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Description of document: **NSA administrative processing file for FOIA request for records on surveillance of "Portland Peaceful Response Coalition"**

Requested date: 27-October-2007

Released date: 10-September-2008

Posted date: 27-September-2008

Date/date range of document: 17-November-2006 – 23-February-2007
(Records refer to earlier incidents and documents)

Source of document: NSA FOIA Requester Service Center:
National Security Agency
Attn: FOIA/PA Office (DJ4)
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20755-6248
Telephone: (301) 688-6527
Fax: (443) 479-3612

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NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 54025
10 September 2008

This is the final response to your Freedom of Information Act (FOIA) request dated 27 October 2007 for “ - The letter of request; - The letter of response, - The contents of the administrative tracking file (notes, memos, email, letters, etc., etc.), and also - The first 200 pages of any records provided for each of the following eight (8) FOIA request cases at the NSA: 51864 51897 51978 51982 52003 52440 52467 52565.” A copy of your request is enclosed. Your request has been processed under the FOIA and some of the documents you requested are enclosed. Certain information, however, has been deleted from the enclosures.

Some of the information deleted from the documents was found to be currently and properly classified in accordance with Executive Order 12958, as amended. This information meets the criteria for classification as set forth in Subparagraph (c) of Section 1.4 and remains classified TOP SECRET and SECRET as provided in Section 1.2 of the Executive Order. The information is classified because its disclosure could reasonably be expected to cause exceptionally grave or serious damage to the national security.

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. We have determined that such information exists in these documents. Accordingly, those portions are exempt from disclosure pursuant to the third exemption of the FOIA which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are Title 18 U.S. Code 798; Title 50 U.S. Code 403-1(i); and Section 6, Public Law 86-36 (50 U.S. Code 402 note).

Commercial and financial information that is privileged or otherwise confidential has also been deleted from the enclosures, pursuant to the fourth exemption of the FOIA.


Also, some of the information has been deleted from the enclosures pursuant to the fifth exemption of the FOIA. This exemption applies to inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency, protecting information that is

normally privileged in the civil discovery context, such as attorney-client privileged information.

Additionally, personal information regarding an individual has been deleted from the enclosures in accordance with 5 U.S.C. 552 (b)(6). This exemption protects from disclosure information that would constitute a clearly unwarranted invasion of personal privacy. In balancing the public interest for the information you request against the privacy interests involved, we have determined that the privacy interests sufficiently satisfy the requirements for the application of the (b)(6) exemption.

Since these deletions may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days from the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJP4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes release of the information is required. The NSA/CSS Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

Sincerely,

A handwritten signature in black ink, reading "Rhea D. Siers". The signature is written in a cursive, flowing style.

RHEA D. SIERS
Deputy Associate Director for Policy

Encls:
a/s

NATIONAL SECURITY AGENCY ADMINISTRATIVE
PROCESSING FILE FOR PREVIOUS FOIA REQUEST
FOR RECORDS ON SURVEILLANCE OF “PORTLAND
PEACEFUL RESPONSE COALITION”

11/21/06

PUBLIC RECORDS REQUEST

BY U.S. POST, CERTIFIED MAIL

National Security Agency/Central Security Service
FOIA/PA Services
NSPS
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20755-6248

Re: Freedom of Information Act Request

Dear FOIA Officer:

I am writing on behalf of Portland Peaceful Response Coalition (PPRC) and the Northwest Constitutional Rights Center to make the following request under the Freedom of Information Act, 5 U.S.C. Sec. 552.

Please provide a copy of all records including data, memoranda, letters, alerts, correspondence, bulletins, e-mails, electronic postings, reports, notes, images, or any other materials in the possession of the Department of Defense regarding the following:

1. All records and data relating to, involving or referencing Portland Peaceful Response Coalition and/or PPRC (henceforth referred to collectively as PPRC) including but not limited to any reports, investigation documents, database references, documents indicating monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and general collection of information, any internal communication in any format dealing with PPRC, any information from other agencies including documents received from other agencies, and documents derived from public or private databases or any other public or private sources.
2. Any orders, agreements, or instructions to monitor, conduct surveillance, observe, question, interrogate, investigate, infiltrate, and/or collect information on PPRC.
3. Any records relating or referring to how, why or when PPRC was selected to be a subject of monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information.
4. Any records relating or referring to how monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on PPRC was or will be conducted.
5. Any records relating or referring to the names of any other federal, state, or local government agencies participating in monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on PPRC.

Approved for Release by NSA on
09-09-2008, FOIA Case # 54025

6. Any records relating or referring to the specific role of the National Joint Terrorism Task Force or any local Joint Terrorism Task Force, including any Oregon Joint Terrorism Task Force in any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collecting of information on PPRC.
7. Any records relating or referring to how records on PPRC have been, will be or might be used.
8. Any policies or procedures for analyzing records about PPRC.
9. Any policies or procedures for cross-referencing records about PPRC with information contained in any database.
10. Any policies or procedures for cross-referencing records about PPRC with any other organization or individuals.
11. Any policies or procedures dealing with the retention of records dealing with PPRC.
12. Any records referring or relating to the destruction of records dealing with PPRC.
13. Any records relating or referring to how, why or when monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on PPRC was suspended or terminated.
14. Any Memorandum of Understanding (MOU) or formal agreement with any other law enforcement agency applicable to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on PPRC.
15. All records and data generated by the Counterintelligence Field Activity (CIFA) including but not limited to that reported in the Threat and Local Observation Notice (TALON) system reports relating to PPRC.

