IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PRIVACY INTERNATIONAL, Plaintiff, v. NATIONAL SECURITY AGENCY, *et al.* Defendants.	Civil Action No. 17-cv-01324 (APM)

ANSWER

Defendants National Security Agency ("NSA"), Office of the Director of National Intelligence ("ODNI"), Department of State ("State"), and the National Archives and Records Administration ("NARA"), hereby answer the numbered paragraphs of Plaintiff's Complaint as follows. Defendants deny that Plaintiff is entitled to any relief.

1. This paragraph consists of Plaintiff's characterization of its Complaint, to which no response is required.

2. This paragraph consists of Plaintiff's characterization of its Complaint, to which no response is required.

3-6. The allegations contained in these paragraphs are immaterial to the adjudication of Plaintiff's FOIA claims and do not set forth facts supporting a claim upon which Plaintiff is entitled to relief. Thus, no answer is required.

7. The first sentence of this paragraph consists of Plaintiff's characterization of its FOIA request, which speaks for itself and to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

8. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

15. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

16-32. The allegations contained in these paragraphs contain Plaintiff's characterizations of news reports and other documents that speak for themselves, and to which the Court is respectfully referred for a true and complete statement of their contents. In addition, these paragraphs consist of allegations that are immaterial to the adjudication of Plaintiff's FOIA claims and do not set forth facts in support of a claim upon which Plaintiff is entitled to relief. Thus, no answer is required.

33. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

34-37. The allegations contained in these paragraphs contain Plaintiff's characterizations of news reports and other documents that speak for themselves, and to which the Court is respectfully referred for a true and complete statement of their contents. In addition, these paragraphs consist of allegations that are immaterial to the adjudication of Plaintiff's FOIA claims

and do not set forth facts in support of a claim upon which Plaintiff is entitled to relief. Thus, no answer is required.

38. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

39. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

40. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

41. This paragraph consists of allegations that are immaterial to the adjudication of Plaintiff's FOIA claims and do not set forth facts in support of a claim upon which Plaintiff is entitled to relief. Thus, no answer is required.

42-43. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in these paragraph.

44. Defendants admit that Plaintiff submitted FOIA requests to NSA, ODNI, and State by letters dated December 13, 2016, and to NARA by letter dated March 16, 2016. Defendants respectfully refer the Court to those requests, *see* Compl., Ex. B, for a complete and accurate statement of their contents.

45. Defendants admit that Plaintiff's FOIA requests sought waivers of search, review, and duplication fees. Defendants respectfully refer the Court to those FOIA requests, *see* Compl., Ex. B, for a complete and accurate statement of their contents. The remaining assertions contained in this paragraph contain argument and conclusions of law, not allegations of fact, and thus no response is required.

46. Defendant NSA admits that it sent a letter to Plaintiff on December 27, 2016, and respectfully refers the Court to that correspondence, attached as Ex. A, for a complete and accurate statement of its contents.

47. Defendant NSA admits that on March 6, 2017, it received a letter from Plaintiff, dated February 24, 2017, and respectfully refers the Court to that correspondence, attached as Ex. B, for a complete and accurate statement of its contents.

48. Defendant NSA admits that it sent a letter to Plaintiff on April 24, 2017, and respectfully refers the Court to that correspondence, attached as Ex. C, for a complete and accurate statement of its contents.

49. Defendant NSA admits that on June 8, 2017 it received a letter from Plaintiff, dated May 31, 2017, and respectfully refers the Court to that correspondence, attached as Ex. D, for a complete and accurate statement of its contents.

50. Defendant NSA admits that it sent Plaintiff a letter dated June 13, 2017, and respectfully refers the Court to that correspondence, attached as Ex. E, for a complete and accurate statement of its contents. Plaintiff's characterization of the correspondence as "stat[ing] that it would not comply the appeal within the required statutory timeframe" contains argument and conclusions of law, not allegations of fact, and thus no response is required. To the extent a response is deemed necessary, denied.

51. Defendant NSA admits that it did not send Plaintiff further written correspondence.

52. Admitted.

53. Defendant ODNI admits that it sent Plaintiff a letter on January 11, 2017, and respectfully refers the Court to that correspondence, attached as Ex. F, for a complete and accurate statement of its contents.

