

July 18, 2019

VIA FOIAONLINE

SAF/AAIL
1000 Air Force Pentagon
Washington, DC 20330-1000

To the responsible FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request copies of any records from any United States Air Force component pursuant to DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," between September 18, 2007 and the date of this request.

In order to help to determine my status to assess fees, you should know that I am a research fellow and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. **I request a waiver of all fees for this request.**

Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Whenever possible, please provide the requested information in electronic Portable Document Format (PDF).

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would appreciate your communicating with me by email or telephone, rather than by mail. My email address is peddington@cato.org and my cell number is 571-215-3468.

Please provide expedited processing of this request which concerns a matter of urgency.

As a Research Fellow, my job is disseminating information. The public has an urgent need for information about potential Defense Department or component element monitoring of American citizens or organizations within the context of DoD Directive 5200.27. Federal government domestic surveillance activities are a source of media stories on literally a weekly basis, making this a very high-profile topic of intense public and Congressional interest.

As a Cato scholar, I meet the statutory definition of a "representative of the news media" per *Cause of Action v. F.T.C.*, 799 F.3d 1108 (D.C. Cir. 2015) as Cato and its scholars (1) gather information of potential interest (2) to a segment of the public; (3) use editorial skills

to turn the raw materials into a distinct work; and (4) distribute that work (5) to one or more audiences. **Accordingly, I ask for expedited processing on that basis.**

I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick G. Eddington". The signature is written in a cursive, flowing style.

Patrick G. Eddington
Research Fellow
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001-5403
571-215-3468 (cell)
peddington@cato.org

Subject: Status Update for Request #2019-04362-F

Dear Patrick Eddington,

The status of your FOIA request #2019-04362-F has been updated to the following status 'Received'. To log into the PAL Application click on the Application URL below.

<https://efoia.milcloud.mil/App/Index.aspx>

Sincerely,
Air Force FOIA Requester Service Center



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC 20330-1000

OFFICE OF THE SECRETARY

20 September 2019

SAF/AAIL (FOIA)
1000 Air Force Pentagon
Washington DC 20330-1000

Cato Institute
ATTN: Mr. Patrick Eddington
1000 Massachusetts Ave., NW
Washington, DC 20001

Dear Patrick Eddington,

This is the Air Force's response to your 18 July 2019 Freedom of Information Act (FOIA) request for *"copies of any records from any United States Air Force component pursuant to DoD Directive 5200.27, 'Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense,' between September 18, 2007 and the date of this request."*

You requested expedited review. You stated the basis for expedited review was because *"As a Research Fellow, my job is disseminating information. The public has an urgent need for information about potential Defense Department or component element monitoring of American citizens or organizations within the context of DoD Directive 5200.27. Federal government domestic surveillance activities are a source of media stories on literally a weekly basis, making this a very high-profile topic of intense public and Congressional interest."*

The Air Force will grant expedited review – which means that your request would be processed before other requests – if a "compelling need" has been established by a requester in accordance with 32 Code of Federal Regulations 286.8(e)(1)(i). A compelling need is one in which:

(A) The failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or

(B) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity."

Under this test, your request is denied. It is not reasonable that there is a compelling need today for records that may be up to twelve years old. Further, your justification does not provide any information as to what circumstances in 2019 warrant a compelling need for records. We note that the DoD publication you reference in your request states any such records are supposed to be normally destroyed after 90 days. In addition, the policy basis for the DoD publication is not new, but has been in existence for many decades. Finally, the DoD publication referenced in your request does not primarily authorize monitoring or surveillance of individuals by the Department of Defense. Rather, it concerns collecting information on individuals not affiliated with the Department of Defense for official purposes, such as individuals who are witnesses to criminal activity by military members; individuals who may be involved in traffic citations or other relatively minor criminal activity on military installations; and similar matters as set forth in the DoD publication.

Concerning the substance of your request, other than as noted below, a “no records” response is provided for the following reasons: (1) records that may contain information on individuals not affiliated with the Department of Defense are not reasonably maintained by any Air Force entity in a form or format that can be searched by reference to “Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense” or similar title. Rather, in a case in which an Air Force criminal investigative organization or other Air Force organization collected information on such an individual, the information would usually be maintained under the name of a particular individual/subject or, possibly, with reference to the crime that occurred where the Air Force has jurisdiction to investigate and prosecute.

Accordingly, every Air Force criminal investigative file or similar file maintained at all Air Force installations world-wide would have to be searched in order to determine whether there was any information in the file associated with a non-DoD affiliated person, such as someone who was a witness in a courts-martial or criminal investigation of a military member. The FOIA and DoD FOIA regulations do not require such a search to be conducted. Further, your request is too vague and broad to adequately target a search to a particular individual who is not affiliated with the Department of Defense.

We are aware of one high profile case in which the Air Force investigated a non-DoD affiliated person in recent years – Devin Kelley. Mr. Kelley was not affiliated with the DoD at the time he killed 25 individuals in November 2017 in Texas, and the Air Force investigation was mainly focused on Kelley’s time in the Air Force as an Airman. The Air Force publicly released all releasable information concerning Mr. Kelley pursuant to numerous FOIA requests, which can be found on the Air Force FOIA Library page at <https://efoia.milcloud.mil/App/Home.aspx>.

Should you decide that an appeal to this decision is necessary, you must write to the Secretary of the Air Force, Thru: SAF/AAll (FOIA), 1000 Air Force Pentagon, Washington DC 20330-1000 within 90 calendar days from the date of this letter. Include in the appeal, your reasons for reconsideration, and attach a copy of this letter.

For any further assistance and to discuss any aspect of your request, you have the right to contact the Air Force FOIA Public Liaison Officer, Ms. Anh Trinh, concerning this matter at AF FOIA Public Liaison Office (SAF/CIO A6XA), 1800 Air Force Pentagon, Washington, DC 20330-1800, usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil or (703) 614-8500.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. 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.

