

May 23, 2012

VIA CERTIFIED MAIL

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

Re: Freedom of Information Act Request F-2012-01071

Dear FOIA Officer,

This letter constitutes an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the U.S. Central Intelligence Agency ("CIA") Inspector General's ("IG") Office of the Information and Privacy Coordinator.

On March 28, 2012, EPIC submitted to the CIA IG's Office and Office of the Information and Privacy Coordinator via certified mail a FOIA request regarding the Inspector General's 2011 investigation regarding the CIA's collaboration with the New York Police Department ("NYPD"). Specifically, EPIC requested:

1. All documents related to the CIA Inspector General's investigation regarding the agency's collaboration with NYPD;
2. All legal analyses conducted by the CIA Inspector General's office regarding the CIA's collaboration with the NYPD;
3. All final reports issued as a result of the CIA Inspector General's investigation;
4. Any communications between the CIA Inspector General's office and the NYPD regarding the agency's collaboration with the NYPD.

Background

Beginning in 2011, a series of investigative articles by the Associated Press revealed that the NYPD had been conducting surveillance of Muslims and persons of Arab descent in New York, New Jersey, and elsewhere.¹ This surveillance included

¹ Associated Press, *Highlights of AP's Probe into NYPD Intelligence Operations*, <http://ap.org/media-center/nypd/investigation>

photographing members of the Muslim community as they entered mosques,² infiltrating Muslim student groups,³ and conducting surveillance of Muslim stores and businesses.⁴

The New York City Police Commissioner Raymond Kelly confirmed that the CIA had collaborated with the NYPD in surveillance matters and that a CIA officer had been working out of NYPD police headquarters.⁵ CIA spokeswoman, Jennifer Youngblood confirmed that the agency had a collaborative relationship with the NYPD.⁶

Several December 2011 media reports discussed a CIA IG's investigation regarding the agency's collaboration with NYPD.⁷ CIA spokesman Preston Golson acknowledged the existence of this investigation and stated that the agency's Inspector General concluded that no laws were broken and there was "no evidence that any part of the agency's support to the NYPD constituted 'domestic spying.'"⁸ Recent news reports indicate that the, as a result of the IG investigation and media scrutiny, the CIA officer embedded within the NYPD would be leaving.⁹

EPIC Appeals the CIA's Failure to Disclose Records Responsive to Categories 1-4

EPIC hereby appeals the CIA's failure to make a timely determination regarding EPIC's FOIA Request. Typically, an agency must make a determination regarding a FOIA request within twenty working days.¹⁰ EPIC received CIA Office of the Information and Privacy Coordinator's acknowledgment and referral letter on May 15, 2012. That letter acknowledged that the Office of the Information and Privacy Coordinator had received EPIC's request on April 9, 2012, was denying EPIC's request for expedited processing, and was granting EPIC's request for fee waiver. However, the Office of the Information and Privacy Coordinator made no definitive, substantive determination regarding EPIC's request.

The Office of the Information and Privacy Coordinator's May 15, 2012 acknowledgment letter is not a determination. A "determination" must include at least a

² Associated Press, NYPD Records, *Target of Surveillance, Majid Omar*, available at: http://hosted.ap.org/specials/interactives/documents/nypd/nypd_omar.pdf

³ Intelligence Division, Intelligence Collection Coordinator, *Deputy Commissioner's Briefing*, Apr. 25, 2008, available at: <http://hosted.ap.org/specials/interactives/documents/nypd/dci-briefing-04252008.pdf>

⁴ See e.g., NYPD Intelligence Division, Demographics Unit, *Egyptian Locations of Interest Report*, July 7, 2006, available at: <http://hosted.ap.org/specials/interactives/documents/nypd/nypd-egypt.pdf>

⁵ Ellen Sullivan, *NYPD Confirms CIA Officer Works at Department*, Associated Press, Aug. 25, 2011.

⁶ *Id.*

⁷ See e.g., Associated Press, *CIA's Watchdog: No Problem with NYPD Partnership*, Dec. 23, 2012, available at: <http://www.usatoday.com/news/washington/story/2011-12-23/cia-nypd-partnership/52198856/1>

⁸ *Id.*

⁹ Faiza Patel and Elizabeth Goitein, *It's Time to Police the NYPD*, New York Times, Jan. 29, 2012, <http://www.nytimes.com/2012/01/30/opinion/the-nypd-needs-policing.html>

¹⁰ 5 U.S.C. § 552(a)(6); see also *Wash. Post v. Dep't of Homeland Sec.*, 459 F. Supp. 2d 61, 74 (D.D.C. 2006) (citing *Payne Enterprises v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1998)) (stating, "FOIA was created to foster public awareness, and failure to process FOIA requests in a timely fashion is 'tantamount to denial.'").

list of the documents to which the requester is being denied access and reasons for the withholding. "Denial of this information would in all likelihood be a violation of due process as well as effectively gutting the reasons for applying the exhaustion doctrine in FOIA cases."¹¹.

An agency's "acknowledgement" of a request "cannot be construed as a 'determination' . . . if it does not grant or deny the right to appeal."¹² The Office of the Information and Privacy Coordinator has not substantively responded to Categories 1-4 of EPIC's FOIA Request, and therefore a determination has not been made as to the documents under these categories. Because more than twenty working days have elapsed since the Office of the Information and Privacy Coordinator received EPIC's request on April 9, 2012, the failure to make a determination violates the FOIA's statutory deadline.

Conclusion

Thank you for your prompt response to this appeal. As provided in 5 U.S.C. § 552(a)(6)(A)(ii), I anticipate that you will produce responsive documents within twenty (20) working days of receipt of this appeal. If you have any questions, please feel free to contact me at (202) 483-1140 x 102 or mccall@epic.org.

Sincerely,

Ginger P. McCall
Director
EPIC Open Government Project

¹¹ *Shermco Indus., Inc. v. Sec'y of Air Force*, 452 F. Supp. 306, 317 n.7 (N.D. Texas, 1978) *rev'd on other grounds*, 613 F.2d 1314 (5th Cir. 1980); *see also* *Oglesby v. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990) (citing *Shermco Indus., Inc. v. Sec'y of Air Force*, 452 F. Supp. 306 (N.D. Tex. 1978)).

¹² *Martinez v. F.B.I.*, No. 82-1547 (D.D.C. Oct. 11, 1983) (citing *Shermco Indus., Inc. v. Sec'y of Air Force*, 452 F. Supp. 306 (N.D. Tex. 1978) and *Marschner v. Dep't of State*, 470 F. Supp. 196, 199 (D. Conn. 1979)).