

February 1, 2006

Directorate for Freedom of Information
and Security Review, Room 2C757
1155 Defense Pentagon
Washington, DC 20301-1155

Department of the Army
Freedom of Information and Privacy Acts Office
TAPC-PDR-PF
7798 Cissna Road, Suite 205
Springfield, VA 22150-3166

Department of the Navy
Commandant of the Marine Corps (ARAD)
Headquarters U.S. Marine Corps,
2 Navy Annex
Washington, DC 20380-1775

Department of the Air Force
11CS/SCSR (FOIA)
1000 Air Force Pentagon
Washington, DC 20330-1000

Inspector General of Department of Defense
Chief FOIA/PA Office
400 Army Navy Drive, Room 405
Arlington, VA 22202-2884

Defense Intelligence Agency (DIA)
ATTN: SVI-1
Washington, DC 20340-5100

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

Attention:

This letter constitutes a Request under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Department of Defense implementing regulations, 32 C.F.R. §

286.1 *et seq.*, by the Rhode Island Affiliate, American Civil Liberties Union and the American Civil Liberties Union Foundation of Rhode Island, on their own behalf, and on behalf of the Rhode Island Community Coalition for Peace, the Green Party of Rhode Island, the South Kingstown Justice and Peace Advocacy Group, and the Providence Branch of the International Socialist Organization, (collectively, “the Requesters”).

I. The Requesters

1. **The Rhode Island Affiliate, American Civil Liberties Union and the American Civil Liberties Union Foundation of Rhode Island** (collectively, “RI ACLU”) are Rhode Island non-profit corporations with a principal place of business at 128 Dorrance Street, Suite 220, Providence, RI 02903.¹ The RI ACLU is an affiliate of, and associated with, the American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively, “ACLU”). This request is filed in coordination with the ACLU.

The ACLU is a national organization that works to protect civil rights and civil liberties. As the leading defender of freedom, equality, privacy, and due process rights in the United States, the ACLU has challenged the United States government’s broad targeting and surveillance of innocent people as part of the war on terrorism, the government’s crackdown on criticism and dissent, and the secret and unchecked surveillance powers of the USA PATRIOT Act.

In particular, the RI ACLU and ACLU attorneys around the country have provided direct representation to individuals and organizations targeted by federal, state and local police for exercising their First Amendment right to criticize the government. Those whom the ACLU has represented include people who participated in numerous rallies and marches to protest the war in Iraq, who were excluded from meaningful participation at public presidential speeches, and who protested at the 2004 Republican and Democratic National Conventions. Both the ACLU and RI ACLU have filed FOIA requests seeking to discover the scope and nature of the surveillance activities of the FBI’s Joint Terrorism Task Forces and other related FOIA requests.

In addition, RI ACLU regularly holds public membership meetings at which a wide range of civil liberties issues are discussed and debated, including those relating to free speech activity and the war on terrorism. Last year, for example, the RI ACLU held a series of forums on the USA Patriot Act, at which the United States Attorney for Rhode Island participated. The RI ACLU also routinely provides information to the public and the

¹ The American Civil Liberties Union Foundation of Rhode Island 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 Rhode Island Affiliate, American Civil Liberties Union is a separate non-profit, non-partisan, 501(c)(4) membership organization that educates the public about the civil rights and 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.

media through print and online communications about the erosion of civil rights and civil liberties after September 11, and encourages RI ACLU members and activists to oppose government anti-terrorism policies that violate civil rights and civil liberties.

2. **The Rhode Island Community Coalition for Peace** (“RICCP”) (initially formed as the Community Coalition for Peace) was formed in late November 2004. The group is comprised of individual members as well as representatives of officially endorsing groups, and has a listserv of more than 300 people. In addition to calling for the immediate withdrawal of troops from Iraq, RICCP opposes the USA PATRIOT Act.

RICCP has organized many public events. A March 19, 2004 rally and march through downtown Providence drew about 500 people. A December 2004 peaceful protest in front of the RI National Guard Office in downtown Providence drew approximately 50 people, and is the one Rhode Island event that has thus far been publicly disclosed as being contained in a TALON database. RICCP sponsored an appearance by anti-war activist Cindy Sheehan last July, and helped organize transportation for a substantial Rhode Island presence at the September 24, 2005 anti-war march in Washington, D.C. RICCP remains very active in ongoing military counter-recruitment efforts.

