EXHIBIT U

PPSA
PROJECT FOR PRIVACY & SURVEILLANCE ACCOUNTABILITY

September 8, 2020

By Overnight Mail
Director, Office of Information Policy (OIP)
United States Department of Justice
441 G Street, NW, 6th Floor
Washington, DC 20530

RE: Freedom of Information Act Appeal – FOIAPA #1459381-000

To Whom It May Concern:

On behalf of the Project for Privacy and Surveillance Accountability, Inc. ("PPSA"), I write to appeal the FBI's denial of the above-captioned FOIA request (the "Request").[1]

The Request seeks two categories of information:

1. Information regarding whether the names of certain listed individuals—current and past Senators and Congressmen—were unmasked; and
2. Information regarding whether those same individuals' names were upstreamed.

The agency issued a blanket denial on June 22, 2020.[2] The agency gave no indication that it had initiated any searches before making its response, instead denying all requests under FOIA Exemptions 1, 3, 6, 7(C), and 7(E).

The agency's cursory denial of all requests demonstrates its failure to conduct an adequate search for responsive records. Further, the blanket denial was itself unwarranted because the exemptions do not justify complete nondisclosure. In the alternative, unique public interests justify waiving those exemptions even if they were to apply.

I. The agency's claimed exemptions do not justify withholding responsive documents.

A. Exemption 1 does not apply, as the documents cannot be reasonably expected to result in damage to national security.

The agency vaguely suggests that the documents requested are national security documents and thus exempt under Exemption 1. Such an assertion would be incorrect. Exemption 1 exempts from disclosure materials that are (1) "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and (2) "are in fact properly classified pursuant to such Executive

[1] *See* Letter from G. Schaerr to FBI FOIA Officer, Jan. 27, 2020 (Attachment A).

[2] *See* Letter from Michael G. Seidel to G. Schaerr, June 22, 2020 (Attachment B).

order." 5 U.S.C. 552(b)(1)(a). The agency does not cite which Executive Order it purports to rely on.

However, the most relevant executive order requires that, for a document to be classified the agency must show (among other things) that its disclosure could "reasonably [ ] be expected to result in damage to the national security[.]" Executive Order 13526 § 1.1(a)(4) (Dec. 29, 2009). The FBI made no such showing. Moreover, no classification is permanent: "[i]nformation shall be declassified *as soon as* it no longer meets the standards for classification under this order." *Id.* at ¶ 3.1(a) (emphasis added). Thus, if documents responsive to the request are not properly classified as of today, Exemption 1 does not shield them from disclosure. There is nothing in the FBIs' response indicating that it searched for responsive records at all, much less determined whether any of those records had been or should be declassified.

Setting aside the fact that the documents may no longer be classified (or need to be classified), the agency's brief citation of Exemption 1 is, at best, a red herring: First, nothing about the original Request would require the FBI to risk "damage to the national security." From the very beginning, I have encouraged the agency to redact names and other identifying information before records are produced if it would "render a responsive but exempt material nonexempt."[3] Doing so would enable the agency to comply with the requirements of FOIA without divulging the agency's interest or non-interest in any specific individual. Second, the agency provides no support for a claim that the unmasking documents relate to national security in any way. As the D.C. Circuit has observed, the agency "must provide detailed and specific information demonstrating that material withheld is logically within the domain of the exemption claimed." *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 30 (D.C. Cir. 1998), as amended (Mar. 3, 1999) (internal quotations omitted). The agency does not even attempt to justify its nondisclosure with any such explanation.

But even if the documents did relate to national security, if they were also political targeting documents a *Glomar* response is still inappropriate. The agency cannot use legitimate national security concerns as an excuse to avoid revealing political targeting. Indeed, when a government agency commits misconduct, documents regarding that misconduct typically must be acknowledged. See, *e.g.*, *Parker v. U.S. Dep't of Justice*, 214 F. Supp. 3d 79 (D.D.C. 2016); *Samahon v. FBI*, 40 F. Supp. 3d 498, 502–03 (E.D. Pa. 2014).

