



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

FOIA Case: 78851B
5 September 2017

STEPHEN A REVILAK

Dear Mr. Revilak:

This is the final response to your Freedom of Information Act (FOIA) request of 4 August 2014, which was received by this office on 13 August 2014, for "copies of the following records:

- Administrative records generated in the processing of FOIA Case No. 75457.
- Administrative records generated in the processing of FOIA Appeal No. 3895."

As noted in our interim response of 1 April 2015, your request has been assigned Case Number 78851, and there are no assessable fees for this request. A copy of your request is enclosed.

Your request has been processed under the FOIA, and the documents you requested are enclosed. Certain information, however, has been deleted from the enclosures.

Information which would reveal NSA/CSS functions and activities and names of NSA/CSS employees has been deleted from the enclosures. These deletions 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 statute applicable in this case is Section 6, Public Law 86-36 (50 U.S. Code 3605).

In addition, some of the information has been deleted from the enclosures pursuant to the fifth exemption of the FOIA. This exemption applies to inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency, protecting

information that is normally privileged in the civil discovery context, such as information that is part of a predecisional deliberative process.

Since information was withheld from some of the enclosures, you may construe this as a partial denial of your request. You are hereby advised of this Agency's appeal procedures:

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

- The appeal must be sent via U.S. postal mail, fax, or electronic delivery (e-mail) and addressed to:

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

The facsimile number is (443)479-3612.

The appropriate email address to submit an appeal is FOIARSC@nsa.gov.

- Request must be postmarked or delivered electronically no later than 90 calendar days from 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 the 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,

A handwritten signature in cursive script, appearing to read "Paul H. Chapman".

for
JOHN R. CHAPMAN
Chief, FOIA/PA Office
NSA Initial Denial Authority

Encls:
a/s

Received
AUG 13 2014

[REDACTED]
August 4, 2014

National Security Agency
Attn: FOIA/PA Office (D.I4)
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20755-6248

Dear NSA FOIA/PA Office:

This is a Freedom of Information Act Request, as described in http://www.nsa.gov/public_info/foia/submit_foia_request/index.shtml. I am seeking copies of the following records:

- Administrative records generated in the processing of FOIA Case No. 75457.
- Administrative records generated in the processing of FOIA Appeal No. 3895.

I would prefer to receive responsive documents as .pdf files, emailed to [REDACTED] but I am happy to accept paper copies mailed to the return address above – whatever is easier for you.

I am willing to pay up \$25 for the processing of this request. Please inform me if the estimated fees will exceed this limit before processing my request.

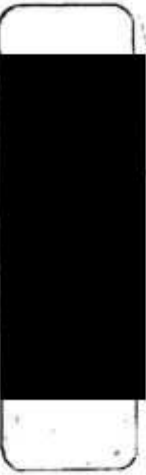
I am seeking information for personal use and not for commercial use.

Thank you for your time and attention.

Sincerely,
[REDACTED]

Stephen A. Revilak
[REDACTED]

OPEN BY
AUG 08 2014
CFSI



BOSTON, MA 021
05 AUG 2014 PM 6 L



NATIONAL Security Agency

ATTN: FOIA/PA OFFICE (D54)

9800 SAVAGE Rd, Suite 6248

FT. GEORGE G. MEADE, MD

20755-6248



(b) (3) - P.L. 86-36

Case Number: 75473

User: [redacted]

Date: 07/31/2014

Comment: (U//FOUO) Forwarded to D/SEC for CoS signature on 28 July 2014. Signed on 30 July 2014. This appeal response was delayed pending the approval of the GLOMAR/PA Search desk note to the CoS in CATS #2014-4798 (6 appeals). Mailed response to requester today.

User: [redacted]

Date: 06/06/2014

Comment: (U//FOUO) Reviewed by [redacted] on 6/5/14. Forwarding to DJ4 for review.

User: [redacted]

Date: 06/05/2014

Comment: (U//FOUO) Reviewed by [redacted] on 6/4/14. Updated response letter with suggested changes. Forwarding to [redacted] for review.

User: [redacted]

Date: 06/02/2014

Comment: (U//FOUO) Appeal reviewed by DJ4 on 5/16/14. Returned to better address the issue presented on appeal that the requested records are PA records. Response updated today. Forwarding to [redacted] for review.

User: [redacted]

Date: 05/16/2014

Comment: (U//FOUO) Forwarding to DJ4 for review.

