

DF-2015-00097

From: Sonia Roubini <sroubini@aclu.org>
Sent: Wednesday, January 21, 2015 11:45 AM
To: DNI-FOIA
Subject: Freedom of Information Act request
Attachments: ACLU FOIA request, government impersonation.pdf

JAN 21 2015

Dear Ms. Hudson,

Please find attached a Freedom of Information Act request, as submitted by the Speech, Privacy, and Technology Project at the ACLU.

All best,
Sonia

Sonia Roubini
Paralegal
Speech, Privacy & Technology Project
American Civil Liberties Union
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January 21, 2015

VIA FACSIMILE OR ELECTRONIC MAIL.

Central Intelligence Agency
Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505
Fax: (703) 613-3007

Drug Enforcement Administration
Katherine L. Myrick, Chief
Freedom of Information Operations Unit
FOI/Records Management Section
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West Building, 6th Floor
Arlington, VA 22202
Fax: (202) 307-8556
Email: dea.foia@usdoj.gov

Defense Intelligence Agency
ATTN: DAN-1A (FOIA)
200 MacDill Blvd
Washington, DC 20340-5100
Fax: (301) 394-5356
Email: foia@dodis.mil

Director of National Intelligence
Jennifer L. Hudson
Director, Information Management Division
Office of the Director of National Intelligence
Washington, DC 20511
Fax: (703) 874-8910
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National Security Agency
NSA FOIA Requester Service Center
POC: Cindy Blacker
NSA FOIA Requester Service Center/DJ4
9800 Savage Road, Suite 6248
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Federal Bureau of Investigation

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Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843
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Re: Freedom of Information Act Request

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 the American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively "ACLU")¹ request records regarding the use of impersonation an investigative technique.

I. Background

Public records and speeches by top officials at a range of government agencies reveal that the government impersonates private citizens and organizations who are not suspected of any wrongdoing as a tactic in the investigation of others. For example, documents obtained by the Electronic Frontier Foundation² reveal that, on June 14, 2007, the FBI's Cryptologic and Electronic Analysis Unit ("CEAU"), in conjunction with the FBI's Seattle Field Office, impersonated an Associated Press reporter and authored a fake Associated Press story in an effort to deliver surveillance software to the target of an investigation. The operation was not made public until 2014, at which point it became the subject of significant public debate and criticism.³

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil-liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate, 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil-rights and civil-liberties cases, educates the public about civil-rights and civil-liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union's members to lobby their legislators.

² Jennifer Lynch, *New FBI Documents Provide Details on Government's Surveillance Spyware*, Electronic Frontier Foundation, Apr. 29, 2011, <https://www.eff.org/deeplinks/2011/04/new-fbi-documents-show-depth-government>

³ Paul Colford, *Editorials Criticize FBI's Impersonation*, Associated Press, Nov. 19, 2014, <http://blog.ap.org/2014/11/19/editorials-criticize-fbis-impersonation/>; Letter from Reporters Committee for Freedom of the Press et al., to Eric H. Holder, Jr. and James B. Comey, Jr. (Nov. 6, 2014), available at <http://www.rcfp.org/sites/default/files/2014-11-06-letter-to-doj-fbi-regarding-sc.pdf>

The FBI has confirmed and defended the use of impersonation.⁴ After the revelation of the FBI's impersonation of the AP reporter, FBI Director James Comey argued that the "technique was proper and appropriate" under Justice Department and FBI guidelines at the time. "Today, the use of such an unusual technique would probably require higher level approvals than in 2007, but it would still be lawful and, in a rare case, appropriate."⁵ On another occasion, Director Comey refused to foreswear the use of similar techniques in the future: "I'm not willing to say never. . . . Just as I wouldn't say that we would never pose as an educator or a doctor or, I don't know, a rocket scientist."⁶

More recently, the DEA created a fake Facebook profile for an individual it had arrested, Sondra Prince, as part of an investigation into an alleged New York drug ring.⁷ The CIA apparently impersonated Senate Staffers in order to gain access to documents relating to the (then) forthcoming report by the Senate Intelligence Committee on the CIA's post-9/11 torture program.⁸ And the FBI impersonated internet repair technicians to gain physical access to suspects' hotel rooms. Court documents from the resulting prosecution disclose that, during an investigation of online gambling, FBI agents disconnected the internet in three rooms of a Las Vegas hotel and impersonated technicians to enter the rooms without suspicion and to collect evidence later used against the suspects in court.⁹

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⁴ James B. Comey, Letter to the Editor, *To Catch a Crook: The F.B.I.'s Use of Deception*, N.Y. Times, Nov. 6, 2014, http://www.nytimes.com/2014/11/07/opinion/to-catch-a-crook-the-fbis-use-of-deception.html?_r=0

⁵ *Id.*

⁶ Eric Tucker, *FBI Leaves Door Open on Media Impersonation*, Associated Press, Dec. 9, 2014, <http://abcnews.go.com/Politics/wireStory/fbi-leaves-door-open-media-impersonation-27483048>

⁷ Terrence McCoy, *DEA Created a Fake Facebook Profile in This Woman's Name Using Seized Pics -- Then Impersonated Her*, Wash. Post, Oct. 7, 2014, <http://www.washingtonpost.com/news/morning-mix/wp/2014/10/07/dea-created-a-fake-facebook-profile-in-this-womans-name-using-seized-pics-then-impersonated-her/>

⁸ Techdirt, *CIA Apparently 'Impersonated' Senate Staffers to Gain Access to Documents on Shared Drives*, Oct. 22, 2014, <https://www.techdirt.com/articles/20141022/08465028908/cia-apparently-impersonated-senate-staffers-to-gain-access-to-documents-shared-drives.shtml>; Mike Masnick, *CIA Spying on the Senate Went Much Further Than Originally Reported*, Techdirt (Aug. 1, 2014), <https://www.techdirt.com/articles/20140731/18065928080/cia-spying-senate-went-much-further-than-originally-reported.shtml>

⁹ Alicia A. Caldwell, *Court Filing: FBI Impersonated Repairman in Ruse*, Associated Press, Oct. 28, 2014, <http://bigstory.ap.org/article/ea89994bcea415d87d6733f5dd21fc6/court-filing-fbi-impersonated-geek-squad-ruse>

These are but a few examples of a tactic that appears to be as widespread as it is troublesome. The impersonation of actual individuals in the conduct of investigations threatens the fabric of trust that our democracy depends upon. If individuals cannot be sure, for example, that the email they received from their spouse or best friend is actually from their spouse or best friend, lawful association will languish. Similarly, if they cannot be sure that they are in fact conducting a transaction with the online merchant they have chosen, commercial association will suffer.

