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RIGHTS
WATCH

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Headquarters Air Force/AII (FOIA)
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Washington, DC 20330-1000

May 3, 2018

To Whom It May Concern:

Through this letter, Human Rights Watch requests copies of documents pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

We request these documents on an expedited basis; we also seek a public interest fee waiver and news media fee status.

In 2017, the US Air Force (“USAF”) Office of Special Investigations disclosed training materials to Human Rights Watch pursuant to a freedom of information request concerning surveillance under Executive Order 12333. These materials showed that 2016 changes to Department of Defense Manual 5240.01 (“Procedures Governing the Conduct of DoD Intelligence Activities”) enabled the “counterintelligence” monitoring of United States persons whom the executive branch regards as “homegrown violent extremists” (“HVEs”).

The present request is detailed below and seeks additional records pertaining to this topic.

I. Requested records

Human Rights Watch requests copies of the following documents, preferably in electronic format and on a rolling basis as the USAF locates them:

1. Formal, final, or implemented legal opinions and determinations, procedures, policies, and training materials concerning the identification, designation, or assessment of “homegrown violent extremists” or individuals regarded as potential HVEs.
2. Any records defining the term “homegrown violent extremist” and/or explaining the criteria or factors that may be used when identifying or designating HVEs.
3. Any records concerning materials or services purchased with the purpose, or partial purpose, of identifying HVEs or assessing the potential for an individual to become an HVE.
 - a. Such records may include, but are not limited to, training or operators’ manuals, contracts, agreements, or purchase records.

- b. Materials may include, but are not limited to, software or analytical solutions such as those offered by Palantir or PATHAR. An example of a product offered by PATHAR is Dunami.

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4. Records of correspondence concerning policies or procedures related to the identification or designation of HVEs or the assessment of the potential for individuals to become HVEs.

5. Formal, final, or implemented legal opinions and determinations, procedures, policies, and training materials concerning the types of monitoring that may be conducted pursuant to Executive Order 12333 to identify, assess, investigate, predict or prevent actions by, or ascertain the behavior or relationships of persons believed to be HVEs or potential HVEs.

II. Request for expedited processing

Pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 286.8(e)(i)(B), Human Rights Watch seeks expedited processing of this request.

There is a “compelling need” for the information we have requested, as HRW is “primarily engaged in disseminating information” and there is an urgent need for the organization to “inform the public concerning actual or alleged Federal Government activity” in the area of surveillance practices (5 U.S.C. § 552(a)(6)(E)(v)(ii); 32 C.F.R. § 286.8(e)(i)(B)).

a. *Human Rights Watch is primarily engaged in disseminating information*

Human Rights Watch is a nonprofit organization comprised of human rights professionals who engage in extensive fact-finding and reporting on human rights conditions in the United States and elsewhere, providing original factual information and analyses to the US and global public and to media outlets. Where the US is concerned, the organization has investigated and reported on federal and state government practices for many years.¹ In particular, it has previously obtained and reported on information concerning the executive branch’s monitoring of HVEs under Executive Order 12333.²

Human Rights Watch’s fact-finding work regularly forms the basis of reports by print, broadcast, and Internet media.³ The organization also disseminates original reports and

¹ For recent examples, see Human Rights Watch, DARK SIDE: SECRET ORIGINS OF EVIDENCE IN US CRIMINAL CASES (2018), <https://www.hrw.org/report/2018/01/09/dark-side/secret-origins-evidence-us-criminal-cases>; Laura Pitter, “US: Ex-Detainees Describe Unreported CIA Torture,” Oct. 3, 2016, <https://www.hrw.org/news/2016/10/03/us-ex-detainees-describe-unreported-cia-torture>; Human Rights Watch, BOOTED: LACK OF RECOURSE FOR WRONGFULLY DISCHARGED MILITARY RAPE SURVIVORS (2016), <https://www.hrw.org/report/2016/05/19/booted/lack-recourse-wrongfully-discharged-us-military-rape-survivors>.

² Human Rights Watch, “US: New Evidence Suggests Monitoring of Americans,” October 25, 2017, <https://www.hrw.org/news/2017/10/25/us-new-evidence-suggests-monitoring-americans>.

³ For recent examples, see Louise Matsakis, “How the Government Hides Secret Surveillance Programs,” WIRED, January 9, 2018, available at <https://www.wired.com/story/stingray-secret-surveillance-programs/>; Dennis Romero, “In California, Justice Is a Matter of Money,” L.A. WEEKLY, April 11, 2017, available at <http://www.laweekly.com/news/californias-bail-system-needs-reform-report->

other factual content directly to the public, including through its website, www.hrw.org, which receives approximately 15 million unique visitors per year.

Human Rights Watch therefore meets the statutory definition of a “representative of the news media” as an “entity that 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). As noted below, several US government agencies have previously recognized Human Rights Watch as a member of the news media for the purpose of freedom of information requests.

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b. There is an urgent need to inform the public concerning actual or alleged Federal Government activity

The identification and/or designation of individuals or groups in the US as “extremist” is a matter of vital public interest raising critical legal issues. The importance of these matters, and the public’s need to be informed about them, is demonstrated by ongoing media coverage.

