

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION and  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

*Plaintiffs,*

v.

NATIONAL SECURITY AGENCY,  
OFFICE OF THE DIRECTOR OF  
NATIONAL INTELLIGENCE, and  
DEPARTMENT OF DEFENSE,

*Defendants.*

**COMPLAINT FOR  
INJUNCTIVE RELIEF**

Case No. 24-cv-3147

**INTRODUCTION**

1. This action under the Freedom of Information Act (“FOIA”) seeks the timely release of agency records concerning the National Security Agency’s use of artificial intelligence and its impact on Americans’ civil rights and civil liberties. The use of AI by the Department of Defense and intelligence agencies is the subject of widespread public debate and media attention and has resulted in congressional hearings and demands for greater oversight. In recent years, National Security Agency (“NSA”) officials have publicly touted the completion of studies, roadmaps, and reports on integrating novel technologies like generative AI into the NSA’s surveillance activities. But despite transparency pledges, none of these documents have been released to the public, even in redacted form. Immediate disclosure of these records is critical to allowing members of the public to participate in the development and adoption of appropriate safeguards for these society-altering systems.

2. Plaintiffs, the American Civil Liberties Union and American Civil Liberties Union Foundation, submitted a FOIA request (the “Request”) to the NSA, Office of the Director of National Intelligence (“ODNI”), and Department of Defense (“DOD”) on March 7, 2024, seeking the release of records (Exhibit A). To date, none of the Defendant agencies has released any responsive records, notwithstanding the FOIA’s requirement that agencies respond to requests within twenty working days.

3. The NSA describes itself as a leader among U.S. intelligence agencies racing to develop and deploy AI. As the public’s focus on AI has grown, NSA officials have described the agency’s efforts to integrate AI into many of its intelligence-gathering and cybersecurity activities, including performing “speaker identification,” “human language processing,” and monitoring U.S. networks. Behind closed doors, NSA has been studying the effects of AI technologies on its operations. DOD and NSA Inspectors General completed a joint evaluation assessing the NSA’s integration of artificial intelligence into signals intelligence operations, identifying basic gaps in how the agency tracks its AI capabilities. Since then, the NSA has completed studies, roadmaps, and implementation plans addressing the agency’s use of AI. Yet the public has never seen any of these documents, and it knows little about the nature or scope of these activities, or their impacts on Americans. For example, the NSA may be using AI systems to automate decisions about who to target for surveillance, to identify people based on their voiceprints or metadata, and to mine vast datasets for sensitive information about those caught in its surveillance dragnet, including people in the United States.

4. ODNI and DOD, which oversee the NSA, have publicly announced their commitment to principles for the ethical use of AI—notably including commitments to transparency. *See, e.g.,* ODNI, *Principles of Artificial Intelligence Ethics for the Intelligence*

*Community (2020)*, <https://shorturl.at/DJMN2>. The withholding of the requested records not only defies that commitment but, more broadly, fails to ensure public trust in the government's development and use of AI.

5. Timely disclosure of the requested records vitally necessary to an informed debate about the NSA's rapid deployment of novel AI systems in its surveillance activities and the safeguards for privacy, civil rights, and civil liberties that should apply.

6. Plaintiffs now ask the Court for an injunction requiring Defendants to process the Request immediately. Plaintiffs also seek an order enjoining Defendants from assessing fees for the processing of the Request.

#### **JURISDICTION AND VENUE**

7. The Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701–06.

8. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

#### **PARTIES**

9. Plaintiff American Civil Liberties Union is a nationwide, non-profit, non-partisan 26 U.S.C. § 501(c)(4) organization, incorporated in the District of Columbia and with its principal place of business in New York City. The American Civil Liberties Union's mission is to maintain and advance civil rights and civil liberties and to ensure that the U.S. government acts in compliance with the Constitution and laws of the United States. The American Civil Liberties Union is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. Obtaining information about governmental activity,

analyzing that information, and widely publishing and disseminating it to the press and the public is a critical and substantial component of the American Civil Liberties Union’s work and one of its primary activities.