To be sure, particular documents generated by the search *may* (but not necessarily will) reveal information that cannot be revealed even with redactions. And in such circumstances, *those* documents could be withheld under Exemption 1 in whole or in part. But the agency's refusal to even search for responsive documents, especially in light of its failure to show that disclosure would risk damage to national security, is inappropriate.

[3] Attachment A at 3.

PPSA
PROJECT FOR PRIVACY & SURVEILLANCE ACCOUNTABILITY

B. Exemption 3 does not preclude disclosure of reports of political targeting.

So too with respect to Exemption 3. That exemption permits non-disclosure when the documents in question are "specifically exempted from disclosure by statute." 5 U.S.C. 552(b)(3). The FBI's denial cites only one statute that allegedly exempts responsive materials from disclosure.[4] But the statute the FBI cites, 50 U.S.C. § 3024(i)(1), also instructs the Director of National Intelligence to prepare "intelligence products in such a way that source information is removed to allow for dissemination … in declassified form to the extent practicable." 50 U.S.C. § 3024(i)(2)(C). The agency has not demonstrated that declassified versions of the documents—versions that protect sources and methods—cannot be prepared under § 3024(i)(2)(C). Even for documents that contain some classified information, the agency must consider redaction as well. 5 U.S.C. § 552(a)(8), (b); *see also Krikorian v. Dep't of State,* 984 F.2d 461, 466 (D.C. Cir. 1993) (noting requirement to redact applies to all FOIA exemptions). Thus, whenever declassified or redacted versions of responsive documents can be produced, the agency must do so. The agency has offered no explanation why it cannot do that here.

C. Recent actions by the Office of the Director of National Intelligence show that neither of Exemptions 1 nor 3 justifies nondisclosure.

As explained above, the agency's denial of PPSA's FOIA Request is unwarranted under Exemption 1 if disclosure of a responsive document could not "reasonably [] be expected to result in damage to the national security[.]" Executive Order 13526 § 1.1(a)(4). Likewise, denial is unwarranted under Exemption 3 where disclosure would not jeopardize any of the intelligence community's "sources [or] methods." 50 U.S.C. 3024(i)(1). The recent disclosure by the Office of the Director of National Intelligence (ODNI) of documents related to the unmasking of former national security advisor Michael Flynn demonstrates the ODNI's express determination that disclosure of records related to unmasking or upstreaming would neither damage national security nor threaten intelligence sources and methods.

As widely reported in the media, several Republican senators wrote to Acting Director of National Intelligence Richard Grenell and Attorney General William Barr requesting that they release information about the Obama administration's efforts to unmask U.S. citizens subject to government surveillance. Only one day later, on or about May 13, 2020, Grenell responded to that request by disclosing a redacted list of individuals who might have been involved in Flynn's unmasking.[5] The redacted list itself, along with

[4] Attachment B at 1.

[5] *See, e.g.*, Andrew Desiderio and Betsy Woodruff Swan, *Intel chief releases info on 'unmasking' of Flynn to Capitol Hill*, Politico (May 13, 2020), *available at* https://www.politico.com/news/2020/05/13/republican-senators-michael-flynn-254726.

an internal memorandum from the Director of the National Security Agency, was then made available to the public at large.[6] Strikethrough annotations indicate that both the list and the NSA memorandum were originally marked "secret" and "classified" before subsequently becoming declassified.

Though the ODNI's actions speak for themselves, Grenell expressly confirmed that the unmasking-related disclosures pose no threat to national security. In a May 25, 2020 letter to Senator Mark Warner, he unambiguously stated that "the decision to declassify the names of individuals who sought to unmask the identity of General Flynn poses *absolutely no risk of compromise of either sources or methods*."[7] He also reiterated that Section 1.7 of Executive Order 13526 forbids maintaining information as classified "to conceal violations of law" or to "prevent embarrassment to a person, organization, or agency."[8]

The disclosure of these unmasking documents, and the ODNI's own rationale for disclosure, forecloses any argument that the FBI cannot comply with PPSA's unmasking and upstreaming Request without harming national security interests or the intelligence community's sources and methods. Even if documents responsive to that Request were to contain sensitive information, the NSA and ODNI's actions in the Flynn matter demonstrate that disclosure with appropriate redaction is both possible and obligatory.

