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-- FREEDOM OF INFORMATION APPEAL --

March 23, 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 No. 1141751-00

Dear Sir or Madam,

This letter constitutes an appeal pursuant to 6 C.F.R. § 5.9 of the determination made on January 12, 2010 in response to request number 1141751-00. The underlying request for “documents containing the location of all JTTF offices in New England” was made jointly by the American Civil Liberties Union Foundation of Massachusetts (ACLUM) and Political Research Associates (PRA) on December 30, 2009. Exhibit A.

On January 25, 2010, the Federal Bureau of Investigation denied this request citing 5 U.S.C. § 552(b)(2) and § 552(b)(7)(E). Exhibit B. The agency found one page of responsive documents and determined that it was exempt from disclosure in its entirety. For the following reasons, we appeal that determination.

I. FOIA PRESUMES THAT DOCUMENTS ARE NOT EXEMPT FROM DISCLOSURE

The purpose of FOIA is “to ensure an informed citizenry, vital to the functioning

of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978). FOIA is premised on the notion that “the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived.” A. Michael's Piano, Inc. v. FTC, 18 F.3d 138, 140 (2d Cir. 1994) (quoting The Federalist No. 49, at 313-14 (James Madison) (Clinton Rossiter ed., 1961). “[O]ur government, relying as it does on the consent of the governed, may not succeed unless its ‘people who mean to be their own governors ... arm themselves with the power knowledge gives.’” Id. at 140-41 (quoting S.Rep. No. 813, 89th Cong., 1st Sess. 2, 3 (1965)).

FOIA “adopts as its most basic premise a policy strongly favoring public disclosure of information in the possession of federal agencies.” Halpern v. FBI, 181 F.3d 279, 286 (2d Cir. 1999). While there are nine exemptions that allow an agency to withhold information, see 5 U.S.C. §§ 552(a)(4)(B) & (b)(1)-(9), the exemptions are narrowly construed and the government bears the burden of proving that any one applies. See Halpern, 181 F.3d at 287; see also Dep’t of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 7-8 (2001) (FOIA exemptions are narrowly construed); John Doe Agency v. John Doe Corp., 493 U.S. 146, 151-52 (1989); DOJ v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 755 (1989). It is well established that these “limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.” Klamath Water Users, 532 U.S. at 7-8. For this reason, any reasonably segregable portion of any record must be released. See 5 U.S.C. § 552(b).

Consistent with the statute and a renewed commitment to open government, on January 21, 2009, President Obama issued a memorandum to the heads of all departments and agencies on the Freedom of Information Act (FOIA) directing that FOIA “should be administered with a clear presumption: In the face of doubt, openness prevails.” Memorandum from President Barack Obama to Heads of Executive Departments and Agencies (Jan. 21, 2009) available at http://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/. Moreover, the President instructed agencies to “adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.” *Id.*

The agency’s response indicates that it did not follow this statutory requirement and executive guidance regarding a presumption in favor of disclosure. With no explanation, the agency denied the request, issuing a form letter where a FOIA official checked off boxes referring to the cited exemptions, but provided no explanation.

For the following reasons, the agency erred in this determination.

II. EXEMPTION 2 DOES NOT BAR DISCLOSURE OF THIS DOCUMENT

“Exemption 2” permits the withholding of documents “related solely to the internal personnel rules and practices of an agency.” 5 U.S.C. § 552(b)(2). It was created to apply purely to internal matters in which the public has no interest. The

document requested does not fit into the exempted category for two reasons. First, it is not purely internal. Second, it is a matter of great public interest.

A. The locations of JTTF offices are not mere housekeeping items

“[T]he general thrust of the exemption is simply to relieve agencies of the burden of assembling and maintaining for public inspections matter in which the public could not reasonably be expected to have an interest.” Dep’t of Air Force v. Rose, 425 U.S. 352, 369-70 (1976). Thus, the Exemption “relates to information concerning those rules and practices that affect the internal workings of an agency, and therefore, would be of no genuine public interest.” Massey v. FBI, 3 F.3d 620, 622 (2d Cir. 1993) (internal quotations omitted).

