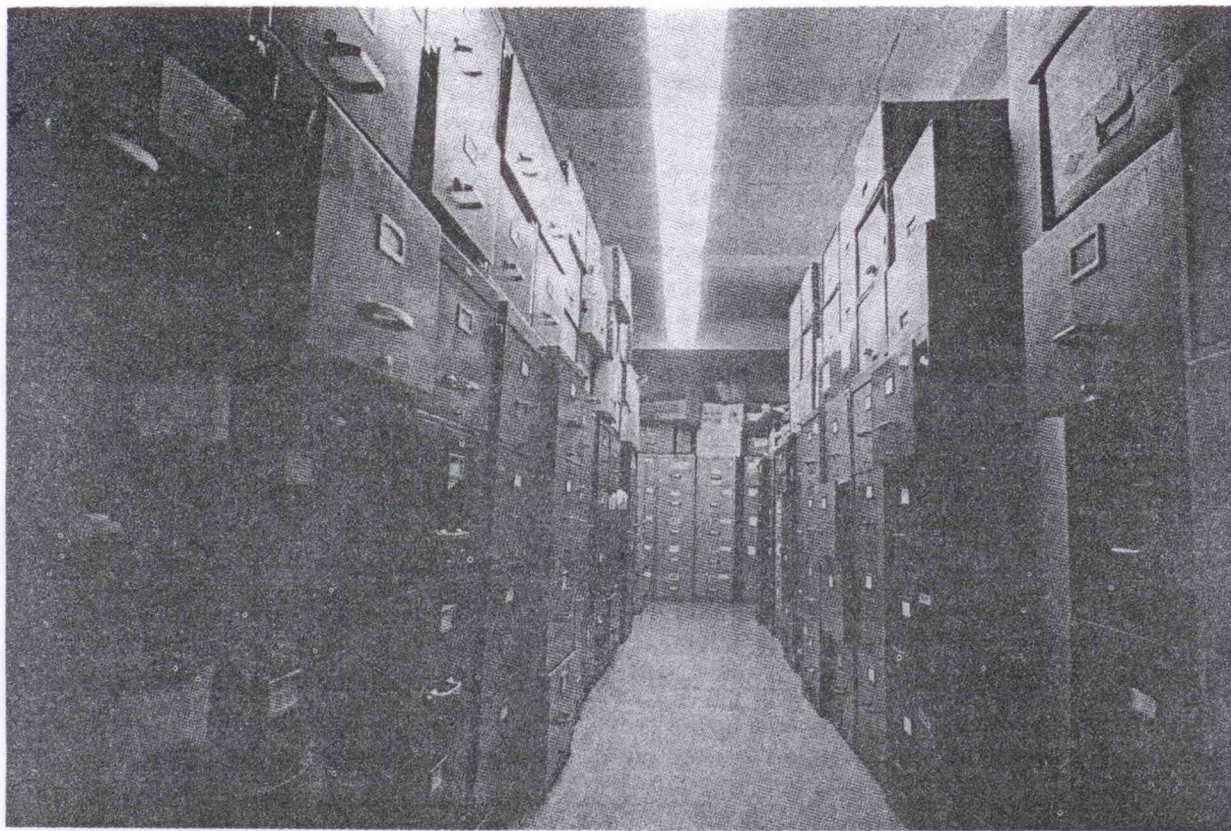


GETTING YOUR GOVERNMENT FILES



by Michael Ratner, Center for Constitutional Rights

THE GRAND JURY PROJECT

THE POLITICS OF GETTING THEM

by Mary O'Melveny & Jon Lubell

The obtaining of documents created or maintained by the FBI and other government agencies under the Freedom of Information Act (FOIA) procedures cannot be viewed simply as a means of satisfying one's curiosity as to what the government knows or does not know. The information which can be obtained has significant political ramifications.

Both the request for the information itself and the analysis of materials released should be approached in a manner which achieves maximum political results.

