

FOIA Request / Expedited Processing Requested

February 7, 2025

Electronically submitted via OMB FOIA portal and via email
U.S. DOGE Service (aka U.S. Digital Service, aka Department of
Government Efficiency)
ATTN: FOIA Officer
USDS@omb.eop.gov



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

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU")¹ submit this Freedom of Information Act ("FOIA") request (the "Request") for records pertaining to access to sensitive agency records by individuals associated with the so-called Department of Government Efficiency ("DOGE"), also known as the U.S. Digital Service or U.S. DOGE Service.

I. Background

In August 2014, President Obama founded the U.S. Digital Service within the Office of Management and Budget, with the goal to "br[ing] together the best engineering, design, and government talent to change our government's approach to technology." U.S. Digital Service, *Our mission*, <https://www.usds.gov/mission> (last visited Feb. 6, 2025). On January 20, 2025, President Trump issued an executive order renaming the United States Digital Service as the "United States DOGE Service (USDS)," with "DOGE" standing for "Department of Government Efficiency." White House, *Establishing and Implementing the President's "Department of Government Efficiency"* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/establishing-and-implementing-the-presidents-department->

¹ The American Civil Liberties Union Foundation is a 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educates the public about civil rights and civil liberties issues across the country. The American Civil Liberties Union is a separate non-profit, 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.

of-government-efficiency/. Within the United States DOGE Service, President Trump established a temporary organization, “the U.S. DOGE Service Temporary Organization,” pursuant to 5 U.S.C. § 3161. *Id.* For purposes of this Request, these entities are collectively referred to as “USDS.”

In the weeks since, numerous press reports have discussed individuals affiliated with or representing USDS requesting or gaining access to various federal agency systems of records, data repositories, databases, computer matching programs, and other systems containing sensitive information. This reportedly includes the Treasury Department’s payment system; personnel records of federal employees, contractors, and applicants; federal student loan records; federal benefits payee records; and more. Many of these records are protected by federal laws and regulations, including the Privacy Act, the Health Information Portability and Accountability Act (HIPAA) and the HIPAA Privacy Rule, the E-Government Act of 2002, including the Federal Information Security Management Act and the Confidential Information Protection and Statistical Efficiency Act, taxpayer privacy laws including 26 U.S.C § 6103, and other provisions. Serious concerns have been raised about whether USDS access to or use of these sensitive records violates these and other federal privacy protections.

Additionally, reports have indicated that individuals associated with USDS have proposed or implemented programs to use artificial intelligence to analyze large volumes of federal government records for purposes including identifying “potential redundancies and budget reductions.”² This raises concerns about whether U.S. government actors are outsourcing important and complex decision-making to black-box AI algorithms, and whether feeding people’s sensitive information to unvetted algorithms further risks compromising Americans’ privacy.

To provide the American public with information about this highly consequential and fast-moving situation, the ACLU seeks information through this FOIA request.

Defined Terms

For purposes of this Request:

“Written communications” includes, but is not limited to, emails, SMS messages, and messages on applications such as Signal, Telegram, iMessage, WhatsApp, Slack, and Microsoft Teams.

² Kate Conger *et al.*, *Musk Allies Discuss Deploying A.I. to Find Budget Savings*, N.Y. Times (Feb. 3, 2025), <https://www.nytimes.com/2025/02/03/technology/musk-allies-ai-government.html>.

“USDS” includes the entities known as the U.S. Digital Service, U.S. DOGE Service, U.S. DOGE Service Temporary Organization, Department of Government Efficiency, and DOGE.

“Persons affiliated with or representing USDS” includes, but is not limited to:

(1) any individual employed by, volunteering with, or working in consultation with USDS, including as a Special Government Employee,

(2) any Special Government Employee who began work with a federal agency on or after Jan. 20, 2025,

(3) any employee hired by a federal agency since Jan. 20, 2025, who previously worked at Tesla, Inc.; X Corp.; Space Exploration Technologies Corporation (SpaceX); The Boring Company (TBC); or X.AI Corp;

(4) the following named individuals, who have been publicly reported³ as being affiliated with or representing USDS:

- Baris Akis,
- Anthony Armstrong,
- Riccardo Biasini,
- Brian Bjelde,
- Akash Bobba,
- Nate Cavanaugh,
- Edward Coristine,
- Steve Davis,
- Stephen Ehikian,
- Marko Elez,
- Luke Farritor,
- Nicole Hollander,
- Stephanie Holmes,

