

**FEDERAL BUREAU OF INVESTIGATION  
IN THE OFFICE OF INFORMATION MANAGEMENT DIVISION**

**No. NFP-168631  
No. NFP-1655043-000**

**AMERICAN CENTER FOR LAW AND JUSTICE,**

Requestor.

**FOIPA REQUESTS  
No. NFP-168631  
No. NFP-1655043-000**

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**FREEDOM OF INFORMATION ACT APPEAL**

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THE AMERICAN CENTER FOR LAW AND JUSTICE

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## STATEMENT OF PROCEEDINGS

On December 16, 2024, the ACLJ submitted a FOIA request via the website. *See* FOIA Request attached as Exhibit A.

On December 19, 2024, the FBI acknowledged receipt of ACLJ's FOIA Request. *See* FBI Acknowledgement attached as Exhibit B. The Acknowledgement stated, in part:

“Your request is overly broad as it contains an overly long, indefinite, no date range or specific identifiers, and/or uses unexplained or unidentified terms and acronyms. Your request does not provide sufficient details to enable FBI personnel to locate potentially responsive records with a reasonable amount of effort, and therefore, we were unable to conduct a search of the Central Records System as your request does not comply with the requirements of 28 CFR § 16.3(b).

The FBI sent an additional response on December 19, 2024, acknowledging receipt of the ACLJ's FOIA Request. *See* FBI *Glomar* Response attached as Exhibit B. The Response stated in part:

“You have requested records on one or more third party individuals. Please be advised the FBI will neither confirm nor deny the existence of such records pursuant to FOIA exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C). The mere acknowledgement of the existence of FBI records on third party individuals could reasonably be expected to constitute an unwarranted invasion of personal privacy. This is our standard response to such requests and should not be taken to mean that records do, or do not, exist. As a result, your request has been closed.”

This administrative appeal follows.

## ARGUMENT

### **I. The agency’s remedy for a requestor’s failure to reasonably describe a record is provided in 5 U.S.C. § 552(a)(6)(A)(ii)(I).**

An agency shall immediately notify the requestor of its determination and the reasons therefore and has 20 business days after receipt of a request to determine whether to comply with a request. 5 U.S.C. § 552(6)(A).<sup>1</sup>

“The 20-day period shall not be tolled by the agency except— (I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section . . . .” 5 U.S.C. § 552 (a)(6)(A)(ii)(I) (hereafter the “Clarification Clause”).

Here, if the FBI actually concluded that the ACLJ’s FOIA request failed to “reasonably describe” the sought records (as opposed to just ignoring it and then coming up with an excuse after the fact), its remedy was to “request to the requester for information,” *i.e.*, clarification as to what documents were sought. There is no statutory remedy for an agency in that scenario that allows a non-response.<sup>2</sup>

“An agency has no power to ‘tailor’ legislation to bureaucratic policy goals . . . they must always ‘give effect to the unambiguously expressed intent of Congress.’” *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 325-26 (2014) (citations omitted); *see also Citizens for Resp. & Ethics in Wash. v. FEC*, 711 F.3d 180, 187 (2013) (rejecting a proposed FEC interpretation of FOIA). In 1974, Congress changed the FOIA language from “request for identifiable records” to “request for

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<sup>1</sup> 5 U.S.C. § 552 (a)(6)(B)(i) permits the agency to extend the time to make a determination within 10 days. Defendant’s response makes this clause inapplicable.

<sup>2</sup> Congress’ intent that the Clarification Clause was specifically meant to address unclear requests this is clear when viewed in the context of the next statutory clause, 5 U.S.C. § 552(a)(6)(A)(ii)(II), which allows tolling in connection with fee assessment issues, *i.e.*, to “clarify . . . issues regarding fee assessment” such as the fee amount or a non-profit fee waiver.

records which . . . reasonably describes such records.” *Truitt v. Dep’t of State*, 897 F.2d 540, 544-45 (1990). The purpose of the change was so that “the identification standard in the FOIA should not be used to obstruct public access to agency records.” *Id.* (Citing to S. Rep. No. 93–854, at 10 (1974)).

