

August 29, 2006

Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

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

Governor's Office of Homeland Security
100 State Circle
Annapolis, MD 21401-1925

Maryland Joint Terrorism Task Force
7155-C Columbia Gateway Drive
Columbia, MD 21046

Maryland State Police Headquarters
Homeland Security and Investigations
Bureau
1201 Reistertown Road
Pikesville, MD 21208

Maryland National Guard
Public Affairs Office
Fifth Regiment Armory
Baltimore, MD 21201

Re: Public Information Act Request

Attention:

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 Baltimore Pledge of Resistance, the Baltimore Emergency Response Network (“BERN”), Jonah House, and the American Friends Service Committee, Middle Atlantic Region’s Baltimore Office (“AFSC/Baltimore”), clients of the ACLU of Maryland (hereinafter referred to as “the Requesters”).

I. The Requesters.¹

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.

¹ The term “Requesters” or references to individual requesters as used herein is defined as the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, the American Friends Service Committee, Middle Atlantic Region’s Baltimore Office, and the members of those organizations.

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. Among other non-violent activities, the Baltimore Pledge of Resistance has periodically traveled to the National Security Agency's facilities in Ft. Meade, Maryland to protest the NSA's activities and petition for changes in NSA policies and practice. The Baltimore Pledge of Resistance believes it has likely come under federal monitoring by the NSA and/or the FBI and possibly the Joint Terrorism Task Forces of the FBI. This includes, for example, monitoring or surveillance on or about October 2-4, 2003 and July 3-4, 2004 in connection with non-violent protest activities at the NSA.

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. Among other non-violent activities, the Baltimore Emergency Response Network has periodically traveled to the National Security Agency's facilities in Ft. Meade, Maryland to protest the NSA's activities and petition for changes in NSA policies and practice. The Baltimore Emergency Response Network believes it has likely come under federal monitoring by the NSA and/or the FBI and possibly the Joint Terrorism Task Forces of the FBI. This includes, for example, monitoring or surveillance on or about October 2-4, 2003 and July 3-4, 2004 in connection with non-violent protest activities at the NSA.

Jonah House is a faith-based anti-war organization located in Baltimore, Maryland. This organization works for peace through non-violent civil resistance, including efforts to educate the public. Among other non-violent activities, Jonah House has periodically traveled to the National Security Agency's facilities in Ft. Meade, Maryland to protest the NSA's activities and petition for changes in NSA policies and practice. Jonah House believes it has likely come under federal monitoring by the NSA and/or the FBI and possibly the Joint Terrorism Task Forces of the FBI. This includes, for example, monitoring or surveillance on or about October 2-4, 2003 and July 3-4, 2004 in connection with non-violent protest activities at the NSA.

The American Friends Service Committee, Middle Atlantic Region is a faith-based, peace-building organization with a branch located in Baltimore, Maryland. This organization works for peace through non-violent civil resistance, including efforts to educate the public. The offices of the AFSC/Baltimore served as an assembly point for individuals who traveled to the National Security Agency's facilities in Ft. Meade,

Maryland to protest the NSA's activities and petition for changes in NSA policies and practice. The AFSC/Baltimore believes it has likely come under federal monitoring by the NSA and/or the FBI and possibly the Joint Terrorism Task Forces of the FBI. This includes, for example, monitoring or surveillance on or about October 2-4, 2003 and July 3-4, 2004 in connection with non-violent protest activities at the NSA.

II. Request.

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, 2001, to the present, that were prepared, received, transmitted, collected and/or maintained by the Maryland State Police Department, Baltimore Police Department, Office of Homeland Security, Office of the Attorney General, Maryland National Guard, and/or the Maryland Military Department, and/or any of their divisions, departments, components or field offices, including but not limited to information relating or referring to the following:

1. Any records relating or referring to the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore, including but not limited to records that document any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information relating to these organizations or their members.

2. Any orders, agreements, or instructions to monitor, conduct surveillance, question, interrogate, investigate, infiltrate, and/or collection information relating to the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or their members.

3. Any records relating or referring to how, why or when the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore 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, 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 monitoring, surveillance, observations, questioning, interrogation, investigation, infiltration and/or collection of information relating to the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or their members was or will be conducted.

5. Any records relating or referring to the names of any other federal, state or local government agencies participating in any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information relating to the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or their members.

6. Any records relating or referring to the specific role of the National Joint Terrorism Task Force or any local Joint Terrorism Task Force, including any Baltimore, Maryland Joint Terrorism Task Force, in any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information relating to the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members.

7. Any records relating or referring to the specific role of any federal, state or local government agency participating in any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information relating to the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members.

8. Any records relating or referring to how records about the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members have been, will be, or might be used.

9. Any databases, lists or other compilations of records that include the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members that were prepared are or maintained for monitoring or surveillance, or other law enforcement or anti-terrorism purposes.

10. Any policies or procedures for cross-referencing records about the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members with information about any other organizations or individuals.

11. Any policies or procedures regarding retention of records about the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members.

12. All records referring or relating to the destruction of records relating to the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members.

13. 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 Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members was or will be suspended or terminated.

14. All records relating to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information about the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members, including Max Obuszewski, Ellen Barfield, Cindy Farquhar, Maria Allwine, Marilyn Carlisle, Jay Gillen, Levanah Ruthschild, Sister Ardeth Platte, Sister Carol Gilbert, Susan Crane or other individuals, in connection with assemblies at the AFSC/Baltimore in Baltimore, Maryland.

15. All records relating to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information about the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore or any of their members, including Max Obuszewski, Ellen Barfield, Maria Allwine, Marilyn Carlisle, Jay Gillen, Levanah Ruthschild, Cindy Farquhar, Sister Ardeth Platte, Sister Carol Gilbert, Susan Crane or other individuals, in connection with protests, demonstrations or other visits or trips to the National Security Agency in Ford Meade, Maryland since January 1, 2001, including such activities on or about July 3-4, 2003, October 3-4, 2003, July 4, 2004 and July 4, 2005.

16. All records relating to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, arrest or detention of Cindy Farquhar or other members of the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, or Jonah House in Towson, Maryland on March 1, 2003, or communications between federal and state or local agencies or authorities relating to that arrest or detention or those activities.

17. All records relating to any database (including the Talon database and other databases managed by the Counter Intelligence Field Activity or CIFA) used for law enforcement or domestic surveillance or monitoring purposes, or for maintaining information that includes the names of organizations involved in anti-war activities, demonstrations or other protest activities (including the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore).

18. All records relating to any lists (or directives, orders, or instructions to prepare or maintain lists) of potential security threats or Potential Threat Elements (“PTEs”), including any records relating to the criteria to be used in designated PTEs, in the State of Maryland or other locations that include the names of organizations or individuals involved in anti-war activities, demonstrations or other protest activity (including the Baltimore Pledge of Resistance, the Baltimore Emergency Response Network, Jonah House, or the AFSC/Baltimore).

19. All records relating to any coordination by, between or among the FBI and the State of Maryland or any county, city or town within Maryland relating in any way to Joint Terrorism Task Force activities that include the monitoring, surveillance, questioning, interrogation, and/or investigation of individuals or organizations on the basis of organizational membership, political views or affiliation, or participation in protest activities or demonstrations.

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 consequences of a change in government policy that has likely resulted in increased 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 our outside counsel at the following address:

Richard A. Rinkema
Heller Ehrman LLP
1717 Rhode Island Avenue, N.W.
Washington, D.C. 20036-3001
(202) 912-2000

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,

A handwritten signature in black ink that reads "David Rocah" followed by a vertical line and the initials "RAR".

David Rocah, Staff Attorney
ACLU of Maryland