

BRENNAN
CENTER
FOR JUSTICE

Brennan Center for Justice
At New York University School of Law

Washington, D.C. Office
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Washington, D.C. 20036
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April 26, 2017

Via Certified Mail and Electronic Submission

Sabrina Burroughs
FOIA Officer/Public Liaison
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW, Room 3.3D
Washington, D.C. 20229

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

Re: Freedom of Information Act Request and Request for Expedited Processing and Fee Waiver

Dear Sir/Madam:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Department of Homeland Security implementing regulations, 6 C.F.R. §§ 5.1 through 5.36. It is also a request for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d)(1), and for a fee waiver under 5 U.S.C. §§ 552(a)(4)(A)(ii) and (iii) and 6 C.F.R. §§ 5.11(d) and (k).

I. Background

Social media monitoring software can search for, read, interpret, and categorize posts on social media sites such as Facebook, Twitter, and Instagram. Many social media monitoring services also offer options to run keyword- and location-specific searches across social media platforms. Social media monitoring technology provides the capability to constantly monitor and archive information on people’s online activities.

The use of social media monitoring software by the federal government is of significant public interest, due to its implications for individuals' privacy and First Amendment rights as well as the possibility of errors or misinterpretations. There is currently little transparency regarding when and how federal agencies utilize social media monitoring services, how their use is overseen, and how the resulting information is used, retained, and shared. Accordingly, we seek information and documents about the nature of social media monitoring services provided or marketed by CSRA, Inc., Palantir Technologies, and Lockheed Martin to U.S. Customs and Border Protection and/or U.S. Immigration and Customs Enforcement.

CSRA Inc.

On November 15, 2016, CSRA, Inc., a security and intelligence company, published a white paper containing border control strategy recommendations for U.S. Customs and Border Protection (CBP). These recommendations include the implementation of software for integrating data from social media and surveilling social media to detect threats or identify radicalizing rhetoric online.¹

This white paper was published only days after CSRA's November 7, 2016 announcement of a \$45,000,000 contract with CBP, to advise on efficient methods to detect and prevent unlawful trade and travel.² Purchase orders catalogued by SmartProcure, a database service that tracks and analyzes government purchasing, indicate that prior to the November 7 contract, CBP spent at least \$15,535,000 on products or services from CSRA.³ Furthermore, SmartProcure archives indicate that U.S. Immigration and Customs Enforcement (ICE) also spent over \$11,000,000 on products or services from CSRA in 2016 and 2017.⁴ These purchase orders are also recorded on the Federal Procurement Data System, a similar database of government procurement records maintained by the federal government.

The emphasis placed by CSRA in its November 15 white paper on the need to incorporate social media surveillance tactics into CBP operations, as well as the timeline of the paper's publication, indicate that it is likely that at least some of the more than \$28,000,000 that CBP has spent on services from CSRA in the past two years has included services related to social media monitoring. The white paper's approach to border control strategy in general also provides cause to believe that at least some of the \$11,000,000 worth of services that ICE has purchased from CSRA have also involved social media monitoring.

Palantir Technologies

¹ The paper was available at <https://www.csra.com/sites/default/files/csra-issue-brief-homeland-security.pdf> through March 5, 2017. As of March 7, 2017, it had been removed from CSRA's website.

² *Press Release: CSRA Assists Customs and Border Protection Defining Equipment Essentials*, CSRA, INC., <https://www.csra.com/media-room/press-release/csra-assists-customs-and-border-protection-defining-equipment-essentials/> (last visited Mar. 7, 2017).

³ See Appendix A.

⁴ See Appendix B.

Palantir Technologies is a data analytics company with a well-documented history of engaging in social media monitoring activity. Palantir software can be used to match clientele’s proprietary data against publicly available information, including criminal databases and social media data, in order to detect suspicious activity.⁵ Until 2010, the company provided services exclusively to the government sector.⁶ The Palantir Technologies website also advertises its software’s capability to “discover unknown connections” and “bring hidden patterns to the surface” through data analysis, an ideal service for clients conducting a “large-scale quantitative investigation.”⁷

From 2010-2013, U.S. Customs and Border Protection spent almost \$1,900,000 on Palantir Technologies software.⁸ From 2011-2017, U.S. Immigration and Customs Enforcement spent \$41,460,000 on services from Palantir.⁹ These purchase orders are also recorded on the Federal Procurement Data System, a similar database of government procurement records maintained by the federal government. Palantir Technologies has obtained a high-profile reputation for providing social media monitoring services, and the company actively advertises its software’s ability to analyze social media data. There is a strong likelihood that the Palantir Technologies products and services purchased by CBP and ICE are being used to obtain and surveil social media data.