Please contact this office at the above address or via email at jose.g.sandoval3.civ@mail.mil should you have any questions and refer to case #2019-04362-F. Department of Defense Manual 5400.07/Air Force Manual 33-302 indicates fees may possibly be assessed for processing this request; however, there are no applicable fees in this instance.

Thank you,

FOIA Administration Section

Subject: FOIA APPEAL: Case #2019-04362-F

PM, Attachments: USAF DoD Dir 5200.27 FOIA appeal 103019.doc

Please see the attached FOIA appeal regarding the above captioned case.

Sincerely,

Patrick G. Eddington
Research Fellow
Cato Institute
1000 Massachusetts Ave, NW
Washington, DC 20001
peddington@cato.org
571-215-3468 (cell)

October 30, 2019

VIA usaf.pentagon.saf-aa.mbx.haf-foia-workflow@mail.mil

Secretary of the Air Force
VIA SAF/AAIL (FOIA)
1000 Air Force Pentagon
Washington DC 20330-1000

To the responsible FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I hereby appeal the denial of my request #2019-04362-F, seeking copies of any records from any United States Air Force component pursuant to DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," between September 18, 2007 and the date of this request..

In its September 20, 2019 response to me, the USAF FOIA Administration Section stated as follows:

"It is not reasonable that there is a compelling need today for records that may be up to twelve years old. Further, your justification does not provide any information as to what circumstances in 2019 warrant a compelling need for records. We note that the DoD publication you reference in your request states any such records are supposed to be normally destroyed after 90 days. In addition, the policy basis for the DoD publication is not new, but has been in existence for many decades. Finally, the DoD publication referenced in your request does not primarily authorize monitoring or surveillance of individuals by the Department of Defense. Rather, it concerns collecting information on individuals not affiliated with the Department of Defense for official purposes, such as individuals who are witnesses to criminal activity by military members; individuals who may be involved in traffic citations or other relatively minor criminal activity on military installations; and similar matters as set forth in the DoD publication."

At best, these statements are misleading.

DoD Directive 5200.27 was the guiding authority for surveillance of anti-war and other political activists during the Vietnam War era, as revealed in documents obtained by the National Lawyers Guild in *National Lawyers Guild v. Attorney General* (1979), records I have examined in person at the New York University Tamiment Library. It was also the guiding authority for the Threat Observation and Notice (TALON) Program, which was only officially terminated in September 2007 and was the subject of a DoD Inspector General Report (Report # 07-INTEL-09, June 27, 2007). That the Air Force FOIA office has asserted that the directive does not primarily authorize monitoring or surveillance of individuals by the Department of Defense" evades the fact that, as cited above, the directive has been used for precisely that purpose, as recently as 12 years ago, and possibly continuing to the present.

Regarding the retention of reports submitted under DoD Directive 5200.27, the directive states as follows:

“6.4. Information within the purview of this Directive, regardless of when acquired, shall be destroyed within 90 days **unless its retention is required by law or unless its retention is specifically authorized under criteria established by the Secretary of Defense, or his designee.**” (emphasis added)

The USAF FOIA Section also claimed that “your request is too vague and broad to adequately target a search to a particular individual who is not affiliated with the Department of Defense.”

The agency’s response suggests that my request was too broad to undertake a search. I disagree. To be valid, a request need only “reasonably describe” the records it seeks so that knowledgeable agency employees will be able to determine “precisely what records are being requested.” *Yeager v. DEA*, 678 F.2d 315, 322 (D.C. Cir. 1982). Similarly, an agency cannot reject a request on the grounds that a search would be burdensome. And the fact that a request may yield a great many responsive records is immaterial, so long as the agency can identify which records to produce. *Id.* As the USAF FOIA Section did not indicate an inability to search based on DoD Directive number, their claim that my request is too vague or burdensome is meritless.

In order to help to determine my status to assess fees, you should know that I am a policy analyst and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. **I request a waiver of all fees for this request.**

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government domestic surveillance activities are a source of media stories on literally a weekly basis, making this a very high-profile topic of intense public and Congressional interest.

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Patrick G. Eddington
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**BY ORDER OF THE SECRETARY
OF THE AIR FORCE**

AIR FORCE POLICY DIRECTIVE 71-1

1 JULY 2019



Special Investigations

**CRIMINAL INVESTIGATIONS
AND COUNTERINTELLIGENCE**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available for downloading or ordering on the e-Publishing web site at www.e-Publishing.af.mil

RELEASABILITY: There are no releasability restrictions on this publication

OPR: SAF/IGX

Certified by: SAF/IG
(Lt Gen Sami D. Said)

Supersedes: AFPD 71-1,
13 November 2015

Pages: 16

This Air Force Policy Directive (AFPD) implements Department of Defense Directive (DoDD) 5505.13E, *DoD Executive Agent (EA) for the DoD Cyber Crime Center (DC3)*; DoDD 5200.27, *Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense*; DoDD 5205.15E, *DoD Forensic Enterprise (DFE)*; DoDD 5210.48, *Credibility Assessment (CA) Program*; DoDD 5240.06, *Counterintelligence Awareness and Reporting (CIAR)*; DoDD 5505.06, *Investigations of Allegations Against Senior DoD Officials*; Department of Defense Instruction (DoDI) O-2000.22, *Designation and Physical Protection of DoD High-Risk Personnel*; DoDI 3305.11, *DoD Counterintelligence (CI) Training and Certification*; DoDI 5210.91, *Polygraph and Credibility Assessment (PCA) Procedures*; DoDD 5240.02, *Counterintelligence (CI)*; DoDI 5240.04, *Counterintelligence (CI) Investigations*; DoDI 5240.05, *Technical Surveillance Countermeasures (TSCM)*; DoDI S-5240.09, (U) *Offensive Counterintelligence Operations (OFCO)*; DoDI 5240.10, *Counterintelligence (CI) in the Combatant Commands and Other DoD Components*; DoDI 5240.16, *Counterintelligence Functional Services (CIFS)*; DoDI S-5240.17, (U) *Counterintelligence Collection Activities (CCA)*; DoDI 5240.18, *Counterintelligence (CI) Analysis and Production*; DoDI 5240.19, *Counterintelligence Support to the Defense Critical Infrastructure Program (DCIP)*; DoDI O-5240.21, *Counterintelligence (CI) Inquiries*; DoDI 5240.27, *Joint Counterintelligence Training Activity (JCITA)05*; DoDI 5400.15, *Guidance on Obtaining Information from Financial Institutions*; DoDI 5505.02, *Criminal Investigations of Fraud Offenses*; DoDI 5505.03, *Initiation of Investigations by Defense Criminal Investigative Organizations*; DoDI 5505.07, *Titling and Indexing in Criminal Investigations*; DoDI 5505.08, *Military Criminal Investigative Organizations (MCIO) and Other DoD Law Enforcement Organizations Investigations of Adult, Private, Consensual Sexual Misconduct*; DoDI O-5505.09, *Interception of Wire, Electronic, and*

