



**Address:** 62 Britton Street, London, EC1M 5UY, Great Britain

**Phone:** +44 (0) 20 3422 4321

**Website:** [www.privacyinternational.org](http://www.privacyinternational.org)

December 13, 2016

**VIA FACSIMILE AND POST**

National Security Agency  
ATTN: FOIA Office  
9800 Savage Road, Suite 6932  
Ft. George G. Meade, MD 20755-6932  
United States of America

**Re: Request Under Freedom of Information Act**

To whom it may concern,

Privacy International ("PI") submits this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to records relating to the British-United States Communication Intelligence Agreement (now known as the "UKUSA Agreement"). Specifically, we request the following records<sup>1</sup>:

1. Any records governing, amending, extending or appended to the UKUSA Agreement.
2. Any records relating to the implementation of the UKUSA Agreement by the United States government, including, but not limited to:
  - a. Regulations, policies, memoranda, legal opinions, strategy documents, directives, definitions, and technical manuals or specifications;
  - b. Records pertaining to planning, technical and other relevant conferences, including, but not limited to, minutes, reports and recommendations.
3. Any records construing or interpreting the authority of the National Security Agency ("NSA") pursuant to the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities pertaining to the UKUSA Agreement.

---

<sup>1</sup> Records include, but are not limited to, letters, reports, memoranda, legal opinions, policy statements, notes, technical manuals, technical specifications, tape recordings, electronic records (including email, data, and computer source and object code), and any other materials.

4. Any records describing the standards that must be satisfied for the “exchange” of “products” of “operations relating to foreign communications,” as the NSA defines these terms, pursuant to the NSA’s authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the “exchange” of intelligence “products” under the UKUSA Agreement.<sup>2</sup>
5. Any records describing the minimization procedures used by the NSA with regard to the “exchange” of “products” of “operations relating to foreign communications,” as the NSA defines these terms, pursuant to the NSA’s authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the “exchange” of intelligence “products” under the UKUSA Agreement.<sup>3</sup>
6. Any other records governing the exchange of intelligence between the United States government and the governments of the United Kingdom, Canada, Australia and/or New Zealand.

#### **Request for a Public Interest Fee Waiver**

PI requests a waiver of search, review and duplication fees on the ground that disclosure of the requested records is in the public interest because it: (1) “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies both criteria.

First, the requested records concern “the operations or activities of the government.” The 1955 version of the UKUSA Agreement provides that “[t]he agreement governs the

---

<sup>2</sup> The 1955 version of the UKUSA Agreement, which is the most recent publicly available version of the agreement and was declassified by the NSA in 2010, lists the following “products”: “collection of traffic,” “acquisition of communications documents and equipment,” “traffic analysis,” “cryptanalysis,” “decryption and translation,” and “acquisition of information regarding communications organizations, procedures, practices and equipment.” U.K.-U.S. Communications Intelligence Agreement (UKUSA Agreement), May 10, 1955, § 4(a), available at [https://www.nsa.gov/news-features/declassified-documents/ukusa/assets/files/new\\_ukusa\\_agree\\_10may55.pdf](https://www.nsa.gov/news-features/declassified-documents/ukusa/assets/files/new_ukusa_agree_10may55.pdf) [hereinafter UKUSA Agreement]. PI requests any records describing the standards that must be satisfied for the “exchange” of “products” including, but not limited to, those contained in the preceding list.

<sup>3</sup> Minimization procedures include, but are not limited to, regulations, policies, procedures or rules addressing the acquisition, processing, retention, dissemination, and destruction of information relating to United States persons that is acquired during the course of intelligence activities.

relations” between the United States and the United Kingdom “in communications intelligence.”<sup>4</sup> UKUSA Agreement, § 2. It further provides that:

The parties agree to the exchange of the products of the following operations relating to foreign communications:-

- (1) Collection of traffic.
- (2) Acquisition of communications documents and equipment.
- (3) Traffic analysis.
- (4) Cryptanalysis.
- (5) Decryption and translation.
- (6) Acquisition of information regarding communications organizations, procedures, practices and equipment.

*Id.* at § 4(a). The UKUSA Agreement therefore documents the United States government’s agreement with the British (as well as Canadian, Australian and New Zealand) governments to exchange intelligence.

