UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, and AMERICAN CIVIL LIBERTIES UNION FOUNDATION, Plaintiffs, v. NATIONAL SECURITY AGENCY, CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, and DEPARTMENT OF STATE, Defendants.	No. 13-cv-09198 (AT) **ECF Case**

FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

Introduction

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), seeking the release of records that describe the government's understanding of its surveillance authority under Executive Order 12,333 ("EO 12,333") as well as the rules that regulate the government's acquisition, retention, use, and dissemination of the communications of Americans swept up in that surveillance.

2. During the last six months, the true breadth of many of the government's post-9/11 surveillance activities has been exposed to the light of day. The media has revealed that, for example, the National Security Agency ("NSA") keeps a record of virtually every phone call made or received in the United States every day for the last five years. Reports have also disclosed that the NSA conducts sweeping surveillance of Americans' international communications—by, for example, searching the contents of essentially all text-based

communications entering or leaving the country for specific keywords.

3. The discussion surrounding the latest disclosures has concentrated on the limitations imposed on the government's surveillance by several statutes—specifically, the Foreign Intelligence Surveillance Act ("FISA"), Section 215 of the Patriot Act (which amended the so-called "business records" provision of FISA), and the FISA Amendments Act of 2008. Considerably less attention has focused on surveillance undertaken pursuant to EO 12,333 and the protections in place under that executive order for Americans' communications.

4. EO 12,333, signed on December 4, 1981 and modified numerous times since, is the principal source of authority for electronic surveillance that does not fall within the scope of FISA. Whereas FISA applies primarily to surveillance conducted on American soil or to surveillance abroad that targets Americans, EO 12,333 appears to be the sole authority for and limitation on government surveillance abroad that targets foreigners. Unlike surveillance conducted pursuant to FISA, surveillance undertaken solely pursuant to EO 12,333 is not overseen by the Foreign Intelligence Surveillance Court.

5. Although EO 12,333 permits the government to target foreigners abroad for surveillance, recent revelations have confirmed that the government interprets that authority to permit sweeping monitoring of Americans' international communications. How the government conducts this surveillance, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great public significance and concern. While the government has released several documents describing the rules that govern its collection and use of Americans' international communications under statutory authorities regulating surveillance on U.S. soil, little information is publicly available regarding the rules that apply to surveillance of

Americans' international calls and emails under EO 12,333.

6. That gap in public knowledge is particularly troubling in light of recent revelations, which make clear that the NSA is collecting vast quantities of data worldwide pursuant to EO 12,333. For instance, recent news reports indicate that, relying on the executive order, the NSA is collecting: nearly 5 billion records per day on the location of cell phones, including Americans' cell phones; hundreds of millions of contact lists or address books from personal email and instant messaging accounts; and information from Google and Yahoo user accounts as that information travels between those companies' data centers located abroad.

7. Surveillance under EO 12,333 inevitably sweeps up the communications of U.S. persons. This FOIA request seeks, in part, to determine what protections are afforded to those U.S. persons and whether those protections are consistent with the Constitution.

8. Disclosure of the records Plaintiffs seek through this action would greatly benefit the public and cause no harm to sensitive intelligence gathering. Plaintiffs seek legal standards and limitations, not operational details. The legal standards that govern surveillance, and the question of whether the government appropriately accommodates the constitutional rights of American citizens, are matters of enormous national significance and ongoing public concern.

Jurisdiction and Venue

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

10. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiffs' principal place of business is in Manhattan, New York, within this district.

Parties

11. Plaintiff American Civil Liberties Union ("ACLU") is a nationwide, non-profit,

nonpartisan 26 U.S.C. § 501(c)(4) organization with more than 500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that the American government complies with the Constitution and laws, including its international legal obligations, in matters that affect civil liberties and human rights. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. The ACLU is incorporated in New York State and has its principal place of business in New York City.

12. Plaintiff American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. It is incorporated in New York State and has its principal place of business in New York City.

13. Defendant National Security Agency ("NSA") is an intelligence agency established within the executive branch of the U.S. government and administered through the Department of Defense. The NSA is an agency within the meaning of 5 U.S.C. § 552(f)(1).

14. Defendant Central Intelligence Agency ("CIA") is an intelligence agency established within the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

15. Defendant Department of Defense is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Defense Intelligence Agency ("DIA"), from which the ACLU has requested records, is a component of the Department of Defense.

16. Defendant Department of Justice is a department of the executive branch of the

U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Federal Bureau of Investigation ("FBI"), National Security Division ("NSD"), and Office of Legal Counsel ("OLC") are all components of the Department of Justice from which the ACLU has requested records.

17. Defendant Department of State ("DOS") is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

Facts

The Requested Records

18. By letter dated May 13, 2013, Plaintiffs filed substantially similar FOIA requests with the CIA, DIA, NSA, FBI, NSD, OLC, and DOS (the "Requests"). (True and correct copies of the Requests are collectively annexed hereto as Exhibit A.)

19. Each of the ACLU's Requests sought:

a. any records construing or interpreting the scope of their authority to act under Executive Order 12,333, and any regulations issued thereunder;

b. any records describing the minimization procedures used by Defendants with regard to both intelligence collection and intelligence interception conducted pursuant to Defendants' authority under EO 12,333 or any regulations issued thereunder; and

c. any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as Defendants define these terms, pursuant to authority under EO 12,333 or any regulations issued thereunder.