³ See, e.g., Avi Asher-Schapiro *et al.*, *Elon Musk’s Demolition Crew*, ProPublica (Feb. 6, 2025), <https://projects.propublica.org/elon-musk-doge-tracker/>; Daniel Barnes *et al.*, Trump administration agrees to restrict DOGE access to Treasury Department payment systems, NBC News (Feb. 5, 2025), <https://www.nbcnews.com/politics/politics-news/trump-administration-agrees-restrict-doge-access-treasury-department-p-rcna190898>; Revolving Door Project, *The People Reportedly Aiding Elon Musk and DOGE’s Attack on the Federal Government* (Feb. 5, 2025), <https://therevolvingdoorproject.org/reportedly-doge/>; Tim Reid, *Exclusive: Musk aides lock workers out of OPM computer systems*, Reuters (Feb. 2, 2025), <https://www.reuters.com/world/us/musk-aides-lock-government-workers-out-computer-systems-us-agency-sources-say-2025-01-31/>; Vittoria Elliott, *The Young, Inexperienced Engineers Aiding Elon Musk’s Government Takeover*, WIRED (Feb. 2, 2025), <https://www.wired.com/story/elon-musk-government-young-engineers/>; Natalie Alms, *Musk visits and asserts growing influence at GSA*, Nextgov/FCW (Jan. 30, 2025), <https://www.nextgov.com/people/gsa/402628>.

- Gautier “Cole” Killian,
- Gavin Kliger,
- Michael Kratsios,
- Tom Krause,
- Matt Luby,
- Katie Miller,
- Justin Monroe,
- Nikhil Rajpal,
- Rachel Riley,
- Michael Russo,
- Amanda Scales,
- Ethan Shaotran,
- Christopher Stanley,
- Thomas Shedd,
- Brad Smith,
- Joanna Wischer;

and

(5) others acting under the supervision or at the direction of the persons described in categories (1)–(4).

Requested Records

The ACLU seeks the release of records for the period beginning at noon Eastern Standard Time on January 20, 2025—including but not limited to written communications and memoranda—concerning the following:

- (1) Any request by persons affiliated with or representing USDS for access to any data repository, database, system of records, computer matching program, code base, or other system containing personally identifiable information (PII), personnel records (including records of federal employees, contractors, and applicants), financial data, health data, or other sensitive data, and any response to such request;
- (2) Any decision, analysis, or discussion about whether persons affiliated with or representing USDS may access any data repository, database, system of records, computer matching program, code base, or other system containing personally identifiable information (PII), personnel records (including records of federal employees, contractors, and applicants), financial data, health data, or other sensitive data;
- (3) Any decision, analysis, or discussion about whether access to any data repository, database, system of records, computer matching program, code base, or other system containing personally identifiable information (PII), personnel records, financial data, health data, or other sensitive data by persons affiliated with or

representing USDS is prohibited or constrained by statute, regulation, or rule. This includes but is not limited to any discussion of protections provided by the Privacy Act; the Health Information Portability and Accountability Act (HIPAA) and the HIPAA Privacy Rule; the E-Government Act of 2002, including the Federal Information Security Management Act and the Confidential Information Protection and Statistical Efficiency Act; taxpayer privacy laws including 26 U.S.C § 6103; the Family Educational Rights and Privacy Act (FERPA); and census record privacy laws including 13 U.S.C. §§ 9 & 214;

- (4) Any proposed or actual use of artificial intelligence, including but not limited to services, models, or other software applications provided by xAI or Grok, by persons affiliated with or representing USDS, or by others acting under the supervision or at the direction of such persons, to analyze agency records or data.
- (5) Any decision, analysis, or discussion about data security, disclosure, and security protocols for adoption by persons affiliated with or representing USDS expected to handle personally identifiable information (PII), personnel records, financial data, or other sensitive data.
- (6) Any decision, analysis, or discussion about persons affiliated with or representing USDS using personal electronic devices and accounts in the course of their work, including but not limited to: email accounts hosted by non-governmental service providers (including but not limited to Proton Mail, Gmail, services provided by commercial employers such as Tesla); non-governmental cell phones; non-governmental laptops; non-governmental accounts with messaging apps (including but not limited to iMessage, Signal, Telegram, WhatsApp, Slack, and Microsoft Teams); accounts on coding-related services such as GitHub created or maintained by such persons prior to January 20, 2025; and social media profiles created and maintained by such persons prior to January 20, 2025.
- (7) Any decision, analysis, or discussion by persons affiliated with or representing USDS about steps to ensure data security and privacy when processing personally identifiable information (PII), personnel records, financial data, or other sensitive data through artificial intelligence software by persons affiliated with or representing USDS.
- (8) Any decision, analysis, or discussion by persons affiliated with or representing USDS about the personally identifiable information, personnel records, financial data, or other sensitive data of individual government employees, contractors, or aid beneficiaries.