Lockheed Martin

Lockheed Martin is a global security and aerospace company that offers a social media data collection, processing, monitoring, and analytics service named LM Wisdom®. LM Wisdom® capabilities include harvesting and “indexing massive multi-language data from the Internet, including...databases, Web sites, Twitter, Blogs, and social networking sites.”¹⁰ In a brochure advertising the LM Wisdom® software, Lockheed Martin states that “exploiting social media as an intelligence source requires high-performance collection and analysis algorithms.”¹¹

From 2010-2016, U.S. Customs and Border Protection spent \$51,662,771 on services from Lockheed Martin.¹² It is not possible to definitively confirm that this figure was spent on LM Wisdom® software, but the sum does exclude services purchased by CBP from Lockheed Martin’s aeronautical divisions, which would not

⁵ Michael Lev-Ram, PALANTIR CONNECTS THE DOTS WITH BIG DATA [WWW.FORTUNE.COM](http://www.fortune.com) (2016), <http://fortune.com/palantir-big-data-analysis/> (last visited April 11, 2017).

⁶ *Supra* note 5.

⁷ Palantir Metropolis and Palantir Gotham, PALANTIR, <https://www.palantir.com/palantir-metropolis/> (last visited Apr 11, 2017).

⁸ See Appendix C.

⁹ See Appendix D.

¹⁰ *Brochure: LM Wisdom®: Customizable End-to-End Solution for Web and Social Media Collection, Processing, Monitoring, and Analytics*, LOCKHEED MARTIN, <http://www.lockheedmartin.com/content/dam/lockheed/data/space/documents/tradeshows/GEOINT/LM%20Wisdom%20Brochure.pdf> (last visited April 11, 2017).

¹¹ *Supra* note 11.

¹² See Appendix E.

be related to social media monitoring. There is a reasonable possibility that contracts made between CBP and Lockheed Martin that are not labeled explicitly for aeronautical purposes may be in part or in whole for licenses to the LM Wisdom® social media monitoring software.

II. Formal Request

The Brennan Center for Justice requests:

1. **Purchase Records and Agreements:** Any and all records reflecting an agreement for purchase, acquisition, or licensing of, or permission to use, test, or evaluate any social media monitoring products or services offered by CSRA, Inc., Palantir, or Lockheed Martin. This includes any contracts and/or Memoranda of Understanding with CSRA, Inc., Palantir Technologies, or Lockheed Martin that relate in any way to social media monitoring services.
2. **Vendor Communications:** Records reflecting communications with CSRA, Inc., Palantir Technologies, or Lockheed Martin concerning social media monitoring products or services, including sales materials and emails regarding the products.
3. **Federal Communications:** Records reflecting any internal emails or other communications relating to the use of social media monitoring services or products offered by CSRA, Inc., Palantir Technologies, and/or Lockheed Martin.
4. **Policies Governing Use:** Any and all policies, procedures, manuals, or guidelines governing the use, testing or evaluation of social media monitoring products or services, including (but not limited to) policies regarding the retention, sharing, and use of collected data.
5. **Audits:** Any records of, or communications regarding, audits or internal reviews of social media monitoring products or services offered by CSRA, Inc., Palantir Technologies, and/or Lockheed Martin.
6. **Past Uses:** Records reflecting the utilization, testing, or evaluation of social media monitoring products or services offered by CSRA, Inc., Palantir Technologies, and/or Lockheed Martin, including records regarding the frequency with which these products or services have been used and in what types of situations these products or services have been used.

7. **Informational Materials:** Any informational materials, presentations, or training guidelines on social media monitoring products or services offered by CSRA, Inc., Palantir Technologies, or Lockheed Martin, including but not limited to materials for intra- and inter-agency distribution.
8. **Budget Records:** Records of any funding requests or budget proposals prepared by U.S. Customs and Border Protection and/or Immigration and Customs Enforcement, whether for internal purposes or distribution to other agencies or Congress, that mention purchase or use of social media monitoring products or services offered by CSRA, Inc., Palantir Technologies, or Lockheed Martin, including but not limited to requests or proposals specifying amounts spent on social media monitoring products or services.

We request that responsive electronic records be provided electronically, in a text-searchable, static-image (PDF) format (in the best image quality available to the agency), pursuant to 5 U.S.C. § 552(a) (3)(A)(B) and (C).