D. Any privacy interests protected by Exemptions 6 and 7(C) do not outweigh the public interest in disclosure.

The FBI's boilerplate invocation of Exemptions 6 and 7(C) to protect the privacy interests of third parties implicated by PPSA's FOIA requests conveniently ignores the applicable balancing test which requires disclosure when the public interest outweighs such privacy interests. *See, e.g.*, *U.S. Dep't of Defense v. FLRA*, 510 U.S. 487 (1994); *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Indeed, that balance tips heavily "in favor of disclosure." *Ripskis v. HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984). In this case, all the individuals implicated in the request are or were elected public figures who either hold or held nationally prominent positions both as members of the United States legislature and as members of important intelligence committees in the Senate and House of Representatives. In those roles, these public figures were responsible for the oversight of the U.S. intelligence community—agencies crucial to national interests. Thus, when compounded with the law's strong preference for disclosure, the public's interest in knowing whether those agencies surveilled their own congressional overseers greatly outweighs any "diminished" privacy interests of those already prominent public figures. *Kimberlin v. DOJ*, 139 F.3d 944, 949 (D.C. Cir. 1998).

---

[6] *See*, *e.g.*, https://www.hsgac.senate.gov/imo/media/doc/2020-05-13%20ODNI%20to%20CEG%20RHJ%20(Unmasking).pdf.

[7] *See* Letter from Richard Grenell to Mark Warner, May 25, 2020 (Attachment C) (emphasis added).

[8] *Id*. (internal quotations omitted).

If that were not enough, the FBI's reflexive denial ignores the fact that several of the public figures implicated by PPSA's request are deceased, and thus have no substantial privacy rights to protect. Because the FBI appears to have invoked Exemptions 6 and 7(C) without first performing the minimal effort of determining the life status of prominent public figures, its invocation of their privacy rights as a basis for denial is both unfounded and improper. *See Schoenman v. FBI*, 576 F. Supp. 2d 3, 9-10, 13-14 (D.D.C. 2008) (before invoking privacy interests under Exemptions 6 and 7(C), "agencies must take pains to ascertain life status in the first instance").

E. Exemption 7(E) does not preclude disclosure.

As to Exemption 7(E): As an initial matter, the FBI's reliance on this exemption stretches its coverage to an untenable degree. The agency claims that "[h]ow the FBI applies its investigative resources … is, itself, a law enforcement technique or procedure" protected by Exemption 7(E). This reading would cause the exemption to swallow the FBI's general duty of disclosure, as any confirmation of responsive records would become a disclosure on "the scope of law enforcement techniques and procedures." The FBI's argument thus proves too much, as it is difficult to imagine any disclosure touching FBI activities that would not, by necessity, reveal information about its use of investigative resources. The FBI's strained interpretation of "technique or procedure" cannot survive the Supreme Court's repeated direction that, because the FOIA should be construed heavily in favor of disclosure, its exemptions must be read very narrowly. *See*, *e.g.*, *U.S. Dep't of Justice v. Julian*, 486 U.S. 1, 8 (1988) (FOIA's "broad" mandate of disclosure requires its exemptions to be "narrowly construed").

Second, and as shown above, the FBI's boilerplate claim that disclosure of unmasking and upstreaming requests would risk circumvention of the law rings hollow in the face of the ODNI's recent actions and express rationale for disclosing details related to the unmasking of Michael Flynn. Not only did the ODNI publicly release a redacted list of individuals—many of them at the highest levels of government—who might have been involved in Flynn's unmasking, but then-Acting Director of National Intelligence Richard Grenell emphatically confirmed that such disclosures posed "absolutely no risk" to national security.[9] Clearly, it is possible to release records responsive to the Request, redacted if necessary, without creating any of the risks cursorily invoked by the FBI.