A political approach to FOIA information involves at least four general areas. First, the information will help us understand the nature of many of the struggles that went on in the 60's and 70's and to recognize some of the factors which determined the outcome of those struggles which were previously unknown to us. For example, information obtained by many people under the Freedom of Information Act has given further insight into the State's War against the Black movement. Such material is helpful in answering the question of whether the Black movement of the late 60's and early 70's merely dissipated or whether it was destroyed by the covert as well as the overt actions of the state.

Second, this information will aid in disclosing specific illegal activities by the State which can be used as a basis for Habeas Corpus and other procedures directed at releasing people from jail where the events leading to their arrest and imprisonment began with illegal government activities. Exposing such illegal activities also create a possibility for affirmative lawsuits by the victims. Such legal actions may hinder the State's attempts to conduct similar activities at this time.

Third, the information, particularly when related to information obtained from other files, may well lead to the identification of informers and agents

who are still involved in movement activities. For example, the COINTELPRO Task Force has been active in efforts to coordinate and cross reference materials released to various individuals to obtain a clearer picture of personalities, events and surveillance activities around the country.

Fourth, the information will help identify State-initiated or inspired activities within the left which ultimately misdirect, disrupt and distort that movement. This information will appear most obvious in the COINTELPRO files. There should be no doubt in our minds that the official "termination" of that program under that name has not brought these activities to a halt. Similar, continuing activities conducted under various other labels will be reflected from time to time in documents obtained as a result of individual FOIA requests.

Requests for FOIA data should focus on obtaining as much material as possible, from all possible governmental files. The more dialogue and coordination which is achieved among people seeking FOIA files, the better our chances for accomplishing these important political objectives. Not only should every regulation be used to the FOIA requester's advantage in seeking release of material—or appealing from its denial—but it should be borne in mind that the FOIA bureaucrats who process requests will occasionally make mistakes and release something in error which can be useful in a political context.

The information and lessons learned from FOIA documents should be circulated and publicized, particularly in the communities which have been the subjects of the most extensive surveillance and disruption. A more concrete understanding of how the state functions against the liberation and radical movements is clearly a necessity if the state is to be defeated in its aim of misdirecting and disrupting these movements. □

OUTLINE OF PROCEDURES FOR APPLYING FOR RECORDS OR FILES PURSUANT TO THE FREEDOM OF INFORMATION ACT, 5 U.S.C. §522 AND THE PRIVACY ACT, 5 U.S.C. §522(a)

I. Two Separate Statutes Give Access To Records Held By The Federal Government

A. Freedom of Information Act (F.O.I.A.)

1. F.O.I.A. gives access to all "records" held by "federal agencies" unless records sought fit within nine specified exemptions, e.g. nat'l security.
 - a) "Records" include all information held by federal agencies.
 - b) "Federal agencies" are all federal and executive branch e.g. C.I.A., F.B.I. and the military, but not territorial or local government agencies such as the State of New York.
2. Any person, organization, corporation, political party, etc. can apply for such records to the appropriate agency.
3. F.O.I.A. is the statute to use if a group or person desires information about a particular subject, e.g. if a person wants a copy of the Report on C.I.A. Domestic Activities.
4. F.O.I.A. is not the sole statute which is used if an individual desires to inspect and obtain his or her own records.

B. The Privacy Act

1. The Privacy Act gives an "individual" the right to inspect his or her own "records" held by "federal agencies" unless such records are exempt from disclosure (if you want your own file it is the Privacy Act which you use.).
 - a) "Individuals" include **only citizens of the United States and lawfully admitted immigrants**. Unlike the F.O.I.A., political parties cannot use the Privacy Act.
 - b) "Records" which can be obtained are defined more narrowly than in the F.O.I.A. and include only information about individuals that are maintained by federal agencies.
 - c) "Federal agencies" are the same as those from which records can be obtained under the F.O.I.A.
2. To obtain maximum disclosure of records, all requests by individuals for their personal records under the Privacy Act should also be made under the F.O.I.A.