3. **The Green Party of Rhode Island** (“GPRI”) has been actively involved in politics in Rhode Island since 1992, emphasizing ecology, equality, democracy and peace. GPRI has run candidates for office in every election cycle since 1994, and actively participated in a variety of public policy debates in the state. GPRI has been very involved in peace issues, helping to organize numerous rallies for peace around the Iraq war, initiating a series of policy forums relating to U.S. energy and war policy, and opposing the Patriot Act. GPRI members were involved in the creation of the RI Community Coalition for Peace and active in the December 2004 rally at the downtown Providence National Guard recruiting center that was included in a TALON database.

4. **The South Kingstown Justice and Peace Action Group** (“SKJPAG”) is made up of a diverse group of area citizens, and seeks positive change promoting justice and peace. Past and current activities include participation in a “Pledge of Resistance” campaign on the eve of the U.S. invasion of Iraq, collaboration with other progressive organizations in Rhode Island, local hosting of national speakers, school presentations, member appearances on radio talk shows, and newspaper editorials on the issues of the day. SKJPAG was successful in working with the South Kingstown Town Council to pass a town resolution opposing provisions of the USA PATRIOT Act that violate civil liberties.

5. **The Providence (RI) Branch of the International Socialist Organization** (“ISO”) has been active since 1992. Among other activities, the ISO organized protests against President George W. Bush’s inauguration in 2001 and 2005. The ISO in Providence has worked closely with the RI Community Coalition for Peace to protest military recruitment in downtown Providence and at Rhode Island College, and to organize buses to the September 24, 2005 anti-war protest in Washington, D.C. Other public protest

activity by the ISO includes a rally against torture last summer and a march and rally in Providence on the March 19th anniversary of the invasion of Iraq.

II. The Request for Information

The Requesters² seek disclosure of any record(s),³ 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 Department of Defense (“DoD”) or any of its components, including but not limited to the Counterintelligence Field Activity Agency (“CIFA”), its Directorate of Field Activities (“DX”), and their Threat and Local Observation Notice (“TALON”) database,⁴ relating or referring to the following:

1. information collected about any of the Requesters or their activities⁵, or collected about any other anti-war or anti-military recruitment activities in Rhode Island;
2. orders or instructions to collect information about any of the Requesters or their activities, or to collect information about any other anti-war or anti-military recruitment activities in Rhode Island;
3. the inclusion of any of the Requesters or their activities, or of any other anti-war or anti-military recruitment activities in Rhode Island, in a TALON database;
4. how, why or when any of the Requesters or any of their activities, or any other anti-war or anti-military recruitment activities in Rhode Island, were selected as a target for DoD information-gathering or for inclusion in a TALON database;

² The term “Requesters” as used herein is defined as all of the organizations identified in Section I of this letter, as well as their employees, members, and board of directors.

³ 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 The term “TALON database” as used herein includes any database in which TALON reports are kept, including the “Cornerstone” database, the Joint Protection Enterprise Network (“JPEN”), all other databases created or controlled by CIFA, and database projects outsourced to private firms – which include, according to an NBC News report, “Person Search” (Northrup contract) and “The Insider Threat Initiative” (Computer Sciences Corp. contract), among others. *See* Lisa Myers et al., “Is the Pentagon Spying on Americans?,” msnbc.com, December 14, 2005.

⁵ The term “activities” as used in Section II.A includes, but is not limited to, any advocacy, provision of services, litigation, lobbying, organizing, fundraising, meetings, marches, rallies, protests, conventions, or campaigns, and any media or communications to, from or about the Requesters in any form (including any oral, written, electronic or online communications, including but not limited to any books, pamphlets, brochures, newsletters, fundraising letters, correspondence, action alerts, e-mail, web communications, discussion groups, or listservs).

5. the means by which information about any of the Requesters or their activities, or information about any other anti-war or anti-military recruitment activities in Rhode Island, was or will be collected, including but not limited to any instances in which DoD personnel gathered information via informants, by collecting information from websites, by infiltrating any of the Requesters in an undercover capacity, or by attending rallies, protests, demonstrations, organizational meetings or other gatherings organized by any of the Requesters or in which any of the Requesters participated;
6. how records about any of the Requesters or their activities have been, are being, will be, or might be used, shared with another agency, or disseminated;
7. the retention of records about any of the Requesters or their activities, or about any other anti-war or anti-military recruitment activities in Rhode Island;
8. the destruction of records about any of the Requesters or their activities, including any policies, orders, or directives requiring, permitting or prohibiting the destruction of such records;
9. policies or procedures in place to protect the privacy of records that refer or relate to the employees, members, and/or board of directors of any of the Requesters; and
10. how, why or when the collection of information about any of the Requesters or their activities, or the inclusion of any of the Requesters or their activities in a TALON database, was or will be suspended or terminated.