F. The agency's Glomar objection is misplaced

Instead of considering redaction or production of responsive, non-classified documents, the agency issued a Glomar response as to both Nos. 1 and 2. The agency thus refused to produce any documents in those categories, or to admit or deny the existence of any responsive documents. But a Glomar response is appropriate only when "the fact of [documents'] existence or nonexistence is itself classified." Executive Order 13526 § 3.6(a).

[9] Attachment C.

Here no national security interest justifies classifying the mere existence of these documents.

The agency is no doubt concerned about the potential for *political* embarrassment if it becomes widely known that many members of Congress were themselves subject to surveillance. But political concerns do not become national security concerns simply because they are held by the FBI. The agency's Glomar response is inappropriate and misplaced for that reason alone.

Finally, even if there were legitimate concerns about releasing the names of the individual members of Congress who were unmasked or upstreamed, those names could be redacted from the records provided in response to my request. As noted earlier, I have been clear that I would prefer records with information redacted over a simple denial of my request as to any category of records.

In short, contrary to the agency's concerns, it can reasonably respond to the Requests without needing to respond in other circumstances that do raise the concerns it identifies.

II. In the alternative, important public interests justify waiving any exemption that has been properly invoked.

Even if one of the invoked exemptions were to *permit* the FBI to deny this FOIA request, it would not *require* denial. Assuming any exemption is properly invoked here, it should be waived.

One important consideration strongly supporting a waiver is that this Request concerns whether government agencies (including the FBI) abused foreign intelligence surveillance powers against American citizens charged with oversight of those same agencies. Much of the unmasking may well have been intended to serve agencies' own institutional purposes rather than legitimate national security interests.[10] Violating the privacy of American citizens for political reasons, particularly to shield agencies from legitimate congressional oversight, undermines our democratic processes and violates the law. 50 U.S.C. §§ 1809(a)(1), 1810; 18 U.S.C. § 2712.

In that unique setting, it is difficult to imagine any national security interest that justifies concealing whether unmasking—a tool developed for national security—has been weaponized for political purposes. Yet without access to the requested documents, members of Congress and the general public cannot know whether such violations occurred. This FOIA request, then, is one of the only pathways to vindicate the legal rights and public interest values that the agency may have violated.

In short, even if some responsive materials could technically be withheld, the agency should exercise its discretion to disclose those materials for three reasons:

---

[10] *See, e.g.*, Mark Mazzetti and Carl Hulse, *Inquiry by CIA Affirms it Spied on Senate Panel*, The New York Times (July 31, 2014), *available at* https://www.nytimes.com/2014/08/01/world/senate-intelligence-commitee-cia-interrogation-report.html.

PPSA
PROJECT FOR PRIVACY & SURVEILLANCE ACCOUNTABILITY

- First, withholding reports about potential agency misconduct puts a shadow on the DOJ and other involved agencies. If documents remain secret—or if the DOJ covers up a political operation to undermine congressional oversight—that hurts the DOJ and any other agencies involved in such an operation. Everyone would be helped by a full airing.
- Second, current and past congressional members have other legal recourses against the FBI and its officials, including civil litigation. 50 U.S.C. § 1810; 18 U.S.C. § 2712. In such a suit, the plaintiffs could likely obtain these same documents through civil discovery. *See* 50 U.S.C. § 1806(f). The agency should prefer to provide responsive documents under FOIA rather than in adversarial litigation, which is far more expensive for all concerned.
- Last, the agency's categorical denial raises serious Fourth Amendment and Due Process considerations. Without the ability to discover whether or not his or her name was unmasked for political gain, a person is "deprived … of liberty"—freedom of speech and freedom from unreasonable searches and seizures—without due process of law. *See* U.S. Const. Amend. V, IV.

If the agency is nonetheless cautious about full disclosure, I would be willing consider access to the documents pursuant to confidentiality agreements or other mutually satisfactory arrangements. Federal courts have acknowledged that agencies could enter into confidentiality agreements with private parties in analogous circumstances. *Cf., e.g.*, *Salomon Bros. Treasury Litig. v. Steinhardt Partners, L.P. (In re Steinhardt Partners, L.P.),* 9 F.3d 230, 236 (2d Cir. 1993).