For example, on April 29, 2018, the New Jersey news outlet *NJ.com* published an investigative report describing what it characterized as a Federal Bureau of Investigation (“FBI”) and Defense Department policy allowing “the tracking of non-active military members [the FBI] deems high risk.”⁴ (In this context, “high risk” appears to mean a heightened risk of engaging in violence motivated by “extremist” beliefs.) Human Rights Watch and Reuters have also reported on a Defense Department policy permitting the monitoring of HVEs.⁵

Media coverage of an FBI analysis depicting a “Black Identity Extremist” movement has also generated continuing public concern about the bases for—and consequences of—government decisions designating individuals or movements as “extremist.”⁶


[says-8115698](https://www.nytimes.com/2016/07/08/us/delayed-care-faulted-in-immigrants-deaths-at-detention-centers.html); Megan Jula and Julia Preston, “Delayed Care Faulted in Immigrants’ Deaths at Detention Centers,” *NEW YORK TIMES*, July 7, 2016, available at <https://www.nytimes.com/2016/07/08/us/delayed-care-faulted-in-immigrants-deaths-at-detention-centers.html>.

⁴ Erin Banco, “A veteran from N.J. says the FBI is targeting him. Is he one of many?”, *NJ.COM*, April 29, 2019, available at http://www.nj.com/news/index.ssf/2018/04/this_nj_vet_says_the_government_is_tracking_him_he.html#incart_2box_nj-homepage-featured.

⁵ *Supra* n. 2; Dustin Volz, “Exclusive: U.S. widens surveillance to include ‘homegrown violent extremists’ – documents,” *Reuters*, October 25, 2017, available at <https://www.reuters.com/article/us-usa-cyber-surveillance-exclusive/exclusive-u-s-widens-surveillance-to-include-homegrown-violent-extremists-documents-idUSKBN1CU1H6>.

⁶ Jana Winter and Sharon Weinberger, “The F.B.I.’s New U.S. Terrorist Threat: ‘Black Identity Extremists,’” *FOREIGN POLICY*, October 6, 2017, available at <http://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists/>; Martin de Bourmont, “Is a Court Case in Texas the First Prosecution of a ‘Black Identity Extremist’?”, *FOREIGN POLICY*, January 30, 2018, available at <http://foreignpolicy.com/2018/01/30/is-a-court-case-in-texas-the-first-prosecution-of-a-black-identity-extremist/>.

These developments confirm that there is an urgent need to inform the public about any governmental identification, designation, assessment, and monitoring of HVEs.

I, Sarah St.Vincent, certify that this demonstration of compelling need is true and correct to the best of my knowledge and belief. 

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III. Request for public interest fee waiver

Human Rights Watch requests that the USAF search for, review, duplicate, and furnish any documents responsive to this submission without charge, as the “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); 32 C.F.R. § 286.12(i)(l)).

Human Rights Watch is a non-profit organization and has no commercial interest in USAF’s response to this request for documents. Additionally, this request exhibits each of the relevant factors set forth at 32 C.F.R. § 286.12(i)(l): (1) it concerns the “operations or activities” of the USAF, (2) the disclosure of the records sought would be meaningfully informative about these operations or activities, and (3) the disclosure would contribute significantly to the general public’s understanding of the subjection in question.

Various Department of Defense and other US government entities (e.g., US Marine Corps, National Reconnaissance Office, Central Intelligence Agency, Department of Justice National Security Division) have previously granted Human Rights Watch a public interest fee waiver regarding other requests.

a. The request concerns USAF operations or activities

Human Rights Watch’s request concerns documents pertaining to the USAF’s identification, assessment, and monitoring of HVEs or potential HVEs. The USAF’s involvement, or prospective involvement, in such operations or activities is indicated by the training materials previously disclosed (see above) as well as comments provided to Human Rights Watch and Reuters by the Defense Department in October 2017 (see links in footnote 1).

b. The disclosure of the records sought would be meaningfully informative about these operations or activities

Through this request, Human Rights Watch seeks records of activities that remain poorly understood by the public following the initial 2017 disclosures (see above). The records requested would provide meaningful information about the policies and procedures for the activities in question as well as any resulting impact on the civil liberties of United States persons.

c. The disclosure would contribute significantly to the general public’s understanding of the subject in question



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The disclosures Human Rights Watch seeks concern foundational legal interpretations, policies, rules, and guidance pertaining to basic aspects of HVE monitoring that have not yet been explained to the general public. The disclosure of these materials would allow the public to gain a significantly better understanding of whom the government may regard as an HVE and what types of monitoring may precede or result from such an identification.

As noted above, recent revelations concerning the designation and potential monitoring of Americans the US government regards as “extremists” have generated widespread public concern. The records Human Rights Watch seeks would contribute to an understanding of the bases for, and consequences of, a conclusion by the executive branch that an individual in the United States is or may be a “violent extremist.”

Human Rights Watch disseminates information widely to the general public and to other members of the media: its press releases, reports, and online materials receive millions of views annually, and its fact-finding is regularly the subject of its own reporting as well as that of national and local media outlets. Information disclosed in response to this request would therefore contribute significantly to an understanding of the subject among the public at large.

IV. Request for news media fee status

Human Rights Watch also requests an exemption from or waiver of other fees that might otherwise apply as a member of the news media (5 U.S.C. § 552(a)(4)(A)(ii)(I)-(II); 32 C.F.R. § 286.12(e)); see Part II(a) above for an explanation of our status as a representative of the news media. Numerous US government entities have previously recognized the organization as a member of the news media for this purpose in relation to other requests; these include the National Geospatial-Intelligence Agency, FBI, and Department of Homeland Security Office of Intelligence and Analysis.

* * *

Responses should be addressed to:

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The addressee may also be contacted by e-mail at stvincs@hrw.org or by telephone at (212) 216-1212.

Sincerely,



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Sarah St.Vincent
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