

May 18, 2005

Certified Mail -- Return Receipt Requested

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Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-0001

Federal Bureau of Investigation
10 Dorrance Street
Providence, RI 02903

Re: Request Under the Freedom of Information Act
With Request for Expedited Processing

To whom it may concern:

I - Preliminary

I represent the Rhode Island Affiliate, American Civil Liberties Union (the "RI-ACLU") and the American Civil Liberties Union Foundation of Rhode Island, Inc., (the "Foundation"). Both of these entities are Rhode Island corporations with a principal place of business at 128 Dorrance Street, Suite 220, Providence, RI 02903. RI-ACLU is a 501(c)(4) organization; the Foundation is a tax deductible 501(c)(3) organization. I refer herein to these two organizations collectively as the "Requestors."

This is a request for documents made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, et seq. I refer herein to this request for information as "the Request."

II - Limitation of Processing Fees

The Requestors hereby seek 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 28 C.F.R. §§ 16.11(c)(1)(i), 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 Requestors fit within this statutory and regulatory mandate. Fees associated with the processing of this request should, therefore, be limited accordingly.

The Requestors each meet the definition of a “representative of the news media” because each 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. Department of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

The Requestors are affiliated with the national American Civil Liberties Union and the American Civil Liberties Foundation (collectively, “ACLU”). 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 public education department. The ACLU also disseminates information through its heavily visited web site: <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/patriot_foia; www.aclu.org/torturefoia. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail.

In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. The within Request by the Requestors is being coordinated with the ACLU, including a number of other state and local affiliates. 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 Requestors plan to “disseminate the information” gathered by this Request “among the public” through these kinds of publications in these kinds of channels. The Requestors are therefore “news media entit[ies].” Cf. Electronic Privacy Information Ctr. v. Department 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 Requestors commercial interest. The ACLU is a “non-profit, non-partisan, public interest organization.” Judicial Watch Inc. v. Rossotti, 326 F.3d 1309, 1310 (D.C. Cir. 2003). The Foundation is a 501(c)(3) tax-exempt organization. Any information disclosed to the Requestors as a result of this Request will be promptly made available to the public at no cost.

III - Fee Waiver

The Requestors 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.’”).

Disclosure of the requested information is in the public interest. This Request will further public understanding of government conduct; specifically, the FBI’s

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monitoring, surveillance, and infiltration of organizations on the basis of national origin, racial and/or ethnic background, religious affiliation, organizational membership, political views or affiliation, or participation in protest activities or demonstrations. 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 the implications of the Department of Justice's recent decision to relax guidelines that previously restricted the FBI's ability to spy on organizations without a threshold showing of suspected criminal activity. These restrictions were created in response to the Hoover-era FBI's scandalous spying on politically active individuals and organizations, despite the complete lack of evidence that such individuals and organizations had been involved in any unlawful behavior. Understanding the current scope of the FBI's surveillance and infiltration of law-abiding organizations is, therefore, crucial to the public's interest in understanding the consequences of the Department of Justice's important change in policy.

As a nonprofit, tax-exempt 501(c)(3) organization and "representative of the news media" as discussed in Section II, above, the Foundation is well-situated to disseminate information it gains from this Request to the general public as well as to immigrant, religious, politically active, and other targeted communities, and to groups that protect constitutional rights. Because the Requestors meet the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, 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. If you wish, I should be pleased to provide additional detailed information and confirmation of the information contained in this paragraph.

The records covered by this Request are not sought for any type of commercial use whatever. Instead, the Requestors plan to disseminate the information disclosed as a result of this Request through the channels described in Section II, above. As also stated in Section II, the Requestors will make any information disclosed as a result of this FOIA available to the public at no cost.

In the event that the above request for a fee waiver is denied, RI-ACLU is prepared to pay up to \$250 for photocopying of documents. If the anticipated photocopying costs exceed \$250, I request that you inform me of that fact before producing documents, and provide a reasonable estimate of the total cost of responding fully.

IV - Documents Requested

1. All documents, files and records, including any memoranda of understanding, relating or referring to any formal or informal agreement between the FBI and the State of Rhode Island or any Rhode Island state department (including the Rhode Island State Police), relating in any way to a Joint Terrorism Task Force (“JTTF”).

2. All documents, files and records, including any memoranda of understanding, relating or referring to any formal or informal agreement between the FBI and any county, city or town within Rhode Island relating in any way to a JTTF. County, city, or town, as used in this paragraph is meant to include their respective police forces.

3. All documents, files and records, relating or referring to any coordination by, between, or among the FBI and the State of Rhode Island or any Rhode Island state department (including the Rhode Island State Police), relating in any way to JTTF activities that include the monitoring, surveillance, questioning, interrogation, and/or investigation of individuals and organizations on the basis of national origin, racial and/or ethnic background, religious affiliation, organizational membership, political views or affiliation, or participation in protest activities or demonstrations.

4. All documents, files and records, relating or referring to any coordination by, between, or among the FBI and any county, city or town within Rhode Island (include their respective police forces) relating in any way to JTTF activities that include the

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monitoring, surveillance, questioning, interrogation, and/or investigation of individuals and organizations on the basis of national origin, racial and/or ethnic background, religious affiliation, organizational membership, political views or affiliation, or participation in protest activities or demonstrations.

5. All documents, files and records, relating or referring to the factors, guidelines, criteria and procedures which any JTTF within Rhode Island uses to determine whether an individual or organization is to become the target of such monitoring, surveillance, questioning, interrogation, and/or investigation.

6. All documents, files and records, relating or referring to the investigation and/or arrest of Bassam Diab, 11 Chaplin Street, Pawtucket, RI, taken into custody on or about January 11, 2004, after an investigation that reportedly involved both the Rhode Island State Police and the JTTF.

