

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

AMERICAN CENTER FOR LAW AND JUSTICE

Requestor,

FOIPA Requests:

**1616833-000, NFP-156151, NFP-156182, NFP-156166, NFP-156223,
NFP-156167, NFP-156224, NFP-1616792-00, NFP-156186, NFP-156222
(Also labeled generally, FOIA-2024-00726)**

FREEDOM OF INFORMATION ACT APPEAL

THE AMERICAN CENTER FOR LAW AND JUSTICE

JORDAN SEKULOW

STUART J. ROTH

JOHN A. MONAGHAN

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STATEMENT OF PROCEEDINGS

On January 18, 2024, ACLJ submitted a FOIA request via the website. *See* FOIA Request attached as Exhibit A.

On January 29-30, 2024, the FBI acknowledged receipt of ACLJ's FOIA Request in various letters. *See* FBI Acknowledgements attached to Exhibit A (in the order of the Requests).

Each Acknowledgement stated, in part:

Additionally, your request for the above referenced subject is not searchable in our indices. The FBI Central Records System (CRS) is indexed according to investigatory interests, and it is not arranged in a manner that allows for the retrieval of information in the form you have requested. The FOIA does not require federal agencies to answer inquiries, create records, conduct research, or draw conclusions concerning queried information. Rather the FOIA requires agencies to provide access to reasonably described, nonexempt records. Therefore, your request is being administratively closed.¹

This Administrative Appeal follows.

¹ Request Number 9 (No.: 1616754-000) was answered and the ACLJ was referred to the "FBI's electronic FOIA library." It is not appealed here.

ARGUMENT

I. The FBI Has Not Made a Good Faith Effort to Conduct a Search for the Requested Records.

While recognizing that the number of requests for information may pose burdens on agencies, Congress determined its ultimate policy of open government should take precedence. *See generally, U.S. DOJ v. Reps. Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989). (FOIA indicates a “basic policy of ‘full agency disclosure unless information is exempted under clearly delineated statutory language.’”).²

The FBI is required to make "a good faith effort to conduct a search for the requested records." *Reporters Comm. for Freedom of the Press v. FBI*, 433 U.S. App. D.C. 244, 247 (2017). Here, it has failed to do so, having made no search at all for many of the Requests. Thus, it has violated its duty to do a search that is “reasonably calculated to uncover all relevant documents,” *Watkins Law & Advocacy, PLLC v. United States*, 78 F.4th 436, 442 (D.C. Cir. 2023), and this Administrative Appeal must order a search, a determination and production of the appropriate records.

II. Plaintiff’s FOIA Requests Are Searchable in the FBI Indices.

The FBI has an “agency-wide Central Records System ("the Index"), which "index[es] terms in files that are useful to a particular investigation or that are deemed potentially useful for future investigative/intelligence retrieval purposes, such as names of individuals, organizations, companies, publications, activities, or foreign intelligence matters (or programs)." *Reporters Comm. for Freedom of the Press v. FBI*, 877 F.3d 399, 403 (D.C. Cir. 2017).

“Indexing is a fundamental requirement for the management of all types of FBI records, regardless of format, medium, or origin. The FBI must maintain an automated index of subjects, references, victims, and complainants to support FBI investigative and administrative matters.

² 5 U.S.C §552 and §552a list a total of 18 exemptions (neatly summarized in the “Explanation of Exemptions” attached by the Agency in its correspondence to us). The category “not searchable in our indices” is not among the 18 exemptions.

Indexing is mandatory, and FBIHQ divisions, FOs, and Legats must ensure required indexing is accomplished.” Federal Bureau of Investigation, *Records Management Policy Guide*, RECORDS MANAGEMENT DIVISION 1, 14 (2015), <https://vault.fbi.gov/records-management-policy-guide-0769pg-part-01-of-01/Records%20Management%20Policy%20Guide%200769PG%20Part%2001%20of%2001>. Attached as Exhibit C.

The ACLJ made a total of twelve requests. Each Request specifies an index term such as “names of individuals, organizations, companies, publications, activities, or foreign intelligence matters (or programs)” as shown below.

A. ACLJ's First Request 1616833-000

The request sought a record, based upon information and belief, to be titled “Domestic Violent Extremists Likely Emboldened in Aftermath of Capitol Breach.” The FBI has replied that no such record exists.