Whether a FOIA Request “particularly describes” the records sought is a “highly context-specific inquiry” *Gunowners of America v. FBI*, 594 F. Supp. 3d 37 (rejecting argument for “categorical test” that all requests for records “relating” to or “involving” a subject matter are overbroad), however, an “inherently vague term” with “several specific limitations that would enable a processor to zero in on the sets of documents at issue” is sufficient. *Id.*

By denying the Request without seeking clarification, the FBI is using the “identification standard” to “obstruct public access to agency records.” This is contrary to the text and intent of the FOIA statute. The Acknowledgment should be reversed.

**II. Plaintiff’s FOIA Requests are reasonably described as they are limited by: (a) time, (b) subject matter, (c) location, and other limitations, making them neither unclear nor overbroad.**

The ACLJ made a total of five requests. The Agency denied four Requests 1, 2, 4 and 5 as overly broad (request 3 was denied under *Glomar* and is addressed separately). “FOIA thus mandates that an agency disclose records on request . . . .” *Milner v. Dep’t of the Navy*, 562 U.S. 562, 565 (2011) (citations omitted). Requests ##1, 2, 4, and 5 (reproduced below in italics) are limited in the ways specified below.

**A. ACLJ’s First Request No. NFP-168631**

*The records at the FBI National Academy that contain the words: “State of Palestine,” “Palestine,” or “Ramallah.”*

**Limitations:**

Custodian: The FBI National Academy.

Subject Matter: Records that contain the words “State of Palestine,” “Palestine,” or “Ramallah.”

Time: No record prior to January 1, 2024.

**B. ACLJ’s Second Request No. NFP-168631**

*All records in possession of the FBI “legal attaché” at the United States Embassy for either Jerusalem or Tel Aviv, Israel that contain the words: “State of Palestine.”*

**Limitations:**

Custodian: FBI “legal attaché” at the United States Embassy in either Jerusalem or Tel Aviv, Israel.

Subject Matter: Records that contain the words “State of Palestine.”

Time: No record prior to January 1, 2024.

**C. ACLJ’s Fourth Request No. NFP-168631**

*All records of Director Christopher Wray or his administrative assistants that contain the words: “State of Palestine” or “Ramallah.”*

**Limitations:**

Custodian: Christopher Wray or his administrative assistants.

Subject Matter: Records that contain the words “State of Palestine” or “Ramallah.”

Time: No record prior to January 1, 2024.

**D. ACLJ’s Fifth Request No. NFP-168631**

*All records at FBI Headquarters that contain the words: “State of Palestine.”*

**Limitations:**

Custodian: FBI Headquarters.

Subject Matter: Records that contain the words “State of Palestine.”

Time: No record prior to January 1, 2024.

Therefore, the denial of production should be reversed and a determination with an estimated completion date made.

**III. A Glomar Response cannot be asserted because: (1) *Glomar* does not apply, or (2) the FBI National Academy has publicly acknowledged the existence of the records requested.**

**A. ACLJ’s Third Request No. NFP-1655043-000**

*The records of the application and approval of “Husam Abu Aisha” of the FBI National Academy Session 292 at FBI Headquarters, the FBI National Academy or the FBI legal attaché referenced above.*

When asserting a FOIA exemption, the agency must “acknowledge the existence of information responsive to a FOIA request and provide specific, non-conclusory justifications for withholding that information.” *Knight First Amend. Inst. at Columbia Univ. v. CIA*, 454 U.S. App. D.C. 218, 221 (2021) (citations omitted). “[I]f ‘the fact of the existence or nonexistence of agency records’ itself falls within a FOIA exemption, the agency may ‘refuse to confirm or deny the existence’ of the requested records.” *Id.* This is a Glomar response. *Id.*

**1. Glomar does not apply.**

An agency may refuse to confirm or deny the existence of records if the fact of the existence or nonexistence of records when answering the FOIA request “would cause harm cognizable under a FOIA exception.” *Wolf v. CIA*, 374 U.S. App. D.C. 230, 234 (2007). The Acknowledgment asserted Exemptions b(6) and b(7)(C) as bases. Neither are applicable as outlined below.

a. **The personnel and medical files exception under 5 U.S.C. § 552(b)(6) is inapplicable.**

When considering redactions under Exemption 6, the “threshold question is whether the requested information is contained in a personal, medical, or similar file.” *Campaign Legal Ctr. v. United States DOJ*, 373 F. Supp. 3d 160, 168 (D.D.C. 2019). Then, a two-step process is required. First, would disclosure violate a de minimis rather than “substantial” privacy interest and, if yes, then second, whether the “public interest in disclosure” is greater than the “individual’s right to privacy.” *Id.*

**i. Is the information contained in a personal, medical or similar file?**

The phrase “similar files” means information that applies to a particular individual. *Lepelletier v. FDIC*, 334 U.S. App. D.C. 37, 164 F.3d 37, 46 (1999). The Request seeks the application and approval for entry into the FBI National Academy of one Husam Abu Aisha. The application and approval are similar files for purposes of FOIA.

