

JULYA HAMPTON  
LEGAL PROGRAM DIRECTOR

AARON CAPLAN  
NANCY TALNER  
STAFF ATTORNEYS



March 21, 2006

Directorate for Freedom of Information and Security Review  
Room 2C757  
1155 Defense Pentagon  
Washington, DC 20301-1155

**Re: FOIA REQUEST  
Expedited Processing and Fee Waiver Requested**

Dear Agency:

**AMERICAN CIVIL  
LIBERTIES UNION OF  
WASHINGTON  
FOUNDATION**  
705 2ND AVENUE, 3RD FL.  
SEATTLE, WA 98104  
T/206.624.2184  
F/206.624.2190  
WWW.ACLU-WA.ORG

TIMOTHY KAUFMAN-OSBORN  
BOARD PRESIDENT

KATHLEEN TAYLOR  
EXECUTIVE DIRECTOR

This letter constitutes a Request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the Department of Defense implementing regulations, 32 C.F.R. § 286.1 *et seq.*, by the American Civil Liberties Union of Washington ("the ACLU") on its own behalf and on behalf of the American Friends Service Committee (AFSC); Peace and Justice Action League of Spokane (PJALS); People for Peace, Justice, and Healing; Pierce County Truth in Recruiting (PCTR); Seattle Raging Grannies; Seattle Peace Chorus; Sound Nonviolent Opponents of War (SNOW); United for Peace of Pierce County; Vancouver For Peace; Western Washington Fellowship of Reconciliation (WWFOR); and the Yakima Valley Peace Advocates Network (collectively, "the Requesters").

This request is motivated in part by recent revelations that the Coast Guard and/or the FBI were conducting intelligence activities and surveillance of Seattle-area peace groups. See Mike Barber and Paul Shukovsky, "Peace Groups Under Watch," Seattle Post-Intelligencer (February 22, 2006). Many of the requesters were mentioned in the surveillance documents described in that article, and others have working relationships with groups mentioned in those documents. Hence, all Requesters wish to see what records are being kept about them by your agencies.

**I. The Requesters**

1. The American Civil Liberties Union of Washington is the statewide affiliate of the American Civil Liberties Union, a national organization that works to protect civil rights and civil liberties. As the leading defender of freedom, equality, privacy, and due process rights in the United States, the ACLU has challenged the United States government's broad targeting and surveillance of innocent people as part of the war on terrorism, the government's crackdown on criticism and dissent, and the secret and unchecked surveillance powers of the USA PATRIOT Act.

2. American Friends Service Committee (AFSC) was founded by Quakers in 1917 to carry out service, development, social justice, and peace programs throughout the

world. AFSC has traditionally championed the rights of conscientious objectors to abstain from service in the United States military.

3. Peace and Justice Action League of Spokane (PJALS) is a local, membership organization committed to involving individuals and local communities in building foundations for a just and nonviolent world through community organizing, nonviolence training, volunteer involvement, human rights education and advocacy. Since its inception PJALS has sponsored several large public protests, including anti-war and anti-globalization demonstrations and the largest anti-racism march in the history of the Inland Northwest.

4. People for Peace, Justice, and Healing is a Tacoma-area group dedicated to returning the United States to its core values of liberty and justice for all. Much of the PPJH's current activity focuses on protesting the war in Iraq through rallies and public education events.

5. Pierce County Truth in Recruiting (formerly "Informed Consent") is an organization dedicated to addressing aggressive military recruitment in Tacoma-area public schools. Through community organizing, Pierce County Truth in Recruiting advocates for equal access to students to be given to people presenting alternative viewpoints to the military.

6. Seattle Raging Grannies exists to promote global peace, justice, and social and economic equality by raising public awareness through song and humor. The Seattle Raging Grannies have performed at numerous anti-war and anti-globalization events in the Puget Sound region.

7. Seattle Peace Chorus is dedicated to creating connections and promoting peace and justice through music. The Seattle Peace Chorus was founded in 1983 out of concern for the nuclear arms race, and has continued to work towards fostering diplomacy with the former Soviet Union through international travel and performance.

8. Sound Nonviolent Opponents of War (SNOW) exists to oppose human rights abuses, military aggression, and weapons of mass destruction, and advocate for U.S. foreign policies which promote human rights, economic justice, and self-determination. Most recently, SNOW's activities have concentrated on protesting the war in Iraq and Bush Administration policies.

9. United for Peace of Pierce County nonviolently opposes the reliance on unilateral military actions and advocates for cooperative diplomacy. United for Peace of Pierce County organizes public marches, rallies and community meetings in the Pierce County region.

10. Vancouver For Peace is an ad-hoc group of citizens of Clark County who promote nonviolent community organization and activism through website technology, listservs and meetings. Current activities include a call for nonviolent civil disobedience in protest of the war in Iraq, film screenings and other anti-war public education events.