20. Plaintiffs also sought a waiver of search, review, and duplication fees because the

requested records were not sought for commercial use, because the ACLU is a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II), and because the requested information is in the public interest as defined under 5 U.S.C. § 552(a)(4)(A)(iii).

Agency Responses

21. Four of the agencies—DIA, FBI, NSD, and DOS—have acknowledged receipt of the FOIA request and indicated its placement in their FOIA processing queues, but have provided no substantive response to date.

22. By email dated June 28, 2013, the NSA memorialized an agreed-upon modification to the scope of Plaintiffs' Request, and by letter dated July 1, 2013, it disclosed two documents responsive to Plaintiffs' Request that were already publicly available. By email dated August 21, 2013, the NSA indicated that additional potentially responsive documents were to be posted on IContheRecord.tumblr.com, and indicated that a further response was forthcoming. By letter dated November 18, 2013, the NSA released two additional documents: a more recent version of U.S. Signals Intelligence Directive SP0018 than had been previously released and its annex, both with redactions. This letter also indicated that the review of additional documents responsive to the request was ongoing, though the NSA has sent no further communication. (True and correct copies of these responses from the NSA are collectively annexed hereto as Exhibit B.)

23. By email and phone communications between June 25 and July 10, 2013, Plaintiffs and the OLC agreed upon a modification to the scope of Plaintiff's Request, but the OLC has not released any responsive documents to date. (True and correct copies of the communications between Plaintiffs and the OLC are collectively annexed hereto as Exhibit C.)

24. By letter dated July 26, 2013, the CIA denied plaintiffs' Request as requiring an

"unreasonably burdensome search." (A true and correct copy of this denial from the CIA is annexed hereto as Exhibit D.)

25. Five of the agencies—CIA, DIA, FBI, NSA, and OLC—have communicated no decision in response to Plaintiffs' requests for fee waivers or limitations of fees. Defendant DOS granted the fee waiver by letter dated June 5, 2013, as did NSD, by letter dated June 11, 2013.

Administrative Appeals

26. By letter dated November 1, 2013, Plaintiffs administratively appealed the CIA's denial of their Request. (A true and correct copy of this appeal is annexed hereto as Exhibit E.)

27. Having received no further responsive records, Plaintiffs administratively appealed the constructive denials of their Requests to the DIA, NSA, FBI, NSD, OLC, and DOS by letter dated November 8, 2013. (True and correct copies of these constructive denial appeals are collectively annexed hereto as Exhibit F.)

28. Four of the defendants, the NSA, FBI, NSD, and DOS, acknowledged receipt of Plaintiffs' administrative appeals. Plaintiffs have received no further responses from any of the defendants.

29. More than twenty working days have elapsed since Plaintiffs filed their administrative appeals of the defendants' constructive denials. Plaintiffs have therefore exhausted their administrative remedies.

30. By letter dated January 9, 2014, Plaintiffs timely appealed the NSA's decision to redact the four documents it has released to date. That appeal concerns only the NSA's decision to redact and not its failure to produce additional responsive records, which was the subject of the prior appeal filed on November 8, 2014.

31. By letter dated January 24, 2014, the NSA acknowledged that it received the

appeal on January 17, 2014. Plaintiffs have received no further response from the NSA in response. More than twenty working days have elapsed since the NSA received the appeal. Plaintiffs have therefore exhausted their administrative remedies.

Causes of Action

32. Defendants' failure to timely respond to the Requests violates FOIA, 5 U.S.C. § 552(a)(6)(A), and Defendants' corresponding regulations.

33. Defendants' failure to make promptly available the records sought by the Requests violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

34. Defendants' wrongful withholdings of specific responsive records, or portions thereof, violates the FOIA, 5 U.S.C. § 552(a)(3)(A), (6)(A), and Defendants' corresponding regulations.

35. Defendants' failure to make a reasonable effort to search for records responsive to the Requests violates the FOIA, 5 U.S.C. § 552(a)(3)(C), and Defendants' corresponding regulations.

36. The failure of CIA, DIA, NSA, FBI, and OLC to grant Plaintiffs' request for a public interest fee waiver violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and Defendants' corresponding regulations.

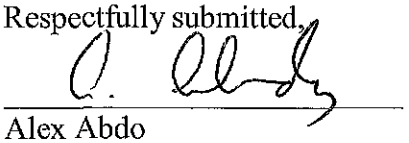
37. The failure of CIA, DIA, NSA, FBI, and OLC to grant Plaintiffs' request for a limitation of fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), and Defendants' corresponding regulations.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Order Defendants to conduct a thorough search for all responsive records;
2. Order Defendants to immediately process and release all records responsive to Plaintiffs' Request;
3. Enjoin Defendants from charging Plaintiffs search, review, or duplication fees for processing their Requests;
4. Award Plaintiffs their costs and reasonable attorney's fees incurred in this action; and
5. Grant such other relief as this Court deems just and proper.

Respectfully submitted,



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(212) 850-6103

February 18, 2014

American Civil Liberties Union v. National Security Agency
No. 1:13-cv-09198-AT

Index of Exhibits to Plaintiffs' First Amended Complaint for Injunctive Relief

Exhibit	Document
A	Plaintiffs' FOIA requests submitted to the CIA, DIA, NSA, FBI, NSD, OLC, and DOS on May 13, 2013
B	Responses from the NSA to Plaintiffs' FOIA request
C	Communications between Plaintiffs and the OLC in response to Plaintiffs' FOIA request
D	CIA's denial of Plaintiffs' FOIA request
E	Plaintiffs' administrative appeal from the CIA's denial of their FOIA request
F	Plaintiffs' administrative appeals from the denials of their FOIA request by the DIA, NSA, FBI, NSD, OLC, and DOS

Exhibit A

LEGAL DEPARTMENT

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SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

May 13, 2013

BY USPS MAIL

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records construing or interpreting the authority of the Central Intelligence Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

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1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.

