

**May 18, 2005**

**U.S. Mail Return Receipt**

Federal Bureau of Investigation  
J. Edgar Hoover Building  
935 Pennsylvania Avenue, N.W.  
Washington, DC 20535-0001

Federal Bureau of Investigation  
Louisville Division  
600 Martin Luther King Jr. Place, Room 500  
Louisville, Kentucky 40202

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

This letter constitutes a request under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) and the Department of Justice implementing regulations, 28 CFR § 16.11, and the Privacy Act, 5 U.S.C. § 552a by the American Civil Liberties Union of Kentucky (“ACLU of Kentucky”) on behalf of Reverend Raymond Payne. Attached is a signed authorization form in compliance with the Privacy Act. The original authorization form was sent to the National FBI office with a true and accurate copy sent to the Louisville Division office.

This request seeks records maintained in the offices of the Federal Bureau of Investigation (FBI) as well as the Louisville Division of the FBI including any FBI Louisville and/or Kentucky Joint Terrorism Task Force. This request also seeks all records to which the national FBI office as well as the Louisville Division of the FBI (including any FBI Louisville and/or Kentucky Joint Terrorism Task Force) have access, for example by means of electronic access to data that may be stored in another location.

**I. The Requestor**

Reverend Raymond Virgil Payne is a United Methodist Minister from Russell, Kentucky. On or about October 12, 2004, he was interrogated for 1 ½ hours by Canadian Border Officials as he attempted to enter Canada on a sight seeing trip with his wife. At the end of the interrogation, he was informed that the interrogation was triggered by the existence of an FBI file of which he is the subject.

Reverend Payne has never been arrested or charged with a crime. He has never even participated in a protest and has received only one traffic ticket in his lifetime. He is concerned, then, that he may have become the subject of FBI surveillance in the immediate aftermath of 9/11 when he ordered books over the Internet about the Islamic religion including several copies of the Koran for purposes of educating the members of his congregation about the religion per their request.

## II. The Request for Information

The ACLU of Kentucky seeks on behalf of Reverend Payne the disclosure of any records<sup>1</sup> created from January 1, 2000 to the present, that were prepared, received, transmitted, collected and/or maintained by the FBI or Louisville Division of the FBI, including any FBI Louisville and/or Kentucky Joint Terrorism Task Force relating or referring to the following:

1. Any records relating or referring to the Requestor, including but not limited to records that document any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on the Requestor or his activities;<sup>2</sup>
2. Any orders, agreements, or instructions to monitor, conduct surveillance, observe, question, interrogate, investigate, infiltrate, and/or collect information on the Requestor;
3. Any records relating or referring to how, why or when the Requestor was selected to be a subject of monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information;
4. Any records relating or referring to how monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on the Requestor was or will be conducted;
5. Any records relating or referring to the names of any other federal, state, or local government agencies participating in any monitoring,

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<sup>1</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>2</sup> The term “activities” as used herein includes, but is not limited to, any activities of the Requestor described in Section I above, including Internet communications such as purchases of books or other products.

surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on the Requestor;

6. Any records relating or referring to the specific role of the National Joint Terrorism Task Force or any local Joint Terrorism Task Force, including any Louisville and/or Kentucky Joint Terrorism Task Force in any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on the Requestor;

7. Any records relating or referring to the specific role of any foreign (including Canada), federal, state, or local government agency participating in any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on the Requestor;

8. Any records relating or referring to how records about the Requestor have been, will be, or might be used;

9. Any policies or procedures for analyzing records about the Requestor;

10. Any policies or procedures for cross-referencing records about the Requestor with information contained in any database;

11. Any policies or procedures for cross-referencing records about the Requestor with information about any other organizations or individuals;

12. Any policies or procedures for cross-referencing records about the Requestor with any other information not covered in numbers 10 and 11 above;

13. Any policies or procedures regarding retention of records about the Requestor;

14. Any records referring or relating to the destruction of records about the Requestor, including any policies permitting or prohibiting the destruction of records;

15. Any records referring or relating to how records about the Requestor were destroyed or might be destroyed in the future;

16. Any records referring or relating to the recipient(s) of records about the Requestor; and

17. Any records relating or referring to how, why or when monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on the Requestor 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) (“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 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 Sec. Archive v. Department of Def., 880 F.2d 1381, 1387 (D.C. Cir. 1989).

