

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

FOIA Case: 77282 27 March 2014

HENRY A PLATSKY PO BOX 140155 BROOKLYN NY 11214

Dear Mr. Platsky:

This responds to your request of 4 March 2014, which was received by this office on 20 March 2014, for a copy of all written and electronic records this Agency maintains on you from January 1, 2000 through January 1, 2005. A copy of your request is enclosed. Your letter has been assigned Case Number 77282. Please refer to this case number when contacting us about your request. Your request has been processed under the provisions of the Freedom of Information Act (FOIA). For purposes of this request and based on the information you provided in your letter, you are considered an "all other" requester. There are no assessable fees for this request.

You may be aware that one of the NSA/CSS missions is to collect, process, and disseminate communications or signals intelligence information for intelligence and counter intelligence purposes. NSA is authorized to engage in these activities in order to prevent and protect against terrorist attacks, the proliferation of weapons of mass destruction, intelligence activities directed against the United States, international criminal drug activities, and other hostile activities directed against the United States. The roles and responsibilities that NSA exercises are delineated in Executive Order 12333, as amended.

As you may also be aware, there has been considerable coverage of two NSA intelligence programs in the press/media. Under Sec. 215 of the USA PATRIOT Act, as authorized by the Foreign Intelligence Surveillance Court ("FISC"), NSA may acquire telephone metadata, such as the telephone numbers dialed and length of calls, but not the content of calls or the names of the communicants. Under Sec. 702 of the FISA, with appropriate authorization, NSA may target non-U.S. persons reasonably believed to be located outside the United States for foreign intelligence purposes. Under the FISC-authorized Sec. 215 authority, NSA cannot review any metadata unless strict requirements are met, i.e., the data may be queried only when there is a reasonable suspicion, based on specific facts, that a phone number is associated with a foreign terrorist organization. Likewise, under Sec. 702, there are strict controls approved by the FISC to help ensure that no U.S. person is targeted and FISC-approved minimizations procedures to ensure the protection of any information concerning U.S. persons that may be incidentally acquired.

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Although these two programs have been publicly acknowledged, details about them remain classified and/or protected from release by statutes to prevent harm to the national security of the United States. To the extent that your request seeks any information on you in relation to NSA intelligence programs, or in relation to any specific methods or means for conducting the programs, we cannot acknowledge the existence or non-existence of such information. Any positive or negative response on a request-by-request basis would allow our adversaries to accumulate information and draw conclusions about NSA's technical capabilities, sources, and methods. Our adversaries are likely to evaluate all public responses related to these programs. Were we to provide positive or negative responses to requests such as yours, our adversaries' compilation of the information provided would reasonably be expected to cause exceptionally grave damage to the national security.

Therefore, your request is denied because the fact of the existence or non-existence of responsive records is a currently and properly classified matter in accordance with Executive Order 13526, as set forth in Subparagraph (c) of Section 1.4. Thus, your request is denied pursuant to the first exemption of the FOIA, which provides that the FOIA does not apply to matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign relations and are properly classified pursuant to such Executive Order.

Moreover, the third exemption of the FOIA provides for the withholding of information specifically protected from disclosure by statute. Thus, your request is also denied because the fact of the existence or non-existence of the information is exempted from disclosure pursuant to the third exemption. 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).

The Initial Denial Authority for NSA information is the Associate Director for Policy and Records, David J. Sherman. As your request is being denied, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days of the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJ4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the adverse determination and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes that the determination is unwarranted. The NSA/CSS FOIA Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

If we have misinterpreted your request and you have been affiliated with the NSA in some way as an employee, applicant, or visitor and are looking for records related to those activities, you may submit a <u>signed</u> Privacy Act request to seek that type of information. If you provide a Social Security number, it will assist us with the search for responsive records. The authorities for collecting this information and the

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use of the requested information is set forth in the Privacy Act Statement provided below.

Sincerely,

PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Encl:

a/s

PRIVACY ACT STATEMENT: Authority for collecting information requested is contained in 5 U.S.C. § 552a and 5 U.S.C. § 552. NSA's Blanket Routine Uses found at 58 Fed. Reg. 10,531 (1993) as well as the specific uses found in GNSA02, GNSA03, and GNSA10 apply to this information. Authority for requesting your Social Security Number (SSN) is Executive Order 9397. The requested information will be used to assist the Agency in locating and disseminating the applicable records to the requestor. The disclosure of the requested information, to include your SSN, is voluntary. However, failure to provide the requested information may delay the processing of your request.

NSA Appeal Authority Ft. Meade Maryland

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I am appealing the decison of your agency to deny my FOIA request for the following reasons:

- 1) The latest date for material in my request is 2005, over 8 years ago. The idea that any present agency operations wuld be endangered by the release of such dated material is absurd.
- 2) According to Executive Order 13526, Sec. 1.5 (b) material classified 10 years ago is automatically declassified unless your agency marks it otherwise. Thus, any material pertinent to my request that has been classified for more than 10 years and not specifically marked for extended classification should be released.
- 3) According to the above cited Executive Order Sec 1.7(a)(1) information that exposes violations of the law by your agency cannot be classified. As I write I along with countless other citizens of our country are suffering from an organized campaign of stalking, harssment, menacing and violence. The tactics used in this campaign stink of those used in the old Cointelpro program long ago declared illegal by the courts. If your agency has played a role in this illegal campign within the time framework of my request then any information regarding this must, by law, be released.
- 4) Your agency is prohibited by law from engaging in any form of covert activity against citizens of this country. Thus any information held by your agency about any form of covert activity involving me must, by law, be turned over.

