



July 5, 2022

**VIA WEBSITE ONLY**

Michael G. Seidel, Section Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Department of Justice  
200 Constitution Drive  
Winchester, VA 22602  
<https://efoia.fbi.gov>

**RE: FOIA Request about the FBI's noncompliance with Section 702 of the Foreign Intelligence Surveillance Act (FISA) in 2021.**

Dear Mr. Seidel:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")<sup>1</sup> on behalf of its members.

To summarize, this Request seeks records pertaining to the FBI's noncompliance with Section 702 of the Foreign Intelligence Surveillance Act (FISA) in 2021.

**Background**

Pursuant to DOJ FOIA regulation 28 C.F.R. §16.3(b), this Background addresses "the date, title or name, author, recipient, subject matter of the record[s]" requested, to the extent known.

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<sup>1</sup> The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

50 U.S.C. § 1881a, **Procedures for targeting certain persons outside the United States other than United States persons** (hereinafter § 702)<sup>2</sup>, states:

**(a) Authorization**

... [T]he Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

**(b) Limitations**

An acquisition authorized under subsection (a)—

- (1) may not intentionally target any person known at the time of acquisition to be located in the United States;
- (2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;
- (3) may not intentionally target a United States person reasonably believed to be located outside the United States;
- (4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and
- (5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.<sup>3</sup>

On April 29, 2022, the *Wall Street Journal* reported: “The Federal Bureau of Investigation performed potentially millions of searches of American electronic data last year without a warrant, U.S. intelligence officials said. . . .”<sup>4</sup>

The *Wall Street Journal*’s source is the *Annual Statistical Transparency Report Regarding the Intelligence Community’s Use of National Security Surveillance Authorities*, prepared by the Office of the Director of National Intelligence (hereafter the *Statistical Report*).

The *Statistical Report* states in relevant part:

In the first half of the year, there were a number of large batch queries related to attempts to compromise U.S. critical infrastructure by foreign cyber actors. These queries, which included approximately 1.9 million query terms related to potential

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<sup>2</sup> 50 U.S.C. § 1881a is the codification of Section 702 of the FISA Amendments Act of 2008, Pub. L. No. 110-261, 122 Stat. 2436, and is frequently referred to as “Section 702.” In the interests of clarity and consistency, the ACLJ will use “Section 702” or “§ 702” throughout this Request when referring to 50 U.S.C. § 1881a.

<sup>3</sup> *Id.*

<sup>4</sup> Dustin Volz, *FBI Conducted Potentially Millions of Searches of Americans’ Data Last Year, Report Says*, WALL ST. J., <https://www.wsj.com/articles/fbi-conducted-potentially-millions-of-searches-of-americans-data-last-year-report-says-11651253728?mod=breakingnews> (Apr. 29, 2022, 6:22 PM).

victims—including U.S. persons—accounted for the vast majority of the increase in U.S. person queries conducted by FBI over the prior year. A batch query is when FBI runs multiple query terms at the same time using a common justification for all of the query terms. Each of the query terms in a batch query is counted as a separate query. These particular large batch queries were reviewed by the Department of Justice and found to be compliant with the FBI’s Section 702 querying procedures.<sup>5</sup>

In 2021, the FBI conducted a total of an estimated 3,394,053 “U.S. Person queries of unminimized Section 702-acquired [sic] contents and noncontents for foreign intelligence information and/or evidence of a crime.”<sup>6</sup>

§702(f)(2) requires the FBI to obtain a FISC Order prior to querying for a matter unrelated to foreign intelligence, about a U.S. person about a criminal investigation unrelated to national security. However, the Report states that no FISC Order was obtained in 2021.<sup>7</sup> Further, it identified four instances where the FBI queried even though “a FISC Order was required pursuant to Section 702(F)(2) but not obtained prior to reviewing the results of a query.”<sup>8</sup>

The purpose of this request is to uncover the *ultra vires* acts, who committed the *ultra vires* acts, who authorized or knew about those acts, and what, if anything, was done about it.

### **Records Requested**

For purposes of this Request, the term “record” means “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

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<sup>5</sup> OFF. OF CIV. LIBERTIES, PRIV., & TRANSPARENCY, OFF. OF THE DIR. OF NAT’L INTEL., ANNUAL STATISTICAL TRANSPARENCY REPORT REGARDING THE INTELLIGENCE COMMUNITY’S USE OF NATIONAL SECURITY SURVEILLANCE AUTHORITIES (2022), at 20. (Available at: <https://www.intelligence.gov/ic-on-the-record-database/results/1161-odni-releases-annual-intelligence-transparency-report>).

<sup>6</sup> *Id.* at 21.

<sup>7</sup> *Id.* at 22.

<sup>8</sup> *Id.* at 22.

For purposes of this Request, the term “aides” used herein has the definition as “a person whose job is to help someone important, such as a member of a government or a military officer of high rank.”

For purposes of this Request, the term “staff” used herein has the definition as “a group of people who work for an organization for a special purpose, or who work for a manager within an organization.”

For purposes of this Request, all terms used herein have the definitions given by FOIA, 5 U.S.C. § 552 *et seq.*

**For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 1, 2021 to the date this request is processed.**

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, the ACLJ hereby requests that the FBI produce the following:

1. All records of communications by or with Attorney General Merrick Garland or his aides or staff, including by utilizing any alias or pseudonym for any such person, involving, discussing or regarding noncompliance with §702.
2. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any FBI official, agent or employee, including by utilizing any alias or pseudonym for any such person, referencing, connected to, or regarding in any way the four instances identified in the *Statistical Report* of non-compliance with §702.
3. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Christopher Wray, or any Deputy Director of the FBI, any Associate Deputy Director of the FBI or any their aides or staff, including by utilizing any alias or pseudonym for any such person, referencing, connected to, or regarding in any way the opening of an investigation in order to query for FISA acquired information.
4. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Christopher Wray, or any Deputy Director of the FBI, any Associate Deputy Director of the FBI or any FBI agent or employee, including by utilizing any alias or pseudonym for any such person, referencing, connected to, or regarding in any way the use of FISA acquired information or the attempt to obtain FISA information regarding: (1) parents at school board meetings, (2) members of Congress, their families or staff, (3) members of State governments, or (4) members of the press.
5. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Christopher Wray, or any Deputy Director of the FBI, any Associate Deputy Director of the FBI or any FBI agent or employee, to the ODNI about or concerning the Statistical Report prior to its publication but subsequent to its final draft.

As to all five Requests above, the ACLJ does NOT request the FISA-acquired record of any U.S. person or the personal identifying information of any U.S. person whose information was collected, stored, queried, accessed or used, or who was under criminal or intelligence investigation. In such instances, a record (or records) documenting that such a collection, storage, query, access, or use, occurred, and any records of FBI or DOJ officials/employees about, or indicating that, such a collection, storage, query, access, or use, occurred is sufficient.

**CONCLUSION**

If this Request is denied in whole or in part, the ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director  
Benjamin P. Sisney, Senior Litigation Counsel  
John A. Monaghan, Senior Litigation Counsel  
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jordan Sekulow in black ink.

Jordan Sekulow  
Executive Director

Handwritten signature of Benjamin P. Sisney in black ink.

Benjamin P. Sisney  
Senior Litigation Counsel

Handwritten signature of John A. Monaghan in blue ink.

John A Monaghan  
Senior Litigation Counsel