II. Requests For Records Under The F.O.I.A. (See Form 1).

A. Requests for Records Must "Reasonably Describe" the Records and Be Made in Accordance With Rules Stating Time, Place, Fees and Procedures

1. Determine appropriate agency from which records are desired and obtain proper address, e.g. requests for F.B.I. records must be sent to F.B.I. and not to Justice Department.
2. Determine what records you want or file systems you want searched. See Code of Federal Regulations (C.F.R.) or Federal Register (F.R.).
3. Determine appropriate procedures for applying for records. See C.F.R.

B. Checklist for Written Requests Under the F.O.I.A.

THE LETTER

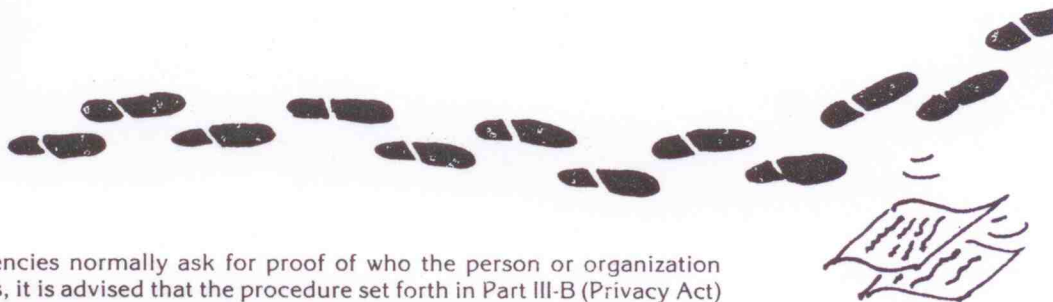
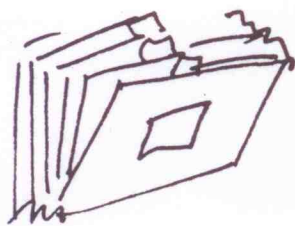
1. Letter addressed to appropriate official and agency.
2. Typed, dated and your address.¹
3. Letter should be marked as F.O.I.A. request.
4. Cite the F.O.I.A. by name and identify as a request under the Act.
5. Statement of documents requested in as much detail as possible.
6. Ask for "reasonably segregable" portion if some documents are exempt.
7. Ask for detailed statement of reasons documents are withheld and index of such documents.
8. Agree to pay costs of finding records and reproducing, but ask that such fees be waived in the public interest."
9. Expect to hear answer in ten working days.
10. Keep a copy of letter.

THE ENVELOPE

11. Mark as F.O.I.A. request.
12. Return address.

MAILING

13. Preferably registered with return receipt requested.



1. Since most agencies normally ask for proof of who the person or organization making the request is, it is advised that the procedure set forth in Part III-B (Privacy Act) be followed and that initial request be notarized.

III. Requests For Records Under the Privacy Act, Your Own Records (See Form 2).

A. Requests Under the Privacy Act Are Similar to Those Under F.O.I.A., But You Are Seeking Your File and Other Information Which Pertains to Yourself

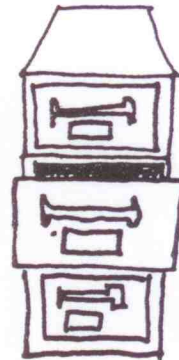
1. Follow the same procedures as in writing for information under the F.O.I.A., except as noted below:

THE LETTER, ENVELOPE AND MAILING

- a) Follow F.O.I.A. steps 1-13 except letter and envelope should be marked "F.O.I.A./PRIVACY ACT REQUEST" and state that you are requesting your file and information about yourself under both the F.O.I.A. and Privacy Act.
 - (i) Persons with Spanish surnames should request that searches be made in three ways: in father's surname, in mother's surname, and in both surnames together.
- b) You do not need to pay costs of the search under the Privacy Act, therefore only offer to pay for reproduction; but, of course, ask that it be waived in the public interest.
- c) You might wish to give additional information about yourself if it is well known publicly, e.g. membership in a political party.

B. All Agencies Require That a Person Making a Request Under the Privacy Act Accompany Their Letter With Proof of Who They Are. This is Done By a Notarized Affidavit Containing the Following Information (See Form 3).

