



September 30, 2008

Maryland State Police Headquarters
1201 Reisterstown Road
Pikesville, MD 21208

Baltimore Police Department
242 W. 29th Street
Baltimore, MD 21211-2908

RE: Public Information Act Request

To Whom It May Concern:

This letter constitutes a request under the Maryland Public Information Act (“MPIA”), Maryland Code Annotated, State Government Article, §§10-611 to 628 and all other applicable regulations by the American Civil Liberties Union of Maryland on behalf of the American Friends Service Committee Mid-Atlantic Region, Baltimore Pledge of Resistance, Baltimore Emergency Response Network, Jonah House, or any of their members or employees, including Clinton Pettus, Max Obuszewski, Ellen Barfield, Maria Allwine, Marilyn Carlisle, Jay Gillen, Levanah Ruthschild, Cindy Farquhar, Sister Ardeth Platte, Sister Carol Gilbert, Susan Crane, and individuals connected thereto (clients of the ACLU of Maryland).

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I. The Requesters¹

The ACLU of Maryland is a branch of the American Civil Liberties Union, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy and free speech and expression. The ACLU of Maryland is responsible for serving the population in the State of Maryland. The communications department of the ACLU of Maryland is a division of the ACLU of Maryland that is responsible for disseminating information to the public about issues of concern to the ACLU of Maryland.

The Baltimore Pledge of Resistance (also referred to as Pledge of Resistance – Baltimore) is an anti-war organization located in Baltimore, Maryland. This organization works for peace through non-violent civil resistance, including efforts to educate the public.

The Baltimore Emergency Response Network is an anti-war organization located in Baltimore, Maryland. This organization works for peace through non-violent civil resistance, including efforts to educate the public.

The American Friend’s Service Committee is a Quaker social service and social justice organization.

Jonah House is a faith-based anti-war organization located in Baltimore. The organization works for peace through non-violent civil resistance.

¹ The term “Requesters” is defined as American Friends Service Committee Mid-Atlantic Region, Baltimore Pledge of Resistance, Baltimore Emergency Response Network, Jonah House, or any of their members or employees, including Clinton Pettus, Max Obuszewski, Ellen Barfield, Maria Allwine, Marilyn Carlisle, Jay Gillen, Levanah Ruthschild, Cindy Farquhar, Sister Ardeth Platte, Sister Carol Gilbert, Susan Crane, and the ACLU of Maryland.

II. Requests

The Requesters seek disclosure of any record(s),² document(s), file(s), communications, memorandum(a), order(s), agreement(s) and/or instruction(s), created from January 1, 2000, to the present, that were prepared, received, transmitted, collected and/or maintained by you, and/or any divisions, departments, components or field offices that you worked with. The recipient is requested to produce the data and documents as they are kept in the normal course of business.

If the recipient does not now have data or documents responsive to a particular request, but later obtains possession, custody, or control of such data or documents, the recipient is requested to furnish such data and/or documents immediately thereafter. If the recipient cannot respond to a request completely, the recipient is requested to provide the answer to the extent possible, explain why the recipient cannot respond to the request completely, and provide all information and knowledge in the recipient's possession, custody, or control regarding the incomplete response. If any data or document responsive to any request is unavailable, the recipient is to identify the data or document, provide an explanation concerning why the data or document is unavailable, and state where the data or document can be obtained.

If, in the course of responding to these data requests, the recipient determines that any instruction, definition, or data request is ambiguous, efforts should be made to contact counsel for the ACLU for any necessary clarification. In any such case, the response should set forth the language you feel is ambiguous and the interpretation you are using in responding to the request. If the recipient knows, or has reason to believe, that another agency or department in the State of Maryland has information sought in a request, or information related to a request, the recipient is requested to disclose the name of the specific agency or department that has the information.

As to the Maryland State Police, the requests below are a supplement to the requests previously submitted on August 29, 2006. Requesters believe that all of the documents requested were encompassed by the original requests, and to the extent responsive documents have already been produced, they need not be produced again, but should simply be referenced in the response.

