Management Division

Enclosure