

Exhibit A

February 10, 2025

SUBMITTED BY FIRST CLASS MAIL

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Re: FOIA Request Related to Access to Reproductive Health Services for Unaccompanied Children in the Custody of the Office of Refugee Resettlement

Dear Freedom of Information Officer:

This is a request for production of records (the “Request”) under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and the implementing regulations of the Department of Health and Human Services, 45 C.F.R. Part 5, on behalf of the American Civil Liberties Union (“ACLU”) and National Center for Youth Law (“NCYL”) (collectively, “the Requestors”). The Requestors seek a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 45 C.F.R. § 5.54, the justifications for which are set out in detail following the Request.

Request for Information

The ACLU and NCYL seek any and all records that were prepared, received, transmitted, collected and/or maintained by the Department of Health and Human Services (“HHS”), including all its subcomponents and specifically including the Administration for Children and Families (“ACF”) and the Office of Refugee Resettlement (“ORR”), (collectively, hereafter, “HHS”), that describe, refer, or relate to the policies, guidelines, protocols, procedures, or practices followed or used by HHS and/or ORR and its care providers regarding the identification of and care provided to unaccompanied children (“UCs”) in ORR custody who are pregnant and/or seek information about or access to reproductive healthcare, including abortion, contraception, and pregnancy-related care.

Federal regulations require care providers to report to ORR the discovery of a UC’s pregnancy and a UC’s request for medical services requiring heightened ORR

involvement, such as abortion. *See* 45 C.F.R. § 410.1307(d); *see also id.* § 410.1001 (defining medical services requiring heightened ORR involvement). ORR is also required to maintain data such as “the date on which the unaccompanied child came into ORR custody” and “[i]nformation relating to the unaccompanied child’s placement, removal, or release from each care provider facility in which the unaccompanied child has resided, including the date on which and to whom the child is transferred, removed, or released.” *Id.* § 410.1501(b)-(c).

Unless otherwise noted, we request the records specified below from January 1, 2023 to the present. Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this Request should also be considered within the Request’s scope.

The ACLU and NCYL will accept records and other information that have been redacted pursuant to the Health Insurance and Portability Accountability Act¹ or other statutes or regulations protecting the privacy of individual minors. This request does not seek any personally identifying information of UCs.

Terms

For purposes of this request, the term “records” includes but is not limited to any and all communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, spreadsheets, charts, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

For purposes of this request, the term “HHS” means the Department of Health and Human Services, and any components, subdivisions, offices, or personnel therein.

For purposes of this request, the term “ORR” means the Office of Refugee Resettlement, and any components, subdivisions, offices, or personnel therein, including, but not limited to, the Director of ORR, the Deputy Director of ORR, and Federal Field Specialists (“FFS”).

For purposes of this request, the term “UC Program” means the unaccompanied children program, under which unaccompanied children in the custody of ORR are cared for through a network of ORR-funded care providers.

For purposes of this request, the term “ORR care providers” means a grantee that receives funding from ORR or a subgrantee that receives funding from an ORR grantee, who are charged with the care and custody of UCs as part of the UC Program. “ORR care providers” also refers to out-of-network providers who are charged with the care and custody of UCs as part of the UC Program.

¹ 42 U.S.C. § 1320d-6.

For purposes of this request, the term “minors” or “UCs” refers to unaccompanied children who are in the care and custody of ORR and the ORR care providers pursuant to the UC Program.

Specific Records Requested

Please provide the following for the time period of January 1, 2023 to present:

1. Any and all records, including, but not limited to, Initial Medical Examinations, Serious Medical Procedure Requests (SMRs), Significant Incident Reports (SIRs) and associated documentation, such as UC Case Review notes, Transfer Requests, and completed treatment authorization forms, regarding:
 - a. Pregnancy identification;
 - b. Requests for abortion;
 - c. Access to abortion;
 - d. Requests for pre-natal care;
 - e. Access to pre-natal care;
 - f. Childbirth;
 - g. The use of restraints on pregnant UCs;
 - h. Requests for contraception, including emergency contraception;
 - i. Access to contraception, including emergency contraception; and
 - j. Requests for and/or access to any other family planning service (“including . . . contraceptive products . . . pregnancy testing and non-directive options counseling, sexually transmitted infection (STI) services, and referrals to appropriate specialists,” 45 C.F.R. § 410.1001) or other pregnancy-related or reproductive health service.