11. Western Washington Fellowship of Reconciliation (WWFOR) is an interfaith organization dedicated to opposing violence, war, and racism, and promoting nonviolence, peace, and justice through public education, coalition building and acts of compassion. Recent efforts include public demonstration for demilitarization and disarmament and public education on the topic of oil industry politics.

12. The Yakima Valley Peace Advocates Network (YVPAN) is a Yakima Valley peace coalition that advocates for peaceful, rather than military, solutions to global conflict. YVPAN is a vocal critic of the war in Iraq, the PATRIOT Act and other Bush Administration policies.

## **II. The Request for Information**

The Requesters seek disclosure of records referring to the following topics that were prepared, received, transmitted, collected and/or maintained by the agencies to whom this letter is addressed. This includes the Department of Defense ("DoD") or any of its components, including but not limited to the Counterintelligence Field Activity Agency ("CIFA"), its Directorate of Field Activities ("DX"), and their Threat and Local Observation Notice ("TALON") database. It includes the Federal Bureau of Investigation, and the Seattle Joint Terrorism Task Force. All requesters seek documents created from January 1, 2001 to the present.

1. information collected about any of the Requesters or their activities;
2. orders or instructions to collect information about any of the Requesters or their activities;
3. the inclusion of any of the Requesters or their activities in any organized file or database, including the TALON database and the Terrorism Screening Database ("TSDB");
4. how, why or when any of the Requesters or any of their activities was selected as a target for information-gathering or for inclusion in any organized file or database;
5. the means by which information about any of the Requesters or their activities was or will be collected, including but not limited to any instances in which DoD personnel gathered information via informants, by collecting information from websites, by infiltrating any of the Requesters in an undercover capacity, or by attending rallies, protests, demonstrations, organizational meetings or other gatherings organized by any of the Requesters or in which any of the Requesters participated;
6. how records about any of the Requesters or their activities have been, are being, will be, or might be used, shared with another agency, or disseminated;
7. the retention of records about any of the Requesters or their activities;

8. the destruction of records about any of the Requesters or their activities, including any policies, orders, or directives requiring, permitting or prohibiting the destruction of such records;
9. policies or procedures in place to protect the privacy of records that refer or relate to the employees, members, and/or board of directors of any of the Requesters; and
10. how, why or when the collection of information about any of the Requesters or their activities, or the inclusion of any of the Requesters or their activities in the TALON database or the TSDB, was or will be suspended or terminated.

### III. Limitation on Processing Fees

The ACLU requests a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .") and 32 C.F.R. § 286.28(e)(7) (search and review fees shall be limited to duplication fees for the first 100 pages for "representatives of the news media"). As a "representative of the news media," the ACLU fits within this statutory and regulatory mandate. Fees associated with the processing of this Request should, therefore, be limited accordingly.

The ACLU meets the definition of a "representative of the news media" because it is "an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience." *National Security Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information").

Depending on the results of the Request, the ACLU plans to disseminate the information gathered by this Request to the public through these kinds of publications in these kinds of channels. The ACLU is therefore a "representative of the news media." *Cf. Electronic Privacy Information Ctr. v. Dep't of Defense*, 241 F.Supp.2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the media" for purposes of FOIA). As seen by the ACLU of Washington's contribution to the Barber and Shukovsky story from the Seattle Post-Intelligencer, our work in this area is dedicated to informing the public.

Disclosure will not be motivated by any commercial interest. The ACLU is a "non-profit, non-partisan, public interest organization." *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003). Any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost.

#### **IV. Waiver of all Costs**

The ACLU additionally requests a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)).

Disclosure of the requested information is in the public interest. This Request will further public understanding of government conduct. There is plainly considerable public interest in the topic of government surveillance of domestic political organizations. It is a subject of contemporary local interest, as seen in the Barber and Shukovsky article from February 2006, and also national interest. *See* Walter Pincus, "Pentagon's Intelligence Authority Widens," *Washington Post*, December 19, 2005. After NBC News obtained and reported on a secret 400-page DoD document that included dozens of anti-war meetings or protests as "suspicious incidents" in which the Department had apparently taken an investigative interest, *see* Lisa Myers et al, "Is the Pentagon Spying on Americans?," *msnbc.com*, December 14, 2005, DoD officials ordered a review of the information in its TALON intelligence database to determine whether information on subjects that were determined to pose no threat was improperly retained in the system. *See* Walter Pincus, "Pentagon Will Review Database on U.S. Citizens," *Washington Post*, December 15, 2005. The administration subsequently initiated the process of setting standards to govern how its agencies collect and maintain reports of activity they consider suspicious. *See* Walter Pincus, "Corralling Domestic Intelligence," *Washington Post*, January 13, 2006.