In essence, Exemption 2 applies to “trivial” or “housekeeping” matters. Schiller v. NLRB, 964 F.2d 1205, 1208 (D.C. Cir. 1992) (internal deadlines and instructions about which agency officials to contact for assistance are “housekeeping matters” not subject to disclosure).

Courts have upheld the withholding of such housekeeping matters that are of no public interest as FBI file numbers; computer codes; internal report numbers; informant and violator codes; FBI handling and dissemination instructions; and Bureau of Prisons internal markings. See McCoy v. Moschella, No. 89-2155, 1991 U.S. Dist. LEXIS 13618 (D.D.C. Sept. 30, 1991); Wightman v. Bureau of Alcohol, Tobacco and Firearms, 755 F.2d 979, 982 (1st Cir. 1985); Texas Instruments, Inc. v. Customs Serv., 479 F.Supp. 404 (D.D.C. 1979); Albuquerque Publ’g Co. v. DOJ, 726 F. Supp. 851 (D.D.C. 1989); Meeropol v. Smith, No. 75-1121, slip op. (D.D.C. Feb. 29, 1984), *aff’d in relevant part & remanded sub nom. Meeropol v. Meese*, 790 F.2d 942 (D.C. Cir. 1986).

The request asked for “documents containing the location of all JTTF offices in New England” Exhibit A. This list is not simply a “housekeeping matter.” There is nothing “trivial” or solely personnel-related about the physical locations of these offices. Unlike lists of computer codes or file numbers, the requested list refers to offices that are fully-functioning parts of our communities, working hand-in-hand with local police forces and carrying out operations in New England. The locations affect persons outside of the agency on a daily basis as JTTF agents carry out investigations and process information through these offices.

B. Even if considered predominantly internal, the document must be disclosed because it is a matter of public interest and its disclosure would not circumvent any agency regulation.

If the threshold test of predominant internality is met, an agency may withhold the requested material “by proving that either [1] ‘disclosure may risk circumvention of agency regulation,’ or [2] ‘the material relates to trivial administrative matters of no genuine public interest.’” Schiller, 964 F.2d at 1207 (citing Schwaner v. Department of Air Force, 898 F.2d 793, 794 (D.C. Cir.1990)). Matters that are of no genuine public interest are generally referred to as “Low 2” while matters that are in the public interest but would risk circumventing agency regulations if disclosed are referred to as “High 2.” Id. at 207.

Assuming, arguendo, that the responsive document is a purely internal matter, it fits the “High 2” category because there is a clear and demonstrated public interest in

matters relating to the JTTFs.¹ The record is needed because the system of government collaboration across jurisdictions implicates core privacy concerns, yet almost nothing is