Oral Communications for Law Enforcement; DoDI 5505.10, Criminal Investigations of Noncombat Deaths; DoDI 5505.11, Fingerprint Card and Final Disposition Report Submission Requirements; DoDI 5505.14, Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders; DoDI 5505.18, Investigation of Adult Sexual Assault in the Department of Defense; DoDI 5525.07, Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DoJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes; DoDI 5525.12, Implementation of the Amended Law Enforcement Officers Safety Act of 2004 (LEOSA); DoDI 7730.47, Defense Incident-Based Reporting System (DIBRS); Data Segments and Elements; and Headquarters Air Force Mission Directive (HAFMD) 1-20, The Inspector General.

This directive applies to all civilian and uniformed members of the Regular Air Force, Air Force Reserve and Air National Guard. This publication may be supplemented at any level, but all direct supplements must be routed to SAF/IGX for coordination prior to certification and approval. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field through the appropriate chain of command. This directive requires the collection and/or maintenance of information protected by the Privacy Act of 1974 authorized by Title 10 United States Code (USC) Section 9013, *Secretary of the Air Force*. The applicable System of Record Notices F0 71 AF OSI A, *Counterintelligence Operations and Collection Records*, and F0 71 AF OSI D, *Investigative Information Management System (I2MS)*, are available at <http://dpclo.defense.gov/Privacy/SORNs.aspx>. Ensure all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule located in the Air Force Records Information Management System.

SUMMARY OF CHANGES

The publication has been substantially revised and needs to be completely reviewed. Major changes include removal of references to counter threat operations, clarification of functions of the Defense Cyber Crime Center, addition of criminal indexing oversight by the Inspector General, and addition of Air Force Office of Special Investigations responsibility to operate the Air Force Criminal Justice Information Cell (AF-CJIC).

1. Overview. Criminal activity and intelligence operations against the Air Force threaten national security. To protect resources and personnel, the Air Force must provide security commensurate with the importance of the assets. The Air Force must prioritize and then thoroughly counter all significant threats posed against it.

2. Policy. The Air Force shall:

2.1. Thoroughly investigate allegations of criminal activity involving Air Force personnel and resources and refer them to the appropriate authority for action.

2.2. Cooperate with civilian law enforcement officials to the extent practical and in accordance with DoDD 3025.18, DoDI 3025.21, and 31 USC § 1535.

2.3. Maintain effective working relationships with the Department of Justice (DoJ) in the investigation and prosecution of crimes involving DoD programs, operations, or personnel, and notify DoJ entities when required by DoDI 5525.07.

2.4. Conduct, manage and coordinate a counterintelligence (CI) awareness and briefing program.

2.5. Support and provide information to the U.S. Secret Service in executing its statutory protective responsibilities per DoDI 3025.19.

2.6. Within limits set by the Congress, fund emergency and extraordinary expenses to further the CI and criminal investigative missions.

2.7. Coordinate acquisition, security, intelligence, and CI activities to protect critical program information (CPI) in accordance with DoDI 5200.39, and law.

2.8. Obtain information from financial institutions as necessary to support law enforcement, CI, and personnel security investigations as DoDI 5400.15 and the law permit.

2.9. Report offender criminal history data to the Federal Bureau of Investigation (FBI) for inclusion in the National Crime Information Center and Interstate Identification Index, in accordance with DoDI 5505.11; Combined DNA Index System, in accordance with DoDI 5505.14; and National Instant Criminal Background Check System in accordance with 18 USC § 922.

2.10. Report criminal incident data to the Defense Incident Based Reporting System (DIBRS) per DoDI 7730.47 and DoD 7730.47-M, Volume 1.

2.11. Conduct or monitor all significant investigations of fraud or corruption related to Air Force procurement activities.

2.12. Provide information on investigative activities to DoD Inspector General (DoDIG) for inclusion in the U.S. Department of Defense Inspector General's *Semiannual Report to the Congress*.

2.13. Investigate all noncombat deaths of members of the armed forces on active duty, or other persons described in DoDI 5505.10 who are under Air Force Office of Special Investigations (AFOSI) investigative jurisdiction, when the death is medically determined to not be from natural causes, such as potential homicides, until evidence establishes otherwise.

2.14. Implement a family liaison program for death investigations as required by DoDI 5505.10.

- 2.15. Provide tactical security elements for the freedom of movement in countering threats in hostile and uncertain environments.
- 2.16. Conduct CI collection to support valid requirements in coordination with the Defense Intelligence Agency, to include their mission taskings. Include CI requirements in training and enter CI collection requirements into the designated CI information system.
- 2.17. Coordinate offensive CI operations (OFCO) proposals and activity, and establish briefing requirements with the supported and supporting combatant commands.
- 2.18. Establish, resource, and manage an organizational CI analysis and production program in coordination with the DoD CI Analysis and Production Coordinator.
- 2.19. Provide basic, specialized, and advanced CI training through approved DoD CI training courses to meet established CI analysis and production requirements. All credentialed AFOSI special agents will meet the established training standards in the Career Field Education and Training Plan.
- 2.20. Carry out executive agent responsibilities for the DoD Cyber Crime Center (DC3) to enable digital and multimedia forensics and threat analysis functions in support of criminal investigations, CI, counterterrorism, and countering threats to critical infrastructure in accordance with DoDD 5505.13E, DoDD 5205.15E, and DoDI 5205.13, *Defense Industrial Base (DIB) Cyber Security (CS) Activities*.

