

December 16, 2024

Douglas A. Olson, Special Agent in Charge
Portland FBI Field Office, Federal Bureau of Investigation
Attn: FOIA/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Arnetta Mallory
FOIA Initiatives Coordinator
National Security Division
Department of Justice
Room 6150
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

RE: PUBLIC RECORDS REQUEST – ACLU of Oregon and Don't Shoot PDX

Dear Records Custodian,

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and its implementing regulations. The Request is jointly submitted by the American Civil Liberties Union of Oregon (ACLU of Oregon) and Don't Shoot PDX (Portland). This Request seeks information from the Federal Bureau of Investigation (“FBI”) pertaining to their work in the Portland Field Office to investigate, collect, and disseminate information on people engaged in protest and communities of color, and the adequacy of the privacy, civil rights, and civil liberties safeguards that apply to them. We respectfully request that this communication be directed to the appropriate FBI Field Office personnel to facilitate the fulfillment of our request.

This request seeks information to educate the public about the extent to which the Portland FBI Field Office:

1. monitors and collects information on people engaged in protest activity and/or associate protest with “terrorism,” and
2. whether their privacy, civil rights, and civil liberties policies are adequate to guard against abuses and discrimination.

Background

The FBI has a long track record of surveilling and disseminating information on First Amendment-protected activity without a nexus to criminal conduct. In the 1950s and 1960s, the FBI's notorious Counterintelligence Program deployed covert activities against prominent activists including Martin Luther King, Jr. In the late 1960s and 1970s, the FBI surveilled and investigated Black-owned bookstores on the grounds that the stores were purportedly centers of extremism. After 9/11, the FBI used JTTFs to conduct widespread "voluntary" interviews in Muslim communities during which agents asked people about their political beliefs.¹ And in August 2017, the FBI issued an intelligence assessment that designated "Black Identity Extremists Likely Motivated to Target Law Enforcement Officers" a new domestic terror threat.² This threat label is just one of many examples in a sordid history of efforts to harass, discredit, and disrupt Black activists who advocate against white supremacy and racial injustice.

Despite the ongoing risks posed to privacy, civil rights, and civil liberties, the FBI and its multiple intelligence divisions, including the field offices in cities scattered across the U.S and Puerto Rico, remain secretive and subject to scant oversight and accountability. As our nation's predominant law enforcement agency, the FBI should be tracking true threats, not wasting resources and inappropriately mapping American communities on the basis of race, ethnicity, national origin, or religion.

Activists in Oregon have also been vulnerable to unlawful surveillance by joint federal and state law enforcement offices for years.³ In order to promote greater transparency for Oregonians surrounding the nature of federal and local collaboration in monitoring people engaged in dissent and its impact on privacy and civil rights and liberties, the ACLU of Oregon and Don't Shoot Portland request copies of the following public records:

1. All final policies, guidance, procedures, directives, advisories, memoranda, agreements, training materials, and/or legal opinions created from January 20, 2017 to the present, pertaining to:
 - a. Responsibilities when officers are working to collect information about, monitor, surveil, observe, question, interrogate, and/or investigate individuals or organizations engaged in protest;

¹ E.g., Jodi Wilgren, A Nation Challenged: The Interviews; Michigan 'Invites' Men from Mideast to Be Interviewed, N.Y. Times (Nov. 27, 2001), <https://www.nytimes.com/2001/11/27/us/nation-challenged-interviews-michigan-invites-men-mideast-be-interviewed.html>; Mary Beth Sheridan, Interviews of Muslims to Broaden, Wash. Post (Jul. 16, 2004), <https://perma.cc/4HYV-M28E>

² <https://www.documentcloud.org/documents/4067711-BIE-Redacted.html>

³ <https://www.portlandmercury.com/news/2017/11/08/19453176/theres-a-new-call-for-portland-to-sever-ties-with-a-federal-terrorism-task-force>

- b. The activities and/or predicate criteria that trigger Portland FBI Field Office involvement, including the legal justification and/or factual showing required;
 - c. Intra-agency correspondence and correspondence among federal, state, and local law enforcement agencies pertaining to monitoring, surveilling, observing, questioning, interrogating, and/or otherwise investigating individuals or groups engaged in protest through or by the Portland FBI Field Office;
 - d. The collection, storage, use, and/or dissemination of data (including photographs, videos, and electronic surveillance records) obtained during and/or in connection with monitoring of individuals or groups engaged in protest through, to, or by the Portland FBI Field Office; and
 - e. Portland FBI Field Office's protection of privacy, civil rights, and civil liberties.
2. Records created from January 20, 2017 to the present, indicating:
 - a. The number of individuals whose activities have been investigated through, with, or by Portland FBI Field Office in connection with protests; and
 - b. The number and names of groups whose activities have been investigated through, with or by the Portland FBI Field Office in connection with protests; and
 - c. Investigation of Don't Shoot PDX; and
 - d. Investigation of the ACLU of Oregon; and
 - e. Investigation of Teresa Raiford; and
 - f. Investigation of Sean Kealiher.
3. Records created from January 20, 2017, to the present concerning the definition of the following terms as used and applied by the Portland FBI Field Office:
 - a. "Racially or Ethnically Motivated Violent Extremism";
 - b. "Black identity extremist";
 - c. "Black Identity Extremism movement";
 - d. "Anti-Government or Anti-Authority Violent Extremism";
 - e. "Animal Rights or Environmental Violent Extremism";
 - f. "All Other Domestic Terrorism Threats";
 - g. "Abortion-Related Violent Extremism";
 - h. "Domestic violent extremism";
 - i. "Domestic terrorism";
 - j. "Anarchist violent extremism";
 - k. "Radical agitator";
 - l. "Criminal organizers and instigator";
 - m. "Violent instigator";
 - n. "Antifa"; and
 - o. "Far-left extremist."

