

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN FRIENDS SERVICE COMMITTEE;
UNITED FOR PEACE AND JUSTICE;
VETERANS FOR PEACE; GREENPEACE;
PITTSBURGH ORGANIZING GROUP;
THOMAS MERTON CENTER; ANTI-WAR
COMMITTEE; PITTSBURGH BILL OF RIGHTS
DEFENSE CAMPAIGN; SAVE OUR CIVIL
LIBERTIES CAMPAIGN; CODEPINK
PITTSBURGH; PITTSBURGH RAGING
GRANNIES; TRUTH PROJECT, INC.;
BROWARD ANTI-WAR COALITION; FORT
LAUDERDALE FRIENDS MEETING; PETER D.
ACKERMAN; GLOBAL NETWORK AGAINST
WEAPONS & NUCLEAR POWER IN SPACE;
BRUCE GAGNON; HAITI SOLIDARITY
COMMITTEE; MELBOURNE COUNTER
INAUGURAL; PATRIOTS FOR PEACE; JEFF
NALL; MARIA TELESKA-WHIPPLE; GEORGIA
PEACE AND JUSTICE COALITION; SCHOOL
OF THE AMERICAS WATCH; AMERICAN
FRIENDS SERVICE COMMITTEE MAINE;
MAINE COALITION FOR PEACE AND
JUSTICE; RHODE ISLAND COMMUNITY
COALITION FOR PEACE; PEACE AND
JUSTICE ACTION LEAGUE OF SPOKANE;
SEATTLE RAGING GRANNIES; SOUND
NONVIOLENT OPPONENTS OF WAR;
AMERICAN CIVIL LIBERTIES UNION;
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION; AMERICAN CIVIL LIBERTIES
UNION OF PENNSYLVANIA; AMERICAN
CIVIL LIBERTIES UNION FOUNDATION OF
PENNSYLVANIA; AMERICAN CIVIL
LIBERTIES UNION OF FLORIDA; AMERICAN
CIVIL LIBERTIES UNION FOUNDATION OF
FLORIDA; AMERICAN CIVIL LIBERTIES
UNION OF GEORGIA; AMERICAN CIVIL
LIBERTIES UNION FOUNDATION OF
GEORGIA; MAINE CIVIL LIBERTIES UNION;
MAINE CIVIL LIBERTIES UNION
FOUNDATION; AMERICAN CIVIL LIBERTIES
UNION OF RHODE ISLAND; AMERICAN
CIVIL LIBERTIES UNION FOUNDATION OF
RHODE ISLAND; AMERICAN CIVIL
LIBERTIES UNION OF WASHINGTON; and

Civil Action No. _____

AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOUNDATION,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE,

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF

Preliminary Statement

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the immediate processing and release of agency records requested by plaintiffs from defendant Department of Defense (“DoD”).

2. In December 2005, major media outlets began reporting that a highly secretive component of the Department of Defense was accumulating and maintaining information on peaceful groups within the United States. NBC News published an eight-page excerpt from a Pentagon database of events that the Defense Department considered “threats”; this database included a number of peaceful political gatherings, most of which were aimed at protesting military recruitment or the war in Iraq. Following these reports, Pentagon officials initiated an internal review and retraining of intelligence personnel, and publicly conceded that “irregularities” continue to plague a certain proportion of entries in its threat database.

3. In February and March 2006, plaintiffs filed FOIA requests with the Department of Defense via several of its component offices, seeking the release of records related to the Defense Department’s collection and retention of information pertaining to individuals, organizations, or groups within the United States. These requests sought records

pertaining to agency policies, procedures, and practices for the collection and retention of this information, along with records pertaining to information collected about the specific requesters.

4. Plaintiffs requested expedited processing of their FOIA requests on the ground that there is an “urgent[] need[]” on the part of organizations “primarily engaged in disseminating information” “to inform the public concerning actual or alleged Federal Government activity.” 32 C.F.R. § 286.4(d)(3)(ii).

5. Several of the agency’s components have explicitly denied expedited processing; others have failed to respond to the requests for expedited processing; still others have provided no response at all. In the rare instances in which expedited processing has been granted, plaintiffs are still awaiting the production of documents even though several months have passed.

6. As of the date of this filing, the defendant agency has provided no documents in response to plaintiffs’ requests.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

8. Plaintiff American Friends Service Committee (“AFSC”) was founded by Quakers in 1917 as an instrument for conscientious objectors to the First World War to contribute to binding up the wounds of war: to build houses for war victims, to feed hungry children, to clothe the displaced. AFSC has historically felt called to be a witness against war and to work to change the conditions that cause violent conflict. AFSC coordinated or supported

four of the events listed in the Pentagon's database of suspected domestic "threats." The four AFSC events, which took place between November 2004 and May 2005 in San Francisco, Vermont, Cleveland, and Akron, Ohio, all addressed military recruitment. All four of these classified "threats" were deemed to be "not credible." AFSC's national headquarters is located in Philadelphia, Pennsylvania.

9. Plaintiff United for Peace and Justice ("UFPJ") is a coalition of more than 1,300 local and national groups throughout the United States that have joined together to oppose the war in Iraq. Since its founding in October 2002, UFPJ has spurred hundreds of anti-war protests and rallies around the country, and sponsored four of the largest demonstrations against the Iraq war. On the second anniversary of the beginning of the war in Iraq (the weekend of March 18-19, 2005), UFPJ coordinated more than 700 local protests around the country. Many of these protests were at or near military facilities, including recruitment stations, and the largest demonstration that weekend was in Fayetteville, North Carolina, the home of Fort Bragg. The Fort Bragg demonstration was among the events listed on the Pentagon's "threat" database.

10. Plaintiff Veterans for Peace ("VFP") is a not-for-profit, non-partisan organization of United States veterans. VFP has been a leading voice in the resistance to the current administration's war in Iraq and militaristic approach to international relationships. Several VFP members helped to organize and spoke at the March 19, 2005, demonstration outside Fort Bragg that was included in the Pentagon's "threat" database.