1. Full Name
2. Address
3. Place of Birth
4. Date of Birth
5. Affirmance that you are person seeking records
6. Signature which is notarized.



IV. Agency Responses Under Both the F.O.I.A. and Privacy Act

A. The Agency Must Respond Within Ten Working Days From Its Receipt of the Request. It Can Respond In Many Ways:

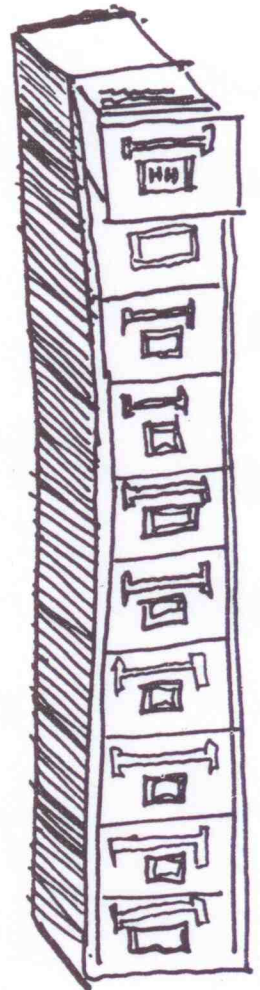
1. Request not specific enough.
Ask if they found anything and if so what. Also try to make your request more specific.
2. Agency needs more time.
You need not give agency more time, but unless documents are critical you might wish to do so.
3. Why do you need information?
You do not have to nor should you tell the agency why you are seeking the records.
4. Request received, but we are backlogged.
This is not an excuse under the Act, but some courts allow it. Ask when you will be reached.
5. Request is for records we don't have.
Ask agency what records it has and what records it has searched.
6. Documents about you are from another agency.
Ask which agency originated the documents and how you can obtain them.
7. Request is granted with deletions.
See Section V. for information about appeals.
8. Request is granted and documents will be delivered to you upon payment of _____dollars.
If you can't afford it ask that the fee be waived, or that you be allowed to examine the records in the agency office.

(See explanations of exemptions, p.10)

V. Appeals: F.O.I.A. and Privacy Act (See Form 4).

A. If the Agency Fails To Answer Within Ten Working Days, Or Denies You the Documents Or Deletes Certain Portions You Should Appeal to a Higher Authority Within the Agency

1. It is necessary to appeal if you want to have the right to go to court.
2. The letter denying you the documents, etc. must advise you of the right to appeal and to whom appeal should be mailed.
3. Generally, you have thirty days in which to appeal and the agency has twenty days from receipt of the appeal to decide it.
4. A simple appeal letter will suffice, but one in which you attempt to rebut agency's reasons for denial is better



VI. Court

A. You Can Go To Federal Court If You Believe Your Request Was Unlawfully Denied Or If Documents Were Unlawfully Deleted. You Have Two Years To Do So

1. You do not need an attorney to do so, although by this stage it is probably better to have one.
2. A sample federal court form is attached (See Form 5).

VII. Other Information

A. Requests For Documents From the F.B.I. Should Be Sent to Both National Headquarters in Washington and the Appropriate Field Office

1. Director
F.B.I.
Washington, D.C. 20535
Attention: F.O.I.A. and Privacy Act Branch
2. Special Agent in Charge
F.B.I.
28 Federal Plaza
New York, N.Y. 10007

B. You Should Ask the F.B.I. to Check All Its Files Including Criminal, Legal and Security and Its Criminal Histories

C. Additional Agencies You Might Want To Send To Include C.I.A., National Security Agency, Secret Service, and Department of State. See List of Addresses, p.11.