For all these reasons, this appeal should be granted, and the FBI should immediately conduct a search, declassify documents as needed, and begin producing them. Thank you for your prompt attention to this important matter.

Sincerely,

Gene C. Schaerr
PPSA, Inc.
General Counsel

PPSA
PROJECT FOR PRIVACY & SURVEILLANCE ACCOUNTABILITY

January 27, 2020

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, regarding the electronic surveillance of members of Congress conducted by the Federal Bureau of Investigation under the Foreign Intelligence Surveillance Act of 1978, P.L. 95-511, 92 Stat. 1783 ("FISA"), as amended by the FISA Amendments Act of 2008, P.L. 110-261, 122 Stat. 2436. This request is filed on behalf of the Project for Privacy and Surveillance Accountability, Inc. ("PPSA").

Specifically, this request concerns circumstances where the identities of United States Senators or Congressmen whose communications were collected by FISA surveillance may have been "unmasked" —that is, their identities were revealed when the products of FISA surveillance were disseminated within the government. *See*, *e.g.*, National Security Agency, United States Signals Intelligence Directive 18, § 7 (January 25, 2011); Federal Bureau of Investigation, Minimization Procedures Used by the Federal Bureau of Investigation in Connection with Acquisition of Foreign Intelligence Information at 9, 19–20, 31 (July 10, 2015). A broad variety of governmental appointees are apparently authorized to request unmasking of names masked in intelligence reports. This request also concerns "upstreaming" — that is, the process of extracting certain data from the electronic sources for analysis. *See*, *e.g.*, National Security Agency, NSA Stops Certain Section 702 "Upstream" Activities (press release April 28, 2017). In the past, the intelligence community has been unwilling to disclose—even to individual Senators or Congressmen themselves—whether their identities had been unmasked or upstreamed.[1]

Using these understandings of the relevant terms, we respectfully request that you produce:

1. **All documents, reports, memoranda, or communications regarding the unmasking—including all unmasking requests—of any person listed below from January 1, 2008 to January 15, 2020:**
   - **a.** Rep. Adam Schiff
   - **b.** Rep. Jim Himes

[1] *See, e.g.* Katie Bo Williams, *Graham Gets Frustrated in Public 'Unmasking' Debate*, The Hill (June 27, 2017), https://thehill.com/policy/national-security/339670-graham-gets-emotional-in-public-unmasking-debate.

PPSA
PROJECT FOR PRIVACY & SURVEILLANCE ACCOUNTABILITY

c. Rep. Terri Sewell
d. Rep. Andre Carson
e. Rep. Jackie Speier
f. Rep. Mike Quigley
g. Rep. Eric Swalwell
h. Rep. Joaquin Castro
i. Rep. Denny Heck
j. Rep. Peter Welch
k. Rep. Sean Patrick Maloney
l. Rep. Val Demings
m. Rep. Raj Krishnamoorthi
n. Rep. Devin Nunes
o. Rep. Mike Conaway
p. Rep. Michael Turner
q. Rep. Brad Wenstrup
r. Rep. Chris Stewart
s. Rep. Rick Crawford
t. Rep. Elise Stefanik
u. Rep. Will Hurd
v. Rep. John Ratcliffe
w. Sen. James Risch
x. Sen. Marco Rubio
y. Sen. Susan Collins
z. Sen. Roy Blunt
aa. Sen. Tom Cotton
bb. Sen. John Cornyn
cc. Sen. Ben Sasse
dd. Sen. Diane Feinstein
ee. Sen. Ron Wyden
ff. Sen. Martin Heinrich
gg. Sen. Angus King
hh. Sen. Kamala Harris
ii. Sen. Michael Bennet
jj. Sen. James Lankford
kk. Sen. Mark Warner
ll. Rep. Peter King
mm. Former Rep. Frank LoBiondo
nn. Former Rep. Trey Gowdy
oo. Former Rep. Tom Rooney
pp. Former Rep. Ileana Ros-Lehtinen
qq. Former Rep. Jeff Miller
rr. Former Rep. Lynn Westmoreland

PPSA
PROJECT FOR PRIVACY & SURVEILLANCE ACCOUNTABILITY

ss. Former Rep. Joe Heck
tt. Former Rep. Mike Pompeo
uu. Former Rep. Luis Gutierrez
vv. Former Rep. Patrick Murphy

2. All documents, reports, memoranda, or communications regarding the upstreaming—including all requests for upstreaming—of any individual listed in Question 1 above, from Jan. 1, 2008 to Jan. 15, 2020.

