

**FEDERAL BUREAU OF INVESTIGATION  
IN THE OFFICE OF INFORMATION MANAGEMENT DIVISION  
FOIPA Request No.: 1669479-000**

**AMERICAN CENTER FOR LAW AND JUSTICE,**

Requestor.

**FOIPA REQUESTS  
No. 1669479-000**

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**FREEDOM OF INFORMATION ACT APPEAL**

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THE AMERICAN CENTER FOR LAW AND JUSTICE


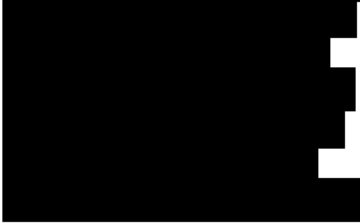
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## TABLE OF CONTENTS

|                                                                                                                                                                                                     |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| STATEMENT OF PROCEEDINGS.....                                                                                                                                                                       | 3  |
| ARGUMENT.....                                                                                                                                                                                       | 5  |
| I.    THE REQUEST DOES NOT REQUIRE THE FBI “TO ANSWER<br>INQUIRIES, CREATE RECORDS, CONDUCT RESEARCH, OR DRAW<br>CONCLUSIONS CONCERNING QUERIED DATA.....                                           | 5  |
| II.   PLAINTIFF’S FOIA REQUESTS ARE REASONABLY DESCRIBED AS<br>LIMITED BY: (A) TIME, (B) SUBJECT MATTER, (C) LOCATION, AND<br>OTHER LIMITATIONS, MAKING THEM NEITHER UNCLEAR NOR<br>OVERBROAD ..... | 6  |
| III.  THE AGENCY’S REMEDY FOR A REQUESTOR’S FAILURE TO<br>REASONABLY DESCRIBE A RECORD IS PROVIDED IN 5 U.S.C. §<br>552(A)(6)(A)(II)(I).....                                                        | 8  |
| IV.   THE FBI HAS A DUTY TO PRODUCE AND SEGREGATE THE<br>RECORDS.....                                                                                                                               | 9  |
| CONCLUSION .....                                                                                                                                                                                    | 10 |

## STATEMENT OF PROCEEDINGS

On May 29, 2025, the ACLJ submitted a FOIA request via the website. *See* FOIA Request attached as Exhibit A. It had two requests reproduced below:

For purposes of this Request, all terms otherwise 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, 2020, to the date this request is processed.**

The ACLJ hereby requests the FBI to produce the following records.

1. All records of communications in the custody of the FBI's Director, Deputy Director, Chief of Staff, General Counsel, or any of their senior staff or assistants, or of any other FBI official of a GS-14 or appointee or Capstone level or of the Senior Executive Service or higher, containing the words: "religion," "religious organization," "Christian," "church," "AGG-Dom, Part V.A.7," "AGG-Dom, Part V.A.7 approval," "racially and ethnically motivated violent extremists," or "RMVE," "Nihilistic Violent Extremist," "NVE," or "'CALEA' and 'religious.'"
2. All records of communications in the custody of the Executive Assistant Director of the FBI who directs the National Security Division (NSD), or any of his/her senior staff or aides, or in the custody of the Senior Executive Service agent who reports to the Executive Assistant Director of the FBI, containing the words: "religion," "religious organization," "Christian," "church," "AGG-Dom, Part V.A.7," "AGG-Dom, Part V.A.7 approval," "racially and ethnically motivated violent extremists," or "RMVE," "Nihilistic Violent Extremist," "NVE," or "'CALEA' and 'religious.'"

On June 3, 2025, the FBI acknowledged receipt of ACLJ's FOIA Request. *See* FBI Acknowledgement attached as Exhibit B.

The FBI sent an additional response on August 5, 2025, denying the ACLJ's FOIA Request. *See* FBI Second Response attached as Exhibit C. The Response stated in relevant parts:

The FOIPA requires agencies to provide access to reasonably described, nonexempt records [Title 5, United States Code, Section 552(a)(3)(A)]. The information requested in the referenced letter is not considered a FOIPA request because it does not comply with the FOIPA and its regulations. Therefore, your request is being administratively closed for one or more of the following reasons:

☒ The FOIPA does not require federal agencies to answer inquiries, create records, conduct research, or draw conclusions concerning queried data.

. . .

☒ 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).

This administrative appeal follows.

## ARGUMENT

### **I. The Request does not require the FBI “to answer inquiries, create records, conduct research, or draw conclusions concerning queried data.”**

A FOIA Requester is to draft a request that reasonably describes the records sought. 5 U.S.C. § 552(a)(3)(A). The form of the request is not relevant. *Evans v. Fed. Bureau of Prisons*, 445 U.S. App. D.C. 361, 366 (2020) (citations omitted) (An “agency may not refuse to comply with a FOIA request simply because the request is phrased in the form of a question.”).

“[A]n agency ‘has a duty to construe a FOIA request liberally.’” *Inst. for Justice v. IRS*, 444 U.S. App. D.C. 256, 261 (2019) (citations omitted). A request is to be construed according to ordinary usage. *Amadis v. United States Dep’t of State*, 449 U.S. App. D.C. 233, 239 (2020). In doing so, an agency may not ignore “what it cannot help but know.” *Inst. for Justice v. IRS*, 444 U.S. App. D.C. 256, 261 (2019) (citations omitted). Further, an agency is to conduct a search for requested records in good faith “using methods which can be reasonably expected to produce the information requested.” *Evans v. Fed. Bureau of Prisons*, 445 U.S. App. D.C. 361, 367 (2020).