3. Roles and Responsibilities:

3.1. The Air Force Inspector General (SAF/IG):

- 3.1.1. Provides oversight of AFOSI in accordance with HAFMD 1-20. This guidance recognizes the AFOSI's independent statutory and regulatory authority to conduct criminal investigations and CI activities.
- 3.1.2. Designates a general officer or civilian equivalent to participate in the Forensic Executive Committee, pursuant to DoDD 5205.15E.
- 3.1.3. Provides administrative guidance and oversight of policies, plans, programs, and budgets for the Air Force Security and Investigative Activities Programs, the CI Program, all Air Force criminal history indexing activities, and administrative oversight of DC3 functions.
- 3.1.4. Complies with the reporting requirements in DoDD 5505.06, and AFPD 90-3, *Inspector General--The Complaints Resolution Program*.

3.2. The Air Force Office of Special Investigations (AFOSI):

- 3.2.1. Is a field operating agency under the administrative guidance and oversight of SAF/IG. It performs as a federal law enforcement agency, a defense criminal investigative organization, a military criminal investigative organization, and a military department CI organization, with responsibility for conducting independent criminal investigations, CI activities, and specialized investigative and force protection support for the Air Force under the direction of Commander, AFOSI. The Commander, AFOSI derives his or her criminal investigative authority directly from the SecAF and has the independent authority within the Air Force to initiate criminal investigations.

- 3.2.2. Will notify the SecAF in writing of any instance in which a commander, or any other Air Force official, attempts to impede an investigation or limit the use of investigative techniques through the use of their authority. Only the SecAF may delay, suspend or terminate an investigation other than an investigation being conducted at the request of DoDIG, and only DoDIG may delay, suspend or terminate an investigation being conducted at the direction of DoDIG.
- 3.2.3. Is the sole Air Force agency responsible for conducting liaison with federal, state, local and foreign nation law enforcement, CI and security agencies for matters falling within the AFOSI mission.
- 3.2.4. Is authorized to apprehend persons subject to 10 USC §§ 801-940, *Uniform Code of Military Justice (UCMJ)*, as well as civilians accompanying the force overseas, confine them, and return them to the U.S. for certain U.S. federal crimes.
- 3.2.5. Seeks and executes civilian search warrants for both UCMJ and non-UCMJ matters related to the AFOSI mission through both military and civilian agents per Federal Rule of Criminal Procedure Rule 41, *Search and Seizure*, and Title 28, Code of Federal Regulations (CFR), Part 60, *Authorization of Federal Law Enforcement Officers to Request the Issuance of a Search Warrant*. AFOSI civilian special agents have authority to arrest individuals not subject to the UCMJ with and without an arrest warrant in matters related to the AFOSI mission per 10 USC § 9377, *Civilian Special Agents of the Office of Special Investigations: Authority to Execute Warrants and Make Arrests*, and SecAF Memorandum to SAF/IG, *Additional Arrest and Search Authority for Civilian Special Agents of the Air Force Office of Special Investigations*, 16 August 2004.
- 3.2.6. Is authorized to seek and execute military search warrants for Stored Communications Act data, pursuant to Article 46, UCMJ, and Rules for Courts-Martial 703A, *Warrant or Order for Wire or Electronic Communications*.
- 3.2.7. Is authorized to conduct fraud investigations against civilian contractors related to DoD programs and personnel within AFOSI investigative jurisdiction. Assists the Office of the Air Force General Counsel in the management of contract administration remedies including suspension and debarment actions.
- 3.2.8. Is the primary investigative agency responsible for investigating all allegations of fraud in accordance with DoDI 5505.02.
- 3.2.9. Is the sole Air Force organization authorized to operate in cyberspace to find, fix, track, and neutralize criminal and espionage threats to war fighting missions and enables joint war fighting operations using unique authorities. Provides support to joint warfighting organizations and other DoD entities using unique authorities.
- 3.2.10. Conducts operations to track and neutralize foreign intelligence entities and international terrorism threats to Air Force and Joint weapon systems, technologies, and acquisitions. This includes adversaries acting below the level of active conflict.
- 3.2.11. Is a combat-ready military organization that provides the Air Force a wartime capability and has the authority to conduct, in hostile and uncertain environments, operations to find, fix, track, and neutralize enemy threats.

3.2.12. Is the sole Air Force organization authorized to conduct CI investigations, collections, and operations. AFOSI shall effectively carry out its CI functions while ensuring its activities affecting U.S. persons are done in a manner that protects the constitutional rights and privacy of such persons.

3.2.13. Notifies and refers to the FBI those incidents and investigative matters meeting the criteria in DoDI 5240.04 and DoDI 5525.07.

3.2.14. Coordinates CI investigations overseas in accordance with Intelligence Community Directive (ICD) 304, *Human Intelligence*, and ICD 310, *Coordination of Clandestine Human Source and Human-Enabled Foreign Intelligence Collection and Counterintelligence Activities Outside the United States*.

3.2.15. Provides designated Office of the Secretary of Defense, Defense Agency Headquarters, Combatant Commands, and DoD Field Activity Headquarters CI support, per DoDI 5240.10.

3.2.16. Provides CI functional services in accordance with DoDI 5240.16.

3.2.17. Conducts CI support to research, development and acquisition programs and equities.

3.2.18. Establishes procedures for technical services operations and is the sole Air Force agency authorized to intercept electronic, oral or wire communications; install or use pen register and trap and trace devices; use electronic or optical enhancements for surveillance; conduct covert video and photographic surveillance activities; and/or track individuals or items using technical services and surveillance in CI and criminal investigations in accordance with DoDI O-5505.09. Develops and implements a process to ensure legal review of the intercept request by a staff judge advocate or legal counsel co-located with the AFOSI headquarters or Air Force General Counsel, when appropriate.