11. Plaintiff Greenpeace is an international advocacy organization dedicated to combating the most serious threats to the planet's biodiversity and environment. In the past several years, Greenpeace has repeatedly engaged the Bush administration through public protest and activism.

12. Plaintiff Pittsburgh Organizing Group (“POG”) is an activist group that has organized more than 75 campaigns and actions dealing with issues of war, militarism, labor rights, environmental issues, and global financial institutions. One campaign, launched in April 2005 to counter military recruitment, has included over two dozen pickets at a local recruiting hub station, a petition to restrict access of military recruiters at area schools, and actions that confront recruiters on campuses and in the streets. One of these confrontations – POG’s April 26, 2005 challenge to military recruiters at Carnegie Mellon University – was included in the Pentagon’s “threat” database.

13. Plaintiff Thomas Merton Center (“TMC”) is a 501(c)(3) entity, incorporated in Pennsylvania in 1972 with its principal place of business in Pittsburgh, Pennsylvania. TMC is a peace and justice resource and organizing center that is actively involved in organizing non-violent resistance to war. TMC acts as a resource and organizing center for 25 different projects and helps people from diverse philosophies and faiths to find a common ground in the nonviolent struggle to bring about a more peaceful and just world. Prior to various protests in the Pittsburgh area, TMC has received visits from the U.S. Secret Service.

14. Plaintiff Anti-War Committee (“AWC”) was created in January of 2003 to oppose the imminent invasion of Iraq. AWC has organized a number of marches and events against the Iraq war. In 2005, AWC organized the largest known convoy of Pittsburgh buses to the anti-war march in Washington, D.C., held on September 24, 2005. AWC also organized the March convergence and the Bring Them Home Now Tour with anti-war activist Cindy Sheehan in September, 2005. Both events drew thousands of Americans to protest the war in Iraq.

15. Plaintiff Pittsburgh Bill of Rights Defense Campaign is organizing a grassroots response to defend civil liberties in America today. Along with other organizations, the

campaign successfully petitioned the Pittsburgh City Council to pass a resolution to resist the implementation of the USA PATRIOT Act.

16. Plaintiff Save Our Civil Liberties Campaign (“SOCL”) is a national organization formed in response to the 2003 Free Trade Area of the Americas Ministerial in Miami. Among other things, SOCL organized highly publicized anti-war protests at the 2004 Democratic and Republican National Conventions.

17. Plaintiff CODEPINK Pittsburgh (“CODEPINK”) joins its sister branches worldwide in its struggle for peace and equality. CODEPINK believes women can be instrumental in ending the invasion and occupation of Iraq. CODEPINK has organized numerous public actions against the war and will continue to express opposition to U.S. foreign policy until all U.S. troops are home safely and the quality of life in Iraq improves.

18. Plaintiff Pittsburgh Raging Grannies aims to promote global peace, justice, and social and economic equality by raising public awareness through the medium of song and humor. Pittsburgh Raging Grannies challenge their audiences to work to bring about the social changes that are required in order to end economic oppression, particularly of women and children, and to end racial inequality, environmental destruction, human rights violations, and arms proliferation. The Raging Grannies have organized and/or performed at numerous peace rallies in and around Pittsburgh, and appear regularly at peace and freedom events throughout the greater Pittsburgh area.

19. Plaintiff Truth Project, Inc. (“Truth Project”) is a Florida non-profit corporation, located in Palm Beach County, Florida, consisting of peace and social justice activists whose meetings in 2004 and 2005 took place in a Quaker church in Lake Worth. The Truth Project provides educational resources to high school students regarding the facts surrounding military enlistment. As reported in December 2005 by NBC News, one of the Truth

Project's planning meetings was listed in the Pentagon's database of suspected domestic "threats."

20. Plaintiff Broward Anti-War Coalition ("BAWC") is a grassroots coalition of several peace organizations, centered in Fort Lauderdale, Florida, that joined together in the fall of 2001 in opposition to U.S. military intervention in Afghanistan. BAWC has organized or participated in every major anti-war demonstration in South Florida since 2001, and has participated in major social justice events such as the Miami Free Trade Area of the Americas demonstrations in November 2003 and the Organization of American States protest in June 2005.

21. Plaintiff Fort Lauderdale Friends Meeting is part of the worldwide Religious Society of Friends ("Quakers"). Their service in the world originates from their meeting for worship and is guided by their testimonies of Simplicity, Integrity, Peace, Equality, and Community. In belief that policies of the present administration run contrary to their stated testimonies, they act to oppose those policies.

22. Plaintiff Peter D. Ackerman is clerk of the Peace and Social Justice Committee of the Fort Lauderdale Friends. He has participated in, and helped to organize, actions to further their goals.

23. Plaintiff Global Network Against Weapons & Nuclear Power in Space ("Global Network") was created in 1992 to build an international movement to prevent the arms race from moving into space. Through the production of video documentaries, organizing protests, speaking tours, and media work, the Global Network has been able to take its message throughout the United States and around the world.

24. Plaintiff Bruce Gagnon has been a full-time peace and justice activist since 1978. From 1983 to 1998, he coordinated the Florida Coalition for Peace & Justice. A co-founder of the Global Network Against Weapons & Nuclear Power in Space, Bruce has been

working full time for that organization since 1998 and has traveled throughout the world speaking and organizing protests.

25. Plaintiff Haiti Solidarity Committee is based in south Florida and has organized numerous protests and lobbying campaigns against the Bush administration's support for the current regime in Haiti. It also organized the Committee to Free Father Jean-Juste, which spearheaded a successful effort that led to the priest's freedom. Last spring, the committee played a leadership role in the Alliance for Justice, a coalition of peace and justice groups that organized a mass protest outside of the Organization of American States Conference in Fort Lauderdale.

26. Plaintiff Melbourne (Fla.) Counter Inaugural (also known as Brevard County Counter Inaugural) was created by Brevard County citizens who joined together to "mourn" symbolically the election of President Bush and the threat they felt he represented to their civil rights. The group crafted headstones representing the civil rights they believed were in jeopardy under the Bush administration and conducted a mock funeral procession on the day of the president's second inauguration.

