



Mary Catherine Roper  
Staff Attorney  
Eastern Regional Office  
[mroper@aclupa.org](mailto:mroper@aclupa.org)  
Ext. 116

Eastern Region Office  
PO Box 40008  
Philadelphia, PA 19106  
215.592.1513 T  
215.592.1343 F

February 1, 2006

Central Region Office  
PO Box 11761  
Harrisburg, PA 17108  
717.238.2258 T  
717.236.6895 F

Directorate for Freedom of Information  
And Security Review, Room 2C757  
1155 Defense Pentagon  
Washington, DC 20301-1155

Western Region Office  
313 Atwood Street  
Pittsburgh, PA 15213  
412.681.7736 T  
412.681.8707 F

Department of the Army  
Freedom of Information and Privacy Acts Office  
TAPC-PDR-PF  
7798 Cissna Road, Suite 205  
Springfield, VA 22150-3166

Department of the Navy  
Commandant of the Marine Corps (ARAD)  
Headquarters U.S. Marine Corps,  
2 Navy Annex  
Washington, DC 20380-1775

Department of the Air Force  
11CS/SCSR (FOIA)  
1000 Air Force Pentagon  
Washington, DC 20330-1000

Inspector General of Department of Defense  
Chief FOIA/PA Office  
400 Army Navy Drive, Room 405  
Arlington, VA 22202-2884

Defense Intelligence Agency (DIA)  
ATTN: SVI-1  
Washington, DC 20340-5100

Re: **REQUEST UNDER FREEDOM OF INFORMATION ACT / Expedited  
Processing Requested**

Attention:

This letter constitutes a Request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the Department of Defense implementing regulations, 32 C.F.R. § 286.1 *et seq.*, by the American Civil Liberties Union of Pennsylvania and the American Civil Liberties Union Foundation of Pennsylvania, on their own behalf, and on behalf of Pittsburgh Organizing Group, the Thomas Merton Center, The Anti-War Committee, CODEPINK Pittsburgh, Pittsburgh Raging Grannies, Pittsburgh Bill of Rights Defense Campaign and the Save Our Civil Liberties Campaign (collectively, "the Requesters").

## **I. The Requesters**

1. The American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively, "ACLU")<sup>1</sup> is a national organization that works to protect civil rights and civil liberties. As the leading defender of freedom, equality, privacy, and due process rights in the United States, the ACLU has challenged the United States government's broad targeting and surveillance of innocent people as part of the war on terrorism, the government's crackdown on criticism and dissent, and the secret and unchecked surveillance powers of the USA PATRIOT Act.

Specifically, ACLU attorneys around the country have provided direct representation to individuals and organizations targeted by federal, state and local police for exercising their First Amendment right to criticize the government. Among those the ACLU has represented include people who participated in numerous rallies and marches to protest the war in Iraq, who were excluded from meaningful participation at public presidential speeches, and who protested at the 2004 Republican and Democratic National Conventions. At the national level, the ACLU has filed FOIA requests seeking to discover the scope and nature of the surveillance activities of the FBI's Joint Terrorism Task Forces, and of the NSA's practice of warrantless interception of Americans' electronic communications. Recently, the ACLU led a group of prominent journalists, scholars, attorneys, and national non-profit organizations in suing to enjoin the NSA's practice of warrantless electronic surveillance.

The ACLU regularly holds public membership meetings at which a wide range of civil liberties issues are discussed and debated. FBI Director Robert Mueller spoke at the ACLU annual membership conference in June 2003. FBI whistleblower Colleen Rowley and former national security advisor Richard Clarke spoke at the ACLU annual membership conference in July 2004. The ACLU also routinely provides information

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<sup>1</sup> The American Civil Liberties Union Foundation is a 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, 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 that educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

to the public and the media through print and online communications about the erosion of civil rights and civil liberties after September 11, and encourages ACLU members and activists to oppose government anti-terrorism policies that unnecessarily violate civil rights and civil liberties.

2. Pittsburgh Organizing Group (POG) is an activist group working toward systemic change; POG is non-hierarchical, consensus-based, and concerned with a wide range of interconnected issues in society. Since its founding in the spring of 2002, POG has organized more than 75 campaigns and actions dealing with issues of war, militarism, labor rights, environmental issues, and global financial institutions. POG has learned, as a result of NBC's release of Pentagon documents, that it has been the subject of a Pentagon investigation because of a campaign that POG launched in April 2005 to counter military recruitment. That campaign has included over two dozen pickets at a local recruiting hub station, direct actions that have shut the station down, counter recruitment presentations and skill shares in other cities, visits and other educational outreach at local high schools, door-to-door work in local communities that has convinced many local businesses to remove military propaganda, 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 challenge to military recruiters at Carnegie Mellon University – was noted in the Pentagon document released by NBC as a potential "threat".

3. The Thomas Merton Center ("TMC") is a 501c(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. Among other things, TMC is involved in organizing protests and consults with various groups concerning social change. TMC acts as a resource and organizing center for twenty-five different projects and represents 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 Secret Service.