- (9) Any analysis or discussion by persons affiliated with or representing USDS with persons outside of the Executive Branch relating to or using personally identifiable information, personnel records, financial data, or other sensitive data. For the purposes of this request, “persons outside of the United States government” includes informal advisors to USDS, volunteers seeking to assist USDS, or any other persons lacking a formal employment relationship with any component of the United States government’s Executive Branch.
- (10) Any decision, analysis, or discussion about permitting persons affiliated with or representing USDS to access any data repository, database, system of records, code base, or other system containing personally identifiable information (PII), personnel records, financial data, or other sensitive data without having undergone the standard or usual background investigation or training needed to access the data or system at issue.
- (11) Any messages or communications sent by persons affiliated with or representing USDS through personal electronic devices or accounts in the course of their work, including but not limited to: email accounts hosted by non-governmental service providers (including but not limited to Proton Mail, Gmail, services provided by commercial employers such as Tesla); non-governmental cell phones; non-governmental laptops; non-governmental accounts with messaging apps (including but not limited to iMessage, Signal, WhatsApp, Slack, and Microsoft Teams); accounts on coding-related services such as GitHub created or maintained by such persons prior to January 20, 2025; and social media profiles created and maintained by such persons prior to January 20, 2025.
- (12) All Slack messages sent to, from, or among persons affiliated with or representing USDS.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and the Agency’s regulations. 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 in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. 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”).⁴

The ACLU regularly publishes the *ACLU* magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 1 million donors. The ACLU also publishes regular updates and alerts via email to 4.8 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 6.6 million social media followers. 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,⁵

⁴ 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. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

⁵ *See, e.g.*, Press Release, ACLU, Government Releases New Court Opinions Highlighting Further Abuse of Warrantless FISA Surveillance Program (July 21, 2023); Press Release, ACLU, New Records Detail DHS Purchase and Use of Vast Quantities of Cell Phone Location Data (July 18, 2022), <https://www.aclu.org/news/privacy-technology/new-records-detail-dhs-purchase-and-use-of-vast-quantities-of-cell-phone-location-data>; Press Release, ACLU, ACLU Files FOIA Request Seeking Records Related to Detained Immigrants’ Ability to Access Counsel (December 17, 2021), <https://www.aclu.org/press-releases/aclu-files-foia-request-seeking-records-related-detained-immigrants-ability-access>; Press Release, ACLU, ACLU Files FOIA Request to Uncover COVID Impact and Cost of Federal Executions (August 6, 2022), <https://www.aclu.org/press-releases/aclu-files-foia-request-uncover-covid-impact-and-cost-federal-executions>; Press Release, ACLU, New Records Detail How the FBI Pressures Police to Keep Use of Shady Phone Surveillance Technology a Secret (June 22, 2023), <https://www.aclu.org/press-releases/new-records-detail-how-the-fbi-pressure-police-to-keep-use-of>

and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁶

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various

shady-phone-surveillance-technology-a-secret; Press Release, ACLU, ACLU Announces Major Settlement in Family Separation Lawsuit (October 16, 2023), <https://www.aclu.org/press-releases/aclu-announces-major-settlement-in-family-separation-lawsuit>; Press Release, ACLU, In Win for Black Voters, Supreme Court Rejects Alabama's Appeal in Milligan and Reaffirms State Must Draw Second Opportunity District Press Release, ACLU, Federal Court Permanently Blocks Billions of Dollars in Border Wall Construction (June 28, 2019), <https://www.aclu.org/press-releases/federal-court-permanently-blocks-billions-dollars-border-wall-construction>; Press Release, ACLU, New Documents Reveal NSA Improperly Collected Americans' Call Records Yet Again (June 26, 2019), <https://www.aclu.org/press-releases/new-documents-reveal-nsa-improperly-collected-americans-call-records-yet-again>; Press Release, ACLU, ACLU and Center for Media Justice Sue FBI for Records on Surveillance of Black Activists (Mar. 21, 2019), <https://www.aclu.org/press-releases/aclu-and-center-media-justice-sue-fbi-records-surveillance-black-activists>; Press Release, ACLU, ACLU, Privacy International Demand Government Disclose Nature and Extent of Hacking Activities (Dec. 21, 2018).

