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*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WILEY GILL; JAMES PRIGOFF; TARIQ  
RAZAK; KHALID IBRAHIM; and AARON  
CONKLIN,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE; LORETTA  
LYNCH, in her official capacity as the  
Attorney General of the United States;  
PROGRAM MANAGER – INFORMATION  
SHARING ENVIRONMENT;  
KSHEMENDRA PAUL, in his official  
capacity as the Program Manager of the  
Information Sharing Environment,

Defendants.

Case No. 3:14-cv-03120-RS-KAW

**DECLARATION OF JAMES PRIGOFF  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT AND PLAINTIFFS'  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

Hearing Date: December 8, 2016  
Time: 1:30 pm  
Judge: Hon. Richard Seeborg  
Courtroom: 3, 17th Floor  
Date of Filing: July 10, 2014  
Trial Date: None Set

1 I, James Prigoff, declare as follows:

2 1. I am one of the Plaintiffs in the above-titled action. I make this Declaration in  
3 support of Plaintiffs' Motion for Summary Judgment and Plaintiffs' Opposition to Defendants'  
4 Motion for Summary Judgment. I make this Declaration of my own personal knowledge, and if  
5 called to testify, I could and would testify competently to the matters stated herein.

6 2. I am a United States citizen and I reside in Sacramento, California. I am 88 years  
7 old.

8 3. I am a retired business executive. I served as Senior Vice President of the Sara Lee  
9 Corporation and President of a division of Levi Strauss & Co.

10 4. I am also a professional photographer. I have been a photographer for most of my  
11 life. My specialty is photographing murals, graffiti and other public art. I have published several  
12 books of photographs and have been included in a dozen more. I have a collection of over 80,000  
13 photographic slides. My work has been exhibited at the Smithsonian and in galleries from Berlin  
14 to Vancouver; I have lectured on photography and public art all over the world. In 2012, based  
15 on my 40 years of documenting public art, the Estria Foundation named me an "Urban Legend."

16 5. It has been my experience that some of my principal photographic subjects (public  
17 art and graffiti) are frequently located on infrastructure (i.e., bridges, tunnels, electrical grids, and  
18 so forth).

19 6. In early June 2004, I was the keynote speaker at the National Conference on Mural  
20 Art in Philadelphia, Pennsylvania. While in Philadelphia, I updated my photographic collection  
21 of that city's public art. After speaking at the conference, I drove to New York to see my son and  
22 also to update my photographic collection of that city's public art. Then I drove to Boston,  
23 Massachusetts, where I made a presentation at a show of my work in Cambridge. While in  
24 Boston, I also took the opportunity to document the public art of Boston.

25 7. As part of this documentation effort, I sought to photograph a famous piece of  
26 public art known as the "Rainbow Swash." The Rainbow Swash is located in the Dorchester  
27  
28

1 neighborhood of Boston. The artwork is painted on a natural gas storage tank, which is  
2 surrounded by a chain link fence. The Rainbow Swash is highly visible to commuters from the  
3 local expressway.

4 8. In order to photograph the Rainbow Swash, I drove my rental car to a public area  
5 outside the fence surrounding the artwork, and set up my equipment. I chose this location in part  
6 because of favorable lighting conditions. From this location, the sun was behind me and casting  
7 its light on the Rainbow Swash. Before I could take any photographs, two private security guards  
8 came out from inside the fenced area and told me I was not allowed to photograph the Rainbow  
9 Swash. The guards claimed the area was private property. When I pointed out to the guards that I  
10 was not on private property, they still insisted that I could not take any photographs.

11 9. To avoid a confrontation with the guards, I did not take any photographs of the  
12 Rainbow Swash from this public area and stopped attempting to do so. I got back in my car and  
13 drove to another public location outside the fenced area. However, the guards followed me to this  
14 new location, so I left this location as well without taking any photographs. I did not provide any  
15 identifying information to the guards at any point.

16 10. I drove to the other side of the Rainbow Swash, and this time, the guards did not  
17 follow me. I was able to take some photographs of the Rainbow Swash from this third vantage  
18 point. However, the lighting conditions were significantly inferior to the conditions at the first  
19 two locations, as I now had to take the photograph into the sunlight. The resulting photographs  
20 were of notably poorer aesthetic quality than if I had been able to photograph from either of the  
21 first two sites.

22 11. I subsequently discovered several excellent photographs of the Rainbow Swash  
23 online, including on the Wikipedia entry for the Rainbow Swash. These widely available  
24 photographs of this national landmark were taken from vantage points closer than the two  
25 locations from which I attempted to take, and the third location from which I actually took,  
26 photographs of the Rainbow Swash.

1           12.     After my trip to Boston, I returned to my home in Sacramento, California. A few  
2 months later, on or about August 19, 2004, I came home one day to find a business card affixed to  
3 my door. It was the business card of Agent A. Ayaz of the Joint Terrorism Task Force. On the  
4 back of the card was a handwritten note, stating, “Mr. Prigoff, please call me. Thanks.” A true  
5 and correct copy of the front and back of the business card I found on my door is attached as  
6 Exhibit 1 to this declaration.

7           13.     Later, I learned from a neighbor across the street that two agents had knocked on  
8 her door and asked about me.

9           14.     I called Mr. Ayaz, who asked if I had been to Boston. I realized that Mr. Ayaz was  
10 referring to my efforts to photograph the Rainbow Swash, and I explained what happened on that  
11 occasion.

12           15.     I believed that the security guards at the Rainbow Swash site had submitted a  
13 report about me that included my rental car information, and that is how I was traced from Boston  
14 to my home in Sacramento.

15           16.     My beliefs were confirmed when I submitted a Freedom of Information Act  
16 (“FOIA”) and Privacy Act request to the FBI on July 9, 2014, and received redacted versions of  
17 three reports, each titled “SUSPICIOUS ACTIVITY,” concerning my attempt to photograph the  
18 Rainbow Swash. True and correct copies of the documents I received from the FBI in response to  
19 my FOIA and Privacy Act request (with personal identifying information about me redacted), and  
20 which I have personally reviewed, are attached as Exhibits 2, 3, and 4 to this declaration. *See* Exs.  
21 2 (“SUSPICIOUS ACTIVITY” report on James Burt Prigoff, dated June 21, 2004), 3  
22 (“SUSPICIOUS ACTIVITY” report on James Burt Prigoff, dated October 18, 2004) & 4  
23 (“SUSPICIOUS ACTIVITY” report on James Burt Prigoff, dated November 8, 2004).

24           17.     Note that, despite my repeated efforts, even the redacted “SUSPICIOUS  
25 ACTIVITY” reports I received in response to my FOIA and Privacy Act request do not constitute  
26 my entire FBI file.

1 (a) I received a response from the FBI regarding my FOIA and Privacy Act  
 2 request, dated March 24, 2015, which provides the three “SUSPICIOUS ACTIVITY”  
 3 reports discussed above, and also noted that deletions had been made in the reports. A true  
 4 and correct copy of the letter I received from the FBI, and which I have personally  
 5 reviewed, is attached as Exhibit 5 to this declaration. *See* Ex. 5 (letter from David M.  
 6 Hardy, FBI, to Yaman Salahi, Asian Americans Advancing Justice, dated March 24,  
 7 2015).

8 (b) The numerous redactions to my “SUSPICIOUS ACTIVITY” reports  
 9 include a paragraph that states:

10 An ACS check of JAMES PRIGOFF revealed the following references:

11 [REDACTED] in 1983

12 [REDACTED] in 1991

13 [REDACTED] in 1992

14 [REDACTED] in 1992

15 Ex. 2 at 2; *see also* Ex. 4 at 2. Thus, according to the redacted reports that were provided  
 16 to me, at least four other FBI files exist that refer to me.

17 (c) The ground provided by the FBI for its failure to produce these other four  
 18 files is 5 U.S.C. § 552(b)(7)(E):

19 records or information compiled for law enforcement purposes, but only to the  
 20 extent that the production of such law enforcement records or information . . .  
 21 would disclose techniques and procedures for law enforcement investigations or  
 22 prosecutions, or would disclose guidelines for law enforcement investigations or  
 23 prosecutions if such disclosure could reasonably be expected to risk circumvention  
 24 of the law.

25 *See* Ex. 2 at 2 (redactions annotated b7e).