The requested records will also “contribute significantly to the public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii). The government’s surveillance powers, capabilities, and activities, including as they pertain to foreign intelligence, are matters of great public interest and concern. Very little information on the government’s agreement to exchange intelligence with the British, Canadian, Australian, and New Zealand governments, including the legal basis and scope of that power, currently exists in the public domain. A clearer understanding of this agreement and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications and/or data are implicated in the course of that exchange, matter significantly to the public.

Second, PI does not have a commercial interest in the disclosure of the requested records. PI is a registered charity in the United Kingdom that seeks to advance the right to privacy throughout the world. Dissemination of information about government activities, particularly with respect to surveillance, is a critical and substantial component of PI’s mission and work. PI does not seek to commercially benefit from these activities. Any information obtained through this request will be disseminated to the public at no cost for the purpose of educating the public and promoting the protection of civil liberties and human rights.

---

<sup>4</sup> Appendix J to the 1955 version of the UKUSA Agreement further provides that “Canada, Australia and New Zealand will be regarded as UKUSA-collaborating Commonwealth countries.” Principles of UKUSA Collaboration with Commonwealth Countries other than the U.K., Appendix J, UKUSA Agreement.

## Request for a Waiver of Search and Review Fees

In the alternative, PI requests a waiver of search and review fees on the ground that the requested records are not sought for commercial use and because PI is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). As discussed above, PI does not seek the requested records for commercial use.

PI further qualifies as a representative of the news media because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also* Nat’l Sec. Archive v. Dep’t of Def., 880 F.2d 1381, 1387 (D.C. Cir. 1989). PI conducts research on a variety of issues related to privacy and surveillance. It then publishes its research in a variety of formats, including research reports,<sup>5</sup> policy papers,<sup>6</sup> and frequent blog posts.<sup>7</sup> This information is freely available via PI’s website.

For the reasons above, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If these fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

\*\*\*

We request that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in text-searchable PDF, in the best image quality in the NSA’s possession, and in separate, Bates-stamped files.

We further request that you provide an estimated date on which you will finish processing this request. See 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of

---

<sup>5</sup> *See, e.g.*, Edin Omanovic, Privacy International, *The Global Surveillance Industry*, July 2016, [https://privacyinternational.org/sites/default/files/global\\_surveillance.pdf](https://privacyinternational.org/sites/default/files/global_surveillance.pdf).

<sup>6</sup> *See, e.g.*, Privacy International, *Submission to the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression: Study on Telecommunications and Internet Access Sector*, Nov. 2016, <https://www.privacyinternational.org/sites/default/files/UN%20SR%20FOE%20Study%20on%20ICT%20Sector%20submission.pdf>.

<sup>7</sup> *See, e.g.*, Eva Blum-Dumontet, *Friends, Followers, Police Officers, and Enemies: Social Surveillance in Thailand*, Sept. 20, 2016, <https://www.privacyinternational.org/node/935>.

requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scarlet K.', with a stylized flourish at the end.

Scarlet Kim  
Legal Officer  
Privacy International

Phone: +44 (0) 20 3422 4321

Email: [scarlet@privacyinternational.org](mailto:scarlet@privacyinternational.org)



NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE  
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 100386  
27 December 2016

KIM SCARLET  
PRIVACY INTERNATIONAL  
62 BRITTON ST  
LONDON EC1M 6UY  
GBR

Dear Ms. Scarlet:

This is an initial response to your Freedom of Information Act (FOIA) request dated 13 December 2016, which was received by this office on 13 December 2016, for "records relating to the British-United States Communication Intelligence Agreement(now known as the 'UKUSA Agreement')." A copy of your request is enclosed. This letter acknowledges that we have received your request and provides some administrative information. Your request has been assigned Case Number 100386. Due to a significant increase in the number of requests being received by this Agency, we are experiencing delays in processing. We will begin to process your request and will respond to you again as soon as we are able. Until further processing is done, we do not know if there will be assessable fees. Therefore, we have not addressed your request for a fee waiver at this time.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office (P132), 9800 Savage Road STE 6932, Ft. George G. Meade, MD 20755-6932 or may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA office is 301-688-6527.

Sincerely,

A handwritten signature in black ink, appearing to read "O. Blanton".

