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FOR FREEDOM OF THE PRESS

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January 3, 2020

Reporters Committee for Freedom of the Press
1156 15th St. NW, Suite 1020
Washington, DC 20005

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

BY FAX

RE: FREEDOM OF INFORMATION ACT REQUEST
Fee benefit and fee waiver requested

Dear FOIA Officer:

The Reporters Committee for Freedom of the Press (“RCFP” or “Reporters Committee”) submits this request under the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to the Central Intelligence Agency (the “CIA” or “Agency”) for records concerning a recent amendment to the Intelligence Identities Protection Act (“IIPA”), 50 U.S.C. §§ 3121-3126.

I. Background

The IIPA criminalizes certain disclosures of the classified identities of present or retired government officers and employees of an intelligence agency, or present or retired members of the Armed Forces assigned to duty with an intelligence agency. It also criminalizes the disclosure of the identity of a U.S. citizen agent, informant, or source of operational assistance to an intelligence agency whose intelligence relationship to the United States is classified information. Collectively, these are defined as “covert agents” in § 3126.

An amendment to the IIPA passed Congress earlier in 2019 as Section 305 of H.R. 3494 and Section 9305 of S. 1790. It was included in the conferenced version of the National Defense Authorization Act for Fiscal Year 2020, which became Public Law No. 116-92 on December 20, 2019 (the “2020 NDAA”).

Until the 2020 NDAA, the text of the IIPA limited criminal exposure by defining “covert agent” to only apply to intelligence agency officers or employees—or to members of the Armed Forces assigned to an intelligence agency—serving outside the United States at the time of the disclosure or to those who had served overseas within the past five years. 50 U.S.C. § 3126(4)(A) (2016). For U.S. citizen informants, agents or sources of operational assistance, they must have had to have been active overseas at the time of disclosure. 50 U.S.C. § 3126(4)(B) (2016). Non-U.S. citizen agents and informants with a past or

present classified intelligence relationship to the United States are protected without regard to geography. 50 U.S.C. § 3126(4)(C). That provision remains unchanged with this amendment.

I refer to the overseas service, residence, or activity limitations as the “geographic nexus.” The 2020 NDAA IIPA amendment removes the geographic nexus.

According to the CIA, while the geographic nexus was included in the original IIPA “primarily because of the threat of physical danger when the identities of officers serving abroad are revealed,” the changes to the IIPA in the 2020 NDAA are necessary because of “evolving” threats faced by “undercover Agency officers.”¹ The CIA identified three such threats: (1) organizations such as Wikileaks; (2) “incidents relating to past Agency programs, such as the [Rendition, Detention and Interrogation Program] investigation” and (3) “cyber threats.”²

The CIA did not offer an explanation as to why these three threats have increased the potential for physical harm in the United States to officers, employees or detailed servicemembers whose identities are classified. The CIA’s written explanation to Congress also did not provide an explanation for why the removal of the geographic nexus with respect to U.S. citizen agents, informants or sources of operational assistance, whose relationship to the intelligence agency is classified, is, the CIA believes, necessary.³

II. Requested Records

Pursuant to the FOIA, I, on behalf of the Reporters Committee, request copies of the following:

- 1) All records created between January 1, 2011, through December 31, 2015 from the Office of Congressional Affairs, the Office of Public Affairs and the Office of General Counsel, including but not limited to communications, emails, opinions, memoranda, directives, guidelines, checklists, or criteria, containing or referencing any of the following terms from:
 1. “Intelligence Identities Protection Act”
 2. “IIPA”
 3. “50 U.S.C. § 3126”
 4. “50 U.S.C. § 426”
 5. “50 USC § 3126”

¹ Central Intelligence Agency, Extending the Intelligence Identities Protection Act of 1982 1, 3 (2019), <https://perma.cc/4KXB-5L5Q>.

² *Id.* at 2.

³ *Id.* at 1-2, 4. The CIA’s written explanation and justification only referred to officers when noting the claimed need for expanded protection under the amendment. U.S. citizen agents, informants and sources of operational assistance are only mentioned briefly in the “section analysis” in the written explanation.