User: [redacted]

Date: 05/14/2014

Comment: (U//FOUO) Appeal draft completed and forwarded to [redacted] for review.

User: [redacted]

Date: 01/24/2014

Comment: (U) Appeal acknowledgment letter mailed.

User: [redacted]

Date: 01/23/2014

Comment: (U//FOUO) OGC Lit notified of appeal correspondence. Validated. #76 in appeals queue.

User: [redacted]

Date: 11/21/2013

Comment: (U//FOUO) Letter printed and mailed. Log updated. Case closed.

User: [redacted]

Date: 11/20/2013

Comment: (U) Signed

(b) (3) - P.L. 86-36

User: [redacted]

Date: 11/19/2013

Comment: (U//FOUO) Final response letter and MR drafted. Removed reference to PA request and the PA statement since requester asked specifically for call records on his home phone. Sent to approval queue.

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Case number should read: 75473

SECURITY CLASSIFICATION

NSA STAFF PROCESSING FORM

TO ⁹²⁰⁰ COS ^{20 July 14}	EXREG CONTROL NUMBER GC-2014-6017	KCC CONTROL NUMBER Case 75457/Appeal 3895
THRU	ACTION <input type="checkbox"/> APPROVAL <input checked="" type="checkbox"/> SIGNATURE <input type="checkbox"/> INFORMATION	EXREG SUSPENSE KCC SUSPENSE ELEMENT
SUBJECT (U) Freedom of Information Act (FOIA) Appeal - Mr. Stephen Revilak		
DISTRIBUTION		

SUMMARY

PURPOSE: (U) To inform a FOIA requester that NSA can neither confirm nor deny the existence or nonexistence of intelligence records on him pertaining to any NSA intelligence programs or activities, pursuant to the first and third exemptions of the FOIA. We also inform him of his right to seek judicial review.

BACKGROUND: (~~UNFOUO~~) By letter dated 23 October 2013 (TAB A), Mr. Stephen Revilak requested a list of all phone calls from his cell phone number [REDACTED]. The Chief, FOIA/Privacy Act (PA) Office responded to Mr. Revilak by letter dated 21 November 2013, informing him that NSA could neither confirm nor deny the existence or nonexistence of intelligence records pertaining to him, or metadata/call-detail records on him, and/or any telephone numbers provided in the request relative to the recent public acknowledgment of NSA programs authorized under Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act Amendments Act, and/or any other intelligence activity. The basis for neither confirming nor denying the existence or nonexistence of such material is the first and third exemptions of the FOIA. The first exemption under the FOIA allows currently and properly classified information to be exempt from disclosure because its exposure could reasonably be expected to cause damage to national security. The third exemption under the FOIA allows the withholding of information specifically protected from disclosure by statute. The applicable statutory provisions with regard to the information at issue 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 NSA. That letter also provided Mr. Revilak with appeal rights (TAB B). Mr. Revilak appealed NSA's denial of records by letter, dated 5 January 2014 (TAB C).

(~~UNFOUO~~) On appeal, we reviewed the initial request, the Chief of the FOIA/PA Office's response, and the appeal. We have determined that we must uphold the FOIA/PA Office Chief's decision, as outlined above, by continuing to neither confirm nor deny the existence or nonexistence of intelligence records on Mr. Revilak.

(CONTINUED)

COORDINATION/APPROVAL					
OFFICE	NAME AND DATE	SECURE PHONE	OFFICE	NAME AND DATE	SECURE PHONE
AssocGC(Lit)	[REDACTED] 8/5/14	963-5047	COSEA		963-4444
DJ4 CAO	[REDACTED] 9/6/14	966-4071			
D Secretarial	[REDACTED] 7/28	963-3201			
ORIGINATOR	[REDACTED]	ORG. D28	PHONE (Secure) 963-2378	DATE PREPARED 6 June 2014	

FORM A6796
REV NOV 95

(b) (3) - P.L. 86-36

SECURITY CLASSIFICATION
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(U//~~FOUO~~) Additionally, Mr. Revilak believes that his request, specifically for the "telephony metadata" from his cell phone calls, falls within the scope of the PA and should have been processed in accordance with the PA. Indeed, his initial request was submitted as a PA request. However, the request was processed under the FOIA because intelligence records are not records that are maintained in a PA system of records. Nevertheless, to the extent Mr. Revilak is seeking a response under the PA, we inform him that the existence or nonexistence of any intelligence records that may fall within a PA system of records is also exempt from disclosure pursuant to the first exemption of the PA (5 U.S.C. §552a(k)(1)), which allows for the withholding of classified information if that information is exempt from disclosure under the FOIA. The existence or nonexistence of the information he requests meets the criteria for classification under the FOIA (5 U.S.C. § 552(b)(1)) pursuant to the statutes cited above and is therefore exempt from disclosure under the PA. Additionally, in response to a request for information under the FOIA and PA, agencies may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under Executive Order 13526. (See Section 3.6(a) of Executive Order 13526).