FORM 1 SAMPLE FOIA REQUEST

	Your address Your phone number Date
Freedom of Information Coordinator _____ Agency Washington, D.C. _____	
Dear Sir or Madam:	
This will request disclosure of copies of materials available from your agency under the Freedom of Information Act and regulations of your agency, including (identify subject matter; names and dates if available; office of the agency involved, if known, etc.)	
Under present regulations and case law pertaining to the Freedom of Information Act, I believe that these documents are available to me and to other members of the public. They are not exempted from required disclosure under present interpretations of the Act, and must therefore be released. Your agency is believed to have custody of these documents, but if it does not I would request prompt notice of their current location.	
If any portion of this request is denied, I request a detailed statement of the reasons for the withholding and an index or similar statement of the nature of the withheld documents. To expedite this request, I would be willing to discuss specific instances of deletion or other exemption claims in advance of a final decision by the agency. In the event of deletions I request that a reason be stated for each partial denial of access.	
I am prepared to pay reasonable costs for locating the requested file and reproducing it.	
As you know, the amended Act permits you to reduce or waive the fees if it "is in the public interest because furnishing the information can be considered as primarily benefiting the public." I believe that this request plainly fits the above category and ask you to waive any fees.	
As provided in the amended Act, I will expect to receive a reply within ten working days.	
	Sincerely yours,

FORM 2

SAMPLE PRIVACY ACT REQUEST

Address _____ Date _____

Dear Sir:

This is a request under the Freedom of Information Act (5 USC §552) and the Privacy Act of 1974 (5 USC §552a).

I want to request a copy of the file maintained on _____ . I am also requesting copies of any documents or other papers which refer to me or any of my activities.

I have annexed an affidavit indicating my full name, birthdate, birthplace and address.

As you know, the amended Act provides that if some parts of a file are exempt from release that "reasonably segregable" portion shall be provided. I therefore request that, if you determine that some portions of the requested report are exempt, you provide me immediately with a copy of the remainder of the report. I, of course, reserve my right to appeal any such decisions.

If you determine that some or all of the report is exempt from release, I would appreciate your advising me as to which exemption(s) you believe covers the material which you are not releasing.

I am prepared to pay reasonable costs for locating the requested file and re-producing it. As you know, the amended Act permits you to reduce or waive the fees if it "is in the public interest because furnishing the information can be considered as primarily benefiting the public." I believe that this request plainly fits that category and ask you to waive any fees.

As provided for in the amended Act, I will expect to receive a reply within ten working days.

Very truly yours,

FORM 3

SAMPLE AFFIDAVIT TO ACCOMPANY REQUESTS

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

_____ being duly sworn, deposes and says:

1. I make this affidavit in support of my request under the Freedom of Information Act and the Privacy Act of 1974.
2. My full name is _____
3. My address is _____
4. I was born in _____
5. I was born on _____
6. I affirm that I am the person requesting information pursuant to the Freedom of Information Act and the Privacy Act of 1974 and am, in fact, _____ My signature is affixed below.

Sworn to before me this _____ day of _____, 197 .

Secretary of Defense
 Department of Defense
 The Pentagon
 Washington, D.C. 20301

Dear Mr. Secretary:

This is an appeal pursuant to subsection (a)(6) of the Freedom of Information Act (5 U.S.C. 552).

On _____, I received a letter from _____ of your agency denying my request for information, and indicating that an appeal should be directed to you. This letter constitutes that appeal. I am enclosing a copy of my exchange of correspondence with your agency so that you can see exactly what files I have requested and the insubstantial grounds on which my request has been rejected.

I trust that upon examination of my request you will conclude that the information I have requested is not properly covered by exemption (b)() of the amended Act and will make the information promptly available.

As provided for in the Act, I will expect to receive a reply within 20 working days.

If you are unable to order release of the requested information, I intend to initiate a lawsuit to compel its disclosure.