The impersonation of actual individuals also raises serious constitutional questions. The Fourth Amendment prohibits "unreasonable searches and seizures." While courts have generally approved of the government's use of deception in particular circumstances, few have ruled upon the constitutionality of the impersonation of actual individuals. The risks it raises are categorically different from and greater than those raised by simple investigative deception.

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In light of these questions and concerns, the ACLU seeks records regarding the use of impersonation as an investigative technique.

II. Requested Records

The ACLU seeks disclosure of records containing the following:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:
 - i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.
 - ii. The impersonation of the Associated Press (described above), as well as the impersonation of any other news agencies or media outlets.
 - iii. The impersonation of journalists, doctors, or members of the clergy.
 - iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.
2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.

3. Records relating to section IV A of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).

- i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014).

The Request encompasses records designated as drafts or non-final, except where such records have resulted in a final policy or memorandum processed as responsive to the Request. The Request covers the time period of 2001 to the present.

III. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E), 28 C.F.R. § 16.5(d), 32 C.F.R. § 1900.34(c), and Regulation 54000.7-R(C1)(5)(4)(3). 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); see also 28 C.F.R. § 16.5(d)(ii), 32 C.F.R. § 1900.34(c)(2), Regulation 54000.7-R(C1)(5)(4)(3).

In addition, the records sought relate to a "breaking news story of general public interest." 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when "the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity").

- A. *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 print magazine distributed to over 350,000 ACLU members; 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 websites, including the Free Future blog; and an online video series with over 10,000 subscribers.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.¹⁰ ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹¹

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The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA.¹² For

¹⁰ See, e.g., 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/inmigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison, Says ACLU, June 24, 2009, <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>.

¹¹ See, e.g., Carrie Johnson, Delay in Releasing CIA Report Is Sought; Justice Dep't Wants More Time to Review IG's Findings on Detainee Treatment, Wash. Post, June 20, 2009 (quoting ACLU staff attorney Amrit Singh); Peter Finn & Julie Tate, CIA Mistaken on 'High-Value' Detainee, Document Shows, Wash. Post, June 16, 2009 (quoting ACLU staff attorney Ben Wizner); Scott Shane, Lawsuits Force Disclosures by C.I.A., N.Y. Times, June 10, 2009 (quoting ACLU National Security Project director Jameel Jaffer); Joby Warrick, Like FBI, CIA Has Used Secret 'Letters,' Wash. Post, Jan. 25, 2008 (quoting ACLU staff attorney Melissa Goodman).

¹² See, e.g., <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <http://www.aclu.org/torturefoia>; <http://www.aclu.org/olcmemos>; <http://www.aclu.org/mappingthefbi>; <http://www.aclu.org/national-security/bagram-foia>; <http://www.aclu.org/safefree/torture/csrfoia.html>;

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example, the ACLU maintains an online "Torture Database," a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.¹³ The ACLU also maintains a "Torture FOIA" webpage containing commentary about the ACLU's FOIA request, press releases, and analysis of the FOIA documents.¹⁴ (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.¹⁵ 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.¹⁶

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

The records sought by this request are urgently needed to inform the public about actual or alleged government activity and about breaking news stories of general public interest. Since the Snowden disclosures in 2013,

<http://www.aclu.org/natsec/foia/search.html>;
<http://www.aclu.org/safefree/nsaspying/30022res20060207.html>;
<http://www.aclu.org/patriotfoia>; <http://www.aclu.org/spyfiles>;
<http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>; and
<http://www.aclu.org/exclusion>.

¹³ <http://www.torturedatabase.org>.

¹⁴ <http://www.aclu.org/torturefoia>.

¹⁵ http://www.aclu.org/safefree/general/olc_memos.html.

¹⁶ 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 materials available at the American Civil Liberties Union Archives at Princeton University Library.

there has been an overwhelming public interest in the variety of investigative tactics used by our government to spy on its targets. As explained more fully above, the revelations relating to the use of impersonation by various federal agencies have been no exception. This request seeks to further the public's understanding of the government's use of that tactic.

IV. 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 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).

The ACLU is a national organization dedicated to the defense of civil rights and civil liberties. Dissemination of information to the public is a critical and substantial component of the ACLU's mission and work. Specifically, the ACLU publishes a continuously updated blog, 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 and web site. The ACLU 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.¹⁷ For example, the ACLU's "Accountability for Torture FOIA" webpage¹⁸ contains commentary about the ACLU's FOIA

¹⁷ See, e.g., <https://www.aclu.org/national-security/warrantless-electronic-communications-foia-requests>; <https://www.aclu.org/technology-and-liberty/foia-request-justice-department-policy-memos-gps-location-tracking>; <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.thetorturedatabase.org>; <http://www.aclu.org/mappingthefbi>.

¹⁸ <https://www.aclu.org/accountability-torture>

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 maintains and publishes a widely read blog specifically dedicated to covering issues involving “civil liberties in the digital age,”¹⁹ through which the organization disseminates news and commentary about FOIA requests similar to this one.²⁰ 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 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to approximately 300,000 subscribers (both ACLU members and non-members) by e-mail. 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,²¹ “know your rights” publications,²² fact sheets,²³ and educational brochures and pamphlets

¹⁹ <https://www.aclu.org/blog/free-future>.

²⁰ See, e.g., Nathan Freed Wessler, *New Documents Suggest IRS Reads Emails Without a Warrant*, Free Future (Apr. 10, 2013), <https://www.aclu.org/blog/technology-and-liberty-national-security/new-documents-suggest-irs-reads-emails-without-warrant>.

²¹ 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).

²² Some of the more recent “know your rights” publications include: ACLU, *Know Your Rights: Pregnant, Post-Partum & Breastfeeding Workers* (Oct. 2013), available at https://www.aclu.org/files/assets/kyr_pregant_breastfeeding.pdf; 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 http://www.aclu.org/files/assets/genderbasedviolence_factsheet_0.pdf; ACLU, *Know Your*

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

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V. 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.”), 28 C.F.R. §§ 16.11(4)(k)(i) and 32 C.F.R. § 1900.13(b) (Records will be furnished without charge or at a reduced rate whenever the agency determines “that it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester”).