⁶ See, e.g., Corin Faife, *Feds Are Tracking Phone Locations With Data Bought From Brokers*, The Verge (July 18, 2022), <https://www.theverge.com/2022/7/18/23268592/feds-buying-location-data-brokers-aclu-foia-dhs>; Jessica Votipka, ACLU Files Suit Against Grand Island School That Ended High School Newspaper, Journal Star (Mar. 31, 2023), https://journalstar.com/news/state-and-regional/crime-and-courts/aclu-files-suit-against-northwest-public-schools/article_4c514454-abc7-533f-b133-498c140cd030.html; Charlie Savage, *N.S.A. Gathered Domestic Calling Records It Had No Authority to Collect*, N.Y. Times (June 26, 2019), <https://www.nytimes.com/2019/06/26/us/telecom-nsa-domestic-calling-records.html> (quoting ACLU attorney Patrick Toomey); Rachel Frazin, *ACLU Sues FBI Over Black Activist Surveillance Records*, Hill, Mar. 21, 2019, <https://thehill.com/policy/national-security/fbi/435143-fbi-sued-over-black-activist-surveillance-records> (quoting ACLU attorney Nusrat Choudhury); Cora Currier, *TSA's Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept (Feb. 8, 2017), <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program> (quoting ACLU attorney Hugh Handeyside); Larry Neumeister, *Judge Scolds Government over Iraq Detainee Abuse Pictures*, The Associated Press (Jan. 18, 2017), <https://www.apnews.com/865c32eebf4d457499c017eb837b34dc> (quoting ACLU project director Hina Shamsi); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About 'Torture' in Its Former Detention Program*, ABC (June 15, 2016), <http://abcn.ws/2jy40d3> (quoting ACLU attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nathan Freed Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR (Dec. 9, 2015), <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.⁷ The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. See <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, including analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and

⁷ See, e.g., ACLU, *Bad Trip: Debunking the TSA’s ‘Behavior Detection’ Program* (2017), https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (2016), <https://www.aclu.org/report/leaving-girls-behind>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>.

educational multi-media features.⁸

The ACLU website includes many features on information obtained through the FOIA. For example, 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 its contents relating to government policies on rendition, detention, and interrogation.⁹ The ACLU has also published a number of charts and

⁸ See, e.g., *ACLU v. ODNI*—FOIA Lawsuit Seeking Records About Government Surveillance Under the USA Freedom Act, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-odni-foia-lawsuit-seeking-records-about-government-surveillance-under-usa-freedom-act>; *ACLU v. DOJ*—FOIA Lawsuit Seeking Information on Federal Agencies’ Surveillance of Social Media, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-seeking-information-federal-agencies-surveillance-social-media>; *ACLU v. DOJ*—FOIA Case for Records Relating to Targeted Killing Law, Policy, and Casualties, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-case-records-relating-targeted-killing-law-policy-and-casualties>; Executive Order 12,333—FOIA Lawsuit, ACLU Case Page, <https://www.aclu.org/cases/executive-order-12333-foia-lawsuit>; ACLU Motions Requesting Public Access to FISA Court Rulings on Government Surveillance, ACLU Case Page, <https://www.aclu.org/cases/aclu-motions-requesting-public-access-fisa-court-rulings-government-surveillance>; *ACLU v. DOJ*—FOIA Lawsuit Demanding OLC Opinion “Common Commercial Service Agreements, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-demanding-olc-opinion-common-commercial-service-agreements>; FOIA Request for Justice Department Policy Memos on GPS Location Tracking, ACLU Case Page, <https://www.aclu.org/cases/foia-request-justice-department-policy-memos-gps-location-tracking>; Florida Stingray FOIA, ACLU Case Page, <https://www.aclu.org/cases/florida-stingray-foia>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida*, (Feb. 22, 2015) <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida?redirect=blog/national-security-technology-and-liberty/aclu-obtained-documents-reveal-breadth-secretive-sting>.