3.2.18.1. The Commander, AFOSI has the authority to authorize the consensual interception and seeking of judicial authorization for nonconsensual interception of wire, electronic, and oral communications for law enforcement.

3.2.18.2. The Commander, AFOSI may further delegate this authority in writing to the positions referenced in DoDI O-5505.09.

3.2.19. Is the sole Air Force organization authorized to conduct technical surveillance countermeasures (TSCM) activities and to acquire or possess equipment for determining the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance.

3.2.20. Establishes procedures for, and is the sole Air Force agency authorized to perform polygraph and credibility assessment (PCA) examinations.

3.2.21. Is the sole Air Force organization authorized to investigate intrusions into and sabotage of Air Force owned or operated Department of Defense computer systems.

3.2.22. Is the Air Force's protection-providing organization for the protection of DoD high-risk personnel. AFOSI agents performing protection duties will only receive performance evaluations through the AFOSI chain of command.

- 3.2.23. Provides specialized support to special access programs.
- 3.2.24. Accredits special agents and issues them badges and credentials for the purpose of official identification. With these credentials, AFOSI special agents are authorized to:
- 3.2.24.1. Enter any Air Force installation or off-limits areas in the furtherance of an AFOSI mission unless otherwise prohibited by law or superseding Air Force security publications.
 - 3.2.24.2. Access all Air Force records, property, and people, except as limited by law, instruction, and security publications.
 - 3.2.24.3. Carry concealed or unconcealed U.S. Government-issued or AFOSI-approved privately owned firearms and ammunition for which they are trained and qualified.
 - 3.2.24.4. Wear civilian clothing while performing their duties.
- 3.2.25. Executes the DoD counterdrug strategy within the Air Force.
- 3.2.26. Investigates drug offenses by individuals not subject to the UCMJ who are suspected of introducing illegal drugs to a military installation or who are suspected of committing a drug offense in conjunction with an Armed Forces member under AFOSI investigative jurisdiction.
- 3.2.27. With the exception of possible violations of Article 93a, UCMJ, only investigates allegations of consensual sexual misconduct between adults when approved in writing by the Commander, AFOSI or Vice Commander, AFOSI.
- 3.2.28. Indexes subjects of investigations in the Defense Central Index of Investigations based upon credible information the subject committed the offense under investigation. Establishes written processes to review the appropriateness of the indexing decisions when the subject challenges them.
- 3.2.29. Will establish written process to review the appropriateness of indexing decisions when the subject challenges them for the following systems of record: National Crime Information Center, Interstate Identification Index, National Instant Criminal Background Checks System, and Combined DNA Index System.
- 3.2.30. In accordance with AFI 31-117, will comply with the provisions of the 18 USC § 926B, Carrying of Concealed Firearms by Qualified Law Enforcement Officers and 18 USC § 926C, Carrying of Concealed Firearms by Qualified Retired Law Enforcement Officers.
- 3.2.31. Manages and is accountable for the expenditure of emergency and extraordinary funds under \$500,000 which SecAF may allocate in support of the criminal and CI missions. The Commander, AFOSI shall provide the Secretary, through SAF/IG, an annual report of such expenditures, per 10 USC § 127, *Emergency and extraordinary expenses*.
- 3.2.32. Operates the U.S. Air Force Special Investigations Academy.

3.2.33. In coordination with the AF Sexual Assault Prevention and Response Office provides quarterly and annual reports of sexual assault involving members of the armed forces to the DoD Sexual Assault Prevention and Response Office.

3.2.34. Provides program oversight and maintains administrative control over DC3 and transfers funds earmarked for DC3 to maintain functions and responsibilities.

3.2.35. Initiates investigations of all offenses of adult sexual assault of which it becomes aware, that occur within its jurisdiction regardless of the severity of the allegation. Conduct investigations thoroughly and in compliance with DoDI 5505.18.

3.2.36. Shall consider privacy and civil liberties when proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to AFOSI's mission in compliance with DoDI 5400.11.

3.2.37. Periodically investigate and review AFOSI actions, policies, procedures, guidelines, and their implementation to ensure that the AFOSI is appropriately considering privacy and civil liberties in compliance with DoDI 5400.11.

3.2.38. Operates the Air Force Criminal Justice Information Cell (AF-CJIC). The cell ensures all criminal history, to include criminal history data, fingerprints, deoxyribonucleic acid, protection orders, personally identifiable information, offense, and disposition data, is properly indexed into national level criminal information databases and systems when qualifying offenses occur in accordance with DoDI 5505.11 and 5505.14.

3.3. All Air Force commanders and civilian directors shall:

3.3.1. Immediately refer to AFOSI all incidents that fall within AFOSI's investigative purview.

3.3.2. Ensure that criminal allegations or suspected criminal allegations involving persons affiliated with the DoD, including active duty personnel and their dependents, DoD contractors, and DoD civilian employees or any property or programs under their control or authority are referred to AFOSI or a law enforcement organization as soon as possible per DoDI 5505.03.

3.3.3. Shall not generally reassign, order, or permit any other type of investigation, or take any other official administrative, personnel, or legal action against someone under investigation by AFOSI without first notifying and discussing the matter with AFOSI and the servicing staff judge advocate. The commander must initiate this coordination between the three offices and others as necessary before taking action. AFOSI investigations have primacy over collateral investigations conducted by commanders, safety investigators (as addressed in AFI 91-204, Safety Investigations and Reports), and other organizational entities. No commander-directed investigation or action shall impede or interfere with investigations or investigative techniques deemed appropriate by AFOSI.

3.3.4. Establish procedures at installations for handling personnel, medical, or other administrative and electronic records of AFOSI special agents to prevent unauthorized disclosure of their rank.