10. Plaintiff American Civil Liberties Union Foundation is a separate 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. It is incorporated in New York State and its principal place of business is in New York City.

11. Plaintiffs together are referred to as the “ACLU.”

12. Defendant National Security Agency (“NSA”) is an intelligence agency established within the executive branch of the U.S. government and administered through the Department of Defense. The NSA is an agency within the meaning of 5 U.S.C. § 552(f)(1).

13. Defendant Office of the Director of National Intelligence (“ODNI”) is a department of the executive branch of the U.S. government and oversees more than a dozen intelligence agencies, including the NSA. The ODNI is an agency within the meaning of 5 U.S.C. § 552(f)(1).

14. Defendant Department of Defense (“DOD”) is a department of the executive branch of the U.S. government and, among other things, provides oversight to the NSA. DOD is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Office of Inspector General (“DOD-OIG”), from which the ACLU requested records, is a component of DOD.

## **FACTUAL BACKGROUND**

### **The NSA’s Adoption of AI**

15. Three years ago, the National Security Commission on Artificial Intelligence (“NSCAI”) issued a sweeping report that made clear U.S. intelligence agencies and the military are integrating AI into some of the government’s most profound decisions. The government is

seeking to use AI to help determine who the government surveils, who it places on watchlists, who it subjects to intrusive searches and questioning at the border, and who it labels a “risk” or “threat” to national security. In many of these areas, the deployment of AI appears to be well underway.

16. The NSA describes itself as a leader among the U.S. intelligence agencies racing to deploy AI. According to officials, the NSA has used AI “for a very long time” to support its intelligence-gathering activities, and today it is one of many spy agencies seeking ubiquitous AI integration in each stage of the intelligence cycle. NSA, *GEN Nakasone Offers Insight into Future of Cybersecurity and SIGINT* (Sep. 21, 2023), <https://perma.cc/97GE-4ULZ>.

17. The NSA and other agencies may use these tools to select new surveillance targets, to perform natural language processing of intercepted voice calls and text, and to analyze the vast amounts of communications they collect every day—often ensnaring people in the United States.

18. Indeed, although the NSA generally seeks to collect foreign intelligence, the mass surveillance it conducts under the Foreign Intelligence Surveillance Act (“FISA”) and other authorities routinely sweeps up the sensitive communications and data of Americans. For example, the NSA relies on Section 702 of FISA to acquire the internet communications and phone calls of Americans who are in contact with hundreds of thousands of foreign targets each year.

19. On August 6, 2021, DOD and NSA announced a joint Inspector General evaluation to “assess the National Security Agency’s integration of artificial intelligence into signals intelligence operations.” DOD & NSA Inspectors General, *Mem. for the DNI re: Announcement of Joint Evaluation*, U.S. DOD Media Releases (Aug. 6, 2021), <https://perma.cc/ZA8N-FYN6>.

20. Although the Inspectors General issued a report describing the results of their joint evaluation on October 17, 2022, DOD and NSA have not released that report to the public, even

in declassified form. DOD Office of Inspector General, *Joint Evaluation of the Nat'l Sec. Agency's Integration of A.I. (DODIG-2023-007)*, DOD-OIG Reports (Oct. 17, 2022), <https://perma.cc/A4L3-EC4K>.

21. Similarly, over the past year, NSA officials have repeatedly described the completion of strategic studies about the agency's use of AI—including an AI roadmap, a five-year plan, and assessments of how technologies like generative AI will impact the NSA's intelligence-gathering activities.

22. For example, in September 2023, former NSA Director Gen. Paul Nakasone said the agency had recently completed a “roadmap for AI/ML,” which addresses how generative AI and machine learning will be used for NSA missions. Lauren C. Williams, *NSA 'Recently Completed' AI Strategic Study, Director Says*, Def. One (Sept. 6, 2023), <https://perma.cc/EQB4-XDVC>. The National Defense Authorization Act for Fiscal Year 2023 mandated such a “roadmap and implementation plan for cyber adoption of artificial intelligence,” and required that the roadmap identify “currently deployed, adopted, and acquired artificial intelligence systems, applications, ongoing prototypes, and data.” James M. Inhofe Nat'l Def. Authorization Act for Fiscal Year 2023, Pub. L. No. 117–263, § 1554, 136 Stat. 2396, 527–29 (2022), <https://perma.cc/SXP8-4APA>.

