

EXHIBIT B



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

FOIA Case: 112526

20 August 2021

GENE C SCHAERR ESQ
PROJECT FOR PRIVACY &
SURVEILLANCE ACCOUNTABILITY
1101 CONNECTICUT AVE NW STE 450
WASHINGTON DC 20036

Dear Gene C. Schaerr:

Thank you for your Freedom of Information Act (FOIA) request letter of 26 July 2021, which we received on 30 July 2021. We have interpreted your request as being for intelligence records relating to the named current and former members of Congress specified in your request (a copy of your request is attached for reference). NSA has processed your request under the provisions of the FOIA. There are no assessable fees for this request; therefore, we did not address your fee category. We have completed our review of your request and assigned it Case Number 112526. Please refer to this number should you need to contact us about this request. For reasons described below, we are not able to confirm or deny the existence of intelligence records on any and all individuals.

NSA collects and provides intelligence derived from foreign communications to policymakers, military commanders, and law enforcement officials. We do this to help these individuals protect the security of the United States, its allies, and their citizens from threats such as terrorism, weapons of mass destruction, foreign espionage, international organized crime, and other hostile activities. What we are authorized to do, and how we do it, is described in Executive Order 12333. Information about how NSA conducts signals intelligence activities is available on the websites of NSA (www.nsa.gov) and the Office of the Director of National Intelligence (www.dni.gov).

To respond to your request, NSA would have to confirm or deny the existence of intelligence records on the named members and former members of Congress specified in your request. Were we to do so in this case, we would have to do so for every other requester. This would enable, for example, a terrorist or other adversary to file a FOIA request with us in order to determine whether he or she was under surveillance or had evaded it. This in turn would allow that individual to better assess whether they could successfully act to

damage the national security of the United States. For such reasons, we can neither confirm nor deny the existence or non-existence of the records you requested.

The FOIA exempts several categories of information from disclosure. Its first exemption indicates that it does not apply to matters that are authorized by Executive Order to be kept secret and properly classified in the interest of national defense or foreign relations. The fact of the existence or non-existence of intelligence records on any individual, including the named members and former members of Congress specified in your request, would reveal a connection or interest that is an appropriately classified matter. Paragraph 3.6(a) of Executive Order 13526 ("Classified National Security Information") specifically authorizes this type of response, also known as a Glomar response, to such requests made under the FOIA.

Moreover, the third exemption under the FOIA authorizes the withholding of information specifically protected from disclosure by statute. The fact of the existence or non-existence of records responsive to your request is currently exempted from disclosure by the following statutes: Title 18 U.S. Code 798; Title 50 U.S. Code 3024(i); and Section 6, Public Law 86-36 (50 U.S. Code 3605).

You may appeal this decision. If you decide to appeal, you should do so in the manner outlined below. NSA will endeavor to respond within 20 working days of receiving any appeal, absent any unusual circumstances.

- The appeal must be sent in via U.S. postal mail, fax, or electronic delivery (e-mail) and addressed to:

NSA FOIA/PA Appeal Authority (P132)
National Security Agency
9800 Savage Road STE 6932
Fort George G. Meade, MD 20755-6932

The facsimile number is 443-479-3612.

The appropriate email address to submit an appeal is
FOIA_PA_Appeals@nsa.gov.

- It must be postmarked or delivered electronically no later than 90 calendar days from the date of this letter. Decisions appealed after 90 days will not be addressed.
- Please include the case number provided above.
- Please describe with sufficient detail why you believe the denial of requested information was unwarranted.

Please be advised that this is our standard response to all requests where we reasonably believe intelligence records are being requested on one or more individuals.

You may also contact our FOIA Public Liaison at foialo@nsa.gov for any further assistance and to discuss any aspect of your request. 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 Rd - OGIS
College Park, MD 20740
ogis@nara.gov
877-684-6448
(Fax) 202-741-5769

Sincerely,

A handwritten signature in black ink that reads "Kimberly Beall". The signature is written in a cursive style with a large initial "K".