FOIA Customer Representative



**Address:** 62 Britton Street, London, EC1M 5UY, Great Britain

**Phone:** +44 (0) 20 3422 4321

**Website:** [www.privacyinternational.org](http://www.privacyinternational.org)

December 13, 2016

**VIA FACSIMILE AND POST**

National Security Agency  
ATTN: FOIA Office  
9800 Savage Road, Suite 6932  
Ft. George G. Meade, MD 20755-6932  
United States of America

**Re: Request Under Freedom of Information Act**

To whom it may concern,

Privacy International ("PI") submits this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to records relating to the British-United States Communication Intelligence Agreement (now known as the "UKUSA Agreement"). Specifically, we request the following records<sup>1</sup>:

1. Any records governing, amending, extending or appended to the UKUSA Agreement.
2. Any records relating to the implementation of the UKUSA Agreement by the United States government, including, but not limited to:
  - a. Regulations, policies, memoranda, legal opinions, strategy documents, directives, definitions, and technical manuals or specifications;
  - b. Records pertaining to planning, technical and other relevant conferences, including, but not limited to, minutes, reports and recommendations.
3. Any records construing or interpreting the authority of the National Security Agency ("NSA") pursuant to the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities pertaining to the UKUSA Agreement.

<sup>1</sup> Records include, but are not limited to, letters, reports, memoranda, legal opinions, policy statements, notes, technical manuals, technical specifications, tape recordings, electronic records (including email, data, and computer source and object code), and any other materials.

4. Any records describing the standards that must be satisfied for the “exchange” of “products” of “operations relating to foreign communications,” as the NSA defines these terms, pursuant to the NSA’s authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the “exchange” of intelligence “products” under the UKUSA Agreement.<sup>2</sup>
5. Any records describing the minimization procedures used by the NSA with regard to the “exchange” of “products” of “operations relating to foreign communications,” as the NSA defines these terms, pursuant to the NSA’s authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the “exchange” of intelligence “products” under the UKUSA Agreement.<sup>3</sup>
6. Any other records governing the exchange of intelligence between the United States government and the governments of the United Kingdom, Canada, Australia and/or New Zealand.

#### **Request for a Public Interest Fee Waiver**

PI requests a waiver of search, review and duplication fees on the ground that disclosure of the requested records is in the public interest because it: (1) “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies both criteria.

First, the requested records concern “the operations or activities of the government.” The 1955 version of the UKUSA Agreement provides that “[t]he agreement governs the

---

<sup>2</sup> The 1955 version of the UKUSA Agreement, which is the most recent publicly available version of the agreement and was declassified by the NSA in 2010, lists the following “products”: “collection of traffic,” “acquisition of communications documents and equipment,” “traffic analysis,” “cryptanalysis,” “decryption and translation,” and “acquisition of information regarding communications organizations, procedures, practices and equipment.” U.K.-U.S. Communications Intelligence Agreement (UKUSA Agreement), May 10, 1955, § 4(a), available at [https://www.nsa.gov/news-features/declassified-documents/ukusa/assets/files/new\\_ukusa\\_agree\\_10may55.pdf](https://www.nsa.gov/news-features/declassified-documents/ukusa/assets/files/new_ukusa_agree_10may55.pdf) [hereinafter UKUSA Agreement]. PI requests any records describing the standards that must be satisfied for the “exchange” of “products” including, but not limited to, those contained in the preceding list.

<sup>3</sup> Minimization procedures include, but are not limited to, regulations, policies, procedures or rules addressing the acquisition, processing, retention, dissemination, and destruction of information relating to United States persons that is acquired during the course of intelligence activities.



relations" between the United States and the United Kingdom "in communications intelligence."<sup>4</sup> UKUSA Agreement, § 2. It further provides that:

The parties agree to the exchange of the products of the following operations relating to foreign communications:-

- (1) Collection of traffic.
- (2) Acquisition of communications documents and equipment.
- (3) Traffic analysis.
- (4) Cryptanalysis.
- (5) Decryption and translation.
- (6) Acquisition of information regarding communications organizations, procedures, practices and equipment.

*Id.* at § 4(a). The UKUSA Agreement therefore documents the United States government's agreement with the British (as well as Canadian, Australian and New Zealand) governments to exchange intelligence.

The requested records will also "contribute significantly to the public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii). The government's surveillance powers, capabilities, and activities, including as they pertain to foreign intelligence, are matters of great public interest and concern. Very little information on the government's agreement to exchange intelligence with the British, Canadian, Australian, and New Zealand governments, including the legal basis and scope of that power, currently exists in the public domain. A clearer understanding of this agreement and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications and/or data are implicated in the course of that exchange, matter significantly to the public.