FORESEEABLE HARM: (U//~~FOUO~~) We can admit that NSA collects communications or signals intelligence information of unspecified persons or entities involved in terrorism as part of the nation's efforts to prevent and protect against terrorist attacks. We can also admit that under Section 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 call or the names of the communicants. Under Section 702 of the FISA Amendments Act, NSA may acquire the communication of non-U.S. persons located abroad for foreign intelligence purposes such as counterterrorism and counter proliferation. This program is also authorized by the FISC. Under the FISC-authorized Section 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 Section 702, there are strict controls established by the FISC to ensure that there is no targeting of any U.S. person's communications and FISC-approved minimizations procedures ensure the protection of any information concerning U.S. persons that may have been incidentally acquired. 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 U.S. To the extent that the request seeks any metadata/call detail records on the requester and/or any telephone numbers provided in the request, or seeks intelligence information on the requester, we cannot acknowledge the existence or non-existence of such metadata or call detail records pertaining to the telephone numbers provided or based on the requester's name. 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 this one, our adversaries' compilation of the information provided would reasonably be expected to cause exceptionally grave damage to the national security. We cannot however release any details of our intelligence operations. In addition, we cannot conduct searches to determine whether any particular U.S. citizen may be an intelligence "target." A "Glomar" response (i.e., to neither confirm nor deny) is necessary because assuming that NSA had no responsive records for this FOIA request, a negative response itself would reveal classified information about NSA's collection practices or capabilities. Acknowledging the fact that NSA did not acquire telephone metadata or call-detail records from a specific service provider, or collect intelligence on this individual would allow our adversaries to accumulate information and draw conclusions about NSA's technical capabilities, sources, and methods. Likewise, acknowledging the existence of responsive records would inform this individual that NSA has the ability to exploit a particular type of communication, possibly from a specific service provider. So informed, this individual and/or our adversaries may conclude that their modes of communication are vulnerable to exploitation by the U.S. If this were to occur, it is logical to assume that they would take counter-measures to deny further exploitation. We must be consistent in neither confirming nor denying whether we hold metadata, call-detail records, or intelligence information on a specific U.S. person and/or any specific entities. Although in the vast majority of cases we would have no records if a search on intelligence targets were done, to respond with a "no records" response in those cases and then neither confirm nor deny in the few cases where we did hold records would by process of elimination make it clear to an adversary who our targets were or what our capabilities are and would reveal classified information. Any further elaboration concerning these matters would reveal information that is currently and properly classified under the Executive Order 13526.

RECOMMENDATION: (U) We recommend you sign the appeal response.

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

Case No. 75457 / Appeal No. 3895
30 July 2014

Mr. Stephen A. Revilak

Dear Mr. Revilak:

This replies to your letter, dated 5 January 2014, appealing the National Security Agency/Central Security Services (NSA/CSS') denial of your request under the Freedom of Information Act (FOIA) for a list of all phone calls from your cell phone number (781-648-1083). I have reviewed your request, the Chief of the FOIA/Privacy Act (PA) 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 records on you pertaining to any NSA intelligence programs or activities, to include 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 activities in general. For example, if NSA 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 was engaged. Any further elaboration concerning these matters would reveal information that is currently and properly classified under Executive Order 13526.

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. § 605), which provides that no law shall be construed to require the disclosure of the organization, personnel, functions, or activities of the National Security Agency.

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09-05-2017, FOIA Case # 78851

Additionally, on appeal you assert that the records you have requested are the types of records that are subject to the provisions of the PA, 5 U.S.C. §552a, because, as suggested in your appeal, they include the collection of personal information which is maintained in a PA system of records. To the extent that you are seeking a response under the PA, please be advised that the existence or nonexistence of any intelligence records that may fall within a PA system of records is also exempt from disclosure pursuant to the first exemption of the PA (5 U.S.C. §552a(k)(1)), which allows for the withholding of classified information if that information is exempt from disclosure under the FOIA. The existence or nonexistence of the information you requested meets the criteria for classification under the FOIA (5 U.S.C. § 552(b)(1)) as described above and thus is also exempt from disclosure under the PA (5 U.S.C. §552a(k)(1)). See also Section 3.6(a) of Executive Order 13526.