III. Limitation of Processing Fees

The RI ACLU requests a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .”) and 32 C.F.R. § 286.28(e)(7) (search and review fees shall be limited to duplication fees for the first 100 pages for “representatives of the news media”). As a “representative of the news media,” the RI ACLU fits within this statutory and regulatory mandate. Fees associated with the processing of this Request should, therefore, be limited accordingly.

The RI ACLU meets the definition 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 raw materials into a distinct work, and distributes that work to an audience.” *National Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); cf. *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Dissemination of information to the public is a critical and substantial component of the ACLU and RI ACLU's mission and work. Specifically, the RI ACLU publishes newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly disseminated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations and not-for-profit groups at no cost. The RI ACLU also disseminates information through its heavily visited web site: www.riaclu.org. The web site addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many documents relating to the issues on which the RI ACLU is focused. The ACLU website, www.aclu.org, also specifically includes features on information obtained through the FOIA. *See, e.g.*, www.aclu.org/torturefoia; www.aclu.org/spyfiles. Finally, the RI ACLU produces a monthly cable television show on civil liberties.

Depending on the results of the Request, the RI ACLU plans to disseminate the information gathered by this Request to the public through these kinds of publications in these kinds of channels. The RI ACLU is therefore a "representative of the news media." *Cf. Electronic Privacy Information Ctr. v. Dep't of Defense*, 241 F.Supp.2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the media" for purposes of FOIA).

Finally, disclosure is not in the RI ACLU's commercial interest. The RI ACLU is a "non-profit, non-partisan, public interest organization." *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003). Any information disclosed by the RI ACLU as a result of this FOIA Request will be available to the public at no cost.

IV. Waiver of all Costs

The RI ACLU additionally requests a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents 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."). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)).

Disclosure of the requested information is in the public interest. This Request will further public understanding of government conduct: specifically, the DoD's domestic intelligence-gathering activities and its possible targeting of individuals, organizations and groups for surveillance based on their political viewpoints, affiliations, or activities. This type of government activity concretely affects many individuals and groups and implicates basic privacy, free speech, and associational rights protected by the Constitution.

Moreover, disclosure of the requested information will aid public understanding of policy decisions taken over the past two months in response to public revelations that CIFA, a DoD component whose size and budget remain secret, has been spying on domestic organizations and their peaceful political activities. See Walter Pincus, "Pentagon's Intelligence Authority Widens," *Washington Post*, December 19, 2005. After NBC News obtained and reported on a secret 400-page DoD document that included dozens of anti-war meetings or protests as "suspicious incidents" in which the Department had apparently taken an investigative interest, see Lisa Myers et al, "Is the Pentagon Spying on Americans?," msnbc.com, December 14, 2005, DoD officials ordered a review of the information in its TALON intelligence database to determine whether information on subjects that were determined to pose no threat was improperly retained in the system. See Walter Pincus, "Pentagon Will Review Database on U.S. Citizens," *Washington Post*, December 15, 2005. The administration subsequently initiated the process of setting standards to govern how its agencies collect and maintain reports of activity they consider suspicious. See Walter Pincus, "Corralling Domestic Intelligence," *Washington Post*, January 13, 2006. And recently, Deputy Secretary of Defense Gordon England directed that DoD intelligence and counterintelligence personnel receive "refresher training" on policies regarding the collection, retention, dissemination and use of intelligence information, and that the TALON database be reviewed to identify reports that should not be in it. See Memorandum from Gordon England, Deputy Sec'y of Defense, to Secretaries of the Military Departments et al., January 13, 2006. Understanding the current scope of the DoD's monitoring of law-abiding individuals, organizations and groups is, therefore, crucial to the public's interest in determining the legality of the Pentagon's domestic intelligence program and in understanding the implications of DoD's recent policy shifts.

As a nonprofit 501(c)(3) organization and "representative of the news media" as discussed in Section III, the RI ACLU is well-situated to disseminate information it gains from this Request to the general public and to groups that protect constitutional rights. Because the ACLU, RI ACLU's parent organization, meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.⁶

The records requested are not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this FOIA Request through the channels described in Section III. As also stated in Section III, the RI ACLU will make

⁶ For example, in May 2005, the United States Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request submitted that month regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. Also, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in August of 2004. In addition, the Office of Science and Technology Policy in the Executive Office of the President said it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003. In addition, three separate agencies – the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice – did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

any information disclosed as a result of this FOIA Request available to the public at no cost.

V. Expedited Processing Request

Expedited processing is warranted because there is an “urgent[] need[]” on the part of an organization “primarily engaged in disseminating information” “to inform the public concerning actual or alleged Federal Government activity.” 32 C.F.R. § 286.4(d)(3)(ii).