KIMBERLY BEALL
Acting Chief, FOIA/PA Division
NSA Initial Denial Authority

Encl:
a/s



July 26, 2021

National Security Agency
ATTN: FOIA/PA Office
9800 Savage Road, Suite 6932
Ft. George G. Meade, MD 20755-6932

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, regarding government purchases of the private data of members of the House and Senate Judiciary Committees. This request is filed on behalf of the Project for Privacy and Surveillance Accountability, Inc. (“PPSA”).

As an organization concerned with government surveillance overreach, PPSA is troubled by the extent to which U.S. law enforcement and intelligence agencies may be purchasing Americans’ private data without meaningful court oversight.¹ Accordingly, PPSA applauds congressional efforts to pass the Fourth Amendment is Not For Sale Act (also known as H.R. 2738² or S.1265³; the “Act”), legislation introduced on or about April 21, 2021 by Senators Ron Wyden,⁴ Rand Paul, and others which would curtail such data purchases. Specifically, the proposed Act provides that “[a] law enforcement agency of a governmental entity and an element of the intelligence community may not obtain from a third party in exchange for anything of value a covered customer or subscriber record or any illegitimately obtained information.” As relevant to this request, the Act further defines the terms: “covered customer or subscriber record”; “illegitimately obtained information”; “intelligence community”; “obtain in exchange for anything of value”; and “third party”.

Using the definitions provided in the Act, PPSA respectfully requests that you produce:

¹ See, e.g., Katie Canales, *Sen. Ron Wyden is introducing a privacy bill that would ban government agencies from buying personal information from data brokers*, BUSINESS INSIDER (Aug. 4, 2020), <https://www.businessinsider.com/ron-wyden-fourth-amendment-is-not-for-sale-privacy-2020-8/>

² See <https://www.congress.gov/bill/117th-congress/house-bill/2738?q=%7B%22search%22%3A%5B%22hr2738%22%5D%7D&s=1&r=1/>

³ See <https://www.congress.gov/bill/117th-congress/senate-bill/1265?q=%7B%22search%22%3A%5B%22s1265%22%5D%7D&s=3&r=1/>

⁴ Bill text available at <https://www.wyden.senate.gov/download/the-fourth-amendment-is-not-for-sale-act-of-2021-bill-text/>



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All documents, reports, memoranda, or communications regarding the obtaining, by any element of the intelligence community from a third party in exchange for anything of value, of any covered customer or subscriber record or any illegitimately obtained information regarding any person listed below:

- Rep. Jerrold Nadler
- Rep. Mary Gay Scanlon
- Rep. Zoe Lofgren
- Rep. Sheila Jackson Lee
- Rep. Steve Cohen
- Rep. Henry C. "Hank" Johnson
- Rep. Theodore E. Deutch
- Rep. Karen Bass
- Rep. Hakeem Jeffries
- Rep. David N. Cicilline
- Rep. Eric Swalwell
- Rep. Ted Lieu
- Rep. Jamie Raskin
- Rep. Pramila Jayapal
- Rep. Val Butler Demings
- Rep. J. Luis Correa
- Rep. Sylvia R. Garcia
- Rep. Joe Neguse
- Rep. Lucy McBath
- Rep. Greg Stanton
- Rep. Madeleine Dean
- Rep. Veronica Escobar
- Rep. Steve Chabot
- Rep. Louie Gohmert
- Rep. Jim Jordan
- Rep. Ken Buck
- Rep. Matt Gaetz
- Rep. Mike Johnson
- Rep. Andy Biggs
- Rep. Tom McClintock
- Rep. Debbie Lesko
- Rep. Guy Reschenthaler
- Rep. Ben Cline
- Rep. Kelly Armstrong
- Rep. W. Gregory Steube
- Rep. John Rutherford
- Rep. Mark Amodei



