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June 7, 2013

National Security Agency
ATTN: FOIA Office (DJ4)
9800 Savage Road STE 6248
Ft. George G. Meade, MD 20755-6248

Via facsimile: 443-479-3612

Dear Sir or Madam,

This letter constitutes a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* It is submitted on behalf of the Partnership for Civil Justice Fund (“PCJF,” “Requester”).

Requester seeks records in the possession of the National Security Agency (“NSA,” “the Agency”), regarding all programs of warrantless mass or dragnet surveillance that operate by impact and effect to collect information and data on United States persons, including their domestic communications and activities, and including their First Amendment-protected activities, without regard to whether there is any information indicating, or reasonable suspicion to believe, that a person has engaged in or is engaging in criminal activity (hereafter “mass surveillance programs”).

This request seeks disclosure of documents reflecting:

- The identification of all warrantless mass surveillance programs;
- The operating guidelines of such mass surveillance programs, including the scope and parameters of data collection and surveillance on U.S. persons, as referenced above; any standard operating procedures, policies and/or staff instructions; the field and record

descriptors of records maintained or data collected; the same for the related data warehousing or storage systems;

- Documents reflecting the criteria for retention of data obtained through mass surveillance programs on persons as referenced above; destruction schedules for such data, including when the information collected is asserted to be incidental to other targets;
- Documents reflecting legal opinions and analysis regarding the legality and constitutionality of each and any warrantless mass surveillance and data collection program. This expressly includes all memoranda, emails, correspondence, legal opinions, communications, or other records in which the unconstitutionality or illegality of such mass surveillance programs was found, considered, asserted, discussed, or in any other way analyzed.

Statements of policy, procedures, interpretations, final opinions, staff manuals and instructions to staff regarding these records collection programs are all subject to the automatic disclosure provisions of the FOIA. *See* 5 U.S.C. § 552(a)(2). The Agency must make these materials available without even the formality of a written FOIA request. We respectfully request immediate production of these materials.

The PCJF is hereby requesting expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and a waiver of any fees associated with this request, pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii), (iii).

Request for Expedited Processing – Urgency to Inform the Public

We are requesting expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. §§ 286.4(d)(3), 299.5(f) based on compelling need and “urgency to inform the public concerning actual or alleged Federal Government activity.” Information has been disclosed over the past two days¹ regarding federal mass surveillance programs including dragnet data collection from telecommunications companies and from the servers of major internet companies, including access to and collection of U.S. persons’ communications data, as well as audio, video chats, photographs, emails, and other information. This has been the subject of intense media scrutiny.

The people of the United States have an urgent need for disclosure of the requested information regarding what appears to be the largest covert surveillance program directed against

¹ *See, e.g.,* Glen Greenwald, *NSA collecting phone records of millions of Verizon customers daily*, The Guardian, June 5, 2013, *available at* <http://www.guardian.co.uk/world/2013/jun/06/nsa-phone-records-verizon-court-order>; Barton Gellman and Laura Poitras, *U.S., British intelligence mining data from nine U.S. Internet companies in broad secret program*, The Washington Post, June 6, 2013, *available at* http://www.washingtonpost.com/investigations/us-intelligence-mining-data-from-nine-us-internet-companies-in-broad-secret-program/2013/06/06/3a0c0da8-cebf-11e2-8845-d970ccb04497_story.html.

them in U.S. history. The U.S. government and its agencies that are carrying out these unprecedented surveillance programs are not entitled to hide these programs from the public.

The President of the United States and many elected officials, all of whom have orchestrated and/or authorized these massive domestic spying operations, are claiming that the public should accept this vast intrusion and violation of their civil rights, constitutional rights, civil liberties and rights to privacy.

The people of the United States are entitled to learn what their government is doing and to challenge improper and illegal conduct rather than merely accept these official assertions. They are entitled to transparency in government operations and to accountability from those who have sworn to uphold and defend the Constitution. They are entitled to learn the existence and contours of these programs and with this knowledge demand an end to them.

The present request pertains to a “news story of general public interest.” The requester is “primarily engaged in disseminating information,” as the regulations require. 32 C.F.R. §§ 286.4(d)(3)(ii), 299.5(f)(2). We certify, as required by regulation, that the compelling need for expedited processing is true and correct to the best of our knowledge and belief.

Status as a Representative of the News Media

The Partnership for Civil Justice Fund is a representative of the news media. In other words, the requester is an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials and information into distinct work, and distributes that work to an audience. *See* 5 U.S.C. §§ 552(a)(4)(A)(i), (ii). *See also, Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1029 (1990).

The PCJF is a non-profit, 501(c)(3) tax exempt charitable legal and educational organization that, among other things, works to ensure transparency and openness in government operations. It is a noncommercial use requester that works to ensure constitutional conduct within government practices, including law enforcement practices, affecting civil and constitutional rights, including the right to be free from warrantless mass surveillance.