Disclosure of the requested information will help members of the public understand the extent to which federal agencies impersonate innocent private citizens and organizations in their investigation of others. This practice has the capacity to erode citizens’ trust in both lawful and

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.

²³ 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.

commercial association, and it also raises serious Fourth Amendment concerns and constitutes a breach of personal privacy. The requested information will "contribute significantly to public understanding" of how this practice affects the average United States citizen. 5 U.S.C. § 552(a)(4)(A)(iii).

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.²⁴

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

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Alex Abdo
ACLU
125 Broad St., 17th Floor
New York, NY 10004

If you have questions, please contact me at aabdo@aclu.org or (212) 549-2517.

Sincerely,



Alex Abdo

²⁴ Fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in May 2012, the Bureau of Prisons granted a fee waiver to the ACLU for a FOIA request seeking documents concerning isolated confinement of prisoners in BOP custody. In March 2012, the Department of Justice Criminal Division granted a fee waiver to the ACLU for a FOIA request seeking records about the government's access to the contents of individuals' private electronic communications. 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. In May 2005, the U.S. 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 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.

[REDACTED]

(b)(3)

From: [REDACTED]
Sent: Thursday, January 29, 2015 11:21 AM
To: [REDACTED] -
Cc: [REDACTED] -
Subject: ACLU Expedited Processing Request - Need Guidance
Importance: High

Classification: UNCLASSIFIED

=====

Hi [REDACTED]

The ACLU requested expedited processing in the attached request. The request was made on 21 Jan 2015, we received it on 21 Jan 2015. We don't anticipate finding responsive material.

Records requested:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:
 - i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.
 - ii. The impersonation of the Associated Press (described above), as well as the impersonation of any other news agencies or media outlets.
 - iii. The impersonation of journalists, doctors, or members of the clergy.
 - iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.

2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.

3. Records relating to section IV of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).
 - i. The use of impersonation in United States v. Wei Seng Phua, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014).

At your earliest convenience, please call [REDACTED] to discuss. She would have reached out to you initially, but she is working on another hot action.

[REDACTED]

FOIA/PA Branch Admin (b)(3)

ODNI/CIO/IMD

[REDACTED]

=====
Classification: UNCLASSIFIED

[REDACTED] - (b)(3)

From: [REDACTED] -
Sent: Tuesday, February 03, 2015 11:38 AM
To: [REDACTED] -
Subject: RE: ACLU Expedited Processing Request - Need Guidance

***** This message has been archived. Double-Click the message to view the contents. *****

Classification: UNCLASSIFIED
=====

Duh, got it. Thank you!

(b)(3)

From: [REDACTED] -
Sent: Tuesday, February 03, 2015 11:26 AM
To: [REDACTED] -
Subject: RE: ACLU Expedited Processing Request - Need Guidance

Classification: UNCLASSIFIED
=====

Okey dokey. I think you have the case folder, along with a hard copy of the ack ltr. Unless you have any changes, it should be ready for your signature. ;-)

(b)(3)

From: [REDACTED] -
Sent: Tuesday, February 03, 2015 9:48 AM
To: [REDACTED] -
Subject: FW: ACLU Expedited Processing Request - Need Guidance

Classification: UNCLASSIFIED
=====

Let's move forward.

From: [REDACTED] -
Sent: Tuesday, February 03, 2015 9:28 AM
To: [REDACTED] (b)(3)

Cc: Judith M. Strother-DNI-; [REDACTED]
Subject: RE: ACLU Expedited Processing Request - Need Guidance

Classification: UNCLASSIFIED
=====

Looks ok to me.

[REDACTED]
Senior Associate General Counsel (Litigation)
Office of the Director of National Intelligence

[REDACTED]
Commercial: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b)(3)

From: [REDACTED] -
Sent: Friday, January 30, 2015 1:02 PM
To: [REDACTED]; [REDACTED]
Cc: Judith M. Strother-DNI-
Subject: RE: ACLU Expedited Processing Request - Need Guidance

Classification: UNCLASSIFIED
=====

[REDACTED],

Please find the attached we drafted before we finalize and send to the requester. It's our standard response for acknowledging the request and when applicable, denying expedited. As discussed, let me know Monday if you have any issues before we have Judith sign the letter on Tuesday or Wednesday. Thanks.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

Alex Abdo
ACLU
125 Broad St., 17th Floor
New York, NY 10004

FEB 03 2015

Reference: ODNI Case DF-2015-00097

Dear Mr. Abdo:

This acknowledges receipt of your Freedom of Information Act (FOIA) request dated 21 January 2015 (Enclosure), received in the Information Management Division of the Office of the Director of National Intelligence on 21 January 2015. Pursuant to the FOIA, 5 U.S.C. § 552, as amended, you requested the following records:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:
 - i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.
 - ii. The impersonation of the Associated Press (described above), as well as the impersonation of any other news agencies or media outlets.
 - iii. The impersonation of journalists, doctors, or members of the clergy.
 - iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.
2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.
3. Records relating to section IV of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).
 - i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014).

With respect to your request for expedited processing, please be advised that ODNI handles all requests in the order we receive them on a "first-in, first-out" basis. We make exceptions to this rule only when a requester establishes a compelling need under the standards in our regulations. A "compelling need" exists: 1) when the matter involves an imminent threat to the life or physical safety of an individual, or 2) when a person primarily engaged in disseminating information makes the request and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity. Your request does

Mr. Abdo

not demonstrate a "compelling need" under these criteria and, therefore, we deny your request for expedited processing.

Since we may be unable to provide a response within the 20 working days stipulated by the FOIA, you have the right to consider this acknowledgment response as a denial and may appeal to the ODNI, Information Management Office, Washington, DC 20511 within 45 days of the date of this letter. It would seem more reasonable, however, to allow us sufficient time to continue processing your request and respond as soon as we can. You will have the right to appeal any denial of records at that time.

If you have any questions, please email our Requester Service Center at DNI-FOIA@dni.gov or call us at (703) 874-8500.