4. Records from January 20, 2017 containing the terms listed in Request 3.
5. Records from January 20, 2017 that name or refer to Don't Shoot Portland, Don't Shoot PDX, Black Gallery PDX, Teresa Raiford, Sean Kealiher, and/or ACLU of Oregon.
6. Records describing the process and/or procedures individuals may use to find out whether and what information about themselves has been collected and maintained by the Portland FBI Field Office, and the process by which any inaccurate information may be challenged and expunged.

* * *

Where a document contains information that falls into one or more of the categories described above, the ACLU of Oregon seeks the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. See 5 U.S.C. § 552(b).

With respect to the form of production, the ACLU of Oregon requests that responsive electronic records be provided electronically in their native file format. See 5 U.S.C. § 552(a)(3)(B). Alternatively, the ACLU of Oregon requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

Request for Expedited Processing

The ACLU of Oregon requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).⁴ There is a "compelling need" for these records, as defined in the statute, because the information requested is "urgen[tly]" needed by an organization primarily engaged in disseminating information "to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

1. The ACLU of Oregon is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.
2. The records sought are urgently needed to inform the public about actual or alleged government activity

⁴ See also 28 C.F.R. § 16.5(e) (DOJ, FBI); 6 C.F.R. § 5.5(e) (DHS).

These records are urgently needed to inform the public about actual or alleged government activity. See 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the use of the Portland FBI field office to investigate protesters and communities of color raises significant privacy, civil rights, and civil liberties concerns. Yet, there is little publicly-available information about how the Portland FBI Field Office gathers, uses, and disseminates information and data and the existence or effectiveness of any safeguards that are in place.

Specifically, the public does not know what activities the Portland FBI Field Office is engaging in in collaboration with local law enforcement; who they are targeting and how these targets are selected; what role federal and local law enforcement entities are playing; and whether adequate safeguards are in place to ensure that protestors' liberties and rights are protected. Thus, timely access to information regarding the Portland FBI Field Office's practices and policies to protect privacy, rights, and liberties is urgently needed to inform the public about this government activity, which has potentially far-reaching implications.

Request for Waiver or Reduction of Fees Because Disclosure Benefits the Public

The ACLU of Oregon requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).⁴⁹ The ACLU of Oregon also requests a waiver of search fees on the grounds that the ACLU of Oregon qualifies as a "representative[] of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

1. The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the ACLU of Oregon.

Both the ACLU of Oregon and Don't Shoot PDX are non-profit public interest organizations with missions that include educating the public about threats to an inclusive and free democracy, including threats compromising their privacy and right to protest. This Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the ACLU of Oregon. Because limited information about the Portland FBI Field Office is publicly available, the records sought are certain to contribute significantly to the public's understanding of the scope of involvement of these counter-terrorism tools in policing domestic protests.

Furthermore, the ACLU of Oregon also has the ability and commitment to ensure a significant portion of the public is educated about what it learns through this public records request. The

ACLU of Oregon frequently disseminates information to the public about government and law enforcement activities through our website, social media, legislative advocacy, and public engagement activities. Additionally, the ACLU of Oregon regularly communicates with over 30,000 members and supporters through the mail, e-mail, social media, and other online forums.

2. The ACLU of Oregon is a representative of the news media and the records are not sought for commercial use.

The ACLU of Oregon also requests a waiver of search fees on the grounds that the ACLU of Oregon qualifies as a “representative[] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU of Oregon meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III)⁵; see also *Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women’s Action Network v. DOD*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. DOJ*, No. C09–0642RSL, 2011WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU of Oregon’s to be “representatives of the news media” as well. See, e.g., *Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).⁶ On account of these factors, fees associated

⁵ See also 28 C.F.R. § 16.10(b) (FBI, NSD); 6 C.F.R. § 5.11(b)(6) (DHS).

⁶ Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information/public education activities. See, e.g., *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d; *Nat’l Sec. Archive*, 880 F.2d at

with responding to FOIA requests are regularly waived for the ACLU of Oregon as a “representative of the news media.” As was true in those instances, the ACLU of Oregon meets the requirements for a fee waiver here.

* * *

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 28 C.F.R. § 16.5(e)(4) (FBI, NSD); 6 C.F.R. § 5.5(e)(4) (DHS).

If the request is denied in whole or in part, the ACLU of Oregon asks that you justify all withholdings by reference to specific exemptions to FOIA. The ACLU of Oregon also asks that you release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526. The ACLU of Oregon reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Please send all correspondence and records relating to this request to Lisa Kwon at **publicrecords@aclu-or.org**. I certify that the foregoing information provided in support of the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,

Lisa Kwon
Legal Associate
ACLU of Oregon