2. For each UC in ORR custody identified as pregnant, any and all records, including but not limited to, Initial Medical Examinations, Serious Medical Procedure Requests (SMRs), Significant Incident Reports (SIRs) and associated documentation, such as UC Case Review notes, Transfer Requests, and other communications, demonstrating:
 - a. The date the pregnant UC came into ORR custody;
 - b. The date the UC was identified as being pregnant;
 - c. The date the minor was informed of the pregnancy;
 - d. The state in which the pregnant UC was initially placed;

- e. Whether the pregnant UC was initially placed in or later transferred to a shelter certified to care for pregnant or parenting UCs;
 - f. Whether the pregnant UC was transferred for any reason and, if yes, the state(s) to which the minor was transferred and when;
 - g. Elevation of a case to an FFS and the FFS's written consultation with DHUC and the UC Policy Unit pursuant to Field Guidance #21 when a medical provider requests consent prior to providing medical services to a pregnant UC; and
 - h. The date the UC was released from ORR custody.
3. For each minor who obtained an abortion while in ORR custody, any and all records, including but not limited to, Initial Medical Examinations, Serious Medical Procedure Requests (SMRs), Significant Incident Reports (SIRs) and associated documentation, such as UC Case Review notes, Transfer Requests, and other communications, demonstrating:
- a. The date the minor came into ORR custody;
 - b. The date the minor was informed of the pregnancy;
 - c. The date the minor requested an abortion;
 - d. The elevation of the minor's case by an FFS to their FFS Supervisor, DHUC, and/or the UC Policy Unit, and any subsequent related communications, pursuant to Field Guidance #21 where the minor has requested an abortion but release to an approved sponsor is imminent;
 - e. The date the minor obtained an abortion;
 - f. Whether the minor was transferred to another state to obtain the abortion and, if so, the states she was placed in before, during, and after the abortion and the dates she was in each location;
 - g. Gestational ages at time of pregnancy identification, abortion request, and/or the abortion procedure, if known; and
 - h. The date the minor was released from ORR custody.
4. For each minor who requested but did not ultimately obtain an abortion while in ORR custody, any and all records, including but not limited to, Initial Medical Examinations, Serious Medical Procedure Requests (SMRs), Significant Incident Reports (SIRs) and associated documentation, such as UC Case Review notes, Transfer Requests, and other communications, demonstrating:
- a. The date the minor came into ORR custody;
 - b. The date the minor was informed of the pregnancy;

- c. The date the minor requested an abortion;
 - d. Gestational age at time of pregnancy identification and/or abortion request, if known;
 - e. The elevation of the minor's case by an FFS to their FFS Supervisor, DHUC, and/or the UC Policy Unit, and any subsequent related communications, pursuant to Field Guidance #21 where the minor has requested an abortion but release to an approved sponsor is imminent;
 - f. The reason(s) the minor did not ultimately obtain a requested abortion while in ORR custody;
 - g. Whether the minor was transferred to another state or shelter and, if so, the locations and dates of each placement; and
 - h. The date the minor was released from ORR custody.
5. For each minor who gave birth while in ORR custody, any and all records demonstrating:
 - a. The date the minor came into ORR custody;
 - b. Whether the minor chose to parent or place the newborn for adoption, if known;
 - c. If the minor chose to parent, where the minor and the newborn were placed while in ORR custody;
 - d. The date the minor was released from ORR custody; and
 - e. The state to which the minor was released.
6. Any and all records regarding potential or actual notification of a UC's pregnancy or decision to have an abortion to the UC's parents and/or approved or potential sponsors, including, but not limited to, ORR federal staff declarations documenting good faith reasons necessitating such disclosure and attempts to secure the UC's consent.
7. Any and all individualized in-care safety plans for UCs who are pregnant or parenting, pursuant to ORR Unaccompanied Children Program Policy Guide Section 3.34.
8. Any and all communications to, from, or about a Child Advocate appointed to a minor who is pregnant or parenting, regarding that minor, the pregnancy, and/or her child(ren).
9. Any and all communications to, from, or about a legal service provider representing a minor who is pregnant or parenting, regarding that minor, the pregnancy, and/or her child(ren).

10. Any and all records, including, but not limited to, any ORR policies, memoranda, directives, and guidance, educational materials, and any correspondence between or among HHS personnel, HHS and any other federal agency, and/or ORR and its care providers, regarding:
 - a. Minors' access to contraception (including emergency contraception) while in ORR custody;
 - b. Educational materials shared with UCs regarding sexual health education, consent, anatomy and physiology, puberty and adolescent sexual development, gender identity and expression, and/or access to reproductive health care services post-release;
 - c. Pregnancy testing of UCs;
 - d. The treatment of pregnant minors in ORR custody, including, but not limited to:
 - i. Their initial placement, including prioritizing placement of pregnant UCs and UCs who are victims of sexual-based crimes in states without abortion bans and with broad access to reproductive healthcare for minors;
 - ii. The handling of minors' requests for access to abortion or for information or counseling regarding pregnancy options (including abortion and adoption);
 - iii. Access to pregnancy-related healthcare such as abortion, prenatal care, and childbirth, including any intra-state or inter-state transfer of pregnant UCs to access these services; and
 - iv. Use of restraints on pregnant UCs;
 - e. The process for minors who decide to place a child for adoption following birth while in ORR custody;
 - f. The placement of parenting minors and their children; and
 - g. Services available and provided to survivors of sexual assault.
11. Any and all records regarding accommodations for ORR care providers with sincerely held religious objections to abortion, contraception, or any other type of reproductive healthcare, including:
 - a. Any HHS, ORR, or ORR care provider policies, memoranda, directives, guidance, or communications regarding ORR care providers obtaining, keeping, or implementing a religious accommodation;