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The ACLU therefore meets the statutory definition of a "representative of the news media" as 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." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "'primarily engaged in disseminating information'"). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns "the operations or activities" of the Agency. E.O. 12,333 is "intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers." EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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Moreover, the requested materials will "contribute significantly to the public understanding" of the Agency's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

***

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

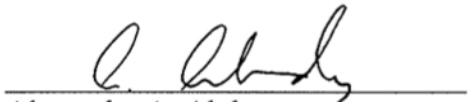
image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



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LEGAL DEPARTMENT

May 13, 2013

BY USPS MAIL

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Defense Intelligence Agency
U.S. Department of Defense
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For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

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We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

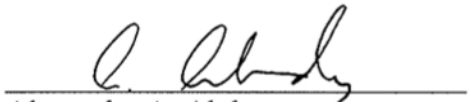
image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

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LEGAL DEPARTMENT

May 13, 2013

BY USPS MAIL

Attn: Cindy Blacker
NSA FOIA Requester Service Center/DJ4
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20744-6248

RE: FREEDOM OF INFORMATION ACT REQUEST

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Dear Ms. Blacker,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records construing or interpreting the authority of the National Security Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

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1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

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The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.

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The ACLU therefore meets the statutory definition of a "representative of the news media" as 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." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "'primarily engaged in disseminating information'"). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns "the operations or activities" of the Agency. E.O. 12,333 is "intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers." EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

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Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

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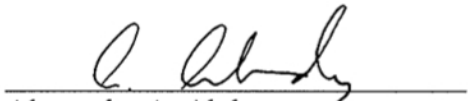

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

May 13, 2013

BY USPS MAIL

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records construing or interpreting the authority of the Federal Bureau of Investigation ("FBI") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the FBI with regard to both intelligence collection and intelligence interception conducted pursuant to the FBI's authority under EO 12,333 or any regulations issued thereunder; and

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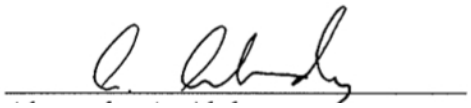

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EXECUTIVE DIRECTOR

May 13, 2013

BY USPS MAIL

Arnetta Mallory, FOIA Initiatives Coordinator
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Room 6150
Washington, DC 20530-0001

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Mallory,

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1. Any records construing or interpreting the authority of the National Security Division ("NSD") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the NSD with regard to both intelligence collection and intelligence interception conducted pursuant to the NSD's authority under EO 12,333 or any regulations issued thereunder; and

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Moreover, the requested materials will "contribute significantly to the public understanding" of the NSD's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

***

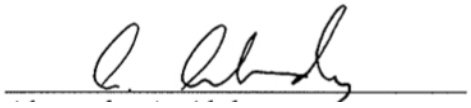
We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

May 13, 2013

BY USPS MAIL

Elizabeth Farris, Supervisory Paralegal
Office of Legal Counsel
Room 5515, 950 Pennsylvania Avenue, NW
Department of Justice
Washington, DC 20530-0001

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Farris,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records in which the Office of Legal Counsel ("OLC") construes or interprets the authority of the Department of Justice ("DOJ") or any executive agencies under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the government with regard to both intelligence collection and intelligence interception conducted pursuant to EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as those terms are defined in EO 12,333 or any regulations issued thereunder.

---

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.

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The ACLU therefore meets the statutory definition of a "representative of the news media" as 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." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "'primarily engaged in disseminating information'"). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns "the operations or activities" of the OLC. E.O. 12,333 is "intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers." EO 12,333 § 2.2. It authorizes the intelligence community, including the OLC, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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Moreover, the requested materials will "contribute significantly to the public understanding" of the intelligence community's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

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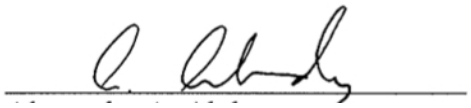
We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

May 13, 2013

BY USPS MAIL

Office of Informational Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records construing or interpreting the authority of the United States Department of State ("Department") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the Department with regard to both intelligence collection and intelligence interception conducted pursuant to the Department's authority under EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Department defines these terms, pursuant to the Department's authority under EO 12,333 or any regulations issued thereunder.

