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October 26, 2009

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843

**Re: FOIA AND PRIVACY ACT REQUEST
Expedited Processing and Fee Waiver Requested**

Dear Mr. Hardy:

This letter constitutes a request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") and the Privacy Act, 5 U.S.C. §552a, 28 C.F.R. § 16, and all other applicable regulations by the American Civil Liberties Union of Washington ("the ACLU"). We seek the following records,¹ created or collected from January 1, 2005 to the present:

1. Any records relating to communication between any employee, contractor or agent of your agency and the Washington Joint Analytical Center (WAJAC), any Regional Intelligence Office, or any Regional Intelligence Analysts within Washington State;
2. Any directives or policies describing the process for handling information about expressive activity²;
3. Any directives or policies describing the process for sharing information about expressive activity with other agencies;
4. A list of all FBI databases that contain information about expressive activity in Washington;

¹ The term "records" includes all records or communications preserved in any form, including: correspondence, documents, data, e-mails (including all attachments and history), text messages, web searches (including search histories), audio/visual tapes, faxes, files, guidance, analyses, notes, procedures, rules, manuals, and technical information.

² The term "expressive activity" includes writing, speeches, demonstrations, protests, marches, drawing, note-taking, photography or any other activity protected by the First Amendment. This also

includes information about individuals engaged in expressive activity related to the following causes: 1) pro- and anti- military or militarization; 2) abortion rights; 3) pro-peace or world-peace; 4) anarchism or socialism; 5) pro- and anti- immigrant rights; 6) anti- death penalty; and 7) anti-war.

5. A list of third-party databases or lists, accessible by the FBI, that contain information about expressive activity in Washington, along with records relating to database access;
6. Any records describing how and why information about expressive activity is entered into each database listed pursuant to requests 4 and 5;
7. Any records relating to the retention or destruction of records containing information about expressive activity;
8. Any records describing directives to collect information about expressive activity in Washington State;
9. Any records relating to the surveillance, investigation, and/or collection of information about expressive activity in Washington State;
10. Any records relating to the use of a private contractor, third party, or private individual (including federal or military agents acting in their individual capacity) to engage in surveillance, investigation or collection of information about expressive activity;
11. Any records describing how, why or when an activist or expressive activity was selected as a surveillance target in Washington State;
12. Any records indicating whether any FBI employee, private contractor or agent engaged in any of the following efforts regarding expressive activity in Washington State:
 - a. Infiltrated political activist groups or meetings in an undercover capacity;
 - b. Gathered information via informants;
 - c. Collected information from websites, e-mail, text message, electronic mailing list or physical mailing list operated by any political activist;
 - d. Attended any expressive activities organized by a target of FBI surveillance;
 - e. Participated in any Suspicious Activity or Suspicious Circumstance Reporting program.
13. Any records of privacy policies governing the collection, storage or dissemination of information about expressive activity;
14. Any records relating to any other federal, state or local government agencies engaged in surveillance, investigation or collection of information about expressive activity in Washington State;

15. Any records relating to coordination between your agency and Washington State (including any county, city or town therein), regarding Joint Terrorism Task Force or Regional Intelligence Group efforts to monitor, investigate or collect information about expressive activity in Washington State;
16. Any records of threat assessments, intelligence updates and/or reports involving expressive activity in Washington State;
17. Any records relating to the following events in Washington State:
 - a. October 10, 2009 protest activity at the First Christian Church, 6th and Orchard, in Tacoma;
 - b. October 7, 2009 protest activity and march at Woodruff Park, on the corner of Harrison and Thomas on the Westside of Olympia;
 - c. September 27, 2009 protest activity at the corner of 12th and Commercial in Anacortes;
 - d. September 25-27, 2009 gathering and fair at the Flowery Trail Fair Site near Usk;
 - e. September 19-20, 2009 book fair and gathering at King's Books, 218 St. Helens Ave, in Tacoma;
 - f. September 13, 2009 protest activity at the corner of 12th and Commercial in Anacortes;
 - g. September 4-6, 2009 gathering and fair in Elma;
 - h. August 30, 2009 protest activity at the corner of 12th and Commercial in Anacortes;
 - i. August 16, 2009 protest activity at the corner of 12th and Commercial in Anacortes;
 - j. August 15-16, 2009 festival and gathering at Elliot Bay Park and Myrtle Edwards Park in Seattle;
 - k. July 4th, 2009 protest activity in Bellingham;
 - l. May 9, 2009 protest activity at the Freedom Bridge over exit 122 on I-5, in Tacoma;
 - m. May 7, 2009 protest activity and march in Tacoma;

