



July 27, 2010

**BY ELECTRONIC TRANSMISSION AND VIA FACSIMILE**

Brian D. Lamkin  
Federal Bureau of Investigation  
Atlanta Field Office  
2635 Century Parkway N.E., Suite 400  
Atlanta, GA 30345-3112

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

Dear Mr. Lamkin:

The American Civil Liberties Union of Georgia submits this Freedom of Information Act (“FOIA”) request for records pertaining to the FBI’s use of race and ethnicity to conduct assessments and investigations in local communities in Georgia.<sup>1</sup> Specifically, this request seeks records concerning the FBI’s implementation of its authority to collect information about and “map” racial and ethnic demographics, “behaviors,” and “life style characteristics” in local communities in order to assist the FBI’s “domain awareness” and “intelligence analysis” activities. Federal Bureau of Investigation, *Domestic Investigations and Operations Guide*, December 16, 2008, 32-34.<sup>2</sup>

In December 2008, the Department of Justice issued revised Attorney General Guidelines, which govern the FBI’s conduct in criminal, national security, and counter-intelligence assessments and investigations. That same month, the FBI issued its “Domestic Investigations and Operations Guide” or “DIOG,” an internal guide to implementing the Attorney General Guidelines. The DIOG was not made publicly available until September 2009, when the FBI released the guide in heavily-censored form. In January 2010, however, the FBI released through FOIA a less-censored version of the DIOG.

The DIOG contains troubling revelations about the FBI’s use of race and ethnicity information in conducting assessments and investigations. Under the DIOG, the FBI is permitted to “identify locations of concentrated ethnic communities in the Field Office’s domain” and:

- Collect and analyze racial and ethnic community demographics, including data about “ethnic-oriented businesses or other facilities”;

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<sup>1</sup> This FOIA request is submitted pursuant to the FOIA, 5 U.S.C. § 552, and the Department of Justice implementing regulations, 28 C.F.R. § 16.1.

<sup>2</sup> Available at

[http://www.muslimadvocates.org/latest/profiling\\_update/community\\_alert\\_seek\\_legal\\_adv.html](http://www.muslimadvocates.org/latest/profiling_update/community_alert_seek_legal_adv.html).

- Collect and analyze racial and ethnic “behaviors,” “cultural traditions,” and “life style characteristics” in local communities; and,
- Map racial and ethnic demographics, “behaviors,” “cultural traditions,” and “life style characteristics” in local communities.<sup>3</sup>

The possibility that the FBI is “mapping” local communities and local businesses based on race and ethnicity, as well as targeting “ethnic communities” for special collection and mapping of information based on so-called racial and ethnic “behaviors” or “characteristics,” raises grave civil rights and civil liberties concerns.<sup>4</sup> Although the DIOG have now been in effect for more than a year and a half, the public knows nothing about how the FBI has implemented this troubling authority in Georgia.

### **Requested Records**

1. Legal memoranda, procedures, policies, directives, practices, guidance, or guidelines created since December 16, 2007 pertaining to the types of racial and ethnic information – including demographics, behaviors, cultural traditions, and life-style characteristics – the FBI can or cannot collect information about, map, or otherwise use in the course of assessments and investigations pursuant to the authorities described in the DIOG;
2. Records created since December 16, 2008 describing or listing the types of racial and ethnic information – including demographics, behaviors, cultural traditions, and life-style characteristics – the FBI Field Office has collected information about or mapped pursuant to the authorities described in the DIOG;
3. Legal memoranda, procedures, policies, directives, practices, guidance, or guidelines created since December 16, 2007 pertaining to the collection of information about and/or mapping of “ethnically-oriented” businesses or other “ethnically-oriented” facilities pursuant to the authorities described in the DIOG;
4. Records created since December 16, 2008 describing or listing the types of “ethnically-oriented” businesses or other “ethnically-oriented” facilities the FBI Field Office has collected information about or mapped pursuant to the authorities described in the DIOG;
5. Legal memoranda, procedures, policies, directives, practices, guidance, or guidelines created since December 16, 2007 pertaining to the specific types of “[f]ocused behavioral characteristics reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community”<sup>5</sup> about which the FBI may collect information or map pursuant to the authorities described in the DIOG;

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<sup>3</sup> DIOG at 32-34.