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- Rep. Judy Chu
- Rep. Scott Peters
- Rep. Bobby Scott
- Rep. Maxine Waters
- Rep. Michael Quigley
- Rep. Linda Sanchez
- Rep. Adam Schiff
- Rep. Mondaire Jones
- Rep. Deborah K. Ross
- Rep. Cori Bush
- Rep. Tom Tiffany
- Rep. Thomas Massie
- Rep. Chip Roy
- Rep. Dan Bishop
- Rep. Michelle Fischbach
- Rep. Victoria Spartz
- Rep. Scott Fitzgerald
- Rep. Cliff Bentz
- Rep. Burgess Owens
- Former Rep. Bob Goodlatte
- Former Rep. Lamar S. Smith
- Former Rep. Darrell Issa
- Former Rep. Steve King
- Former Rep. Ted Poe
- Former Rep. Tom Marino
- Former Rep. Trey Gowdy
- Former Rep. Raul Labrador
- Former Rep. Ron DeSantis
- Former Rep. Karen Handel
- Former Rep. Keith Rothfus
- Former Rep. Luis Gutierrez
- Former Rep. Randy Forbes
- Former Rep. Trent Franks
- Former Rep. Jason Chaffetz
- Former Rep. Blake Farenthold
- Former Rep. Mimi Walters
- Former Rep. Dave Trott
- Former Rep. Mike Bishop
- Former Rep. John Conyers
- Former Rep. Pedro Pierluisi
- Former Rep. Howard Coble
- Former Rep. Elton Gallegly



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- Former Rep. Dan Lungren
- Former Vice President and Former Rep. Mike Pence
- Former Rep. Timothy Griffin
- Former Rep. Dennis A. Ross
- Former Rep. Sandy Adams
- Former Rep. Ben Quayle
- Former Rep. Howard Berman
- Former Rep. Mel Watt
- Former Rep. Jared Polis
- Former Rep. Rick Boucher
- Former Rep. Bill Delahunt
- Sen. and Former Rep. Tammy Baldwin
- Former Rep. Charlie Gonzalez
- Former Rep. Anthony Weiner
- Former Rep. Dan Maffei
- Former Rep. Tom Rooney
- Former Rep. Gregg Harper
- Former Rep. Spencer Bachus
- Former Rep. Suzan DelBene
- Former Rep. Joe Garcia
- Former Rep. Cedric Richmond
- Former Rep. Debbie Mucarsel-Powell
- Former Rep. Doug Collins
- Former Rep. F. James Sensenbrenner
- Former Rep. John Ratcliffe
- Former Rep. Martha Roby
- Former Rep. George Holding
- Sen. Lindsey Graham
- Sen. Dianne Feinstein
- Sen. Chuck Grassley
- Sen. Patrick Leahy
- Sen. John Cornyn
- Sen. Dick Durbin
- Sen. Michael S. Lee
- Sen. Sheldon Whitehouse
- Sen. Ted Cruz
- Sen. Amy Klobuchar
- Sen. Ben Sasse
- Sen. Christopher A. Coons
- Sen. Joshua D. Hawley
- Sen. Richard Blumenthal
- Sen. Thom Tillis



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- Sen. Mazie Hirono
- Sen. Joni Ernst
- Sen. Cory Booker
- Sen. Mike Crapo
- Sen. John Kennedy
- Sen. Marsha Blackburn
- Sen. Chuck Schumer
- Sen. Ron Wyden
- Sen. Alex Padilla
- Sen. Jon Ossoff
- Vice President and Former Sen. Kamala Harris
- Former Sen. Orrin Hatch
- Former Sen. Jeff Flake
- Former Sen. Al Franken
- Former Sen. Jeff Sessions
- Former Sen. David Vitter
- Former Sen. Herb Kohl
- Former Sen. Tom Coburn
- Former Sen. Jon Kyl
- Former Sen. Ben Cardin
- Former Sen. Russ Feingold
- Former Sen. Ted Kaufman
- Former Sen. Arlen Specter
- Former Sen. David Perdue

Scope of Request:

For all purposes of this request: (I) the date range for responsive materials encompasses those either created, altered, sent, or received between January 1, 2008 and July 26, 2021; and (II) PPSA requests a *Vaughn* index for any responsive materials that are withheld.

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 redaction should foreclose any need to issue a Glomar response, as anonymized and redacted production would neither (1) reveal intelligence sources or methods nor (2) disclose any agency interest (or lack thereof) in any particular individual.



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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