III. Application for Expedited Processing

The Brennan Center requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and implementing regulation 6 C.F.R. § 5.5(d). There is a “compelling need” for these records because the information requested is urgently required by an organization “primarily engaged in disseminating information” to “inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v); 6 C.F.R. § 5.5(d)(1)(ii).

The Brennan Center is a section 501(c)(3) non-profit organization that is “primarily engaged in disseminating information” within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(d)(1)(ii). The United States District Court for the District of Columbia has found that a non-profit, public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information” within the meaning of the statute and regulations. *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)). The Brennan Center regularly writes and publishes reports and newspaper articles and makes appearances on various media outlets, addressing U.S. policy on issues ranging from counterterrorism efforts to

voting rights to campaign finance laws and beyond, and it will continue to do so for the foreseeable future.¹³

Furthermore, the Brennan Center urgently requires the information sought by this request in order to inform the public of federal government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1)(ii). The information requested herein concerns federal government activity with regard to the federal government's purchase and use of social media monitoring products or services. This information is of interest to the many members of the general public who are concerned about the surveillance and recording of their social media activity by federal government agencies, including CBP and ICE. Many public interest and advocacy organizations are seeking greater clarity about the collection of social media data by federal border-control agencies.¹⁴ As of December 20, 2016, travelers to the United States under the Visa Waiver Program are being solicited to voluntarily provide their social media information upon entering the country, raising concerns about the privacy risks posed to travelers who choose to disclose their information either by will or due to confusion.¹⁵ The Brennan Center intends to share any information about the use of social media for the purposes of border control obtained from this request with the public.

IV. Application for Waiver or Limitation of All Fees

The Brennan Center requests a waiver of all search, review, and duplication fees associated with this request. The requester is eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. §§ 5.11(d) and (k), and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(1).

¹³A complete list of the Brennan Center's recent publications is available at <http://www.brennancenter.org/content/resources/publications/P0/>.

¹⁴ See, e.g., Sophia Cope, FEAR MATERIALIZED: BORDER AGENTS DEMAND SOCIAL MEDIA DATA FROM AMERICANS WWW.EFF.ORG (2017), <https://www.eff.org/deeplinks/2017/01/fear-materialized-border-agents-demand-social-media-data-americans> (last visited Mar 7, 2017); Faiza Patel & Rachel Levinson-Waldman, BRENNAN CENTER SUBMITS COMMENTS ON DHS PLAN TO COLLECT SOCIAL MEDIA INFORMATION THROUGH THE VISA WAIVER PROGRAM (2016), <https://www.brennancenter.org/analysis/brennan-center-submits-comments-dhs-plan-collect-social-media-information-through-visa> (last visited Mar 27, 2017); CIVIL LIBERTIES COALITION SUBMITS COMMENTS ON DHS PLAN TO COLLECT TRAVELERS' SOCIAL MEDIA INFORMATION (2016), <https://www.brennancenter.org/analysis/civil-liberties-coalition-submits-comments-dhs-plan-collect-social-media-information> (last visited Mar 27, 2017).

¹⁵ Tony Romm, U.S. GOVERNMENT BEGINS ASKING FOREIGN TRAVELERS ABOUT SOCIAL MEDIA (2016), <http://www.politico.com/story/2016/12/foreign-travelers-social-media-232930> (last visited Mar 21, 2017).

First, the Brennan Center plans to analyze, publish, and publicly disseminate information obtained from this request. The requested records are not sought for commercial use and will be disclosed to the public at no cost.

Second, the Brennan Center qualifies as a “representative of the news media” for the same reasons that it is “primarily engaged in dissemination of information” – i.e., because the Brennan Center “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.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *see also supra*, Part III; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11. The Brennan Center has released thirty-four publications in the form of reports and papers on various issues of public importance in the period since January 2011.¹⁶ *Cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat’l Sec. Archive*, 880 F.2d at 1386 (deeming National Security Archive a representative of the news media after it published one book and indicated its intention to publish a set of documents on national and international politics and nuclear policy). The Brennan Center is therefore entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. §§ 5.11(d).

As a noncommercial requester, the Brennan Center also qualifies for waivers as an “educational institution” pursuant to 6 C.F.R. §§ 5.11(d). The Brennan Center qualifies as an educational institution because it is affiliated with the NYU School of Law, which is plainly an educational institution under the definition provided in 6 C.F.R. § 5.11(d)(1); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989).