MATTHEW P. DONOVAN
Acting Secretary of the Air Force

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

- 10 USC § 127, *Emergency and extraordinary expenses*
- 10 USC §§ 801-940, *Uniform Code of Military Justice (UCMJ)*
- 10 USC § 9377, *Civilian Special Agents of the Office of Special Investigations: Authority to Execute Warrants and Make Arrests*
- 18 USC § 121, *Stored Wire and Electronic Communications and Transactional Records Access*
- 18 USC § 922, *Unlawful acts*
- 18 USC § 926B, *Carrying of Concealed Firearms by Qualified Law Enforcement Officers*
- 18 USC § 926C, *Carrying of Concealed Firearms by Qualified Retired Law Enforcement Officers*
- 18 USC § 2510, *Wire and Electronic Communications Interception and Interception of Oral Communications*
- 18 USC § 3117, *Mobile Tracking Devices*
- 18 USC §§ 3121-3127, *Pen Registers and Trap and Trace Devices*
- 28 CFR § 60, *Authorization of Federal Law Enforcement Officers to Request the Issuance of a Search Warrant*
- 31 USC § 1535, *Economy Act*
- AFI 91-204, *Safety Investigation and Hazard Reporting*, 27 April 2018
- AFMAN 33-363, *Management of Records*, 1 March 2008
- AFPD 90-3, *Inspector General--The Complaints Resolution Program*, 9 June 2016
- DoD 7730.47-M, Volume 1, *Defense Incident-Based Reporting System (DIBRS): Data Segments and Elements*, 7 December 2010
- DoDD 3025.18, *Defense Support of Civil Authorities (DSCA)*, 29 December 2010
- DoDD 5105.42, *Defense Security Service (DSS)*, 3 August 2010
- DoDD 5210.56, *Arming and the Use of Force*, 18 November 2016
- DoDD 5505.06, *Investigations of Allegations Against Senior DoD Officials*, 6 June 2013
- DoDD 5200.27, *Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense*, 7 January 1980
- DoDD 5240.02, *Counterintelligence (CI)*, 17 March 2015
- DoDD 5205.15E, *DoD Forensic Enterprise (DFE)*, 26 April 2011
- DoDD 5210.48, *Credibility Assessment (CA) Program*, 24 April 2015
- DoDD 5240.06, *Counterintelligence Awareness and Reporting (CIAR)*, 17 May 2011

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DoDD 5505.13E, *DoD Executive Agent (EA) for the DoD Cyber Crime Center (DC3)*, 1 March 2010

DoDI O-2000.22, *Designation and Physical Protection of DoD High Risk Personnel*, 19 June 2014

DoDI 3025.19, *Procedures for Sharing Information with and Providing Support to the U.S. Secret Service (USSS), Department of Homeland Security (DHS)*, 29 November 2011

DoDI 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, 27 February 2013

DoDI 3305.11, *DoD Counterintelligence (CI) Training and Certification*, 13 August 2015

DoDI 5200.39, *Critical Program Information (CPI) Identification and Protection Within Research, Development, Test, and Evaluation (RDT&E)*, 28 May 2015

DoDI 5205.13, *Defense Industrial Base (DIB) Cyber Security (CS) Activities*, 29 January 2010

DoDI 5210.91, *Polygraph and Credibility Assessment (PCA) Procedures*, 12 August 2010

DoDI 5240.04, *Counterintelligence (CI) Investigations*, 1 April 2016

DoDI 5240.05, *Technical Surveillance Countermeasures (TSCM)*, 3 April 2014

DoDI S-5240.09, *(U) Offensive Counterintelligence Operations (OFCO)*, 2 February 2015

DoDI 5240.10, *Counterintelligence (CI) in the Combatant Commands and Other DoD Components*, 5 October 2011

DoDI 5240.16, *Counterintelligence Functional Services (CIFS)*, 27 August 2012

DoDI S-5240.17, *(U) Counterintelligence Collection Activities (CCA)*, 14 March 2014

DoDI 5240.18, *Counterintelligence (CI) Analysis and Production*, 17 November 2009

DoDI 5240.19, *Counterintelligence Support to the Defense Critical Infrastructure Program (DCIP)*, 31 January 2014

DoDI O-5240.21, *Counterintelligence (CI) Inquiries*, 14 May 2009

DoDI 5240.27, *Joint Counterintelligence Training Activity (JCITA)*, 13 November 2013

DoDI 5400.11, *DoD Privacy and Civil Liberties Programs*, 29 January 2019

DoDI 5400.15, *Guidance on Obtaining Information from Financial Institutions*, 2 December 2004

DoDI 5505.02, *Criminal Investigations of Fraud Offenses*, 29 August 2013

DoDI 5505.03, *Initiation of Investigations by Defense Criminal Investigative Organizations*, 24 March 2011

DoDI 5505.07, *Titling and Indexing in Criminal Investigations*, 28 February 2018

DoDI 5505.08, *Military Criminal Investigative Organizations (MCIO) and Other DoD Law Enforcement Organizations Investigations of Adult, Private, Consensual Sexual Misconduct*, 17 April 2013

DoDI 5505.10, *Criminal Investigations of Noncombat Deaths*, 15 August 2013

DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*, 21 July 2014

DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders*, 22 December 2015

DoDI 5505.18, *Investigation of Adult Sexual Assault in the Department of Defense*, 22 March 2017

DoDI 5525.07, *Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DoJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes*, 18 June 2007

DoDI 5525.12, *Implementation of the Amended Law Enforcement Officers Safety Act of 2004 (LEOSA)*, 13 February 2014

DoDI O-5505.09, *Interception of Wire, Electronic, and Oral Communications for Law Enforcement*, 27 November 2013

DoDI 7730.47, *Defense Incident-Based Reporting System (DIBRS)*, 23 January 2014

Federal Rule of Criminal Procedure Rule 41, *Search and Seizure*

HAFMD 1-20, *The Inspector General*, 7 May 2015

ICD 304, *Human Intelligence*, 9 July 2009

ICD 310, *Coordination of Clandestine Human Source and Human-Enabled Foreign Intelligence Collection and Counterintelligence Activities Outside the United States*, 27 June 2016

Rules for Courts-Martial 703A, *Warrant or Order for Wire or Electronic Communications*