26 (d) On May 19, 2015, I appealed the incomplete production of my FBI files. A  
 27 true and correct copy of the letter I sent to the DOJ’s Office of Information Policy, and  
 28

1 which I have personally reviewed, is attached as Exhibit 6 to this declaration. *See* Ex. 6  
 2 (letter from Yaman Salahi to Director, Office of Information Policy, DOJ, dated May 19,  
 3 2015). In that letter, I cited the redacted passage quoted in the previous paragraph and  
 4 noted that the missing reports “clearly fall within the parameters of [my FOIA]  
 5 request . . . .” *Id.* at 1-2. I also challenged the exemption based on § 552(b)(7)(E):

6 Here, the Department invoked (b)(7)(E) to justify redacting materials related to  
 7 incidents that occurred *over two to three decades ago*, specifically, all information  
 8 relating to ACS references for Mr. Prigoff from 1983, 1991, and 1992. Such  
 9 information cannot plausibly be the subject of law enforcement investigations or  
 10 prosecutions. In addition, given that Mr. Prigoff has not engaged in any criminal  
 11 activity, it is highly unlikely that the Department is able to meet its burden of  
 12 showing that the redacted material relates to enforcement of a particular federal  
 13 law.

14 *Id.* at 2-3 (original emphasis).

15 (e) On January 27, 2016, I received a response from the DOJ’s Office of  
 16 Information Policy denying my appeal of the incomplete production of my FBI files. A  
 17 true and correct copy of the letter I received from the DOJ’s Office of Information Policy,  
 18 and which I have personally reviewed, is attached as Exhibit 7 to this declaration. *See* Ex.  
 19 7 (letter from Sean R. O’Neill, Office of Information Policy, DOJ, to Yaman Salahi, dated  
 20 January 27, 2016).

21 18. My FOIA and Privacy Act request to the FBI, dated July 9, 2014, was also  
 22 addressed to the Office of the Director of National Intelligence (“ODNI”).

23 (a) The ODNI responded to me by letter dated January 8, 2015. A true and  
 24 correct copy of the ODNI’s response, which I have personally reviewed, is attached as  
 25 Exhibit 8. *See* Ex. 8 (letter from Jennifer Hudson, Director, Information Management  
 26 Division, ODNI, to Yaman Salahi, dated January 8, 2015). In its letter, the ODNI stated  
 27  
 28

1 that “it could neither confirm nor deny the existence or nonexistence [in its classified  
2 files] of any information responsive to your request.” *Id.*

3 (b) I appealed the ODNI’s determination on February 20, 2015. On September  
4 15, 2015, the ODNI denied that appeal. A true and correct copy of the ODNI’s appeal  
5 denial, which I have personally reviewed, is attached as Exhibit 9. *See* Ex. 9 (letter from  
6 Mark W. Ewing, Office of the Director of National Intelligence, to Yaman Salahi, dated  
7 September 15, 2015).

8 19. I am very upset that I was tracked cross-country from Boston to Sacramento, and  
9 contacted by law enforcement agents at my home, over my effort to engage in photography from  
10 a public location. Indeed, one of the “SUSPICIOUS ACTIVITY” reports notes that I rented the  
11 car (that I was using when trying to photograph the Rainbow Swash) “in downtown Philadelphia  
12 on 6/3/2004 and returned to the Philadelphia airport on 6/13/2004 with an accumulation of 1,280  
13 miles.” Ex. 1. This shows that the FBI was carefully monitoring my whereabouts.

14 20. I am also very upset that law enforcement agents questioned at least one of my  
15 neighbors about me. I believe this questioning created a negative and strong implication that I  
16 must have engaged in some type of misconduct. *See also* Ex. 3 at 3 (“PRIGOFF was also upset  
17 when he learned, through his neighbors, that investigators visited his residence.”).

18 21. The FBI has maintained the “SUSPICIOUS ACTIVITY” reports about me for  
19 over a decade now. These three reports, dated June 21, 2004, October 18, 2004, and November 8,  
20 2004, all pertain to activity in the spring of 2004. Yet the FBI produced them to me by letter dated  
21 March 24, 2015. *See* Ex. 5. Thus, the FBI has clearly maintained these reports in some kind of  
22 database for over ten years. This is so even though the second and third SARs state that the matter  
23 is concluded. *See* Ex. 3 at 4 (“Absent the development of additional derogatory information  
24 attributed to PRIGOFF, Sacramento views no basis for further investigation, and therefore  
25 considers this lead covered.”) & Ex. 4 at 2 (“In view of the explanation provided this, Boston  
26 considers this lead covered.”).

1           22.     As a result of the “SUSPICIOUS ACTIVITY” reports about me, and their  
2 inclusion in the FBI’s database, my reputation has been injured because I have been branded as a  
3 person who has engaged in some type of misconduct, even though I was simply attempting to  
4 take photographs from a public area. Note that the October 18, 2004 “SUSPICIOUS  
5 ACTIVITY” report concludes: “Absent the development of additional derogatory information  
6 attributed to PRIGOFF, Sacramento . . . considers this lead covered.” Ex. 4 at 3 (emphasis added)

7           23.     In addition, as a result of the inclusion of this information about me in the FBI’s  
8 database, my privacy has been invaded because any person with access to the database has access  
9 to information about me, even though I was simply attempting to take photographs from a public  
10 area.

11           24.     I have reviewed the “Criteria Guidance” contained in each of the three versions of  
12 the “Functional Standard” for Suspicious Activity Reporting issued by the Program Manager for  
13 the Information Sharing Environment (“PM-ISE”), and attached as Exhibit 10 to this declaration.  
14 The “Criteria Guidance” lists categories of behavior that presumably satisfies the PM-ISE’s  
15 definition of what constitutes suspicious activity. Photography of infrastructure is listed in each of  
16 the three versions. I have also reviewed a document that is titled “Potential Indicators of Terrorist  
17 Activities Related to the General Public” with the seal of the Bureau of Justice Assistance and  
18 that is attached as Exhibit 11 to this declaration. This document lists as one potential indicator of  
19 terrorist activity “people acting suspiciously.”

20           25.     I continue to be an active photographer and often take pictures of architectural  
21 structures and post offices, among other sites that could be described as infrastructure. Taking  
22 photographs of infrastructure falls under one or more of the behavioral categories identified by  
23 the PM-ISE. Although I do not view taking photographs as suspicious, the security guards at the  
24 Rainbow Swash apparently did and so my activities as a photographer could, in the eyes of at  
25 least some people, fall under the label “people acting suspiciously.” As a result, I fear that I am  
26 likely to be the subject of yet another SAR in the future. I further fear that my efforts to take  
27 photographs of architectural structures, post offices (which frequently contain murals from the  
28

1 WPA period) or other sites that could be described as infrastructure will be hindered again in the  
 2 future, and I will be either prevented from taking photographs or forced to take photographs of  
 3 lesser quality, as occurred to me at the Rainbow Swash.

4 26. I remain deeply troubled by what may result from the collection, maintenance, and  
 5 dissemination in a database of reports describing me as engaging in suspicious activity.

6 27. I believe that the defendants in this case would have benefited from input from the  
 7 public on the standard for suspicious activity reporting. I would have wanted the defendants to  
 8 know when they adopted their standard for suspicious activity reporting that a standard that does  
 9 not require reasonable suspicion of criminal activity harms innocent people, like me, who have  
 10 not engaged in any wrongdoing: It makes us the targets of law enforcement scrutiny, puts our  
 11 information in government databases, and adversely affects our reputations by identifying us as  
 12 individuals who have engaged in conduct with a potential nexus to terrorism. I would also have  
 13 wanted defendants to know the specific facts of my case so that they could understand the factual  
 14 basis for my concerns. I was not aware that defendants sought input on the standard for  
 15 suspicious activity reporting. As a result, I did not have an opportunity to share my perspective or  
 16 the factual basis for my concerns.

17  
 18 I declare under penalty of perjury under the laws of the United States that the foregoing is  
 19 true and correct. Executed this 15 day of Sept 2016 in Sacramento, California.

20  
 21 By: 

22 James Prigoff

**FILER’S ATTESTATION**

I, Phillip J. Wiese, am the ECF user whose identification and password are being used to file this DECLARATION OF JAMES PRIGOFF IN SUPPORT OF PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT. Pursuant to L.R. 5-1(i)(3), I hereby attest that concurrence in the electronic filing of this document has been obtained from each of the other signatories.