54. Denied. Defendant ODNI has no record of receiving the alleged February 24, 2017 letter referenced in Plaintiff's allegations.

55. Defendant ODNI admits that it did not send Plaintiff further written correspondence.

56. Defendant ODNI admits that it has been 204 days since the FOIA request was submitted. Defendant ODNI is without knowledge or information sufficient to admit or deny Plaintiff's allegation that it has been 131 days since an appeal was submitted.

57. Defendant State admits that it sent Plaintiff a letter on December 14, 2016, and respectfully refers the Court to that correspondence, attached as Ex. G, for a complete and accurate statement of its contents.

58. Defendant State admits that on March 3, 2017 it received a letter from Plaintiff, dated February 24, 2017, and respectfully refers the Court to that correspondence, attached as Ex. H, for a complete and accurate statement of its contents.

59. Defendant State admits that it sent Plaintiff an email on March 8, 2017, and respectfully refers the Court to that correspondence, attached as Ex. I, for a complete and accurate statement of its contents.

60. Defendant State admits that it sent Plaintiff a letter on April 6, 2017, and respectfully refers the Court to that correspondence, attached as Ex. J, for a complete and accurate statement of its contents.

61. Defendant State admits that it sent Plaintiff an email on May 18, 2017, and respectfully refers the Court to that correspondence, attached as Ex. K, for a complete and accurate statement of its contents.

62. Defendant State admits that it received an email from Plaintiff dated May 19, 2017, and respectfully refers the Court to that correspondence, attached as Ex. L, for a complete and accurate statement of its contents.

63. Defendant State admits that it did not send Plaintiff further written correspondence.

64. Admitted.

65. Defendant NARA admits that it sent Plaintiff an email on March 16, 2017 acknowledging its receipt of Plaintiff's FOIA request and informing Plaintiff that its request was being forwarded to the "office of Research Services, Special Access and FOIA" due to the nature of the records being sought. Defendant NARA respectfully refers the Court to that correspondence, attached as Ex. M, for a complete and accurate statement of its contents. Defendant NARA denies that the response was automated.

66. Admitted.

67. Defendant NARA admits that it did not send Plaintiff further written correspondence.

68. Admitted.

69. Defendants admit that they have not produced records responsive to Privacy International's requests.

Count I

70. Defendants restate and incorporate by reference the responses contained in all preceding paragraphs.

71. Defendants admit that they are agencies subject to FOIA. The remainder of the paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

72. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

73. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

Count II

74. Defendants restate and incorporate by reference the responses contained in all preceding paragraphs.

75. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

Count III

76. Defendants restate and incorporate by reference the responses contained in all preceding paragraphs.

77. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

78. This paragraph contains argument and conclusions of law, not allegations of fact, and thus no response is required.

The remaining paragraphs of the Complaint contain Plaintiff's requested relief, to which no response is required. To the extent a response is deemed necessary, Defendants deny the allegations contained in the prayer for relief and further aver that Plaintiff is not entitled to the requested relief or any other relief. Defendants deny each allegation of the Complaint not otherwise responded to.

WHEREFORE, Defendants respectfully request that the Court enter judgment dismissing this action with prejudice and awarding Defendants costs and such other relief as the Court may deem appropriate.

Dated: August 21, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director

/s/ *Caroline Anderson*
CAROLINE J. ANDERSON
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Tel: (202) 305-8645
Fax: (202) 616-8470
E-mail: Caroline.J.Anderson@usdoj.gov

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2017, I filed the foregoing document with the Clerk of Court via the CM/ECF system, causing it to be served electronically on Plaintiff's counsel of record.