- n. May 1, 2009 protest activity at Central Washington University in Ellensburg;
- o. March 22, 2009 protest activity and rally at the Port of Olympia amphitheater, 915 Washington Street NE, in Olympia;
- p. March 22, 2009 protest activity at both the Port Tower and Sylvester Park in Olympia;
- q. March 21, 2009 protest activity in Tacoma;
- r. March 21, 2009 protest activity at Franklin Park, North Division, in Spokane;
- s. March 19, 2009 protest activity at intersection of South 320th Street and Pacific Highway South in Federal Way
- t. March 19, 2009 demonstration and movie showing at Capitol Theater, 206 5th Ave SE, in Olympia;
- u. March 15, 2009 protest activity at the Tacoma Mall in Tacoma;
- v. January 22, 2009 demonstration at the Washington State Capitol Building in Olympia;
- w. January 16, 2009 protest activity at West Side Olympia Police Station;
- x. January 16, 2009 protest which proceeded from downtown Olympia, along Harrison Ave, to Perry Street police sub-station;
- y. December 11, 2008 protest activity at the corner of 17th, Pacific and Commerce in Tacoma;
- z. December 11, 2008 demonstration and march in Olympia;
- aa. December 02, 2008 and May 01, 2008 protest activity at the Washington State Capitol Building in Olympia;
- bb. November 15, 2008 demonstration at Sylvester Park, 4th Ave and Port of Olympia in Olympia;
- cc. November 15, 2008 demonstration at City Council Building in Olympia;
- dd. October 29, 2008 protest activity at Thurston County Courthouse at 2000 Lakeridge Drive in Olympia;

- ee. October 26, 2008 protest activity at Wells Fargo at 2215 N. 30th Street in Tacoma;
- ff. October 22, 2008 demonstration through downtown Olympia, which began at Sylvester Park;
- gg. October 16-19, 2008, gathering in/near Tonasket;
- hh. October 11, 2008 protest activity and vigil at the Northwest Detention Center, 1623 E. J Street, in Tacoma;
- ii. September 29, 2008 protest activity at 909 8th Ave SE in Olympia;
- jj. September 26, 2008 “Critical Mass” bicycle ride from Evergreen State College to Port of Olympia;
- kk. September 20, 2008 protest activity at the Federal Building, First and Oak Streets, in Port Angeles;
- ll. September 9, 2008 demonstration in Olympia, moving from Capitol Lake Park to City Hall;
- mm. August 3 through 5, 2008 protest activity at Port of Tacoma;
- nn. August 3, 2008 protest activity at 11th and Thorne in Tacoma;
- oo. August 2 through 3, 2008 protest activity at I-5 Exit 119 (Fort Lewis / Dupont) overpass; at Tacoma’s Federal Courthouse (1713 Pacific Ave); and at Puyallup Ave and East D. Street in Tacoma;
- pp. August 2, 2008 protest activity at I-5 Exit 120;
- qq. August 1, 2008 protest activity at I-5 Berkeley Exit and Logistics Center Exit;
- rr. August 1 and 2, 2008 protest activity at I-5 Exit 123 (Berkeley) and at Thorne and Berkeley overpasses;
- ss. July 31 through August 1, 2008 protest activity in Tacoma at 11th and Portland Ave; 11th and Milwaukee Ave; Thorne Lane and Ross Way; Port of Tacoma Road and Ross Way; Lincoln Ave and Milwaukee Way; 11th between Port of Tacoma Road and Milwaukee Way;
- tt. July 31, 2008 protest activity at Tacoma Mall (4502 S Steele St);
- uu. July 31 and August 1, 2008 protest activity in Tacoma at: Tollefson Square (1701 Pacific Ave); Tacoma’s Federal Courthouse (1713