---

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

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The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns "the operations or activities" of the Department. E.O. 12,333 is "intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers." EO 12,333 § 2.2. It authorizes the intelligence community, including the Department, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

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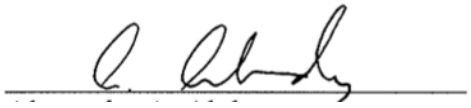
image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



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National Security Project
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Exhibit B

"Phillips, Pamela" <pnphill@nsa.gov>
NSA FOIA Clarification
June 28, 2013 10:29 AM

Mr. Abdo,

Thank you for speaking to me this morning about your FOIA request and helping us to scope it into a manageable search. We will continue to work with the organizations conducting the searches, and if we need any additional information to further clarify as we proceed, I will give you another call or email you. For the record, here is what we decided about your request today:

Case 70809 – for records construing or interpreting the authority of NSA under O.E. 12333; records describing the minimization procedures used by the Agency; records describing the standards that must be satisfied for collection, acquisition, or interception of communications

You agreed to limit the request to formally issued guidance (of which I mentioned various types, such as DoD Directions, NSA USSID, NSA Policies, various issuances relating to FISA, compliance training, and advisories). You agreed to omit guidance that simply reiterates or includes pieces and excerpts from the formal guidance. You also agreed that you are not seeking emails. Finally, you indicated that you would want any separate legal opinions that interpret the standards or define terms collection, acquisition, or interception to the extent that that opinion/interpretation is not included in the formal guidance.

Please let me know if I have mischaracterized or misunderstood our conversation in any way. You will be receiving a formal interim response from us soon with two previously released documents. Thanks again.

Pamela

Pamela N. Phillips
Chief, FOIA/PA Office (DJ4)
FOIA Public Liaison Officer
National Security Agency
(301) 688-6527
pnphill@nsa.gov

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 70809
1 July 2013

American Civil Liberties Union
ATTN: Mr. Alexander Abdo
National Office
125 Broad Street, 18th Fl.
New York, NY 10004-2400

Dear Mr. Abdo:

This is an initial response to your Freedom of Information Act (FOIA) request dated 13 May 2013, which was received by this office on 30 May 2013, for access to documents relating to Executive Order 12333, 3 C.F.R. 200, specially the following records:

1. Any records construing or interpreting the authority of the National Security Agency ("Agency") under Executive 12333 or any regulations issues thereunder;

2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12333 or any regulations ussued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12333 or any regulations issued thereunder.

In a telephone conversation on 28 June 2013, you agreed to narrow your request to allow us to process it more quickly and to avoid search fees, since we have already begun processing several requests for similar information. You agree to limit your request (as relates to the above three items) to formally issued guidance, omiting emails and omiting guidance that reiterates or includes excerpts from the formal guidance. In addition, you indicated that you still desire any separate legal opinions that interpret the

standards or define the terms in item 3 above, to the extent that it is not included in the formal guidance.

Your request has been assigned Case Number 70809. This letter indicates that we have begun to process your request. There is certain information relating to this processing about which the FOIA and applicable Department of Defense (DoD) and NSA/CSS regulations require we inform you. For purposes of this request, you are considered an "all other" requester. However, as we already indicated, the search is being conducted in response to other requests, so there will be no search fees assessed for this request. In addition, we do not plan to charge the duplication fees for the responsive material for any of the requesters. Therefore, we have not addressed your request for a waiver of fees.

With this response, we enclose two documents (USSID 18 and NSA/CSS Policy 1-23, 81 pages in total) that were previously released under the FOIA. We are continuing our search for responsive materials and will contact you again as information becomes available.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office (DJ4), 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248 or may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA office is 301-688-6527.

Sincerely,

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Encls:
a/s

"Phillips, Pamela" <pnphill@nsa.gov>
NSA FOIA 70809
August 21, 2013 4:40 PM

Mr. Abdo,

You may already be already aware, but my understanding is that the ODNI is going to post several documents this afternoon related to Section 702 were released today in a FOIA litigation case, some of which may also be responsive to your FOIA request to this agency for minimization procedures. They are to be posted to the ODNI website, and then later to the IContheRecord.tumblr.com website. We are continuing the processing of your request to this Agency and will respond further when documents are complete.

Pamela

Pamela N. Phillips
Chief, FOIA/PA Office (DJ4)
FOIA Public Liaison Officer
National Security Agency
(240) 373-1434
pnphill@nsa.gov
pnphill@nsa.smil.mil

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 70809A
18 November 2013

American Civil Liberties Union
ATTN: Mr. Alexander Abdo
National Office
125 Broad Street, 18th Fl.
New York, NY 10004-2400

Dear Mr. Abdo:

This further responds to your Freedom of Information Act (FOIA) request dated 13 May 2013 for access to documents relating to Executive Order (EO) 12333, 3 C.F.R. 200, specifically the following records:

1. Any records construing or interpreting the authority of the National Security Agency ("Agency") under EO 12333 or any regulations issues thereunder;

2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12333 or any regulations ussued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12333 or any regulations issued thereunder.

You agreed to narrow your request (as relates to the above three items) to formally issued guidance, omitting emails and omitting guidance that reiterates or includes excerpts from the formal guidance. In addition, you indicated that you still desire any separate legal opinions that interpret the standards or define the terms in item 3 above, to the extent that it is not included in the formal guidance.

FOIA Case: 70809A

Two additional documents responsive to your request (USSID SP0018 and Annex J) have been processed under the FOIA and are enclosed. Certain information, however, has been deleted from the enclosures.

Some of the information deleted from the documents was found to be currently and properly classified in accordance with Executive Order 13526. This information meets the criteria for classification as set forth in Subparagraphs (c) and/or (d) of Section 1.4 and remains classified SECRET as provided in Section 1.2 of the Executive Order. The information is classified because its disclosure could reasonably be expected to cause serious damage to the national security. Because the information is currently and properly classified, it is exempt from disclosure pursuant to the first exemption of the FOIA (5 U.S.C. Section 552(b)(1)).