¹ See e.g. Colin Moynihan, *Activist Unmasks Himself as Federal Informant in G.O.P. Convention Case*, N.Y. TIMES, Jan 5, 2009; Denny Walsh, *Student's Path to FBI Informant*, SACRAMENTO BEE, Sept. 12, 2007; Pachuco, *Joint Terrorism Task Force Questions Professor*, March 13, 2006, <http://la.indymedia.org/news/2006/03/150016.php>; *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*, 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: Giving Cops Too Much Information?*, TIME MAGAZINE, March 9, 2009; Robert O'Harrow, Jr., *Centers Tap Into Personal Databases, State Groups Were Formed After 9/11*, WASH. POST, April 2, 2008; Ryan Singel, *Fusion Center Cash Infusion*, Wired Magazine, March 14, 2007; Brent Kendall, *FBI to Assess Actions Before Hood Shooting*, WALL. ST. J., December 9, 2009; Anderson, Jennifer, *New Council Inherits Task Force Decision*, PORTLAND TRIBUNE Dec. 21, 2004; *Activists Announce Letter to Governor Demanding Complete Investigation of Spying*, MD. NEWS, Aug. 12, 2008; David E. Kaplan, *Spies Among Us*, US NEWS AND WORLD REPORT, May 8, 2006; Erin Rosa, *Colorado Fusion Center to Step Up Intelligence Gathering During DNC*, COLO. INDEPENDENT, July 30, 2008; Bures, Frank, *City's split: fear for safety vs. fear for rights*, CHRISTIAN SCIENCE MONITOR, Oct. 17, 2001; Nakashima, Ellen, *\$1 billion FBI database will track physical characteristics of millions*, BOSTON GLOBE, Dec. 23, 2007; Lisa Myers, *Is the Pentagon Spying on Americans?* MSNBC, Dec. 14, 2005; *Fusion Center Meltdown: Feds stifling open government in VA?* ARS TECHNICA, March 24, 2008; Joseph Straw, *Fusion Centers and Civil Rights*, SECURITY MANAGEMENT, August 2008; Rogers M. Smith, *Civil Liberties in the Brave New World of Antiterrorism*, 93 RADICAL HISTORY REVIEW at 170-85, Fall 2005; James Casey, M.A., *Managing Joint Terrorism Task Force Resources*, FBI ENFORCEMENT BULLETIN, November 2004, at 1-6; Roberto Lovato, *Building the Homeland Security State*, NACLA REPORT ON THE AMERICAS, Vol. 41, No. 6, Nov/Dec 2008, at 15-20; Christopher Ortiz, Nicole Hendricks & Naomi Sugie, *Policing Terrorism: The Response of Local Police Agencies to Homeland Security Concerns*, CRIMINAL JUSTICE STUDIES, Vol 20, No. 2, June 2007, at 91-109; Naomi Klein, *Big Brother Democracy: How Free Speech and Surveillance Are Now Intertwined*, THE NATION, Aug. 28, 2006; Shelley Murphy, *False tips cost antiterror officials time and credibility*, Feb. 1, 2005; Erich Lichtblau, *F.B.I. Goes Knocking for Political Troublemakers*, N.Y. TIMES, Aug. 16, 2004; John Friedman, *Spying on the Protesters*, THE NATION, Sept. 19, 2005; Matthew Rothschild, *Tales of Big Brother*, THE PROGRESSIVE, Aug. 25, 2004; Dafna Linzer, *In New York, a Turf War in the Battle Against Terrorism*, WASHINGTON POST, Mar. 22, 2008.

known about its workings, the standards that guide it or limit this potentially-invasive information-sharing system, or whether the system is being abused. The physical locations of JTTF offices are an important piece of information that the public has an interest in knowing.

As parallel situations demonstrate, the public has expressed an interest in knowing the locations of law enforcement agencies and operations. Last year, when a journalist from The Nation reported that U.S. Immigration and Customs Enforcement had set up secret sub-field offices around the country, there was a great deal of public outcry surrounding the secrecy over offices that carry out governmental functions. See Jacqueline Stevens, America's Secret ICE Castles, THE NATION, Dec. 16, 2009.

Earlier, when it became clear that the U.S. government was holding prisoners in “black sites” around the world, public outcry for the information forced the government to respond. See Jane Mayer, The Black Sites: a Rare Look Inside the C.I.A.'s Secret Interrogation Program, THE NEW YORKER, Aug. 13, 2007. Like these two examples, the public has a right to know and a genuine interest in knowing about the locations of JTTF offices.

Because it is a matter of public interest, the agency may only withhold the document by proving that “disclosure may risk circumvention of agency regulation.” Schiller, 964 F.2d at 1207. Additionally, the agency must demonstrate with adequate specificity how disclosure of records at issue would “significantly risk circumvention of federal statutes or regulations.” See e.g., Crooker v. Bureau of Alcohol, Tobacco, and Firearms, 670 F.2d 1051, 1074-1075 (D.C. Cir. 1981) (en banc) (concluding that it is the government's burden to show that release of a surveillance manual might “help

individuals evade detention by law enforcement authorities”). The agency has not made such an argument.

In fact, the locations of many FBI, JTTF and other law enforcement agencies already are part of the public record; agencies readily post those locations on their websites and materials, and the locations themselves often are in well-marked, easily-identifiable buildings. The following locations, for example, already are public records and easily accessible on the World Wide Web.