SecAF Memorandum to SAF/IG, *Additional Arrest and Search Authority for Civilian Special Agents of the Air Force Office of Special Investigations*

Prescribed Forms

None

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

DoJ Form R-84, *Final Disposition Report*

FD 249, *Suspect Fingerprint Card*

Abbreviations and Acronyms

AF-CJIC—Air Force Criminal Justice Information Cell

AFI—Air Force Instruction

AFOSI—Air Force Office of Special Investigations

AFMAN—Air Force Manual

AFPD—Air Force Policy Directive

CI—Counterintelligence
CFR—Code of Federal Regulations
CPI—Critical Program Information
DC3—DoD Cyber Crime Center
DFE—Defense Forensics Enterprise
DHS—Department of Homeland Security
DIBRS—Defense Incident Based Reporting System
DoD—Department of Defense
DODIG—DoD Inspector General
DoDD—DoD Directive
DoDI—DoD Instruction
DoJ—Department of Justice
FBI—Federal Bureau of Investigation
HAFMD—Headquarters Air Force Mission Directive
ICD—Intelligence Community Directive
I2MS—Investigative Information Management System
OFCO—Offensive CI Operations
OPR—Office of Primary Responsibility
PCA—Polygraph and Credibility Assessment
SAF—Secretariat Offices within the HAF (Headquarters Air Force)
SAF/IG—Air Force Inspector General
SAF/IGX—Air Force Inspector General’s Office, Special Investigations Directorate
SecAF—Secretary of the Air Force
TSCM—Technical Surveillance Countermeasures
UCMJ—Uniform Code of Military Justice
USC—United States Code
USSS—U.S. Secret Service

Terms

Apprehend—Taking a person into custody.

Arrest—Use of legal authority to deprive a person of his/her freedom of movement.

Arrest Warrant—Document issued by a judge or magistrate that authorizes the taking of a person into custody for the commission of a crime based on probable cause.

CI—Information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons or their agents, or international terrorist organizations or activities.

CI Activity—One or more of the CI functions of analysis, collection, functional services, investigations, operations, and production.

CI Analysis—The process of examining and evaluating information to determine the nature, function, interrelationships, personalities, and intent regarding the intelligence capabilities of foreign intelligence entities.

CI Collections—The systematic acquisition of intelligence information to answer CI collection requirements.

CI Functional Services—CI activities supporting the four missions of CI and that enable one or more of the other CI functions.

CI Investigations—Formal investigative activities undertaken to determine whether a particular person is acting for or on behalf of, or an event is related to, a foreign power engaged in spying or committing espionage, sabotage, treason, sedition, subversion, assassinations, or international terrorist activities, and to determine actions required to neutralize such acts.

CI Operations—Proactive activities to identify, deceive, exploit, disrupt, neutralize, or deter foreign intelligence entities activities.

CI Production—The creation of finished intelligence products incorporating CI analysis in response to known or anticipated customer CI concerns.

Criminal Investigation—An investigation of possible criminal violations of the United States Code, the Uniform Code of Military Justice, or, when appropriate, state or local statutes or ordinances or foreign law.

Criminal Offender Data—The information, including fingerprints, that is recorded on the front and back of a standard Suspect Fingerprint Card (FBI FD 249) and Final Disposition Report (FBI/DoJ R-84), or their electronic data transfer equivalent.

Defense Clearance and Investigations Index—A computerized, central index of investigations for all DoD investigative activities managed by the Defense Security Services.

Defense Forensic Enterprise—The DoD resources, assets, and processes which provide forensic capabilities in support of DoD operations.

Electronic Communication—According to 18 USC § 2510, *Wire and Electronic Communications Interception and Interception of Oral Communications*, any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic, or photo optical system that affects interstate or foreign commerce, but does not include the following: any wire or oral communication; any communication made through a tone—only paging device; any communication from a tracking device as defined by 18 USC § 3117, *Mobile Tracking Devices*; electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

Interception—According to 18 USC § 2510(4), the aural or other acquisition of the contents of any wire, electronic, or oral communication through use of any electronic, mechanical, or other device. The term "contents," when related to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.

Oral Communication—According to 18 USC § 2510(2), any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication.

Pen Register—According to 18 USC §§ 3121-3127, the term "pen register" means a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication, but such term does not include any device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device or process used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

Polygraph and Credibility Assessment (PCA) Instrumentation—Technical devices, used in conjunction with associated techniques, that measure or display physiological or behavioral activity that is analyzed in the assessment of an individual's truthfulness.

Search Warrant—Express permission to search and seize issued by competent civilian authority based on probable cause.

Senior Officials—Active duty, retired, Reserve, or National Guard military officers in grades O-7 and above, or selected for promotion to grade O-7; current and former members of the Senior Executive Service; other current and former DoD civilian employees whose positions are deemed equivalent to that of a member of the Senior Executive Service (e.g., Defense Intelligence Senior Executive Service employees, Senior Level employees, and non-appropriated fund senior executives); and current and former Presidential appointees.

Technical Services—The investigative use of video surveillance, the interception of oral, electronic and wire communications and the installation or use of pen register and trap and trace devices.

Technical Surveillance—The employment of specialized equipment and techniques to conduct: lawful intercepts of oral, wire, and electronic communications, pen register, trap and trace, video surveillance, signal surveillance, and technical surveillance countermeasures activities.

Trap and Trace Device—According to 18 USC §§ 3121-3127, the term "trap and trace device" means a device or process which captures the incoming electronic or other impulses which identify the originating number or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication, provided, however, that such information shall not include the contents of any communication.

Technical Surveillance Countermeasures (TSCM)—Techniques and measures to detect, neutralize, and/or exploit a wide variety of hostile and foreign penetration technologies which seek to obtain unauthorized access to classified and sensitive information.

Wire Communication—Any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce. The term includes any electronic storage of such communication.