Sincerely,

for 
Jennifer Hudson
Director, Information Management Division

Enclosure

(b)(3)

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 16
Date: Monday, March 16, 2015 8:32:35 AM

Classification: UNCLASSIFIED
=====

NCSC has searched all files (share drive, e-mails) and have not found any responsive records to FOIA DF-2015-00097- Use of Impersonation as an Investigative Technique.

v/r

[REDACTED]

(b)(3)

[REDACTED]
Executive Secretariat
National Counterintelligence and Security Center (NCSC)
Office of the Director of National Intelligence
[REDACTED] (Secure)
[REDACTED] (nonsecure)

(b)(3)

From: [REDACTED]
Sent: Monday, March 02, 2015 9:19 AM
To: [REDACTED]-; [REDACTED]-; DNI-P&S-Front Office; DNI-NCSC-Executive Secretariat
Cc: Judith M. Strother-DNI-; [REDACTED]-
Subject: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 16

Classification: UNCLASSIFIED
=====

Good morning,

The IMD/FOIA Branch received a FOIA request (ODNI case DF-2015-00097) from Alex Abdo for **use of impersonation as an investigative technique**. The request is attached and provided at the end of this email for your reference.

We, the FOIA office, interpret this request to mean locating materials only related to **use of impersonation as an investigative technique** and only to be tasked to those who would likely and reasonably have the responsive materials. We are NOT asking for everyone in your component to search, just those who would reasonably be the subject matter experts for the information requested.

Remember, under FOIA all documents potentially related to the request must be provided to the FOIA office. We will then review the documents for responsiveness and apply the appropriate FOIA exemptions. Upon completion of our review, the FOIA office will provide our proposed release for review/concurrence. If the components do not concur with our proposed release, they will need to identify the information of concern and provide a statement explaining the harm in the release. The FOIA office will then work with your office to identify the appropriate FOIA exemption for the information.

Due to a significant increase in the number of litigations we require all responses, with or without record findings, to include "what" and "where" you searched for the requested information. For example, "IMD searched for materials including memos and studies relating to commercial imagery resolution (the what) searching through all AIN and CWE emails as well as the IMD share drive (the where)."

Please send any responsive documents along with your search strategy (mentioned in the example above) to [DNI-FOIA](#) by **COB on Mar 16, 2015**.

(b)(3)

FOIA/PA Branch Admin
ODNI/CIO/IMD

The ACLU seeks disclosure of records containing the following:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:
 - i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.
 - ii. The impersonation of the Associated Press (described above), as well as the impersonation of any other news agencies or media outlets.
 - iii. The impersonation of journalists, doctors, or members of the clergy.
 - iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.
2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.
3. Records relating to section IV A of the Attorney General's

Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).

i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014).

The Request encompasses records designated as drafts or non-final, except where such records have resulted in a final policy or memorandum processed as responsive to the Request. The Request covers the time period of 2001 to the present.

=====
Classification: UNCLASSIFIED

=====
Classification: UNCLASSIFIED

(b)(3)

From: [REDACTED]
To: [REDACTED]; [DNI-FOIA](#)
Cc: [DNI-P&S-Front Office](#)
Subject: RE: P&S response - FOIA Search for DF-2015-00097
Date: Thursday, March 19, 2015 8:35:08 AM

Classification: UNCLASSIFIED
=====

Thank you, [REDACTED].

[REDACTED]
[FOIA/PA Branch Admin](#)
[ODNI/CIO/IMD](#)

(b)(3)

From: [REDACTED]
Sent: Monday, March 16, 2015 4:30 PM
To: DNI-FOIA
Cc: [REDACTED]; [DNI-P&S-Front Office](#)
Subject: P&S response - FOIA Search for DF-2015-00097

Classification: UNCLASSIFIED
=====

Good afternoon [REDACTED],

(b)(3)

P&S [REDACTED] did not have any responsive material for this request. We searched the CWE Policy share drive, Lotus Notes e-mail storage, and Policy staff working folders and e-mails. Search terms included impersonation, impersonate, imperson, cover, cover support, and investigative.

Please let us know if you have any questions.

Thanks, [REDACTED]

[REDACTED], Action Officer and COTR
Policy & Strategy front office
[REDACTED]

(b)(3)

From: [REDACTED]
Sent: Monday, March 02, 2015 9:19 AM
To: [REDACTED]; [REDACTED]; [DNI-P&S-Front Office](#); [DNI-NCSC-Executive Secretariat](#)
Cc: [Judith M. Strother-DNI](#); [REDACTED]
Subject: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 16

Classification: UNCLASSIFIED
=====

Good morning,

The IMD/FOIA Branch received a FOIA request (ODNI case DF-2015-00097) from Alex Abdo for use

of impersonation as an investigative technique. The request is attached and provided at the end of this email for your reference.

We, the FOIA office, interpret this request to mean locating materials only related to **use of impersonation as an investigative technique** and only to be tasked to those who would likely and reasonably have the responsive materials. We are NOT asking for everyone in your component to search, just those who would reasonably be the subject matter experts for the information requested.

Remember, under FOIA all documents potentially related to the request must be provided to the FOIA office. We will then review the documents for responsiveness and apply the appropriate FOIA exemptions. Upon completion of our review, the FOIA office will provide our proposed release for review/concurrence. If the components do not concur with our proposed release, they will need to identify the information of concern and provide a statement explaining the harm in the release. The FOIA office will then work with your office to identify the appropriate FOIA exemption for the information.

Due to a significant increase in the number of litigations we require all responses, with or without record findings, to include "what" and "where" you searched for the requested information. For example, "IMD searched for materials including memos and studies relating to commercial imagery resolution (the what) searching through all AIN and CWE emails as well as the IMD share drive (the where)."

Please send any responsive documents along with your search strategy (mentioned in the example above) to [DNI-FOIA](#) by **COB on Mar 16, 2015**.

[REDACTED]
FOIA/PA Branch Admin
ODNI/CIO/IMD
[REDACTED]

(b)(3)

The ACLU seeks disclosure of records containing the following:

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- ii. The impersonation of the Associated Press (described above), as well as the impersonation of any other news agencies or media outlets.
- iii. The impersonation of journalists, doctors, or members of the clergy.

iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.

2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.

3. Records relating to section IV A of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).

i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014).

The Request encompasses records designated as drafts or non-final, except where such records have resulted in a final policy or memorandum processed as responsive to the Request. The Request covers the time period of 2001 to the present.

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

=====
Classification: UNCLASSIFIED

(b)(3)

From: [REDACTED]
To: [REDACTED]; DNI-FOIA
Cc: [REDACTED]; [REDACTED]
Subject: RE: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 16
Date: Friday, April 10, 2015 9:16:17 AM

Classification: UNCLASSIFIED
=====

Great...Thank you.