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. We have determined that such information exists in these documents. Accordingly, those portions are exempt from disclosure pursuant to the third exemption of the FOIA which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are Title 18 U.S. Code 798; Title 50 U.S. Code 3024(i) (formerly Title 50 U.S. Code 403-1(i)); and Section 6, Public Law 86-36 (50 U.S. Code 3605, formerly 50 U.S. Code 402 note).

The Initial Denial Authority for NSA information is the Associate Director for Policy and Records, David J. Sherman. Since these deletions may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days from the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJ4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes release of the information is required. The NSA/CSS Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

The State Department has also asked that we protect information pursuant to 5 U.S.C. 552(b)(1). We will coordinate any appeal of the denial of that information with the State Department.

FOIA Case: 70809A

Review of additional documents responsive to your request continues; they will be provided to you as they are completed. In addition, documents related to NSA collection activities and procedures continue to be released in litigation on behalf of the Intelligence Community (IC) by the Office of the Director of National Intelligence (ODNI). You will find those documents posted on the ODNI web page, as well as on IC on the Record (IContheRecord.tumblr.com).

Sincerely,

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Encls:
a/s

Exhibit C

U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

June 25, 2013

Alexander Abdo
National Security Project
ACLU
125 Broad St.
18th Fl.
New York NY 10004-2400

Re: FOIA Tracking No. FY13-051

Dear Mr. Abdo:

This letter acknowledges receipt of your Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC"), dated May 13, 2013. We received your request on May 29, 2013, and assigned it FOIA tracking number **FY13-051**.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

Finally, pursuant to your conversation with my colleague David Lehn on June 20, 2013, we propose that your request be revised as follows:

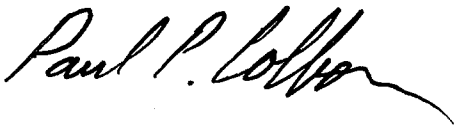
1) All OLC final legal advice concerning the scope and application of the authority of the United States Government to conduct electronic surveillance of the communications of United States persons pursuant to Executive Order 12333 or its implementing regulations, regardless of whether the United States person is the target of the electronic surveillance or is in the United States at the time of the electronic surveillance, except to the extent that the electronic surveillance is conducted pursuant to the Foreign Intelligence Surveillance Act. For purposes of this request, "electronic surveillance" and "United States person" have the meaning given in Executive Order 12333.

2) All OLC final legal advice concerning the meaning of the terms "collection", "acquisition", and "interception" as applied to electronic surveillance conducted pursuant to Executive Order 12333 or its implementing regulations. For purposes of this request, "electronic surveillance" has the meaning given in Executive Order 12333.

Please let us know whether you agree to this proposal, so that the processing of your request may proceed, consistent with its position in OLC's FOIA queue. To do so, or to discuss any other aspect of your request, you may contact Elizabeth Farris, our Supervisory Paralegal and FOIA contact, at usdoj-officeoflegalcounsel@usdoj.gov, (202) 514-2038, or Office of Legal

Counsel, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

Sincerely,



Paul P. Colborn
Special Counsel

"Lehn, David (OLC)" <David.Lehn@usdoj.gov>
RE: OLC FOIA Request 13-051
July 10, 2013 12:34 PM

Great - thanks, Alex.

From: Alexander Abdo [mailto:aabdo@aclu.org]
Sent: Wednesday, July 10, 2013 12:23 PM
To: Lehn, David (OLC)
Subject: RE: OLC FOIA Request 13-051

David, this looks great. Thanks so much.

From: Lehn, David (OLC) [mailto:David.Lehn@usdoj.gov]
Sent: Monday, July 08, 2013 3:27 PM
To: Alexander Abdo
Subject: RE: OLC FOIA Request 13-051

Hi, Alex. Thanks for getting back to me. I carved out FISA in light of my understanding of what you were seeking based on our conversation. But we can eliminate the carve-out given that the application of EO 12333 to elsur under FISA is fairly within the scope of your original request. So, how about this?

1) All OLC final legal advice concerning Executive Order 12333 or its implementing regulations with respect to electronic surveillance by the United States Government of communications of United States persons, regardless of whether the United States person is the target of the electronic surveillance or is in the United States at the time of the electronic surveillance. For purposes of this request, "electronic surveillance" and "United States person" have the meaning given in Executive Order 12333.
2) All OLC final legal advice concerning the meaning of the terms "collection", "acquisition", and "interception" as used in Executive Order 12333 or its implementing regulations with respect to electronic surveillance by the United States Government of communications of United States persons. For purposes of this request, "electronic surveillance" has the meaning given in Executive Order 12333.

From: Alexander Abdo [mailto:aabdo@aclu.org]
Sent: Saturday, June 29, 2013 1:18 PM
To: Lehn, David (OLC)
Subject: Re: OLC FOIA Request 13-051

David,

Thanks so much for memorializing this. I have a few modifications I'd like to make, just to make sure the request is targeted at what we're interested in.

In the first bullet point, can we change "pursuant to Executive Order 12,333" to "governed by Executive Order 12,333," and can we delete the phrase "except to the extent that the electronic surveillance is conducted pursuant to the Foreign Intelligence Surveillance Act"? My understanding is that the executive order often imposes additional requirements on surveillance conducted pursuant to other authorities (such as FISA or the FISA Amendments Act). I think the language you proposed would cover those situations as well, but I just want to make sure it's clear.

For the same reason and in the second bullet point, can we change "pursuant to" to "governed by"?

