



May 13, 2021

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

RE: ACLJ FOIA Request about the FBI's apparent widespread violations of privacy rules in conducting surveillance under Section 702 of the Foreign Intelligence Surveillance Act (FISA)

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")¹ on behalf of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records pertaining to the FBI's knowledge and efforts surrounding its apparent widespread violations of privacy rules in conducting surveillance and background investigations in connection to Section 702 of the Foreign Intelligence Surveillance Act (FISA).

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.

¹The 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.S. § 1881a, Procedures for targeting certain persons outside the United States other than United States persons (hereafter § 702),² states:

[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;

(5) may not intentionally acquire communications that contain a reference to, but are not to or from, a target of an acquisition authorized under subsection (a), except as provided under section 103(b) of the FISA Amendments Reauthorization Act of 2017 [note to this section]; and

(6) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.³

On May 4, 2021, Representatives Jim Jordan and Andy Biggs sent a letter to FBI Director Christopher Wray requesting information about alleged violations of Section 702. It stated:

“On April 26, 2021, the Office of the Director of National Intelligence declassified a 67-page FISC memorandum opinion and order from November 2020 detailing the FBI’s ‘apparent widespread violations’ of privacy rules in conducting surveillance under section 702 of the Foreign Intelligence Surveillance Act (FISA). We write to request information about the FBI’s illegal spying activities.”⁴

The Foreign Intelligence Surveillance Court opinion, referenced above, found:

³ 50 U.S.C.S. § 1881a (LexisNexis, Lexis Advance through Public Law 116-344, approved January 13, 2021, with a gap of Public Law 116-283). 50 U.S.C. § 1881a is the codification of Section 702 of the FISA Amendments Act, Pub. L. No. 110-261, 122 Stat. 2436 (2008), and is frequently referred to as “Section 702.” In the interests of clarity and consistency, we will use “Section 702” throughout this request when referring to 50 U.S.C. § 1881a.

⁴ Letter from Rep. Jim Jordan and Rep. Andy Biggs, Committee on the Judiciary, to Christopher Wray, Director, Federal Bureau Investigation, (May 5, 2021) <https://twitter.com/JudiciaryGOP/status/1389591741662179330>

- 1) “[L]imited background investigations” of persons seeking to participate in the FBI “Citizens Academy,” tradesmen coming to make a repair, persons providing information for criminal investigations, and crime victims.⁵
- 2) Failure to opt out of “querying raw FISA-acquired information.”⁶
- 3) Failure to obtain a FISC Order before querying in support of predicated criminal investigations unrelated to foreign intelligence.⁷
- 4) System failures “to detect improper queries before they occur, and logging required information to enable proper oversight.”
- 5) Failure to purge FISA records as required.⁸

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

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.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is November 1, 2019, to the date this request is processed.

⁵ Memorandum Opinion and Order at 39. Document re Section 702 Certification (FISA Ct Nov. 18, 2020)

⁶ *Id.* at 40

⁷ *Id.* at 42

⁸ *Id.* at 52-58

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

1. 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, Acting Attorney General Monty Wilkinson, Attorney General Merrick Garland, the Principal Deputy Attorney General, or any Deputy Attorney General, including by utilizing any alias or pseudonym for any such person, referencing, connected to, or regarding in any way:

- a) “limited background investigations” of persons seeking to participate in the FBI “Citizens Academy,” tradesmen coming to make a repair, persons providing information for criminal investigations, and crime victims;
- b) failure to opt out of “querying raw FISA-acquired information”;
- c) failure to get a FISC Order before querying in support of predicated criminal investigations unrelated to foreign intelligence;
- d) system failures “to detect improper queries before they occur, and logging required information to enable proper oversight”;
- e) failure to purge FISA records as required; or
- f) any other background investigation accessing or using FISA-acquired information not undertaken for a foreign intelligence purpose,

as those terms and phrases are used by the FISC as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, FBI electronic mail or message accounts, non-FBI electronic mail or message accounts, personal electronic mail or message accounts, FBI servers, non-FBI servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

2. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any FBI official, agent or employee, not identified in Request # 1 above, referencing, connected to, or regarding in any way:

- a) “limited background investigations” of persons seeking to participate in the FBI “Citizens Academy,” tradesmen coming to make a repair, persons providing information for criminal investigations, and crime victims;
- b) failure to opt out of “querying raw FISA-acquired information”;
- c) failure to get a FISC Order before querying in support of predicated criminal investigations unrelated to foreign intelligence;
- d) system failures “to detect improper queries before they occur, and logging required information to enable proper oversight”;
- e) failure to purge FISA records as required; or
- f) any other background investigation accessing or using FISA-acquired information not undertaken for a foreign intelligence purpose,

as those terms and phrases are used by the FISC as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, FBI electronic mail or message accounts, non-FBI electronic mail or message accounts, personal electronic mail or message accounts, FBI servers, non-FBI servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

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, or any FBI agent or employee, Acting Attorney General Monty Wilkinson, Attorney General Merrick Garland, the Principal Deputy Attorney General, or any Deputy Attorney General, including by utilizing any alias or pseudonym for any such person, referencing, connected to, or regarding in any way:

- a) the collection or storage in any system or database, including but not limited to any system in which FISA-acquired information is collected or stored, the use of, or access to, the National Instant Criminal Background Check System (NICS) and/or ATF Form 4473 information of any U.S. person not under criminal investigation, and who, upon the submission of ATF Form 4473 to the NICS, was found not to have a criminal record or be otherwise ineligible to purchase or own a firearm.
- b) the querying of any FISA-acquired information in connection with the National Instant Criminal Background Check System (NICS) and/or ATF Form 4473 information of any U.S. person not under criminal investigation and who did not have a criminal record, and upon the submission of ATF Form 4473 to the NICS, was found not to have a criminal record or be otherwise ineligible to purchase or own a firearm;
- c) Any other connection between FISA-acquired information and the NICS ATF Form 4473 information of any U.S. person,

including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, FBI electronic mail or message accounts, non-FBI electronic mail or message accounts, personal electronic mail or message accounts, FBI servers, non-FBI servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

As to all 3 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.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled a waiver of all fees associated with it. The ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for a waiver of fees.

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

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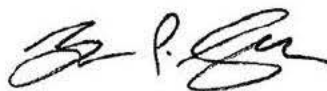
[REDACTED]

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

Respectfully submitted,



Jordan Sekulow
Executive Director



Benjamin P. Sisney
Senior Litigation Counsel



John A. Monaghan
Senior Litigation Counsel