Dated: September 22, 2016                      By           /s/ Phillip J. Wiese            
Phillip J. Wiese

# EXHIBIT 1

**Joint Terrorism Task Force**

A. Ayaz  
Task Force Agent  
4560 Orange Grove Ave  
Sacramento, CA 95841  
Tel: 916-481-9110  
Fax: 916-977-2300



8-19-04  
1:30 PM

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MR. PRIGOFF, PLEASE  
CALL ME. THANKS

# EXHIBIT 2

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 08-25-2014 BY NSICG/E97M74K90

(Rev. 01-31-2003)

# FEDERAL BUREAU OF INVESTIGATION

**Precedence:** ROUTINE

**Date:** 06/21/2004

**To:** Boston  
Sacramento

**From:** Boston

CT-3

**Contact:** [REDACTED]

b6  
b7C

**Approved By:** [REDACTED]

**Drafted By:** [REDACTED]

**Case ID #:** [REDACTED]

(Pending) -2924  
(Pending) -144

b7E

**Title:** SUSPICIOUS ACTIVITY  
JAMES BURT PRIGOFF

DEMOCRATIC NATIONAL CONVENTION  
BOSTON, MA. JULY 2004  
00: BOSTON

✓ pw

**Synopsis:** On 6/11/2004 the male operator of a rental car stopped his vehicle near a natural gas tank in Boston and began taking photographs of the facility.

**Enclosure(s):** a BOSTON POLICE DEPARTMENT (BPD) report form (CC#040-3006167) dated 6/11/2004

a PENNSYLVANIA BUREAU OF MOTOR VEHICLES vehicle registration check on PENNSYLVANIA registration EZX-9873

a copy of California Drivers' License [REDACTED], with Image of JAMES BURT PRIGOFF

**Details:** On 6/11/2004 the BOSTON POLICE DEPARTMENT (BPD) notified the writer of an incident reported to that Department relative to the following incident:

On 6/11/2004 members of the KEYSpan SECURITY reported that about 10:10 AM that date, a white, non-Hispanic male, late 50's or early 60's, 5'9" - 5'10", weight in proportion to height, dark hair, mustache drove a vehicle up onto a private road which was marked No Trespassing, leading

[REDACTED]

123 p.w.o.c

b7E

2924

To: Boston From: Boston  
Re: [REDACTED] 06/21/2004

b7E

to a natural gas storage tank facility at 200 Victory Road, Dorchester, Massachusetts and began taking photographs of the facility.

As the security staff advised this male that he was not allowed to take photographs of the facility he became extremely belligerent telling them that he could take photos of anything he wanted. This male then drove to another road on this facility and was again told that he was trespassing. He again became belligerent and finally left the scene.

The vehicle the subject drove, a 2004 Chevrolet sedan, grey in color, Pennsylvania Registration EZX-9873 is registered to the AVIS RAC SYS INC. PV Holding Company, 300 Cente Pointe Drive, Virginia Beach, Va. 23462.

Further inquiry revealed that this vehicle had been rented in downtown Philadelphia on 6/3/2004 and returned to the Philadelphia airport on 6/13/2004 with an accumulation of 1,280 miles. The vehicle had been rented by one JAMES PRIGOFF D.O.B. [REDACTED] of [REDACTED], Sacramento, California 95835 under California Operator's License [REDACTED].

An ACS check of JAMES PRIGOFF revealed the following references:

[REDACTED] in 1983  
[REDACTED] in 1991  
[REDACTED] in 1992  
[REDACTED] in 1992

b7E

To: Boston From: Boston  
Re: [REDACTED] 06/21/2004

b7E

LEAD(s):

Set Lead 1: (Action)

SACRAMENTO

AT AT SACRAMENTO

Sacramento Field Office is requested to conduct an interview of JAMES PRIGOFF born [REDACTED] of [REDACTED] Drive, Sacramento, California 95825 as to the purpose of his trip to Massachusetts and in particular his presence in BOSTON and in the area of the natural gas storage tanks.

♦♦

# EXHIBIT 3

(Rev. 01-31-2003)

## FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 10/18/2004

To: Boston

Attn: CT-3

SSA [REDACTED]  
SA [REDACTED]b6  
b7C

From: Sacramento

JTTF

Contact: TFA [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED] 292aa04.ec

Case ID #: [REDACTED] (Pending)  
[REDACTED] (Pending)

b7E

Title: SUSPICIOUS ACTIVITY  
JAMES BURT PRIGOFF

Synopsis: To report results of [REDACTED] investigation.

Reference: [REDACTED]

b7E

Details: After interviewing captioned subject, Sacramento has determined that captioned subject is not [REDACTED]  
[REDACTED]

By way of background, on 6/11/2004, the BOSTON POLICE DEPARTMENT (BPD) notified the Boston FBI division of an incident reported to that Department relative to the following incident:

On 6/11/2004 members of the KEYSpan SECURITY reported that about 10:10 AM that date, a white, non-Hispanic male, late 50's or early 60's, 5'9" - 5'10", weight in proportion to height, dark hair, mustache drove a vehicle up onto a private road which was marked No Trespassing, leading to a natural gas storage tank facility at 200 Victory Road, Dorchester, Massachusetts and began taking photographs of the facility.

As the security staff advised this male that he was not allowed to take photographs of the facility he became extremely belligerent telling them that he could take photos of anything he wanted. This male then drove to another road on this facility and was again told that he was trespassing. He again became belligerent and finally left the scene.

To: Boston From: Sacramento  
Re: [REDACTED] 10/18/2004

b7E

The vehicle the subject drove, a 2004 Chevrolet sedan, grey in color, Pennsylvania Registration EZX-9873 is registered to the AVIS RAC SYS INC. PV Holding Company, 300 Cente Pointe Drive, Virginia Beach, Va. 23462.

Further inquiry revealed that this vehicle had been rented in downtown Philadelphia on 6/3/2004 and returned to the Philadelphia airport on 6/13/2004 with an accumulation of 1,280 miles. The vehicle had been rented by one JAMES PRIGOFF D.O.B. [REDACTED] of [REDACTED], Sacramento, California 95835 under California Operator's License [REDACTED].

An ACS check of JAMES PRIGOFF revealed the following references:

[REDACTED] in 1983  
[REDACTED] in 1991  
[REDACTED] in 1992  
[REDACTED] in 1992

b7E

Set forth below is the telephonic interview that Writer conducted with PRIGOFF.

On 08/23/2004, James PRIGOFF, DOB [REDACTED], California DL# [REDACTED], residence address [REDACTED], Sacramento, CA 95825, residence telephone [REDACTED], was telephonically interviewed by Writer. Writer contacted PRIGOFF to determine PRIGOFF'S possible involvement [REDACTED]. After being advised of the nature of the interview and the identity of the interviewing agent, PRIGOFF provided the following information:

b7E

PRIGOFF is an artist who was attending the National Conference for Mural Art in Philadelphia, PA, and identified himself as the keynote speaker at this event. From Philadelphia, PRIGOFF drove to New York to visit his son. PRIGOFF then drove to Boston, MA, to attend what he described as his own art show at the Cambridge Art Gallery, where his collection of art is known as "The Walls of Heritage and the Walls of Pride." PRIGOFF was also a guest speaker at that event. Just prior to arriving in Boston from New York, PRIGOFF noticed a tower, presumably a water tower, with public art displayed on it. PRIGOFF intended to get a closer view of the art but was denied access by the towers security officers, which greatly irritated him. PRIGOFF stated that he simply desired to take a photo of the art work on the tower.

To: Boston From: Sacramento  
Re: [REDACTED] 10/18/2004

b7E

PRIGOFF stated that he is known internationally as an artist and has photographed a number of tanks and towers throughout the country.

Note: PRIGOFF spoke in a generally agitated tone during his conversation with Writer. PRIGOFF stated that he normally does not communicate with Federal Agents but would make an exception during this occasion, since he found the topic of the inquiry to be "amusing." PRIGOFF was also upset when he learned, through his neighbors, that investigators visited his residence. (Prior to the telephonic conversation with PRIGOFF, investigators attempted to contact him at his residence without success). PRIGOFF stated that investigators inquiry of him was a "waste of taxpayers money."

Absent the development of additional derogatory information attributed to PRIGOFF, Sacramento views no basis for further investigation, and therefore, considers this lead covered.

To: Boston From: Sacramento  
Re:  10/18/2004

b7E

LEAD(s) :

Set Lead 1: (Info)

BOSTON

AT BOSTON

Provided for information.

♦♦

# EXHIBIT 4

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 08-25-2014 BY NSICG/F97M74K90

(Rev. 01-31-2003)

## FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 11/08/2004

To: Boston

From: Boston

CT-3

Contact: [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]

Case ID #:

[REDACTED]

(Pending) — 3402

Title: SUSPICIOUS ACTIVITY

Synopsis: Results of [REDACTED] of an incident on 6/11/2004 where JAMES PRIGOFF took photographs of the Dorchester Gas Tank. 1/2

Details: On 6/11/2004 a male, later identified as JAMES PRIGOFF DOB [REDACTED] of [REDACTED], Sacramento, California 95835, has stopped the vehicle he was operating, on a private road, marked with No Trespassing signs, at the Dorchester Gas Tank facility at 200 Victory Road, Boston, Massachusetts, and began taking photographs of the facility.

