

FBI and Department of Justice reject Freedom of Information Act document request by SEP National Chairman David North

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The Federal Bureau of Investigation (FBI) has rejected a Freedom of Information Act (FOIA) request filed by David North, national chairman of the Socialist Equality Party (US) and chairman of the international editorial board of the *World Socialist Web Site*. North had filed his request to obtain access to whatever documents the government may have acquired through surveillance by the FBI and related intelligence agencies of his activities in the socialist movement over a period spanning nearly 50 years.

After an almost nine-month delay that violated numerous statutory deadlines, the US Department of Justice informed North that his FOIA request had been denied. It stated that for reasons of national security and foreign intelligence operations, the government would neither admit nor deny the existence of records pertaining to surveillance of North and illegal efforts to disrupt his political activities.

In the letter dated February 15, 2019 rejecting North's request for documents, the Department of Justice wrote:

The nature of your request implicates records that the FBI may or may not compile pursuant to its national security and foreign intelligence functions. Accordingly, the FBI cannot confirm or deny the existence of any records about your subject as the mere acknowledgment of such records [sic] existence or nonexistence would in and of itself trigger harm to national security interests... This response neither confirms nor denies the existence of your subject's name on any watch lists.

The FBI gives "neither confirm nor deny" responses—known in legal terminology as "Glomar responses"—in only the most sensitive cases. In Fiscal Year 2018, for example, the government responded in this manner in just three percent of total FOIA requests.

The FBI took 270 days to respond to North's FOIA request, which was filed in May 2018. Under FOIA, the government is

obligated to respond within 20 days or notify the requestor of "unusual circumstances" necessitating a further 10-day delay. On average, the FBI responds to "simple" requests in nine days and "complex" requests in 121 days.

The text of the FOIA statute establishes that an "unusual circumstance" justifies delay only when (1) the records in question are spread out across multiple "field offices," (2) there is "a voluminous amount of separate and distinct records which are demanded in a single request," or (3) where the FBI has a "need for consultation... with another agency having substantial interest in the determination of the request."

The statute also requires that the government "set forth the names and titles or positions of each person responsible" for a request denial. In North's case, the FBI has provided no explanation for the "unusual circumstances" justifying its delay, nor for its failure to enumerate those individual agents responsible for the denial.

In an appeal of the government's denial filed on April 15, 2019, attorneys for North wrote:

Mr. North has engaged in constitutionally protected activity in the socialist movement for 48 years. From 1976 to present, Mr. North has led the American Trotskyist movement, serving as National Secretary of the Workers League from 1976 to 2008 and National Chairman of the Socialist Equality Party from 2008 to present. He has served as the chairman of the international editorial board of the *World Socialist Web Site* since its founding in 1998.

The appeal continued:

In the course of his long political career, Mr. North has written and edited several thousand published articles, and delivered hundreds of lectures at major universities across the US and internationally. He is the author of several

books, and is recognized all over the world as a significant socialist theorist and authority on the history of the Fourth International.

The appeal argued that the FBI's response violated North's democratic right to free speech and free assembly.

In its Glomar response, the FBI asserts the power to refuse to tell Mr. North whether it was or is surveilling him, wiretapping his phones, bugging his home, reading his emails, tracking his movements or otherwise monitoring or interfering with his privacy or political speech and activity. The agency refuses to tell Mr. North whether he is on any covert watch lists. The response refuses to give any indication of what criteria would have led to his being placed under surveillance or on any list and it does not explain any potential attendant consequences.

The appeal further argued:

By refusing to admit or deny the existence of records, the response places Mr. North outside the law and in a constitutional "no man's land," unable to determine whether or not he enjoys and has full legal access to democratic rights and protections guaranteed by law to American citizens. The agency's argument bears a disturbing resemblance to fascist legal theories, including Nazi jurist Carl Schmitt's "state of exception" and the principle of *homo sacer*, which states that the government can place certain people, including their right to live, outside the protection of the law. In the contemporary context of drone strikes and "disposition matrices," the implications of these violations have alarming consequences.

The Department of Justice Office of Information Policy has notified North's attorneys that the appeal has been denied.

In a statement to the *World Socialist Web Site*, North declared:

The US government has a long history of illegal surveillance and disruption of the Trotskyist movement. Based on the government's response to my FOIA request, it is obvious that I have been the subject of surveillance. If that were not the case, it would be easy enough for the government to simply deny that it has been engaged in such illegal and disruptive activity.

The government declares, in truly Kafkaesque language, that it cannot admit or even deny that it has been spying on my activities. But my work over five decades has consisted of speaking and writing about Marxist theory and the

program of the Trotskyist Fourth International. The fact that the government views my constitutionally protected activities as so great a threat to national security that it can neither admit nor deny that surveillance-related documents exist testifies to the government's fear of socialism and, especially, ideas based on the political legacy of Leon Trotsky.

The denial of my FOIA request must be seen in the context of the recent decision of the German government to place my co-thinkers of the Sozialistische Gleichheitspartei (SGP) on an official list of subversive organizations, based exclusively on its propagation of a socialist program. The official German government report justifying this action specifically referenced the SGP's publication of my writings in German as an example of subversive activity. The decision also casts new light on the efforts of Google and Facebook to censor access to the *World Socialist Web Site*.

I do not view the actions of the government as a personal matter. The FBI and Department of Justice's response takes place in a reactionary political climate in which the political elite of both the Republican and Democratic parties are sponsoring unprecedented attacks on democratic rights, from the construction of immigrant concentration camps and the deployment of the military on the grounds of "national emergency" to the prosecution of WikiLeaks founder Julian Assange and whistleblower Chelsea Manning.

North and his attorney Daniel Kornstein of Emery Celli Brinckerhoff & Abady are examining the legal grounds upon which it might be possible to mount a further challenge to the actions of the Justice Department in federal court.

"There may exist legal avenues to challenge the government denial of my FOIA request," North told the WWS. "But the success of efforts in the courts are subordinate to, and depend entirely upon, the development of a mass movement among workers and youth against the escalating attacks, within the United States and internationally, on democratic rights."



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