Request for Fee Waiver

The disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. For further explanation of the purpose and necessity of this request, see the discussion below addressing expedited review.

The information requested herein is not intended to be used for commercial purposes, but for dissemination to the public and for public education. All information received shall be made available for public access.

Request for Expedited Review

Full disclosure of the DOD's activities regarding surveillance of activist groups is a matter of widespread and exceptional interest in which there exist possible questions

about the government's integrity which affects public confidence. It is necessary for the public to assess the scope and nature of DOD's activities with regard to activist groups.

News articles reflect the strong public interest in the materials sought under this request. For example, NBC national news ran a story regarding DOD's maintenance of data on anti-war protests and protesters on December 13, 2004, which was followed by multiple articles including articles run by the Associated Press, Reuters, and the Washington Post. Two different spokesmen for the DOD publicly addressed the matter, one stating that he possessed "no personal knowledge of the document," and the other stating that "the allegation that the department is interested in domestic surveillance is not consistent with our policies and procedures." Subsequently an unnamed official has acknowledged that the Pentagon is improperly maintaining information on protests and protesters.

This variety of media reports indicate that the DOD could be wrongfully investigating the group described in this request and therefore, the need for information about this is of utmost urgency to cease the possible continued infringement on constitutional rights. A delay in disclosure could cause the loss of fundamental constitutional rights including those arising pursuant to the First and Fourth Amendments and the Due Process Clause.

The information requested herein is not intended to be used for commercial purposes, but for dissemination to the public and for public education. All information received shall be published and/or made publicly available.

In the Event of Denial

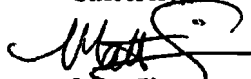
If this request is denied in whole or in part, please provide the basis for each such denial or deletion by reference to the specific exemption of the Act which you assert is applicable.

Request for All Portions of Material for Which No Exemption to Production is Claimed

Please provide all segregable portions of otherwise exempt material.

We reserve the right to appeal your decision to withhold any information or deny a waiver of fees. The Northwest Constitutional Rights Center **DOES NOT AGREE TO PAY ANY FEES OVER \$25.00**. Please confirm with the NW Center prior to charging any amount greater than \$25.00.

Sincerely,



Matt Simpson – Project Coordinator
intern@nwcrc

Northwest Constitutional Rights Center
520 SW 6th Ave., Suite 1050
Portland, OR 97204
503.295.6400
Fax 503.295.6415

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NW Constitutional Rights Center
520 SW 6th Ave, Suite 1050
Portland, OR 97204



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National Security Agency/Central Security
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FOIA/PA Services
N5P5
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Ft. George G. Meade, MD 20755-6248



20733+6248-73 C081



DOCID: 3419015

FOIA Case: 51982
23 February 2007

Mr. Matt Simpson
Northwest Constitutional Rights Center
520 SW 6th Avenue, Suite 1050
Portland, OR 97204

Dear Mr. Simpson:

This responds to your Freedom of Information Act (FOIA) request of 17 November 2006, which was received by this office on 21 November 2006, for 15 separate items pertaining to surveillance of the Portland Peaceful Response Coalition (PPRC). Your letter has been assigned Case Number 51982. Please refer to this case number when contacting us about your request.

For purposes of this request and based on the information you provided in your letter, you are considered an "all other" requester. There are no assessable fees for this request; therefore, we did not address your request for a fee waiver. Your request has been processed under the provisions of the FOIA.

As you know, the President of the United States "authorized the National Security Agency [(NSA)], consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al Qaeda and related terrorist organizations." The President also noted that, "[t]his is a highly classified program that is crucial to our national security."

Rest assured that safeguards are in place to protect the civil liberties of U.S. citizens. However, because of the highly classified nature of the program, we can neither confirm nor deny the existence of records responsive to your request. The fact of the existence or non-existence of responsive records is a currently and properly classified matter in accordance with Executive Order 12958, as amended. Thus, your request is denied pursuant to the first exemption of the FOIA, which provides that the FOIA does not apply to matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign relations and are properly classified pursuant to such Executive Order.

Moreover, the third exemption of the FOIA provides for the withholding of information specifically protected from disclosure by statute. Thus, your

request is also denied because the fact of the existence or non-existence of the information is exempted from disclosure pursuant to the third exemption. The specific statutes applicable in this case are Title 18 U.S. Code 798; Title 50 U.S. Code 403-1(i); and Section 6, Public Law 86-36 (50 U.S. Code 402 note).

As your request is being denied, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days of the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DC34), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the adverse determination and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes that the determination is unwarranted. The NSA/CSS FOIA Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

Lastly, please be advised we can only respond on NSA records. If you seek information from other federal agencies, you will need to direct your inquiry to those agencies.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis F. Giles", written in a cursive style.