/s/ *Caroline Anderson*
CAROLINE J. ANDERSON

Exhibit A

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

FOIA Case: 100386
27 December 2016

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

Dear Ms. Scarlet:

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

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

Sincerely,

FOIA Customer Representative

Exhibit B

Rec'd MAR 0 6 2017

MFIA MEDIA FREEDOM & INFORMATION ACCESS CLINIC

ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

Yale Law School

February 24, 2017

BY USPS MAIL

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

RE: FOIA APPEAL, Case: 100386

Dear FOIA Officer,

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

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

Sincerely,

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

PRIVACY INTERNATIONAL

Address: 62 Britton Street, London, EC1M 5UY, Great Britain
Phone: +44 (0) 20 3422 4321
Website: www.privacyinternational.org

December 13, 2016

VIA FACSIMILE AND POST

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

Re: Request Under Freedom of Information Act

To whom it may concern,

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

1. Any records governing, amending, extending or appended to the UKUSA Agreement.

2. Any records relating to the implementation of the UKUSA Agreement by the United States government, including, but not limited to:

    a. Regulations, policies, memoranda, legal opinions, strategy documents, directives, definitions, and technical manuals or specifications;

    b. Records pertaining to planning, technical and other relevant conferences, including, but not limited to, minutes, reports and recommendations.

3. Any records construing or interpreting the authority of the National Security Agency ("NSA") pursuant to the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities pertaining to the UKUSA Agreement.

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

4. Any records describing the standards that must be satisfied for the "exchange" of "products" of "operations relating to foreign communications," as the NSA defines these terms, pursuant to the NSA's authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the "exchange" of intelligence "products" under the UKUSA Agreement.[2]

5. Any records describing the minimization procedures used by the NSA with regard to the "exchange" of "products" of "operations relating to foreign communications," as the NSA defines these terms, pursuant to the NSA's authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the "exchange" of intelligence "products" under the UKUSA Agreement.[3]

6. Any other records governing the exchange of intelligence between the United States government and the governments of the United Kingdom, Canada, Australia and/or New Zealand.

Request for a Public Interest Fee Waiver

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

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

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

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

relations" between the United States and the United Kingdom "in communications intelligence."[4] UKUSA Agreement, § 2. It further provides that:

> The parties agree to the exchange of the products of the following operations relating to foreign communications:-
>
> (1) Collection of traffic.
> (2) Acquisition of communications documents and equipment.
> (3) Traffic analysis.
> (4) Cryptanalysis.
> (5) Decryption and translation.
> (6) Acquisition of information regarding communications organizations, procedures, practices and equipment.

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

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

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

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

Request for a Waiver of Search and Review Fees

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

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

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

***

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

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

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

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[5] *See, e.g.*, Edin Omanovic, Privacy International, *The Global Surveillance Industry*, July 2016, https://privacyinternational.org/sites/default/files/global_surveillance.pdf.

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

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

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

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

Sincerely,



Scarlet Kim
Legal Officer
Privacy International

Phone: +44 (0) 20 3422 4321
Email: scarlet@privacyinternational.org

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

Case: 100386/Appeal: 5062
3 April 2017

Mr. Andrew Udelsman
Yale Law School
P.O. Box 208215
New Haven, CT 06520-8215

Dear Mr. Udelsman:

This acknowledges receipt of your correspondence, dated 24 February 2017, appealing the National Security Agency/Central Security Service (NSA/CSS) "delays in processing" your client, Scarlet Kim's request for records related to the British-United States Communication Intelligence Agreement ("UKUSA Agreement"). Your appeal was received by the NSA/CSS Freedom of Information Act (FOIA)/Privacy Act (PA) Appeal Authority Staff on 6 March 2017 and has been assigned Appeal Number 5062. Ms. Kim extended client authorization to you on 16 March 2017.

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

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

Sincerely,

Deb L

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

Exhibit C

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

FOIA Case: 100386
24 April 2017

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

Dear Ms. Kim:

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

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

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

FOIA Case: 100386

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

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

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

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

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

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

Sincerely,

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

Exhibit D

Rec'd JUN 0 8 2017

MFIA MEDIA FREEDOM & INFORMATION ACCESS CLINIC

ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

Yale Law School

May 31, 2017

VIA U.S. MAIL

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

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

Dear Sir or Madam:

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

1. Any records governing, amending, extending or appended to the UKUSA Agreement.

2. Any records relating to the implementation of the UKUSA Agreement by the United States government, including but not limited to:

   a. Regulations, policies, memoranda, legal opinions, strategy documents, definitions, and technical manuals or specifications;

   b. Records pertaining to planning, technical or other relevant conferences, including but not limited to, minutes, reports and recommendations.