<sup>4</sup> Indeed, in 2007 when it came to light that the L.A.P.D. planned to implement a similar plan to map L.A.’s Muslim community, the public outcry was so great that that the plan was abandoned immediately. See Richard Winton and Teresa Watanabe, *LAPD’s Muslim Mapping Plan Killed*, L.A. Times, Nov. 15, 2007.

<sup>5</sup> DIOG at 33.

6. Records created since December 16, 2008 describing or listing the types of “[f]ocused behavioral characteristics reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community”<sup>6</sup> the FBI Field Office has collected information about or mapped pursuant to the authorities described in the DIOG;
7. Legal memoranda, procedures, policies, directives, practices, guidance, or guidelines created since December 16, 2007 pertaining to the specific types of “behavioral and cultural information about ethnic or racial communities that is reasonably likely to be exploited by criminal or terrorist groups that hide within those communities”<sup>7</sup> about which the FBI may collect information or map pursuant to the authorities described in the DIOG;
8. Records created since December 16, 2008 describing or listing the types of “behavioral and cultural information about ethnic or racial communities that is reasonably likely to be exploited by criminal or terrorist groups that hide within those communities”<sup>8</sup> the FBI Field Office has collected information about or mapped pursuant to the authorities described in the DIOG;
9. Legal memoranda, procedures, policies, directives, practices, guidance, or guidelines created since December 16, 2007 pertaining to how the FBI is authorized to use the racial and ethnic data it collects pursuant to the authorities described in the DIOG;
10. Records created since December 16, 2008 concerning the number of communities in Georgia about which the FBI Field Office has collected information or mapped racial and ethnic demographics, behaviors, cultural traditions, and life-style characteristics pursuant to the authorities described in the DIOG;
11. Records created since December 16, 2008 listing or describing which communities in Georgia about which the FBI Field Office has collected information or mapped racial and ethnic demographics, behaviors, cultural traditions, and life-style characteristics pursuant to the authorities described in the DIOG; and,
12. Maps created since December 16, 2008 based on racial and ethnic data collected – including demographics, behaviors, cultural traditions, and life-style characteristics – pursuant to the authority described in the DIOG.

### **“Public Interest” Fee Waiver Request**

The ACLU of Georgia requests a waiver of document search, review, and duplication fees because disclosure of the requested records is in the public interest. The request is (1) “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.11(k)(1).

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<sup>6</sup> DIOG at 33.

<sup>7</sup> DIOG at 34.

<sup>8</sup> DIOG at 34.

The records sought here will significantly contribute to public understanding of the FBI's collection and mapping of racial and ethnic data in local communities. *See* 28 C.F.R. § 16.11(k)(1)(i). Very little is currently known about how the authorities described in the DIOG concerning the collection and mapping of racial and ethnic data have been interpreted or implemented in Georgia. Release of the records requested will shed much-needed light on these troubling practices.

Moreover, as a nonprofit, nonpartisan organization, and as a “representative of the news media” as discussed below, the ACLU of Georgia is well-situated to disseminate the information gained from this request to the general public. In accordance with its general practice, the ACLU of Georgia plans to disseminate records disclosed as a result of this FOIA request to the public. The ACLU of Georgia routinely obtains information about government activity (including through FOIA requests), analyzes that information, and widely publishes and disseminates that information to the press and to the public in a variety of ways. The ACLU of Georgia publishes a biweekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members) by e-mail. *See e.g.*, VOICE: ISSUES, EVENTS & AGITATIONS (ACLU of Georgia), Mar. 10, 2010, <http://archive.constantcontact.com/fs022/1102424221285/archive/1103157702940.html>. The electronic newsletter is also posted on the ACLU of Georgia's website, [www.acluga.org](http://www.acluga.org), and Facebook page, [www.facebook.com/pages/ACLU-of-Georgia/116855228000](http://www.facebook.com/pages/ACLU-of-Georgia/116855228000).