LOUIS F. GILES
Director of Policy

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FOIA Case: 51982

M/R: (U) **GLOMAR - US ORGANIZATION**

(U) The attached letter responds to Matt Simpson's FOIA request of 17 November 2006 for 15 separate items pertaining to the federal government's surveillance of the peace group, "Portland Peaceful Response Coalition (PPRC)."

(U) I searched CTS using "Simpson" in both the first and last name position as well as Portland Peaceful Response Coalition and PPRC in the subject line. I located one previous request from Mr. Simpson for records on a different organization (FOIA Case #51978). There have been no previous requests for this peace group.

(U//~~FOUO~~) The attached letter provides a "GLOMAR" response to the requester. We must neither confirm nor deny the existence of documents verifying that NSA is conducting surveillance on the peace group, "Portland Peaceful Response Coalition (PPRC)" based on the following rationale:

(U//~~FOUO~~) NSA's mission is twofold: to produce foreign intelligence information and to protect U.S. information systems. This Agency's SIGINT role has been enhanced by superior intelligence sources and methods which enable us to keep pace with challenging developments in virtually every area of technology. In the course of fulfilling these missions, we obtain information and report it to customers within the U.S. Government. From a SIGINT mission standpoint, some of the information we glean may not be significant; however, it is frequently interleaved with information that reveals how vital SIGINT was collected and is virtually impossible to segregate. More often than not, it is the potential loss of an important intelligence source or method that is at risk when NSA is required to explain how we obtain information which is incidental to our focus.

(U//~~FOUO~~) The requester in this instance asked for information relating to surveillance, targeting, domestic collection/intercept of a U.S. peace group, "Portland Peaceful Response Coalition (PPRC)." While we can admit that the President of the United States, consistent with U.S. law and the Constitution, has authorized NSA to intercept the international communications of people with known links to al Qaeda and related terrorist organizations, because the program is highly classified, we cannot release any details of the program. In addition, we cannot conduct searches to determine whether any particular U.S. citizen or group may be a "target" of this program. To confirm or deny that we

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FOIA Case: 51982

hold information on a specific U.S. person or group would reveal classified information.

(U//~~FOUO~~) Since the fact of the existence or non-existence of records would reveal classified information about specific targeting or collection capabilities, the Agency can invoke the first exemption under the FOIA, 5 U.S.C. Section 552(b)(1). The first exemption provides that the FOIA "does not apply to matters that are - 1(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order." This Agency is also authorized by various statutes to protect certain information concerning its activities.

(U//~~FOUO~~) The fact of the existence or non-existence of records on the peace group, "Portland Peaceful Response Coalition (PPRC)" is also exempt under the third exemption of the FOIA which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are: 18 U.S.C. Section 798, which prohibits the release of information concerning classified communications intelligence activities except to persons authorized to receive such information; 50 U.S.C. Section 403-1(i) which protects intelligence sources and methods; and Section 6 of the National Security Agency Act of 1959 (50 U.S.C. 402 note, Public Law 86-36), which provides that no law shall be construed to require the disclosure of the organization, personnel, functions or activities of NSA.

(U//~~FOUO~~) To summarize, the release of any information that would allude to the effectiveness of our collection efforts, or force us to explain our SIGINT sources and methods could result in denial of vital information to U.S. military commanders and government officials in the future.

(U) We inform the requester of his "all other" fee status, and explain that since there are no assessable fees for this request we did not address his request for a fee waiver. We advise him that the fact of the existence or non-existence of records responsive to his request is classified and exempt from disclosure pursuant to (b)(1) and (b)(3)/all statutes. We provide requester with his appeal rights.

(U//~~FOUO~~)

DC34, 963-5827, 12 February 2007

(b) (3) - P.L. 86-36

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"Comments" to FOIA Case 51982 (as requested under case 54025)

11/27/2006 (U) Glomar on this "surveillance on a peace group"

02/12/2007 (U//~~FOUO~~) Found 1 previous request from this requester for a different org. (51978). No prior requests on this peace group. Preparing Glomar ltr & mr.

02/12/2007 (U//~~FOUO~~) Forwarding to review

02/13/2007 (U) Rev'd and approved. Sent to DC3 to sign

02/13/2007 (U) proofed and ok.

02/22/2007 (U) signed

02/23/2007 (U//~~FOUO~~) Printed and placed in bin to be mailed.

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11/21/06

PUBLIC RECORDS REQUEST

BY U.S. POST, CERTIFIED MAIL

National Security Agency/Central Security Service
FOIA/PA Services
NSPS
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20755-6248

Re: Freedom of Information Act Request

Dear FOIA Officer:

I am writing on behalf of Civil Resist and the Northwest Constitutional Rights Center to make the following request under the Freedom of Information Act, 5 U.S.C. Sec. 552.