As described above, the records requested are not sought for commercial use. As a nonprofit 501(c)(3) organization and "representative of the news media" as discussed above, the ACLU is well-situated to disseminate information it gains from this Request to the general public and to groups that protect constitutional rights. Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.

#### **V. Expedited Processing Request**

Expedited processing is warranted because there is an "urgent[] need[]" on the part of an organization "primarily engaged in disseminating information" "to inform the public concerning actual or alleged Federal Government activity." 32 C.F.R. § 286.4(d)(3)(ii).

The ACLU is "primarily engaged in disseminating information" for the same reasons it is a "representative of the news media," as discussed in Section III. This Request clearly relates to activity of the federal government, namely, the collection and retention of information by the Department of Defense.

There is an "urgent need" to inform the public about the federal government's monitoring and surveillance of individual citizens, as well as political, religious, and community organizations throughout the nation. Such government activity may infringe upon the public's free speech, free association, and privacy rights, which are guaranteed by the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Requests for information bearing upon potential constitutional violations require an immediate response so that steps may be taken to ensure any violations cease and future violations are prevented.

Moreover, the investigation of individuals and organizations because of their political views and expressive or associational activity may have a chilling effect on the exercise of First Amendment rights by others. *See, e.g., Thornhill v. Alabama*, 310 U.S. 88, 97 (1940) ("It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion."). The chilling effect here may be exacerbated by the fact that the public has little information about what policies and procedures control the government's surveillance activities.

DoD's regulations implementing FOIA specify that information is "[u]rgently needed" where the information "has a particular value that will be lost if not disseminated quickly" – a criterion that is generally met by "a breaking news story of general public interest." 32 C.F.R. § 286.4(d)(3)(ii)(A). Here, there is extensive public and media interest in the use of the military to gather intelligence domestically on anti-war/counter-recruitment demonstrators and others engaging in protected activity. The initial NBC News report disclosing the extent of the Pentagon's surveillance of peaceful demonstrations and organizations, *see* Lisa Myers et al, "Is the Pentagon Spying on Americans?," msnbc.com, December 14, 2005, generated widespread attention from the news media and public officials both nationally and locally. Since the NBC report, there have been numerous news reports about surveillance of domestic political activities.<sup>1</sup>

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<sup>1</sup> *See, e.g.,* Michael Isikoff, "The Other Big Brother," *Newsweek*, January 30, 2006; Walter Pincus, "Corralling Domestic Intelligence," *Washington Post*, January 13, 2006; "A Fog of False Choices," *New York Times*, December 20, 2005 (editorial mentioning Pentagon program); Walter Pincus, "Pentagon's Intelligence Authority Widens," *Washington Post*, December 19, 2005; "What Can't the Pentagon Understand About American's Right Peaceably to Assemble," *Fayetteville Observer*, December 19, 2005 (editorial); "Big Brother Bush," *Pittsburgh Post-Gazette*, December 18, 2005 (editorial); David S. Cloud, "Pentagon is Said to Mishandle a Counterterrorism Database," *New York Times*, December 16, 2005; Arianna Huffington, "It's Dirty Tricks All Over Again," *Salt Lake City Tribune*, December 16, 2005 (syndicated column appearing in other papers as well); Chris Matthews, "Update: Pentagon Eyeing Activist Groups?," *Hardball*, December 16, 2005 (interview by Chris Matthews with Lisa Myers of NBC news); Walter Pincus, "Pentagon Will Review Database on U.S. Citizens," *Washington Post*, December 15, 2005; Associated Press, "Pentagon to Review Spy Files After NBC Report," msnbc.com, December 15, 2005 (also printed elsewhere including foxnews.com); Vicky O'Hara, "Pentagon to Probe Abuse of Security Database," *National Public Radio, All Things Considered*, December 15, 2005; Charles Aldinger, "Pentagon Admits Compiling Data on Antiwar Activists," *Capitol Hill Blue*, December 15, 2005 (Reuters article reprinted elsewhere as well including Yahoo! News); Kevin Deutsch, "Pentagon Calls Lake Worth Peace Meeting a 'threat,'" *Palm Beach Post*, December 15, 2005; Robert Burns, "Pentagon to Review Possible Database Misuse," *boston.com*, December 15, 2005 (Associated Press writer posted on cite that hosts the Boston Globe); Steven Elbow, "Local Anti-War Protest on Pentagon List," *Madison.com*, December 15, 2005.

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As these reports illustrate, the DoD's domestic intelligence-gathering program constitutes a breaking and unfolding news story. The requested information is needed to provide the public with a full picture of the extent of program.

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Thank you for your prompt attention to this matter. Please furnish all applicable records to:

American Civil Liberties Union  
705 Second Avenue, Third Floor  
Seattle, WA 98104

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,

AARON H. CAPLAN  
Staff Attorney