1. Any records relating or referring to the Requesters, including but not limited to records that document any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information relating to Requesters or any person identified as associated with Requesters, either as an employee, volunteer, member, or in any other capacity, or any event sponsored by Requesters.

2. Any orders, agreements, or instructions to monitor, conduct surveillance, question, interrogate, investigate, infiltrate, and/or collect information relating to the Requesters.

3. Any records relating or referring to how, why, or when the Requesters or their members were selected to be a subject of monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information.

² 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, e-mails, text messages, 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.

4. Any records relating or referring to how, why or when monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information relating to the Requesters or any of their members was or will be suspended or terminated.

5. Any records relating or referring to how monitoring, surveillance, observations, questioning, interrogation, investigation, infiltration and/or collection of information relating to the Requesters or their members was or will be conducted, including any records indicating whether any employee subscribed to any listserv or e-mail mailing list or physical mailing list operated by or on behalf of any Requester.

6. Any records relating or referring to the names of any other federal, state or local government agencies participating in or requesting any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information relating to the Requesters or their members.

7. Any records relating or referring to the specific role of any federal, state or local government agency participating in or requesting any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information relating to the Requesters or any of their members.

8. Any records relating or referring to how records about the Requesters or any of their members have been, will be, or might be used, or documenting how or with whom or with which other agencies, public or private, any records have been shared or disseminated, including by means of inclusion into a database to which any other governmental or non-governmental agency or entity has access in any way.

9. Any memoranda of understanding or other agreements regarding the sharing of threat information with the National Security Agency.

10. Any databases, lists or other compilations of records that include the Requesters or any of their members.

11. Any policies or procedures regarding targeting, surveilling, monitoring, infiltrating, or collection of information, or the methods of such, about persons or groups engaged in political protest activities, including policies or procedures regarding the use of undercover officers or confidential informants with respect to such persons or groups.

12. Any policies concerning the investigatory methods that may be used, and the record keeping requirements applicable, in investigations of persons or organizations engaged in political activity.

13. Any policies or procedures to ensure compliance with 28 C.F.R. § 23.20, including, but not limited to, the certification and written acceptance of principles required by 28 C.F.R. § 23.30(d) in connection with the Washington/Baltimore High Intensity Drug Trafficking Area.

14. All records relating to any lists (or directives, orders or instructions to prepare or maintain lists) of potential security threats, or security threat groups, in the State of Maryland or other locations that include the Requesters).

15. Any e-mails sent to or from any of the Requesters.

16. All records that records exist that define or explain the term “security threat group” as used with respect to the Baltimore Pledge of Resistance in the Washington/Baltimore HIDTA Case Explorer database, and that delineate the criteria for labeling groups as such, and records that provide any factual basis to identify the Baltimore Pledge of Resistance as being a such a group.

17. All records that explain or delineate the elements of the offenses “terrorism-anti government” and “terrorism-anti-war protestors” and that identify the relevant sections of Maryland or Federal Code that create those offenses, and that provide the factual basis for linking Max Obuszewski to those offenses in the Washington/Baltimore High Intensity Drug Trafficking Area Case Explorer database.

18. A copy of the full Intelligence Report or any other document to which the Supplement to Intelligence Report Initiated by Agent Sparwasser (previously released to the ACLU of Maryland) is a supplement, appendix, attachment.

19. All records indicating the rank and identity of the highest ranking person who approved, authorized, or ordered the surveillance documented in the documents previously released to the ACLU of Maryland by the Maryland State Police.

20. Copies of the original case reports or notes that formed the basis for the summary logs previously produced to the ACLU of Maryland.

21. Copies of any responses by supervisors to the case reports made by the officers conducting the surveillance reflected in the logs previously produced to the ACLU of Maryland, including any authorizations or directions that the surveillance continue.

22. All records that explain why the Baltimore City Police Department was making reports to the National Security Agency Police as reflected in the documents attached hereto as Exhibits 1 -3, as well as copies of any such reports made, orders directing that the surveillance take place, and policies applicable to such surveillance.

