



May 2, 2014

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Via Email and Certified Mail

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Re: Request Under Freedom of Information Act

To Whom It May Concern:

This letter is a request by the American Civil Liberties Union Foundation (“ACLU”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and related Amtrak implementing regulations, 49 C.F.R. § 701.1 *et seq.* This request seeks records regarding the sharing of data about Amtrak passengers with the Drug Enforcement Administration, and regarding drug interdiction efforts on board Amtrak trains, whether performed by the DEA or by other federal, state, or local entities.

I. Background

Public reports of cooperation between Amtrak and the DEA for purposes of drug interdiction appeared as early as 1987, when the *Washington Post* reported that the DEA targeted suspects on Amtrak trains who were “singled out in advance by Amtrak security personnel using a drug-courier ‘profile.’”¹ The profile included characteristics such as traveling with “little luggage,” “nervousness,” and “keeping their luggage with them in the lounge car.”²

As the digital age has enabled the collection of more data about passengers and their behavior, reports indicate that cooperation between Amtrak and law enforcement has expanded. As of 2001, at least one

¹ Nancy Lewis, *Amtrak, Drug Agents Fight Traffic: Cocaine Runners Taking the Train*, *Wash. Post*, Apr. 12, 1987, available at http://articles.latimes.com/1987-04-12/news/mn-1021_1_amtrak-s-silver-star.

² *Id.*

Amtrak office shared data with the DEA, including the method of payment for tickets, time of purchase, and whether or not a phone number was provided at purchase. Those who bought tickets with cash, provided an incorrect or no phone number, and those who bought tickets shortly before long trips were targeted as suspected drug couriers.³

Once targeted, reports indicate that passengers may encounter federal, state, or local agents who ask for consent to search their luggage or private room. Some passengers have reported that these requests are made in an intimidating environment or that officers threaten to remove them from the train if they do not consent to the search.⁴ One former assistant U.S. attorney has stated that requesting to search Amtrak passengers for drug enforcement purposes without explaining that a passenger has a right to refuse the request has been a “common practice.”⁵

This type of targeting constitutes a significant invasion of personal privacy. It suggests that Amtrak is sharing the travel-related data of thousands of its passengers who have engaged in no wrongdoing. Accordingly, the ACLU seeks records regarding coordinated drug enforcement efforts of the DEA and Amtrak, including but not limited to data sharing and on-board search policies and practices.

II. Records Requested

The ACLU seeks disclosure of any of the following records created, modified, updated, or in use between January 1, 2004 and the present:

- 1) Policies, procedures, practices, agreements, or memoranda regarding the collection of data about Amtrak passengers (“passenger data”), including what types of data are collected, how long data is retained, when and how passenger data is accessed, and when data is purged;

³ Michael W. Lynch, *Amtrak's Bad Trip*, Reason.com (April 19, 2001), <http://reason.com/archives/2001/04/19/amtraks-bad-trip>.

⁴ See, e.g., Mike McKnight, *Amtrak passenger Upset By Early Morning Questioning*, WOWT (Mar. 9, 2011), <http://www.wowt.com/news/headlines/117620619.html>; gregravis, *Today we were boarded (California Zephyr)*, Trainorders.com (Mar. 7, 2011), <http://www.trainorders.com/discussion/read.php?4,2411347>; Tim Chandler, Facebook post on Amtrak page (Nov. 8, 2012, 2:43 pm), <https://www.facebook.com/Amtrak/posts/10151219701074014>; Michael W., Post on Amtrak California Zephyr, Yelp (April 5, 2013), <http://www.yelp.com/biz/amtrak-california-zephyr-emeryville>.

⁵ Peter Zeidenberg, *Reduce Long Sentences for Drug Dealers Even If It Makes Prosecutions Harder*, Wash. Post, Apr. 10, 2014, http://www.washingtonpost.com/opinions/reduce-long-sentences-for-drug-dealers-even-if-it-makes-prosecutions-harder/2014/04/10/e645646c-b9dc-11e3-9a05-c739f29ccb08_story.html.