**ii. The privacy interest is de minimis.**

The relevant inquiry is to what extent “interference with privacy” would be caused by disclosure of the name, address or other personal information. *Campaign Legal Ctr. v. United States DOJ*, 373 F. Supp. 3d 160, 168 (D.D.C. 2019). The potential interference cannot be speculative. *Hum. Rights Def. Ctr. v. United States Park Police*, No. 23-5236, 2025 U.S. App. LEXIS 1586, at \*12 (D.C. Cir. Jan. 24, 2025) (ordering release of officers’ names in case files settled pre-litigation.) The request seeks the files of Husam Abu Aisha from “Ramallah” in the “State of Palestine,” an international student (now graduate) of the FBI National Academy whose graduation was posted on the FBI YouTube channel. FBI National Academy graduates return “to their police departments and agencies in the U.S. and overseas with new knowledge and many new



friends.”<sup>3</sup> As an international student, he presumably returned to his place of origin. Additionally, the FBI has already publicized his name. His street address, telephone number and email may be segregated. The potential interference with privacy is both moot and speculative. Therefore, the interference with privacy is de minimis.

**iii. The “public interest in disclosure” is greater than the individual’s right to privacy.**

“[T]he focus [of] . . . FOIA is to inform the public what the government is up to. The Act was not intended to be used as a shield by the government to deny disclosure of information that is not favorable. *Cardona v. United States INS*, No. 93 C 3912, 1995 U.S. Dist. LEXIS 1853, at \*8 (N.D. Ill. Feb. 15, 1995). *See also, United States Dep’t of Def. v. Fed. Lab. Rels. Auth.*, 510 U.S. 487, 495 (1994) (“[T]he only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government.”) (citations omitted).

The FBI National Academy is “one of the premier law enforcement training programs in the world.”<sup>4</sup> All FBI National Academy applicants must be nominated by their agency.<sup>5</sup> Participation is by invitation only.<sup>6</sup> The academy offers courses in such areas as “law, behavioral and forensic science, understanding terrorism and terrorists, and leadership development.”<sup>7</sup>

The “State of Palestine” is not recognized by the United States. Ramallah is under the

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<sup>3</sup> *FBI National Academy Celebrating a Milestone*, FBI (Sept. 28, 2012), <https://www.fbi.gov/news/stories/fbi-national-academy>.

<sup>4</sup> *Id.*

<sup>5</sup> *The FBI Offers a Wealth of Training Opportunities to Federal, State, Municipal, and International Agencies and Partners*, LAW ENFORCEMENT RESOURCES, <https://le.fbi.gov/training#National-Academy> (last visited Feb. 14, 2025).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

control of the Palestinian Authority,<sup>8</sup> which is subject to the OFAC terrorism sanctions program.<sup>9</sup> Who nominated Husam Abu Aisha? Why was the nomination approved? Who, if anybody, signed off on the announcement from “Ramallah, State of Palestine”? These questions are logical questions and need to be answered. The public have a right to understand how it came about that the FBI trained a person from a terrorist-controlled area in anti-terrorism techniques. The public’s interest in disclosure outweighs any privacy interest.

**b. The law enforcement exception under 5 U.S.C. § 552(b)(7)(c) is inapplicable.**

In order to invoke *Glomar*, an agency has to name a threshold showing that the records were “compiled for law enforcement purposes.” *Bartko v. United States DOJ*, 898 F.3d 51, 64 (D.C. Cir. 2018). Then, if so, release of the records “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” *id.* citing 5 U.S.C. § 552(b)(7)(C). “The law-enforcement-purpose inquiry focuses on how and under what circumstances the requested files were compiled, and whether the files sought relate to anything that can fairly be characterized as an enforcement proceeding. The purpose of the investigation is the critical factor.” *Bartko v. United States DOJ*, 898 F.3d 51, 64 (2018) (citations and internal quotations omitted). The investigation must focus on specific alleged acts which could result in civil or criminal sanctions. *Bartko v. United States DOJ*, 898 F.3d 51, 64 (2018). Records of government surveillance or employee oversight do not qualify. *Id.* The mere possibility of a legal violation is not enough. *Id.*

The FBI National Academy is a 10-week professional course of study for U.S. and

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<sup>8</sup> *Ramallah*, BRITANNICA (Feb. 11, 2025), <https://www.britannica.com/place/Ramallah>.