Please provide a copy of all records including data, memoranda, letters, alerts, correspondence, bulletins, e-mails, electronic postings, reports, notes, images, or any other materials in the possession of the Department of Defense regarding the following:

1. All records and data relating to, involving or referencing Civil Resist and/or Civil Resist Portland (henceforth referred to collectively as Civil Resist) including but not limited to any reports, investigation documents, database references, documents indicating monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and general collection of information, any internal communication in any format dealing with Civil Resist, any information from other agencies including documents received from other agencies, and documents derived from public or private databases or any other public or private sources.
2. Any orders, agreements, or instructions to monitor, conduct surveillance, observe, question, interrogate, investigate, infiltrate, and/or collect information on Civil Resist.
3. Any records relating or referring to how, why or when Civil Resist was selected to be a subject of monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information.
4. Any records relating or referring to how monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information of Civil Resist was or will be conducted.
5. Any records relating or referring to the names of any other federal, state, or local government agencies participating in monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on Civil Resist.

6. Any records relating or referring to the specific role of the National Joint Terrorism Task Force or any local Joint Terrorism Task Force, including any Oregon Joint Terrorism Task Force in any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collecting of information on Civil Resist.
7. Any records relating or referring to how records on Civil Resist have been, will be or might be used.
8. Any policies or procedures for analyzing records about Civil Resist.
9. Any policies or procedures for cross-referencing records about Civil Resist with information contained in any database.
10. Any policies or procedures for cross-referencing records about Civil Resist with any other organization or individuals.
11. Any policies or procedures dealing with the retention of records dealing with Civil Resist.
12. Any records referring or relating to the destruction of records dealing with Civil Resist.
13. Any records relating or referring to how, why or when monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on Civil Resist was suspended or terminated.
14. Any Memorandum of Understanding (MOU) or formal agreement with any other law enforcement agency applicable to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information on Civil Resist.
15. All records and data generated by the Counterintelligence Field Activity (CIFA) including but not limited to that reported in the Threat and Local Observation Notice (TALON) system reports relating to Civil Resist.

Request for Fee Waiver

The disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. For further explanation of the purpose and necessity of this request, see the discussion below addressing expedited review.

The information requested herein is not intended to be used for commercial purposes, but for dissemination to the public and for public education. All information received shall be made available for public access.

Request for Expedited Review

Full disclosure of the DOD's activities regarding surveillance of activist groups is a matter of widespread and exceptional interest in which there exist possible questions about the government's integrity which affects public confidence. It is necessary for the public to assess the scope and nature of DOD's activities with regard to activist groups.

News articles reflect the strong public interest in the materials sought under this request. For example, NBC national news ran a story regarding DOD's maintenance of data on anti-war protests and protesters on December 13, 2004, which was followed by multiple articles including articles run by the Associated Press, Reuters, and the Washington Post. Two different spokesmen for the DOD publicly addressed the matter, one stating that he possessed "no personal knowledge of the document," and the other stating that "the allegation that the department is interested in domestic surveillance is not consistent with our policies and procedures." Subsequently an unnamed official has acknowledged that the Pentagon is improperly maintaining information on protests and protesters.

This variety of media reports indicate that the DOD could be wrongfully investigating the group described in this request and therefore, the need for information about this is of utmost urgency to cease the possible continued infringement on constitutional rights. A delay in disclosure could cause the loss of fundamental constitutional rights including those arising pursuant to the First and Fourth Amendments and the Due Process Clause.

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In the Event of Denial

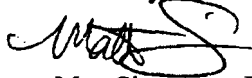
If this request is denied in whole or in part, please provide the basis for each such denial or deletion by reference to the specific exemption of the Act which you assert is applicable.

Request for All Portions of Material for Which No Exemption to Production is Claimed

Please provide all segregable portions of otherwise exempt material.

We reserve the right to appeal your decision to withhold any information or deny a waiver of fees. The Northwest Constitutional Rights Center **DOES NOT AGREE TO PAY ANY FEES OVER \$25.00**. Please confirm with the NW Center prior to charging any amount greater than \$25.00.

Sincerely,



Matt Simpson – Project Coordinator

intern@nwrc

Northwest Constitutional Rights Center

520 SW 6th Ave., Suite 1050

Portland, OR 97204

OCID: 3419016

503.295.6400
Fax 503.295.6415

NW Constitutional Rights Center
520 SW 8th Ave, Suite 1050
Portland, OR 97204

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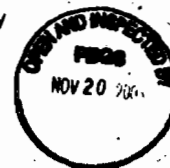


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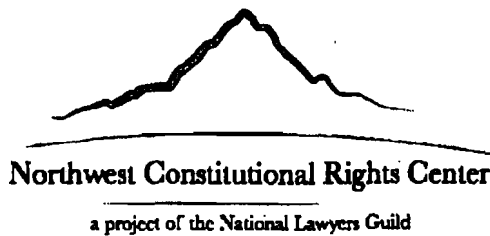
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January 26, 2007

NSA/CSS FOIA Appeal Authority (DC34)
National Security Agency
9800 Savage Road STE 6248
Ft. George G. Meade, MD 20755-6248

FREEDOM OF INFORMATION ACT APPEAL
CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Re: Freedom of Information Act Appeal; Case Number 51978

To Whom It May Concern:

This is an appeal pursuant to 5 U.S.C. § 552(a)(6)(2006), concerning the National Security Agency's ("Agency") refusal to disclose certain documents within its control. The requested documents are records and data relating to, involving or referencing Civil Resist, also known as Civil Resist Portland. The Agency's refusal to disclose the requested items violates the federal Freedom of Information Act (FOIA or Act), 5 U.S.C. § 552 (2007).