“FOIA requests are not a game of Battleship. The requester should not have to score a direct hit on the records sought based on the precise phrasing of his request. Rather, the agency must liberally interpret the request and frame its search accordingly.” *Gov't Accountability Project v. United States Dep't of Homeland Sec.*, 335 F. Supp. 3d 7, 12 (D.D.C. 2018).

Here the FBI has played a game of Battleship. Attached is a Joint Intelligence Bulletin (Exhibit B), titled “Domestic Violent Extremists Emboldened in Aftermath of Capitol Breach, Elevated Domestic Terrorism Threat of Violence Likely Amid Political transitions and Beyond.” The titles of the respective documents are not exactly the same but it is close enough. (FOIA does not permit a requestor to ask questions. However, it does permit requests for documents i.e. a requestor can ask for a document in order to authenticate what he already has.)

The FBI has neither “liberally interpreted the request” nor “framed its search accordingly.” The document sought should be produced.

B. ACLJ's Second Request NFP-156151,

The Index has "terms in files that are useful to a particular investigation or that are deemed potentially useful for future investigative/intelligence retrieval purposes, such as . . . organizations, companies" *Reporters Comm. for Freedom of the Press v. FBI*, 877 F.3d 399, 403 (D.C. Cir. 2017) (Citing FBI's Declaration).

“The Freedom of Information Act allows any person—except fugitives, federal agencies, and foreign intelligence agencies—to request information about organizations, businesses, investigations, historical events, incidents, groups or deceased persons.” *FBI eFOIA Request Form*, FBI, <https://forms.fbi.gov/fbi-efoia-request-form> (last visited Mar. 18, 2024). Attached as Exhibit D.

This Request seeks “records of communications by the Charlotte FBI Field offices to Bank of America (BoA) concerning the information provided by BoA to the FBI.” A particular

organization or company –BoA- is specified. Further, the relevant FBI office is also specified. The search should be ran, a determination made and the documents produced.

C. ACLJ's Third Request NFP-156182,

This request seeks the transcribed interviews of Mr. George Hill, Mr. Steve Jensen and Mr. Joseph Bonavolonta, all formerly FBI personnel, made to the House of Representatives Judiciary Committee. It is limited to names of individuals testifying to a particular House committee.

“Personnel subfiles are maintained at the ARC, regardless of the location of the FBI personnel.” Federal Bureau of Investigation, *Records Management Policy Guide*, RECORDS MANAGEMENT DIVISION 1, 30 (2015), <https://vault.fbi.gov/records-management-policy-guide-0769pg-part-01-of-01/Records%20Management%20Policy%20Guide%200769PG%20Part%2001%20of%2001>. At the very minimum, there should be personnel files on these people.

Thus, it defies belief that the FBI does not have administrative files of agents testifying to Congress and transcripts of what they said. The transcripts should be searched for, a determination made and the documents produced.

D. ACLJ's Fifth Request NFP-156166,

The Request is about current FBI employees Mr. Peter Sullivan, his assistants and their communications to Facebook (including META) and Twitter (now X) concerning domestic terrorism. It gives names of individuals, companies or organizations, and their communication records about a particular activity.

FBI personnel with access to the FBI's e-mail systems must determine the record status of e-mails sent from, or received in, their e-mail account(s). An e-mail may be a nontransitory record (needed for more than 180 days), transitory record (needed for 180 days or less) or nonrecord. When doubt exists about whether or not an e-mail is a nontransitory record e-mail, it should be treated as a nontransitory record e-mail and imported into Sentinel or a successor central recordkeeping system.

Id. at 22. Employee name, subject matter of communication and to what corporate entity are given. Therefore, it is with the realm of specificity needed and the search should be made, a determination made and the documents produced..

E. ACLJ's Sixth Request NFP-156223,

The request seeks records about “Lone Actor/Homegrown Violent Extremism Indicators” shared to “Financial Institutions.” Both “activities” and “companies” are indices referenced above (See, Section II), and so searchable. *See generally, FBI eFOIA Request Form*, FBI, <https://forms.fbi.gov/fbi-efoia-request-form> (last visited Mar. 18, 2024). *See also*, Federal Bureau of Investigation, Records Management Policy Guide, RECORDS MANAGEMENT DIVISION 1, 30 (2015), <https://vault.fbi.gov/records-management-policy-guide-0769pg-part-01-of-01/Records%20Management%20Policy%20Guide%200769PG%20Part%2001%20of%2001>. The search should be ran, a determination made and the documents produced.

