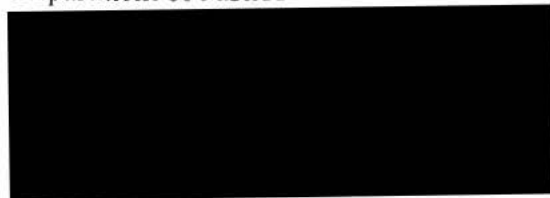


February 23, 2017

FOIA/PA Mail Referral Unit
Department of Justice



RE: FOIA Request to U.S. Department of Justice Regarding Former Attorney General Loretta Lynch's Input Into Deliberations Concerning, and her Review and Approval of "Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333"

Dear Sir or Ma'am:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")¹ on behalf of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records pertaining to former Attorney General Loretta Lynch's input into the deliberations concerning the "Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333," her review of those procedures, and her approval of those procedures, which she executed on January 3, 2017.

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



Background

Pursuant to DOJ FOIA regulation 28 C.F.R. §16.3(b), this Background addresses “the date, title or name, author, recipient, subject matter of the record[s]” requested, to the extent known.

According to the New York Times, “[i]n its final days, the Obama administration has expanded the power of the National Security Agency to share globally intercepted personal communications with the government’s 16 other intelligence agencies before applying privacy protections.”² On December 15, 2016, Director of National Intelligence James Clapper executed a document entitled “Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333.”³ On January 3, 2017, then-Attorney General Loretta Lynch executed this document, indicating her approval.

As reported by the New York Times, “[t]he new rules significantly relax longstanding limits on what the N.S.A. may do with the information gathered by its most powerful surveillance operations.”⁴ Authority for these new procedures derives from Executive Order 12333, last amended by President Bush in 2008, which provided:

Elements of the Intelligence Community are authorized to collect, retain, or disseminate information concerning United States persons only in accordance with procedures established by the head of the Intelligence Community element concerned or by the head of a department containing such element and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order, after consultation with the Director.⁵

After President Bush’s last amendment in 2008, “[i]t took another eight years to develop those rules.”⁶ The New York Times had first reported in 2014 that deliberations by Obama administration officials on developing these procedures were occurring.⁷ But, apparently, the new procedures were not completed by the Director of National Intelligence and approved by the Attorney General until just weeks before the end of President Obama’s tenure.

²Charlie Savage, *N.S.A. Gets More Latitude to Share Intercepted Communications*, NEW YORK TIMES (Jan. 12, 2017), https://www.nytimes.com/2017/01/12/us/politics/nsa-gets-more-latitude-to-share-intercepted-communications.html?_r=0.

³OFFICE OF THE DIR. OF NAT’L INTELLIGENCE, (U) 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), *available at* <https://www.documentcloud.org/documents/3283349-Raw-12333-surveillance-sharing-guidelines.html>.

⁴Savage, *supra* note 2.

⁵Executive Order 12333—United States Intelligence Activities, 46 Fed. Reg. 59941 (Dec. 4, 1981), *available at*, <https://www.archives.gov/federal-register/codification/executive-order/12333.html>; <https://www.gpo.gov/fdsys/pkg/FR-2008-08-04/pdf/E8-17940.pdf>.

⁶Savage, *supra* note 2.

⁷*Id.*

Records Requested

For purposes of this Request, the term “record” means “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recording, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016)⁸ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DOJ official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Justice or Federal Bureau of Investigation in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Justice or Federal Bureau of Investigation in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Justice, all without regard to the component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is November 7, 2016, to January 20, 2017.

Pursuant to FOIA, 5 U.S.C. § 552, ACLJ hereby requests that the U.S. Department of Justice produce the following within twenty (20) business days:

1. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by then-Attorney General Loretta Lynch referencing, connected to, or regarding in any way section 2.3 of Executive Order 12333, as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOJ electronic mail or message accounts, non-DOJ electronic mail or message accounts, personal electronic mail or message accounts, DOJ servers, non-DOJ servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message

⁸*Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016).

carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

2. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by then-Attorney General Loretta Lynch referencing, connected to, or regarding in any way her review of the procedures set forth in the document entitled "Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333," which she executed on January 3, 2017, as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOJ electronic mail or message accounts, non-DOJ electronic mail or message accounts, personal electronic mail or message accounts, DOJ servers, non-DOJ servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

3. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by then-Attorney General Loretta Lynch referencing, connected to, or regarding in any way her input into the development of procedures set forth in the document entitled "Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333," which she executed on January 3, 2017, as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOJ electronic mail or message accounts, non-DOJ electronic mail or message accounts, personal electronic mail or message accounts, DOJ servers, non-DOJ servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

4. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by then-Attorney General Loretta Lynch referencing, connected to, or regarding in any way her approval of the procedures set forth in the document entitled "Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333," which she executed on January 3, 2017, as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOJ electronic mail or message accounts, non-DOJ electronic mail or message accounts, personal electronic mail or message accounts, DOJ servers, non-DOJ servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency

account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

5. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOJ official referencing, connected to, or regarding in any way then-Attorney General Loretta Lynch's input, review and approval of procedures set forth in the document entitled "Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333," which she executed on January 3, 2017, as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOJ electronic mail or message accounts, non-DOJ electronic mail or message accounts, personal electronic mail or message accounts, DOJ servers, non-DOJ servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era

of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.⁹

As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to a *Vaughn* Index.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. The ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jay Alan Sekulow, Chief Counsel
Colby M. May, Senior Counsel
Craig L. Parshall, Special Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jay Alan Sekulow in cursive.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Colby M. May in cursive.

Colby M. May
Senior Counsel

Handwritten signature of Benjamin P. Sisney in cursive.

Benjamin P. Sisney
Senior Litigation Counsel

cc: Director of Public Affairs, Office of Public Affairs, Department of Justice

⁹PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.