27. Plaintiff Patriots for Peace is an informal citizen group of Brevard and Indian River residents who oppose the war in Iraq. The group began organizing demonstrations against the war in the lead-up to the invasion of Iraq. The group also organized several anti-war vigils. Since 2003, the group has continued to help organize anti-war demonstrations, vigils and other events.

28. Plaintiff Jeff Nall is a community activist and freelance writer. In 2003, Jeff helped found Patriots for Peace and became a leader in the anti-war movement in Brevard County, Florida. He has organized numerous peace vigils and demonstrations, as well as rallies

for marriage equality, reproductive rights and civil liberties. Jeff also helped organize the Space Coast Progressive Alliance, and regularly contributes to progressive publications.

29. Plaintiff Maria Telesca-Whipple has worked for many years in Brevard County, Florida, as an organizer for the Global Network Against Nuclear Weapons & Power in Space. She has attended numerous peace rallies.

30. Plaintiff Georgia Peace and Justice Coalition is an umbrella group of faith, student, and community organizations opposed to war and globalization. The Coalition has organized dozens of non-violent vigils and marches, petition campaigns, and educational campaigns opposing the war in Iraq and calling for justice on issues ranging from globalization to Katrina relief. News reports have revealed that the DoD gathered information on March 28, 2005, and April 8, 2005, Georgia Peace and Justice Coalition events.

31. Plaintiff School of the Americas Watch (“SOAW”) is an independent organization that seeks to close the U.S. Army School of the Americas through vigils and fasts, demonstrations and nonviolent protest, as well as media and legislative work. SOAW holds annual demonstrations outside the gates of Fort Benning in Columbus, Georgia. Records obtained through a previous FOIA request reveal that SOAW has been a target of surveillance by federal agents.

32. Plaintiff American Friends Service Committee: Maine (“AFSC: Maine”) is an organization committed to bringing balanced information about military recruitment to Maine high school students. AFSC: Maine’s Program on Youth and Militarism seeks to ensure that students know that they have a right to discuss the military without being forced to enlist, and to participate in open dialogue about militarism and society. AFSC: Maine has helped lead efforts in Maine to protect high school students’ private information from military recruiters.

33. Plaintiff Maine Coalition for Peace and Justice (“MCPJ”) is a statewide organization of individual citizens and Maine group representatives working collectively and nonviolently for social equality, economic justice, direct democracy, and regenerative environmental policies. Members of the MCPJ have organized rallies and marches across Maine in opposition to the war in Iraq.

34. Plaintiff Rhode Island Community Coalition for Peace (“RICCP”) is a coalition of individuals and groups that support the immediate withdrawal of troops from Iraq and oppose the Patriot Act. RICCP has organized many public events, including a March 19, 2004, rally and march through downtown Providence and a December 2004 peaceful protest in front of the Rhode Island National Guard Office in downtown Providence. The December event was listed in the Pentagon’s database of suspected domestic “threats.” RICCP also sponsored an appearance by anti-war activist Cindy Sheehan last July, and helped organize transportation for the September 24, 2005, anti-war march in Washington, D.C.

35. Plaintiff Peace and Justice Action League of Spokane (“PJALS”) is a local membership organization committed to involving individuals and local communities in building foundations for a just and nonviolent world through community organizing, nonviolence training, volunteer involvement, human rights education, and advocacy. Since its inception, PJALS has sponsored several large public protests, including anti-war and anti-globalization demonstrations and the largest anti-racism march in the history of the Inland Northwest.

36. Plaintiff Seattle Raging Grannies promotes global peace, justice, and social and economic equality by raising public awareness through song and humor. The Seattle Raging Grannies have performed at numerous anti-war and anti-globalization events in the Puget Sound region.

37. Plaintiff Sound Nonviolent Opponents of War (“SNOW”) exists to oppose human rights abuses, military aggression, and weapons of mass destruction, and to advocate for a foreign policy that promotes human rights, economic justice, and self-determination. Most recently, SNOW’s activities have concentrated on protesting the war in Iraq and Bush Administration policies.

38. Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (collectively, “the ACLU”) together comprise a national organization that works to protect civil rights and civil liberties. The American Civil Liberties Union Foundation is a 501(c)(3) organization that provides free legal representation and educates the public about civil rights and civil liberties issues. The American Civil Liberties Union is a separate non-profit, non-partisan, 501(c)(4) membership organization engaged in public education and analysis of pending and proposed legislation. As the leading defender of freedom, equality, privacy, and due process rights in the United States, the ACLU has provided direct representation to individuals and organizations seeking to expose and challenge illegal government surveillance activity.

39. Plaintiffs American Civil Liberties Union of Pennsylvania and American Civil Liberties Union Foundation of Pennsylvania (collectively “ACLU-PA”); American Civil Liberties Union of Florida and American Civil Liberties Union Foundation of Florida (collectively “ACLU-FL”); American Civil Liberties Union of Georgia and American Civil Liberties Union Foundation of Georgia (collectively “ACLU-GA”); Maine Civil Liberties Union and Maine Civil Liberties Union Foundation (collectively “MCLU”); American Civil Liberties Union of Rhode Island and American Civil Liberties Union Foundation of Rhode Island (collectively “ACLU-RI”); and American Civil Liberties Union of Washington and American Civil Liberties Union of Washington Foundation (collectively “ACLU-WA”), are six state

affiliates of the ACLU. Each of these affiliate organizations works to fulfill the goals of the national ACLU, by similar means, at a local and regional level. The division of organization and function between the “Union” and the “Foundation” components of each of the affiliate plaintiffs mirrors that of the national American Civil Liberties Union and American Civil Liberties Union Foundation.

40. Defendant United States Department of Defense (“DoD”) is a Department of the Executive Branch of the United States Government. The DoD is an agency within the meaning of 5 U.S.C. § 552(f)(1).