At Boston's request, on 8/23/2004 an agent of the FEDERAL BUREAU OF INVESTIGATION'S (FBI) Sacramento Office conducted an interview of JAMES PRIGOFF, during which PRIGOFF described himself as being an internationally known artist who was attending the National Conference for Mural Art in Philadelphia where he was a keynote speaker. From Philadelphia, PRIGOFF drove to New York to visit his son and then drove to Boston, Massachusetts to attend what he described as his "own art show" at the Cambridge Art Gallery where his collection of art is known as "The Walls of Heritage and the Walls of Pride". He advised that he was also a guest speaker at that event.

Just prior to arriving in Boston from New York, PRIGOFF noticed a tower (presumably the Dorchester Gas Tank) with public art displayed on it. He intended to get a closer view of the art but was denied access by facility's security officers. PRIGOFF advised that he was greatly irritated because he simply desired to take a photo of the art work on

b6  
b7C

b7E

b7E

[REDACTED]

3402

To: Boston From: Boston  
Re:  11/08/2004

b7E

the tower. He has photographed a number of tanks and towers throughout the country.

In view of the explanation provided this, Boston considers this lead covered.

♦♦

# EXHIBIT 5

U.S. Department of Justice



Federal Bureau of Investigation  
Washington, D.C. 20535

March 24, 2015

MR. YAMAN SALAH  
ASIAN AMERICANS ADVANCING JUSTICE  
ASIAN LAW CAUCUS  
55 COLUMBUS AVENUE  
SAN FRANCISCO, CA 94111

FOIPA Request No.: 1280493-000  
Subject: PRIGOFF, JAMES

Dear Mr. Salah:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

**Section 552**☐ (b)(1)☐ (b)(2)☐ (b)(3)☐ (b)(4)☐ (b)(5)☒ (b)(6)☐ (b)(7)(A)☐ (b)(7)(B)☒ (b)(7)(C)☐ (b)(7)(D)☒ (b)(7)(E)☐ (b)(7)(F)☐ (b)(8)☐ (b)(9)**Section 552a**☐ (d)(5)☐ (j)(2)☐ (k)(1)☐ (k)(2)☐ (k)(3)☐ (k)(4)☐ (k)(5)☐ (k)(6)☐ (k)(7)

9 pages were reviewed and 9 pages are being released.

☐ Document(s) were located which originated with, or contained information concerning, other Government agency(ies) [OGA].

☐ This information has been referred to the OGA(s) for review and direct response to you.

☐ We are consulting with OGA(s). The FBI will correspond with you regarding this information when the consultation is finished.

☒ In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

☒ You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

☐ The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

☒ See additional information which follows.

Sincerely,



David M. Hardy  
Section Chief  
Record/Information  
Dissemination Section  
Records Management Division

#### Enclosures

This is in reference to your Freedom of Information Privacy Acts request submitted to the Records Management Division in Winchester, Virginia. Enclosed is a processed copy of records responsive to this FOIPA. These records represent the final release of information related to this request.

The enclosure is being provided at no charge.

Regarding your request for expungement of records concerning James Prigoff, we have determined that the records in question consist of investigatory materials compiled for law enforcement purposes contained in the FBI Central Records System. Therefore, consistent with the system of records notice contained in 28 C.F.R. § 16.96, these records are exempt from the amendment provisions of the Privacy Act. See 5 U.S.C. § 552a (j)(2).

You may file an appeal regarding the request for expungement by writing to the Director, Office of Privacy and Civil Liberties (OPCL), U.S. Department of Justice, 1331 Pennsylvania Ave. NW, Suite 1000, Washington, D.C. 20530-0001. Your appeal must be received by OPCL within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Privacy Amendment Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

**EXPLANATION OF EXEMPTIONS****SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ( A ) could reasonably be expected to interfere with enforcement proceedings, ( B ) would deprive a person of a right to a fair trial or an impartial adjudication, ( C ) could reasonably be expected to constitute an unwarranted invasion of personal privacy, ( D ) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, ( E ) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or ( F ) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a**

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

# EXHIBIT 6



May 19, 2015

**VIA FEDEX AIR**

Director, Office of Information Policy  
U.S. Department of Justice  
1425 New York Avenue, NW, Suite 11050  
Washington, D.C. 20530-0001

**Re: Freedom of Information Act and Privacy Act Appeal on Behalf of James Prigoff;  
FOIPA Request No. 1280493-000**

Dear Sir/Madam:

We write to appeal the U.S. Department of Justice's (the "Department") March 24, 2015 letter exempting portions of a production responsive to FOIPA Request Number 1280493-000, which we filed on behalf of James Prigoff on July 9, 2014.<sup>1</sup> The Department produced nine redacted pages in response to Mr. Prigoff's request. The production, however, makes clear that (1) the Department did not produce all records relating to Mr. Prigoff, as requested, and (2) the Department improperly applied exemptions under FOIA as the basis for withholding information responsive to Mr. Prigoff's request. For these reasons, and as set forth in detail below, we appeal certain of the exemptions upon which the Department withheld responsive information, and respectfully request that the Department produce all documents referencing Mr. Prigoff.

**I. The Department Failed to Produce All Responsive Documents**

In our July 9, 2014 request, we sought "*all records*, including but not limited to Suspicious Activity Reports, *pertaining to or referencing Mr. Prigoff*." (Ex. A, at p. 1 (emphasis added).) We did not limit the scope of our request by subject matter or by date. By way of example, we included information about an incident in 2004 involving Mr. Prigoff about which we believed the Department contained records. (*See id.*, at p. 2.) The Department's production, however, did not produce all documents pertaining to or referencing Mr. Prigoff. Instead, the Department produced *only* records relating to that particular 2004 incident. The production,

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<sup>1</sup> Copies of our July 9, 2014 request and the FBI's March 24, 2015 response are attached hereto as Exhibits A and B, respectively.

however, reveals that other responsive documents exist, but were not included. Specifically, page two of the report dated June 21, 2004, states:

An ACS check of JAMES PRIGOFF revealed the following references:

[redacted] in 1983

[redacted] in 1991

[redacted] in 1992

[redacted] in 1992

(Ex. B.) Page two of the FBI's report dated October 18, 2004 contains the same information. (*See id.*)

The Department did not include in the production any records relating to these references in its ACS system, even though they clearly fall within the parameters of our request for "all records . . . pertaining to or referencing Mr. Prigoff." (Ex. A, at p. 1.) The Department thus has not met its burden of making "a good-faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (internal quotation omitted). Accordingly, we hereby reiterate our request that the FBI produce any and all documents pertaining to or referencing Mr. Prigoff, including but not limited to, all documents related to the above-listed references in the FBI's ACS system.

## II. The Department Failed to Substantiate Use of Exemptions

The Department cites sections (b)(6), (b)(7)(C), and (b)(7)(E) to justify withholding portions of the nine-page production. Review of the production, however, reveals that the (b)(7)(E) exemption was not properly asserted and that redactions based thereon were over broadly applied.

Exemption (b)(7)(E) applies to records or information compiled for law enforcement purposes that would disclose techniques, procedures, and/or guidelines for law enforcement investigations or prosecutions. 5 U.S.C. § 552(b)(7)(E). Here, the Department invoked (b)(7)(E) to justify redacting materials related to incidents that occurred *over two to three decades ago*, specifically, all information relating to ACS references for Mr. Prigoff from 1983, 1991, and 1992. Such information cannot plausibly be the subject of law enforcement investigations or prosecutions. In addition, given that Mr. Prigoff has not engaged in any criminal activity, it is highly unlikely that the Department is able to meet its burden of showing that the redacted material relates to enforcement of a particular federal law. *See ACLU v. FBI*, Case No. 10-cv-03759-RS (N.D. Cal. March 23, 2015) (holding FBI could not assert exemption 7 where it did



not show a rational basis between the enforcement of a federal law and withheld information). In any event, the Department's blanket cite to (b)(7)(E) fails to justify its withholding of responsive information. As such, the (b)(7)(E) exemption was improperly asserted and information that was redacted based thereon should have been disclosed. *See Local 598 v. Dept. of Army Corps of Eng'rs*, 841 F.2d 1459, 1463 (9th Cir. 1988) (FOIA "embodies a strong policy of disclosure and places a duty to disclose on federal agencies. . . . 'disclosure, not secrecy, is the dominant objective of the Act.'") (internal citation omitted).