Joint Terrorism Task Force offices in the Northeast

Massachusetts: 1 Center Plaza, Boston MA, Suite 600
Rhode Island: 10 Dorrance Street, Providence, RI
Connecticut: 600 State Street, New Haven, CT
Connecticut: 430 State Street, Bridgeport, CT
New Jersey: Claremont Tower 11 Centre Place Newark, NJ

Fusion Centers in New England working with Joint Terrorism Task Force:

Maine: 45 Commerce Dr. Suite 1, Augusta, ME
Vermont: Williston, VT
Massachusetts: 124 Acton Street Maynard, MA
Massachusetts: 1 Schroeder Plaza, Boston, MA

Essentially, this request asks the government to disclose a complete list of these taxpayer-funded offices. Withholding those locations would allow secret offices or “black sites” in our own cities and towns where the JTTF could operate without accountability to the public whom it is seeking to protect.

Finally, if the agency can prove that disclosure of certain documents would significantly risk circumvention of the law, the agency nonetheless has to demonstrate that it has segregated nonexempt material for disclosure. Schreibman v. Dep’t of Commerce, 785 F.Supp. 164, 166 (D.D.C. 1991) (requiring agency to segregate and

release portions of documents that merely identify computer systems rather than contain security plans, which remain protected as vulnerability assessments.).

III. EXEMPTION 7(E) DOES NOT BAR DISCLOSURE OF THIS DOCUMENT

“Exemption 7(E)” provides for the withholding of “records of information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E).

The document sought here – a list of JTTF locations in New England – does not fit the statutory definition. The mere list of locations does not disclose techniques, procedures or guidelines.

Furthermore, in order to demonstrate a “risk of circumvention of the law,” the agency must demonstrate that the rules or procedures it seeks to withhold are not well known to the public. See Rosenfeld v. DOJ, 57 F.3d 803, 815 (9th Cir. 1995) (“Exemption 7(E) only exempts investigative techniques not generally known to the public.”); National Sec. Archive v. FBI, 759 F.Supp. 872, 885 (D.D.C. 1991); Albuquerque Publishing Co. v. Dep’t of Justice, 726 F.Supp. 851, 857 (D.D.C. 1989).

Thus, there must be a particularized showing by the withholding agency that disclosure would undermine or lead to the circumvention of the law. See Davin v. DOJ, 60 F.3d 1043, 1064 (3d Cir. 1995) (requiring agency “to establish that the release of this

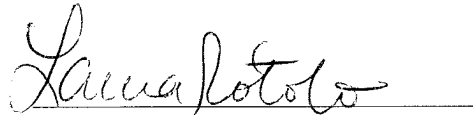
information would risk circumvention of the law,” while rejecting as inadequate “speculation” in government’s brief on this subject.) There has been no particularized showing in this case.

Finally, even if disclosure of certain documents would significantly risk circumvention of the law, the agency must demonstrate that it has segregated nonexempt material. See PHE, Inc. v. DOJ, 983 F.2d 248, 252 (D.C. Cir 1993) (holding that agency must “clearly indicate[] why disclosable material could not be segregated from exempted material”); Voinche v. FBI, 412 F.Supp. 2d 60, 73 (D.D.C. 2006) (ordering agency to produce, inter alia, a proper segregability analysis.)

IV. CONCLUSION

The requested document is subject to disclosure because the FOIA statute and more recently, Presidential guidance, strongly favor a presumption of disclosure and because neither of the cited exemptions allows the agency to withhold the responsive documents. We urge you to release the document.

Thank you for your consideration.


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ACLU Staff Attorney

Thomas R. Cincotta
PRA Civil Liberties Project Director

-- FREEDOM OF INFORMATION APPEAL --

Appeal of FOIA Request No. 1141751-00

Exhibit A



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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.

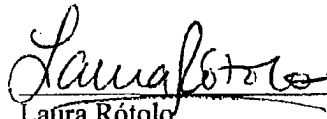
Conclusion

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

-- FREEDOM OF INFORMATION APPEAL --

Appeal of FOIA Request No. 1141751-00

Exhibit B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

January 25, 2010

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

Subject: JTTF/OFFICE LOCATIONS IN NEW ENGLAND

FOIPA No. 1141751- 000

Dear Ms. Rotolo:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Section 552

Section 552a

- Exemption codes for Section 552 (b)(1) through (b)(6) and Section 552a (d)(5) through (k)(7)

1 page was reviewed and 0 pages are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
- referred to the OGA for review and direct response to you.
- referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, 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 easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown, when ident, references usually contain information similar to the information processed in the main file(s).

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) 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;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.