



December 20, 2005

FOIA/PA Mail Referral Unit
Justice Management Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW.
Washington, DC 20530-0001.

**Re: REQUEST UNDER FREEDOM OF INFORMATION ACT /
Expedited Processing Requested**

Attention:

This letter constitutes a request by the American Civil Liberties Union and the American Civil Liberties Union Foundation (“ACLU”) under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Department of Justice implementing regulations, 28 CFR § 16.11.¹

I. The Request for Information

The ACLU seeks disclosure of any presidential order(s) authorizing the NSA to engage in warrantless electronic surveillance² and/or warrantless physical searches in the United States, created from September 11, 2001 to the present.³

¹ The American Civil Liberties Union Foundation is a 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educates the public about civil rights and civil liberties issues. The American Civil Liberties Union is a separate non-profit, non-partisan, 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

² The term “electronic surveillance” includes but is not limited to warrantless acquisition of the contents of any wire or radio communication by an electronic, mechanical, or other surveillance device, and the warrantless installation or use of an electronic, mechanical, or other surveillance device for monitoring to acquire information, other than from a wire or radio communication.

³ This request does not include surveillance authorized by 50 U.S.C. §§ 1802 or 1822(a).



In addition, the ACLU seeks disclosure of any record(s),⁴ document(s), file(s), communications, memorandum(a), order(s), agreement(s) and/or instruction(s), created from September 11, 2001 to the present, about:

1. any presidential order(s) authorizing the NSA to engage in warrantless electronic surveillance and/or warrantless physical searches in the United States;
2. the policies, procedures and/or practices of the NSA:
 - a. for identifying individuals, organizations or entities to subject to warrantless electronic surveillance and/or warrantless physical searches in the United States, including but not limited to any “checklist to follow in deciding whether probable cause existed to start monitoring someone’s communications,”⁵ or a requirement that there be a “clear link” between terrorist organizations and individuals subject to such surveillance;⁶
 - b. for gathering information through warrantless electronic surveillance and/or warrantless physical searches in the United States;
 - c. governing the maintenance and/or storage of information described in paragraph 2(b) above;
 - d. for analyzing and using information described in paragraph 2(b) above;
 - e. for sharing information described in paragraph 2(b) above with other government agencies;

⁴ The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

⁵ James Risen and Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, New York Times, Dec. 16, 2005, at A1, A16.

⁶ Transcript, President Bush’s Address, Dec. 17, 2005, available at <http://www.nytimes.com/2005/12/17/politics/17text-bush.html>



- f. for sharing information described in paragraph 2(b) above to be “used as the basis for F.I.S.A. warrant requests from the Justice Department,”⁷ or any other form of warrant;
 - g. for cross referencing information described in paragraph 2(b) above with information about other individuals, organizations, or groups;
 - h. for cross-referencing information described in paragraph 2(b) above with information in any database;
 - i. to suspend and/or terminate warrantless electronic surveillance and/or physical searches in the United States by the NSA;
 - j. governing the destruction of information described in paragraph 2(b) above;
 - k. for protecting the privacy of individuals who are subject to warrantless electronic surveillance and/or warrantless physical searches in the United States;
 - l. for consulting with, or obtaining approval from, the Justice Department or other departments, agencies, and/or executive branch officials before engaging in warrantless electronic surveillance and/or warrantless physical searches in the United States;
 - m. any minimization procedure, as that term is defined in 50 U.S.C. § 1801(h), for information described in paragraph 2(b) above;
3. the name of other government agencies with whom the information described in part 2(b) above is shared;
4. the date on which:
 - a. President Bush signed an order permitting the NSA to engage in warrantless electronic surveillance and/or warrantless physical searches in the United States;

⁷ Risen and Lichtblau, Dec. 16., at A16.



- b. the NSA began engaging in warrantless electronic surveillance and/or warrantless physical searches in the United States;⁸
5. the constitutionality, legality, and/or propriety of warrantless electronic surveillance and/or warrantless physical searches in the United States;
6. any Justice Department “legal reviews of the program and its legal rationale.”⁹
7. any actual or potential violations of, or deviations from, any policy, procedure or practice related to warrantless electronic surveillance and/or warrantless physical searches in the United States by the NSA;
8. any investigation, inquiry, or disciplinary proceeding initiated in response to any actual or potential violations of, or deviations from, any policy, procedure or practice related to warrantless electronic surveillance and/or warrantless physical searches in the United States by the NSA;
9. any Department of Justice audit of any NSA program carrying out warrantless electronic surveillance and/or warrantless physical searches in the United States;¹⁰
10. the number of:
 - a. individuals who have been subjected to warrantless electronic surveillance in the United States by the NSA since September 11, 2001;

⁸ It is unclear when the NSA began its domestic surveillance program and when the President provided written authorization for it to do so. On December 18, 2005, the New York Times reported that the NSA “first began to conduct warrantless surveillance on telephone calls and e-mail messages between the United States and Afghanistan months before President Bush officially authorized a broader version of the agency’s special domestic collection program.” Eric Lichtblau and James Risen, *Eavesdropping Effort Began Soon After Sept. 11 Attacks*, New York Times, Dec. 18, 2005.

⁹ Eric Lichtblau and David E. Sanger, *Administration Cites War Vote in Spying Case*, New York Times, Dec. 20, 2005.

¹⁰ Risen and Lichtblau, Dec. 16, at A16 (describing such an audit as taking place on or after 2004).