The Brennan Center is also entitled to a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(1). First, the subject of the requested records clearly concerns “the operations or activities of the federal government.” As noted above, this request seeks records and information concerning federal government activity because the documents requested concern federal government purchase and use of social media monitoring products or

¹⁶ For representative examples of the Brennan Center’s previous publications on issues of public concern, see Rachel Levinson-Waldman, What the Government Does with Americans’ Data (2013), available at <https://www.brennancenter.org/sites/default/files/publications/Data%20Retention%20-%20FINAL.pdf>; Michael Price, National Security and Local Police (2013), available at https://www.brennancenter.org/sites/default/files/publications/NationalSecurity_LocalPolice_web.pdf.

services. This connection to the federal government is “direct and clear, not remote or attenuated.” *See* 6 C.F.R. § 5.11(k)(2)(i). Disclosure of the requested records is therefore in the public interest because it is likely to contribute significantly to public understanding of how the government is engaging in social media monitoring activity that directly impacts the privacy and social media use of the public. *See* 6 C.F.R. §§ 5.11(k)(2)(ii) and (iii). Finally, because of the dearth of information currently available on the federal government’s involvement with and expenditures on social media monitoring activity, disclosure will significantly enhance the public’s understanding of this subject. *See* 6 C.F.R. § 5.11(k)(2)(iv).

Moreover, disclosure is not primarily in the Brennan Center’s commercial interests. *See* 6 C.F.R. § 5.11(k)(3). As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress’s legislative intent that FOIA be “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Statement of Sen. Leahy)).

V. Response Requested in 10 Days

Your attention to this request is appreciated, and the Brennan Center will anticipate your determination regarding our request for expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(d)(4). I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(d)(3).

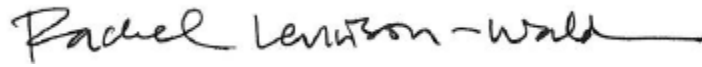
We also request that you provide us with an estimated completion date, as required by 5 U.S.C. § 552(a)(7)(B)(ii). If the Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish all applicable records to:

Rachel Levinson-Waldman
Senior Counsel, Liberty and National Security Program
Brennan Center for Justice
1140 Connecticut Ave. NW, Suite 1150
Washington, D.C. 20036

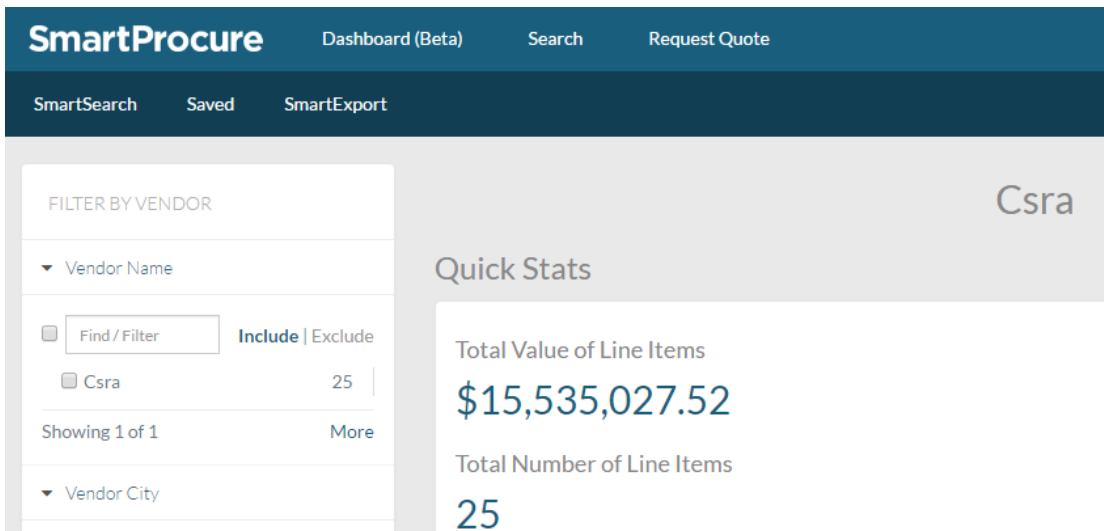
Should you have any questions regarding this request, please contact me at your earliest convenience at the address above, by telephone at (202) 249-7193, or by e-mail at rachel.levinson.waldman@nyu.edu.