Pacific Ave); Puyallup and East D. Street; corner of Lincoln and Milwaukee; and corner of Ross and Thorne;

vv. July 30, 2008 protest activity at Puyallup Ave and East D. Street in Tacoma;

ww. July 30, 2008 at I-5 Logistic's Center / Thorne Street Exit in Tacoma;

xx. July 29 through August 7 2008 protest activity at Port of Tacoma and Fort Lewis;

yy. July 27, 2008 activity at army tugboat "Scholarie";

zz. June 3, 2008 protest activity and demonstrations at Tacoma Convention Center at 1500 Broadway in Tacoma;

aaa. May 30-31, 2008 protest activity at Naval Base Kitsap-Bangor on the Kitsap Peninsula;

bbb. May 10-11, 2008 protest activity at Naval Base Kitsap-Bangor on the Kitsap Peninsula;

ccc. May 3, 2008 rally and march from Volunteer Park to Westlake Center in Seattle;

ddd. May 1, 2008 protest and vigil in Yakima;

eee. May and June 2008 protest activity at Evergreen State College;

fff. April 26, 2008 demonstration in Tacoma starting at People's Park and ending at Tacoma Detention Center;

ggg. March 19, 2008 protest activity in Spokane;

hhh. March 15, 2008 protest activity at Tacoma Mall (4502 S Steele St);

iii. March 7, 2009 protest activity on the Olympic Peninsula;

jjj. January 19, 2008 protest activity at Naval Base Kitsap-Bangor on the Kitsap Peninsula;

kkk. December 5, 2007 protest activity at Health Department at 37th Street and South D. Street in East Tacoma;

lll. November 10, 2007 protest activity at Port of Olympia (including Union Ave and Plum Street);

- mmm. November 9 and 10, 2007 protest activity in downtown Tacoma;
- mmn. November 7, 2007 protest activity and strike at Port of Tacoma;
- ooo. November 1 through 19, 2007 protest activity in Olympia;
- ppp. October 25, 2007 gathering in/near Tonasket;
- qqq. October 13, 2007 protest activity and vigil at the Northwest Detention Center, 1623 E. J Street, in Tacoma;
- rrr. August 6, 2007 protest activity at Naval Base Kitsap-Bangor on the Kitsap Peninsula;
- sss. July 27, 2007 protest activity in Olympia;
- ttt. June 4 through 6, 2007 protest activity and demonstrations at Tacoma Convention Center at 1500 Broadway in Tacoma;
- uuu. April 21, 2007 protest activity at Indian Island Naval Base in Port Townsend;
- vvv. March 2 through 14, 2007 protest activity at or near Port of Tacoma;
- www. March 5, 2007 protest activity at Pacific Overpass at Pacific and I-5 in Tacoma;
- xxx. March 6, 2007 protest activity at Tacoma Municipal Building at 747 Market Street;
- yyy. March 6, 2007 protest activity at the federal courthouse at 1717 Pacific Ave in Tacoma;
- zzz. February 5 and 24, 2007 protest activity at Port of Tacoma and Fort Lewis;
- aaaa. November 11, 2006 protest activity and vigil at the Northwest Detention Center, 1623 E. J Street, in Tacoma;
- bbbb. September 23, 2006 protest activity at Indian Island Naval Base in Port Townsend;
- cccc. April 5, 2006 protest activity at the University of Washington in Seattle, Western Washington University in Bellingham, Central Washington University in Ellensburg,

Yakima Valley Community College in Yakima, and Columbia Basin Community College in Tri-Cities.

III. Limitation on Processing Fees

The 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 28 C.F.R. § 16.11(d)(1) ("No search fee will be charged for requests by . . . representatives of the news media.").

As a "representative of the news media," the ACLU fits within this statutory and regulatory mandate. Fees associated with the processing of this Request should, therefore, be limited accordingly.

The 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").

The ACLU of Washington is a state-wide organization, affiliated with the American Civil Liberties Union ("ACLU"), dedicated to the defense of civil rights and civil liberties. Dissemination of information to the public is a critical and substantial component of ACLU's mission and work. Information obtained through the ACLU of Washington may be disseminated through all of the means available to the national ACLU as well as the ACLU of Washington. Specifically, the ACLU publishes newsletters, news briefings, right-to-know documents and other educational and informational materials that are broadly disseminated to the public. The ACLU makes its information widely available to the public in print and also through its website: www.aclu.org. The ACLU's website features information obtained through the FOIA, including information relating to government surveillance of political organizations, see www.aclu.org/spyfiles.