(b)(3)

From: [REDACTED]
Sent: Friday, April 10, 2015 9:11 AM
To: [REDACTED]; DNI-FOIA
Cc: [REDACTED]; [REDACTED]
Subject: RE: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 16

Classification: UNCLASSIFIED
=====

Greetings,

The search terms are:

any records that pertain to or contain "impersonation" or "fictitious persona" AND "investigation" or "investigative technique" in the same document.

Thank you,

[REDACTED]
ODNI/OGC Legislation
Phone: [REDACTED]

(b)(3)

From: [REDACTED]
Sent: Friday, April 10, 2015 8:43 AM
To: [REDACTED]; DNI-FOIA
Cc: [REDACTED]; [REDACTED]
Subject: RE: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 16

Classification: UNCLASSIFIED
=====

Thank you. Can you please provide the search terms you used?

(b)(3)

[REDACTED]
From: [REDACTED]
Sent: Thursday, April 09, 2015 4:11 PM

To: DNI-FOIA

(b)(3)

Cc: [Redacted]

Subject: FW: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 16

Classification: UNCLASSIFIED

=====
Greetings,

OGC's subject matter expert completed their search of emails and share drive for FOIA Request DF-2015-00097 and have no responsive documents.

We would ask that IMD task CIA to search relevant emails for Mr. Robert Litt.

Please don't hesitate to contact us if you have any further questions.

Thank you,

[Redacted]

ODNI/OGC

Phone(s): [Redacted] (u)

(b)(3)

From: [Redacted] -

Sent: Tuesday, March 24, 2015 8:18 AM

To: [Redacted]

Cc: [Redacted]; [Redacted]

Subject: FW: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 16

Classification: UNCLASSIFIED

=====
[Redacted]

Senior Associate General Counsel (Litigation)
Office of the Director of National Intelligence

[Redacted]

Commercial: [Redacted]

NSTS: [Redacted]

[Redacted]

[Redacted]

[Redacted]

(b)(3)

From: [Redacted]

Sent: Monday, March 02, 2015 9:19 AM

To: [Redacted]; [Redacted]; DNI-P&S-Front Office; DNI-NCSC-Executive Secretariat

Cc: Judith M. Strother-DNI-; [Redacted] -

Subject: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 16

Classification: UNCLASSIFIED

=====

Good morning,

The IMD/FOIA Branch received a FOIA request (ODNI case DF-2015-00097) from Alex Abdo for **use of impersonation as an investigative technique**. The request is attached and provided at the end of this email for your reference.

We, the FOIA office, interpret this request to mean locating materials only related to **use of impersonation as an investigative technique** and only to be tasked to those who would likely and reasonably have the responsive materials. We are NOT asking for everyone in your component to search, just those who would reasonably be the subject matter experts for the information requested.

Remember, under FOIA all documents potentially related to the request must be provided to the FOIA office. We will then review the documents for responsiveness and apply the appropriate FOIA exemptions. Upon completion of our review, the FOIA office will provide our proposed release for review/concurrence. If the components do not concur with our proposed release, they will need to identify the information of concern and provide a statement explaining the harm in the release. The FOIA office will then work with your office to identify the appropriate FOIA exemption for the information.

Due to a significant increase in the number of litigations we require all responses, with or without record findings, to include "what" and "where" you searched for the requested information. For example, "IMD searched for materials including memos and studies relating to commercial imagery resolution (the what) searching through all AIN and CWE emails as well as the IMD share drive (the where)."

Please send any responsive documents along with your search strategy (mentioned in the example above) to [DNI-FOIA](#) by **COB on Mar 16, 2015**.

(b)(3)

FOIA/PA Branch Admin
ODNI/CIO/IMD

The ACLU seeks disclosure of records containing the following:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:

i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.

ii. The impersonation of the Associated Press (described above),

as well as the impersonation of any other news agencies or media outlets.

iii. The impersonation of journalists, doctors, or members of the clergy.

iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.

2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.

3. Records relating to section IV A of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).

i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014). The Request encompasses records designated as drafts or non-final, except where such records have resulted in a final policy or memorandum processed as responsive to the Request. The Request covers the time period of 2001 to the present.

=====
Classification: UNCLASSIFIED

(b)(3)

From: [REDACTED]
To: [REDACTED]
Subject: RE: SENSITIVE CRAWL REQUEST (CWE & AIN): FOIA Request DF-2015-00097: DUE COB 04/24/15 Records relating to use of impersonation as an investigative technique.
Date: Monday, April 20, 2015 11:14:25 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.png](#)

Classification: UNCLASSIFIED
=====

Good morning,

Below is the location of the Lotus Notes portion of this request. I will send an email when the Outlook portion of the request is ready.

Please let me know if you have any questions.

Thank you,

[REDACTED]

(b)(3)

File location: [REDACTED] \F_2015_00097\F_2015_00097.nsf

[REDACTED]

If you don't already have a connection record to the [REDACTED] please follow the instructions below.

1. Select **File/Open/Lotus Notes Application** (*Your option may be **File/Application/Open***)
2. Leave the server name as **On My Computer**.
3. In the File name box type **names.nsf** and click open
cid:image007.jpg@01CED632.C4A91FD0



4. Under **View/Advanced** select **Connections** and then click **New / Server connection**

cid:image003.jpg@01CFACC6.EA9A3330

(b)(3)

5. Make sure you fill in the **Basics** and the **Advanced** tabs with the appropriate information. Server name [REDACTED] and Destination server address is [REDACTED] Save and close the new record.

cid:image004.png@01CFACC6.EA9A3330



cid:image007.jpg@01CFACC6.EA9A3330



In Lotus Notes click **File/Open/Lotus Notes Application** (..or **File/Application/Open**). Fill in the information for the server and navigate to the file under **exports\F_2015_00097\F_2015_00097.nsf**



Please let me know if you have any questions/problems.

Thanks!

██████████

(b)(3)

From: ██████████
Sent: Monday, April 13, 2015 08:39
To: CIO-GCS-ECG-CSD-EPSB-IONS; ██████████
Cc: ██████████ -
Subject: SENSITIVE CRAWL REQUEST (CWE & AIN): FOIA Request DF-2015-00097: DUE COB 04/24/15
Records relating to use of impersonation as an investigative technique.

Classification: UNCLASSIFIED

=====
ECG – D/IMS approved the below request to search CWE Notes/Outlook and AIN. Please provide
response directly to ██████████. Regards, ██████████

(b)(3)

From: ██████████ -
Sent: Friday, April 10, 2015 10:50 AM
To: ██████████ -
Cc: Judith M. Strother-DNI-; ██████████
Subject: FOIA Request DF-2015-00097: DUE COB 04/24/15 Records relating to use of impersonation as
an investigative technique.