Very truly yours,

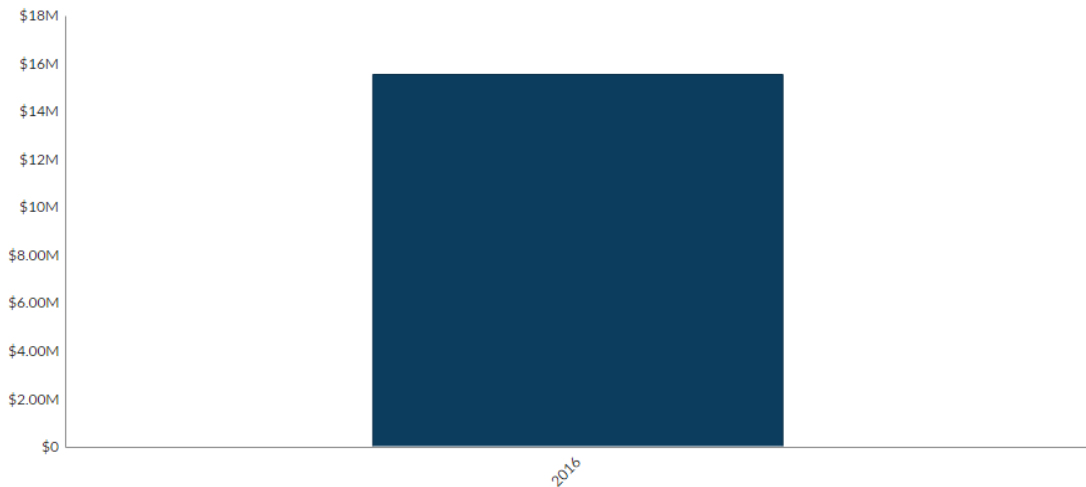
A handwritten signature in black ink that reads "Rachel Levinson-Waldman". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Rachel B. Levinson-Waldman
Senior Counsel
Liberty and National Security Program

Appendix A – CSRA and CBP



Total Value of Line Items By Year



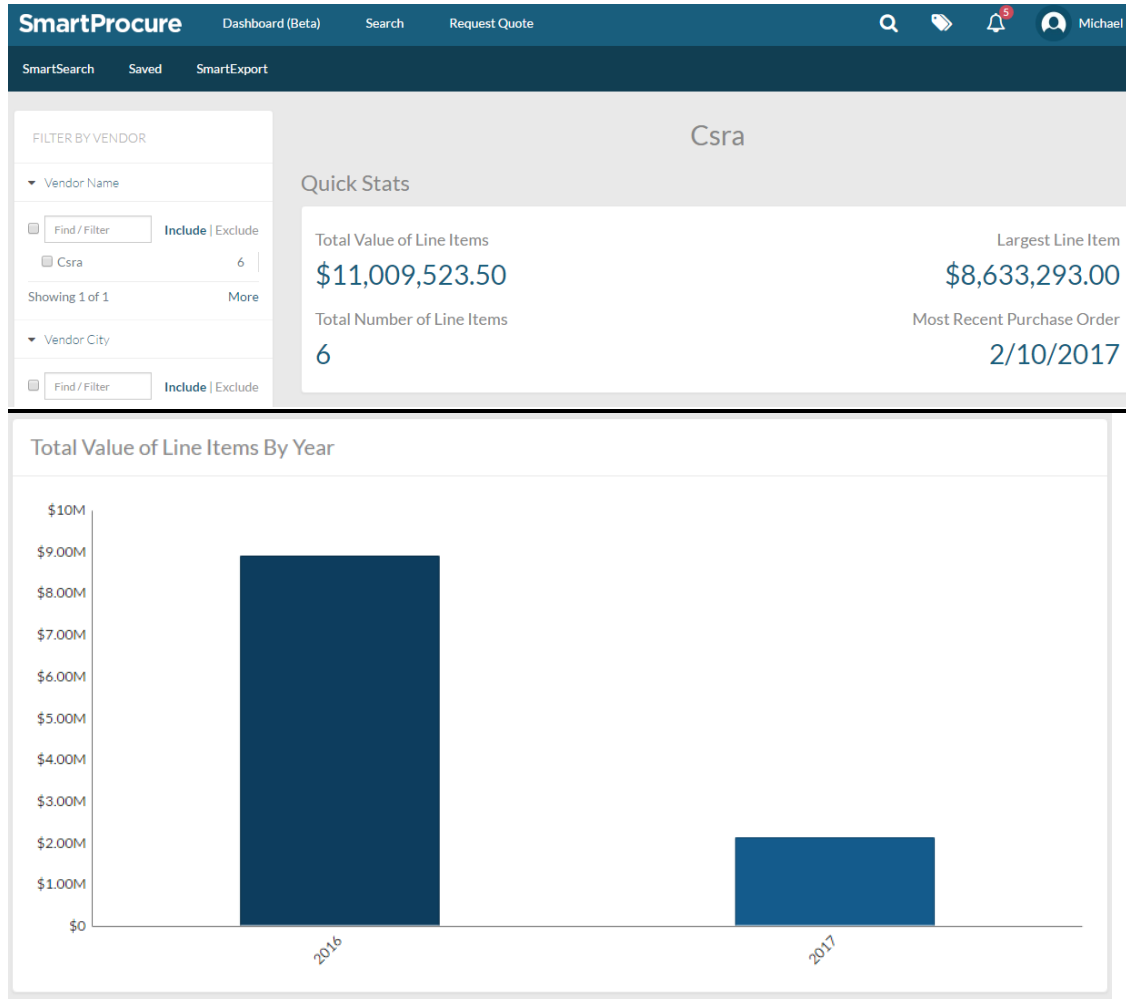
SmartProcure is an online database that tracks federal procurement data based on publicly available contracts and purchase orders. The above images were captured on March 27, 2017 and display the total value of contracts stored on SmartProcure that were made between U.S. Customs and Border Protection and CSRA, Inc., prior to the signing of the November 7, 2017 contract for \$45 million over 3 years. This information was obtained by visiting the vendor profile of CSRA, Inc. on SmartProcure and filtering the company’s statistics to show only the value of purchases made by CBP for products or services offered by CSRA.