Rather than physical production of any responsive records, we ask that you please provide each record in electronic form. If a portion of responsive records may be produced more readily than the remainder, we request that those records be produced first and that the remaining records be produced on a rolling basis. Further, we recognize the possibility that some responsive records may be exempt. **To the extent possible, if redaction under 5 U.S.C. § 552(b) can render a responsive but exempt record nonexempt, please produce any such record in redacted form.** We believe that any redaction should foreclose the need to issue a Glomar response, as anonymized and redacted production would neither (1) reveal intelligence sources or methods nor (2) disclose the agency's interest (or lack thereof) in any particular individual.

We are prepared to pay up to $2000 for the material in question. Please contact me if the fees associated with this request exceed that figure, or if you have any other questions about this request.

Thank you in advance for your speedy attention and assistance.

Sincerely,

Gene C. Schaerr
PPSA, Inc.
General Counsel

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

June 22, 2020

MR. GENE C. SCHAERR
PROJECT FOR PRIVACY AND SURVEILLANCE ACCOUNTABILITY, INC.
SUITE 450
1101 CONNECTICUT AVENUE NW
WASHINGTON, DC 20036

FOIPA Request No.: 1459381-000
Subject: Documents Concerning Unmasking and Upstreaming of Members of the Intelligence Committees of the U.S. House of Representatives and Senate
(January 1, 2008 – January 15, 2020)

Dear Mr. Schaerr:

This is in response to your Freedom of Information Act (FOIA) request.

The FBI is an intelligence agency as well as a law enforcement agency. In its capacity as an intelligence agency, the FBI compiles records while carrying out its responsibilities to investigate threats to national security and gather foreign intelligence. The FBI can neither confirm nor deny the existence of records responsive to your request pursuant to FOIA Exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C) and (b)(7)(E) of 5 U.S.C.§ 552.

The nature of your request implicates records the FBI may or may not compile pursuant to its national security and foreign intelligence functions. Accordingly, the FBI cannot confirm or deny the existence of any records about your subject as the mere acknowledgment of such records existence or nonexistence would in and of itself trigger harm to national security interests per Exemption (b)(1) and/or reveal intelligence sources and methods per Exemption (b)(3); 50 U.S.C. § 3024(i)(1).

Additionally, you have requested records on one or more third party individuals. Please be advised the FBI will neither confirm nor deny the existence of such records pursuant to FOIA exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C). The mere acknowledgement of the existence of FBI records on third party individuals could reasonably be expected to constitute an unwarranted invasion of personal privacy. This is our standard response to such requests and should not be taken to mean that records do, or do not, exist. As a result, your request has been administratively closed.

Finally, FOIA Exemption (b)(7)(E) protects "records or information compiled for law enforcement purposes when disclosure would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." How the FBI applies its investigative resources against a particular allegation, report of criminal activity, or perceived threat is, itself a law enforcement technique or procedure that the FBI protects pursuant to Exemption (b)(7)(E) of 5 U.S.C. § 552. Accordingly, a confirmation by the FBI that it has or does not have responsive records would be tantamount to acknowledging where the FBI is or is not applying investigative resources thus disclosing the scope of law enforcement techniques and procedures.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. **"Part 1"** of the Addendum includes standard responses that apply to all requests. **"Part 2"** includes additional standard responses that apply to all requests for records about yourself or any third party individuals. **"Part 3"** includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: https://www.justice.gov/oip/submit-and-track-request-or-appeal. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,

Michael G. Seidel
Acting Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure

FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum provides information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes standard responses that apply to requests for records about individuals to the extent your request seeks the listed information. Part 3 includes general information about FBI records, searches, and programs.