INTRODUCTION

We are writing this letter on behalf of members of Civil Resist, a Portland, Oregon-based peace organization. As noted in our original FOIA request, dated November 16, 2006:

Full disclosure of the DOD's activities regarding surveillance of activist groups is a matter of widespread and exceptional interest in which there exist possible questions about the government's integrity, which affects public confidence. It is necessary for the public to assess the scope and nature of DOD's activities with regard to activist groups.

See, original FOIA request, page 3.

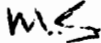
Unfortunately, by a letter dated November 30, 2006, the National Security Agency has refused to disclose any requested material or even whether such material exists. By this letter, we are therefore making a timely appeal pursuant to 5 U.S.C. § 552(a)(6); 32 C.F.R. § 286.24(a); 32 CFR § 299.5(n) in response to the Agency's denial of the FOIA request.

CONCLUSION

As noted above, it is necessary for the public to assess the scope and nature of the Agency's activities with regard to activist groups engaged in activities protected by the First Amendment to the U.S. Constitution. It is hard to imagine materials falling more squarely within the goal of FOIA; the full illumination of governmental activities in areas directly affecting the public good. Compared to that important goal, and considering the immediacy of this particular issue, we ask that the Agency disclose the requested documents.

In the event this appeal is denied, the Agency is required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial, and the procedures required to invoke judicial assistance in this matter. 5 U.S.C. § 552(a)(6)(ii), 32 C.F.R. § 299.5(o). As noted above, time is of the essence in this matter, if this appeal is denied or the Agency's response is not forthcoming within 20 working days, we reserve our rights under FOIA to seek judicial review, including the award of attorney's fees. We await your prompt reply. Thank you for your consideration of this appeal.

Sincerely,



Matt Simpson
Project Coordinator
Northwest Constitutional Rights Center



Shauna Curphey
Staff Attorney
Northwest Constitutional Rights Center

Because we do not agree that the requested materials are exempt from disclosure, we ask that the FOIA Appeal Authority reverse the denial of their FOIA request and waive all associated fees. They further request that if any portions of the requested documents are withheld, the Agency should describe the deleted material in detail and specify the statutory basis for the denial as well as reasons for believing that the alleged statutory justification applies in this instance. *Vaughn v. Rosen*, 484 F.2d 820, 826-28 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

DISCUSSION

Under FOIA, an agency must disclose all records requested by any person unless the agency can establish that the information falls within one of the exemptions set forth in the statute. See 5 U.S.C. §§ 552(a)(3)-(b). Moreover, "these exemptions from disclosure must be construed narrowly, in such a way as to provide the maximum access consonant with the overall purpose of the Act." *Vaughn*, 484 F.2d at 823. An agency that withholds information pursuant to an exemption bears the burden of justifying its decision. See 5 U.S.C. § 552(a)(4)(B).

It is by now well-established law that a plaintiff in a FOIA case is entitled to an index of the documents or portions of documents that have been withheld by the defendant agency. *Vaughn*, 484 F.2d at 827. Moreover, the description of the withheld material must be "sufficiently specific to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Here, the Agency has made a "Glomar response," see *Phillipi v. C.I.A.*, 546 F.2d 1009 (D.C. Cir. 1976), refusing to confirm or deny the existence of responsive records. Such a response is proper only when "to confirm or deny the existence of records would cause harm cognizable under the FOIA exception." *Gardels v. C.I.A.*, 689 F.2d 1100, 1103 (D.C. Cir. 1982). The Agency justifies this response under Exemptions 1 and 3. 5 U.S.C. § 552(b)(1), (3).

The Agency's November 30, 2006 letter provides no justification for invoking either exception. Exemption 1 protects from disclosure documents that an agency has properly classified pursuant to an executive order. 5 U.S.C. § 552(b)(1). An agency that seeks to invoke the exception "must provide detailed and specific information demonstrating both why the material has been kept secret and why such secrecy is allowed by the terms of the executive order." *ACLU v. U.S. Dept. of Justice*, 265 F. Supp. 2d 20, 27 (D.D.C. 2003). Similarly, to invoke Exemption 3, which provides for nondisclosure of materials that are specifically exempted from disclosure by statute, 5 U.S.C. § 552(b)(3), an agency must point to an appropriate nondisclosure statute and demonstrate that the withheld materials are covered by that statute. See *CIA v. Sims*, 471 U.S. 159, 167 (1985).

The Agency has provided no information supporting either exception. Therefore, we ask that the Agency provide detailed information explaining why it has invoked Exemptions 1 and 3. Of course we are not in the litigation context yet, but to help avoid such an eventuality, it would certainly be helpful if the Agency were to provide a *Vaughn* index if it were to decide to continue withholding of any portions of the requested documents.