Classification: UNCLASSIFIED

=====
Good morning,

The ODNI FOIA office received a FOIA request case DF-2015-00097 for records related to **use of impersonation as an investigative technique**. The request letter is attached for reference. Please let

me know if you need anything else.

SEARCH TERMS:

Impersonation
Fictitious persona
Investigative technique

NAMES OF OFFICERS (from and to):

Robert Litt

DATE RANGE:

April 2005-Present

-

SYSTEMS:

CWE Lotus Notes
CWE MS Outlook
AIN MS Outlook

PERSONS WHO NEED ACCESS:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b)(3)

[REDACTED]

FOIA/PA Branch Admin
ODNI/CIO/IMD

[REDACTED]

IT. . Requested Records

The ACLU seeks disclosure of records containing the following:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:
 - i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.
 - ii. The impersonation of the Associated Press (described above), as well as the impersonation of any other news agencies or media outlets.
 - iii. The impersonation of journalists, doctors, or members of the clergy.
 - iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.
2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual

organizations or actual individuals.

3. Records relating to section *N A* of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).

i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014).

The Request encompasses records designated as drafts or non-final, except where such records have resulted in a final policy or memorandum processed as responsive to the Request. The Request covers the time period of 2001 to the present.

Sonia Roubini

=====
Classification: UNCLASSIFIED

(b)(3)

From: [REDACTED]
Sent: Tuesday, April 21, 2015 2:46 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Status Update of 2015-00097

***** This message has been archived. Double-Click the message to view the contents. *****

Classification: UNCLASSIFIED

=====

(b)(3)

Good Afternoon [REDACTED],

I completed the first step of the conversion process for 2015-00097.

I noted in the subject line of messages that had attachments that needed to be converted.

Also several "Bills to Watch" did not allow me to save nor edit subject line.

See you tomorrow.

(b)(3)

[REDACTED]

=====

Classification: UNCLASSIFIED

(b)(3)

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: SENSITIVE CRAWL REQUEST (CWC & AIN): FOIA Request DF-2015-00097. DUE COB 04/24/15 Records relating to use of impersonation as an investigative technique.
Date: Thursday, April 23, 2015 10:33:06 AM

Classification: UNCLASSIFIED
=====

I've completed the AIN email crawl as requested and the search results have been exported to an Outlook personal folders (i.e. pst file). The below process should allow you to access the file via Outlook.

1. Launch Outlook
2. Click the **File** tab
3. Click **Open**
4. Double-click **Open Outlook Data File**
5. Browse to the following location
 - a. U:\FOIA Request\DF-2015-00097\
6. Click the Outlook Data File (Example: DF-2015-00097 Robert Litt-Robert Litt-04.23.2015.0959AM.pst) file that you want to open, and then click **OK**.

The file should now appear in the Outlook Navigation Pane (left column of the main Outlook window)

Please let me know if you have any problems.

Thanks,
[REDACTED]

(b)(3)

From: [REDACTED]
Sent: Monday, April 13, 2015 1:06 PM
To: [REDACTED] -
Subject: FW: SENSITIVE CRAWL REQUEST (CWE & AIN): FOIA Request DF-2015-00097: DUE COB 04/24/15 Records relating to use of impersonation as an investigative technique.

Classification: UNCLASSIFIED
=====

Over to you...

Regards,

[REDACTED]
Chief, Agency Internet Program (AIP)
[REDACTED]

(b)(3)

From: [REDACTED]
Sent: Monday, April 13, 2015 8:39 AM
To: CIO-GCS-ECG-CSD-EPSB-IONS; [REDACTED]

(b)(3)

Cc: [REDACTED]

Subject: SENSITIVE CRAWL REQUEST (CWE & AIN): FOIA Request DF-2015-00097: DUE COB 04/24/15 Records relating to use of impersonation as an investigative technique.

Classification: UNCLASSIFIED
=====

ECG – D/IMS approved the below request to search CWE Notes/Outlook and AIN. Please provide response directly to [REDACTED]. Regards, [REDACTED]

(b)(3)

From: [REDACTED]

Sent: Friday, April 10, 2015 10:50 AM

To: [REDACTED]

Cc: Judith M. Strother-DNI-; [REDACTED]

Subject: FOIA Request DF-2015-00097: DUE COB 04/24/15 Records relating to use of impersonation as an investigative technique.

Classification: UNCLASSIFIED
=====

Good morning,

The ODNI FOIA office received a FOIA request case DF-2015-00097 for records related to **use of impersonation as an investigative technique**. The request letter is attached for reference. Please let me know if you need anything else.

SEARCH TERMS:

- Impersonation
- Fictitious persona
- Investigative technique

NAMES OF OFFICERS (from and to):

Robert Litt

DATE RANGE:

April 2005-Present

-

SYSTEMS:

- CWE Lotus Notes
- CWE MS Outlook
- AIN MS Outlook

PERSONS WHO NEED ACCESS:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

(b)(3)

[REDACTED]

(b)(3)

FOIA/PA Branch Admin
ODNI/CIO/IMD

[REDACTED]

IT. . Requested Records

The ACLU seeks disclosure of records containing the following:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:

- i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.
- ii. The impersonation of the Associated Press (described above), as well as the impersonation of any other news agencies or media outlets.
- iii. The impersonation of journalists, doctors, or members of the clergy.
- iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.

2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.

3. Records relating to section *N A* of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).

i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014).

The Request encompasses records designated as drafts or non-final, except where such records have resulted in a final policy or memorandum processed as responsive to the Request. The Request covers the time period of 2001 to the present.

Sonia Roubini

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: FOR ACTION: FOIA Search for DF-2015-00097--Due 1200 31 May
Date: Tuesday, May 24, 2016 8:21:53 AM
Attachments: [image001.png](#)
[image004.png](#)

(b)(3)

Classification: UNCLASSIFIED
=====

This is the consolidated DDII response for this request.

VR,

J

[REDACTED]
XO, ODNI/DDII Front Office

(b)(3)

[REDACTED]



*O, DDII
Integratus maximus
Prime directorate*

From: [REDACTED]
Sent: Tuesday, May 24, 2016 8:11 AM
To: [REDACTED]; DNI-DDII-MID-Taskers <DNI-DDII-MID-Taskers_ [REDACTED]>
Cc: [REDACTED]
Subject: RE: FOR ACTION: FOIA Search for DF-2015-00097--Due 1200 31 May

(b)(3)

Classification: UNCLASSIFIED
=====

MID/CIG searched and has no responses to this FOIA request.