Second, PI does not have a commercial interest in the disclosure of the requested records. PI is a registered charity in the United Kingdom that seeks to advance the right to privacy throughout the world. Dissemination of information about government activities, particularly with respect to surveillance, is a critical and substantial component of PI's mission and work. PI does not seek to commercially benefit from these activities. Any information obtained through this request will be disseminated to the public at no cost for the purpose of educating the public and promoting the protection of civil liberties and human rights.

---

<sup>4</sup> Appendix J to the 1955 version of the UKUSA Agreement further provides that "Canada, Australia and New Zealand will be regarded as UKUSA-collaborating Commonwealth countries." Principles of UKUSA Collaboration with Commonwealth Countries other than the U.K., Appendix J, UKUSA Agreement.

### Request for a Waiver of Search and Review Fees

In the alternative, PI requests a waiver of search and review fees on the ground that the requested records are not sought for commercial use and because PI is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). As discussed above, PI does not seek the requested records for commercial use.

PI further qualifies as a representative of the news media because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also* Nat’l Sec. Archive v. Dep’t of Def., 880 F.2d 1381, 1387 (D.C. Cir. 1989). PI conducts research on a variety of issues related to privacy and surveillance. It then publishes its research in a variety of formats, including research reports,<sup>5</sup> policy papers,<sup>6</sup> and frequent blog posts.<sup>7</sup> This information is freely available via PI’s website.

For the reasons above, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If these fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

\*\*\*

We request that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in text-searchable PDF, in the best image quality in the NSA’s possession, and in separate, Bates-stamped files.

We further request that you provide an estimated date on which you will finish processing this request. See 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of

<sup>5</sup> *See, e.g.*, Edin Omanovic, Privacy International, *The Global Surveillance Industry*, July 2016, [https://privacyinternational.org/sites/default/files/global\\_surveillance.pdf](https://privacyinternational.org/sites/default/files/global_surveillance.pdf).


<sup>6</sup> *See, e.g.*, Privacy International, *Submission to the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression: Study on Telecommunications and Internet Access Sector*, Nov. 2016, <https://www.privacyinternational.org/sites/default/files/UN%20SR%20FOE%20Study%20on%20ICT%20Sector%20submission.pdf>.

<sup>7</sup> *See, e.g.*, Eva Blum-Dumontet, *Friends, Followers, Police Officers, and Enemies: Social Surveillance in Thailand*, Sept. 20, 2016, <https://www.privacyinternational.org/node/935>.

requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,



Scarlet Kim  
Legal Officer  
Privacy International

Phone: +44 (0) 20 3422 4321

Email: [scarlet@privacyinternational.org](mailto:scarlet@privacyinternational.org)

February 24, 2017

**BY USPS MAIL**

National Security Agency  
FOIA Office (P132)  
9800 Savage Road STE 6932  
Ft. George G. Meade, MD 20755-6932  
Fax: 443-479-3612  
Telephone: 301-688-6527

**RE: FOIA APPEAL, Case: 100386**

Dear FOIA Officer,

We are writing on behalf of our client, Privacy International. On December 13, 2016, Scarlet Kim, Legal Officer at Privacy International, submitted a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking records related to the British-United States Communication Intelligence Agreement (“UKUSA Agreement”). A copy of that request is enclosed.

On December 27, 2016, an NSA FOIA Customer Representative sent a letter to Ms. Kim in response, explaining that “delays in processing” prevented the NSA from responding to her request. As you know, FOIA requires NSA to make a determination regarding whether to comply with Ms. Kim’s request within 20 days of its receipt. Because this deadline has lapsed, we are writing to appeal the NSA’s constructive denial of Ms. Kim’s request. We look forward to the NSA’s response to this appeal within 20 days. 5 U.S.C. 552 (a)(6)(A)(ii).

*Sincerely,*

Andrew Udelsman  
Law Student Intern  
andrew.udelsman@ylsclinics.org



NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE  
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 100386  
24 April 2017

SCARLET KIM  
PRIVACY INTERNATIONAL  
62 BRITTON STREET  
LONDON EC1M 6UY  
GBR

Dear Ms. Kim:

This responds to your Freedom of Information Act (FOIA) request of 13 December 2016, which was received by this office on 13 December 2016, for "Access to records relating to the British-United States Communication Intelligence Agreement (now known as the "UKUSA Agreement")." Your request has been processed under the provisions of the FOIA. There are no assessable fees for this request.