- b. Any and all records and communications regarding specific instances where an ORR care provider with a religious accommodation handled a minor's request for care to which the provider objected, including but not limited to records demonstrating:
 - i. The name and location of the objecting ORR care provider;
 - ii. The date the minor came into the ORR care provider's custody;
 - iii. The date the minor was informed of the pregnancy, if relevant;
 - iv. The date the minor requested care to which the ORR care provider objected, and the type of care requested by the minor;
 - v. The date the care provider notified the assigned FFS and Project Officer of the minor's request, pursuant to UAC MAP 3.4.3(B);
 - vi. The date the FFS delivered the required notifications to the minor, pursuant to UAC MAP 3.4.3(B);
 - vii. The FFS's written summary of the meeting sent to the care provider, the assigned Project Officer, DHUC, and the FFS Supervisor, and the details of the meeting documented by the care provider in the UC Case Review, pursuant to UAC MAP 3.4.3(B);
 - viii. Whether the minor was transferred to another shelter at any point, the reason for transfer, the date of any transfer requests, the date(s) of actual transfer, and the shelter(s) to which the minor was transported;
 - ix. The date the minor ultimately obtained the requested care to which the provider objected and, if never obtained, why; and
 - x. The date the minor was released from ORR custody.
- c. Names of the ORR care providers, including any grantees or sub-grantees, who have claimed such a religious accommodation, and the time period(s) for which they have held that accommodation.

Production of Records

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU and NCYL request that responsive electronic records be provided electronically in their native file format, if possible, with all metadata and load files. Alternatively, the ACLU and NCYL request 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. Please do not compress images or downsample the resolution, as this interferes with their legibility.

We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this Request would require HHS to provide multiple copies of identical material, the Request is limited so that only one copy of the identical material is requested. To facilitate a speedy response, we ask that records responsive to this Request be produced on a rolling basis.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon.

Fee Waiver

For two separate reasons, the ACLU and NCYL request that any fees associated with responding to this Request be waived pursuant to 5 U.S.C. § 552(a)(4)(A) and 45 C.F.R. § 5.54. A fee waiver in this instance 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.'").

1. *The Requestors qualify for a fee waiver because disclosure of the requested records is in the public interest and is not primarily in the Requestors' commercial interest.*

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54(a), any fees should be waived or reduced if disclosure is (1) in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and (2) "not primarily in the commercial interest of the requester." Disclosure in this case meets both of these requirements.

- A. *Disclosure is in the public interest as it is likely to contribute significantly to the public's understanding of the operations and activities of the government.*

First, disclosure pursuant to this Request is in the public interest. The requested records pertain to the treatment of unaccompanied immigrant minors in federal custody, and federal agency policy regarding these minors' ability to confidentially access vital reproductive health services while in federal care. Disclosure of these records would shed light on the actual operations of the government and contribute significantly to public understanding of these operations.

Unaccompanied immigrant minors are a highly marginalized group. They come to the United States without their parents or legal guardians, often fleeing violence and abuse.

They face considerable stress, including separation from family and the uncertainty of immigration proceedings. Unaccompanied immigrant minors also have an acute need for reproductive healthcare, in part because a significant portion of these youth are victims of sexual assault, immediately before, during, and after their journeys to the United States.

Understanding ORR's treatment of this vulnerable population, including whether ORR is providing the reproductive healthcare that the minors in its care request and require, is a matter of widespread media and public interest. For example, ORR's prior policy, implemented under the first Trump Administration, that prevented pregnant minors from accessing confidential abortion care while in government custody rightly provoked significant public scrutiny,² prompted intense questioning from legislators in Congress,³ and caused some legislators to call for the firing of then-ORR Director Scott Lloyd.⁴ The revelation of this treatment of pregnant minors in ORR custody also prompted a class action lawsuit, filed by the ACLU on behalf of pregnant unaccompanied immigrant minors, which resulted in a federal court order preliminarily enjoining enforcement of the policy and ultimately led to a settlement prohibiting ORR from obstructing minors' access to abortion or any other pregnancy-related care. That settlement was effectively codified in federal regulations that took effect on July 1, 2024. 45 C.F.R. 410.1000 *et seq.*

Recently, following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), many states have limited access to safe reproductive healthcare, including abortion and miscarriage management care, within their borders. As of July 2024, 56 percent of all youth in ORR custody are detained in states that have banned or severely restricted access to abortion. Unaccompanied children have a need for timely access to this healthcare, even if they are in an ORR shelter in a state that currently limits the access of such medical care. The media and public have an interest in understanding how minors are being treated through these changed circumstances.

