



June 15, 2023

By E-mail

FOIA/PA Mail Referral Unit  
Department of Justice  
Room 115  
LOC Building  
Washington, DC 20530-0001  
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Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, regarding the use of administrative subpoenas, which federal law enforcement agencies frequently use to obtain Americans' private electronic data. In particular, these subpoenas are often used to collect bulk data, rather than targeting data from an identifiable target. And it is all done without meaningful judicial oversight. Accordingly, as described in more detail below, this request seeks information about when the Department of Justice ("DOJ") uses administrative subpoenas, whether and when it has used them without probable cause, when it has used them as alternatives to a court-ordered subpoena, and when DOJ shares data obtained through administrative subpoenas with other federal or state agencies.

This request is filed on behalf of the Project for Privacy and Surveillance Accountability, Inc. ("PPSA"). As an organization concerned with government surveillance overreach, PPSA is troubled by the extent to which U.S. law enforcement and intelligence agencies may be collecting Americans' private data without their knowledge, without probable cause, and without meaningful judicial oversight.

To better understand the ways in which DOJ relies on administrative subpoenas, PPSA requests the following records from any DOJ component that may have responsive records, including, at a minimum, the Executive Office for United States Attorneys, the Federal Bureau of Investigation, DOJ's Criminal Division, the Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

PPSA thus seeks the following records:<sup>1</sup>

- (1) Records reflecting whether probable cause is required to use administrative subpoenas, and whether there has been any change in how this requirement has been applied.
- (2) Records reflecting each instance when an administrative subpoena was used without probable cause.
- (3) Records reflecting each instance when an administrative subpoena was requested but not approved due to a lack of probable cause.
- (4) Records reflecting policies, procedures, or guidance regarding use of administrative subpoenas rather than court-ordered subpoenas.
- (5) Records discussing how to share data or information obtained through administrative subpoenas with other federal agencies, state governments, or state or local law enforcement.
- (6) Records reflecting the use of administrative subpoenas not directed at or related to particular identifiable investigations or targets.

*Definitions.* For purposes of this request, the term “record” shall mean: (1) typed material of any kind, including but not limited to all correspondence, memoranda, notes, messages, letters, facsimiles, papers, forms, telephone messages, schedules, calendars, minutes, books, reports, lists, ledgers, invoices, receipts, computer printouts, contracts, agreements, and transcripts; (2) any electronically stored material of any kind, including all emails and also including material stored on any personal electronic devices; (3) any audio or visual recordings of any kind; and (4) any materials using other means of preserving information.

*Exemptions.* To the extent DOJ concludes that any record, or portion thereof, is exempt from release, DOJ shall redact the exempt information while still producing any other portions of those pages. For instance, such redactions should foreclose any need to issue a *Glomar* response, as anonymized and redacted production would neither (1) reveal intelligence sources or methods, nor (2) disclose any agency interest (or lack thereof) in any particular individual. Additionally, DOJ should provide PPSA a *Vaughn* Index explaining the basis for any such withholdings.

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<sup>1</sup> For all requested records, PPSA limits its request to documents created from January 1, 2008 to the date of the search.

*Fee Waiver.* PPSA requests a waiver of both search fees and duplication fees under 5 U.S.C. §§ 552(a)(4)(A)(i), 552(a)(4)(A)(ii)(II), and 552(a)(4)(A)(iii). First, PPSA is entitled to the waiver of such fees because it is a member of the news media as that term is defined in FOIA and construed by the courts, disclosing information that is in the public interest and educating the public about government operations. *See Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As the D.C. Circuit has said: “[I]f an entity ... issues substantive press releases concerning the documents it uncovers, or even if it simply provides editorial comments on those documents in interviews with newspapers, such a gloss on the underlying materials could satisfy this element of the definition.” *Cause of Action v. FTC*, 799 F.3d 1108, 1122 (D.C. Cir. 2015). PPSA does just that—it obtains information on the activities of the federal government, uses editorial skill to translate this information into discrete informational products and policy briefs, and disseminates that information to the public to educate the citizenry of the United States. PPSA intends to do so with the information received through this request.

Second, we request a full fee waiver for this request as “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The subject of the requested records concerns government operations, including the collection of Americans’ data that the majority of them would consider private. The public deserves to know how the U.S. Government ensures their civil liberties and constitutionally protected rights are safeguarded. Few matters are of such substantial public interest. *See id.* § 552(a)(4)(A)(iii). This concern is particularly important here, because administrative subpoenas can be used to minimize judicial oversight, thus increasing the need for public oversight. Accordingly, we request a full fee waiver for this request.

Please contact me at [foia@schaerr-jaffe.com](mailto:foia@schaerr-jaffe.com) if you have any other questions about this request.

Thank you in advance for your speedy attention and assistance.

Sincerely,

Gene C. Schaerr  
PPSA, Inc.  
General Counsel