F. ACLJ's Seventh Request NFP-156167

This request seeks emails concerning the document titled “Domestic Violent Extremists Emboldened in the Aftermath of the Capitol Breath,” from FBI Headquarters. As one of the indices above is “Publications” and it defies belief that the FBI does not retain its bulletins or its employees emails (whether or not separate from the Index is another matter), not least ecause failure to retain such emails would be a violation of its own *Records Management Policy Guide*, the search should be done, a determination made and the documents produced.

G. ACLJ's Eighth Request NFP-156224

This request seeks FBI documents relating to plans to use improperly acquired personal information relating to the date January 6-7, 2021 in Washington, D.C. It may be a “publication” in the Index referenced above but, again, it defies belief that the FBI does not have a filing system for its internal memoranda. Again, FOIA not being a game of Battleship, the search should be ran, a determination made and the documents produced. . *See* Federal Bureau of Investigation, *Records Management Policy Guide*, RECORDS MANAGEMENT DIVISION 1, 30 (2015), <https://vault.fbi.gov/records-management-policy-guide-0769pg-part-01-of-01/Records%20Management%20Policy%20Guide%200769PG%20Part%2001%20of%2001>.

H. ACLJ's Ninth Request 161754

This request was granted and is referenced only for clarity.

I. ACLJ’s Tenth Request NFP-1616792-00

This request seeks FBI communications about the events of January 5-7, 2021 to financial institutions. As both “activities” (like January 6, 2021) and “companies” (such as financial institutions) are indices referenced above (*See*, Section II), the search is possible, should be made, a determination issued and the documents produced. *See also*, *FBI eFOIA Request Form*, FBI, <https://forms.fbi.gov/fbi-efoia-request-form> (last visited Mar. 18, 2024) (Referencing searches for a business).

J. ACLJ’s Eleventh Request NFP-156186

This request seeks emails about the use of “financial transactions related to the “purchase of books (including religious texts)” at FBI Headquarters” concerning the document titled “Domestic Violent Extremists Emboldened in the Aftermath of the Capitol Breath,” “E-mail is a frequent means of communication within the FBI, and the information contained in e-mails must be managed accordingly. FBI personnel are responsible for managing the e-mails they send and receive.” *Records Management Policy Guide Federal Bureau of Investigation* An email should be imported into Sentinel (the FBI records system) if potentially important. *Records Management Policy Guide Federal Bureau of Investigation* Thus, the search should be made in the appropriate database, determination made, and the documents produced.

K. ACLJ’s Twelfth Request NFP-156222

This request seeks emails “containing the search terms “TRUMP,” “conservative,” “MAGA,” “Bible,” and “prior FinCEN analysis” relating to the “Lone Actor/Homegrown Violent Extremism Indicators.” As the FBI retains its bulletins or its employees emails pursuant to the *Records Management Policy Guide Federal Bureau of Investigation* (whether or not separate from the Index is another matter), the search should be made in the appropriate database and a determination made, then the documents produced.

II. The Categories of “domestic terrorist” or “domestic terrorism” or Something Similar Should Be An Investigatory Interest Searchable Within the FBI Central Records System.

The FBI does not and cannot investigate or classify crimes haphazardly. It follows that

there exist rules for how to classify a crime for the purposes of the FBI Central Records System, at a minimum.

In terms of the request for “tags” having to do with domestic terrorism, this is essentially a request for the user manual of the SIADDT program. Even if the specific terms cannot be searched for in the indices, some guideline, manual, directive or other writing should exist as to how the SIADDT classifies domestic terror or domestic terrorism as compared to other crimes. These writings ought to exist in some form and be producible.

Additional reasons support the ACLJ’s appeal: Reasonably segregable records are to 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 not believable that there are no reasonably segregable records responsive to the ACLJ’s requests, and the FBI’s categorical denial does not even come close to satisfying the applicable jurisprudential requirements.

CONCLUSION

For the foregoing reasons, ACLJ respectfully requests that the FBI search for, make the determination and produce the responsive records.

DATED this 19 day of April 2024.

THE AMERICAN CENTER FOR LAW AND JUSTICE

JORDAN SEKULOW
[REDACTED]
COUNSEL OF RECORD
STUART J. ROTH
[REDACTED]

/s/ John A. Monaghan
JOHN A. MONAGHAN
[REDACTED]