Thank you for your attention to this appeal. Please do not hesitate to contact me at (415) 848-7711 or by email at [yamans@advancingjustice-alc.org](mailto:yamans@advancingjustice-alc.org) if you have any questions. We look forward to your prompt response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yaman Salahi'.

Yaman Salahi  
Staff Attorney

Enclosures



# EXHIBIT 7



**U.S. Department of Justice**  
Office of Information Policy  
*Suite 11050*  
*1425 New York Avenue, NW*  
*Washington, DC 20530-0001*

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*Telephone: (202) 514-3642*

Yaman Salahi, Esq.  
Asian Americans Advancing Justice  
Asian Law Caucus  
55 Columbus Avenue  
San Francisco, CA 94111  
[yamans@advancingjustice-alc.org](mailto:yamans@advancingjustice-alc.org)

Re: Appeal No. AP-2015-03904  
Request No. 1280493  
RRK:TAZ

**VIA: E-mail**

Dear Mr. Salahi:

You appealed on behalf of your client, James Prigoff, from the action of the Federal Bureau of Investigation on his Freedom of Information Act request for access to records concerning himself. I note that your appeal is limited to challenging the adequacy of the FBI's search for records, and the FBI's assertions of Exemption (b)(7)(E) to withhold certain information.

After carefully considering your appeal, I am affirming the FBI's action on your client's request. In order to provide your client with the greatest possible access to responsive records, your client's request was reviewed under both the Privacy Act of 1974 and the FOIA. I have determined that the records responsive to your client's request are exempt from the access provision of the Privacy Act. See 5 U.S.C. § 552a(j)(2); see also 28 C.F.R. § 16.96 (2015). For this reason, I have reviewed your appeal under the FOIA.

The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld certain information because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(E). This provision concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions.

To the extent that your client's request seeks access to records that would either confirm or deny an individual's placement on any government watch list, the FBI properly refused to confirm or deny the existence of any records responsive to your client's request because the existence of such records is protected from disclosure pursuant to 5 U.S.C. § 552a(j)(2) & 5 U.S.C. § 552(b)(7)(E). FOIA Exemption 7(E) concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law

- 2 -

enforcement investigations or prosecutions. This response should not be taken as an indication that records do or do not exist. Rather, this is the standard response made by the FBI.

As to your appeal concerning the adequacy of the FBI's search for responsive records subject to the FOIA, I have determined that the FBI's response was correct and that it conducted an adequate, reasonable search for such records. The FBI searched for both main files and cross references in its Headquarters Office and in its Boston, New York, San Francisco, and Washington Field Offices.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your client's underlying request, and the action of the FBI in response to your client's request.

If your client is dissatisfied with my action on your appeal, the FOIA permits him to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your client's right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

1/27/2016

X 

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Sean R. O'Neill  
Chief, Administrative Appeals Staff  
Signed by: SEAN O'NEILL

# EXHIBIT 8

Office of the Director of National Intelligence  
Washington, DC 20511

JAN - 8 2015

Yaman Salahi  
Asian Americans Advancing Justice - Asian Law Caucus  
55 Columbus Avenue  
San Francisco, CA 94111

Reference: ODNI Case #DP-2015-00003

Dear Mr. Salahi:

This is in response to your letter dated 9 July 2014 (Enclosure) received in the Information Management Division of the Office of the Director of National Intelligence (ODNI) on 20 October 2014, in which you requested records pertaining to James Prigoff under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act (PA), 5 U.S.C. §552a.

Your request has been processed in accordance with both the FOIA and the PA. The ODNI conducted a search of its Security, Personnel, and Human Resources files for records responsive to your request, and no records were located.

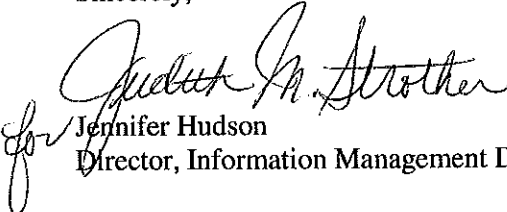
With regard to its classified files, in accordance with Section 3.6(a) of Executive Order 13526, the ODNI can neither confirm nor deny the existence or nonexistence in those files of any information responsive to your request. The fact of the existence or nonexistence of the requested records is currently and properly classified pursuant to FOIA exemption (b)(1) and PA exemption (k)(1). Any information within those files that would reveal intelligence sources and methods information is protected from disclosure by the National Security Act of 1947, as amended, and by FOIA exemption (b)(3), 50 U.S.C. 3024(i).

If you wish to appeal our determination on this request, please explain the basis of your appeal and forward to the address below within 45 days of the date of this letter.

Office of the Director of National Intelligence  
Information Management Office  
Washington D.C. 20511

If you have any questions, email our Requester Service Center at [DNI-FOIA@dni.gov](mailto:DNI-FOIA@dni.gov) or call us at (703) 874-8500.

Sincerely,

  
for Jennifer Hudson  
Director, Information Management Division

Enclosure

# EXHIBIT 9

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE  
CHIEF MANAGEMENT OFFICER  
WASHINGTON, DC 20511

SEP 15 2015

Mr. Yaman Salahi  
Asian Americans Advancing Justice  
Asian Law Caucus  
55 Columbus Avenue  
San Francisco, CA 94111

Reference: ODNI Case DP-2015-00003

Dear Mr. Salahi:

This is in response to your letter dated 20 February 2015 (Enclosure), wherein you appealed our 8 January 2015 determination in response to your 9 July 2014 request for all records pertaining to your client, Mr. James Prigoff.

Your appeal was processed in accordance with the FOIA, 5 U.S.C. § 552, as amended, and Privacy Act, 5 U.S.C. § 552a. The Office of the Director of National Intelligence (ODNI) conducted an additional search for unclassified records responsive to your request and no records were located. Expungement of records will not apply in this case, since no responsive records were located.

Regarding classified holdings, in accordance with Section 3.6(a) of Executive Order 13526, the ODNI can neither confirm nor deny the existence or nonexistence in its files of any information responsive to your request. The fact of the existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by the National Security Act of 1947, as amended. Therefore your request is denied pursuant to FOIA exemptions (b)(1) and (k)(1). By this statement, the ODNI neither confirms nor denies that such records may or may not exist.

Therefore, after careful consideration of your appeal, we have determined that the decision of the Director, Information Management Office should be affirmed.

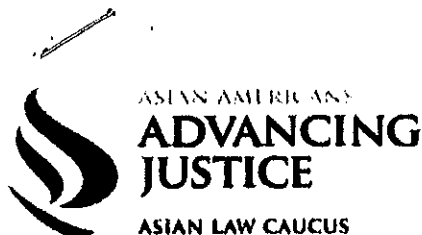
In accordance with the provisions of the FOIA, you have the right to seek judicial review of this determination in a United States district court. Alternatively, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and federal agencies. Using services offered by OGIS does not affect your right to pursue litigation. For more information, including how to contact OGIS, please consult this website, <http://ogis.archives.gov>.

Sincerely,

  
Mark W. Ewing

Enclosure:  
Appeal Request

REC'D SEP 29



FEB 23 2015

February 20, 2015

VIA EMAIL AND UPS NEXT DAY AIR

Office of the Director of National Intelligence  
Information Management Office  
Washington, D.C. 20511

Re: **Freedom of Information Act and Privacy Act Appeal on Behalf of James Prigoff;**  
**ODNI Case #DP-2015-00003**

Dear Sir/Madam:

We write to appeal the Office of the Director of National Intelligence's (the "ODNI") response to our request, dated July 9, 2014, on behalf of James Prigoff to disclose, amend, and/or expunge any and all records, including but not limited to Suspicious Activity Reports ("SARs"), pertaining to or referencing Mr. Prigoff. By way of letter dated January 8, 2015, the ODNI stated that it "conducted a search of its Security, Personnel, and Human Resources files for records responsive to your request, and no records were located." The ODNI further stated that it could neither confirm nor deny the existence or non-existence of any information responsive to our request in its classified files.<sup>1</sup> There are several grounds for this appeal.