Facts

41. According to published news reports, the Counterintelligence Field Activity Agency (“CIFA”), a Department of Defense component whose size and budget remain secret, has been collecting and maintaining information about domestic organizations and their peaceful political activities. See Walter Pincus, “Pentagon’s Intelligence Authority Widens,” *Washington Post*, December 19, 2005. After NBC News obtained and reported on a secret 400-page DoD document that listed dozens of anti-war meetings or protests as “suspicious incidents” in which the Department had apparently taken an investigative interest, see Lisa Myers et al., “Is the Pentagon Spying on Americans?,” *msnbc.com*, December 14, 2005, DoD officials ordered a review of the information in its Threat and Local Observation Notice (“TALON”) intelligence database to determine whether information on subjects that were determined to pose no threat had been improperly retained in the system. See Walter Pincus, “Pentagon Will Review Database on U.S. Citizens,” *Washington Post*, December 15, 2005. The administration subsequently initiated the process of setting standards to govern how its agencies collect and maintain reports of activity they consider suspicious. See Walter Pincus, “Corralling Domestic Intelligence,” *Washington Post*, January 13, 2006. Deputy Secretary of Defense Gordon

England thereafter directed that DoD intelligence and counterintelligence personnel receive “refresher training” on policies regarding the collection, retention, dissemination, and use of intelligence information, and that the TALON database be reviewed to identify reports that should not be in it. *See* Memorandum from Gordon England, Deputy Sec’y of Defense, to Secretaries of the Military Departments et al., January 13, 2006, *available at* http://www.aclu.org/images/spyfiles/asset_upload_file342_25864.pdf.

42. There has been extensive public and media interest in the military’s practice of gathering intelligence domestically on anti-war/counter-recruitment demonstrators and others engaging in peaceful protest activity. The initial NBC News report disclosing the extent of the Pentagon’s surveillance of peaceful demonstrations and organizations, *see* Lisa Myers et al., “Is the Pentagon Spying on Americans?,” *msnbc.com*, December 14, 2005, generated widespread attention from the news media and public officials both nationally and locally. In the wake of the NBC report, there were numerous news reports on CIFA, the TALON system and its potential use, and government officials’ various responses to the disclosure of the scope of DoD surveillance of domestic political activities. *See, e.g.*, Walter Pincus, “Unverified Reports of Terror Threats Linger,” *Washington Post*, January 31, 2006; Michael Isikoff, “The Other Big Brother,” *Newsweek*, January 30, 2006; “Bad Targeting,” *Washington Post*, January 30, 2006 (editorial); Frances Grandy Taylor, “The Pacifist ‘Threat’; Disclosure of Recent Government Surveillance of Quaker Activities Doesn’t Surprise Members,” *Hartford Courant*, January 16, 2006; Sarah Kershaw, “A Protest, a Spy Program and a Campus in Uproar,” *New York Times*, January 14, 2006; Walter Pincus, “Corralling Domestic Intelligence,” *Washington Post*, January 13, 2006; David Kaplan, “The Eyes Have It,” *U.S. News & World Report*, January 9, 2006; “A Fog of False Choices,” *New York Times*, December 20, 2005 (editorial mentioning Pentagon program); Walter Pincus, “Pentagon’s Intelligence Authority Widens,” *Washington Post*,

December 19, 2005; "What Can't the Pentagon Understand About Americans' Right Peaceably to Assemble," *Fayetteville Observer*, December 19, 2005 (editorial); "Big Brother Bush," *Pittsburgh Post-Gazette*, December 18, 2005 (editorial); David S. Cloud, "Pentagon Is Said To Mishandle a Counterterrorism Database," *New York Times*, December 16, 2005; Arianna Huffington, "It's Dirty Tricks All Over Again," *Salt Lake City Tribune*, December 16, 2005 (syndicated column appearing in other papers as well); Chris Matthews, "Update: Pentagon Eyeing Activist Groups?," *Hardball*, December 16, 2005 (interview by Chris Matthews with Lisa Myers of NBC news); Walter Pincus, "Pentagon Will Review Database on U.S. Citizens," *Washington Post*, December 15, 2005; Associated Press, "Pentagon to Review Spy Files After NBC Report," *msnbc.com*, December 15, 2005 (also printed elsewhere including *foxnews.com*); Vicky O'Hara, "Pentagon to Probe Abuse of Security Database," *National Public Radio, All Things Considered*, December 15, 2005; Charles Aldinger, "Pentagon Admits Compiling Data on Antiwar Activists," *Capitol Hill Blue*, December 15, 2005 (Reuters article reprinted elsewhere as well including Yahoo! News); Kevin Deutsch, "Pentagon Calls Lake Worth Peace Meeting a 'Threat,'" *Palm Beach Post*, December 15, 2005; Robert Burns, "Pentagon To Review Possible Database Misuse," *boston.com*, December 15, 2005 (Associated Press writer posted on cite that hosts the Boston Globe); Steven Elbow, "Local Anti-War Protest on Pentagon List," *Madison.com*, December 15, 2005.

43. That there is widespread public concern regarding this program is demonstrated not only by the quantity of news reports it has generated but also by official reaction to these reports, including the initiation of internal review and retraining of intelligence personnel. See Memorandum from Gordon England, Deputy Sec'y of Defense, to Secretaries of the Military Departments et al., January 13, 2006; Gerry J. Gilmore, "DOD Orders Review of Anti-Threat Intel-Gathering System," *American Forces Press Service*, December 15, 2005. DoD

officials have conceded that “irregularities” continue to plague a certain proportion of entries in its threat database. *See* Walter Pincus, “Unverified Reports of Terror Threats Linger,”

Washington Post, January 31, 2006.