Yours sincerely,

FORM 4

SAMPLE FOIA/PRIVACY ACT APPEAL LETTER

FORM 5

SAMPLE FOIA/ PRIVACY ACT FEDERAL COURT COMPLAINT



UNITED STATES DISTRICT COURT
 FOR _____

YOUR NAME _____)	
your address _____)	
Plaintiff _____)	CIVIL ACTION NO. _____
AGENCY/WHICH HAS FILES _____)	COMPLAINT FOR
agency address _____)	DECLARATORY AND
HEAD OF AGENCY WHICH HAS FILES _____)	INJUNCTIVE RELIEF
agency address _____)	
Defendants _____)	

JURISDICTION

1. This is an action under the Freedom of Information Act, 5 USC §552, to order defendant to produce certain documents for inspection and copying, viz., _____ (hereinafter the requested documents).
2. This Court has jurisdiction over this action pursuant to 5 USC §552(a) (4); Title 28, USC 1361; and the First and Fifth Amendments. (1361 and the Amendments need not be cited.)

PARTIES

3. Plaintiff is (brief description of who plaintiff is and, if you want, why plaintiff wants the documents).
4. Defendant _____ is an agency of the Executive Branch in which the documents are located. Defendant _____ is (identify as head of Agency); he is sued in his official capacity as custodian of the requested documents, and as head of the agency in which the requested documents are located.

CAUSE OF ACTION

5. By letter dated _____, addressed to _____, a copy of which is attached hereto as Exhibit A*, plaintiff requested access to the requested document.
6. By letter dated _____, plaintiff's request was denied. A copy of this letter is attached as Exhibit B.
7. By letter dated _____, addressed to _____, plaintiff appealed the initial denial of the request. A copy of this letter is attached as Exhibit C.
8. By letter dated _____, plaintiff's request was finally denied. A copy of this letter is attached as Exhibit D.
9. Plaintiff has exhausted his or her administrative remedies.
10. Plaintiff is entitled, pursuant to 5 USC §552(a), to inspect and copy the requested documents.

Wherefore, plaintiff prays (1) that the Court order defendants to produce the requested documents to him (or her) for inspection and copying, (2) that this Court award plaintiff his (or her) costs and disbursements in this action as provided in 5 USC §552(a) (4) (e), (3) that this Court grant such other and further relief as the Court may deem just and proper, and (4) provide for expedition of proceedings on this complaint as provided in 5 USC §552(a) (4) (C) (D).

Dated: City and State
 Date

 (Attorney for Plaintiff) or
 (Pro Se) address

*copies of the letters need not
 be attached

EXPLANATION OF EXEMPTIONS

The following form generally accompanies the letter that the government sends with your documents and is meant to explain excisions, deletions, or the withholding of entire documents.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b) (1) information which is currently and properly classified pursuant to Executive Order 11652 in the interest of the national defense or foreign policy
- (b) (2) materials related solely to the internal rules and practices of the FBI
- (b) (3) information specifically exempted from disclosure by statute
- (b) (4) privileged or confidential information obtained from a person, usually involving commercial or financial matters
- (b) (5) inter-agency or intra-agency documents which are not available through discovery proceedings during litigation; or documents, the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction; or which represent the work product of an attorney-client relationship
- (b) (6) materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy
- (b) (7) investigatory records compiled for law enforcement purposes, the disclosure of which would; (A) interfere with law enforcement proceedings, including pending investigations; (B) deprive a person of the right to a fair trial or an impartial adjudication, or give one party to a controversy an undue advantage by exclusive access to such information; (C) constitute an unwarranted invasion of the personal privacy of another person; (D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means; (E) disclose investigative techniques and procedures, thereby impairing their future effectiveness; and (F) endanger the life or physical safety of law enforcement personnel
- (b) (8) information collected by Government regulatory agencies from financial institutions
- (b) (9) geological and geophysical information, including maps, produced by private companies and filed by them with Government agencies.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d) (5) information compiled in reasonable anticipation of a civil action or proceeding
- (j) (2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminal, except records of arrest
- (k) (1) information which is currently and properly classified pursuant to Executive Order 11652 in the interest of the national defense or foreign policy
- (k) (2) material compiled during civil investigations for law enforcement purposes and which would reveal the identity of an individual who has furnished information pursuant to a promise that his identity would be held in confidence
- (k) (3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056
- (k) (4) required by statute to be maintained and used solely as statistical records
- (k) (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his identity would be held in confidence
- (k) (6) the substance of tests used to determine individual qualifications for appointment or promotion in Federal Government service
- (k) (7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his identity would be held in confidence.