Northwest Constitutional Rights Center
620 SW 8th Avenue
Suite 1060
Portland, OR 97204



NSACSS FOIA Appeal Authority (DC34)
National Security Agency
9800 Savage Road STE 6248
Ft. George G. Meade, MD 20755-6248

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NATIONAL SECURITY AGENCY
FORT GEORGE G. MEADE, MARYLAND 20755-6000

Case No. 51978/Appeal No. 3223

6 February 2007

Mr. Matt Simpson
Project Coordinator
Northwest Constitutional Rights Center
520 SW 6th Avenue, Suite 1050
Portland, OR 97204

Dear Mr. Simpson:

This replies to your letter dated 26 January 2007 appealing the National Security Agency's (NSA) denial of your request under the Freedom of Information Act (FOIA). You had requested 16 separate items pertaining to the surveillance of the Civil Resist and/or the Civil Resist Portland organizations. Your original request, the Office of Policy's response to you, and your letter of appeal have been reviewed. As a result of this review, I have concluded that the appropriate response to your request is to continue to neither confirm nor deny the existence or non-existence of the materials you request.

The existence or non-existence of the information you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(1), which protects properly classified information. I have determined that any substantive response to your request would tend to confirm or deny specific activities. The fact of the existence or non-existence of such information is a properly classified matter under Executive Order 12958, as amended, since it meets the specific criteria for classification established in Sections 1.4(c) and (g) of the Order. When such classification is warranted, Section 3.6(a) allows an agency to respond by declining to confirm or deny the existence of responsive records.

Further, the fact of the existence or non-existence of the records requested is also exempt pursuant to 5 U.S.C. § 552(b)(3), which permits withholding of matters specifically exempted from disclosure by statute. The applicable statutory provisions with regard to the existence or non-existence of the records requested are: Section 6 of the National Security Act of 1959 (Public Law 86-36, 50 U.S.C. § 402 note), which provides that no law shall be construed to require the disclosure of the organization, personnel, functions, or activities of the National Security Agency; 50 U.S.C. § 403-1(i)(1), which requires the protection of intelligence sources and methods from unauthorized disclosure; and 18 U.S.C. § 798, which prohibits the release of information concerning classified communications intelligence activities except to those persons authorized to receive such information.

Regardless of whether NSA has surveillance records related to the Civil Resist and/or Civil Resist Portland organizations, or any individual, NSA can neither confirm nor deny alleged activities or targets. To do otherwise when challenged under the FOIA would result in the exposure of intelligence information, sources, and methods and would severely undermine surveillance activities in general. For example, if NSA denied allegations about intelligence activities or targets in cases where such allegations were false (e.g., we told one FOIA requestor that we had no records), but remained silent in cases where the allegations were accurate, it would tend to reveal that the individuals in the latter cases were targets. Any further elaboration concerning these matters would reveal information that is currently and properly classified under the Executive Order 12958, as amended.

Since this response may be construed as a denial of your appeal, you are hereby advised of your right pursuant to 5 U.S.C. § 552(a)(4)(B) to seek judicial review of my decision in the United States District Court, in the district in which you reside, in which you have your principal place of business, in which the Agency records are situated (U.S. District Court of Maryland), or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. C. Inglis', is written over the printed name.

JOHN C. INGLIS

Freedom of Information Act/Privacy Act
Appeals Authority

UNCLASSIFIED//~~FOUO~~

SECURITY CLASSIFICATION

NSA STAFF PROCESSING FORM

TO D/DIR <i>SC</i>	EXREG CONTROL NUMBER 1194-07	KCC CONTROL NUMBER Case #51978/Appeal #3223
THRU	ACTION <input type="checkbox"/> APPROVAL <input checked="" type="checkbox"/> SIGNATURE <input type="checkbox"/> INFORMATION	EXREG SUSPENSE KCC SUSPENSE ELEMENT SUSPENSE
SUBJECT (U// FOUO) FOIA Appeal-Matt Simpson		
DISTRIBUTION DC3		

SUMMARY

PURPOSE: (U) To inform a FOIA requester that NSA can neither confirm nor deny the existence of surveillance records on the basis of FOIA exemptions (b)(1) and (b)(3). We also inform him of his right to judicial review.

BACKGROUND: (U) Matt Simpson on behalf of the Northwest Constitutional Rights Center submitted an initial request, postmarked 16 November 2006, for 16 separate items pertaining to the surveillance of the Civil Resist and/or Civil Resist Portland organizations. The Director of Policy responded to Mr. Simpson by letter dated 30 November 2006, indicating that the NSA could neither confirm nor deny the existence of surveillance records on the organizations indicated above. The basis for neither confirming nor denying the existence or non-existence of surveillance records is pursuant to FOIA exemptions (b)(1) and (b)(3).

(U) Mr. Simpson appealed the Agency's response by letter dated 26 January 2007. Mr. Simpson challenges the Director of Policy's decision. On appeal, we have determined to uphold the Director of Policy's decision that the NSA can neither confirm nor deny the existence of the surveillance records.

RECOMMENDATION: (U) We recommend you sign the appeal response.