⁹ The Torture Database, ACLU, <https://www.thetorturedatabase.org> (last visited May 11, 2017). See also, e.g., *Countering Violent Extremism FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; ACLU, *Targeted Killing FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>; ACLU, *ACLU v. CIA - FOIA Case for Records Relating to Drone Killings*, ACLU Database, <https://www.aclu.org/national-security/predator-drones-foia>; ACLU, *FBI Releases Details of 'Zero-Day' Exploit Decisionmaking Process*, Free Future Blog (June 26, 2015, 11:00 AM), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; ACLU, *FBI Documents Reveal New Information on Baltimore Surveillance Flights*, Free Future Blog (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; ACLU, *ACLU v. DOJ - FOIA Case for Records Relating to Killing of Three U.S. Citizens* (Dec. 30, 2016), <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; ACLU, *ACLU v. Dep't of Defense* (Aug. 18, 2015), <https://www.aclu.org/cases/aclu-v-department-defense>; ACLU,

explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA.¹⁰

The ACLU 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 Requesters plan 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, they pertain to whether federal agencies are violating federal laws, regulations, or policies by providing extraordinary access to sensitive information to individuals associated with or representing USDS. USDS activities are the subject of widespread and intense public controversy and media attention, with multiple new breaking news stories published daily, including about USDS access to sensitive information,¹¹ and USDS use of

Mapping the FBI, <https://www.aclu.org/mappingthefbi>, (last visited May 11, 2017); ACLU, *Bagram FOIA* (Apr. 18, 2013), <https://www.aclu.org/cases/bagram-foia>; ACLU, *CSRT FOIA*, <https://www.aclu.org/national-security/csrt-foia>, (last visited May 11, 2017); ACLU, *ACLU v. DOJ, Lawsuit to Enforce NSA Warrantless Surveillance FOIA* <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>, (last visited May 11, 2017); ACLU, *Patriot FOIA*, <https://www.aclu.org/patriot-foia> (last visited May 11, 2017); ACLU, *NSL Documents Released by DOD*, <https://www.aclu.org/nsl-documents-released-dod?redirect=cpreirect/32088> (last visited May 11, 2017).

¹⁰ ACLU, *FBI Documents Reveal New Information on Baltimore Surveillance Flights*, Free Future Blog (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU (Nov. 29, 2010), <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>; *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance*, ACLU (Mar. 5, 2009), https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf; *Statistics on NSL's Produced by Department of Defense*, ACLU, https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

¹¹ *See, e.g.*, Isaac Stanley-Becker, et al., *Musk's DOGE Agents Access Sensitive Personnel Data, Alarming Security Officials*, Wash. Post (Feb. 6, 2025), <https://perma.cc/A7W5-7BBP>; *Inside Musk's Aggressive Incursion Into the Federal Government*, N.Y. Times (Feb. 3, 2025), <https://www.nytimes.com/2025/02/03/us/politics/musk-federal-government.html>; Andrew Duehren, et al., *Elon Musk's Team Now Has Access to Treasury's Payments System*, N.Y. Times (Feb. 1, 2025), <https://perma.cc/R9RN-DEFE>; Vittoria Elliott, et al., *A 25-Year-Old With Elon Musk Ties Has Direct Access to the Federal Payment System*, WIRED (Feb. 4, 2025), <https://perma.cc/LB74-HWC9>; Lauren Irwin, *Senate Democrat: DOGE Has 'Burrowed Into the Private Information of Every American'*, The Hill (Feb. 6, 2025),

artificial intelligence tools to analyze federal data or records and make decisions.¹² USDS access to sensitive data has also been the subject of multiple lawsuits filed since January 20,¹³ and members of Congress have urgently raised alarms.¹⁴ The records sought relate to a matter of widespread and exceptional public and media interest in the access USDS has to sensitive information.

In spite of the extraordinary public interest in the activities of USDS, USDS and federal agencies have released little information about what access to sensitive data has been granted to individuals associated with USDS, and with what protections, if any. Given the extraordinary interest and the lack of public information, there is an urgent need to inform the public about the access persons affiliated with or representing DOGE or USDS have to sensitive information held by government agencies and the use of AI tools to analyze large repositories of agency records. An extraordinary debate about unprecedented activity within federal agencies is happening now, and accurate public information about agency activities is urgently needed to inform that debate. Expedited processing is therefore appropriate under 5 U.S.C. § 552(a)(6)(E) and the Agency's implementing regulations.