October 30, 2019

VIA FOIAONLINE

Department of the Navy - Office of the Chief of Naval Operations
FOIA/Privacy Act Program Office/Service Center ATTN: DNS 36
2000 Navy Pentagon
Washington DC 20350-2000

To the responsible FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request copies of any records from any Navy component pursuant to DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," between September 18, 2007 and the date of this request.

In order to help to determine my status to assess fees, you should know that I am a research fellow and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. **I request a waiver of all fees for this request.**

Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Whenever possible, please provide the requested information in electronic Portable Document Format (PDF).

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would appreciate your communicating with me by email or telephone, rather than by mail. My email address is peddington@cato.org and my cell number is 571-215-3468.

Please provide expedited processing of this request which concerns a matter of urgency.

As a Research Fellow, my job is disseminating information. The public has an urgent need for information about potential Defense Department or component element monitoring of American citizens or organizations within the context of DoD Directive 5200.27. Federal government domestic surveillance activities are a source of media stories on literally a weekly basis, making this a very high-profile topic of intense public and Congressional interest.

As a Cato scholar, I meet the statutory definition of a "representative of the news media" per *Cause of Action v. F.T.C.*, 799 F.3d 1108 (D.C. Cir. 2015) as Cato and its scholars (1)

gather information of potential interest (2) to a segment of the public; (3) use editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to one or more audiences. **Accordingly, I ask for expedited processing on that basis.**

I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick G. Eddington". The signature is written in a cursive style with a large initial "P".

Patrick G. Eddington
Research Fellow
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001-5403
571-215-3468 (cell)
peddington@cato.org



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

5720
Ser DNS-36KF/19U103139
December 18, 2019

Sent via email to: peddington@cato.org

Mr. Patrick Eddington
Cato Institute
1000 Massachusetts Ave, NW
Washington, DC 20001

Dear Mr. Eddington:

This is in reference to your Freedom of Information Act (FOIA)/Privacy Act (PA) request dated October 30, 2019. Your request was received in our office on the same day and assigned case number DON-NAVY-2020-000995.

In accordance with the Department of the Navy's (DON) FOIA regulations (32 CFR 701.8 (a)(1)), a requester is required to describe the records sought in sufficient detail to enable an employee familiar with the subject area of the request to locate responsive records with a reasonable amount of effort. Your request does not comply with this requirement. In addition, we have contacted Naval Criminal Investigative Services (NCIS) and they advised our office that they are unable to conduct a search due to the overly broad nature of this request.

As a result, it precludes a knowledgeable individual from conducting a search with a reasonable amount of effort. Requests for records must enable an agency to determine precisely what records are being requested.

Descriptive information about a record may be divided into two broad categories:

(a) Category I is file-related and includes information such as type of record, title, index citation, subject area, date the record was created, or its originator.

(b) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit

the conduct of an organized, non-random search based on the existing filing arrangements and retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

In this instance, we are unable to determine which office(s) would be likely to maintain responsive records as you did not indicate which offices you expect would hold responsive information. In accordance with 32 CFR 701.8 (a)(2)(c), we will not proceed further with your request until we receive additional information from you. Please provide our office with a clarification with regard to the records requested. If we do not hear from you within twenty (20) workdays of the date of this letter (Jan 17, 2020), we will assume you are no longer interested in pursuing this request and will close the file with the disposition "Improper FOIA request".

For this determination, you have the right to seek dispute resolution services from either the DoD Navy Component FOIA Public Liaison, Mr. Chris Julka, at: Christopher.a.julka@navy.mil, via phone: (703) 697-0031; or by contacting the Office of Government Information Services at: (<https://ogis.archives.gov/>), (202) 741-5770, ogis@nara.gov.

Questions regarding the action this office has taken to process your request may be directed to our FOIA Service Center at (202) 685-0412 or via email at donfoia-pa@navy.mil.

Sincerely,



G. Cason

By direction

Deputy Director

DON PA/ FOIA Program Office

January 9, 2020, 2019

VIA FOIAONLINE

Department of the Navy
Office of the Chief of Naval Operations
2000 Navy Pentagon
Washington, DC 20350-2000

To the responsible FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I hereby appeal the adequacy of the search conducted regarding my request DON-NAVY-2020-000995, regarding DoD Directive 5200.27.

The agency's response suggests that my request was too broad to undertake a search. I disagree. To be valid, a request need only "reasonably describe" the records it seeks so that knowledgeable agency employees will be able to determine "precisely what records are being requested." *Yeager v. DEA*, 678 F.2d 315, 322 (D.C. Cir. 1982). Similarly, an agency cannot reject a request on the grounds that a search would be burdensome. And the fact that a request may yield a great many responsive records is immaterial, so long as the agency can identify which records to produce. *Id.* Clearly, the Navy, as a DoD component, must both comply with and file reports, records and other responsive documents under DoD Directive 5200.27. The assertion that a search based on that information is not possible is not credible. Accordingly, I appeal the Navy's decision in this FOIA case.

In order to help to determine my status to assess fees, you should know that I am a research fellow and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. **I request a waiver of all fees for this request.**

Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

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Please provide expedited processing of this request which concerns a matter of urgency.

As a Research Fellow, I am primarily engaged in disseminating information. The public has an urgent need for information about whether the Navy or its components have conducted potentially unconstitutional surveillance or related activities against American citizens exercising their constitutional rights. Federal government domestic surveillance activities are a source of media stories on literally a weekly basis, making this a very high-profile topic of intense public and Congressional interest.

As a Cato scholar, I meet the statutory definition of a “representative of the news media” per *Cause of Action v. F.T.C.*, 799 F.3d 1108 (D.C. Cir. 2015) as Cato and its scholars (1) gather information of potential interest (2) to a segment of the public; (3) use editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to one or more audiences. **Accordingly, I ask for expedited processing on that basis.**

I certify that my statements concerning the need for expedited processing and fee waivers are true and correct to the best of my knowledge and belief.

I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires. Thank you for your assistance.

Sincerely,



Patrick G. Eddington
Research Fellow
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1000 Massachusetts Ave., NW
Washington, DC 20001-5403
571-215-3468 (cell)
peddington@cato.org