6. "50 USC § 426"
 7. "50 U.S.C. 3126"
 8. "50 U.S.C. 426"
 9. "50 USC 3126"
 10. "50 USC 426"
 11. "Section 3126"
 12. "Section 426"
- 2) All records created since January 1, 2018, from the Office of Congressional Affairs, the Office of Public Affairs and the Office of General Counsel, including but not limited to communications, emails, opinions, memoranda, directives, guidelines, checklists, or criteria, containing or referencing any of the following terms:
1. "Intelligence Identities Protection Act"
 2. "IIPA"
 3. "50 U.S.C. § 3126"
 4. "50 U.S.C. § 426"
 5. "50 USC § 3126"
 6. "50 USC § 426"
 7. "50 U.S.C. 3126"
 8. "50 U.S.C. 426"
 9. "50 USC 3126"
 10. "50 USC 426"
 11. "Section 3126"
 12. "Section 426"
 13. "H.R. 3494"
 14. "S.1790"
 15. "National Defense Authorization Act"
 16. "NDAA"
- 3) All communications, including emails, created since January 1, 2018, between any element of the Agency and the Office of the Director of National Intelligence referencing the "Intelligence Identities Protection Act" or the "IIPA."

Please search all records systems, databases, offices, and other repositories that could contain responsive records.

I would like to receive the information in electronic format, preferably PDFs. Please also provide PDFs that have been subjected to optical character recognition ("OCR") or are otherwise electronically searchable, in order to facilitate public access to the content of the information.

III. Fee Benefit and Fee Waiver Requested

As a representative of the news media, RCFP requests a fee benefit which would require it to pay only for the direct cost of duplication after the first one hundred pages of responsive records. 5 U.S.C. § 552(a)(4)(A)(ii)(II). In the event that records responsive to this request

exceed one hundred pages, RCFP is willing to pay up to one hundred dollars in duplication fees. Please inform me if fees will exceed that amount before proceeding.

RCFP also seeks a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure 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.” *Id.*

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii), disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government” within the meaning of the statute because the Reporters Committee is a nonprofit association of news reporters and editors that publishes information to educate the public about the state of the press. In addition to regularly obtaining information about government activities that touch and concern members of the press and the First Amendment, RCFP also engages in analyzing and publishing that information.⁴ For instance, RCFP routinely posts articles on its website⁵ and social media accounts⁶ and emails out newsletters. RCFP intends to analyze and disseminate information obtained through this Request to the general public via these publications.

Further, the records sought are “likely to contribute significantly to public understanding” of the “operations or activities of the government” because they will shed light on the CIA’s efforts to amend the HIPA, its reasons for undertaking these efforts, and how the changes will impact the press’s ability to report on intelligence operations.

Additionally, the records requested are not sought for commercial use. RCFP is a nonprofit public interest organization. *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). This information is being sought on behalf of the Reporters Committee for free dissemination to the general public through its multiple publishing avenues.

IV. Conclusion

If this request is denied in whole or part, please justify all such denials by reference to specific exemptions, and provide an explanation of why the CIA “reasonably foresees that disclosure would harm an interest” protected by that exemption or why “disclosure is prohibited

⁴ *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a nonprofit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information”) (citation omitted).

⁵ Reporters Committee for Freedom of the Press, <https://www.rcfp.org/> (last visited Dec. 24, 2019).

⁶ See @rcfp, Twitter, <https://twitter.com/rcfp> (17,800 followers as of Dec. 24, 2019); Reporters Committee for Freedom of the Press, Facebook, <https://www.facebook.com/ReportersCommittee/> (8,672 “likes” as of Dec. 24, 2019).

by law[.]” 5 U.S.C. § 552(a)(8). Please also ensure that all segregable portions of otherwise exempt material are released.

If you have any questions regarding this request, please contact me at grottman@rcfp.org. I look forward to your determination within twenty working days of this request, as is required by law. Thank you in advance for your assistance in this matter.

Sincerely,

Gabriel Rottman
Director, Technology and Press Freedom Project,
Reporters Committee for Freedom of the Press
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