3. Any records construing or interpreting the authority of the NSA pursuant to the UKUSA agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities pertaining to the UKUSA Agreement.

4. Any records describing the standards that must be satisfied for the "exchange" of "products" of "operations relating to foreign communications," as the NSA defines these terms, pursuant to the NSA's authority under the UKUSA

P.O. BOX 208215, NEW HAVEN, CONNECTICUT 06520-8215 · FACSIMILE 203 432-2064
COURIER ADDRESS 127 WALL STREET, NEW HAVEN, CT 06511

Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the "exchange" of intelligence "products" under the UKUSA Agreement.[1]

5. Any records describing the minimization procedures used by the NSA with regard to the "exchange" of "products" of "operations relating to foreign communications," as the NSA defines these terms, pursuant to the NSA's authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the "exchange" of intelligence "products" under the UKUSA Agreement.[2]

6. Any other records governing the exchange of intelligence between the United States government and the governments of the United Kingdom, Canada, Australia and/or New Zealand.

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

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

EXHIBIT A

PRIVACY INTERNATIONAL

Address: 62 Britton Street, London, EC1M 5UY, Great Britain
Phone: +44 (0) 20 3422 4321
Website: www.privacyinternational.org

December 13, 2016

VIA FACSIMILE AND POST

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

Re: Request Under Freedom of Information Act

To whom it may concern,

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

1. Any records governing, amending, extending or appended to the UKUSA Agreement.

2. Any records relating to the implementation of the UKUSA Agreement by the United States government, including, but not limited to:

    a. Regulations, policies, memoranda, legal opinions, strategy documents, directives, definitions, and technical manuals or specifications;

    b. Records pertaining to planning, technical and other relevant conferences, including, but not limited to, minutes, reports and recommendations.

3. Any records construing or interpreting the authority of the National Security Agency ("NSA") pursuant to the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities pertaining to the UKUSA Agreement.

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

4. Any records describing the standards that must be satisfied for the "exchange" of "products" of "operations relating to foreign communications," as the NSA defines these terms, pursuant to the NSA's authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the "exchange" of intelligence "products" under the UKUSA Agreement.[2]

5. Any records describing the minimization procedures used by the NSA with regard to the "exchange" of "products" of "operations relating to foreign communications," as the NSA defines these terms, pursuant to the NSA's authority under the UKUSA Agreement; any regulations, policies or other implementing documents issued thereunder; or any other relevant authorities governing the "exchange" of intelligence "products" under the UKUSA Agreement.[3]

6. Any other records governing the exchange of intelligence between the United States government and the governments of the United Kingdom, Canada, Australia and/or New Zealand.

Request for a Public Interest Fee Waiver

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

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

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

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

relations" between the United States and the United Kingdom "in communications intelligence."[4] UKUSA Agreement, § 2. It further provides that:

> The parties agree to the exchange of the products of the following operations relating to foreign communications:-
>
> (1) Collection of traffic.
> (2) Acquisition of communications documents and equipment.
> (3) Traffic analysis.
> (4) Cryptanalysis.
> (5) Decryption and translation.
> (6) Acquisition of information regarding communications organizations, procedures, practices and equipment.

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

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

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

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

Request for a Waiver of Search and Review Fees

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

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

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

***

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

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

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

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[5] *See, e.g.*, Edin Omanovic, Privacy International, *The Global Surveillance Industry*, July 2016, https://privacyinternational.org/sites/default/files/global_surveillance.pdf.

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

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

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

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

Sincerely,



Scarlet Kim
Legal Officer
Privacy International

Phone: +44 (0) 20 3422 4321
Email: scarlet@privacyinternational.org

EXHIBIT B

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

FOIA Case: 100386
27 December 2016

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

Dear Ms. Scarlet:

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

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

Sincerely,

FOIA Customer Representative

EXHIBIT C

February 24, 2017

BY USPS MAIL

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

RE: FOIA APPEAL, Case: 100386

Dear FOIA Officer,

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

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

Sincerely,

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

EXHIBIT D

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

FOIA Case: 100386
24 April 2017

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

Dear Ms. Kim:

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

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

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

FOIA Case: 100386

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

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

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

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

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

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

Sincerely,

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

Exhibit E

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

Case: 100386/Appeal: 5099
13 June 2017

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

Dear Ms. Bloch-Wehba:

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

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

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

Sincerely,

Deb L

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

Exhibit F

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

JAN 11 2017

Scarlet Kim
62 Britton Street
London, EC1M 5UY, Great Britain

Reference: ODNI Case DF-2017-00087

Dear Ms. Scarlet:

This acknowledges receipt of your email dated 13 December 2016 (Enclosure), received in the Information Management Division of the Office of the Director of National Intelligence (ODNI) on 13 December 2016. Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, you requested records relating to the British-United States Communication Intelligence Agreement.

We have initiated searches and will contact you as soon as possible if additional information or clarification is needed to process your request. All fees associated with the processing of this request have been waived.

We may be unable to provide a response within the 20 working days stipulated by the FOIA. If we have not responded to you by the 20th working day, you have the right to consider our inability to meet the 20 day requirement for a response as a denial, and may appeal to the ODNI, Information Management Division, Washington, DC 20511 within 90 days of that date. **It would seem more reasonable, however, to allow us sufficient time to continue processing your request and respond as soon as we can.** You will have the right to appeal any denial of records/information at that time.

If you have any questions, please feel free to email our Requester Service Center at DNI-FOIA@dni.gov or call us at (301) 243-1499. You can also contact ODNI's FOIA Liaison at DNI-FOIA-Liaison@dni.gov.

Sincerely,

Sally Nicholson

Sally A. Nicholson
Chief, FOIA Branch
Information Management Division

Enclosure

Exhibit G

United States Department of State

Washington, D.C. 20520

DEC 14 2016

Dear Requester,

RE: Records relating to the British-United States Communication Intelligence Agreement (now known as the "UKUSA Agreement").

This is in response to your request dated 12-13-2016, which was received on 12-14-2016. We have assigned Case Control Number F-2016-17168 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

We have considered your request for a fee waiver. Based upon the information provided in your letter, your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

Unusual circumstances (including the number and location of Department components involved in responding to your request, the volume of requested records, etc.) may arise that would require additional time to process your request.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you have any questions, you may call our FOIA Requester Service Center at (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

Requester Communications Branch
Office of Information Programs & Services

Office of Information Programs and Services
U.S. Department of State, SA-2
Washington, DC 20522-8100
Website: www.foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
E-mail: FOIAStatus@state.gov

Exhibit H

MFIA MEDIA FREEDOM & INFORMATION ACCESS CLINIC

ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

Yale Law School

February 24, 2017

BY USPS MAIL

Office of Information Programs and Services
U.S. Department of State, SA-2
Washington, DC 20522-8100
FOIAstatus@state.gov

RE: FOIA APPEAL, Case: F-2016-17168

Dear FOIA officer,

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

On December 14, 2016, a FOIA officer from the State Department sent a letter to Ms. Kim in response, notifying her that her request for fee waiver had been granted, and that her request was being processed. As you know, FOIA requires the State Department to make a determination regarding whether to comply with Ms. Kim's request within 20 days of its receipt. Because this deadline has lapsed, we are writing to appeal the State Department's constructive denial of Ms. Kim's request. We look forward to the State Department's response to this appeal within 20 days. 5 U.S.C. 552 (a)(6)(A)(ii).

Sincerely,

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

'17 MAR 3 PM4:31

Exhibit I

Miller, Jeanne

From: Miller, Jeanne
Sent: Wednesday, March 08, 2017 12:27 PM
To: 'scarlet@privacyinternational.org'
Cc: 'andrew.udelsman@ylsclinics.org'
Subject: FOIA Request F-2016-17168

