



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF FLORIDA
4500 BISCAYNE BLVD.
SUITE 340
MIAMI, FL 33137-3227
T/305/576/2337
F/305/576/1106
rmarshall@aclufl.org
www.aclufl.org

February 1, 2006

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

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

Dear FOIA Officer:

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 Florida and the American Civil Liberties Union Foundation of Florida, on their own behalf, and on behalf of Patriots for Peace, Brevard County Counter Inaugural, Jeff Nall, The Global Network Against Weapons & Nuclear Power in Space, Bruce Gagnon, Maria Telesca-Whipple, the Fort Lauderdale Friends (“Quakers”), Peter D. Ackerman, the Haiti Solidarity Committee, Broward Anti-War Coalition, and The Truth Project (collectively, “the Requesters”).

I. The Requesters

1. The American Civil Liberties Union of Florida¹ is a state affiliate of the American Civil Liberties Union, 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.

¹ The American Civil Liberties Union Foundation of Florida and the American Civil Liberties Union Foundation are 501(c)(3) organizations that provide legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educate the public about civil rights and civil liberties issues. The American Civil Liberties Union of Florida and the American Civil Liberties Union are separate non-profit, non-partisan, 501(c)(4) membership organizations that educate the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, provide analyses of pending and proposed legislation, directly lobby legislators, and mobilize their members to lobby their legislators. These organizations are referred to collectively as the ACLU.

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 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. Patriots for Peace is an informal citizen group made up of Brevard and Indian River County residents who oppose the war in Iraq. The group began organizing demonstrations against the war in the lead up to invasion of Iraq. In 2003, Patriots for Peace organized rallies on February 15, March 15, and March 22. The group also organized several anti-war vigils as well. Since 2003 the group has continued to help organize anti-war demonstrations, vigils, and other events.

3. Melbourne, Florida Counter Inaugural. Citizens from around Brevard county joined together to mourn the election of President Bush and the threat they felt he represented to their civil rights. The group crafted headstones demarking the civil rights in jeopardy under the continued Bush administration and conducted a mock funeral procession on January 20, 2005, the day of the President's inauguration.

4. Jeff Nall is a community activist and freelance writer. In 2003 Nall helped found Patriots for Peace and lead the anti-war movement in Brevard County, Florida, producing two demonstrations which were attended by about half-a-thousand people. Since then he has gone on to help organize 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 in 2005 he helped reorganize the Brevard chapter of the National Organization for Women. Nall also regularly contributes to progressive publications like Toward Freedom, the Humanist, and Impact Press.

5. The Global Network Against Weapons & Nuclear Power in Space was created in 1992 to build an international movement to prevent the arms race from moving into space. Each year the Global Network holds an international space organizing conference in a different part of the world bringing together the growing numbers of concerned citizens who wish to keep space for peace. 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 U.S. and around the world. For the past several years the Global Network has organized "Keep Space for Peace Week" during the first week of October. This week of local actions around the world is held to show the growing opposition to Star Wars.

6. Bruce Gagnon has been a full-time peace and justice activist since 1978. From 1983-1998 he coordinated the Florida Coalition for Peace & Justice and began to specialize on the

nuclearization and weaponization of space. Bruce, a co-founder of the Global Network Against Weapons & Nuclear Power in Space, has been working full-time for that organization since 1998. Since that time he has spent nearly two weeks out of every month traveling throughout the world speaking and organizing protests around the space issue. During the 1980's, Bruce, with the help of *The Orlando Sentinel*, was able to expose a series of infiltrations of the Florida Coalition by the Metropolitan Bureau of Investigation (MBI).

7. Maria Telesca-Whipple has worked extensively for many years in Brevard County, Florida, as an organizer for the Global Network Against Nuclear Weapons and Power in Space and has attended just about all of the Melbourne Peace rallies. Along with Jeff Nall and Bruce Gagnon she was mentioned frequently in files created and maintained by the Brevard County Sheriff's Office regarding their peaceful activities.

8. The 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.

9. 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 concerns.

10. The Haiti Solidarity Committee is a south Florida based organization that has organized numerous protests and lobbying campaigns against the Bush administration's support for the current regime in Haiti. It has also organized the Committee to Free Father Jean-Juste which has spearheaded a much broader and successful effort which led to the priest's freedom. Last spring the committee played a leadership role in The Alliance For Justice, an *ad hoc* coalition of peace and justice groups that organized a mass protest that included several thousand Haitians outside of the Organization of American States ("OAS") Conference in Ft. Lauderdale. It was discovered (in January 2006) that the Haiti Solidarity Committee's participation in the Alliance for Justice in the Americas' OAS-related meetings in 2005 were infiltrated by a paid FBI undercover informant.

11. The 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-FTAA demonstrations in November 2003 and the Organization for American States protest in June 2005. In December 2005 it was revealed, through the leaking of a secret Defense Department report, that BAWC events have been subject to covert surveillance by U.S. Military Intelligence on multiple occasions. It was discovered (in January 2006) that BAWC's participation in the Alliance for Justice in the Americas' OAS-related meetings in 2005 were infiltrated by a paid FBI undercover informant.

12. The Truth Project, Inc., 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 Nightly News, the Truth Project's meetings were placed under surveillance by the 902nd Military Intelligence Group, headquartered in Fort Meade, MD, which is also the location of the National Security Agency (NSA). A secret Department of Defense report characterized the Truth Project as a "credible threat" to national security.

II. The Request for Information

The Requesters² seek disclosure of any record(s),³ 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 their Threat and Local Observation Notice ("TALON") database,⁴ relating or referring to the following:

1. information collected about any of the Requesters or their activities;⁵

² 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.

³ 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.

⁴ 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 Initiative" (Computer Sciences Corp. contract), among others. See Lisa Myers et al., "Is the Pentagon Spying on Americans?," msnbc.com, December 14, 2005.

⁵ 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).

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.

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 of Florida is the Florida affiliate of the ACLU which 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 and the affiliate’s website: www.aclufl.org. These web sites addresses civil rights and civil liberties issues in depth, provide features on civil rights and civil liberties issues in the news, and contain many thousands of documents relating to the issues on which the ACLU is focused. The websites 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.

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, “Corraling 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 a 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.⁶

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).

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

⁶ 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.

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, a 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 site that hosts the *Boston Globe*); Steven Elbow, "Local Anti-War Protest on Pentagon List," *Madison.com*, December 15, 2005.

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 a 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 a 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)).

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:

Randall C. Marshall, Legal Director
American Civil Liberties Union of Florida
4500 Biscayne Boulevard – Suite 340
Miami, FL 33137-3227

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,



Randall C. Marshall