(b)(3)-P.L. 86-36

COORDINATION/APPROVAL					
OFFICE	NAME AND DATE	SECURE PHONE	OFFICE	NAME AND DATE	SECURE PHONE
D05		963-5047			
		963-5047			
		963-3201			
ORIGINATOR			ORC	PHONE (Secure)	DATE PREPARED
			D28	963-8342	1 February 2007
FORM A6796 REV NOV 95			SECURITY CLASSIFICATION UNCLASSIFIED// FOUO		

Mr. Matt Simpson
Project Coordinator
Northwest Constitutional Rights Center
520 SW 6th Avenue, Suite 1050
Portland, OR 97204

Dear Mr. Simpson:

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The existence or non-existence of the information you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(1), which protects properly classified information. I have determined that any substantive response to your request would tend to confirm or deny specific activities. The fact of the existence or non-existence of such information is a properly classified matter under Executive Order 12958, as amended, since it meets the specific criteria for classification established in Sections 1.4(c) and (g) of the Order. When such classification is warranted, Section 3.6(a) allows an agency to respond by declining to confirm or deny the existence of responsive records.

Further, the fact of the existence or non-existence of the records requested is also exempt pursuant to 5 U.S.C. § 552(b)(3), which permits withholding of matters specifically exempted from disclosure by statute. The applicable statutory provisions with regard to the existence or non-existence of the records requested are: Section 6 of the National Security Act of 1959 (Public Law 86-36, 50 U.S.C. § 402 note), which provides that no law shall be construed to require the disclosure of the organization, personnel, functions, or activities of the National Security Agency; 50 U.S.C. § 403-1(i)(1), which requires the protection of intelligence sources and methods from unauthorized disclosure; and 18 U.S.C. § 798, which prohibits the release of information concerning classified communications intelligence activities except to those persons authorized to receive such information.

Regardless of whether NSA has surveillance records related to the Civil Resist and/or Civil Resist Portland organizations, or any individual, NSA can neither confirm nor deny alleged activities or targets. To do otherwise when challenged under the FOIA would result in the exposure of intelligence information, sources, and methods and would severely undermine surveillance activities in general. For example, if NSA denied allegations about intelligence activities or targets in cases where such allegations were false (e.g., we told one FOIA requestor that we had no records), but remained silent in cases where the allegations were accurate, it would tend to reveal that the individuals in the latter cases were targets. Any further elaboration concerning these matters would reveal information that is currently and properly classified under the Executive Order 12958, as amended.

Since this response may be construed as a denial of your appeal, you are hereby advised of your right pursuant to 5 U.S.C. § 552(a)(4)(B) to seek judicial review of my decision in the United States District Court, in the district in which you reside, in which you have your principal place of business, in which the Agency records are situated (U.S. District Court of Maryland), or in the District of Columbia.

Sincerely,

JOHN C. INGLIS
Freedom of Information Act/Privacy Act
Appeals Authority

SECURITY CLASSIFICATION

NSA STAFF PROCESSING FORM

TO D/DIR	EXREG CONTROL NUMBER	KCC CONTROL NUMBER Case #51978/Appeal #3223
THRU	ACTION <input type="checkbox"/> APPROVAL <input checked="" type="checkbox"/> SIGNATURE <input type="checkbox"/> INFORMATION	EXREG SUSPENSE
SUBJECT		KCC SUSPENSE
(U// FOUO) FOIA Appeal-Matt Simpson		ELEMENT SUSPENSE
DISTRIBUTION DC3		

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(b)(3)-P.L. 86-36

COORDINATION/APPROVAL					
OFFICE	NAME AND DATE	SECURE PHONE	OFFICE	NAME AND DATE	SECURE PHONE
D05		963-5047			
		963-5047			
		963-3201			

ORG D28	PHONE (Secure) 963-8342	DATE PREPARED 1 February 2007
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FOIA Case: 51978
30 November 2006

Mr. Matt Simpson
Northwest Constitutional Rights Center
520 SW 6th Avenue, Suite 1050
Portland, OR 97204

Dear Mr. Simpson:

This responds to your Freedom of Information Act (FOIA) request of 16 November 2006, which was received by this office on 21 November 2006, for 16 separate items pertaining to the surveillance of the Civil Resist and/or the Civil Resist Portland organizations. Your letter has been assigned Case Number 51978. Please refer to this case number when contacting us about your request.

For purposes of this request and based on the information you provided in your letter, you are considered an "all other" requester. There are no assessable fees for this request; therefore, we did not address your request for a fee waiver. Your request has been processed under the provisions of the FOIA.

As you know, the President of the United States "authorized the National Security Agency [(NSA)], consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al Qaeda and related terrorist organizations." The President also noted that, "[t]his is a highly classified program that is crucial to our national security."

Rest assured that safeguards are in place to protect the civil liberties of U.S. citizens. However, because of the highly classified nature of the program, we can neither confirm nor deny the existence of records responsive to your request. The fact of the existence or non-existence of responsive records is a currently and properly classified matter in accordance with Executive Order 12958, as amended. Thus, your request is denied pursuant to the first exemption of the FOIA, which provides that the FOIA does not apply to matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign relations and are properly classified pursuant to such Executive Order.