The RI ACLU is “primarily engaged in disseminating information” for the same reasons it is a “representative of the news media,” as discussed in Section III. This Request clearly relates to activity of the federal government, namely, the collection and retention of information by the Department of Defense.

There is an “urgent need” to inform the public about DoD’s extensive monitoring and surveillance of individual citizens, as well as political, religious, and community organizations throughout the nation. 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. Requests for information bearing upon potential constitutional violations require an immediate response so that steps may be taken to ensure any violations cease and future violations are prevented.

The possibility that the government is targeting individuals, organizations and groups for surveillance on the basis of their political viewpoints, affiliations, or activities raises fundamental questions about the government’s integrity. The government’s singling out its political enemies on the basis of their political viewpoint is a critical issue with a long history dating back to the founding of the nation. Questions about the government’s integrity in these areas substantially affect the public’s confidence in law enforcement and the legal system.

Moreover, the investigation of individuals and organizations because of their political views and expressive or associational activity may have a chilling effect on the exercise of First Amendment rights by others. *See, e.g., Thornhill v. Alabama*, 310 U.S. 88, 97 (1940) (“It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion.”). The chilling effect here may be exacerbated by the fact that the public has little information about what policies and procedures govern the DoD’s secretive CIFA component and its surveillance activities.

DoD’s regulations implementing FOIA specify that information is “[u]rgently needed” where the information “has a particular value that will be lost if not disseminated quickly” – a criterion that is generally met by “a breaking news story of general public interest.” 32 C.F.R. § 286.4(d)(3)(ii)(A). Here, there is extensive public and media interest in the use of the military to gather intelligence domestically on anti-war/counter-

recruitment demonstrators and others engaging in protected activity. The initial NBC News report disclosing the extent of the Pentagon's surveillance of peaceful demonstrations and organizations, *see* Lisa Myers et al, "Is the Pentagon Spying on Americans?," msnbc.com, December 14, 2005, generated widespread attention from the news media and public officials both nationally and locally. Since the NBC report, there have been numerous news reports on CIFA, the TALON database and its potential use, and government officials' various responses to the disclosure of the scope of DoD surveillance of domestic political activities. *See, e.g.*, Walter Pincus, "Unverified Reports of Terror Threats Linger," *Washington Post*, January 31, 2006; Michael Isikoff, "The Other Big Brother," *Newsweek*, January 30, 2006; "Bad Targeting," *Washington Post*, January 30, 2006 (editorial); Frances Grandy Taylor, "The Pacifist 'Threat'; Disclosure of Recent Government Surveillance of Quaker Activities Doesn't Surprise Members," *Hartford Courant*, January 16, 2006; Sarah Kershaw, "A Protest, a Spy Program and a Campus in Uproar," *New York Times*, January 14, 2006; Walter Pincus, "Corralling Domestic Intelligence," *Washington Post*, January 13, 2006; David Kaplan, "The Eyes Have It," *U.S. News & World Report*, January 9, 2006; "A Fog of False Choices," *New York Times*, December 20, 2005 (editorial mentioning Pentagon program); Walter Pincus, "Pentagon's Intelligence Authority Widens," *Washington Post*, December 19, 2005; "What Can't the Pentagon Understand About American's Right Peaceably to Assemble," *Fayetteville Observer*, December 19, 2005 (editorial); "Big Brother Bush," *Pittsburgh Post-Gazette*, December 18, 2005 (editorial); David S. Cloud, "Pentagon is Said to Mishandle a Counterterrorism Database," *New York Times*, December 16, 2005; Arianna Huffington, "It's Dirty Tricks All Over Again," *Salt Lake City Tribune*, December 16, 2005 (syndicated column appearing in other papers as well); Chris Matthews, "Update: Pentagon Eyeing Activist Groups?," *Hardball*, December 16, 2005 (interview by Chris Matthews with Lisa Myers of NBC news); Walter Pincus, "Pentagon Will Review Database on U.S. Citizens," *Washington Post*, December 15, 2005; Associated Press, "Pentagon to Review Spy Files After NBC Report," msnbc.com, December 15, 2005 (also printed elsewhere including foxnews.com); Vicky O'Hara, "Pentagon to Probe Abuse of Security Database," *National Public Radio, All Things Considered*, December 15, 2005; Charles Aldinger, "Pentagon Admits Compiling Data on Antiwar Activists," *Capitol Hill Blue*, December 15, 2005 (Reuters article reprinted elsewhere as well including Yahoo! News); Kevin Deutsch, "Pentagon Calls Lake Worth Peace Meeting a 'threat,'" *Palm Beach Post*, December 15, 2005; Robert Burns, "Pentagon to Review Possible Database Misuse," *boston.com*, December 15, 2005 (Associated Press writer posted on cite that hosts the Boston Globe); Steven Elbow, "Local Anti-War Protest on Pentagon List," *Madison.com*, December 15, 2005.