Though CIG would not typically be exposed to such information, the group did search its CWE shared drives for materials relating to law enforcement use of impersonation for investigative purposes. Terms in the textual search were variants of "impersonation" and "investigation."

(b)(3)

[REDACTED]

From: [REDACTED] -
Sent: Tuesday, May 17, 2016 11:39 AM
To: DNI-DDII-MID-Taskers <[DNI-DDII-MID-Taskers](#), [REDACTED]>
Cc: [REDACTED]
Subject: FW: FOR ACTION: FOIA Search for DF-2015-00097--Due 1200 31 May

(b)(3)

Classification: UNCLASSIFIED
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I'm not entirely sure that DDII has anything to say about this issue, but I'm guessing that Collection probably is the best angle...yes? If no, please advise.

If applicable, please search MID holdings according to the search terms, and provide a consolidated division collection of responsive materials to DDII-Taskers by 1200 on 31 May.

If you have a large volume of responsive material, please advise and we will come up with a consolidation and delivery method.

Added to the DDII FO EOD.

Thank you/VR,

J

[REDACTED]
XO, ODNI/DDII Front Office

(b)(3)



*O, DDII
Integratus maximus
Prime directorate*

From: [REDACTED] -
Sent: Tuesday, May 17, 2016 11:29 AM
To: NCTC_ExecSec <[NCTC_ExecSec](#), [REDACTED]>; DNI-DDII-Taskers <[DNI-DDII-Taskers](#), [REDACTED]>
Cc: [REDACTED]
Subject: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 31

(b)(3)

Classification: UNCLASSIFIED
=====

Good afternoon,

The IMD/FOIA Branch received a FOIA request (ODNI case DF-2015-00097) from Alex Abdo for **use of impersonation as an investigative technique**. The request is attached and provided at the end of this email for your reference.

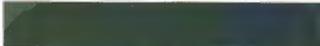
We, the FOIA office, interpret this request to mean locating materials only related to **use of impersonation as an investigative technique** and only to be tasked to those who would likely and reasonably have the responsive materials. We are NOT asking for everyone in your component to search, just those who would reasonably be the subject matter experts for the information requested.

Remember, under FOIA all documents potentially related to the request must be provided to the FOIA office. We will then review the documents for responsiveness and apply the appropriate FOIA exemptions. Upon completion of our review, the FOIA office will provide our proposed release for review/concurrence. If the components do not concur with our proposed release, they will need to identify the information of concern and provide a statement explaining the harm in the release. The FOIA office will then work with your office to identify the appropriate FOIA exemption for the information.

Due to a significant increase in the number of litigations we require all responses, with or without record findings, to include "what" and "where" you searched for the requested information. For example, "IMD searched for materials including memos and studies relating to commercial imagery resolution (the what) searching through all AIN and CWE emails as well as the IMD share drive (the where)."

Please send any responsive documents along with your search strategy (mentioned in the example above) to [DNI-FOIA](#) by **COB on Mar 31, 2016**.

(b)(3)


FOIA/PA Branch Admin
ODNI/P&S/IMD


The ACLU seeks disclosure of records containing the following:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:

- i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.
- ii. The impersonation of the Associated Press (described above),

as well as the impersonation of any other news agencies or media outlets.

iii. The impersonation of journalists, doctors, or members of the clergy.

iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.

2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.

3. Records relating to section IV A of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).

i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014). The Request encompasses records designated as drafts or non-final, except where such records have resulted in a final policy or memorandum processed as responsive to the Request. The Request covers the time period of 2001 to the present.

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

(b)(3)

From: [Redacted]
To: [Redacted]; [DNI-FOIA](#)
Cc: [NCTC_ExecSec](#)
Subject: NCTC Response: RE: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 31
Date: Wednesday, June 01, 2016 9:41:58 AM
Attachments: [image001.jpg](#)

Classification: UNCLASSIFIED
=====

Good Morning,

Sorry for the delay. Thank you for the opportunity to review.

NCTC has reviewed the subject FOIA and did not find any responsive records to provide on this action.

Thank You,

v/r

(b)(3)

[Redacted]
National Counterterrorism Center
Office of the Executive Secretary
[Redacted]
[Redacted]

NCTC Seal



(b)(3)

From: [Redacted]
Sent: Tuesday, May 17, 2016 11:36 AM
To: [NCTC_ExecSec](#) <[NCTC_ExecSec](#) [Redacted]>; [DNI-DDII-Taskers](#) <[DNI-DDII-Taskers](#) [Redacted]>
Cc: [Redacted]
Subject: RE: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 31

Classification: UNCLASSIFIED
=====

I apologize all. The due date for this tasking is May 31, 2016.

From: [REDACTED]
Sent: Tuesday, May 17, 2016 11:29 AM
To: NCTC_ExecSec <NCTC_ExecSec [REDACTED]>; DNI-DDII-Taskers <DNI-DDII-Taskers [REDACTED]>
Cc: [REDACTED]
Subject: FOR ACTION: FOIA Search for DF-2015-00097 - DUE MAR 31

(b)(3)

Classification: UNCLASSIFIED
=====

Good afternoon,

The IMD/FOIA Branch received a FOIA request (ODNI case DF-2015-00097) from Alex Abdo for **use of impersonation as an investigative technique**. The request is attached and provided at the end of this email for your reference.

We, the FOIA office, interpret this request to mean locating materials only related to **use of impersonation as an investigative technique** and only to be tasked to those who would likely and reasonably have the responsive materials. We are NOT asking for everyone in your component to search, just those who would reasonably be the subject matter experts for the information requested.

Remember, under FOIA all documents potentially related to the request must be provided to the FOIA office. We will then review the documents for responsiveness and apply the appropriate FOIA exemptions. Upon completion of our review, the FOIA office will provide our proposed release for review/concurrence. If the components do not concur with our proposed release, they will need to identify the information of concern and provide a statement explaining the harm in the release. The FOIA office will then work with your office to identify the appropriate FOIA exemption for the information.

Due to a significant increase in the number of litigations we require all responses, with or without record findings, to include "what" and "where" you searched for the requested information. For example, "IMD searched for materials including memos and studies relating to commercial imagery resolution (the what) searching through all AIN and CWE emails as well as the IMD share drive (the where)."