First, the ODNI's January 8, 2015 letter makes clear that it only searched its "Security, Personnel, and Human Resources" files for records responsive to our request. We did not, however, limit our request to such files, but instead requested that the ODNI provide *all* records in the Information Sharing Environment's possession that refer or relate to Mr. Prigoff. (*See Ex. A*, at p. 2.) The ODNI has not met its burden of making "a good-faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (internal quotation omitted). Accordingly, we hereby reiterate our request that the ODNI search all databases and files to which it has access, including any databases and files containing SARs, for records concerning Mr. Prigoff. We also request that, in its subsequent response, the ODNI identify the databases and files that it searched, and indicate whether those databases and files contain SAR information within the ODNI's possession, access, or control.

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<sup>1</sup> Copies of our July 9, 2014 request and the ODNI's January 8, 2015 response are attached hereto as Exhibits A and B, respectively.

Second, in declining to confirm or deny the existence or non-existence of responsive information, the ODNI invoked 5 U.S.C. § 552(b)(1). It is not clear whether the ODNI applied this exemption to eGuardian or other databases containing SAR reports or information derived from SAR reports. If so, the ODNI's reliance is improper because the type of information that is the subject of our request, and which we believe is in the ODNI's possession, has already been publicly disclosed with regard to three other individuals. Specifically, SARs have been disclosed to Mr. Wiley Gill, Mr. Khaled Ibrahim, and Mr. Tariq Razak, all of whom we represent and all of whom filed similar FOIA and Privacy Act requests with the ODNI. (Mr. Gill's ODNI case number is DP-2015-00006, Mr. Ibrahim's ODNI case number is DP-2015-00005, and Mr. Razak's ODNI case number is DP-2015-00004.) Thus, there is no reason under FOIA or the Privacy Act to justify the ODNI's refusal to confirm or deny the existence or non-existence of similar information with regard to Mr. Prigoff.

Third, the ODNI's January 8, 2015 letter did not address our request pursuant to the Privacy Act for an opportunity to amend and/or expunge all records maintained by the ODNI that describe (i) Mr. Prigoff's exercise of rights guaranteed by the First Amendment, (ii) conduct that does not support reasonable suspicion of criminal activity, and (iii) conduct that does not implicate criminal conduct in any way. (See Ex. A, at pp. 2-3.) As such, it appears that the ODNI did not process this portion of our request. We hereby reiterate our request for amendment and/or expungement as set forth in our July 9, 2014 letter. To the extent that documents responsive to our request exist, but have been designated classified, the ODNI is not precluded from expunging records based on this classification.

Thank you for your attention to this appeal. Please do not hesitate to contact me at (415) 848-7711 or by email at [yamans@advancingjustice-alc.org](mailto:yamans@advancingjustice-alc.org) if you have any questions. We look forward to your prompt response.

Sincerely,



Yaman Salahi  
Staff Attorney

Enclosures

# EXHIBIT 10

## PART B – ISE-SAR CRITERIA GUIDANCE

Category	Description
Eliciting Information	Questioning facility personnel about facility/infrastructure/personnel; this includes individuals probing employees in person on or off-site, over the phone, or via the Internet about particular structures, functions, and personnel procedures at the facility/infrastructure.
Breach/Attempted Intrusion	Unauthorized personnel attempting to or actually entering a restricted area or protected site. Impersonation of authorized personnel (e.g. police/security, janitor).
Misrepresentation	Presenting false or misusing insignia, documents, and/or identification, to misrepresent one's affiliation to cover possible illicit activity.
Photography	Taking pictures/video of facility/infrastructure/personnel or surrounding environment.
Observation	Showing unusual interest in facility/infrastructure/personnel; for example, observing it through binoculars, taking notes, drawing maps, or drawing structures of the facility.
Surveillance	Monitoring the activity of people, facilities, processes or systems.
Theft/Loss/Diversion	Stealing or diverting something associated with a facility/infrastructure (e.g., badges, uniforms, identification, emergency vehicles, technology or documents (classified or unclassified), which are proprietary to the facility).
Sabotage/Tampering/Vandalism	Damaging, manipulating, or defacing part of a facility/infrastructure or protected site.
Testing of Security	Interactions with, or challenges to installations, personnel, or systems that reveal physical, personnel or cyber security capabilities.
Cyber Attack	Compromising, or attempting to compromise or disrupt an organization's information technology infrastructure.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure.
Flyover	Suspected over flight of a facility/infrastructure; this includes any type of flying vehicle (e.g., airplanes, helicopters, unmanned aerial vehicles, hang gliders).
Materials Acquisition/Storage	Acquisition of unusual quantities of precursor material (e.g., cell phones, pagers, fuel, timers), unauthorized/unlicensed individual/group attempts to obtain precursor chemicals/agents, or toxic materials, and rental of storage units for the purpose of storing chemicals or mixing apparatus.
Acquisition Of Expertise	Attempts to obtain or conduct training in security concepts; military weapons or tactics; or other, unusual, capabilities, such as specialized transport or handling capabilities.
Weapons Discovery	Discovery of weapons or explosives.
Sector-Specific Incident	Actions associated with a characteristic of unique concern to specific sectors (such as the public health sector), with regard to their personnel, facilities, systems or functions.
Recruiting	Building of operations teams and contacts, personnel data, banking data or travel data.
Other	Incidents not fitting any of the above categories.

UNCLASSIFIED

ISE-FS-200

## PART B – ISE-SAR CRITERIA GUIDANCE

Category	Description
<b>DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY</b>	
Breach/Attempted Intrusion	Unauthorized personnel attempting to or actually entering a restricted area or protected site. Impersonation of authorized personnel (e.g. police/security, janitor).
Misrepresentation	Presenting false or misusing insignia, documents, and/or identification, to misrepresent one's affiliation to cover possible illicit activity.
Theft/Loss/Diversion	Stealing or diverting something associated with a facility/infrastructure (e.g., badges, uniforms, identification, emergency vehicles, technology or documents (classified or unclassified), which are proprietary to the facility).
Sabotage/Tampering/Vandalism	Damaging, manipulating, or defacing part of a facility/infrastructure or protected site.
Cyber Attack	Compromising, or attempting to compromise or disrupt an organization's information technology infrastructure.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure.
Aviation Activity	Operation of an aircraft in a manner that reasonably may be interpreted as suspicious, or posing a threat to people or property. Such operation may or may not be a violation of Federal Aviation Regulations.
<b>POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL FACT INFORMATION DURING INVESTIGATION<sup>11</sup></b>	
Eliciting Information	Questioning individuals at a level beyond mere curiosity about particular facets of a facility's or building's purpose, operations, security procedures, etc., that would arouse suspicion in a reasonable person.
Testing or Probing of Security	Deliberate interactions with, or challenges to, installations, personnel, or systems that reveal physical, personnel or cyber security capabilities.
Photography	Taking pictures or video of facilities, buildings, or infrastructure in a manner that would arouse suspicion in a reasonable person. Examples include taking pictures or video of infrequently used access points, personnel performing security functions (patrols, badge/vehicle checking), security-related equipment (perimeter fencing, security cameras), etc.

<sup>11</sup> Note: These activities are generally First Amendment-protected activities and should not be reported in a SAR or ISE-SAR absent articulable facts and circumstances that support the source agency's suspicion that the behavior observed is not innocent, but rather reasonably indicative of criminal activity associated with terrorism, including evidence of pre-operational planning related to terrorism. Race, ethnicity, national origin, or religious affiliation should not be considered as factors that create suspicion (although these factors may be used as specific suspect descriptions).

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ISE-FS-200

Category	Description
Observation/Surveillance	Demonstrating unusual interest in facilities, buildings, or infrastructure beyond mere casual or professional (e.g. engineers) interest such that a reasonable person would consider the activity suspicious. Examples include observation through binoculars, taking notes, attempting to measure distances, etc.
Materials Acquisition/Storage	Acquisition and/or storage of unusual quantities of materials such as cell phones, pagers, fuel, chemicals, toxic materials, and timers, such that a reasonable person would suspect possible criminal activity.
Acquisition of Expertise	Attempts to obtain or conduct training in security concepts; military weapons or tactics; or other unusual capabilities that would arouse suspicion in a reasonable person.
Weapons Discovery	Discovery of unusual amounts of weapons or explosives that would arouse suspicion in a reasonable person.
Sector-Specific Incident	Actions associated with a characteristic of unique concern to specific sectors (such as the public health sector), with regard to their personnel, facilities, systems or functions.