There has also been heavy media coverage in Rhode Island about this issue, in light of the release by MSNBC of limited excerpts from a TALON database indicating that at least one military recruitment protest in Rhode Island was listed. *See, e.g.*, Gerald Carbone, "Pentagon Tracked Activities of R.I. Antiwar Group," *Providence Journal*, December 21, 2005; Elizabeth Gudrais, "Anti-war Protesters Find Nobody Home in March on Guard Recruiting Office," *Providence Journal*, December 22, 2005.

That there is widespread public concern regarding this program is demonstrated not only by the quantity of news reports it has generated but also by official reaction to these

reports, including the initiation of internal review and retraining of intelligence personnel. See Memorandum from Gordon England, Deputy Sec'y of Defense, to Secretaries of the Military Departments et al., January 13, 2006; Gerry J. Gilmore, "DOD Orders Review of Anti-Threat Intel-Gathering System," *American Forces Press Service*, December 15, 2005. Just yesterday, DoD officials admitted that "irregularities" continue to plague a certain proportion of entries in its threat database. See Walter Pincus, "Unverified Reports of Terror Threats Linger," *Washington Post*, January 31, 2006.

A number of political leaders have questioned and/or spoken out against the inclusion of anti-war and counter-recruitment protests in a TALON database. These statements have also drawn significant media attention. See, e.g., Erica Werner, "Senator Raises Question On Pentagon Program," *sfgate.com*, January 12, 2005 (Associated Press article reprinted in numerous locations); Becky Bartindale, "Lofgren Seeks Probe of Pentagon Activity," *San Jose Mercury News*, January 3, 2006; Jondi Gumz, "Congressman Denounces Pentagon Spying at UCSC," *Santa Cruz Sentinel*, December 17, 2005; Kathryn Casa, "Pentagon Spy Database Includes Vermont Protests," *Vermont Guardian*, December 20, 2005 (indicating concern of Senator Patrick Leahy of Vermont, ranking member of the Senate Judiciary Committee); Lisa Myers, et al., "Senator Demands Investigation of Spy Database," *msnbc.com*, December 15, 2005 (citing letter by Senator Bill Nelson of Florida to Secretary of Defense Donald Rumsfeld). See also Elizabeth Gudrais, "Anti-war Protesters Find Nobody Home in March on Guard Recruiting Office," *Providence Journal*, December 22, 2005 (citing letter from Senator Jack Reed pledging to "press for a rapid and vigorous review of these activities").

As these reports illustrate, the DoD's domestic intelligence-gathering program constitutes a breaking and unfolding news story. The requested information is needed to provide the public with a full picture of the extent of the program.

Finally, there is a very real risk that information will be lost if this Request is not expedited. Although news reports indicate serious concern among DoD officials that information about suspected threats has been improperly retained, see Walter Pincus, "Pentagon Will Review Database on U.S. Citizens," *Washington Post*, December 15, 2005, the England directive required the identification of reports improperly retained in the TALON database, see Memorandum from Gordon England, Deputy Sec'y of Defense, to Secretaries of the Military Departments et al., January 13, 2006, and the head of CIFA has recently indicated that the purging of the database is ongoing. See Walter Pincus, "Unverified Reports of Terror Threats Linger," *Washington Post*, January 31, 2006.

To ensure that the information sought by this Request is not destroyed before it can be disclosed pursuant to this FOIA Request, the Requesters ask that you preserve all information responsive to this Request and that you do not erase it until you have provided the Requesters with copies. Destruction of responsive documents after a FOIA Request is received constitutes an improper withholding of documents. See, e.g., *Judicial Watch v. U.S. Dep't of Commerce*, 34 F. Supp. 2d 28, 43-44 (D.D.C. 1998) (citing *Kissinger v. Reporters Comm.*, 444 U.S. 136, 148-152 (1980)).

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Pursuant to applicable regulations and statute, the RI ACLU expects the determination of this request for expedited processing within 10 calendar days and the determination of this Request for documents within 20 days. *See* 32 C.F.R. § 286.4(d)(1), (3); 5 U.S.C. § 552(a)(6)(A)(i).

If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. The RI ACLU expects the release of all segregable portions of otherwise exempt material. The RI ACLU reserves the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Steven Brown
Executive Director
Rhode Island ACLU
128 Dorrance Street, Suite 220
Providence, RI 02903

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,

Steven Brown
Executive Director