ADDRESSES OF SELECTED OFFICES


<u>AGENCY</u>	<u>REQUESTS</u>	<u>APPEALS</u>
Central Intelligence Agency	Information and Privacy Coordinator Central Intelligence Agency Washington, D.C. 20505 703-351-1100	Information and Privacy Coordinator Central Intelligence Agency Washington, D.C. 20505 703-351-1100
Commission on Civil Rights	Soliciter Commission on Civil Rights 1121 Vermont Ave. Rm. 600 Washington, D.C. 20425 202-254-6606	Staff Director Commission on Civil Rights 1121 Vermont Ave. Washington, D.C. 20405 202-254-6606
Defense/ Department of the Army	Chief, Records Management Division Office of the Adjutant General ATTN: DAAG-AMR-S Rm. GA 076, Forrestal Bldg. Washington, D.C. 20314 202-693-1847	Secretary of the Army ATTN: General Counsel Washington, D.C. 202-697-8029
Defense/ Defense Intelligence Agency	Director Defense Intelligence Agency ATTN: SC (FOIA) Washington, D.C. 20301 202-692-5766	Director Defense Intelligence Agency ATTN: SC (FOIA) Washington, D.C. 20301 202-692-5766
Department of Energy	Information Access Officer Department of Energy Rm. 2121 12th & Pennsylvania, NW Washington, D.C. 20461 202-566-9840	Director, Office of Hearings and Appeals Department of Energy Federal Bldg. Washington, D.C. 20461 202-254-5134
Environmental Protection Agency	FOIA Officer A-101 401 M St., SW Washington, D.C. 20460 202-755-2760	SAME
Department of Justice/ Law Enforcement Administration	Correspondence Control LEAA 633 Indiana Ave., NW Washington, D.C. 20531 202-376-3976	Office of Privacy and FOI Appeals Dept. of Justice 10th & Pennsylvania, NW Washington, D.C. 20530 202-739-4672
Dept. of Justice/ Bureau of Prisons	Director Bureau of Prisons 320 First St., NW Washington, D.C. 20534 202-724-3062	Office of Privacy and FOI Appeals Dept. of Justice 10th & Pennsylvania, NW Washington, D.C. 20530 202-739-4672
Secret Service	U.S. Secret Service 1800 G Street, NW Washington, D.C. 20223 202-634-5700	SAME
Selective Service System	National Headquarters Selective Service System 600 E St., NW Washington, D.C. 20435 202-724-0427	Director Selective Service 600 E St., NW Washington, D.C. 20435 202-724-0419
Dept. of State	Director FOI Staff Bureau of Public Affairs Dept. Of State Washington, D.C. 20520 202-632-9322	Asst. Secretary of State for Public Affairs Chairman, Council on Classification Policy Dept. of State, Rm. 6804 Washington, D.C. 20520 202-632-9322

THE GRAND JURY PROJECT

The Grand Jury Project provides help to people who have been subpoenaed to grand juries, or who have suffered other forms of FBI harassment. We can provide speakers to help you organize your community and explain what grand juries are about. We maintain a library of grand jury litigation material that we make available to individuals subpoenaed to grand juries and their lawyers. This library includes a number of specialized packets on grand jury composition challenges, electronic surveillance, "Grumbles" motions, etc.

QUASH is a newsletter published by the project collective every six weeks, in an effort to keep people informed about grand jury/FBI activity, report on legal strategies and developments in grand jury law, and provide ideas for resistance to grand jury/FBI repression.

SUBSCRIBE TO QUASH



Annual Subscription – \$6.00 for individuals and National Lawyers Guild members. \$12.00 for institutions and lawyers who are not Guild members. Published every six weeks.

SEND ME A SUBSCRIPTION TO QUASH

name _____

address _____

city _____ state _____ zip _____

QUASH SUB
Grand Jury Project
853 Broadway
New York, N.Y. 10007