The PCJF reviews and researches government practices, including government aggregation of intelligence and personal information on U.S. persons, for such purposes. The PCJF also seeks to educate the public on the issues of civil and constitutional rights and civil liberties. In this capacity as a representative of the news media, the PCJF operates a media website with original articles and analysis, justiceonline.org, as well as a separate website specifically dedicated to providing information and analysis on surveillance within the United States, www.BigBrotherAmerica.org. The PCJF also has the capability to widely disseminate information to large segments of the public through its publication of literature, articles and other

communications, using in-person distribution, websites, mass email communication, and Facebook and Twitter accounts, as well as educational presentations at meetings and events.

A primary organizational purpose of the PCJF is information dissemination. The material requested is not for commercial use and is sought for scholarly and legal review and research by the attorneys and staff of the PCJF and for analysis, publication and dissemination to the public as a distinct work - as part of an original analysis examining the methods of government aggregation of personal information on U.S. persons; policies and guidelines for aggregation, retention and use of data; information sharing; and the constitutional and civil rights implications thereof.

The PCJF has worked in defense of civil rights and civil liberties nationally. It engages in analysis, publication and public education, as well as legal support, regarding constitutional and legal issues where lawful activity and/or the exercise of constitutional rights are affected by government conduct. *See, e.g., Covert National Mass Surveillance Grid Exposed – Battlefield Technologies Migrate Home*, The Partnership for Civil Justice Fund, August 6, 2012, <http://www.justiceonline.org/commentary/covert-national-mass.html>; *Breaking: Just Released FBI Documents Reveal Secret Nationwide Occupy Monitoring*, December 22, 2012, <http://www.justiceonline.org/commentary/fbi-files-ows.html>; Michael S. Schmidt and Colin Moynihan, *FBI Counterterrorism Agents Monitored Occupy Movement, Records Show*, The New York Times, Dec. 24, 2012; Naomi Wolf, *Revealed: How the FBI coordinated crackdown on Occupy*, The Guardian, December 29, 2012, <http://www.guardian.co.uk/commentisfree/2012/dec/29/fbi-coordinated-crackdown-occupy> (“The Partnership for Civil Justice Fund, in a groundbreaking scoop that should once more shame major U.S. media outlets (why are nonprofits now some of the only entities in America left breaking major civil liberties news?), filed this request.”); *Homeland Security Documents Show Massive Nationwide Monitoring of Occupy Movement*, May 3, 2012, <http://www.justiceonline.org/commentary/dhs-releases-more-documents.html>; *PJCF, Michael Moore and NLG Obtain New DHS Documents: Critical Analysis Shows DHS is Playing Three Card Monte*, March 21, 2012, <http://www.michaelmoore.com/words/mike-friends-blog/pcjf-and-michael-moore-obtain-new-dhs-documents-critical-analysis-shows-dhs-playing-three-card-monte>.

The information requested is necessary in furtherance of PCJF’s role as a watchdog to review and analyze government policies and procedures in order to ensure compliance with constitutional and legal standards; and as a publisher of analyses and information on the same subject matter. *See Partnership for Civil Justice Fund v District of Columbia*, 2009 CA 0000748 B, Superior Court of the District of Columbia (FOIA litigation obtaining release of MPD General and Special Orders reflecting how police are to exercise their authority, which the PCJF made available to the public) (“PCJF needs the documents in question to perform its core function of conducting police oversight”) (Sept. 22, 2009 Order).

The PCJF has the concrete intention to publish an analysis and report regarding the constitutional implications of federal surveillance, data aggregation, domestic spying and information sharing. The report will cull from a wide variety of data sources, including legal authorities, released documents and current articles.

The requester will engage in legal and scholarly research and analysis of the materials requested, distill the raw materials along with an applied analysis into a distinct work, and will publish the results. The requester will act as editor of the research which, combined with in-house expertise and knowledge pertaining to civil rights and constitutional law, will be presented as part of the analyses described above.

Request for Public Interest Fee Waiver

Furnishing the requested information will primarily benefit the public interest in uncovering government misconduct; in understanding government authorization, policies, procedures rules and guidelines for domestic surveillance programs; and in allowing for an informed populace to affect government programs and policies, as is necessary in a democracy. As described above in reference to the request for expedited processing, and incorporated herein, the people of the United States have an urgent need to learn what the government is doing and the existence and contours of mass surveillance programs that are directed against them. The requested materials will “likely contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See* 32 C.F.R. §§ 286.28(d), 299.6(a).

The PCJF is requesting a fee waiver based on its status as a representative of the news media and because disclosure is in the public interest. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 286.28(d).

The information sought is not requested for commercial purposes and will be made available to the public and widely disseminated, both in raw form as well as in the form of the distinct expert analysis.

Willingness to Pay Applicable Fees

For the aforementioned reasons, we do not believe fees are appropriately assessed for purposes of this request. We do, however, state a willingness to pay fees up to \$100 for the materials, under protest, and subject to the exercise of the right to appeal any imposition of fees through administrative channels or civil litigation.

Format of Materials Requested: Electronic Where So Available

We are requesting the information be produced in electronic or computer file format where it is so available.

Production of Segregable Information

Should any requested information be withheld based on a claimed exemption, we request that you produce any segregable portion of the responsive records.

Sincerely,



Mara Verheyden-Hilliard

6/9/13

Enclosures