<sup>9</sup> *Palestinian Authority*, OFFICE OF FOREIGN ASSETS CONTROL, <https://ofac.treasury.gov/sanctions-programs-and-country-information/counter-terrorism-sanctions/palestinian-authority> (last visited Feb. 14, 2025).

international law enforcement managers nominated by their agency heads.<sup>10</sup> It offers 10 weeks of leadership classes, communication courses and physical challenges.<sup>11</sup> The classes are accredited through the University of Virginia and taught by instructors renowned for their work in criminology.<sup>12</sup> Upon completion, the graduates receive 18 credits towards a bachelor's or master's degree.<sup>13</sup> Its purpose is to “support, promote, and enhance the personal and professional development of law enforcement leaders.”<sup>14</sup> Candidates must be professional law enforcement managers with proven track records. Graduates have served over 20 years on average and usually return to management positions.<sup>15</sup> Part of the National Academy is the International Partnership Program (IPP).<sup>16</sup> This provides students with an opportunity to network on a one-on-one basis with our international partners.

The files sought about “Husam Abu Aisha” of the “State of Palestine” are his application and approval, neither of which is inherently illegal. “Husam Abu Aisha” of the “State of Palestine” was not the subject of an investigation or even government surveillance. He was a student at the FBI National Academy and records were created so that he could attend. Those records are not law enforcement records as they had no investigatory purpose, therefore, Exemption 7(c) does not apply. Furthermore, even if Exemption 7(c) did apply, the “public interest in disclosure” is greater than the individual’s right to privacy for the reasons outlined above.

**2. The FBI National Academy has publicly acknowledged the existence of the records requested.**

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<sup>10</sup> *The FBI National Academy Brochure*, U.S. DEP’T. OF JUST., <https://le.fbi.gov/file-repository/fbi-national-academy-brochure-031524.pdf/view> (last visited Feb. 14, 2025).

<sup>11</sup> *Id.*

<sup>12</sup> *290th National Academy Graduation*, FBI (June 7, 2025), <https://www.fbi.gov/contact-us/field-offices/houston/news/290th-national-academy-graduation>.

<sup>13</sup> *The FBI National Academy Brochure*, *supra* note 10.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

If an agency has previously acknowledged otherwise exempt information by prior disclosure, a *Glomar* response is waived. *Knight First Amend. Inst. at Columbia Univ. v. CIA*, 454 U.S. App. D.C. 218, 221 (2021). “To constitute official acknowledgment in the *Glomar* context, the prior disclosure must confirm the existence or nonexistence of records responsive to the FOIA request.” *Knight First Amend.t Inst. at Columbia Univ. v. CIA*, 454 U.S. App. D.C. 218, 221 (2021).

The FBI has published to its YouTube channel a video (since taken down) of the graduation ceremony for the FBI National Academy. The video, the relevant snippet of which is still available online,<sup>17</sup> shows then Director Christopher Wray handing a diploma to one “Husam Abu Aisha” of the “State of Palestine.” It was publicly and officially acknowledged.

Due to this public announcement by the FBI National Academy, a *Glomar* response has been waived. The files exist. Everybody knows that they exist. We know this because the FBI told us itself that one “Husam Abu Aisha” of the “State of Palestine” graduated the FBI National Academy. The only question is what may and may not be disclosed. Therefore, the denial should be reversed, and the production should begin immediately.

#### **IV. The FBI has a duty to produce and segregate the records.**

Reasonably segregable records must be produced. 5 U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.”). It is simply not credible that there are no reasonably segregable records responsive to the ACLJ’s requests. The FBI’s wholesale denial fails to satisfy the applicable jurisprudential requirements.

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<sup>17</sup> Marina Medvin (@MarinaMedvin), X (Dec. 12, 2024, 3:19 PM), <https://x.com/MarinaMedvin/status/1867303207069720918>.

**CONCLUSION**

For the foregoing reasons, ACLJ respectfully requests that the FBI reverse its initial determination and produce the responsive records.

**DATED** this 17 day of March, 2025.

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