

April 26, 2017

National Security Agency
ATTN: FOIA Office
9800 Savage Road, STE 6932
Ft. George G. Meade, MD 20755-6932

To Whom It May Concern:

A series of reports published by *The New York Times*, *The Washington Post*, the BBC, and other news outlets indicates that foreign surveillance activities were aimed at private individuals associated with then-candidate Donald Trump's presidential campaign. Citing numerous anonymous federal intelligence and law enforcement officials, these reports have disclosed an enormous amount of classified information, apparently gathered pursuant to orders issued by the Foreign Intelligence Surveillance Act Court (FISA Court). The nature, timing, and volume of classified information released indicate a systematic effort to exploit the orders of the FISA Court for political purposes.

Concurrent with these substantial and illegal leaks was an expansion in access within the executive branch to raw signals intelligence information (SIGINT) gathered pursuant to FISA Court warrants and other National Security Agency (NSA) surveillance measures. The new access procedures expand access to raw SIGINT from officials in five intelligence agencies to officials in a total of seventeen agencies. The expanded policy was established by former Director of National Intelligence James R. Clapper on December 15, 2016, and approved by then-Attorney General Loretta E. Lynch on January 3, 2017. "Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333 (Raw SIGINT Availability Procedures)," <https://fas.org/sgp/othergov/intel/sigint-raw.pdf>.

Landmark Legal Foundation (Landmark) respectfully submits this request under the Freedom of Information Act, 5 U.S.C. Section 552, for access to documents relating to this new policy. In addition, Landmark requests a fee waiver pursuant to 32 C.F.R. 286.12(k).

Specifically, we request the following records dated between January 1, 2015 and the date of this request¹:

¹ Landmark does not seek any classified records. The term "records" 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,

1. Any formal regulations or policies relating to the NSA's authority under the modified Raw SIGINT Availability Procedures to "Electronic Surveillance," that implicates "United States Persons" (as those terms are defined by EO 12,333), including regulations or policies relating to NSA's acquisition, retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority.
2. Any executive branch directive related to the "unmasking" of United States Persons who have been subject to Electronic Surveillance pursuant to EO 12,333.
3. Any document that officially implements new or modifies existing "minimization procedures," as that term is defined in 50 U.S.C. Section 1801(h), or "unmasking" procedures for the NSA's use of raw SIGINT data obtained through Electronic Surveillance of United States Persons.
4. Any document that adopts or modifies official rules or procedures for the NSA's retention, dissemination, or use of information or communications to, from, or about United States Persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
5. Any document that officially authorizes or modifies under EO 12,333 the NSA's use of raw SIGINT data obtained through Electronic Surveillance of United States Persons, or documents that adopt or modify official rules or procedures for the NSA's retention, dissemination, or use of information or communications to, from, or about United States persons under such authority generally or in the context of particular programs, techniques, or types of Electronic Surveillance.
6. Any formal legal opinions addressing the NSA's revised authority under EO 12,333 to make available or disseminate raw SIGINT.
7. Any formal reports or memoranda that discuss or analyze NSA's compliance with the provisions of the Foreign Intelligence Surveillance Act or the Fourth Amendment relating to NSA's provision of access to or dissemination of raw SIGINT acquired through Electronic Surveillance implicating United States Persons.
8. Any presidential or other executive branch order authorizing or directing NSA to disseminate or otherwise make available Electronic Surveillance that implicates United States Persons.

orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

Landmark Legal Foundation (“Landmark”) requests a waiver of fees associated with this FOIA request. A waiver of fees may be granted when the requester demonstrates “how disclosure of the requested 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.” 32 C.F.R. 286.12(k)(1).

Relevant regulations further provide that four factors will be considered when determining whether a requester has satisfied the first requirement, i.e., whether the FOIA production is in the public interest.

- (i) Whether the subject of the requested records concerns the operations or activities of the government;
- (ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
- (iii) The contribution to an understanding of the subject by the public is likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding.”
- (iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. 32 C.F.R. 286.12(k)(2)

Relevant regulations also require a showing that the disclosure of records is not primarily in the commercial interest of the requester. 32 C.F.R. 286.12(k)(iii).

Landmark satisfies each of these factors. Each leak of classified information about United States Persons acquired through Electronic Surveillance is potentially criminal and certainly unethical. It is also of utmost importance to the privacy rights of all Americans, whose faith in the credibility of the FISA process is being tested. Worst of all, these leaks appear to be part of a systematic, political effort designed to undermine an incoming presidential administration, which, if true, is of monumental importance to the American public.

Landmark has a proven record of ensuring that information it receives pursuant to FOIA requests garners widespread attention in print, electronic and broadcast media. Landmark’s investigations have been cited by the *Associated Press*, *The Wall Street Journal*, *The Washington Post*, *The Washington Times*, and the Fox News Channel.

Landmark does not have any commercial interest in the release of the requested records. Obtaining, analyzing, and disseminating this information is consistent with Landmark’s mission to educate the public concerning the activities of federal agencies. Landmark has no commercial interest of any kind, nor can it as a 501(c)(3) public interest non-profit organization. Since Landmark satisfies the first part of the commercial interest test, the balancing of the requester’s commercial interest against the identified public interest is inapplicable.

Thank you for your attention to this important matter. Should you have any questions or wish to discuss this matter, please contact me via email at pete.hutch@landmarklegal.org or by telephone at 816-931-5559.

Please deliver responsive records on a rolling basis. If any exemptions or redactions are asserted, please identify the record and explain in full the legal justification for each redaction. Records can be delivered electronically to the email address above, or to my attention at the following address:

Richard P. Hutchison
Executive Vice President & General Counsel
Landmark Legal Foundation
3100 Broadway Blvd., Suite 1210
Kansas City, MO 64111

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard P. Hutchison', with a horizontal line extending to the left and right of the signature.

Richard P. Hutchison