4. The Anti-War Committee ("AWC") was created in opposition to the imminent invasion of Iraq in January of 2003. 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, DC on September 24. AWC also organized the March convergence and the Bring Them Home Now Tour with Cindy Sheehan in September. Both events drew thousands of Americans out in protest of the war in Iraq.

5. CODEPINK Pittsburgh joins its sister branches worldwide in its struggle for peace and equality. CODEPINK believes women can be instrumental in ending the illegal and immoral invasion and occupation of Iraq, and rejects peace, freedom, and democracy at gunpoint. CODEPINK has organized numerous public actions against the war and will continue express opposition to the US foreign policy until all U.S. troops

are home safely, and the quality of life to Iraqi citizens is restored.

6. The mission of Pittsburgh Raging Grannies is 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 its 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.

7. 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.

8. Save Our Civil Liberties Campaign (SOCL) formed in response to the 2003 Free Trade Area of the Americas Ministerial in Miami, and is a national organization. Among other things, SOCL organized highly publicized anti-war protests at both the 2004 Democratic and Republican National Conventions. SOCL members were questioned and subjected to surveillance by U.S. military personnel at those events.

## **II. The Request for Information**

The Requesters<sup>2</sup> seek disclosure of any record(s),<sup>3</sup> document(s), file(s), communications, memorandum(a), order(s), agreement(s) and/or instruction(s), created from January 1, 2001, to the present, that were prepared, received, transmitted, collected and/or maintained by the Department of Defense ("DoD") or any of its components, including but not limited to the Counterintelligence Field Activity Agency ("CIFA"), its Directorate of Field Activities ("DX"), and any Threat and Local Observation Notice ("TALON") database,<sup>4</sup> relating or referring to the following:

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<sup>2</sup> The term "Requesters" as used herein is defined as all of the organizations identified in Section I of this letter, as well as their employees, members, and board of directors.

<sup>3</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

<sup>4</sup> The term "TALON database" as used herein includes any database in which TALON reports are kept, including the "Cornerstone" database, the Joint Protection Enterprise Network ("JPEN"), all other databases created or controlled by CIFA, and database projects outsourced to private firms – which include, according to an NBC News report, "Person Search" (Northrup contract) and "The Insider Threat

1. information collected about any of the Requesters or their activities;<sup>5</sup>
2. orders or instructions to collect information about any of the Requesters or their activities;
3. the inclusion of any of the Requesters or their activities in a TALON database;
4. how, why or when any of the Requesters or any of their activities was selected as a target for DoD information-gathering or for inclusion in a TALON database;
5. the means by which information about any of the Requesters or their activities was or will be collected, including but not limited to any instances in which DoD personnel gathered information via informants, by collecting information from websites, by infiltrating any of the Requesters in an undercover capacity, or by attending rallies, protests, demonstrations, organizational meetings or other gatherings organized by any of the Requesters or in which any of the Requesters participated;
6. how records about any of the Requesters or their activities have been, are being, will be, or might be used, shared with another agency, or disseminated;
7. the retention of records about any of the Requesters or their activities;
8. the destruction of records about any of the Requesters or their activities, including any policies, orders, or directives requiring, permitting or prohibiting the destruction of such records;
9. policies or procedures in place to protect the privacy of records that refer or relate to the employees, members, and/or board of directors of any of the Requesters; and
10. how, why or when the collection of information about any of the Requesters or their activities, or the inclusion of any of the Requesters or their activities in a TALON database, was or will be suspended or terminated.

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Initiative" (Computer Sciences Corp. contract), among others. See Lisa Myers et al., "Is the Pentagon Spying on Americans?," msnbc.com, December 14, 2005.

<sup>5</sup> The term "activities" as used in Section II.A includes, but is not limited to, any advocacy, provision of services, litigation, lobbying, organizing, fundraising, meetings, marches, rallies, protests, conventions, or campaigns, and any media or communications to, from or about the Requesters in any form (including any oral, written, electronic or online communications, including but not limited to any books, pamphlets, brochures, newsletters, fundraising letters, correspondence, action alerts, e-mail, web communications, discussion groups, or listservs).

### **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) (“[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 . . .”) and 32 C.F.R. § 286.28(e)(7) (search and review fees shall be limited to duplication fees for the first 100 pages for “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.

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 raw materials into a distinct work, and distributes that work to an audience.” *National Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “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 substantial 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](http://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](http://www.aclu.org/torturefoia); [www.aclu.org/spyfiles](http://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.

In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. 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.

Depending on the results of the Request, the ACLU plans to disseminate the information gathered by this Request to the public through these kinds of publications in these kinds of channels. The ACLU is therefore a “representative of the news media.” *Cf. Electronic Privacy Information Ctr. v. Dep’t of Defense*, 241 F.Supp.2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA).

Finally, 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, 1310 (D.C. Cir. 2003). Any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost.

#### **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 in this case meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *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 omitted)).