The ACLU is a national organization with state affiliates, 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. Any information obtained through the Kentucky affiliate of the ACLU will be disseminated both through all the means available by national ACLU as well as the ACLU of Kentucky. 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 public education department. The ACLU also disseminates information through its heavily subscribed web site: <http://www.aclu.org>. The web site addresses 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](http://www.aclu.org/patriot_foia); [www.aclu.org/torturefoia](http://www.aclu.org/torturefoia). The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail. 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. Also,

ACLU publications are often disseminated to relevant groups across the country that then further distribute them to their members or to other parties.

In addition, the Kentucky affiliate has utilized various means of communication to inform people about civil liberties issues. These means of communication include its web site (<http://www.aclu-ky.org>); e-mail action alerts on civil liberties developments sent to ACLU Kentucky members; quarterly newsletters sent to approximately 3,900 Kentucky households; briefing papers, pamphlets, and brochures on civil liberties issues; press releases and press conferences related to significant civil liberties issues; television and radio appearances as ACLU spokespersons on civil liberties matters; and public speaking at public forums on civil liberties topics. The Kentucky affiliate assists in the distribution of national ACLU reports on a variety of civil liberties matters. The ACLU of Kentucky archives documents at the University of Louisville.

Depending on the results of the Request, the ACLU plans to “disseminate the information” gathered by the Request “among the public” through one or more of the means of communication discussed above. The ACLU is therefore a “news media entity.” 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 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). Information disclosed by the ACLU as a result of this FOIA 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., 326 F.3d at 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 monitoring, surveillance, and infiltration of individuals and organizations on the basis of religious affiliation and interest and other First Amendment activity. 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 individuals and 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 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 as well as to immigrant, religious, politically active, and other targeted communities, 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>3</sup>

The records requested are not sought for commercial use, and the ACLU and Requestor 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 information disclosed as a result of this FOIA available to the public at no cost.

#### V. Expedited Processing Request

Expedited processing is warranted where there is "an urgency to inform the public about an actual or alleged federal government activity" by

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<sup>3</sup> 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.

organizations “primarily engaged in disseminating information” 28 C.F.R. § 16.5(d)(1)(ii).<sup>4</sup> 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 of individuals and 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 individuals and groups on the basis of categories such as religion and political viewpoint. Such potential unequal treatment is a matter necessitating immediate attention. There is also intense public concern, particularly among potentially targeted individuals and groups, about the actual or 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 instant request clearly meets these standards as the requests relate to possible violations of First, Fourth, Fifth, and Fourteenth Amendment Rights and have been subject to substantial media attention. The widespread and 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](http://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](http://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*

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<sup>4</sup> The ACLU is “primarily engaged in disseminating information” as discussed in Sections III and IV.

People Say the Steps Veer Toward Intimidation, *The Denver Post*, August 26, 2004 at A-08; August 17, 2004; 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 Harrassed, 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 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, First Amendment activity and other similar categorizations raises many questions about the government's integrity, which affect public confidence in a profound way. The government's treatment of persons on the basis of categorizations such as religion and nationality 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. Questions about the government's integrity in this area also affect the public's confidence in the law enforcement and legal systems. 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.



Finally, pursuant to applicable regulations and statute, the ACLU expects the determination of this request for expedited processing within 10 calendar days upon receipt of this request 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).

If this request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA and the Privacy Act. The ACLU expects you to release all portions of otherwise exempt material which can be segregated. 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: Lili S. Lutgens, Staff Attorney, ACLU of Kentucky, to our address on this letterhead.

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,

Lili S. Lutgens,  
Staff Attorney  
ACLU of Kentucky