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



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

Case No: 75473 / Appeal No: 3895
24 January 2014

Mr. Stephen A. Revilak
[REDACTED]

Dear Mr. Revilak:

This acknowledges receipt of your correspondence, dated 5 January 2014, appealing the National Security Agency's (NSA's) denial of your Freedom of Information Act (FOIA) request of 23 October 2013 for a list of all phone calls made from your home phone number (781-648-1083). Your appeal was received by the NSA Office of Associate General Counsel (Litigation) on 16 January 2014 and has been assigned Appeal Number 3895.

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 numbers assigned to your request and be addressed to the National Security Agency, Office of Associate General Counsel (Litigation), FOIA/PA Appeals, 9800 Savage Road, Suite 6278, Fort George G. Meade, MD 20755-6278; or it may be sent via facsimile to 443-479-1111. 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,

A handwritten signature in black ink, appearing to read "B.C.", written over a light blue horizontal line.

Brian C.
FOIA/PA Appeals Program Manager
Office of Associate General Counsel (Litigation)

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09-05-2017, FOIA Case # 78851

recid:
JAN 15 2014



January 5, 2014

NSA/CSS FOIA Appeal Authority (DJ4)
National Security Agency
9800 Savage Road STE 6248
Fort George G. Meade, MD 20755-6248.

Dear NSA/CSS FOIA Appeal Authority:

I am writing in regards to FOIA request case number 75473, in which I requested telephony metadata for calls originating from [REDACTED], my Verizon-provided home telephone number. The NSA responded on November 21, 2013, denying my request. I disagree with the reasons given for denial, and wish to file an appeal.

NSA's letter cited three statutes as the basis for my denial: Title 18 U.S. Code 798, Title 50 U.S. Code 3024(i), 50 U.S. Code 3605. I am appealing the denial because I believe that none of the cited statutes applies to my request.

50 U.S. Code 3605 deals with "disclosure of the organization or any function of the National Security Agency, or any information with respect to the activities thereof, or of the names, titles, salaries, or number of the persons employed by such agency." My request involve my personal telephony metadata - it does not involve the organization of the National Security Agency; nor does it involve the names, titles, salaries, or number of persons employed by the agency. Furthermore, my request was strictly limited to data already collected - I have not requested details of the NSA's functions or activities. As the original denial letter notes, the Agency's functions and activities have been widely reported by the press and media; I will note that the press and media reporting has made extensive use of primary source documents.

Title 50 U.S. Code 3024(i) deals with the "Protection of intelligence sources and methods" [...] "from unauthorized disclosure". I have requested a copy of telephony metadata collected from my home phone number; I have not requested any information regarding the source of that data, nor have I requested information about how the data was obtained.

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Title 18 U.S. Code 798 deals with
classified information [...]

- (1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or
- (2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or
- (3) concerning the communication intelligence activities of the United States or any foreign government; or
- (4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes

I believe that (1) does not apply, since my personal telephony metadata is not a "code, cypher, or cryptographic system". I believe that (2) does not apply because my personal telephony metadata is not a "device, apparatus, or appliance". I believe that (3) does not apply because I have requested telephony metadata, and not information about the activities that led to its collection. (As before, said activities have been widely reported in the media, to the point where they could be considered common public knowledge.) I believe that (4) does not apply because my personal telephony metadata does not include "the communications of any foreign government".

Furthermore, I believe that my FOIA request falls squarely in scope of the Privacy Act of 1974. See 5 USC Section 552a, Paragraph (d)

Each agency that maintains a system of records shall -

- (1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him

[...]

I believe that the agency's collection of telephony metadata constitutes a sys-

tem of record, whereby I have the right to obtain and review records pertaining to me.

Thanks for your time and attention. I look forward to hearing your response.

Sincerely,


Stephen A. Revilak



BOSTON MA 021

06 JAN 2014 PM 3 L

NSA/CSS FOIA APPEAL AUTHORITY (DUY)
NATL SECURITY AGENCY
9800 SAVAGE RD. STE 6248
FORT GEORGE G. MEADE, MD

20755-6248



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JAN 10 2014
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