Disclosure of the requested information is in the public interest. This Request will further public understanding of government conduct: specifically, the DoD’s domestic intelligence-gathering activities and its possible targeting of individuals, organizations and groups for surveillance based on their political viewpoints, affiliations, or activities. This type of government activity concretely affects many individuals and groups and implicates basic privacy, free speech, and associational rights protected by the Constitution.

Moreover, disclosure of the requested information will aid public understanding of policy decisions taken over the past two months in response to public revelations that CIFA, a DoD component whose size and budget remain secret, has been spying on 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 included 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 TALON intelligence database to determine whether information on subjects that were determined to pose no threat was 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. And recently, Deputy Secretary of Defense Gordon England 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. Understanding the current scope of the DoD's monitoring of law-abiding individuals, organizations and groups is, therefore, crucial to the public's interest in determining the legality of the Pentagon's domestic intelligence program and in understanding the implications of DoD's recent policy shifts.

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.<sup>6</sup>

The records requested are not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this FOIA Request through the channels described in Section III. As also stated in Section III, the ACLU will make any information disclosed as a result of this FOIA Request available to the public at no cost.

#### V. Expedited Processing Request

Expedited processing is warranted because there is 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).

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<sup>6</sup> For example, in May 2005, the United States Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request submitted that month regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. Also, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in August of 2004. In addition, the Office of Science and Technology Policy in the Executive Office of the President said it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003. In addition, three separate agencies – the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and 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.



The ACLU is “primarily engaged in disseminating information” for the same reasons it is a “representative of the news media,” as discussed in Section III. This Request clearly relates to activity of the federal government, namely, the collection and retention of information by the Department of Defense.

There is an “urgent need” to inform the public about DoD’s extensive monitoring and surveillance of individual citizens, as well as political, religious, and community organizations throughout the nation. Such government activity may infringe upon the public’s 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.

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 enemies 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.

Moreover, the investigation of individuals and organizations because of their political views and expressive or associational activity may have a chilling effect on the exercise of First Amendment rights by others. *See, e.g., Thornhill v. Alabama*, 310 U.S. 88, 97 (1940) (“It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion.”). The chilling effect here may be exacerbated by the fact that the public has little information about what policies and procedures govern the DoD’s secretive CIFA component and its surveillance activities.

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 use of the military to gather intelligence domestically on anti-war/counter-recruitment demonstrators and others engaging in protected 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. Since the NBC report, there have been numerous news reports on CIFA, the TALON database 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 American’s 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.

Pennsylvania media outlets in Pittsburgh have also reported on the recent revelation of DoD surveillance. *See, e.g.*, Marty Levine, “Military Recruiting: And the Surveillance Says: Pittsburgh,” *Pittsburgh City Paper*, December 22, 2005 (noting the Pittsburgh “incident” on April 27, 2005 that is listed in the DoD database); Associated Press, “Pentagon will review data on suspicious acts,” *pittsburghlive.com*, December 15, 2005; Walter Pincus, “Terror Agency Operates in U.S. - Pentagon Unit Collects Intelligence,” *Pittsburgh Post-Gazette*, December 19, 2005; Walter Pincus, “Federal Suspicious-Activity Data Needs Better Handling,” *Pittsburgh Post-Gazette*, January 14, 2006.

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. Just yesterday, DoD officials admitted 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.

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).

As these reports illustrate, the DoD's domestic intelligence-gathering program constitutes a breaking and unfolding news story. The requested information is needed to provide the public with a full picture of the extent of program.

Finally, there is a very real risk that information will be lost if this Request is 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 has recently indicated that the purging of the database is ongoing. See Walter Pincus, "Unverified Reports of Terror Threats Linger," *Washington Post*, January 31, 2006.

To ensure that the information sought by this Request is not destroyed before it can be disclosed pursuant to this FOIA Request, the Requesters ask that you preserve all information responsive to this Request and that you do not erase it until you have provided the Requesters with copies. Destruction of responsive documents after a FOIA Request is received constitutes an improper withholding of documents. See, e.g., *Judicial Watch v. U.S. Dep't of Commerce*, 34 F. Supp. 2d 28, 43-44 (D.D.C. 1998) (citing *Kissinger v. Reporters Comm.*, 444 U.S. 136, 148-152 (1980)).

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Pursuant to applicable regulations and statute, the ACLU expects the determination of this request for expedited processing within 10 calendar days and the determination of this Request for documents within 20 days. *See* 32 C.F.R. § 286.4(d)(1), (3); 5 U.S.C. § 552(a)(6)(A)(i).

If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or to deny a waiver of fees.

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

Mary Catherine Roper  
Staff Attorney  
American Civil Liberties Union of Pennsylvania  
P.O. Box 40008  
Philadelphia, PA 19106  
voice 215.592.1513 ext 116  
fax 215.592.1343

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Mary Catherine Roper  
American Civil Liberties Union of Pennsylvania  
Eastern Region Office  
P.O. Box 40008  
Philadelphia, PA 19106

Michael J. Healey  
Healey & Hornack, P.C.  
The Pennsylvanian, 1100 Liberty Avenue, Ste C-2  
Pittsburgh, Pennsylvania 15222  
Telephone: 412-391-7711  
Fax: 412-281-9509