



March 16, 2017

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VIA ELECTRONIC MAIL TO ICE-FOIA@dhs.gov

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

**Re: Request Under Freedom of Information Act
(Expedited Processing & Fee Waiver/Limitation Requested)**

To Whom It May Concern:

The American Civil Liberties Union of Pennsylvania¹ submits this Freedom of Information Act (“FOIA”) request (“Request”) for records about agreements between any Pennsylvania law enforcement agencies and U.S. Immigrations and Customs Enforcement (“ICE”) pursuant to Section 287(g) of the Immigration and Nationality Act, as well as any requests from any Pennsylvania law enforcement agencies to enter into 287(g) agreements or any other agreements with ICE.

I. Records Requested

For the purposes of this Request, “Records” are collectively defined to include, but are not limited to: contracts or agreements; memoranda of understanding; e-mails; instructions; directives; guidance documents; reports; legal and policy memoranda; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; social-media posts; communications made through any website or web service, whether private or public (including, but not limited to, iMessage, WhatsApp, Signal, Gchat, Snapchat, or Twitter); text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text, or Blackberry Messenger); images, video, and audio recorded on cell phones; voicemail messages; and minutes or notes of meetings and phone calls. We seek release of the following:

- A. Records concerning any current agreements between any Pennsylvania law enforcement agencies and ICE pursuant to Section 287(g) of the Immigration and Nationality Act or any other agreements authorizing state or local law enforcement agents to perform the functions of an immigration officer;
- B. Records concerning any requests from any Pennsylvania law enforcement agencies to enter into an agreement

¹ The American Civil Liberties Union of Pennsylvania is a 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation of Pennsylvania is a separate 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, and provides analyses of pending and proposed legislation. They are affiliates of the national American Civil Liberties Union.

under Section 287(g) of the Immigration and Nationality Act, or any other agreements authorizing state or local law enforcement agents to perform the functions of an immigration officer with ICE since November 8, 2016;

- C. Records concerning any request from any Pennsylvania law enforcement agencies to enter into any other type of agreement with ICE since November 8, 2016; and
- D. Records concerning any communications between ICE and any Pennsylvania law enforcement agencies concerning Section 287(g) of the Immigration and Nationality Act or any other agreements authorizing state or local law enforcement agents to perform the functions of an immigration officer since November 8, 2016.

II. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed 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)(II).

A. The ACLU is an organization primarily engaged in disseminating information to inform the public about actual or alleged government activity.

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding 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” to be “primarily engaged in disseminating information”).²

Public education is one of the three central pillars of the work performed by the ACLU of Pennsylvania, which routinely creates and disseminates informational literature. The ACLU of Pennsylvania maintains a website that contains updates about its litigation, advocacy, and other civil liberties news.³ In 2016, the website received 266,113 visitors. The most populated page contains fourteen Know Your Rights publications on topics ranging from rights at a protest to interactions with police and immigration agents. The website contains a blog about current civil liberties issues that received 12,632 visitors in 2016.⁴ The ACLU of Pennsylvania also has more than 20,000 followers on social media and 69,545 e-mail subscribers who receive updates on the

² Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

³ ACLU of Pennsylvania, *ACLU of Pennsylvania Home*, <https://www.aclupa.org>.

⁴ ACLU of Pennsylvania, *Speaking Freely: The Official Blog of the American Civil Liberties Union of Pennsylvania*, <https://blog.aclupa.org/>.

ACLU of Pennsylvania's activities. The organization released 34 press releases about its actions in 2016.⁵

On a national level, the ACLU publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. The ACLU also publishes regular updates and alerts via email to approximately 2.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,⁶ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁷

The ACLU website includes many features on information obtained through the FOIA.⁸ For example, the ACLU's "Predator Drones FOIA" webpage⁹ contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions

⁵ See, e.g., ACLU of Pennsylvania, *ACLU-PA Sues City of Philadelphia Over Free Speech Restrictions During DNC* (Jun. 23, 2016), <https://www.aclupa.org/news/2016/06/23/aclu-pa-sues-city-philadelphia-over-free-speech-restrictions>.