- 2) Policies, procedures, practices, agreements, and memoranda governing the presence, notification, powers, chain of command, or jurisdiction of law enforcement on Amtrak train routes;
- 3) Policies, procedures, practices, agreements, and memoranda governing the sharing of passenger data with entities other than Amtrak, including but not limited to the Drug Enforcement Administration and other state, federal, or local law enforcement agencies;
- 4) Policies, procedures, practices, agreements, and memoranda regarding whether and how passenger data is shared with any law enforcement agency;
- 5) Policies, procedures, practices, agreements, and memoranda regarding the circumstances under which law enforcement may board Amtrak trains and what actions law enforcement agents are permitted to take on board;
- 6) Policies, procedures, practices, agreements, and memoranda regarding the training or protocols for law enforcement officers who board Amtrak trains, or for any Amtrak employee notifying or assisting law enforcement;
- 7) Policies, procedures, practices, agreements, and memoranda regarding the search of Amtrak passengers by law enforcement, including passengers who refuse to consent to a search by law enforcement;
- 8) Policies, procedures, practices, agreements, and memoranda regarding removal of passengers from Amtrak trains by law enforcement, including post-removal procedures for the continued travel of individuals found not to be carrying contraband;
- 9) Policies, procedures, practices, agreements, and memoranda regarding when law enforcement may seize cash from passengers on board or removed from Amtrak trains;
- 10) Policies, procedures, practices, agreements, and memoranda governing the division of cash or anything else of value taken from an individual on board or removed from an Amtrak train between Amtrak, the Drug Enforcement Administration, and any other federal, state, or local entity;
- 11) Policies, procedures, practices, agreements, and memoranda regarding complaints about or findings of violation of any policy

related to search or seizure of Amtrak passengers and their possessions.

III. Limitation of Processing Fees

The ACLU requests a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees 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 . . .”) and 49 C.F.R. § 701.11(d)(2) (search and review fees shall not be charged to “representatives of the news media”). As a representative of the news media, the ACLU fits within this statutory and regulatory mandate. Fees associated with the processing of this request should, therefore, be limited accordingly.

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The ACLU meets the definition of a representative of the news media because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

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 substantial component of the ACLU's mission and work. Specifically, the ACLU publishes a continuously updated blog, newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly disseminated to the public.⁶ 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 its public education department and web site. The ACLU 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 ACLU's website specifically includes features on information obtained through the FOIA process.⁷ For example, the ACLU's “Accountability for Torture FOIA” webpage,

⁶See Dan Gillmor, *In Praise of the Almost-Journalists*, Slate (Mar. 28, 2014, 12:29 PM), http://www.slate.com/articles/technology/future_tense/2014/03/human_rights_watch_and_other_advocacy_groups_doing_great_journalism.html.

⁷See, e.g., <https://www.aclu.org/national-security/warrantless-electronic-communications-foia-requests>; <https://www.aclu.org/technology-and-liberty/foia-request-justice-department-policy-memos-gps-location-tracking>; <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.thetorturedatabase.org>; <http://www.aclu.org/mappingthefbi>.

<https://www.aclu.org/accountability-torture>, contains commentary about the ACLU's FOIA request for documents related to the treatment of detainees, press releases, analysis of the FOIA documents disclosed, and an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA. See *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch to be a news-media requester because it posted documents obtained through FOIA on its website).

The ACLU also maintains and publishes a widely-read blog specifically dedicated to covering issues involving “civil liberties in the digital age,”⁸ through which the organization disseminates news and commentary about FOIA requests similar to this one.⁹ The ACLU publishes a newsletter at least twice a year that reports on and analyzes civil-liberties-related current events. The newsletter is distributed to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to approximately 300,000 subscribers (both ACLU members and non-members) by e-mail. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. Cf. *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding the Electronic Privacy Information Center to be a representative of the news media under Department of Defense regulations because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements”).

The ACLU also regularly publishes books,¹⁰ “know your rights” publications,¹¹ fact sheets,¹² and educational brochures and pamphlets

⁸ <https://www.aclu.org/blog/free-future>.

⁹ See, e.g., Nathan Freed Wessler, *New Documents Suggest IRS Reads Emails Without a Warrant*, Free Future, (Apr. 10, 2013), <https://www.aclu.org/blog/technology-and-liberty-national-security/new-documents-suggest-irs-reads-emails-without-warrant>.