Through its national office and affiliates, the ACLU has provided information gleaned from FOIA requests to the general public. For example, using information gained from FOIA requests, the ACLU of Maryland disclosed the actions of the Maryland State Police (MSP), who engaged in covert surveillance of political activists without reason to believe they were engaged in criminal behavior. The ACLU educated the public on the actions of the MSP by issuing press releases, calling for an independent investigation, and maintaining a log of its efforts on its website, freely accessible by the general public, at <http://www.aclu-md.org/IndexContent/NoSpying/NoSpying.html>. The education campaign of the ACLU sparked the Maryland governor to call for an independent investigation, resulting in a report

that strongly condemned the MSP practices. As a response, Maryland enacted the Freedom of Association and Assembly Protection Act of 2009 to safeguard against further unwarranted government surveillance.

Because allegations of similar actions are present in Washington, information gained from this FOIA request may be used to benefit the public interest, as was the case in Maryland. The ACLU of Washington utilizes various means of communications to disseminate information broadly to the public, including through its website, www.aclu-wa.org; distribution of a print newsletter, electronic mailing lists, press conferences and television and radio appearances.

Depending on the results of the Request, the ACLU plans to disseminate the information gathered by this Request to the public through these kinds of publications in these kinds of channels. The ACLU is therefore a "representative of the news media." *Cf. Electronic Privacy Information Ctr. v. Dept' 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). Disclosure will not be motivated by any commercial interest. The 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 ACLU as a result of this FOIA Request will be available to the public at no cost.

IV. Waiver of all Costs

The 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 extent of information sharing between federal and state and local agencies regarding the monitoring, surveillance and infiltration of organizations on the basis of political views or affiliation or participation in protest activities or demonstrations, and the involvement of military employees and officials in domestic law enforcement activities. The ACLU recently came across information, based on documents disclosed via public records requests, showing that a military civilian employee covertly infiltrated Puget Sound area political activist groups under an assumed name, earned the trust of group members, gained administrative control of one group's listserv, collected information on these groups, and supplied this information to law

enforcement agencies, all without any reason to believe that the political activists were engaged in criminal behavior.

Disclosure further serves the public interest because covert surveillance of First Amendment-protected activity has a negative impact on free expression. This type of government information-sharing implicates the privacy, free speech and associational rights of individuals and groups. Disclosure of the requested information will aid public understanding of the extent to which information about individuals is collected, shared and maintained by various arms of the federal government and the extent of government surveillance of law-abiding organizations and individuals. As shown by the events in Maryland, disclosure of such information can result in vibrant public debate and inform legislative decisions.

As described above, the records requested are not sought for commercial use. As a nonprofit 501(c)(3) organization and "representative of the news media" as discussed above, the 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 meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for ACLU affiliates. The records sought are not requested for commercial use, and the ACLU of Washington will make information disclosed as a result of this FOIA available to the public at no cost.

V. Expedited Processing Request

Expedited processing is warranted because there is an "urgency" on the part of an organization "primarily engaged in disseminating information" "to inform the public about an actual or alleged federal government activity." 28 C.F.R. § 16.5(d) (stating that "(1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve: . . . (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.")

The 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, retention and sharing of information by the Department of Homeland Security, the Department of Defense and the Federal Bureau of Investigation.

There is an "urgency" to inform the public about the federal government's monitoring, surveillance and sharing of information about individual citizens, as well as political, religious, and community organizations. 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. Moreover, the investigation of individuals and organizations because of their political views and expressive or

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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 the extent of, and what policies and procedures control, the government's surveillance and information sharing activities and involvement by military personnel or employees in domestic law enforcement.

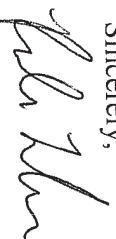
Finally, if this request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA and Privacy Act. According to the Memorandum issued by the Office of President Barack Obama on January 21, 2009, "(a)ll agencies should adopt a presumption in favor of disclosure," regarding FOIA requests, and "should act promptly and in a spirit of cooperation." Further, according to the Memorandum issued by the Office of Attorney General Eric Holder on March 19, 2009, "an agency should not withhold information simply because it may do so legally," and "must consider whether it can make partial disclosure" when it determines full disclosure cannot be made. We reserve 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. If available, we would prefer to have any responsive documents in electronic format. If you anticipate that the response to this request will exceed 1000 documents, please contact me in advance using the information listed below. Please furnish all applicable records to us at the following address:

Randy Tyler
American Civil Liberties Union of Washington
705 2nd Ave, Suite 300
Seattle, WA 98104-1799
(206) 624-2184, ext. 267
rt Tyler@aclu-wa.org

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,



Randy Tyler, Legal Fellow
ACLU of Washington Foundation