Regarding the portion of your request for information on the "UKUSA Agreement," many documents pertaining to the agreement dated 1940-1956 were released in 2010 and are available at the NSA.gov website. The remaining documents responsive to this portion of your request have been found to be currently and properly classified in accordance with Executive Order 13526. These documents meet the criteria for classification as set forth in Subparagraphs (b), (c), and (d) of Section 1.4 and remain TOP SECRET and SECRET as provided in Section 1.2 of Executive Order 13526. The documents are classified because their disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Some of the information is exempt from automatic declassification in accordance with Section 3.3(b)(6) of E.O. 13526. Because the documents are currently and properly classified, they are exempt from disclosure pursuant to the first exemption of the FOIA (5 U.S.C. Section 552(b)(1)).

In addition, this Agency is authorized by various statutes to protect certain information concerning its activities. We have determined that such information exists in these documents. Accordingly, those portions this FOIA request are exempt from disclosure pursuant to the third exemption of the FOIA, which provides for the withholding of information specifically protected from disclosure by statute. The specific statutes applicable in this case are Title 18 U.S. Code 798; Title 50 U.S. Code 3024(i); and Section 6, Public Law 86-36 (50 U.S. Code 3605). No portion of the information is reasonably segregable.

FOIA Case: 100386

You may appeal this decision. If you decide to appeal, you should do so in the manner outlined below.

- The appeal must be in writing and addressed to the:

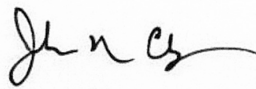
NSA/CSS FOIA/PA Appeal Authority (P132),  
National Security Agency  
9800 Savage Road STE 6932  
Fort George G. Meade, MD 20755-6932

- It must be postmarked no later than 90 calendar days of the date of this letter. Decisions appealed after 90 days will not be addressed.
- Please include the case number provided above.
- Please describe with sufficient detail why you believe the denial of requested information was unwarranted.
- NSA will endeavor to respond within 20 working days of receiving your appeal, absent any unusual circumstances.

You may also contact our FOIA Public Liaison at [foialo@nsa.gov](mailto:foialo@nsa.gov) for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Rd- OGIS  
College Park, MD 20740  
[ogis@nara.gov](mailto:ogis@nara.gov)  
(877)684-6448  
(202)741-5770  
Fax (202)741-5769

Sincerely,



JOHN R. CHAPMAN  
Chief, FOIA/PA Office  
FOIA Public Liaison Officer



MEDIA  
FREEDOM &  
INFORMATION  
ACCESS CLINIC

ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

## Yale Law School

May 31, 2017

### VIA U.S. MAIL

NSA/CSS FOIA/PA Appeal Authority (P132)  
National Security Agency  
9800 Savage Road STE 6932  
Ft. George G. Meade, MD 20755-6932

**RE: FREEDOM OF INFORMATION ACT APPEAL  
FOIA REQUEST NO. 100386**

Dear Sir or Madam:

Privacy International, through the undersigned counsel, writes to appeal from the National Security Agency/Central Security Service's ("NSA") denial of FOIA request number 100386, a true and correct copy of which is attached hereto as Exhibit A. In that request, Privacy International seeks the following records relating to the British-United States Communications Intelligence Agreement ("UKUSA Agreement"):

1. Any records governing, amending, extending or appended to the UKUSA Agreement.
2. Any records relating to the implementation of the UKUSA Agreement by the United States government, including but not limited to:
  - a. Regulations, policies, memoranda, legal opinions, strategy documents, definitions, and technical manuals or specifications;
  - b. Records pertaining to planning, technical or other relevant conferences, including but not limited to, minutes, reports and recommendations.
3. Any records construing or interpreting the authority of the NSA pursuant to the UKUSA agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities pertaining to the UKUSA Agreement.
4. Any records describing the standards that must be satisfied for the "exchange" of "products" of "operations relating to foreign communications," as the NSA defines these terms, pursuant to the NSA's authority under the UKUSA

Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the “exchange” of intelligence “products” under the UKUSA Agreement.<sup>1</sup>

5. Any records describing the minimization procedures used by the NSA with regard to the “exchange” of “products” of “operations relating to foreign communications,” as the NSA defines these terms, pursuant to the NSA’s authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the “exchange” of intelligence “products” under the UKUSA Agreement.<sup>2</sup>
6. Any other records governing the exchange of intelligence between the United States government and the governments of the United Kingdom, Canada, Australia and/or New Zealand.

