

LEGAL DEPARTMENT
TECHNOLOGY AND
LIBERTY PROGRAM



64-39
10/21/03

October 17, 2003

Elizabeth Withnell
Acting Departmental Disclosure Officer
U.S. Department of Homeland Security
Washington, DC 20528

Re: Freedom of Information
Act request

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
TECHNOLOGY AND
LIBERTY PROGRAM
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PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

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CHAIR, NATIONAL
ADVISORY COUNCIL

RICHARD ZACKS
TREASURER

Attention:

This is a request pursuant to the Freedom of Information Act (FOIA, 5 U.S.C. § 552), for all agency records (including, but not limited to letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, or any other materials) held by the United States Department of Homeland Security (DHS) regarding the Multistate Anti-Terrorism Information Exchange (MATRIX).

This request includes, but is not limited to records regarding:

The specifications for the MATRIX, including, but not limited to documents regarding storage capacities, throughput (e.g. number of identity files processed per hour), types of computers used, and user manuals;

- What personal data is accessed and/or used by the MATRIX, including, but not limited to documents regarding the types of personal data (including, but not limited to drivers' records, financial records, medical information, marriage records, divorce records, Internet usage information, phone records, travel records, voting records, biometric data, educational records, information regarding race, ethnicity, immigration records, criminal justice records and/or gun owners' records) accessed or used by the MATRIX, the contents of any personal information databases related to the MATRIX, the number of individuals whose personal data has been obtained, how that data was obtained, including, but not limited to documents regarding how such data was selected for use in the MATRIX and any agreements and/or contracts to obtain such personal data, including, but not limited to any agreements and/or contracts with

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Seisint Inc. (Seisint), the Florida Department of Law Enforcement (FDLE), the Georgia Bureau of Investigation (GBI), the Georgia Department of Motor Vehicle Safety (GDMVS) and/or the United States Department of Justice (DOJ), the retention of any such data, including, but not limited to retained records or results, the record retention policies pertaining to these systems, any documentation of the approval of the retention policies by the DHS, any state government agencies (including, but not limited to the FDLE, GBI and/or GDMVS) and/or their contractors (including, but not limited to Seisint);

- Any procedures for analyzing the data, including, but not limited to the criteria used by the MATRIX to determine whether someone is a terrorist, including, but not limited to the use of information regarding race, ethnicity, religious background, internet usage, travel patterns, political views, political activities and/or consumer purchasing habits in any way, shape or form;
- The results of any tests, including, but not limited to any logs or other written descriptions of how any such systems is and/or has been used, the accuracy rates of any such systems while in operation and assessments of the individuals whose data was collected and used;
- Who has access to the MATRIX, including, but not limited a complete list of all recipients of data from the MATRIX; any procedures for individuals to find out what information the MATRIX has about them, any procedures for individuals to correct information that the MATRIX has about them, and any procedures for individuals to find out what the MATRIX has determined about them; Any procedures in place to protect the privacy of the individuals whose data was accessed and/or used by the MATRIX, including, but not limited to documents regarding oversight boards, login restrictions, pop-up screens at sign-on, data security measures, encryption, reduced use of certain criteria (e.g. race and/or ethnicity) and/or data checking to ensure accuracy of the information, how any of the personal data accessed and/or used by the MATRIX will be destroyed, and documentation of any policies permitting such destruction;
- Details regarding usage of the MATRIX, including, but not limited to the number of times has the MATRIX been used, the cases or circumstances in which the MATRIX has been used (including, but not limited to instances where the MATRIX was used for non-terrorism investigations purposes and/or for non-criminal investigations purposes), the information that was collected in each instance, the results in instances when the MATRIX was used,

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including, but not limited to whether any terrorists were caught through use of the MATRIX in each instance, how many innocent people were caught through use of the MATRIX in each instance, notes or logs created during any of these instances where the MATRIX was used, and what happened to people identified by the MATRIX as a threat, the number of times the MATRIX has malfunctioned, the cases or circumstances in which the MATRIX malfunctioned, and what happened in each instance that the MATRIX malfunctioned, any procedures are in place for use/testing of the MATRIX, including, but not limited to who decides whether the MATRIX will be used/tested in a given case, procedures for handling requests to use the MATRIX in a given case (including, but not limited to requests from state agencies, Federal agencies and/or private entities), the number of requests to use the MATRIX that have been received so far, the entities and/or individuals who have made requests to use the MATRIX, and the number of such requests that have been rejected,