The ACLU of Georgia regularly publishes reports about government activity and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. *See, e.g.*, AZADEH SHAHSHAHANI, ACLU OF GEORGIA THE PERSISTENCE OF RACIAL PROFILING IN GWINNETT, TIME FOR ACCOUNTABILITY, TRANSPARENCY, AND AN END TO 287(G), Mar. 2010, *available at* <http://www.acluga.org/gwinnettracialreportfinal.pdf> (describing incidents of racial profiling that have occurred under the auspices of Gwinnett County's 287(g) agreement); ALEXANDRA STANCZYK, ACLU OF GEORGIA, BEST PRACTICES FOR DISMANTLING THE SCHOOL TO PRISON PIPELINE, Aug. 8, 2007, *available at* <http://www.acluga.org/docs/schooltoprison.pdf> (describing trends in public education and juvenile justice disproportionately affecting people of color that result in high incarceration rates among youths). The ACLU of Georgia also regularly publishes books, “Know Your Rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. *See, e.g.*, ACLU OF GEORGIA, GET YOUR VOTE BACK, *available at* <http://www.acluga.org/voting.rights.html> (providing information on how to register to vote following conviction for a felony).

The ACLU of Georgia also publishes, analyzes, and disseminates information through its heavily visited website, [www.acluga.org](http://www.acluga.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The website includes features on information obtained through the FOIA. *See, e.g.*, Press Release, ACLU Sues Pentagon for Documents on Peace Groups, June 14, 2006, *available at* <http://www.acluga.org/docs/docket/SpyFiles/PentagonSpyFileNatlPressRelease.pdf> (describing

FOIA request for documents relating to surveillance of domestic groups and activists involved in protests). *See also* Press Release, ACLU Intervenes In Georgia Voting Rights Act Challenge, July 7, 2010, *available at* <http://www.acluga.org/news/2010/07/07/aclu-intervenes-in-georgia-voting-rights-act-challenge/> (describing the intervention of the ACLU of Georgia in a challenge to Georgia state voting practices under Section 5 of the Voting Rights Act).

Public records disclosed as a result of this FOIA request will also be published, analyzed, and disseminated on the national ACLU's website, [www.aclu.org](http://www.aclu.org). This website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contain many thousands of documents relating to the issues on which the ACLU is focused. The national ACLU's website includes features based on information obtained through the FOIA, including a web feature called "Spy Files," [www.aclu.org/spyfiles](http://www.aclu.org/spyfiles), devoted exclusively to housing, analyzing, and disseminating records obtained through FOIA requests by ACLU affiliates (including the ACLU of Georgia) and the national ACLU about a host of domestic surveillance programs and practices. The site also contains a regularly-updated list of news stories pertaining to various types of domestic surveillance. The "Spy Files" site contains a page exclusively devoted to FBI surveillance practices, including the FBI's collection and mapping of racial and ethnic data in local communities. Records obtained through this FOIA will be described, analyzed, and widely disseminated to the public through this "Spy Files" website.

The national ACLU also operates a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily, [www.aclu.org/blog](http://www.aclu.org/blog). In this forum, the ACLU of Georgia creates and disseminates original editorial and educational content on civil rights and civil liberties news. *See, e.g.,* AZADEH SHAHSHAHANI, TIME TO PUT AN END TO RACIAL PROFILING IN GEORGIA, BLOG OF RIGHTS, Mar. 23, 2010, <http://www.aclu.org/blog/immigrants-rights-racial-justice/time-put-end-racial-profiling-georgia>.

Moreover, disclosure of the requested records is "not primarily in the commercial interest" of the ACLU of Georgia. *See* 28 C.F.R. § 16.11(k)(1)(ii). The records requested are not sought for commercial use and the ACLU of Georgia plans to disseminate the information disclosed as a result of this FOIA request to the public at no cost. Thus, 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).

### **News Media Status Fee Limitation Request**

We also request a waiver of document reproduction fees on the grounds that the ACLU of Georgia qualifies as a "representative of the news media." *See* 28 C.F.R. § 16.11(d). Again, here it is significant that the records are not sought for commercial use. *See Id.* The ACLU of Georgia meets the statutory and regulatory definitions 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 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 Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that "gathers information from a

variety of sources,” exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *cf. ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”).<sup>9</sup> As discussed above, the ACLU of Georgia, by itself and in conjunction with the national ACLU, routinely gathers information from a variety of sources (including from the government through FOIA), and organizes, analyzes, publishes, and widely disseminates that information to the public.

