

December 12, 2002

Via Facsimile

Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535
Attention: FOIA/Privacy Act
Fax: (202) 324-3752

**RE: REQUEST UNDER FREEDOM OF INFORMATION ACT AND
PRIVACY ACT**

Dear Freedom of Information Officer:

This letter constitutes a request under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Privacy Act, 5 U.S.C. § 552a. The FOIA request is submitted on behalf of the American Civil Liberties Union Foundation of Northern California (ACLU-NC) and Rebecca A. Gordon. The Privacy Act request is submitted on behalf of Ms. Gordon, a client of the ACLU-NC. *See* Attachment A (notarized authorization of Ms. Gordon).

I. **Background**

On August 7, 2002, Ms. Gordon and her companion, Janet A. Adams, arrived at San Francisco International Airport (SFO) for an American Trans Air (ATA) flight to Boston via Chicago. When they checked in at the ATA counter, an ATA agent told them that their names appeared on a “no fly” list. San Francisco Police Department (SFPD) officers arrived at the scene and detained Ms. Gordon and Ms. Adams. The officers informed Ms. Gordon and Ms. Adams that the police would have to check whether Ms. Gordon’s and Ms. Adams’ names appeared on a “master list.” Although Ms. Gordon and Ms. Adams were eventually allowed to fly, their boarding passes were marked with a red “S”, which subjected them to additional, subsequent searches at SFO. Ms. Adams was again subjected to additional scrutiny when she presented herself for her return flight at Boston Logan International Airport.

The ACLU-NC sent a request to SFO under the California Public Records Act on November 14, 2002 asking for documents relating to the August 7 incident. SFO

responded by providing documentation confirming the existence of a “no-fly” list, and also confirming that Ms. Adams’ and Ms. Gordon’s names were checked against a master “FBI list.” *See* Attachment B (response of SFO to California Public Records Act Request).

II. Request

The ACLU-NC and Ms. Gordon seek disclosure of the following agency records under FOIA and the Privacy Act:

1. All records prepared, collected, or maintained by the Federal Bureau of Investigation (FBI) in connection with the placement of Ms. Gordon’s name or other identifying information on any lists of individuals considered potential threats to transportation or national security, including lists maintained pursuant to the Aviation Transportation Security Act of 2001 (hereinafter “watchlists”).
2. All records prepared, collected, and/or maintained by the FBI about the placement of Ms. Gordon's name or identifying information on the list commonly referred to as the “no fly” list. *See* Attachment B (response of SFO to request under California Public Records Act).
3. All records, including memoranda of understanding and correspondence, transmitted between the FBI, Department of Transportation (DOT), and/or Transportation Security Administration (TSA) and any airport or local police department, including SFO and SFPD, regarding sharing or gathering information related to a “no fly” list or any watchlist.
4. All records, including memoranda, policy directives, and guidances, issued by the FBI and distributed to any airport or local police department, including SFO or SFPD, regarding the “no fly” list or any watchlist.
5. All records, including policy directives, procedures, and guidances, regarding access to the “no fly” list and any watchlists by any individual or agency, including airline or airport employees.
6. All records, including policy directives, procedures, and guidances, concerning how individuals are placed on and removed from the “no fly” list or any watchlist.
7. All records, including policy directives, procedures, and guidances, regarding whether political beliefs, membership in groups, or any other First Amendment activity is a factor in placing individuals on the “no fly” list or any watchlist.

8. All records, including policies, procedures, guidances, and evaluations, regarding the use and accuracy of the “no fly” list or any watchlist and any procedures to correct errors or remove names from those lists.
9. All files and records maintained by the FBI indexed or maintained under the name or identifying information of Ms. Gordon.

We further request the disclosure of any agency records containing the following information, if such information is not already contained in the records disclosed pursuant to paragraphs 1 through 9 above:

1. The number of names on the “no fly” list and all watchlists as of the date of this request.
2. The number of times since the creation of the “no fly” list and effective date of the Aviation Transportation Security Act (ATSA) that the DOT, TSA, FBI, or local or state law enforcement, including SFPD, has stopped or questioned individuals at airports, including SFO, because those individuals were believed to be on the “no fly” list or any watchlist.
3. The number of times since the creation of the “no fly” list or the ATSA’s effective date that an individual was incorrectly identified (even briefly) as being on the “no fly” list or any watchlist.
4. The name(s) of the agency or agencies that maintain(s) the “no fly” list or any watchlist.

Examples of records covered by this request include memoranda, correspondence, analyses, evaluations, policies, reports, notes of meetings, and other written records or records by any other means, including but not limited to records kept on computers, electronic communications or video tapes.

III. Waiver of Processing Fees Under the Freedom of Information Act

The ACLU-NC is a “representative of the news media,” and fees associated with the processing of this request should therefore be “limited to reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU-NC publishes newsletters, news briefings, right-to-know documents, and other materials that are disseminated to the public. Its material is widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee through its public education department. The ACLU-NC also disseminates information through its Web site (www.aclunc.org). The Web site addresses civil

liberties issues in depth, provides features on civil liberties issues in the news, and contains numerous documents that relate to the issues on which the ACLU-NC is focused. Finally, the ACLU-NC disseminates information through a newsletter, which is distributed to subscribers by mail.

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

IV. Waiver of Duplication Costs Under the Freedom of Information Act

We request a fee waiver for duplication costs because disclosure of this information is in the public interest. The information we seek is likely to contribute significantly to the public understanding of government activity. The ACLU-NC is a nonprofit 501(c)(3) organization working to increase citizen participation in governance issues. The ACLU-NC is making this request specifically to further the public's understanding of the government's use of watchlists.

News articles reflect the strong public interest in the "no fly" list and other government watchlists. *See, e.g.*, Ann Davis, "Post-Sept. 11 Watch List Acquires Life of Its Own," *Wall Street Journal* (Nov. 19, 2002); Jack Chang, "Liberties Tested After September 11," *Contra Costa Times* (Nov. 14, 2002); Bob Egelko, "ACLU's TV Ads Make Issue of Bush Security Measures," *San Francisco Chronicle* (Oct. 17, 2002); Steve Jacob, "Vacation Interrupted," *Forth Worth Star-Telegram* (Oct. 11, 2002); Editorial, "A 'No-Fly Zone' in Our Country?" *San Francisco Chronicle* (Sept. 30, 2002); Alan Gaithright, "No-Fly Blacklist Snares Political Activists," *San Francisco Chronicle* (Sept. 27, 2002); "Retired Coast Guard Commander Finds Himself on FBI List," *Associated Press* (Sept. 11, 2002); Ralph R. Ortega, "He's Told Name Just Won't Fly," *New York Daily News* (May 21, 2002); Ryan O'Rourke, "Activists Detained," *Milwaukee Journal Sentinel* (Apr. 26, 2002).

V. Interrelationship between Freedom of Information Act and Privacy Act

Where possible, this request should be construed as a request under FOIA. For the agency's reference in locating relevant records, Ms. Gordon's identifying information is detailed in Attachment C.

VI. Requested Response

If our request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA and/or the Privacy Act. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to

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appeal a decision to withhold any information or to deny a waiver of fees. Pursuant to applicable regulations and statute, we will anticipate your determination on our request within 20 days. *See* 5 U.S.C. § 552(a)(6)(A)(i).

Please respond to Jayashri Srikantiah, Staff Counsel, American Civil Liberties Union of Northern California, 1663 Mission Street, Suite 460, San Francisco, CA 94103, telephone (415) 621-2493.

Thank you for your prompt attention to this matter.

Sincerely,

Jayashri Srikantiah
Staff Counsel