44. A number of political leaders have questioned and/or spoken out against the inclusion of anti-war and counter-recruitment protests in the TALON database. These statements have also drawn significant media attention. *See, e.g.*, Erica Werner, “Senator Raises Question On Pentagon Program,” *sfgate.com*, January 12, 2005 (Associated Press article reprinted in numerous locations); Becky Bartindale, “Lofgren Seeks Probe of Pentagon Activity,” *San Jose Mercury News*, January 3, 2006; Jondi Gumz, “Congressman Denounces Pentagon Spying at UCSC,” *Santa Cruz Sentinel*, December 17, 2005; Kathryn Casa, “Pentagon Spy Database Includes Vermont Protests,” *Vermont Guardian*, December 20, 2005 (indicating concern of Senator Patrick Leahy of Vermont, ranking member of the Senate Judiciary Committee); Lisa Myers, et al., “Senator Demands Investigation of Spy Database,” *msnbc.com*, December 15, 2005 (citing letter by Senator Bill Nelson of Florida to Secretary of Defense Donald Rumsfeld).

Plaintiffs’ FOIA requests

45. In February and March, 2006, FOIA requests were submitted, either by or on behalf of each plaintiff, to several components of defendant DoD. The requests all sought records pertaining to the DoD’s collection and retention of information about the plaintiffs. One of the requests, submitted by plaintiff ACLU, also sought records pertaining to agency policies, procedures, and practices governing the collection and retention of information pertaining to individuals, organizations, or groups within the United States. All of these requests sought expedited processing, limitation of processing fees, and waiver of all costs. The details of the specific requests follow.

46. On February 1, 2006, plaintiffs ACLU, ACLU-PA, ACLU-FL, ACLU-GA, MCLU, and ACLU-RI submitted FOIA requests to the following five components of the DoD: Directorate for Freedom of Information and Security Review; Department of the Navy; Department of the Air Force; Inspector General of the Department of Defense; and Defense Intelligence Agency. Plaintiffs ACLU, ACLU-FL, ACLU-GA, MCLU, and ACLU-RI also submitted the same requests to the Department of the Army.

47. Plaintiff ACLU submitted its request on behalf of itself and plaintiffs AFSC, UFPJ, VFP, and Greenpeace. This request sought records pertaining to DoD's collection and retention of information about plaintiffs ACLU, AFSC, UFPJ, VFP, and Greenpeace, including the reasons for collecting information on plaintiffs, the means by which information was collected, and the sharing of such information, among other details. This request also sought records pertaining to agency policies, procedures, and practices governing the collection and retention of information pertaining to individuals, organizations, or groups within the United States, including any authorizations to collect such information and agency analyses of the legality or constitutionality of such information gathering, among other details.

48. Plaintiff ACLU-PA submitted its request on behalf of itself and plaintiffs POG, TMC, AWC, Pittsburgh Bill of Rights Defense Campaign, Save Our Civil Liberties Campaign, CODEPINK Pittsburgh, and Pittsburgh Raging Grannies. Plaintiff ACLU-FL submitted its request on behalf of itself and plaintiffs Truth Project, BAWC, Fort Lauderdale Friends Meeting, Ackerman, Global Network, Gagnon, Haiti Solidarity Committee, Melbourne Counter Inaugural, Patriots For Peace, Nall, and Telesca-Whipple. Plaintiff ACLU-GA submitted its request on behalf of itself and plaintiffs Georgia Peace and Justice Coalition and SOAW, along with several other requesters. Plaintiff MCLU submitted its request on behalf of itself and plaintiffs AFSC: Maine and MCPJ. Plaintiff ACLU-RI submitted its request on behalf

of itself and plaintiff RICCP, along with several other requesters. Each of these requests sought records pertaining to DoD's collection and retention of information about the requesters, including the reasons for collecting information, the means by which information was collected, and the sharing of such information, among other details.

49. On March 21 and March 23, 2006, plaintiff ACLU-WA submitted a FOIA request to defendant DoD. Like most of the other plaintiffs in this case, the ACLU-WA sent its request to the following six components of the DoD: Directorate for Freedom of Information and Security Review; Department of the Army; Department of the Navy; Department of the Air Force; Inspector General of the Department of Defense; and Defense Intelligence Agency. The ACLU-WA's request was submitted to all of the above components except the Department of the Army and the Department of the Navy on March 21; the Army and Navy requests were submitted March 23.

50. Plaintiff ACLU-WA submitted its request on behalf of itself and plaintiffs PJALS, Seattle Raging Grannies, and SNOW, along with several other requesters. Like the other requests, this request sought records pertaining to DoD's collection and retention of information about the requesters, including the reasons for collecting information, the means by which information was collected, and the sharing of such information, among other details.

51. All of the above FOIA requests sought expedited processing on the grounds of an "urgent[] need[]" on the part of an organization "primarily engaged in disseminating information" "to inform the public concerning actual or alleged Federal Government activity." 32 C.F.R. § 286.4(d)(3)(ii).

52. All of the above FOIA requests sought a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("[F]ees shall be limited to reasonable standard charges for

document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .”).

53. All of the above FOIA requests sought a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge . . . if disclosure of the 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 is not primarily in the commercial interest of the requester.”).

54. The FOIA requests submitted by plaintiffs ACLU, ACLU-PA, ACLU-FL, ACLU-GA, MCLU, and ACLU-RI also requested that all information responsive to the requests be preserved and not destroyed before being provided to the requesters.

Plaintiffs’ Entitlement to Expedited Processing

55. The FOIA provides that requests characterized by a “compelling need” are to receive expedited processing, in accordance with regulations promulgated by the queried agency. 5 U.S.C. § 552(a)(6)(E). Both under the expedited processing provision of the FOIA and the corresponding regulation promulgated by DoD, “compelling need” includes cases in which “the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.” 32 C.F.R. 286.4(d)(3)(ii); *see also* 5 U.S.C. § 552(a)(6)(E)(v)(II) (defining compelling need as “urgency to inform the public concerning actual or alleged Federal Government activity” on the part of “a person primarily engaged in disseminating information”).

56. As explained in plaintiffs’ various FOIA requests, plaintiffs are entitled to expedited processing of their requests.