Thanks so much,

Alex

On Jun 25, 2013, at 3:42 PM, "Lehn, David (OLC)" <David.Lehn@usdoj.gov> wrote:

Alex, following up on our call last week, please see the attached letter. Notwithstanding what the letter says, you can respond directly to me. Thanks

---

David Lehn
Attorney-Adviser
Office of Legal Counsel
U.S. Department of Justice
202-514-5572

<13-051 ack 2013-06-25.pdf>

Exhibit D

Central Intelligence Agency

Washington, D.C. 20505

26 July 2013

Mr. Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004-2400

Reference: F-2013-01775

Dear Mr. Abdo:

This is a final response to your 13 May 2013 Freedom of Information Act (FOIA) request, submitted on behalf of the American Civil Liberties Union, received in the office of the Information and Privacy Coordinator on 23 May 2013, for:

1. Any records construing or interpreting the authority of the Central Intelligence Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

We cannot accept your FOIA request in its current form because it would require the Agency to perform an unreasonably burdensome search. The FOIA requires requesters to "reasonably describe" the information they seek so that professional employees familiar with the subject matter can locate responsive information with a reasonable amount of effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

Sincerely,

Michele Meeks
Information and Privacy Coordinator

Exhibit E

NATIONAL SECURITY PROJECT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
NATIONAL OFFICE
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OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

November 1, 2013

BY USPS MAIL

Agency Release Panel (ARP)
c/o Coordinator
Information and Privacy Coordinator
Central Intelligence Agency (CIA)
Washington, DC 20505

Re: FREEDOM OF INFORMATION ACT APPEAL – NO. F-2013-01775

Dear Panelists:

The American Civil Liberties Union and the American Civil Liberties Foundation (collectively "ACLU") write to appeal from the response of the Central Intelligence Agency ("CIA") to FOIA Request No. F-2013-01775, in which the ACLU seeks the following records:

> 1. Any records construing or interpreting the authority of the Central Intelligence Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;
>
> 2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and
>
> 3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder. *See* FOIA Request of May 13, 2013 ("Request") (Exhibit 1, attached).

In a letter dated July 26, 2013 ("Response Letter") (Exhibit 2, attached), Information and Privacy Coordinator Michele Meeks of the CIA denied the ACLU's Request in its entirety stating, that "The FOIA requires requesters to 'reasonably describe' the information they seek so that professional employees [sic] can locate responsive documents with a reasonable amount of effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems."

The CIA's denial of the ACLU's Request was premised entirely on its determination that the records sought exceed what is required by the FOIA—i.e., that the Request is "extremely broad or vague" and "would require the Agency to perform an unreasonably burdensome search." *See* Response Letter. This determination is inaccurate and without basis.

The Request is specific in what it seeks. The second and third paragraphs of the request seek discrete categories of records: those describing the Agency's minimization procedures under EO 12,333 and those articulating the standards that the Agency must satisfy before collecting, acquiring, or intercepting communications under EO 12,333. The first paragraph of the request, though comprehensive, nonetheless specifies a discrete category of records for processing: those construing or interpreting the Agency's authority under EO 12,333. Although the ACLU is not in a position to be more specific without additional information from the Agency, the first paragraph of the request includes, at a minimum, rules, policies, or legal opinions describing the Agency's authority to conduct—or analyze, use, retain, and disseminate the fruits of—electronic surveillance under EO 12,333.

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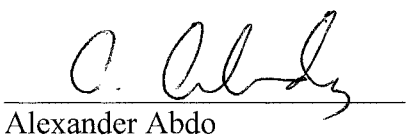
UNION FOUNDATION

These specific categories of documents must be processed by the CIA under FOIA. Indeed, at least four other government agencies—the United States Air Force, the Department of the Army, the Department of Homeland Security, and the National Security Agency—have already processed and produced documents in response to identical FOIA requests. In addition, at least three other government agencies—the Department of State, the Department of the Army, and the Department of Justice National Security Division—have already granted fee waivers to the ACLU with respect to identical FOIA requests.

For the reasons stated above, the CIA's determination to deny the Request was erroneous and should be reversed.

Sincerely,



Alexander Abdo
Staff Attorney
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212 549 2517
Fax: 212 549 2629
E-mail: aabdo@aclu.org

Exhibit 1

LEGAL DEPARTMENT

May 13, 2013

BY USPS MAIL

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

RE: FREEDOM OF INFORMATION ACT REQUEST

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records construing or interpreting the authority of the Central Intelligence Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

---

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.

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The ACLU therefore meets the statutory definition of a "representative of the news media" as 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." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "'primarily engaged in disseminating information'"). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns "the operations or activities" of the Agency. E.O. 12,333 is "intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers." EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Moreover, the requested materials will "contribute significantly to the public understanding" of the Agency's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

***

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

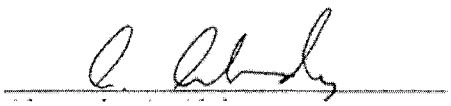
image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

Phone: (212) 549-2517
Email: aabdo@aclu.org

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Exhibit 2

Central Intelligence Agency

Washington, D.C. 20505

26 July 2013

Mr. Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004-2400

Reference: F-2013-01775

Dear Mr. Abdo:

This is a final response to your 13 May 2013 Freedom of Information Act (FOIA) request, submitted on behalf of the American Civil Liberties Union, received in the office of the Information and Privacy Coordinator on 23 May 2013, for:

1. Any records construing or interpreting the authority of the Central Intelligence Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

We cannot accept your FOIA request in its current form because it would require the Agency to perform an unreasonably burdensome search. The FOIA requires requesters to "reasonably describe" the information they seek so that professional employees familiar with the subject matter can locate responsive information with a reasonable amount of effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

Sincerely,

Michele Meeks
Information and Privacy Coordinator

Exhibit F

NATIONAL SECURITY PROJECT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

November 8, 2013

BY UPS

Defense Intelligence Agency
ATTN: DAN-1A (FOIA)
200 MacDill Blvd
Washington, DC 20340-5100

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
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OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT APPEAL

Dear Sir or Madam,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 6, 2013 in a letter signed by Alesia Y. Williams. The request was assigned the following identification number: F-2013-09022.

Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5. U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time and the ten-day extension have elapsed without a substantive response, the Defense Intelligence Agency has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,

Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
Phone: (212) 549-2517
Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

LEGAL DEPARTMENT

May 13, 2013

BY USPS MAIL

Margaret A. Bestrain, Chief, FOIA and Declassification Services Branch
Defense Intelligence Agency
U.S. Department of Defense
ATTN: DAN-1A (FOIA)
200 MacDill Blvd.
Washington, DC 20340-5100

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Bestrain,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records construing or interpreting the authority of the Defense Intelligence Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

---

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.

The ACLU therefore meets the statutory definition of a "representative of the news media" as 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." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "'primarily engaged in disseminating information'"). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns "the operations or activities" of the Agency. E.O. 12,333 is "intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers." EO 12,333 § 2.2. It authorizes the intelligence community, including the Agency, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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Moreover, the requested materials will "contribute significantly to the public understanding" of the Agency's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

***

We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

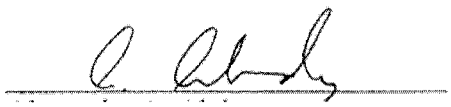
image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union

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Email: aabdo@aclu.org

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NATIONAL SECURITY PROJECT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

November 8, 2013

BY UPS

NSA/CSS FOIA Appeal Authority (DJ4)
National Security Agency
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20755-6248

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT APPEAL

Dear Sir or Madam,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated July 1, 2013 in a letter signed by Pamela N. Philips. The request was assigned the following identification number: 70809.

Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5. U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time has elapsed without a substantive response, the National Security Agency has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,

Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
Phone: (212) 549-2517
Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

LEGAL DEPARTMENT

May 13, 2013

BY USPS MAIL

Attn: Cindy Blacker
NSA FOIA Requester Service Center/DJ4
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20744-6248

RE: FREEDOM OF INFORMATION ACT REQUEST

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Dear Ms. Blacker,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records construing or interpreting the authority of the National Security Agency ("Agency") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the Agency with regard to both intelligence collection and intelligence interception conducted pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Agency defines these terms, pursuant to the Agency's authority under EO 12,333 or any regulations issued thereunder.

---

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.

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The ACLU therefore meets the statutory definition of a "representative of the news media" as 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." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "'primarily engaged in disseminating information'"). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

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Moreover, the requested materials will "contribute significantly to the public understanding" of the Agency's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

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For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

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We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided

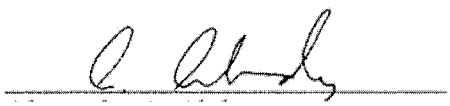
electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
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NATIONAL SECURITY PROJECT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

November 8, 2013

BY UPS

Office of Information Policy
U.S. Department of Justice, Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT APPEAL [FEDERAL BUREAU OF INVESTIGATION]

Dear Sir or Madam,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 7, 2013 in a letter signed by David M. Hardy. The request was assigned the following identification number: 1216886-000.

Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5. U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time has elapsed without a substantive response, the Federal Bureau of Investigation has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,

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Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

LEGAL DEPARTMENT

May 13, 2013

BY USPS MAIL

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

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1. Any records construing or interpreting the authority of the Federal Bureau of Investigation ("FBI") under Executive Order 12,333 or any regulations issued thereunder;

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before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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Moreover, the requested materials will "contribute significantly to the public understanding" of the FBI's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

***

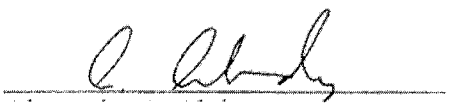
We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



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NATIONAL SECURITY PROJECT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

November 8, 2013

BY UPS

Office of Information Policy
U.S. Department of Justice, Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT APPEAL [NATIONAL SECURITY DIVISION]

Dear Sir or Madam,

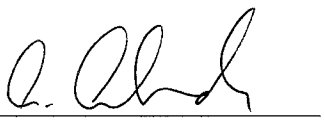
The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 11, 2013 in a letter signed by Arnetta Mallory. The request was assigned the following identification number: 13-175.

Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5. U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time has elapsed without a substantive response, the Department of Justice, National Security Division has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,



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AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

LEGAL DEPARTMENT

May 13, 2013

BY USPS MAIL

Arnetta Mallory, FOIA Initiatives Coordinator
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Room 6150
Washington, DC 20530-0001

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OFFICERS AND DIRECTORS
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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Mallory,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records construing or interpreting the authority of the National Security Division ("NSD") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the NSD with regard to both intelligence collection and intelligence interception conducted pursuant to the NSD's authority under EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the NSD defines these terms, pursuant to the NSD's authority under EO 12,333 or any regulations issued thereunder.