- Any legal analyses regarding the MATRIX, including, but not limited to documents regarding whether the MATRIX violates international, Federal, state and/or local privacy laws;
- Organizational details regarding the development and use of the MATRIX, including, but not limited to documents regarding sources of technical and/or financial support for the MATRIX, which Federal, state and/or local government agencies are involved and/or cooperating in the MATRIX project, the extent to which such agencies are involved and/or cooperating in the MATRIX project, what companies (including, but not limited to Seisint), consultants and/or colleges are involved and/or cooperating in the MATRIX project, the extent to which such companies, consultants and/or colleges are involved and/or cooperating in the MATRIX project, what companies, the amount of money spent on developing the MATRIX system so far, the sources for this money, and budgetary outlays for future development and/or maintenance of the MATRIX;
- Records regarding training of people to use the MATRIX, including, but not limited to textbooks, video presentations, contracts and/or agreements to be signed by MATRIX trainees, and the number of people who have been trained to use the MATRIX so far; and
- Meetings regarding the MATRIX, including, but not limited to a meeting between Georgia Governor Sonny Perdue and Florida Governor Jeb Bush to discuss the MATRIX, and meetings held between July 2001 and January 2003 with U.S. Senator Bob Graham to discuss development of the MATRIX.

This request also includes, but is not restricted to information regarding similar activities being conducted by any public and/or private agency or organization.

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We request a waiver of search and review fees because the American Civil Liberties Union Foundation (ACLU Foundation) is a representative of the news media (for FOIA purposes). The Foundation meets the criterion laid out in *National Security Archive v. Department of Defense*, where a representative of the news media is defined as an entity that "gathers information of potential interest to a segment of the public" and "uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience." 880 F. 2d at 1387; see also 68 Fed. Reg. 4061; *Electronic Privacy Information Center v. Dep't of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003). The ACLU Foundation publishes newsletters, frequent press releases, news briefings, right to know handbooks, and other materials on a variety of issues (including information obtained through FOIA requests concerning privacy matters). These materials are widely available to everyone including tax exempt organizations, not-for-profit groups, law students and faculty, not to mention our 400,000 members. The ACLU Foundation disseminates information through publications available on-line at www.aclu.org as well.

Moreover, we request a fee waiver of duplication costs pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(I) & (iii) and 68 Fed. Reg. 4063 because the subject matter of the requested records concerns the operations and activities of the Federal government, the disclosure is likely to contribute to an understanding of Federal government operations or activities, disclosure of the requested information is in the public interest (as evidenced by a considerable amount of press coverage about the MATRIX), the contribution to public understanding of Federal government operations or activities will be significant, and, as a non-profit 501(c)(3) organization, we do not have a commercial interest that would be furthered by the disclosure of the requested information. (See, e.g., *Georgia should pass on citizens database as tool vs. terrorism*, GAINSVILLE SUN, Oct. 11, 2003; Duane D. Stanford & Joey Ledford, *State to link up private data*, ATLANTA JOURNAL-CONSTITUTION, Oct. 10, 2003; *Privacy Advocates Object to Move*, ASSOCIATED PRESS, Oct. 10, 2003; Jim Krane, *States Join in Building Terror Database*, Sept. 23, 2003; Tim Lockett, *MATRIX is raising privacy concerns*, GAINSVILLE SUN, Aug. 10, 2003; Robert O'Harrow Jr., *U.S. Backs Florida's New Counterterrorism Database*, WASHINGTON POST, Aug. 6, 2003, at A1.)

We look forward to your reply within twenty working days, as required under 5 U.S.C. § 552(a)(6)(A)(i) and 68 Fed. Reg. 4059.

Sincerely,

[
Christopher T. Chiu
Technology Policy Analyst

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Barry Steinhardt
Director, Technology & Liberty
Program

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