Application for Waiver or Limitation of Fees

The ACLU requests a waiver of document search, review, and duplication fees on the grounds 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). The ACLU also requests a waiver of search fees on the

<https://perma.cc/NPS9-SLDK>; *Musk's DOGE Granted Access to US Medicare and Medicaid Systems*, Reuters (Feb. 5, 2025), <https://perma.cc/36N8-TPAB>; Vittoria Elliott, *DOGE Will Allow Elon Musk to Surveil the US Government From the Inside*, WIRED (Jan. 24, 2025), <https://www.wired.com/story/doge-elon-musk/>.

¹² See, e.g., Hannah Natanson et al., *Elon Musk's DOGE is Feeding Sensitive Federal Data into AI to Target Cuts*, Wash. Post (Feb. 6, 2025), <https://www.washingtonpost.com/nation/2025/02/06/elon-musk-doge-ai-department-education/>; Kate Conger et al., *Musk Allies Discuss Deploying A.I. to Find Budget Savings*, N.Y. Times (Feb. 3, 2025), <https://www.nytimes.com/2025/02/03/technology/musk-allies-ai-government.html>.

¹³ See, e.g., *Alliance for Retired Americans v. Bessent*, No. 25-313 (D.D.C. filed Feb. 3, 2025); Hurubie Meko, *State Attorneys General to Sue Over Musk's Access to Government Systems*, N.Y. Times (Feb. 6, 2025), <https://www.nytimes.com/2025/02/06/nyregion/letitia-james-doge-suit.html>.

¹⁴ See, e.g., Letter from Sen. Mark R. Warner et al. to Susie Wiles, White House Chief of Staff (Feb. 5, 2025), <https://www.kelly.senate.gov/wp-content/uploads/2025/02/DOGE-Letter.pdf>.

grounds that the ACLU qualifies 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, this Request concerns serious questions surrounding the extraordinary access to sensitive agency records by individuals associated with USDS. Little official information is publicly available regarding this topic, so the records sought are certain to contribute significantly to the public’s understanding.

The ACLU is not filing this Request to further its 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 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.*

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies 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). The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it 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.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. 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. 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. 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”). The ACLU is therefore a “representative of the news media” for the same reasons it is “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. 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," a news media requester).¹⁵

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a "representative of the news media."¹⁶ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

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¹⁵ 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 and 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.

¹⁶ The ACLU regularly receives FOIA fee waivers from federal agencies. For example, in June 2018, the U.S. Citizenship and Immigration Services granted a fee-waiver request regarding a FOIA request for documents relating to the use of social media surveillance. In August 2017, CBP granted a fee-waiver request regarding a FOIA request for records relating to a muster sent by CBP in April 2017. In June 2017, the Department of Defense granted a fee-waiver request regarding a FOIA request for records pertaining to the authorities approved by President Trump in March 2017 which allowed U.S. involvement in Somalia. In June 2017, the Department of Defense, the CIA, and the Office of Inspector General granted fee-waiver requests regarding a FOIA request for records pertaining to U.S. involvement in the torture of detainees in prisons in Yemen, Eritrea, and aboard Yemeni or Emirati naval vessels. In May 2017, CBP granted a fee-waiver request regarding a FOIA request for documents related to electronic device searches at the border. In April 2017, the CIA and the Department of State granted fee-waiver requests in relation to a FOIA request for records related to the legal authority for the use of military force in Syria. In March 2017, the Department of Defense Office of Inspector General, the CIA, and the Department of State granted fee-waiver requests regarding a FOIA request for documents related to the January 29, 2017 raid in al Ghayil, Yemen. In June 2016, the Office of the Director of National Intelligence granted a fee-waiver request regarding a FOIA request related to policies and communications with social media companies' removal of "extremist" content. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the Department of Justice for documents related to Countering Violent Extremism Programs.

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, the ACLU asks that you justify all deletions by reference to specific exemptions to FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves 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 the applicable records to:

Nathan Freed Wessler
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, New York 10004
T: 212.549.2500
nwessler@aclu.org

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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).

Sincerely,



Nathan Freed Wessler
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Megan C. Keenan
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