Please send any responsive documents along with your search strategy (mentioned in the example above) to [DNI-FOIA](#) by **COB on Mar 31, 2016**.

(b)(3)

[REDACTED]
FOIA/PA Branch Admin
ODNI/P&S/IMD

(b)(3)



The ACLU seeks disclosure of records containing the following:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:

i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.

ii. The impersonation of the Associated Press (described above), as well as the impersonation of any other news agencies or media outlets.

iii. The impersonation of journalists, doctors, or members of the clergy.

iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.

2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.

3. Records relating to section IV A of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).

i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014).

The Request encompasses records designated as drafts or non-final, except where such records have resulted in a final policy or memorandum processed as responsive to the Request. The Request covers the time period of 2001 to the present.

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

From: [Sally A. Nicholson-DNI-](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Senior Review Package - DF-2016-00097 (Abdo)
Date: Friday, June 10, 2016 11:12:23 AM
Attachments: [image001.jpg](#)

(b)(3)

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Classification: UNCLASSIFIED//~~FOUO~~
=====

Signature review completed. Routing sheet and letter printed and signed.

Good job.

- *Sally*

Sally A. Nicholson
Chief, FOIA Branch
ODNI/P&S/IMD/FOIA

[REDACTED] (b)(3)
[REDACTED]

Managing, protecting, and releasing information – it's what we do!

From: [REDACTED]
Sent: Wednesday, June 01, 2016 5:54 PM
To: Sally A. Nicholson-DNI- [REDACTED] >
Cc: [REDACTED]
<[REDACTED]>
Subject: RE: Senior Review Package - DF-2016-00097 (Abdo)

(b)(3)

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Classification: UNCLASSIFIED//~~FOUO~~
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Sally, Ready for signature. [REDACTED]

S:\DNI\DIS\DMS\IMO\ZZ - Possible New Structure\MI-FOIA Branch\FOIA\FOIA Cases\2015\DF-2015-00097 (Abdo)_NRL\Senior Review Package

(b)(3)

From: [REDACTED]
Sent: Wednesday, June 01, 2016 3:03 PM
To: [REDACTED]
Cc: Sally A. Nicholson-DNI- [REDACTED]
Subject: Senior Review Package - DF-2016-00097 (Abdo)

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Classification: UNCLASSIFIED//~~FOUO~~
=====

Guys,

Search tasker was sent to P&S, NCTC, NCSC, & DDII. They responded with no documents located.

A tasker was also sent to IT for AIN and Lotus Notes search, resulting in emails that are saved in the shared folder. The emails and their attachments reviewed and are not responsive to the request. Once you have completed your senior review, I will remove the non-responsive documents from the case. I just left them in for your verification and second set of eyes. Always like to double check.

The close of this case will provide information to facilitate the close of cases DF-2015-00133(Leopold) & DF-2015-00330(Carboni). (I will send separately)

S:\DNI\DIS\DMS\IMO\ZZ - Possible New Structure\MI-FOIA Branch\FOIA\FOIA Cases\2015\DF-2015-00097 (Abdo)_NRL\Senior Review Package

Thanks much,

[Redacted]

(b)(3)

**FOIA BRANCH
P&S INFORMATION MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**

[Redacted]

[Redacted]

MANAGING, PROTECTING, AND RELEASING INFORMATION – IT'S WHAT WE DO!



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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~

Final Response

Expedited: No

Urgent: NO

Case Number: DF-2015-00097

Requester: Alex Abdo

Routing:

1. Case Manager AM, 6/1/16
2. Senior Review jfh, 6/1/2016
3. Signature signed, SAN, 6/10/2016



Case Details:

Grant Code NRL

Sub Grant Code _____

**Reason for No Records/
Withdrawal/etc.** _____

Comments

Search tasker sent to P&S, NCTC, NCSC, & DDII. No documents were located. Tasker sent to IT for AIN and Lotus Notes search, resulting in emails that were saved in the shared folder. After a thorough review, the emails and their attachments were found to be non-responsive.

The close of this case will provide information to facilitate the close of cases DF-2015-00133(Leopold) & DF-2015-00330(Carboni).

Please review and approve final response.

Post: Yes No

JUN 10 2016

Alex Abdo
ACLU
125 Broad St., 17th Floor
New York, NY 10004

Reference: ODNI Case DF-2015-00097

Dear Mr. Abdo:

This responds to your request dated 21 January 2015 (Enclosure), received in the Information Management Division of the Office of the Director of National Intelligence on 21 January 2015. Pursuant to the FOIA, 5 U.S.C. § 552, as amended, you requested a copy of the following:

1. Policies, procedures, protocols, agreements, formal or informal guidelines, legal analysis, and memoranda relating to:
 - i. The impersonation of other actual organizations or actual individuals, whether physically, digitally, or otherwise.
 - ii. The impersonation of the Associated Press (described above), as well as the impersonation of any other news agencies or media outlets.
 - iii. The impersonation of journalists, doctors, or members of the clergy.
 - iv. The use of electronic surveillance methods and technologies that involve impersonation, including, but not limited to, "man in the middle" interception of encrypted communications or traffic.
2. The case name, docket number, and court for all cases in which the government investigation employed the impersonation of actual organizations or actual individuals.
3. Records relating to section IV of the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. (Authorization of Undercover Operations, General Approval Standards).
 - i. The use of impersonation in *United States v. Wei Seng Phua*, No. 2:14-cr-00249-APG-PAL (D. Nev. July 14, 2014).

Your request was processed under the FOIA, 5 U.S.C. § 552, as amended. After a thorough search in our records and databases, we were unable to locate any records responsive to your request.

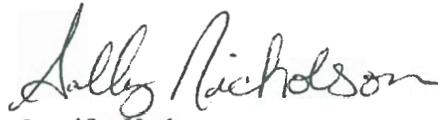
If you wish to appeal our determination on this request, please explain the basis of your appeal and forward to the address below within 45 days of the date of this letter:

Office of the Director of National Intelligence
Information Management Division
Washington, DC 20511

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

If you have any questions, email our Requester Service Center at DNI-FOIA@dni.gov or call us at (703) 874-8500.

Sincerely,

A handwritten signature in black ink that reads "Sally Richardson". The signature is written in a cursive style.

for Jennifer Hudson
Director, Information Management Division

Enclosure