In a letter dated December 27, 2016, a true and correct copy of which is attached hereto as Exhibit B, an NSA FOIA customer representative asserted that “delays in processing” prevented the NSA from responding to the request within the time required by FOIA.

When the NSA failed to make the required determination regarding whether to comply with Privacy International’s request within the 20-day deadline, Privacy International, through counsel, sent a second letter, dated February 24, 2017, to the NSA. The letter, a true and correct copy of which is attached hereto as Exhibit C, appealed the NSA’s constructive denial of Privacy International’s FOIA request.

By letter dated April 24, 2017, John R. Chapman, Chief of the FOIA/PA Office, responded to Privacy International’s FOIA request. A true and correct copy of that letter is attached hereto as Exhibit D. Chapman stated that, while documents pertaining to the UKUSA Agreement dated 1940-1956 were released in 2010 and publicly available, all the remaining records responsive to the FOIA request were exempt from disclosure pursuant to Exemption 1

---

<sup>1</sup> The 1955 version of the UKUSA Agreement, which is the most recent publicly available version of the agreement and was declassified by the NSA in 2010, lists the following “products”: “collection of traffic,” “acquisition of communications documents and equipment,” “traffic analysis,” “cryptanalysis,” “decryption and translation,” and “acquisition of information regarding communications organizations, procedures, practices and equipment.” U.K.-U.S. Communications Intelligence Agreement (UKUSA Agreement), May 10, 1955, § 4(a), available at [https://www.nsa.gov/news-features/declassified-documents/ukusa/assets/files/new\\_ukusa\\_agree\\_10may55.pdf](https://www.nsa.gov/news-features/declassified-documents/ukusa/assets/files/new_ukusa_agree_10may55.pdf). PI requests any records describing the standards that must be satisfied for the “exchange” of “products” including, but not limited to, those contained in the preceding list.

<sup>2</sup> Minimization procedures include, but are not limited to, regulations, policies, procedures or rules addressing the acquisition, processing, retention, dissemination, and destruction of information relating to United States persons that is acquired during the course of intelligence activities.



and Exemption 3, relying for the latter on three particular withholding statutes, 18 U.S.C. § 798, 50 U.S.C. § 3024(i) and Pub. L. No. 86-36 § 6 (50 U.S.C. § 3605). Chapman additionally stated that no portion of the information was reasonably segregable. The letter further advised Privacy International and counsel of the NSA's appeal procedures.

This letter therefore timely appeals the NSA's decision to withhold the requested documents. FOIA enacts into law a strong policy favoring disclosure of agency records. Records may be withheld only if the agency can demonstrate that certain records, or portions thereof, come within one or more narrowly-construed exemptions. *See Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 259 (D.C. Cir. 1977) ("The exemptions from the mandatory disclosure requirement of the FOIA are both narrowly drafted and narrowly construed in order to counterbalance the self-protective instincts of the bureaucracy which, like any organization, would prefer to operate under the relatively comforting gaze of only its own members rather than the more revealing 'sunlight' of public scrutiny.").

Under FOIA, an agency may withhold information only if it "reasonably foresees that disclosure would harm an interest" protected by one of the statute's enumerated exemptions. 5 U.S.C. § 552(a)(8)(A). Here, the NSA made generic assertions that an unspecified number of documents, all of which it utterly failed to describe, are classified and therefore can be withheld. The NSA's conclusory assertion that all records responsive to the FOIA request are exempt from disclosure because they are properly classified is unjustified. Mere assertions that documents are exempt from disclosure cannot justify withholding them under FOIA. Indeed, under *Vaughn v. Rosen*, "courts will simply no longer accept conclusory and generalized allegations of exemptions...but will require a relatively detailed analysis in manageable segments." 484 F.2d 820, 827 (D.C. Cir. 1973).