Notably, courts have found other organizations similar in kind to the ACLU to be “representatives of the news media.” *See, e.g., Elec. Privacy Info. 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); *Nat’l Security Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).<sup>10</sup>

### **Request for Expedited Processing**

Expedited processing is warranted here because there is “an urgency to inform the public about an actual or alleged federal government activity” and the FOIA request has been filed by an organization “primarily engaged in disseminating information.” *See* 28 C.F.R. § 16.5(d)(1)(ii). *See also* 5 U.S.C. § 552(a)(6)(E)(v)(II). The records in question involve the FBI’s actual and alleged activities with regard to the monitoring and surveillance of groups throughout the State of Georgia. There is an urgency to inform the public about such activities because it may bear on a number of Constitutional rights. In addition, the request deals with potential disparate treatment of groups based on categories such as religion, race, and ethnicity, and such potential unequal treatment is a matter necessitating immediate attention. Moreover, there is great public concern regarding the FBI’s use of new surveillance powers granted by statutory and regulatory changes since September 11, 2001. These concerns are illustrated by media coverage described below.

Expedited processing is independently appropriate here because the information sought relates to “a matter of widespread and exceptional media interest in which there exist possible questions

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<sup>9</sup> Fees associated with responding to FOIA requests are regularly waived for the ACLU, and a number of agencies have determined that the ACLU is a “representative of the news media” for the purposes of FOIA, including the Departments of Justice, State, and Commerce. In December 2008, the Department of Justice found that the ACLU was a “representative of the news media” for the purposes of FOIA in the context of a request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists.

<sup>10</sup> Courts have founds these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information/public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54; *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference to be primarily engaged in disseminating information even though it engages in substantial amounts of legislative advocacy beyond its publication and public education functions).

about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). The potential targeting of individuals and groups by the federal government on the basis of race, ethnicity, and other similar categorizations raises many questions about the government's integrity which affect public confidence in a significant way, particularly given this nation's long and troubling history with these issues. *See, e.g., ACLU*, 321 F.Supp. at 28-32 (granting expedited processing on this basis for a FOIA request regarding the number of times the U.S. Department of Justice requested permission to use a surveillance power created by the Patriot Act).

The vast amount of media coverage, both at a national and local level, demonstrates widespread and exceptional media interest in this issue. *See, e.g., Charlie Savage & James Risen, N.S.A. Wiretaps were Unlawful, U.S. Judge Rules*, N.Y. TIMES, Apr. 1, 2010, at 1; Bryan Bender, *FBI Gives a Glimpse of its Most Secret Layer*, BOS. GLOBE, Mar. 29, 2010, at 1; Charlie Savage, *Loosening of F.B.I. Rules Stirs Privacy Concerns*, N.Y. TIMES, Oct. 28, 2009, at A1; Josh Meyer, *Spy Effort Kept Quiet, Probe Says; Bush Administration Allegedly Cut Justice Leaders Out of Loop*, CHI. TRIB., July 11, 2009, at C10; Bob Egelko, *Illegal Wiretapping Suit Now in Obama's Court; New Administration Must Take a Stand on Whether Bush Program Violated Civil Rights*, S.F. CHRON., Jan. 19, 2009, at A1; Spencer S. Hsu & Carrie Johnson, *U.S. May Ease Police Spy Rules; More Federal Intelligence Changes Planned*, WASH. POST, Aug. 16, 2008, at A1.

The ACLU of Georgia expects a determination of this request for expedited processing within 10 calendar days and a determination of the request for documents within 20 calendar days. *See* 28 C.F.R. 16.5(d)(4); 5 U.S.C. § 552(a)(6)(A)(i).

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If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. The ACLU of Georgia expects the release of all segregable portions of otherwise exempt material. The ACLU of Georgia 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:

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American Civil Liberties Union of Georgia  
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Atlanta, GA 30339

Sincerely,

Azadeh Shahshahani, Esq  
National Security/Immigrants' Rights Project Director