⁶ See, e.g., Press Release, American Civil Liberties Union, *U.S. Releases Drone Strike 'Playbook' in Response to ACLU Lawsuit* (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *Secret Documents Describe Graphic Abuse and Admit Mistakes* (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit* (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, *Justice Department White Paper Details Rationale for Targeted Killing of Americans* (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement* (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>. See also Press Release, American Civil Liberties Union of Virginia, *ACLU of Virginia Demands Release of Records on Police Cell Phone Database* (Oct. 24, 2014), <https://acluva.org/16226/aclu-of-virginia-demands-hampton-roads-releases-information-related-to-telephone-analysis-sharing-network/>; Press Release, American Civil Liberties Union of Virginia, *ACLU of Virginia Decries Roanoke Mayor's Statements Invoking Japanese Internment* (Nov. 18, 2015), <https://acluva.org/18137/aclu-of-virginia-decries-roanoke-mayors-statements-invoking-japanese-internment/>; Press Release, American Civil Liberties Union of Virginia, *ACLU-VA Supports Gov. McAuliffe's Position on Syrian Refugees* (Nov. 17, 2015), <https://acluva.org/18131/aclu-va-supports-gov-mcauliffes-position-on-syrian-refugees/>; Press Release, American Civil Liberties Union of Virginia, *ACLU of Virginia Launches "The People's Body-Cam"* (Nov. 13, 2015), <https://acluva.org/18125/aclu-of-virginia-launches-the-peoples-body-cam/>.

⁷ See, e.g., Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <https://www.washingtonpost.com/>

⁸ See, e.g., <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-defense>; <https://www.aclu.org/mappingthefbi>; <https://www.aclu.org/cases/bagram-foia>; <https://www.aclu.org/national-security/csrt-foia>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <https://www.aclu.org/patriot-foia>; <https://www.aclu.org/nsi-documents-released-dod?redirect=cpredirect/32088>.

⁹ <https://www.aclu.org/national-security/predator-drones-foia>,

about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online “Torture Database,” a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.¹⁰

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.¹¹ Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act;¹² a chart of original statistics about the Defense Department’s use of National Security Letters based on its own analysis of records obtained through FOIA requests;¹³ and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.¹⁴

The ACLU of Pennsylvania plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requester plans to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

These records are urgently needed to inform the public about actual or alleged government activity. See 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records will be used to inform the public about ICE’s current and forthcoming agreements with local law enforcement agencies in Pennsylvania to permit those agencies to detain individuals based on immigration status. This is an issue of national import that is rapidly developing, and there are open questions about the level of cooperation between local law enforcement agencies and ICE, as well as the legality of enforcement of federal immigration law by local police departments.¹⁵ The uncertainty has led to concerns about unlawful detention and other civil rights abuses. The ACLU plays an important role in informing and providing context to the public and the press about civil rights matters.

¹⁰ <https://www.thetorturedatabase.org>. See also <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

¹¹ https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

¹² <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

¹³ https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

¹⁴ <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

¹⁵ See, e.g., WFMZ-69 News, “Immigration Officials Detain Alleged Undocumented Immigrants in Poconos,” <http://www.wfmz.com/news/poconos-coal/immigration-officials-detain-alleged-undocumented-immigrants-in-poconos/352640956>; Christine Vendel, “Immigration Agents Flood Allison Hill in Harrisburg: ‘Families Have Been Broken Up,’” Penn Live (Mar. 10, 2017), http://www.pennlive.com/news/2017/03/immigration_raids_allison_hill.html.

Given the foregoing, we have satisfied the requirements for expedited processing of this Request.

III. Application for Waiver or Limitation of Fees

As explained below, we request a waiver of document search, review, and duplication fees on two grounds: (1) that disclosure of the requested records is in the public interest and because disclosure 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,” 5 U.S.C. § 552(a)(4)(A)(iii), and (2) that we qualify as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A. The Request 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 ACLU.

As discussed above, news accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Especially because little specific information has been made public about how ICE is coordinating with local law enforcement agencies—and which agencies have affirmatively sought authority to detain individuals based on immigration status—the records sought are certain to contribute significantly to the public’s understanding of these issues.

We are not filing this Request to further our commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

B. The ACLU is a representative of the news media and the records are not sought for commercial use.

We also request a waiver of search fees on the grounds that we qualify as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). We meet the statutory and regulatory definitions of a “representative of the news media” because that is defined as an “entity that 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); *see also Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women’s Action Network v. U.S. Dep’t of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and

Department of Veterans Affairs); *ACLU of Wash. v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “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”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). We are therefore a “representative of the news media” for the same reasons that we are “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” to be a news media requester).¹⁶

On account of these factors, fees associated with responding to FOIA requests are regularly waived for us as a “representative of the news media.”¹⁷ As was true in those instances, we meet the requirements for a fee waiver here.

¹⁶ Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

¹⁷ In 2005 and again in 2006, the FBI, Department of Defense, and Department of Homeland Security did not charge the ACLU of Pennsylvania fees in response to a FOIA request for documents relating to the surveillance of anti-war protestors. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted a fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU for a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The DOJ did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the DOJ Office of Information and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

* * *

Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. See 5 U.S.C. § 552(a)(6)(E)(ii).

If the Request is denied in whole or in part, we ask that you justify all deletions by reference to specific FOIA exemptions. 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 deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records electronically, if possible, to achristy@aclupa.org.

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).

Respectfully submitted,

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