57. Plaintiffs ACLU, ACLU-PA, ACLU-FL, ACLU-GA, MCLU, ACLU-RI, and ACLU-WA are organizations “primarily engaged in disseminating information.” The ACLU is a

national organization dedicated to the defense of civil rights and civil liberties. Dissemination of information to the public is a critical and primary component of the ACLU's mission and work. Specifically, the ACLU publishes newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly disseminated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee through the ACLU's public education department. The ACLU also disseminates information through its heavily visited web site, www.aclu.org. The web site addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The website specifically includes features on information obtained through the FOIA. *See, e.g.*, www.aclu.org/torturefoia; www.aclu.org/spyfiles. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail. Finally, the ACLU produces an in-depth television series on civil liberties.

58. In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. Plaintiffs ACLU-PA, ACLU-FL, ACLU-GA, MCLU, ACLU-RI, and ACLU-WA are six such offices. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived material available at the American Civil Liberties Union Archives, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library. ACLU publications are often disseminated to relevant groups across the country, which then further distribute them to their members or to other parties.

59. Depending on the results of the FOIA requests that are the subject of this action, plaintiffs ACLU, ACLU-PA, ACLU-FL, ACLU-GA, MCLU, ACLU-RI, and ACLU-WA plan to disseminate the information gathered by these requests to the public through the informational activities detailed in the two preceding paragraphs.

60. There is an “urgent need” to inform the public about DoD’s domestic intelligence-gathering on individual citizens, as well as political, religious, and community organizations throughout the nation. Such government activity may infringe upon free speech, free association, and privacy rights, which are guaranteed by the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Requests for information bearing upon potential constitutional violations require an immediate response so that steps may be taken to ensure any violations cease and future violations are prevented.

61. The possibility that the government is targeting individuals, organizations, and groups for surveillance on the basis of their political viewpoints, affiliations, or activities raises fundamental questions about the government’s integrity. The government’s singling out its political adversaries on the basis of their political viewpoint is a critical issue with a long history dating back to the founding of the nation. Questions about the government’s integrity in these areas substantially affect the public’s confidence in law enforcement and the legal system.

62. DoD’s regulations implementing FOIA specify that information is “[u]rgently needed” where the information “has a particular value that will be lost if not disseminated quickly” – a criterion that is generally met by “a breaking news story of general public interest.” 32 C.F.R. § 286.4(d)(3)(ii)(A). Here, there is extensive public and media interest in the military’s practice of gathering intelligence domestically on anti-war/counter-recruitment demonstrators and others engaging in protected activity.

63. In support of their request for expedited processing, plaintiffs cited dozens of news articles – many of them republished by multiple news outlets – including the articles described in paragraphs 41-44 above.

64. As reflected in the widespread and ongoing media coverage and the outcry from public officials, the DoD's domestic intelligence-gathering program constitutes a breaking and unfolding news story, and uncovering and disseminating information about the government's domestic surveillance efforts and operations is a matter of continuing public interest and urgent concern. Providing the public with additional information about DoD's surveillance policies and practices quickly is critical to enabling the public to understand and assess the government's continuing use of domestic surveillance methods, to its understanding and evaluation of the scope of their use and efficacy, and to its understanding and evaluation of whether civil liberties are being violated. Because First Amendment rights are at stake, prompt disclosure of this information is also crucial to reducing fear and anxiety among individuals and groups exercising their First Amendment-protected rights, and to ensuring that lawful protest activities are not chilled by the veil of secrecy surrounding government surveillance.

65. Finally, there is a very real risk that information will be lost if these FOIA requests are not expedited. Although news reports indicate serious concern among DoD officials that information about suspected threats has been improperly retained, *see* Walter Pincus, "Pentagon Will Review Database on U.S. Citizens," *Washington Post*, December 15, 2005, the England directive required the identification of reports improperly retained in the TALON database, *see* Memorandum from Gordon England, Deputy Sec'y of Defense, to Secretaries of the Military Departments et al., January 13, 2006, and the head of CIFA indicated in January that the purging of the database was ongoing at that time. *See* Walter Pincus, "Unverified Reports of Terror Threats Linger," *Washington Post*, January 31, 2006.

**Defendants' Failure to
Disclose the Records Sought**

66. Defendants are improperly withholding the records sought by plaintiffs' FOIA requests.

67. As of the date of this filing, neither the defendant agency nor any of its components has provided any documents in response to any of plaintiffs' FOIA requests, nor stated which records, if any, the agency intends to disclose.

68. As detailed in the paragraphs that follow, several of the agency's components have explicitly denied expedited processing; others have failed to respond to the request for expedited processing; still others have provided no response at all. In the rare instances in which expedited processing has been granted, plaintiffs are still awaiting the production of documents even though several months have passed.

69. Plaintiffs have exhausted the applicable administrative remedies.

Plaintiff ACLU's request

70. By letter dated February 13, 2006, the DoD's Office of Freedom of Information denied the ACLU's requests for expedited processing and for a fee waiver.

71. By letter dated March 10, 2006, the Department of the Air Force denied the ACLU's request for expedited processing. The Air Force then informed the ACLU by letter dated April 12, 2006, that it had found no records responsive to the ACLU's request. However, a letter from the Air Force's Office of Special Investigations, dated April 17, 2006, informed the ACLU that this office needed additional time to process the request.

72. By letter dated March 31, 2006, the Defense Intelligence Agency granted the ACLU's request for expedited processing but stated that "it is still impossible for us to forecast when your case will be completed."

73. By letter dated April 5, 2006, the Department of the Army informed the ACLU that, although the agency had expedited the ACLU's request, the agency was "unable to comply with the statutory 20-day time limit in processing your request" and that the requesters "may consider this delay an administrative denial or you may agree to wait for a substantive reply upon completion of our coordination."

74. By letter dated April 18, 2006, the Department of the Navy denied the ACLU's request for expedited processing.

75. To date, plaintiffs ACLU, AFSC, UFPJ, VFP, and Greenpeace have received no response from the Inspector General of the Department of Defense, the other component of the DoD to which their request was directed.

Plaintiff ACLU-PA's request

76. By letter dated February 7, 2006, the Inspector General of the Department of Defense informed the ACLU-PA that it was referring its FOIA request to the DoD's Freedom of Information Office.

