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5 February 2009

Pamela N. Phillips
Chief, FOIA/PA Office, DJP4
National Security Agency
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20755-6248

Re: FOIA Request – NSA in-house publications

Dear Ms. Phillips:

This is a request on behalf of the James Madison Project (“JMP”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, for copies of **all current and back issues of the National Security Agency (“NSA”) in-house publications *The Communicator* and *NSA Newsletter*, not including any issues that have previously been made available in their entirety. However, we do request disclosure in their entirety of any issues previously disclosed with redactions.**

When processing this request, please note that the D.C. Circuit has previously held that agencies have a duty to construe the subject material of FOIA requests *liberally* to ensure responsive records are not overlooked. *See Nation Magazine, Washington Bureau v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995). Furthermore, in line with the guidance issued by the DOJ on 9 September 2008 to all federal agencies with records subject to FOIA, agency records that are currently in the possession of a U.S. Government contractor for purposes of records management remain subject to FOIA. Please ensure that your search complies with this clarification on the effect of Section 9 of the OPEN Government Act of 2007 of the definition of a “record” for purposes of FOIA. Please also consider this letter an affirmative rejection of any limitation of your search to NSA-originated records or to records created prior to

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James Madison, 1822

the date of this request. To the contrary, we stipulate that this search should be restricted to records created prior to the date of the first substantive review of this request by NSA FOIA personnel (as opposed to the date that receipt of the request was acknowledged by the NSA).

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please “black out” rather than “white out” or “cut out.” In addition, we draw your attention to President Obama’s 21 January 2009 *Memorandum for the Heads of Executive Departments and Agencies*, directing federal agencies to adopt a presumption in favor of disclosure and stating that government information should not be kept confidential “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”

We are hereby requesting a waiver of all fees in accordance with our status as a representative of the news media. JMP is a non-profit organization under the laws of the District of Columbia, has the ability to disseminate information on a wide scale, and intends to use information obtained through FOIA in original works. Stories concerning our activities have received prominent mention in many publications including, but not limited to, the *Washington Post*, *Washington Times*, *St. Petersburg Tribune*, *San Diego Union Tribune*, *European Stars & Stripes*, *Christian Science Monitor*, *U.S. News and World Report*, *Mother Jones*, and *Salon Magazine*. Our website, where much of the information received through our FOIA requests is or will be posted for all to review, can be accessed at <http://www.jamesmadisonproject.org>, and information published there has previously been used by third parties in published works. In addition, we also intend to use information obtained through FOIA in our own published opinion editorials, journal articles, and the like. JMP’s Director of FOIA Operations Kel McClanahan has already published information received through FOIA in this manner. Therefore, according to the ruling of *National Security Archive v. Department of Defense*, 800 F.2d 1381 (D.C. Cir. 1989), codified by the 2008 FOIA amendments, defining a representative of the news media as “a person or 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,” JMP should be considered a representative of the news media according to 5 U.S.C. § 552(a)(4)(A)(ii)(II). Similarly, our request for a public interest fee waiver should be granted. Most prior requests submitted by our organization have received fee waivers.

There can be no question that the information sought would contribute to the public’s understanding of government operations or activities and is in the public interest. These in-house publications provide insight into the analytical methods of the NSA by illustrating on what information analysts focus, how they analyze the information so selected, and how their

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conclusions measure up to subsequent historical evidence. Understanding these processes will clearly contribute to the public's understanding of government operations or activities.

The NSA is required by law to respond to this request within 20 working days. Failure to timely comply may result in the filing of a civil action against your agency in the United States District Court for the District of Columbia.

We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact my Director of FOIA Operations Kel McClanahan at Kel@JamesMadisonProject.org or 301-728-5908.

Please respond to this request by email to Kel@JamesMadisonProject.org or by fax to 240-681-2189.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Zaid for". The signature is fluid and cursive.

Mark S. Zaid
Executive Director

MSZ/km

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