23. Likewise, in September 2023, Gen. Nakasone announced that the NSA had recently concluded a 60-day study evaluating generative AI's impacts on the agency. Martin Matishak, *NSA, Cyber Command Recently Wrapped Studies on AI Use, Director Says*, Record from Recorded Future News (Sept. 5, 2023), <https://perma.cc/F4ZT-PNTB>.

24. But again, the agency has not disclosed these roadmaps, plans, or studies to the public, even in declassified form.

25. This secrecy is at odds with Defendants' publicly stated commitment to transparency when it comes to AI. ODNI, which oversees the NSA and more than a dozen other intelligence agencies, touts transparency as a core principle in its *Principles of Artificial Intelligence Ethics for the Intelligence Community*. Yet ODNI and the intelligence agencies have provided strikingly little information to the public about the AI systems they are deploying to conduct surveillance and analyze vast amounts of private data.

26. The government's lack of transparency is especially concerning given the danger that many AI systems pose for American's civil rights and civil liberties. Just like in law enforcement, using algorithmic systems to gather and analyze intelligence can compound privacy intrusions and perpetuate discrimination.

27. AI systems may amplify biases that are embedded in the datasets used to train those systems, and they may have higher error rates when applied to people of color and marginalized communities due to flaws in the algorithms or underlying data. Likewise, AI-driven surveillance may be used to guide or expand government activities that have long been used to wrongly and unfairly scrutinize communities of color. For example, built-in bias or flawed intelligence algorithms may lead to additional surveillance and investigation of individuals, exposing their lives to wide-ranging government scrutiny under FISA or other authorities.

28. Yet almost nothing is known about the efficacy of the NSA's AI tools, the potential harms posed by these technologies, or what safeguards for civil rights and civil liberties are in place.

29. Without access to the requested records, the public has little insight into the ways the NSA is using AI. This information is vital for the mounting public and legislative debate.

### The FOIA Request

30. On March 7, 2024, the ACLU submitted identical FOIA Requests (Exhibit A) to the NSA, ODNI, and DOD Office of Inspector General seeking the following records:

(1) The Inspector General report on the DOD's and NSA's "Joint Evaluation of the National Security Agency's Integration of Artificial Intelligence," issued on or around October 17, 2022, and any records describing responses to the report or its recommendations.

(2) All roadmaps, strategic plans, implementation plans, studies, inventories, and reports concerning the NSA's use of AI or machine learning that were created on or after January 1, 2023, including but not limited to the following:

- (a) The "roadmap and implementation plan for cyber adoption of artificial intelligence," which was mandated by the National Defense Authorization Act for Fiscal Year 2023;
- (b) The "AI roadmap" described by former NSA Deputy Director George Barnes on or around July 14, 2023;
- (c) The "roadmap for AI/ML" and the "strategic study" described by former NSA Director Gen. Paul Nakasone on or around September 6, 2023;
- (d) The "five-year plan" described by NSA Director Gen. Paul Nakasone on or around September 5, 2023;
- (e) The "60-day study" evaluating generative AI's impacts on the NSA described by former NSA Director Gen. Paul Nakasone on or around September 5, 2023;

(3) All reports, assessments, studies, audits, analyses, or presentations concerning the risks or impacts posed by the NSA's use or proposed use of AI or machine learning for privacy, civil liberties, or civil rights that were created on or after January 1, 2022—including but not limited to such records created or maintained by the NSA Office of Civil Liberties and Privacy, ODNI Office of Civil Liberties, Privacy, and Transparency, and NSA or DOD Office of the Inspector General.

31. Plaintiffs sought expedited processing of the Request on the ground that there is a "compelling need" for these records because the information requested is urgently needed by an



organization primarily engaged in disseminating information in order to inform the public about actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E).