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## PART B—ISE-SAR CRITERIA GUIDANCE

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Part B provides a more thorough explanation of ISE-SAR pre-operational behavioral categories and criteria. This guidance highlights the importance of having a trained analyst or investigator take into account the context, facts, and circumstances in reviewing suspicious behaviors to identify those SARs with a potential nexus to terrorism (i.e., to be reasonably indicative of pre-operational planning associated with terrorism). It is important to understand, however, that the behavioral categories and criteria listed below reflect studies of prior terrorism incidents and are not intended to be limited in any way by the descriptive examples.<sup>19</sup> The descriptive examples outlined below in the third column do not represent all possible examples that relate to ISE-SAR submissions. They are provided as a nonexhaustive list of illustrations of pre-operational behaviors that may support the documentation and submission of an ISE-SAR based on the contextual assessment of the reviewing analyst or investigator.

In order to ensure that Part B is responsive to changes in the threat environment, the ISA IPC will establish a formal process for reviewing and updating the behavioral categories in the first column and the behavioral criteria set forth in the second column. (*See the chart below.*) The process will involve coordination and consultation between and among NSI participants and other stakeholders, who will examine the current body of knowledge regarding terrorism and other criminal activity. This process will result in the issuance of an update to the *ISE-SAR Functional Standard* when revisions are made to either or both of the first or second columns.

As needed, the DHS, in conjunction with the FBI, will guide a *separate* process to allow for interim updates to the descriptive examples contained in the third column of Part B. Updates to the third column will be based on field experience (e.g., emerging threats, trip wire reports, and other intelligence) and will be documented in the change management chart<sup>20</sup> of the *ISE-SAR Functional Standard*, rather than reissuance of the *ISE-SAR Functional Standard* by the PM-ISE.

The nine behaviors identified below as “Potential Criminal or Non-criminal Activity Requiring Additional Information During Vetting” are not inherently criminal behaviors and may include constitutionally protected activities that must not be documented in an ISE-SAR that contains PII unless there are articulable facts or circumstances that clearly support the determination that the behavior observed is not innocent, but rather reasonably indicative of pre-operational planning associated with terrorism. Race, ethnicity, gender, national origin, religion, sexual orientation, or

<sup>19</sup> In addition to the descriptive examples listed in Part B and in order to further enhance NSI participants’ understanding of the Part B behavioral categories and criteria, the DHS, in conjunction with the FBI, may develop additional examples to be included in implementation materials (e.g., the *Vetting ISE-SAR Data* guidance) or delivered through training. Additionally, relevant federal and SLTT law enforcement agencies may identify and report additional examples of terrorism behavior within the 16 behavioral categories to the DHS or the FBI.

<sup>20</sup> This chart is included on page 6 of this *Functional Standard*.

gender identity must not be considered as factors creating suspicion (but attributes may be documented in specific suspect descriptions for identification purposes).<sup>21</sup> The activities listed as “Potential Criminal or Non-Criminal Activity” are not inherently criminal behaviors and are potentially constitutionally protected; thus, additional facts or circumstances must be articulated in the incident. For example, the trained analyst or investigator should document specific additional facts or circumstances indicating that the behavior is suspicious, such as steps to conceal one's location and avoid detection while taking pictures.

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
<b>DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY</b>		
Breach/ Attempted Intrusion	Unauthorized personnel attempting to enter or actually entering a restricted area, secured protected site, or nonpublic area. Impersonation of authorized personnel (e.g., police/security officers, janitor, or other personnel).	<ul style="list-style-type: none"> <li>At 1:30 a.m., an individual breached a security perimeter of a hydroelectric dam complex. Security personnel were alerted by an electronic alarm and observed the subject on CCTV, taking photos of himself in front of a “No Trespassing” sign and of other parts of the complex. The subject departed prior to the arrival of security personnel.</li> <li>A railroad company reported to police officers that video surveillance had captured images of three individuals illegally entering a train station to gain access to a restricted-access tunnel and taking photos of the tunnel.</li> </ul>

<sup>21</sup> See footnote 9 for additional guidance.

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
Misrepresentation	Presenting false information or misusing insignia, documents, and/or identification to misrepresent one's affiliation as a means of concealing possible illegal activity.	<ul style="list-style-type: none"> <li>• A state bureau of motor vehicles employee discovered a fraudulent driver's license in the possession of an individual applying to renew the license. A criminal investigator determined that the individual had also fraudulently acquired a passport in the same name and used it to make several extended trips to countries where terrorist training has been documented.</li> <li>• An individual used a stolen uniform from a private security company to gain access to the video monitoring control room of a shopping mall. Once inside the room, the subject was caught trying to identify the locations of surveillance cameras throughout the entire mall.</li> </ul>
Theft/Loss/ Diversion	Stealing or diverting something associated with a facility/infrastructure or secured protected site (e.g., badges, uniforms, identification, emergency vehicles, technology, or documents {classified or unclassified}), which are proprietary to the facility/infrastructure or secured protected site.	<ul style="list-style-type: none"> <li>• A federal aerospace facility reported a vehicle burglary and the theft of an employee's identification credential, a secure ID token, and an encrypted thumb drive.</li> <li>• An explosives ordnance company reported a burglary of a storage trailer. Items stolen included electric initiators, radios, and other items that could be used in connection with explosives.</li> </ul>

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
Sabotage/ Tampering/ Vandalism	Damaging, manipulating, defacing, or destroying part of a facility/infrastructure or secured protected site.	<ul style="list-style-type: none"> <li>• A light-rail authority reported the discovery of a track switch that had been wrapped in a length of chain in a possible attempt to derail a passenger train car.</li> <li>• A natural gas company reported the deliberate removal of gas meter plugs on the “customer side” in two separate locations approximately a quarter of a mile apart. One location was a government facility. The discovery was made as the government facility’s sensor detected the threat of an explosion.</li> </ul>
Cyberattack	Compromising or attempting to compromise or disrupt an organization’s information technology infrastructure.	<ul style="list-style-type: none"> <li>• A federal credit union reported it was taken down for two and a half hours through a cyberattack, and the attacker was self-identified as a member of a terrorist organization.</li> <li>• A state’s chief information officer reported the attempted intrusion of the state’s computer network by a group that has claimed responsibility for a series of hacks and distributed denial-of-service attacks on government and corporate targets.</li> </ul>
Expressed or Implied Threat	Communicating a spoken or written threat to commit a crime that will result in death or bodily injury to another person or persons or to damage or compromise a facility/infrastructure or secured protected site.	<ul style="list-style-type: none"> <li>• A customer-experience feedback agency received a call from a watchlisted individual stating, “Wait till they see what we do to the ATF, IRS, NSA.”</li> <li>• A military museum received a threatening letter containing a white powder. The letter claimed a full-scale anthrax attack had been launched in retaliation for crimes committed by the U.S. Armed Forces.</li> </ul>

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
Aviation Activity	Learning to operate, or operating an aircraft, or interfering with the operation of an aircraft in a manner that poses a threat of harm to people or property and that would arouse suspicion of terrorism or other criminality in a reasonable person. Such activity may or may not be a violation of Federal Aviation Regulations.	<ul style="list-style-type: none"> <li>• Federal air traffic control personnel reported two separate laser beam cockpit illumination incidents involving different commercial airliners occurring at night and during the take-off phase of flight. The reports revealed that the laser beam in both incidents originated from the same general geographic area, near a major airport on the East Coast. These findings indicate the likelihood of purposeful acts by the same individual.</li> <li>• A chemical facility representative reported an unauthorized helicopter hovering within 50 feet of a chemical tank located in a posted restricted area. An FAA registry search of the tail number was negative, indicating use of an unregistered number, which suggests an attempt to conceal the identity of the plane's owner and/or its place of origin.</li> </ul>

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
<b>POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL INFORMATION DURING VETTING</b>		
Eliciting Information	Questioning individuals or otherwise soliciting information at a level beyond mere curiosity about a public or private event or particular facets of a facility's or building's purpose, operations, security procedures, etc., in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person.	<ul style="list-style-type: none"> <li>• A tour bus company servicing one of the nation's national monuments reported that a male subject asked a driver many unusual and probing questions about fuel capacity, fueling locations, and fueling frequency such that the driver became very concerned about the intent of the questioning. The male subject was not a passenger.</li> <li>• A guest services employee at a shopping center was questioned by an individual about how much security was on the property. The employee contacted security personnel, who confronted the individual. When questioned by security personnel, the individual quickly changed his questions to renting a wheelchair and then left without being identified. Security personnel reported that the individual seemed very nervous and that his explanations were not credible.</li> </ul>