The screenshot shows the SmartProcure interface for the vendor 'Csra'. The top navigation bar includes 'SmartProcure', 'Dashboard (Beta)', 'Search', and 'Request Quote'. Below this, there are tabs for 'SmartSearch', 'Saved', and 'SmartExport'. The main content area is titled 'Csra' and features a 'Quick Stats' section. On the left, there is a 'FILTER BY VENDOR' sidebar with a 'Vendor Name' dropdown set to 'Csra', showing 38 results. The 'Quick Stats' section displays the following data:

| Stat | Value | Stat | Value |
|----------------------------|-----------------|----------------------------|----------------|
| Total Value of Line Items | \$28,925,914.37 | Largest Line Item | \$5,383,625.50 |
| Total Number of Line Items | 38 | Most Recent Purchase Order | 2/28/2017 |

The above image was captured on March 27, 2017 and displays the total value of contracts stored on SmartProcure that have been made between U.S. Customs and Border Protection and CSRA, Inc. up until March 27, 2017. This information was obtained by visiting the vendor profile of CSRA, Inc. on SmartProcure and filtering the company's statistics to show only the value of purchases made by CBP for products or services offered by CSRA.

Appendix B – CSRA and ICE



SmartProcure is an online database that tracks federal procurement data based on publicly available contracts and purchase orders. The above images were captured on April 6, 2017 and display the total value of contracts stored on SmartProcure that have been made between U.S. Immigration and Customs Enforcement and CSRA, Inc. up until April 6, 2017. This information was obtained by visiting the vendor profile of CSRA, Inc. on SmartProcure and filtering the company’s statistics to show only the value of purchases made by ICE for products or services offered by CSRA.

Appendix C – Palantir Technologies and CBP

SmartProcure Dashboard (Beta) Search Request Quote


SmartSearch Saved SmartExport

Purchase Order
Delivery Order-HSBP1010J00107-0-HSHQDC07D00025

Date: 1/29/2010
Amount: \$497,845.60


Department of Homeland Security: U.S. Customs and Border Protection

Department of Homeland Security:
U.S. Customs and Border Protection
1300 Pennsylvania Ave Nw
Washington, DC 20004-3002
cbp.gov



Govplace

Govplace
15707 Rockfield Blvd
305
Irvine, CA 92618-2829
www.govplace.com
+1 (949) 297-4000



Description

Palantir Annual Support And Maintenance

Request Quote

SmartProcure Dashboard (Beta) Search Request Quote


SmartSearch Saved SmartExport

Purchase Order
Delivery Order-HSBP1011J00433-0-HSHQDC07D00020

Date: 6/13/2011
Amount: \$466,253.12


Department of Homeland Security: U.S. Customs and Border Protection

Department of Homeland Security:
U.S. Customs and Border Protection
1300 Pennsylvania Ave Nw
Washington, DC 20004-3002
cbp.gov