23. All records that explain why, in response to a Public Information Act request dated August 29, 2006, Maria Korman of the Baltimore Police Department’s Office of Legal Affairs asserted that she spoke with the officer in charge of BPD's intelligence unit, who said that he was familiar with Exhibit 1 from media calls, and said that the unit it referred to was not them, and that perhaps it referred to a unit of the NSA police.

To the extent documents responsive to these requests have already been produced to the ACLU of Maryland, the documents need not be produced again, but should be specifically referenced in the answers to each request.

III. Waiver of Fees

The ACLU of Maryland requests a waiver of all fees pursuant to State Government Article §10-621(e), which allows the custodian to waive fees when the applicant requests a waiver and “after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.” Moreover, under the Freedom of Information Act, 5 U.S.C. §552(a)(4)(A)(ii)II, “[d]ocuments shall be furnished without any charge ... if disclosure of the information 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 the commercial interest of the requester.” The

ACLU of Maryland is a non-profit, tax-exempt organization dedicated to the public interest—protecting the civil liberties of the citizens of and visitors to Maryland. Disclosure of the requested information is in the public interest. This request will further public understanding of government conduct; specifically, the surveillance and infiltration of organizations on the basis of organizational membership, political views or affiliation, or participation in protest activities or demonstrations. This type of government activity concretely affects many individuals and groups and implicates basic privacy, free speech, and associational rights protected by the Constitution. In addition, disclosure of the requested information will aid public understanding of the implications of spying on organizations without a threshold showing of suspected criminal activity. Understanding the current scope of the government’s surveillance and infiltration of law-abiding organizations is, therefore, crucial to the public’s interest in understanding recent developments in the law vis-à-vis their rights.

As a nonprofit 501(c)(3) and 501(c)(4) organization, the ACLU of Maryland is well-situated to disseminate information it gains from this request to the general public as well as to immigrant, religious, politically active, and other targeted communities, and to groups that protect constitutional rights. Because the ACLU of Maryland meets the test for a fee waiver under FOIA, fees associated with responding to FOIA requests are regularly waived for ACLU affiliates and should therefore be waived under MPIA.

IV. Expediting Processing Request.

Section 10-614(b) requires a response to this request within 30 days. Expedited processing is warranted in analogous federal situations where there is “an urgency to inform the public about actual or alleged federal government activity” by organizations “primarily engaged in disseminating information.” 28 C.F.R. § 16.5(d)(1)(ii).

This request implicates a matter of urgent public concern; namely, the surveillance of individuals and surveillance and/or infiltration of political, religious and community organizations by the government. Such government activity may infringe upon the public’s free speech, free association, and privacy rights, which are guaranteed by the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. In addition, as described above, the ACLU of Maryland is well situated to disseminate information it gains from this request to the general public as well as to immigrant, religious, politically active, and other targeted communities, and to groups that protect constitutional rights. Given the urgency of the matter and the ACLU’s nature, expedited processing is warranted here.

Finally, if you determine that some portions of the requested records are exempt from disclosure, we will expect, as the Act provides in § 10-614 (b)(3)(iii), that you provide us with “any reasonable severable portion” of the records sought. See *Blythe v. State*, 161 Md. App. 492, 870 A.2d 1246 (2005) (holding that “the denials of inspection that are permitted are not blanket denials for an entire record but are more narrowly focused denials of “a part of public record”).

If all or any part of this request is denied, please provide us with a written statement of the grounds for the denial, citing the law or regulation under which you believe you may deny access. If this is the case, we also request that you inform us of the available remedies for review of the denial.

In addition, we would like to call your attention to the discretionary nature of § 10-618(f)(1)(ii) exemptions to the duty to disclose. If such an exemption to the MPIA is asserted it will be construed narrowly by the courts, and the burden rests on the custodian of the records to

show that such records should not be released. See Cranford v. Montgomery, 300 Md. 759, 777, 481 A.2d 221 (1984).

Thank you for your prompt attention to this matter. Please furnish all applicable records to me at the following address:

ACLU of Maryland
3600 Clipper Mill Rd.
Suite 350
Baltimore, MD 21211

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,

David Rocah
Staff Attorney

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND