



May 6, 2015

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Re: Freedom of Information Act Request /
Surveillance Flights over Baltimore, Maryland
EXPEDITED PROCESSING REQUESTED

To Whom It May Concern:

This letter is a request under the Freedom of Information Act by the American Civil Liberties Union ("ACLU"). This request seeks records regarding recent surveillance or monitoring flights over the Baltimore area.

In the aftermath of the death of Freddie Gray in police custody last month and the public's reaction, the ACLU of Maryland has monitored interactions between law enforcement agencies and the public and has expressed serious concern about treatment of protesters and other community members in the city. As part of the ACLU's effort to ensure that

law enforcement has not inappropriately surveilled and targeted members of the public, we seek information about several airplanes that recently flew paths above Baltimore that were indicative of surveillance activity.

On at least several recent evenings, light aircraft have flown patterns over Baltimore that suggest they are engaged in surveillance or monitoring activities. On the evening of May 2, 2015, for example, a Cessna 182T Skylane, Registration Number N539MY, made repeated passes over West Baltimore, ending at approximately 10:00 PM. Starting at or near the time that plane departed the Baltimore area, a Cessna 560 Citation V, registration number unknown, was observed flying circles over West Baltimore for approximately two hours. We seek information about the purpose and conduct of such flights.

Records Requested

Please provide copies of the following records created since or in effect from January 1, 2015 to the present:

1. All records regarding surveillance or monitoring flights over the greater Baltimore area from April 19, 2015, to the present, that were conducted, contracted, or requested by any local, state, or federal agency;
2. All records regarding policies, practices, and procedures for conducting or contracting surveillance or monitoring flights and for storing, accessing, analyzing, sharing, and otherwise interacting with records collected during such flights (including photographs, videos, and electronic surveillance records), including but not limited to documents that describe:
 - a. the legal justification and factual showing required before a surveillance flight is authorized;
 - b. the purposes for which collected data may or may not be accessed; and
 - c. who may access the collected data, what procedures they must go through to access the data, and who may authorize access;
3. All contracts, agreements, and communications with NG Research, Persistent Surveillance Systems, and other private companies to conduct surveillance or monitoring flights over the greater Baltimore area, to operate surveillance or monitoring equipment installed on aircraft conducting such flights, or to store, analyze, or transmit data or information collected during such flights;
4. All records regarding the Cessna model 182T aircraft with Registration Number N539MY, registered to NG Research, PO Box

722, Bristow, VA, 20136;

5. All records regarding a Cessna 560 Citation V aircraft, registration number unknown, that flew multiple passes over Baltimore on May 2 through May 3, 2015, and possibly other dates;
6. All records listing, logging, or describing surveillance or monitoring flights over the greater Baltimore area from April 1, 2015, to the present;
7. All records regarding surveillance or monitoring equipment carried on such flights, including its capabilities and description of the data gathered by it; and
8. All records regarding any proposal, approval, or authorization to conduct or engage others to conduct surveillance or monitoring flights over the greater Baltimore area.

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Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v).

1. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II). *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information” (internal citation omitted)); *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is “to serve as the site of record for relevant and up-to-the-minute civil rights news and information” and to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”).

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU's mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU's regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 390,000 households; email updates to 1.1 million subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog that attracts more than 40,000 unique visitors per month; heavily visited websites¹; and a video series.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.² ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.

The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA. For example, the ACLU maintains an online "Torture Database," a compilation of over 100,000 FOIA documents that allows researchers and the public to

¹ See www.aclu.org.

² See, e.g., Press Release, American Civil Liberties Union, Erie County Sheriff Records Reveal Invasive Use of "Stingray" Technology, Apr. 7, 2015, <https://www.aclu.org/news/erie-county-sheriff-records-reveal-invasive-use-stingray-technology>; Press Release, American Civil Liberties Union, U.S. to Release Targeted Killing Memo Sought by ACLU FOIA Lawsuit, May 20, 2014, <https://www.aclu.org/news/us-release-targeted-killing-memo-sought-aclu-foia-lawsuit>; Release, American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement, Sept. 14, 2012, <http://www.aclu.org/node/36742>; Press Release, American Civil Liberties Union, FOIA Documents Show FBI Using "Mosque Outreach" for Intelligence Gathering, Mar. 27, 2012, <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of "Community Outreach," Dec. 1, 2011, <http://www.aclu.org/national-security/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community>; Press Release, American Civil Liberties Union, FOIA Documents from FBI Show Unconstitutional Racial Profiling, Oct. 20, 2011, <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem, Oct. 19, 2011, <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>.

conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation. The ACLU also maintains a "Torture FOIA" webpage containing commentary about the ACLU's FOIA request, press releases, and analysis of the FOIA documents. (That webpage also notes that the ACLU, in collaboration with Columbia University Press, has published a book about the documents obtained through FOIA. *See* Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007)). Similarly, the ACLU's webpage about the Office of Legal Counsel ("OLC") torture memos obtained through FOIA contains commentary and analysis of the memos; an original, comprehensive chart summarizing the memos; links to web features created by ProPublica (an independent, non-profit, investigative-journalism organization) based on the ACLU's information gathering, research, and analysis; and ACLU videos about the memos. In addition to websites, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through FOIA.