All Points Logistics

All Points Logistics
2567 Athens Hwy
Gainesville, GA 30507-7457



Description

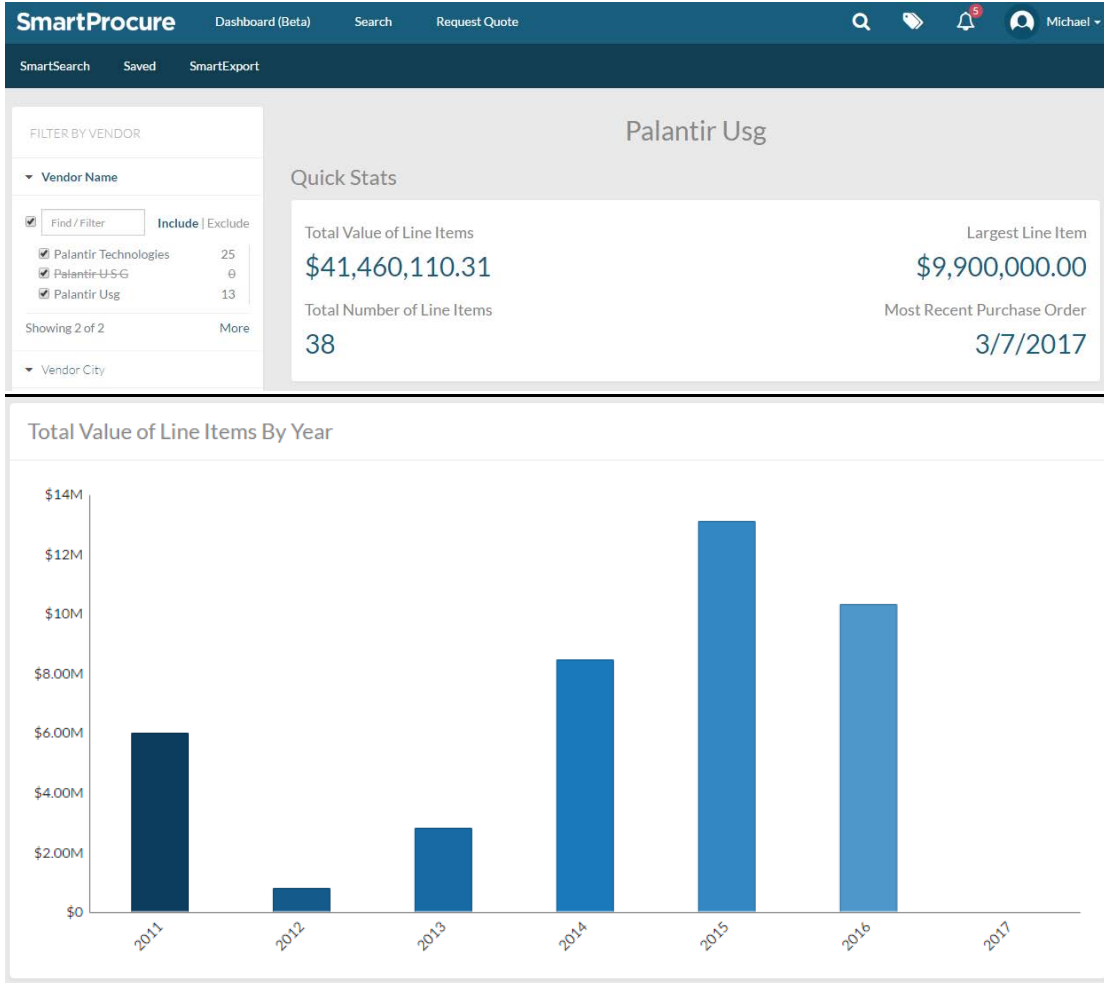
Palantir License

Request Quote

The screenshot displays the SmartProcure interface. At the top, the navigation bar includes 'SmartProcure', 'Dashboard (Beta)', 'Search', and 'Request Quote'. Below this, there are links for 'SmartSearch', 'Saved', and 'SmartExport'. The main content area shows a 'Purchase Order' for 'Delivery Order-HSBP1013J00181-0-HSHQDC12D00015' with a date of 4/3/2013 and an amount of \$466,989.72. The order is from the 'Department of Homeland Security: U.S. Customs and Border Protection' to 'Akira Technologies'. The vendor's address is 10 G St NE, Washington, DC 20002. The description of the purchase order is 'lgf:ct:lgf, Palantir Software License Renewals'. A 'Request Quote' button is visible in the bottom right corner.