77. By letter dated February 16, 2006, the DoD's Office of Freedom of Information denied the ACLU-PA's requests for expedited processing and for a fee waiver.

78. By letter dated February 16, 2006, the Defense Intelligence Agency granted the ACLU-PA's request for expedited processing but stated that "it is still impossible for us to forecast when your case will be completed."

79. By letter dated March 8, 2006, the Department of the Navy's Marine Corps Headquarters informed the ACLU-PA that it does not organize its documents by subject matter and therefore needed to research the request further. The Marine Corps did not specify when its research would be completed, and informed the ACLU-PA that it may consider the Marine Corps response to be an adverse determination. By letter dated March 27, 2006, the Department

of the Navy informed the ACLU-PA it was referring its FOIA request to the Naval Criminal Investigative Service (“NCIS”). By letter dated April 18, 2006, the Department of the Navy, through NCIS, denied the ACLU-PA’s request for expedited processing.

80. By letter dated March 10, 2006, the Department of the Air Force denied the ACLU-PA’s request for expedited processing. The Air Force then informed the ACLU-PA by letter dated April 12, 2006, that it had found no records responsive to the ACLU-PA’s request. However, a letter from the Air Force’s Office of Special Investigations, dated April 17, 2006, informed the ACLU-PA that this office needed additional time to process the request.

Plaintiff ACLU-FL’s request

81. By letter dated February 7, 2006, the Inspector General of the Department of Defense informed the ACLU-FL it was referring its FOIA request to the DoD’s Freedom of Information Office.

82. By letter dated February 13, 2006, the DoD’s Office of Freedom of Information denied the ACLU-FL’s requests for expedited processing and for a fee waiver.

83. By letter dated February 22, 2006, the Department of the Army informed the ACLU-FL that it was referring its FOIA request to the Army’s Freedom of Information/Privacy Office. That office then informed ACLU-FL, by letter dated March 6, 2006, that it was referring the FOIA request to Intelligence and Security Command, Public Affairs Office. By letter dated March 15, 2006, that office informed the ACLU-FL that the agency was “unable to comply with the statutory 20-day time limit in processing your request” and that the requesters “may consider this delay an administrative denial . . . or you may agree to wait for a substantive reply upon completion of our coordination.” By letter dated May 4, 2006, the Department of the Army informed the ACLU-FL that “no records responsive to your request were located.”

84. By letter dated March 8, 2006, the Department of the Navy's Marine Corps Headquarters informed the ACLU-FL that it does not organize its documents by subject matter and therefore needed to research the request further. The Marine Corps did not specify when its research would be completed, and informed the ACLU-FL that it may consider the Marine Corps response to be an adverse determination. By letter dated March 27, 2006, the Department of the Navy informed the ACLU-FL it was referring its FOIA request to the Naval Criminal Investigative Service ("NCIS"). By letter dated April 18, 2006, the Department of the Navy, through NCIS, denied the ACLU-FL's request for expedited processing.

85. By letter dated March 10, 2006, the Department of the Air Force denied the ACLU-FL's request for expedited processing. The Air Force then informed the ACLU-FL by letter dated April 12, 2006, that it had found no records responsive to the ACLU-FL's request. However, a letter from the Air Force's Office of Special Investigations, dated April 17, 2006, informed the ACLU-FL that this office needed additional time to process the request.

86. By letter dated March 31, 2006, the Defense Intelligence Agency granted the ACLU-FL's request for expedited processing but stated that "it is still impossible for us to forecast when your case will be completed."

Plaintiff ACLU-GA's request

87. By letter dated February 7, 2006, the Inspector General of the Department of Defense informed the ACLU-GA it was referring its FOIA request to the DoD's Freedom of Information Office.

88. By letter dated February 13, 2006, the DoD's Office of Freedom of Information denied the ACLU-GA's requests for expedited processing and for a fee waiver.

89. By letter dated February 22, 2006, the Department of the Army informed the ACLU-GA that it was referring its FOIA request to the Army's Freedom of Information/Privacy

Office. That office then informed ACLU-GA, by letter dated March 6, 2006, that it was referring the FOIA request to Intelligence and Security Command, Public Affairs Office. By letter dated March 15, 2006, that office informed the ACLU-GA that the agency was “unable to comply with the statutory 20-day time limit in processing your request” and that the requesters “may consider this delay an administrative denial . . . or you may agree to wait for a substantive reply upon completion of our coordination.” By letter dated May 4, 2006, the Department of the Army informed the ACLU-GA that “no records responsive to your request were located.”

90. By letter dated March 8, 2006, the Department of the Navy’s Marine Corps Headquarters informed the ACLU-GA that it does not organize its documents by subject matter and therefore needed to research the request further. The Marine Corps did not specify when its research would be completed, and informed the ACLU-GA that it may consider the Marine Corps response to be an adverse determination. By letter dated March 27, 2006, the Department of the Navy informed the ACLU-GA that it was referring its FOIA request to the Naval Criminal Investigative Service (“NCIS”). By letter dated April 18, 2006, the Department of the Navy, through NCIS, denied the ACLU-GA’s request for expedited processing.

91. By letter dated March 10, 2006, the Department of the Air Force denied the ACLU-GA’s request for expedited processing. The Air Force then informed the ACLU-GA by letter dated April 12, 2006, that it had found no records responsive to the ACLU-GA’s request. However, a letter from the Air Force’s Office of Special Investigations, dated April 17, 2006, informed the ACLU-GA that this office needed additional time to process the request.

92. By letter dated March 31, 2006, the Defense Intelligence Agency granted the ACLU-GA’s request for expedited processing but stated that “it is still impossible for us to forecast when your case will be completed.”

Plaintiff MCLU's request

93. By letter dated February 7, 2006, the Inspector General of the Department of Defense informed MCLU it was referring its FOIA request to the DoD's Freedom of Information Office.

94. By letter dated February 16, 2006, the DoD's Office of Freedom of Information denied the MCLU's requests for expedited processing and for a fee waiver.