Follow Up Flag: Follow up
Flag Status: Flagged

Ms. Kim,

Good afternoon. Reference is made to your December 13, 2016, Freedom of Information Act (FOIA) request for access to records relating to the British-United States Communications Intelligence Agreement (UKUSA Agreement). We also received a February 24, 2017, appeal submitted by Andrew Udelsman on your behalf. We are currently in the process of conducting a search for responsive records but have been unable to locate any to date. Please note that the majority of the Department of State records which are 25 years or older and considered permanent are transferred to the National Archives and Records Administration (NARA) in accordance with Title 22, Code of Federal Regulations, Part 171.6. Additionally, NARA maintains other agency records and could potentially have additional information related to the UKUSA Agreement. As such, you may wish to submit a FOIA request directly to NARA. Contact information for NARA is a follows:

National Archives & Records Administration
8601 Adelphi Road, Room 311
College Park, Maryland 20740-6001

If there is something specific you are seeking regarding the UKUSA or records younger than 25 years old, please let me know. Any information you can provide will certainly help us to narrow the scope and identify records more quickly. Please feel free to contact me via email or at the number below.

Regards,
Jeanne

Jeanne Miller
Branch Chief
A/GIS/IPS/CR/EAN
U.S. Department of State
SA-2, Suite 7004
Tel: 202-261-8312

Official
UNCLASSIFIED

Exhibit J

United States Department of State

Washington, D.C. 20520

April 6, 2017

Andrew Udelsman
Media Freedom & Information Access Clinic
Yale Law School
P.O. Box 208215
New Haven, CT 06520-8215

Dear Mr. Udelsman:

Thank you for your letter of February 24, 2017, concerning Freedom of Information Act ("FOIA") request number F-2016-17168, in which you note that the Department of State has not yet responded to your FOIA request.

Your FOIA request is not subject to administrative appeal at this time, since no specific material has been denied in response to the request. Section (a)(6)(C) of the FOIA provides that a requester shall be deemed to have exhausted his administrative remedies if an agency fails to respond within the applicable time limit specified in the paragraph, which is twenty days (with certain exceptions). The requester, therefore, would not be required to appeal administratively before instituting suit in federal court. This provision does not, however, provide a basis for an administrative appeal of a request that is still being processed. Moreover, the lack of a substantive response to date is not the same as a response indicating that no documents were found.

I have confirmed that your request is being processed. The Department receives thousands of FOIA and Privacy Act requests each year and yours will be processed in turn. I have sent a copy of your letter to the office that has been assigned responsibility for processing your request. Your continued patience is appreciated. If you need further assistance, you may contact the FOIA Requester Service Center at (202) 261-8484 or FOIAstatus@state.gov.

Sincerely,

Lori Hartmann
Appeals Officer
Office of Information Programs and Services

Exhibit K

Begin forwarded message:

From: Miller, Jeanne <MillerJ5@state.gov>
Subject: RE: FOIA Request F-2016-17168
Date: May 18, 2017 at 11:58:21 AM EDT
To: scarlet@privacyinternational.org <scarlet@privacyinternational.org>
Cc: andrew.udelsman@ylsclinics.org <andrew.udelsman@ylsclinics.org>

Ms. Kim:

Good morning. This is in further response to your Freedom of Information Act request submitted to the Department of State. As I have not heard back from you, I wanted to confirm that you were able to get in touch with the National Archives and Records Administration before your request is administratively closed in this office. Your request will be held open for an additional twenty days pending response from you. If we do not hear from you, we will presume you are no longer interested and the request will be closed. No fees will be assessed. As always, please feel free to contact me if you have any questions.

Regards,
Jeanne

Jeanne Miller
Branch Chief
A/GIS/IPS/CR/EAN
U.S. Department of State
SA-2, Suite 7004
Tel: 202-261-8312

Official
UNCLASSIFIED

From: Miller, Jeanne
Sent: Wednesday, March 08, 2017 12:27 PM
To: 'scarlet@privacyinternational.org'
Cc: 'andrew.udelsman@ylsclinics.org'
Subject: FOIA Request F-2016-17168

Ms. Kim,

Good afternoon. Reference is made to your December 13, 2016, Freedom of Information Act (FOIA) request for access to records relating to the British-United States Communications Intelligence Agreement (UKUSA Agreement). We also received a February 24, 2017, appeal submitted by Andrew Udelsman on your behalf.. We are currently in the process of conducting a search for responsive records but have been unable to locate any to date. Please note that the majority of the Department of State records which are 25 years or older and considered permanent are transferred to the National Archives and Records Administration (NARA) in accordance with Title 22, Code of Federal Regulations, Part 171.6. Additionally, NARA maintains other agency records and could potentially have additional information related to the UKUSA Agreement. As such, you may wish to submit a FOIA request directly to NARA. Contact information for NARA is a follows:

Exhibit L

Miller, Jeanne

From: Hannah Bloch-Wehba <hannah.bloch-wehba@ylsclinics.org>
Sent: Friday, May 19, 2017 11:37 AM
To: Miller, Jeanne
Cc: Scarlet
Subject: Re: FOIA Request F-2016-17168

Ms. Miller,

I represent Privacy International in connection with the above-referenced Freedom of Information Act ("FOIA") request to the Department of State.

I am writing to follow up on our phone call of May 18, 2017 regarding your email of the same date to Scarlet Kim. In that email, you notified Ms. Kim that your office was preparing to administratively close Privacy International's request. As you are aware, FOIA requires your office to make a determination regarding whether to comply with a request within 20 days of its receipt. As of this date, the Department still has not made a determination regarding the FOIA request, nor has it informed Ms. Kim (or counsel) regarding whether it has located any responsive records, whether the Department is invoking any exemptions to withhold records in whole or in part, or when it will produce those responsive records. As a result, the Department has not fulfilled its obligations under FOIA, and it is premature and inappropriate to "administratively close" the request.

As we discussed, moreover, the FOIA request is not limited to records more than 25 years old. Rather, the request encompasses any records, no matter how recent, relating to the UKUSA agreement, responsive to the enumerated categories. In this regard, it is worth noting that the UKUSA agreement may have been amended numerous times and may therefore be referred to by a title other than the "UKUSA agreement." Moreover, FOIA also requires the Department to produce any "reasonably segregable" portions of the records requested. *See* 5 U.S.C. § 552(b) ("Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.").

Please direct further correspondence regarding this matter to me at this email address.

Very truly yours,

Hannah

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Hannah Bloch-Wehba
Clinical Lecturer in Law | Stanton First Amendment Fellow | Research Scholar
Media Freedom & Information Access Clinic
Yale Law School
(203) 436-5824

From: Andrew Udelsman <andrew.udelsman@ylsclinics.org>
Date: Thursday, May 18, 2017 at 12:01 PM
To: Hannah Bloch-Wehba <hannah.bloch-wehba@ylsclinics.org>
Subject: Fwd: FOIA Request F-2016-17168

Exhibit M

Joseph Scanlon <joseph.scanlon@nara.gov>

Fwd: Request under the Freedom of Information Act

1 message

Joseph Scanlon <joseph.scanlon@nara.gov> Thu, Mar 16, 2017 at 8:58 AM
To: scarlet@privacyinternational.org
Cc: Specialaccess_foia <specialaccess_foia@nara.gov>, FOIA <FOIA@nara.gov>
Bcc: Robin Cecil <robin.cecil@nara.gov>

Dear Ms. Kim:

Thank you for submitting your Freedom of Information Act request to the National Archives and Records Administration.

Due to the nature of your request, we have forwarded your request to our *Office of Research Services, Special Access and FOIA*division, for appropriate handling. You will be assigned a new tracking number by that office. If you would like to follow up with that office directly, please contact them at: specialaccess_FOIA@nara.gov.

For your reference, your original submission is below.

Please also visit our main website, www.archives.gov, to learn more about the many exciting resources we offer the public.

Sincerely,

Joseph A. Scanlon
FOIA & Privacy Act Officer
National Archives and Records Administration
Office of General Counsel
(301) 837-0583

---------- Forwarded message ----------
From: **Scarlet** <scarlet@privacyinternational.org>
Date: Thu, Mar 16, 2017 at 7:24 AM
Subject: Request under the Freedom of Information Act
To: foia@nara.gov, specialaccess_foia@nara.gov

Dear FOIA Officer,

Please find attached a request for records under the Freedom of Information Act.

Thank you.

Best,

Scarlet

Scarlet Kim
Legal Officer

Privacy International
62 Britton Street
London EC1M 5UY
United Kingdom

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FOIA Request (NARA) .pdf
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