---

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

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EXECUTIVE DIRECTOR

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.

The ACLU therefore meets the statutory definition of a "representative of the news media" as 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." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "'primarily engaged in disseminating information'"). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns "the operations or activities" of the NSD. E.O. 12,333 is "intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers." EO 12,333 § 2.2. It authorizes the intelligence community, including the NSD, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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Moreover, the requested materials will "contribute significantly to the public understanding" of the NSD's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.*, Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

***

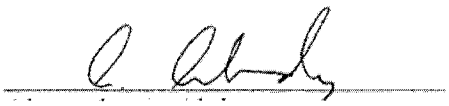
We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Alexander Abdo
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NATIONAL SECURITY PROJECT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

November 8, 2013

BY UPS

Office of Information Policy
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20530 0001

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT APPEAL [OFFICE OF LEGAL COUNSEL]

Dear Sir or Madam,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 25, 2013 in a letter signed by Paul P. Colborn. The request was assigned the following identification number: FYI13-051.

Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5. U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time has elapsed without a substantive response, the Office of Legal Counsel has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,

Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
Phone: (212) 549-2517
Email: aabdo@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

LEGAL DEPARTMENT

May 13, 2013

BY USPS MAIL

Elizabeth Farris, Supervisory Paralegal
Office of Legal Counsel
Room 5515, 950 Pennsylvania Avenue, NW
Department of Justice
Washington, DC 20530-0001

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OFFICERS AND DIRECTORS
SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Ms. Farris,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records in which the Office of Legal Counsel ("OLC") construes or interprets the authority of the Department of Justice ("DOJ") or any executive agencies under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the government with regard to both intelligence collection and intelligence interception conducted pursuant to EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as those terms are defined in EO 12,333 or any regulations issued thereunder.

---

1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.

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The ACLU therefore meets the statutory definition of a "representative of the news media" as 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." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "'primarily engaged in disseminating information'"). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns "the operations or activities" of the OLC. E.O. 12,333 is "intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers." EO 12,333 § 2.2. It authorizes the intelligence community, including the OLC, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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Moreover, the requested materials will "contribute significantly to the public understanding" of the intelligence community's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

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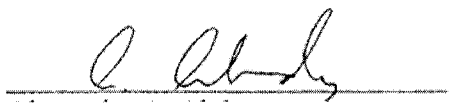
We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



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NATIONAL SECURITY PROJECT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

November 8, 2013

BY CERTIFIED MAIL

Chairman, Appeals Review Panel
c/o Information and Privacy Coordinator/Appeals Officer
U.S. Department of State
A/GIS/IPS/PP, SA-2
Washington, DC 20522-8100

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RE: FREEDOM OF INFORMATION ACT APPEAL

Dear Mr. Chairman,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to appeal from the constructive denial of their Freedom of Information Act request, submitted on May 13, 2013, for documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). A copy of the request is attached here for reference. The ACLU received an acknowledgement of receipt dated June 5, 2013 in a letter signed by Mary Therese Casto. The request was assigned the following identification number: F-2013-09022.

Under the Freedom of Information Act, determinations about whether an agency will produce documents must be made within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.6(b). Where an agency cannot meet the statutory time limit due to unusual circumstances, the agency may extend the time limit by ten working days with written notice to the requester. 5. U.S.C. § 552(a)(6)(B). An agency denying a request in any respect must send the requester a signed letter including, among other things, a brief statement of the reasons for denial. 5 U.S.C. § 552(a)(6)(A)(i).

Because the twenty-day statutory time limit has elapsed without a substantive response, the Department of State has constructively failed to meet its legal obligation to disclose the information requested. By this appeal, we ask you to direct the timely disclosure of all records responsive to our request.

We thank you for your consideration of this appeal. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we expect a response regarding this appeal within twenty days. If you have any questions or concerns, please do not hesitate to contact me at the email address or telephone number indicated below.

Sincerely,

Alexander Abdo
Staff Attorney
National Security Project
American Civil Liberties Union
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AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

LEGAL DEPARTMENT

May 13, 2013

BY USPS MAIL

Office of Informational Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

RE: FREEDOM OF INFORMATION ACT REQUEST

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records[1]:

1. Any records construing or interpreting the authority of the United States Department of State ("Department") under Executive Order 12,333 or any regulations issued thereunder;

2. Any records describing the minimization procedures[2] used by the Department with regard to both intelligence collection and intelligence interception conducted pursuant to the Department's authority under EO 12,333 or any regulations issued thereunder; and

3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the Department defines these terms, pursuant to the Department's authority under EO 12,333 or any regulations issued thereunder.

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1 Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

2 Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.

Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.

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The ACLU therefore meets the statutory definition of a "representative of the news media" as 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." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "'primarily engaged in disseminating information'"). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it "is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) it "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns "the operations or activities" of the Department. E.O. 12,333 is "intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers." EO 12,333 § 2.2. It authorizes the intelligence community, including the Department, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a

recent case before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at *45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

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Moreover, the requested materials will "contribute significantly to the public understanding" of the Department's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. *See* Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at *4, *33, *41, *45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. *See, e.g.,* Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. *See, e.g.*, *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed $100.

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We request that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best

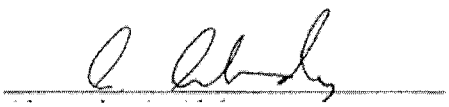
image quality in the agency's possession, and in separate, Bates-stamped files.

We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



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