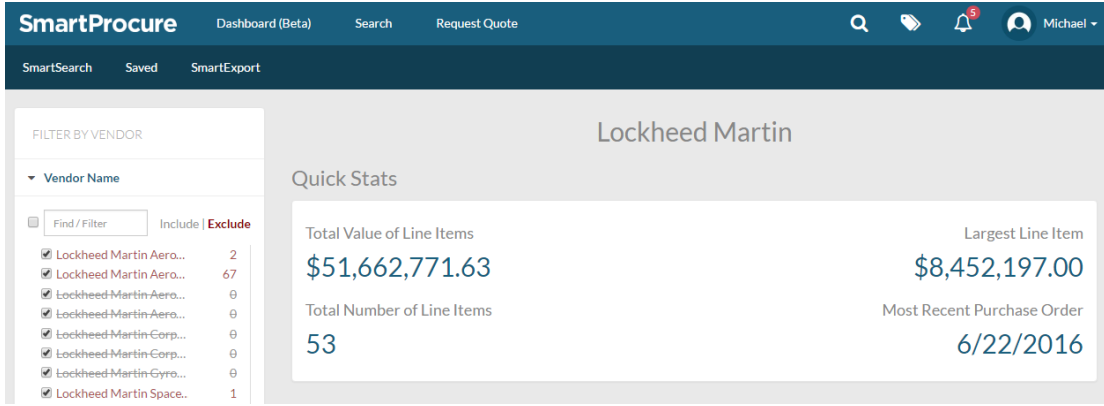
SmartProcure is an online database that tracks federal procurement data based on publicly available contracts and purchase orders. The above images were captured on April 11, 2017 and display the total value of contracts stored on SmartProcure that have been made between U.S. Customs and Border Protection and third-party vendors for licenses to Palantir software, as of April 11, 2017. This information was obtained through a filtered search on the SmartProcure database for all contracts made by U.S. Customs and Border Protection pertaining to Palantir Technologies.

Appendix D

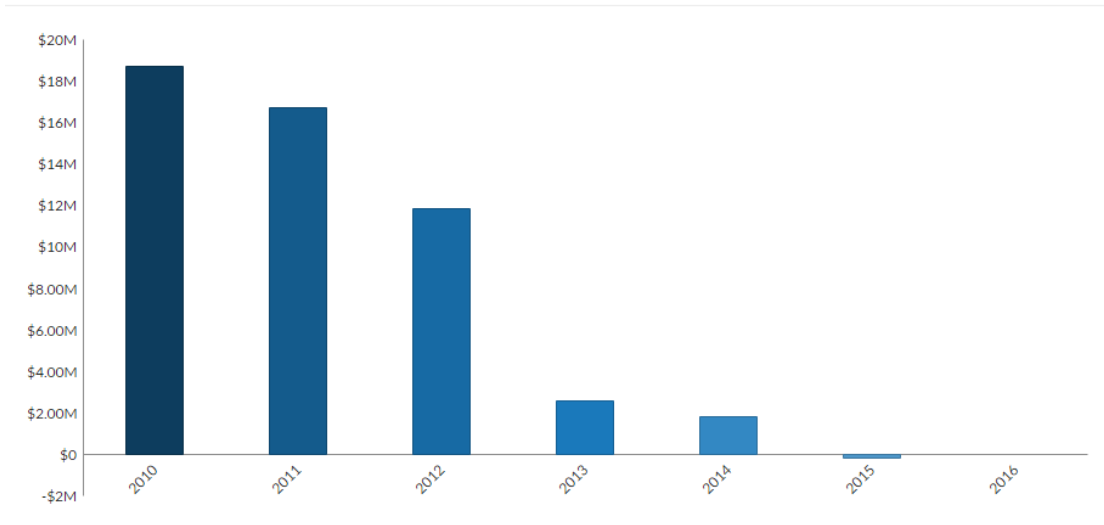


SmartProcure is an online database that tracks federal procurement data based on publicly available contracts and purchase orders. The above images were captured on April 11, 2017 and display the total value of contracts stored on SmartProcure that have been made between U.S. Immigration and Customs Enforcement and Palantir Technologies up until April 11, 2017. This information was obtained by visiting the vendor profile of Palantir Technologies on SmartProcure and filtering the company’s statistics to show only the value of purchases made by ICE for products or services offered by Palantir.

Appendix E



Total Value of Line Items By Year



SmartProcure is an online database that tracks federal procurement data based on publicly available contracts and purchase orders. The above images were captured on April 11, 2017 and display the total value of contracts stored on SmartProcure that have been made between U.S. Customs and Border Protection and Lockheed Martin, excluding contracts with Lockheed Martin’s aeronautical divisions, up until April 11, 2017. This information was obtained by visiting the vendor profile of Lockheed Martin on SmartProcure and filtering the company’s statistics to show only the value of purchases made by CBP from divisions of Lockheed Martin that are not specifically related to aeronautical services.