95. By letter dated February 21, 2006, the Department of the Army informed the MCLU that it was referring its FOIA request to the Army's Freedom of Information/Privacy Office. That office then informed MCLU, by letter dated March 6, 2006, that it was referring the FOIA request to Intelligence and Security Command, Public Affairs Office. By letter dated March 15, 2006, that office informed the MCLU that the agency was "unable to comply with the statutory 20-day time limit in processing your request" and that the requesters "may consider this delay an administrative denial . . . or you may agree to wait for a substantive reply upon completion of our coordination." By letter dated May 4, 2006, the Department of the Army informed the MCLU that "no records responsive to your request were located."

96. By letter dated March 10, 2006, the Department of the Air Force denied the MCLU's request for expedited processing. The Air Force then informed the MCLU by letter dated April 12, 2006, that it had found no records responsive to the MCLU's request. However, a letter from the Air Force's Office of Special Investigations, dated April 17, 2006, informed the MCLU that this office needed additional time to process the request.

97. To date, plaintiffs MCLU, AFSC: Maine and MCPJ have received no responses from the Department of the Navy or the Defense Intelligence Agency, the other components of the DoD to which their request was directed.

Plaintiff ACLU-RI's request

98. By letter dated February 7, 2006, the Inspector General of the Department of Defense informed the ACLU-RI it was referring its FOIA request to the DoD's Freedom of Information Office.

99. By letter dated February 13, 2006, the DoD's Office of Freedom of Information denied the ACLU-RI's requests for expedited processing and for a fee waiver.

100. By letter dated March 8, 2006, the Department of the Navy's Marine Corps Headquarters informed the ACLU-RI that it does not organize its documents by subject matter and therefore needed to research the request further. The Marine Corps did not specify when its research would be completed, and informed the ACLU-RI that it may consider the Marine Corps response to be an adverse determination. By letter dated March 27, 2006, the Department of the Navy informed the ACLU-RI it was referring its FOIA request to the Naval Criminal Investigative Service ("NCIS"). By letter dated April 18, 2006, the Department of the Navy, through NCIS, denied the ACLU-RI's request for expedited processing.

101. By letter dated March 10, 2006, the Department of the Air Force denied the ACLU-RI's request for expedited processing. The Air Force then informed the ACLU-RI by letter dated April 12, 2006, that it had found no records responsive to the ACLU-RI's request. However, a letter from the Air Force's Office of Special Investigations, dated April 17, 2006, informed the ACLU-RI that this office needed additional time to process the request.

102. By letter dated March 31, 2006, the Defense Intelligence Agency granted the ACLU-RI's request for expedited processing but stated that "it is still impossible for us to forecast when your case will be completed."

103. To date, plaintiffs ACLU-RI and RICCP have received no response from the Department of the Army, the other component of the DoD to which their request was directed.

Plaintiff ACLU-WA's request

104. By letter dated March 23, 2006, the Inspector General of the Department of Defense informed the ACLU-WA that it had found no records responsive to the ACLU-WA's FOIA request. However, by letter dated May 30, 2006, the Inspector General assigned the request a case number and informed the ACLU-WA that the agency was facing a backlog of FOIA requests and would notify the ACLU-WA of a decision as soon as possible.

105. By letter dated April 3, 2006, the DoD's Office of Freedom of Information denied the ACLU-WA's requests for expedited processing and for a fee waiver.

106. By letter dated April 6, 2006, the Department of the Navy's Marine Corps Headquarters informed the ACLU-WA that it was unable to identify responsive documents but was referring the request to the Chief of Naval Operations. By letter dated April 10, 2006, the Department of the Navy informed the ACLU-WA it was referring its FOIA request to the Naval Criminal Investigative Service ("NCIS"). By letter dated May 16, 2006, the Department of the Navy, through NCIS, denied the ACLU-WA's request for expedited processing.

107. By letter dated April 20, 2006, the Department of the Air Force denied the ACLU-WA's request for expedited processing. The Air Force then informed the ACLU-WA, by letter dated April 24, 2006, that it needed additional time to process the request.

108. By letter dated May 8, 2006, the Department of the Army informed the ACLU-WA that it was referring its FOIA request to the Army's Freedom of Information/Privacy Office. By letter dated May 15, 2006, that office informed the ACLU-WA that the agency was "unable to comply with the statutory 20-day time limit in processing your request" and that the requesters "may consider this delay an administrative denial . . . or you may agree to wait for a substantive reply upon completion of our coordination."

109. To date, plaintiffs ACLU-WA, PJALS, Seattle Raging Grannies, and SNOW have received no response from the Defense Intelligence Agency, the other component of the DoD to which their request was directed.

CAUSES OF ACTION

First Cause of Action: **Violation of the FOIA for Failure to Make Promptly Available the Records Sought by Plaintiffs' Requests**

110. Defendant's failure to make promptly available the records sought by plaintiffs' requests violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and the corresponding agency regulations.

Second Cause of Action: **Violation of the FOIA for Failure Timely to Respond to Plaintiffs' Requests**

111. Defendant's failure timely to respond to plaintiffs' requests violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and the corresponding agency regulations.

Third Cause of Action: **Violation of the FOIA for Failure to Expedite the Processing of Plaintiffs' Requests**

112. Defendant's failure to expedite the processing of plaintiffs' requests violates the FOIA, 5 U.S.C. § 552(a)(6)(E)(iii), and the agency regulation promulgated thereunder, 32 C.F.R. § 286.4(d)(3).

Requested Relief

WHEREFORE, plaintiffs pray that this Court:


- A. Order defendant immediately to process the requested records in their entirety;
- B. Order defendant, upon completion of such expedited processing, to disclose the requested records in their entirety and make copies available to plaintiffs;
- C. Enjoin defendants from charging plaintiffs fees for the processing of their requests;

- D. Award plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
- E. Grant such other relief as the Court may deem just and proper.

Dated: June 14, 2006

Respectfully submitted,

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