32. Plaintiffs sought a waiver of search, review, and reproduction fees on the ground that disclosure of the requested records 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.” *Id.* § 552(a)(4)(A)(iii).

33. Plaintiffs also sought a waiver of search and review fees on the grounds that the ACLU qualifies as a “representative of the news media” and that the records are not sought for commercial use. *Id.* § 552(a)(4)(A)(ii)(II).

### **Defendants’ Responses to the Request**

34. Despite the urgent public interest regarding government use of AI in intelligence activities, Defendants have not released any records in response to the Request.

35. Under FOIA, Defendants ordinarily have twenty working days to respond to a request, and have an additional ten working days if certain “unusual circumstances” apply. 5 U.S.C. § 552(a)(6)(A)(i), (B)(i). More than thirty working days have passed since Plaintiffs submitted the Request. Thus, even if unusual circumstances apply here, the statutory time period for response has elapsed.

### National Security Agency

36. By letter dated March 15, 2024, the NSA acknowledged receipt of the Request and assigned it Case Number 118142.

37. The letter denied Plaintiffs’ request for expedited processing and deferred decision on Plaintiffs’ request for a fee waiver.

38. Plaintiffs appealed NSA's denial of expedited processing on March 21, 2024. By letter dated April 12, 2024, the NSA denied Plaintiffs' appeal and assigned it Appeal Number 5919.

39. To date, the NSA has neither released responsive records nor explained its basis for withholding them. Plaintiffs have exhausted all administrative remedies because the NSA has failed to comply with the time limit for responding to the Request under FOIA.

Office of the Director of National Intelligence

40. By letter dated March 15, 2024, the ODNI acknowledged receipt of the Request and assigned it tracking number DF-2024-00166.

41. The letter denied Plaintiffs' request for expedited processing and deferred Plaintiffs' request for a fee waiver.

42. Plaintiffs appealed ODNI's denial of expedited processing on March 21, 2024, and ODNI acknowledged receipt of the appeal the same day. Plaintiffs' administrative appeal remains pending.

43. To date, ODNI has neither released responsive records nor explained its basis for withholding them. Plaintiffs have exhausted all administrative remedies because ODNI has failed to comply with the time limit for responding to the Request under FOIA.

Department of Defense Office of Inspector General

44. By email dated March 8, 2024, the DOD-OIG acknowledged receipt of the request and assigned it case number DODOIG-2024-000329.

45. The DOD-OIG letter stated that the Request has "been assigned to the expedited processing queue" and deferred Plaintiffs' request for a fee waiver. The letter also cited "unusual

circumstances” and stated that DOD-OIG “may not be able to meet the 20-business day response time.”

46. To date, DOD-OIG has neither released responsive records nor explained its basis for withholding them. Plaintiffs have exhausted all administrative remedies because DOD-OIG has failed to comply with the time limit for responding to the Request under FOIA.

### **CLAIMS FOR RELIEF**

47. The failure of Defendants to make a reasonable effort to search for records responsive to the Request violates the FOIA, 5 U.S.C. § 552(a)(3), and Defendants’ corresponding regulations.

48. The failure of Defendants to promptly make available the records sought by the Request violates the FOIA, 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(A), and Defendants’ corresponding regulations.

49. The failure of Defendants to process Plaintiffs’ request expeditiously and as soon as practicable violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants’ corresponding regulations.

50. The failure of Defendants to grant Plaintiffs’ request for a waiver of search, review, and duplication fees violates the FOIA, 5 U.S.C. §§ 552(a)(4), (a)(6), and Defendants’ corresponding regulations.

51. The failure of Defendants to grant Plaintiffs’ request for a limitation of fees violates the FOIA, 5 U.S.C. §§ 552(a)(4), (a)(6), and Defendants’ corresponding regulations.

### **REQUESTED RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order Defendants to conduct a thorough search for all responsive records;

- B. Order Defendants to immediately process and release any responsive records;
- C. Enjoin Defendants from charging Plaintiffs search, review, or duplication fees for the processing of the Request;
- D. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
- E. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

*S/ Patrick Toomey*

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