

EXHIBIT M



December 27, 2021

Via Online Portal

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

RE: FOIPA Request No. 1505066-000

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:

“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 [in the Request].”

The Request listed past and present members of congressional judiciary committees, with a date range for responsive records covering the period between January 1, 2008 and July 26, 2021.

The FBI issued a blanket denial on September 28, 2021.² The agency gave no indication that it had initiated any searches before making its response, instead denying the Request under FOIA Exemptions 1, 3, 6, 7(C), and 7(E).

The agency’s cursory denial demonstrates its failure to conduct an adequate search for responsive records. Further, the blanket denial was itself unwarranted because none of the invoked exemptions justifies nondisclosure. In the alternative, unique public interests justify waiving those exemptions even if they apply.

¹ See Letter from G. Schaerr to Department of Justice FOIA Officer, July 26, 2021 (Attachment A)

² See Letter from Michael G. Seidel to G. Schaerr, Sept. 28, 2021 (Attachment B)

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

A. Exemption 1 does not justify a *Glomar* response because there are categories of documents whose disclosure 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 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). Many of the individuals listed in the Request are no longer members of congressional judiciary committees, several no longer hold any public office at all, and some are dead. Further, by mandating procedures to challenge classification decisions, the order recognizes the existence of “improperly classified” records and information. *Id.* at 1.8(b). Because there are categories of documents responsive to PPSA’s request that are not properly classified as of today, Exemption 1 does not shield them from disclosure, nor can it justify a blanket *Glomar* response or refusal to search.

B. Exemption 3 does not justify a *Glomar* response.

Exemption 3 also does not justify the FBI’s *Glomar* response. 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, the National Security Act, that allegedly exempts responsive materials from disclosure.³ Although that statute instructs the Director of National Intelligence to “protect intelligence sources and methods from unauthorized disclosure,” 50 U.S.C. 3024(i)(1), it also instructs the Director 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 provided 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, to the extent declassified or

³ Attachment B at 1.

redacted versions of responsive documents can be produced, the agency must do so. Hence, this statute does not justify a *Glomar* response because nothing about the original Request would require the FBI to jeopardize any of the intelligence community's "sources [or] methods." From the very beginning, we have encouraged the agency to redact names and other identifying information before records are produced if it would "render a responsive but exempt record nonexempt."⁴ 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.

To be sure, even with redactions, particular documents generated by the search *may* (but not necessarily will) reveal "sources or methods" that cannot be revealed. And in such circumstances, *those* documents could be withheld under Exemption 1 and Exemption 3 in whole or in part. But the agency's refusal even to search for responsive documents is inappropriate.

C. 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 judiciary committees in the Senate and House of Representatives. Thus, when compounded with the law's strong preference for disclosure, the public's interest in knowing whether those agencies surveilled the U.S. Congress greatly outweighs any "diminished" privacy interests of those already prominent public figures. *Kimberlin v. DOJ*, 139 F.3d 944, 949 (D.C. Cir. 1998).

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 unavailing. *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").

⁴ Attachment A at 6.

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

The FBI's reliance on Exemption 7(E) stretches the coverage of that exemption 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 to some extent disclose "the scope of law enforcement techniques and procedures." The FBI's argument 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").

E. The agency's *Glomar* objection is misplaced

Instead of considering redaction or production of responsive, non-classified documents, the agency issued a *Glomar* response. 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). 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 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 whose data was purchased, those names could be redacted from the records provided in response to our request. As noted earlier, we have been clear that we would prefer records with information redacted over a simple denial of our 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 those exemptions here.

Even if Exemption 1 or Exemption 3 *permits* the FBI to deny this FOIA request, they do not *require* denial. Assuming the exemptions are properly invoked here, they should be waived.

One important consideration strongly supporting a waiver is that this Request concerns whether Executive Branch agencies (including the FBI) abused intelligence surveillance powers against American citizens in the Legislative Branch. Those troubling violations of separation-of-powers may well have been intended to serve the Executive Branch's own institutional purposes rather than legitimate national security interests.⁵ Violating the privacy of American citizens for politicized reasons, perhaps to shield the Executive Branch 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 data purchasing—itsself a troubling end-run around Fourth Amendment protections—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 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:

- First, withholding reports about potential agency misconduct puts a shadow on the FBI and other involved agencies. If documents remain secret—or if the FBI covers up a political operation to undermine congressional oversight—that hurts the FBI 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.
- 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 private information was purchased 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, we 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).

⁵ *See, e.g.,* Rebecca Heilweil, *The Trump administration forced Apple to turn over lawmakers' data. Democrats are outraged.*, VOX (June 14, 2021, 12:07 PM), <https://tinyurl.com/9hd84upk>.

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 attention to this important matter.

Sincerely,

Gene C. Schaerr
PPSA, Inc.
General Counsel



July 26, 2021

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, D.C. 20530-0001
MRUFOIA.Requests@usdoj.gov

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”.

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/>



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

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



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SURVEILLANCE ACCOUNTABILITY**

- Rep. W. Gregory Steube
- Rep. John Rutherford
- Rep. Mark Amodei
- 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



**PROJECT FOR PRIVACY &
SURVEILLANCE ACCOUNTABILITY**

- Former Rep. Pedro Pierluisi
- Former Rep. Howard Coble
- Former Rep. Elton Gallegly
- 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



**PROJECT FOR PRIVACY &
SURVEILLANCE ACCOUNTABILITY**

- Sen. Joshua D. Hawley
- Sen. Richard Blumenthal
- Sen. Thom Tillis
- 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; (II) PPSA requests a *Vaughn* index for any responsive materials that are withheld; and (III) this request is directed specifically at the following units and/or divisions within the Department of Justice: Federal Bureau of Investigation; National Security Division; Office of Information Policy; Office of the Attorney General; Office of the Deputy Attorney General; and Office of Legislative Affairs.

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**



PROJECT FOR PRIVACY &
SURVEILLANCE ACCOUNTABILITY

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.

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

ATTACHMENT B

U.S. Department of Justice



Federal Bureau of Investigation

Washington, D.C. 20535

September 28, 2021

MR. GENE C. SCHAERR
PROJECT FOR PRIVACY AND SURVEILLANCE ACCOUNTABILITY
SUITE 900
1717 K STREET NORTHWEST
WASHINGTON, DC 20006

FOIPA Request No.: 1505066-000
Subject: Government Purchases of the Private Data
of Members of the House and Senate Judiciary
Committees
(January 1, 2008 – July 26, 2021)

Dear Mr. Schaerr:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI. The FOIPA Request Number listed above has been assigned to your request. Below you will find information relevant to your request. Please read each paragraph carefully.

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, 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. Therefore, the FBI neither confirms nor denies the existence of records pursuant to FOIA Exemption (b)(7)(E) of 5 U.S.C. § 552.

Finally, 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. Please visit www.fbi.gov, select "Services," "Information Management," and "Freedom of Information/Privacy Act" for more information about making requests for records on third party individuals (living or deceased).

As a result, your request has been closed.

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.

ATTACHMENT B

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
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure

FBI FOIPA Addendum

ATTACHMENT B

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.

ATTACHMENT B**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.