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
Testing or Probing of Security	Deliberate interactions with, or challenges to, installations, personnel, or systems that reveal physical, personnel, or cybersecurity capabilities in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person.	<ul style="list-style-type: none"> <li>• An individual who refused to identify himself to facility personnel at a shipping port reported that he was representing the governor's office and wanted to access the secure area of a steel manufacturer's space. He was inquiring about the presence of foreign military personnel. The individual fled when he realized that personnel were contacting the security office about his activities. He ran through the lobby and departed in a vehicle with an out-of-state license plate and containing two other individuals.</li> <li>• An individual discharged a fire extinguisher in a stairwell of a hotel and set off the building's fire alarm. This individual was observed entering the hotel approximately two minutes before the alarm sounded, was observed exiting from the stairwell at about the same time as the alarm, and then was observed in the lobby area before leaving the hotel.</li> </ul>
Recruiting/Financing	Providing direct financial support to operations teams and contacts or building operations teams and contacts; compiling personnel data, banking data, or travel data in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person.	<ul style="list-style-type: none"> <li>• A prison inmate reported an effort to radicalize inmates nearing release toward violence. According to the plan, released inmates would go to a particular location for the purpose of obtaining information about attending an overseas terrorist training camp.</li> <li>• An individual reported that a former friend and business associate (a chemist) had recently asked him to participate in a terrorist-cell operation by providing funding to purchase needed equipment. The funding for the operation was reportedly linked to the illegal production of drugs.</li> </ul>

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
Photography	Taking pictures or video of persons, facilities, buildings, or infrastructure in an unusual or surreptitious manner that would arouse suspicion of terrorism or other criminality in a reasonable person. Examples include taking pictures or video of infrequently used access points, the superstructure of a bridge, personnel performing security functions (e.g., patrols, badge/vehicle checking), security-related equipment (e.g., perimeter fencing, security cameras), etc.	<ul style="list-style-type: none"> <li>• A citizen reported to local police that she saw an unknown male crouched down in the back of an SUV with the hatchback open half-way. The subject was videotaping a National Guard readiness center. The vehicle was parked on the side of the road but sped away when the citizen began to approach the vehicle. The citizen could not provide a license tag number.</li> <li>• A citizen observed a female subject taking photographs of a collection of chemical storage containers in the vicinity of the port. The subject was hiding in some bushes while taking photographs of the storage tanks. The citizen reported this information to the city's port police. When the port police officer arrived and approached the subject, she ran to a nearby vehicle and sped off.</li> </ul>

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
Observation/ Surveillance	Demonstrating unusual or prolonged interest in facilities, buildings, or infrastructure beyond mere casual (e.g., tourists) or professional (e.g., engineers) interest and in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person. Examples include observation through binoculars, taking notes, attempting to mark off or measure distances, etc.	<ul style="list-style-type: none"> <li>• A mall security officer observed a person walking through the mall, filming at waist level, and stopping at least twice to film his complete surroundings, floor to ceiling. The subject became nervous when he detected security personnel observing his behavior. Once detained, the subject explained that he came to the mall to walk around and was simply videotaping the mall for his brother. The camera contained 15 minutes of mall coverage and footage of a public train system, along with zoomed photos of a bus.</li> <li>• Military pilots reported that occupants of multiple vehicles were observing and photographing in the area of residences of the military pilots. The pilots are responsible for the transport of special forces units. The report was made once the pilots realized that they had been individually surveyed by occupants of multiple vehicles during the same time period.</li> </ul>

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
Materials Acquisition/Storage	Acquisition and/or storage of unusual quantities of materials such as cell phones, pagers, radio control toy servos or controllers; fuel, chemicals, or toxic materials; and timers or other triggering devices, in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person.	<ul style="list-style-type: none"> <li>• A garden center owner reported an individual in his twenties seeking to purchase 40 pounds of urea and 30 pounds of ammonium sulfate. The owner does not carry these items and became suspicious when the individual said he was purchasing the items for his mother and then abruptly departed the business.</li> <li>• A female reported that a man wanted to borrow her car to purchase fertilizer to add to the 3,000 pounds he had already acquired. When asked why he was acquiring fertilizer, he responded that he was going to "make something go boom." The subject lives in a storage unit and utilizes several other storage units at the location.</li> </ul>
Acquisition of Expertise	Attempts to obtain or conduct training or otherwise obtain knowledge or skills in security concepts, military weapons or tactics, or other unusual capabilities in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person.	<ul style="list-style-type: none"> <li>• A fusion center received information on a watch-listed individual who was making repeated attempts to gain a hazardous materials endorsement for his commercial driver's license even though his immigration status made him ineligible.</li> <li>• A complaint was received from a gun shop about an individual under the age of 21 who had brought multiple groups of students into the gun shop to rent weapons to shoot. They desired to shoot assault rifles and handguns and asked questions about how to get around state and federal laws on weapon possession and transport.</li> </ul>

Behavioral Categories	Behavioral Criteria	Select Descriptive Examples
Weapons Collection/Discovery	Collection or discovery of unusual amounts or types of weapons, including explosives, chemicals, and other destructive materials, or evidence, detonations or other residue, wounds, or chemical burns, that would arouse suspicion of terrorism or other criminality in a reasonable person.	<ul style="list-style-type: none"> <li>• A city employee discovered a backpack near a park bench along the route of a planned Martin Luther King Day march in the city. The backpack contained an improvised explosive device.</li> <li>• A suspicious person call resulted in the discovery of three individuals possessing hand-held radios, a military-grade periscope, a 7mm Magnum scoped rifle, an AK-74 assault rifle, a pistol-gripped shotgun, a semi-automatic handgun, a bandolier of shotgun ammunition, dozens of loaded handgun magazines, dozens of AK-74 magazines, Ghillie suits, several homemade explosive devices constructed of pill bottles, blast simulators, and military clothing.</li> </ul>
Sector-Specific Incident	Actions associated with a characteristic of unique concern to specific sectors (e.g., the public health sector), with regard to their personnel, facilities, systems, or functions in a manner that would arouse suspicion of terrorism or other criminality in a reasonable person.	<ul style="list-style-type: none"> <li>• A water company reported that it had security footage of an unknown person breaking into the premises. At 5 a.m., the individual cut through a fence and used a tool to breach a door. Once inside the building, the person took photos of the chlorination system, including the chlorine tank. A pump failure occurred, but it was not certain that this was related to the break-in.</li> <li>• A vehicle containing two individuals was discovered in a secure area of a loading dock at a facility that stores officially designated sensitive chemicals. The vehicle sped off upon discovery by security personnel. Surveillance footage revealed that the individuals gained entry by manually lifting a security gate to the compound.</li> </ul>

# EXHIBIT 11



**BJA**  
Bureau of Justice Assistance

# Communities Against Terrorism

## Potential Indicators of Terrorist Activities Related to the General Public

### What Should I Consider Suspicious?

People involved in terrorist activity often exhibit indicators that if observed could identify a potential impending crime or terrorist attack. The following is a list of some of the characteristics of such persons that you should be aware of.

- Unusual requests for information –
  - questions regarding sensitive information such as security procedures or systems
  - questions regarding facility operations
- Unusual interest in high risk or symbolic targets
  - surveillance
  - note taking
  - drawing of diagrams
  - annotating maps
  - inappropriate photographs or videos

- people over dressed for the weather
- Unusual activity –
  - people acting suspiciously
  - people departing quickly when seen or approached
  - people in places where they do not belong
  - vehicles that appear to be overloaded



### What Should I Do?

It is important to give a thorough report when notifying law enforcement. Keep in mind the responding officer may only have the information you gave at the time of your call. Providing a detailed description of persons or vehicles is imperative for a successful follow up by law enforcement personnel.

**If something seems wrong, notify law enforcement authorities.**

**Do not jeopardize your safety or the safety of others.**

**Columbus, Ohio Division of Police  
Homeland Security Section  
Terrorism Early Warning Unit  
614-645-5410  
1-866-759-8005**



Terrorism may be national or international in scope, but terrorist incidents occur locally and are preceded by a number of pre-incident activities. Individuals in the community are key to identifying these pre-incident activities. By learning what to look for, **you** can aid law enforcement officials in protecting the homeland.

By being aware of what to look for and knowing how to report suspicious behavior, **you** can make a positive contribution in the fight against terrorism. The **partnership between the community and law enforcement** is essential to the success of anti-terrorism efforts.

It is important to remember that just because someone's speech, actions, beliefs, appearance, or way of life is different, it does not mean that he or she is suspicious. Instead, focus on behavior and activities that are unusual or out of place for the situation and that appear to be suspicious.

The activities outlined on this handout are by no means all-inclusive but have been compiled from a review of terrorist events over several years. Some of the activities, taken individually, could be innocent and must be examined by law enforcement professionals in a larger context to determine whether there is a basis to investigate.

# Potential Indicators of Terrorist Activities Related to the General Public



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