¹⁰ Some of the recent books published by the ACLU include: Susan N. Herman, *Taking Liberties: The War on Terror and the Erosion of American Democracy* (Oxford Univ. Press 2011); Lenora M. Lapidus, Emily J. Martin & Namita Luthra, *The Rights of Women: The Authoritative ACLU Guide to Women's Rights* (NYU Press 4th ed. 2009); Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007) (a book based on documents obtained through FOIA).

¹¹ Some of the more recent “know your rights” publications include: ACLU, *Know Your Rights: Pregnant, Post-Partum & Breastfeeding Workers* (Oct. 2013), available at https://www.aclu.org/files/assets/kyr_pregant_breastfeeding.pdf; ACLU, *Know Your Rights: Demonstrations and Protests* (Nov. 2011), available at https://www.aclu.org/files/assets/kyr_protests.pdf; ACLU, *Gender-Based Violence &*

designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These materials are specifically designed to be educational and widely disseminated to the public. *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding the Electronic Privacy Information Center to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties).

Depending on the results of this request, the ACLU plans to “disseminate the information” it receives “among the public” through these kinds of publications in these kinds of channels. The ACLU is therefore a news media entity.

Disclosure is not in the ACLU’s commercial interest. The ACLU is a “non-profit, non-partisan, public interest organization.” *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation and internal quotations omitted)). Any information disclosed by the ACLU as a result of this FOIA will be available to the public at no cost.

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IV. Waiver of All Costs

The ACLU additionally requests 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.”).

Disclosure of the requested information will help members of the public understand the privacy risks of traveling on an Amtrak train. Invasions of personal privacy by the government, especially when facilitated by data collection and sharing, are currently topics of great public interest.¹³

Harassment: Your School, Your Rights (May 2011), available at http://www.aclu.org/files/assets/genderbasedviolence_factsheet_0.pdf; ACLU, *Know Your Rights: What to Do If You’re Stopped by Police, Immigration Agents or the FBI* (June 2010), available at http://www.aclu.org/files/assets/bustcard_eng_20100630.pdf.

¹² See, e.g., ACLU, *Military Abortion Ban in Cases of Rape and Incest (Factsheet)* (2011), available at <http://www.aclu.org/reproductive-freedom/military-abortion-ban-cases-rape-and-incest-factsheet>; ACLU, *The Facts About “The No Taxpayer Funding For Abortion Act”* (2011), available at http://www.aclu.org/files/assets/Chris_Smith_bill_ACLU_Fact_Sheet_UPDATED-4-30-11.pdf.

¹³ See, e.g., Meghan Barr, *Post, Guardian Win Pulitzers for NSA Revelations*, Associated Press (Apr. 14, 2014), available at <http://abcnews.go.com/US/wireStory/nsa-surveillance-report-pulitzer-contenders-23313754>; Ellen Nakashima, *Obama Says New NSA Proposal Alleviates Privacy Concerns About Surveillance*, Wash. Post, Mar. 25, 2014, <http://www.washingtonpost.com/world/national-security/obama-says-new-nsa-proposal->

The requested information will “contribute significantly to public understanding.” 5 U.S.C. § 552(a)(4)(A)(iii).

As a nonprofit 501(c)(3) organization and “representative of the news media” as discussed in Section III, the ACLU is well-situated to disseminate information it gains from this request to the general public and to groups that protect constitutional rights. Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.¹⁴

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

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Sincerely,



Lee Rowland
Staff Attorney
American Civil Liberties Union

alleviates-privacy-concerns/2014/03/25/c6911126-b431-11e3-8cb6-284052554d74_story.html; Claire Cain Miller, *Revelations of N.S.A. Spying Cost U.S. Tech Companies*, N.Y. Times, Mar. 21, 2004, http://www.nytimes.com/2014/03/22/business/fallout-from-snowden-hurting-bottom-line-of-tech-companies.html?_r=0.

¹⁴ Fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in May 2012, the Bureau of Prisons granted a fee waiver to the ACLU for a FOIA request seeking documents concerning isolated confinement of prisoners in BOP custody. In March 2012, the Department of Justice Criminal Division granted a fee waiver to the ACLU for a FOIA request seeking records about the government’s access to the contents of individuals’ private electronic communications. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act.