The introductory line for the Requests states: “The ACLJ hereby requests the FBI to produce the following records...” (Exhibit A (*See also*, Exhibit A-1, pg 3, Ls 29-30) (Exhibit A-1 is the same as Exhibit A-1 but for the addition of line numbering). Then, the First Request and Second Request seek “[a]ll records. . .” (Exhibit A; Exhibit A-1, pg 3, Ls 33 & 41). The FOIA statute defines a record as any information maintained by any agency in any format, including an electronic format. 5 U.S.C.S. § 552(a) (f)(2)(A). The Requests incorporate this definition saying: “For purposes of this Request, all terms otherwise used herein have the definitions given by FOIA, 5 U.S.C. § 552 *et seq.*” (Exhibit A; Exhibit A-1, pg 3, Ls 26-27).

A particular kind of record was requested: “records of communications.” Communications in ordinary usage means “a process by which information is exchanged between individuals

through a common system of symbols, signs, or behavior.” *Communication*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/communication> (last visited Aug. 26, 2025).

The FBI did not construe the request liberally. It ignores the words and form used. The introductory sentence “requests the FBI to produce the following records.” (Exhibit A; Exhibit A-1, pg 3, L 30). Then each request begins with, “All records of communications in the custody of,” so only records are requested, and, by their own terms, records of a particular type – communications. (Exhibit A; Exhibit A-1, pg 3, Ls 33 & 41). These are not questions about FBI data or FBI actions but requests for records (as defined by FOIA) already created by the FBI.

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 two requests. The Agency denied both as being overly broad (a second basis is addressed separately above). “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). Each Request (reproduced below in italics) is limited in the ways specified below.

**A. ACLJ’s First Request**

*All records of communications in the custody of the FBI’s Director, Deputy Director, Chief of Staff, General Counsel, or any of their senior staff or assistants, or of any other FBI official of a GS-14 or appointee or Capstone level or of the Senior Executive Service or higher, containing the words: “religion,” “religious organization,” “Christian,” “church,” “AGG-Dom, Part V.A.7,” “AGG-Dom, Part V.A.7 approval,” “racially and ethnically motivated violent extremists,” or “RMVE,” “Nihilistic Violent Extremist,” “NVE,” or “‘CALEA’ and ‘religious.’”*

**Limitations:**

Custodians: *FBI’s Director, Deputy Director, Chief of Staff, General Counsel, or any of*

*their senior staff or assistants, or of any other FBI official of a GS-14 or appointee or Capstone level or of the Senior Executive Service*

[NOTE: The Request defines the terms “staff” or “aides.” (Exhibit A)]

Subject Matter: Records that contain the words “*religion*,” “*religious organization*,” “*Christian*,” “*church*,” “*AGG-Dom, Part V.A.7*,” “*AGG-Dom, Part V.A.7 approval*,” “*racially and ethnically motivated violent extremists*,” or “*RMVE*,” “*Nihilistic Violent Extremist*,” “*NVE*,” or “‘*CALEA*’ and ‘*religious*.’”<sup>1</sup>

Time: No record prior to January 1, 2020.

## **B. ACLJ’s Second Request**

*All records of communications in the custody of the Executive Assistant Director of the FBI who directs the National Security Division (NSD), or any of his/her senior staff or aides, or in the custody of the Senior Executive Service agent who reports to the Executive Assistant Director of the FBI, containing the words: “religion,” “religious organization,” “Christian,” “church,” “AGG-Dom, Part V.A.7,” “AGG-Dom, Part V.A.7 approval,” “racially and ethnically motivated violent extremists,” or “RMVE,” “Nihilistic Violent Extremist,” “NVE,” or “‘CALEA’ and ‘religious.’”*

### **Limitations:**

Custodians: *Executive Assistant Director of the FBI who directs the National Security Division (NSD), or any of his/her senior staff or aides, or in the custody of the Senior Executive Service agent who reports to the Executive Assistant*

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<sup>1</sup> A request is to be construed according to ordinary usage. *Amadis v. United States Dep’t of State*, 449 U.S. App. D.C. 233, 239 (2020). The terms: “*religion*,” “*religious organization*,” “*Christian*,” “*church*,” and “*religious*” are words in ordinary usage.

An agency may not ignore “what it cannot help but know.” *Inst. for Justice v. IRS*, 444 U.S. App. D.C. 256, 261 (2019) (citations omitted). “*AGG-Dom, Part V.A.7*,” “*AGG-Dom, Part V.A.7 approval*,” “*racially and ethnically motivated violent extremists*,” or “*RMVE*,” “*Nihilistic Violent Extremist*,” “*NVE*,” and “‘*CALEA*’ and ‘*religious*’” are FBI acronyms contained in the manual: NCTC, FBI & DHS, U.S. VIOLENT EXTREMIST MOBILIZATION INDICATORS, (2021) and referenced in the FOIA Request Background (Exhibit A).

*Director of the FBI*

[NOTE: The Request defines the terms “staff” or “aides.”]

Subject Matter: Records that contain the words “*religion*,” “*religious organization*,” “*Christian*,” “*church*,” “*AGG-Dom, Part V.A.7*,” “*AGG-Dom, Part V.A.7 approval*,” “*racially and ethnically motivated violent extremists*,” or “*RMVE*,” “*Nihilistic Violent Extremist*,” “*NVE*,” or “‘*CALEA*’ and ‘*religious*.’”

Time: No record prior to January 1, 2020.

**III. 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>2</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 generating 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>3</sup>

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<sup>2</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 Second Response (Exhibit C) makes this clause inapplicable.

<sup>3</sup> Congress’ intent that the Clarification Clause was specifically meant to address unclear requests 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.



“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 records which . . . reasonably describes such records.” *Truitt v. Dep’t of State*, 897 F.2d 540, 544 (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.* at 545 (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). Even still, 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.

#### **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.

## CONCLUSION

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

**DATED** this 1<sup>st</sup> day of October, 2025.

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