V. Expedited Processing Request

Expedited processing of this Request is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” by organizations “primarily engaged in disseminating information” 28 C.F.R. § 16.5(d)(1)(ii). This request implicates a matter of urgent public concern; namely, the consequences of a recent change in government policy that has likely resulted in increased surveillance and infiltration of political, religious, and community organizations by the FBI. 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 any violations cease, future violations are prevented, and any chilling effect on public participation in potentially targeted groups and/or political activity be halted.

In addition, this request deals with potential disparate treatment of groups on the basis of categories such as religion, nationality and political viewpoint. Such potential unequal treatment is a matter necessitating immediate attention. There is also intense public concern, particularly among potentially targeted groups, about the actual or

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alleged federal government activity addressed by this request. This intense public concern is illustrated by the selection of news coverage detailed in the paragraph below.

A requestor may also demonstrate the need for expedited processing by showing that the information sought relates to “a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(d)(1)(iv). The within request clearly meets these standards as the request relates to possible violations of Constitutional rights by federal law enforcement and potential targeting of groups by federal law enforcement based on illicit categories of political viewpoint, race, religion and nationality. The exceptional media interest in this issue is reflected in widespread news coverage at both the local and national level. See e.g. Daily Star Staff, *American Arabs Concerned Over FBI’s ‘October Plan,’* www.dailystar.com.lb, October 6, 2004; David Shepardson, *FBI Agents Hunt for Terror Leads: Agency Combs Muslim Neighborhoods for Help in Preventing Election Day Attack,* The Detroit News, October 1, 2004; Eric Lichtblau, *Subpoena Seeks Records About Delegate Lists on Web,* NY Times, August 30, 2004 at P10; Alex Bradley and John Mayer, *The War at Home: Nationwide Crackdown on Activists Part,* www.saveourliberties.com, September 2, 2004; Eric Lichtblau, *Protestors at Heart of Debate on Security vs. Civil Rights,* NY Times, August 27, 2004 at A9; Larry Abramson, *FBI Questioning Political Demonstrators,* NPR.org; Susan Greene, *Activists Decry Pre-Convention Security Tactics: Questions by FBI, The Feds Say They’re Trying to Avoid Terror Threats, But Many People Say the Steps Veer Toward Intimidation,* The Denver Post, August 26, 2004 at A-08; Eric Lichtblau, *F.B.I. Goes Knocking for Political Troublemakers,* NY Times, August 16, 2004 at A1; Amy Herder, *Teaching the Silent Treatment,* The Denver Post, August 8, 2004 at C-01; Jayashri Srikantiah, *Few Benefits to Questioning Targeted Groups,* San Francisco Chronicle, August 6, 2004; Camille T. Taiara, *New F.B.I. Witch-Hunt,* San Francisco Bay Guardian, August 4-10, 2004; Kelly Thornton, *F.B.I.’s Home Visits Have Some Muslims Feeling Harassed, Alienated,* Signonsandiego.com, August 4, 2004; Richard Schmitt and Donna Horowitz, *FBI Starts to Question Muslims in U.S. About Possible Attacks,* latimes.com, July 18, 2004; Karen Abbott, *FBI’s Queries Rattle Activist,* www.rockymountainnews.com, July 27, 2004; Mary Beth Sheridan, *Interviews of Muslims to Broaden,* www.washingtonpost.com, July 17, 2004; Jeff Eckhoff and Mark Siebert, *Group Fights Anti-war Inquiry,* The Des Moines Register, February 7, 2004; Jeff Eckhoff and Mark Siebert, *Anti-war Inquiry*

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Unrelated to Terror, *The Des Moines Register*, February 10, 2004 at 1A; Jeff Eckhoff and Mark Siebert, *Group Fights Anti-war Inquiry*, *The Des Moines Register*, February 7,

2004; Monica Davey, *An Antiwar Forum in Iowa Brings Federal Subpoenas*, *NY Times*, February 10, 2004 at A14; Monica Davey, *Subpoenas on Antiwar Protest Are Dropped*, *NY Times*, February 11, 2004 at A18; Michelle Goldberg, *A Thousand J. Edgar Hoovers*, *www.salon.com*, February 12, 2004; Michelle Goldberg, *Outlawing Dissent*, *www.salon.com*, February 11, 2004; Kerri Ginis, *Peace Fresno Seeks Damages*, *The Fresno Bee*, February 28, 2004; Eric Lichtblau, *F.B.I. Scrutinizes Antiwar Rallies*, *www.nytimes.com*, November 23, 2003.

The potential targeting of individuals and groups by the federal government on the basis of group membership, religion, political protest, nationality, and other similar categories raises many questions about the government's integrity and affects public confidence in a profound way. The government's -- and particularly the FBI's -- treatment of persons on the basis of their political viewpoints 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 the government's ability to protect all of its citizens, and in law enforcement and the legal system. This issue has been of concern to lawmakers, including three members of the House of Representatives. *See, e.g.*, Eric Lichtblau, *Inquiry into F.B.I. Question Is Sought*, *NY Times* A16, August 18, 2004.

VI. Statutory Schedule and Reservation of Rights

Pursuant to applicable regulations and statute, the Requestors expect the determination of this request for expedited processing within 10 calendar days and the determination of this request for documents within 20 days. See 28 C.F.R. 16.5(d)(4); 5 U.S.C. § 552(a)(6)(A)(i). The Requestors expressly reserve their right pursuant to applicable law to treat the failure to answer as a denial of the Request and to pursue appeals provided for in FOIA.

Very truly yours,

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Jerry Elmer