The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The record requested is not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

2. *The record sought is urgently needed to inform the public about actual or alleged government activity.*

These records are urgently needed to inform the public about actual or alleged government activity; moreover, this document relates to a breaking news story of general public interest.

There has been intense and sustained news coverage of developments in Baltimore since the killing of Freddie Gray in police custody on April 19, 2015. We make this Request to further the public's understanding of one aspect of law enforcement's response to the public's reaction to Gray's death. National news stories have extensively covered this topic, and continue to do so. *See, e.g.,* Craig Timberg, *Surveillance Planes Spotted in the Sky for Days after West Baltimore Rioting*, Wash. Post, May 5, 2015, http://www.washingtonpost.com/business/technology/surveillance-planes-spotted-in-the-sky-for-days-after-west-baltimore-rioting/2015/05/05/c57c53b6-f352-11e4-84a6-6d7c67c50db0_story.html; Ben Nuckols & David Dishneau, *Baltimore Mayor Lifts Curfew 6 Days After Riots*, Wash. Post, May 3, 2015, <http://www.washingtonpost.com/national/baltimore-mayor-lifts-curfew-6-days-after-riots/2015/05/03/e66036e4-f201-11e4-bca5->

21b51bbdf93e_story.html; Erin Cox & John Fritze, *Unrest after Freddie Gray's Death Puts Spotlight on Hogan, Rawlings-Blake*, Baltimore Sun, May 2, 2015, <http://www.baltimoresun.com/news/maryland/politics/bs-md-hogan-rawlingsblake-politics-20150502-story.html#page=1>; Sheryl Gay Stolberg, *After Thousands Rally in Baltimore, Police Make Some Arrests as Curfew Takes Hold*, N.Y. Times, May 2, 2015, <http://www.nytimes.com/2015/05/03/us/baltimore-braces-for-more-protests.html>; Amanda Lee Myers & David Dishneau, *Baltimore on Edge: National Guardsmen Take Up Positions*, Wash. Post, Apr. 28, 2015, http://www.washingtonpost.com/local/riot-looting-prompt-state-of-emergency-curfew-in-baltimore/2015/04/27/e3e19e14-ed3b-11e4-8050-839e9234b303_story.html; Erin Cox, Justin Fenton, & Luke Broadwater, *Critics Question Delay in Calling Out the Guard*, Baltimore Sun, Apr. 28, 2015, <http://www.baltimoresun.com/news/maryland/politics/bs-md-state-city-response-20150428-story.html#page=1>; Sheryl Gay Stolberg, *Baltimore Enlists National Guard and a Curfew to Fight Riots and Looting*, N.Y. Times, Apr. 27, 2015, <http://www.nytimes.com/2015/04/28/us/baltimore-freddie-gray.html>

National news outlets and the public maintain great interest in learning about how law enforcement has interacted with and monitored the public in Baltimore in recent weeks. The news story is still developing.

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 28 C.F.R. §§ 16.11(c)(1)(i), 16.11(c)(3), 16.11(d)(1) (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.

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).

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 its communications department and web site. 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's blog attracts more than 40,000 unique visitors per month. The website specifically includes features on information obtained through the FOIA. For example, the ACLU's "Accountability for Torture FOIA" webpage, <http://www.aclu.org/torturefoia>, 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 publishes a newsletter at least twice a year that reports on and analyzes civil-liberties-related current events. The newsletter is distributed to approximately 390,000 households. The ACLU also sends email updates to 1.1 million. 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,³ "know your rights" publications,⁴ fact sheets,⁵ and educational brochures and pamphlets

³ 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).

⁴ Some of the more recent "know your rights" publications include: ACLU, *Know Your Rights: Demonstrations and Protests* (Nov. 2011), available at http://www.aclu.org/files/assets/kyr_protests.pdf; ACLU, *Gender-Based Violence & Harassment: Your School, Your Rights* (May 2011), available at

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) (citation and internal quotations omitted) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”). Any information disclosed by the ACLU as a result of this FOIA will be available to the public at no cost.

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.”).

The requested information will “contribute significantly to public understanding.” *Id.* Disclosure of the requested information will help the American public better understand whether and how the government monitored protesters and other members of the public in a major American

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.

⁵ 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; ACLU, *Fact Sheet on H.R. 3, the No Taxpayer Funding for Abortion Act* (2011), available at <http://www.aclu.org/reproductive-freedom/fact-sheet-hr-3-no-taxpayer-funding-abortion-act>.

city. The public has already demonstrated a strong interest in learning more about this topic, as is apparent by sustained press coverage devoted to this issue. *See supra*.

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

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

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

AMERICAN CIVIL LIBERTIES
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⁶ For example, 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. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006.

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Sincerely,



Nathan Freed Wessler
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AMERICAN CIVIL LIBERTIES
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