Part 1: The standard responses below apply to all requests:

(i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIPA [5 U.S.C. § 552(c)]. FBI responses are limited to those records subject to the requirements of the FOIPA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.

(ii) **Intelligence Records**. To the extent your request seeks records of intelligence sources, methods, or activities, the FBI can neither confirm nor deny the existence of records pursuant to FOIA exemptions (b)(1), (b)(3), and as applicable to requests for records about individuals, PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that any such records do or do not exist.

Part 2: The standard responses below apply to all requests for records on individuals:

(i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.

(ii) **Requests for Records about any Individual—Witness Security Program Records.** The FBI can neither confirm nor deny the existence of records which could identify any participant in the Witness Security Program pursuant to FOIA exemption (b)(3) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(3), 18 U.S.C. 3521, and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.

(iii) **Requests for Records for Incarcerated Individuals.** The FBI can neither confirm nor deny the existence of records which could reasonably be expected to endanger the life or physical safety of any incarcerated individual pursuant to FOIA exemptions (b)(7)(E), (b)(7)(F), and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (b)(7)(F), and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

(i) **Record Searches.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching systems or locations where responsive records would reasonably be found. A standard search normally consists of a search for main files in the Central Records System (CRS), an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled by the FBI per its law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization, comprising records of FBI Headquarters, FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide; Electronic Surveillance (ELSUR) records are included in the CRS. Unless specifically requested, a standard search does not include references, administrative records of previous FOIPA requests, or civil litigation files. For additional information about our record searches, visit www.fbi.gov/services/information-management/foipa/requesting-fbi-records.

(ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.

(iii) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheet. These criminal history records are not the same as material in an investigative "FBI file." An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.

(iv) **National Name Check Program (NNCP).** The mission of NNCP is to analyze and report information in response to name check requests received from federal agencies, for the purpose of protecting the United States from foreign and domestic threats to national security. Please be advised that this is a service provided to other federal agencies. Private Citizens cannot request a name check.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

(b)(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 to such Executive order;

(b)(2) related solely to the internal personnel rules and practices of an agency;

(b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

(d)(5) information compiled in reasonable anticipation of a civil action proceeding;

(j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;

(k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;

(k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;

(k)(4) required by statute to be maintained and used solely as statistical records;

(k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;

(k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

MAY 25 2020

The Honorable Mark R. Warner
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Vice Chairman Warner:

I write in response to your letter of 20 May 2020. My declassification determination was made in the interests of full transparency and public accountability given serious unanswered questions about the potential misuse of intelligence for partisan purposes following the 2016 election.

The protection of intelligence sources and methods is always at the fore of any declassification decision which I might make. As you well know, the decision to declassify the names of individuals who sought to unmask the identity of General Flynn poses absolutely no risk of compromise of either sources or methods. Additionally, far from undermining the credibility of the Intelligence Community (IC), the utmost transparency in this matter builds public trust and confidence in the Community and ensures the IC will not conceal potential abuse behind unnecessary security classification. I appreciate your reference to Executive Order 13526. I remind you that this Order makes clear in Section 1.7 that "in no case shall information…continue to be maintained as classified, or fail to be declassified in order to conceal violations of law…(or) prevent embarrassment to a person, organization, or agency."

I find it puzzling that your letter initially complains about the declassification of the identities of unmaskers, a declassification that posed no conceivable risks to sources or methods, only to then request the declassification of actual intelligence reports. Cherry picking certain documents for release, while attacking the release of others that don't fit your political narrative, is part of the problem the American people have with Washington DC politicians. I would appreciate it if you would explain your philosophy on transparency as it appears to be based solely on political advantage.

Lastly, I should add, I gladly would have discussed this and other intelligence matters with you directly had you not chosen to cancel our planned call and then ignored subsequent requests by my office to reschedule.

Sincerely,

Richard A. Grenell
Acting Director

Cc: The Honorable Marco Rubio