Moreover, the third exemption of the FOIA provides for the withholding of information specifically protected from disclosure by statute. Thus, your request is also denied because the fact of the existence or non-existence of the information is exempted from disclosure pursuant to the third exemption. The specific statutes applicable in this case are Title 18 U.S. Code 798; Title 50 U.S. Code 403-1(i); and Section 6, Public Law 86-36 (50 U.S. Code 402 note).

As your request is being denied, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days of the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DC34), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the adverse determination and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes that the determination is unwarranted. The NSA/CSS FOIA Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

Lastly, please be advised we can only respond on NSA records. If you seek information from other federal agencies, you will need to direct your inquiry to those agencies.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis F. Giles", written in a cursive style.

LOUIS F. GILES
Director of Policy

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FOIA Case: 51978

M/R: (U) **GLOMAR - US ORGANIZATION**

(U) The attached letter responds to Matt Simpson's FOIA request of 16 November 2006 for 16 separate items pertaining to the federal government's surveillance of the activist group, "Civil Resist and/or Civil Resist Portland."

(U) Searched CTS using Simpson in both first and last name position as well as Civil Resist in the subject line. There have been no previous requests from this requester or for this organization.

(U//~~FOUO~~) The attached letter provides a "GLOMAR" response to the requester. We must neither confirm nor deny the existence of documents verifying that NSA is conducting surveillance on the activist group, "Civil Resist and/or Civil Resist Portland" based on the following rationale:

(U//~~FOUO~~) NSA's mission is twofold: to produce foreign intelligence information and to protect U.S. information systems. This Agency's SIGINT role has been enhanced by superior intelligence sources and methods which enable us to keep pace with challenging developments in virtually every area of technology. In the course of fulfilling these missions, we obtain information and report it to customers within the U.S. Government. From a SIGINT mission standpoint, some of the information we glean may not be significant; however, it is frequently interleaved with information that reveals how vital SIGINT was collected and is virtually impossible to segregate. More often than not, it is the potential loss of an important intelligence source or method that is at risk when NSA is required to explain how we obtain information which is incidental to our focus.

(U//~~FOUO~~) The requester in this instance asked for information relating to surveillance, targeting, domestic collection/intercept of a U.S. activist group, "Civil Resist and/or Civil Resist Portland." While we can admit that the President of the United States, consistent with U.S. law and the Constitution, has authorized NSA to intercept the international communications of people with known links to al Qaeda and related terrorist organizations, because the program is highly classified, we cannot release any details of the program. In addition, we cannot conduct searches to determine whether any particular U.S. citizen or group may be a "target" of this program. To confirm or deny that we hold information on a specific U.S. person or group would reveal classified information.

(U//~~FOUO~~) Since the fact of the existence or non-existence of records would reveal classified information about specific targeting or collection capabilities, the Agency can invoke the first exemption under the FOIA,

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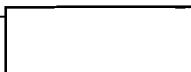
FOIA Case: 51978

5 U.S.C. Section 552(b)(1). The first exemption provides that the FOIA "does not apply to matters that are - 1(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order." This Agency is also authorized by various statutes to protect certain information concerning its activities.

(U//~~FOUO~~) The fact of the existence or non-existence of records on the activist group, "Civil Resist and/or Civil Resist Portland" is also exempt under the third exemption of the FOIA which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are: 18 U.S.C. Section 798, which prohibits the release of information concerning classified communications intelligence activities except to persons authorized to receive such information; 50 U.S.C. Section 403-1(i) which protects intelligence sources and methods; and Section 6 of the National Security Agency Act of 1959 (50 U.S.C. 402 note, Public Law 86-36), which provides that no law shall be construed to require the disclosure of the organization, personnel, functions or activities of NSA.

(U//~~FOUO~~) To summarize, the release of any information that would allude to the effectiveness of our collection efforts, or force us to explain our SIGINT sources and methods could result in denial of vital information to U.S. military commanders and government officials in the future.

(U) We inform the requester of his "all other" fee status and explain that since there are no assessable fees for this request we did not address his request for a fee waiver. We advise him that the fact of the existence or non-existence of records responsive to his request is classified and exempt from disclosure pursuant to (b)(1) and (b)(3)/all statutes. We provide requester with his appeal rights.

(U//~~FOUO~~)

DC34, 963-5827, 27 November 2006 (b)(3) P.L. 86-36

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"Comments" to FOIA Case 51978 (as requested under case 54025)

11/27/2006 (U) Glomar for this "surveillance on a protest group"

11/27/2006 (U//~~FOUO~~) no previous requests from this requester but one other current request for a different organization. this case, #51982 is being worked by

11/27/2006 (U//~~FOUO~~) letter being forwarded for review/signature

11/28/2006 (U) Rev'd and approved. Sent to DC3

11/29/2006 (U) proofed and ok.

11/29/2006 (U) signed

11/30/2006 (U//~~FOUO~~) letter put in bins to mail. case closed as GLOMAR

(b)(3)-P.L. 86-36

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Kopyt-FF

San Francisco Chronicle

901 Mission Street, San Francisco, CA 94103



National Security Agency
Attn: FOIA/PA Office (DC34)
9800 Savage Rd. Suite 6248
Ft. George G. Meade, MD 20755-6248



2075536248 C081