At a minimum, the NSA must identify how many responsive documents it has located, describe those documents and articulate with specificity the basis for withholding them pursuant to the claimed exemptions. Moreover, the NSA's denial provides virtually no detail concerning the classification authority, the classification level, or the expected declassification date of a single record that would suggest that the information is "properly classified," as required by FOIA. Nor has it offered any information whatsoever about the basis for concluding that release of the requested records creates a potential harm to national security. Without any information regarding the type of information and number of records that have been withheld from disclosure, it is virtually impossible to challenge the denial of the FOIA request through this appeal.

The NSA has similarly failed to justify its invocation of the various withholding statutes it relies on under Exemption 3. For instance, while some information might be properly withheld under 50 U.S.C. § 3024(i) if it constitutes "intelligence sources and methods," the NSA has provided no description or other explanation of the withheld records that indicates that disclosure would, in fact, reveal such information. Likewise, 18 U.S.C. § 798 criminalizes the disclosure of any classified information "concerning the nature, preparation, or use of any code, cipher or cryptographic system of the United States," and Pub. L. No. 86-36 § 6 (50 U.S.C. § 3605) does not require the NSA to disclose "any information with respect to...the names, titles, salaries, or number of the persons employed." Again, the NSA has failed to provide any description or

explanation of the responsive records that would tend to demonstrate that disclosure would reveal such information. Nor does the NSA's determination provide sufficient detail to explain how the statutes it relies upon to justify withholding actually apply to the requested materials.

Furthermore, the NSA has not complied with its statutory duty to segregate and disclose non-exempt portions of the requested records. Even assuming that the requested records are exempt in part, portions of them likely contain information that has already been made available to the public or disclosure of which would not create any risk to national security. An agency "may not sweep a document under a general allegation of exemption, even if that general allegation is correct with regard to part of the information. It is quite possible that part of a document should be kept secret while part should be disclosed." *Vaughn*, 484 F.2d at 826. The NSA's failure to specify in detail which portions of the documents requested are disclosable and which portions are allegedly exempt violates FOIA.

Because the NSA failed to adequately justify withholding the requested documents, Privacy International appeals from the agency's determination that not a single portion of any record can be released pursuant to the FOIA request. We hereby request that the NSA reconsider its blanket denial of Privacy International's request, identify how many responsive documents it has located, and describe those documents and the basis for withholding them as required under *Vaughn*, 484 F.2d at 827. In accordance with FOIA, we expect a response within 20 working days. Please send any correspondence to the address indicated below.

Very truly yours,



Hannah Bloch-Wehba  
MEDIA FREEDOM & INFORMATION ACCESS  
CLINIC  
Yale Law School  
P.O. Box 208215  
New Haven, CT 06520-8215  
(203) 436-5824  
[hannah.bloch-wehba@ylsclinics.org](mailto:hannah.bloch-wehba@ylsclinics.org)  
*Counsel for Privacy International*



NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE  
FORT GEORGE G. MEADE, MARYLAND 20755-6000

Case: 100386/Appeal: 5099  
13 June 2017

Ms. Hannah Bloch-Wehba  
MEDIA FREEDOM & INFORMATION  
ACCESS CLINIC  
Yale Law School  
P.O. Box 208215  
New Haven, CT 06520-8215

Dear Ms. Bloch-Wehba:

This acknowledges receipt of your correspondence, dated 31 May 2017, appealing the response from the National Security Agency (NSA) to your client's 13 December 2016 request under the Freedom of Information Act (FOIA) for records relating to the British-United States Communications Agreement. Your appeal was received by the NSA FOIA/Privacy Act (PA) Appeal Authority Staff on 8 June 2017 and has been assigned Appeal Number 5099.

Please be advised that appeals are processed in the order in which they are received, on a first-in, first-out basis. At this time, there are a large number of appeals ahead of yours in our queue. We will begin to process your appeal and will respond to you again as soon as we are able. We appreciate your understanding in this matter.

Correspondence related to your request should include the case and appeal number assigned to your request and be addressed to the National Security Agency, Office of Information Management, FOIA/PA Appeals, 9800 Savage Road, Suite 6932, Fort George G. Meade, MD 20755-6932; or it may be sent via facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of "FOIA Appeals." **For inquiries regarding the status of your appeal, please contact this office via email at [FOIA\\_Appeal\\_Status@nsa.gov](mailto:FOIA_Appeal_Status@nsa.gov).**

Sincerely,

A handwritten signature in cursive script, appearing to read "Deb E.", written in black ink.

NSA/CSS FOIA/PA Appeal Authority Staff  
Office of Information Management