Respectfully,

Henry Platsky PO Box 140155 Brooklyn, NY, 11214



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

Case No. 77282/Appeal No. 3988 30 July 2014

Mr. Henry A. Platsky P.O. Box 140155 Brooklyn, NY 11214

Dear Mr. Platsky:

This replies to your letter, dated 20 May 2014, appealing the National Security Agency/Central Security Service's (NSA/CSS') denial of your request under the Freedom of Information Act (FOIA) for a copy of all written and electronic records this Agency maintains on you from January 1, 2000 through January 1, 2005. I have reviewed your request, the Chief of the FOIA/Privacy Act Office's response to you, and your letter of appeal.

As a result of my review, I have concluded that the appropriate response is to continue to neither confirm nor deny the existence or nonexistence of any intelligence material on you pertaining to any NSA/CSS intelligence programs or activities, including programs authorized under Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act Amendments Act. To do otherwise when challenged under the FOIA would result in the exposure of intelligence information, sources, and methods, which could harm our national security and severely undermine NSA/CSS activities in general. For example, if NSA/CSS denied having information in cases where we had no such information but remained silent in cases in which the information existed, it would tend to reveal in which activities NSA/CSS was engaged.

Accordingly, the existence or nonexistence of any intelligence information you requested remains exempt from disclosure pursuant to 5 U.S.C. §552(b)(1), which protects properly classified information. I have determined that any substantive response to your request would tend to confirm or deny specific activities. The fact of the existence or nonexistence of such information is a properly classified matter under Executive Order 13526, since it meets the specific criteria for classification established in Section 1.4(c) of the Order. When such classification is warranted, Section 3.6(a) of the Order allows an agency to respond by declining to confirm or deny the existence of responsive records.

Further, the fact of the existence or nonexistence of any such records is also exempt pursuant to 5 U.S.C. §552(b)(3), which permits withholding of matters specifically exempted from disclosure by statute. The applicable statutory provisions with regard to the existence or nonexistence of the records requested are: 18 U.S.C. §798, which prohibits the release of information concerning classified communications intelligence activities except to those persons authorized to receive such information; 50 U.S.C. §3024(i), which requires the protection of intelligence sources and methods from unauthorized disclosure; and Section 6 of the National Security Agency Act of 1959, Public Law 86-36 (codified at 50 U.S.C. §3605), which provides that no law shall be construed to require the disclosure of the organization, personnel, functions, or activities of the National Security Agency.

Because this response is a denial of your appeal, you are hereby advised of your right pursuant to 5 U.S.C. §552(a)(4)(B) to seek judicial review of my decision in the United States District Court in the district in which you reside, in which you have your principal place of business, in which the Agency records are situated (U.S. District Court of Maryland), or in the District of Columbia.

Sincerely,

E. R. BROOKS
Chief of Staff
Freedom of Information Act/Privacy Act
Appeal Authority

## **MANDATE**

S.D.N.Y.-N.Y.C. 15-cv-1529 Preska, C.J.

## United States Court of Appeals

FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16<sup>th</sup> day of July, two thousand fifteen.

Present:  Robert A. Katzmann,  Chief Judge,  Dennis Jacobs,  José A. Cabranes,  Circuit Judges.		
Henry Platsky,		
	Plaintiff-Appellant,	
v.		15-1464
National Security Agency, et al.,		
	Defendants-Appellees.	

Appellant, pro se, moves for leave to proceed *in forma pauperis* ("IFP"). Upon due consideration, it is hereby ORDERED that the motion is GRANTED. It is further ORDERED that the judgment of the district court is VACATED to the extent the district court relied on collateral estoppel to dismiss Appellant's complaint, and the matter is REMANDED for further proceedings.

The Appellant's previous Freedom of Information Act ("FOIA") action addressed Appellant's requests for records covering the period January 1, 2005 to January 1, 2010, not January 1, 2000 to January 1, 2010 as the district court concluded. *See Platsky v. Nat'l Sec. Agency*, E.D.N.Y. dkt no. 11-cv-4816, doc. 20 at 1–2. Thus, contrary to the district court's collateral estoppel ruling, the "legal question" of whether the defendants properly issued *Glomar* responses to Appellant's FOIA requests for records between January 1, 2000 and January 1, 2005, which is at issue in this case,

was not "actually litigated and decided" in the first FOIA action. *See Olin Corp. v. Am. Home Assurance Co.*, 704 F.3d 89, 98 (2d Cir. 2012) ("Collateral estoppel only prevents relitigation in a subsequent action of an issue of law or fact actually litigated and decided by a court of competent jurisdiction in a prior action." (internal quotation marks omitted)). Nor was the Appellant's argument that the records he now seeks should be declassified because they are more than ten years old.

FOR THE COURT: Catherine O'Hagan Wolfe, Clerk

A True Copy

Catherine O'Hagan Wolfe Clerk

United States Court of Appears, Second Circuit

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