² See, e.g., Carter Sherman, *A Raped Migrant Teen Asked Trump Officials for An Abortion. She Got Counseling With Bible Verses and Coloring*, VICE News, Dec. 17, 2018, https://news.vice.com/en_us/article/pa5_wz9/a-raped-migrant-teen-wanted-an-abortion-thetrump-administration-gave-her-anti-abortion-counseling; Christopher Mele, *A.C.L.U. Goes to Court for 2 Undocumented Teenagers Seeking Abortions*, Dec. 15, 2017, <https://www.nytimes.com/2017/12/15/us/abortion-undocumented-aclu.html>.

³ See, e.g., Rebecca Harrington, Business Insider, *Trump's official behind the Jane Doe case urged 'savvy' lawmakers to make women get men's permission before getting abortions*, Oct. 29, 2019, <https://www.businessinsider.com/scott-lloyd-jane-doe-abortion-case-controversialpast-2017-10>; Murray, *Feinstein Demand Answers After Report Reveals Trump Administration Tracked Pregnancies of Young Women in Its Custody*, March 26, 2019, <https://www.help.senate.gov/ranking/newsroom/press/murray-feinstein-demand-answers-after-report-reveals-trump-administration-tracked-pregnancies-of-young-women-in-its-custody>; Tina Vasquez, Rewire, *Senator Calls Out Lie About Trump Official Blocking Immigrant Teens From Abortion Care*, Apr. 27, 2019, <https://rewire.news/article/2018/04/27/senator-calls-lie-trump-official-blocking-immigrant-teens-abortion-care/>.

⁴ See Press Release, ICYMI: Pro-Choice Leaders: HHS Should Stop Forced Dissemination of Deceptive Anti-Abortion Brochure and HHS Secretary Alex Azar Should Fire ORR Director Scott Lloyd, Congressman Jerry Nadler, May 1, 2018, <https://nadler.house.gov/news/documentsingle.aspx?DocumentID=391742>.

Given the significant attention to this issue by advocacy groups, the media, and legislators, the requested records will contribute significantly to the public's understanding of the government's treatment of pregnant minors and minors in need of reproductive healthcare while in ORR custody.

B. Disclosure is not primarily in the commercial interest of the Requestors.

Second, the ACLU and NCYL are not filing this request to further a commercial interest. Both the ACLU and NCYL are 501(c)(3) nonprofit organizations and therefore have no commercial interest. The Requestors intend to make any relevant information obtained through this FOIA request available to the public. The ACLU and NCYL each publish newsletters, news briefings, right-to-know handbooks, practice guides, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, and law students and faculty, for no cost or for a nominal fee.

The ACLU also publishes, analyzes, and disseminates information through its heavily subscribed website, <http://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 website also includes many features on information obtained through FOIA requests. For example, the ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, 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 about targeted killing, and links to the documents themselves.⁵ 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, in February 2017, the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program.⁶ The ACLU plans to analyze, publish, and disseminate to the public any relevant information gathered through this Request at no cost.

NCYL similarly publishes, analyzes, and disseminates information through its website, <http://www.youthlaw.org>. The website addresses youth rights and issues affecting the lives of youth in depth and contains many thousands of documents relating to the issues on which NCYL is focused. NCYL also plans to analyze, publish, and disseminate to the public any relevant information gathered through this Request at no cost.

⁵ See also The Torture Database, <https://www.thetorturedatabase.org> (last visited Jan. 31, 2023); *Countering Violent Extremism FOIA Documents*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

⁶ *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>.

Because disclosure is in the public interest and not primarily in the commercial interest of the Requestors, a fee waiver or reduction pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54(a), is warranted for this Request.

2. *The ACLU also qualifies for a fee waiver because it is a representative of the news media and the records are not sought for commercial use.*

The ACLU is also entitled to a fee waiver 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); 45 C.F.R. § 5.53. 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); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 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); *ACLU v. U.S. Dep’t of Just.*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).⁷

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. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 1,000,000 households. The ACLU also publishes regular updates and alerts via email to approximately 2 million subscribers. These updates are additionally broadcast to 6.6 million social media followers. The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests.⁸ These reports, analyses, multi-media features, including videos and podcasts, as well as case related news and archives addressing civil rights and liberties issues are disseminated widely through various ACLU channels, including the website and social media. The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well

⁷ Other courts have found that the ACLU and organizations with similar missions engaging in information-dissemination similar to the ACLU’s are “primarily engaged in disseminating information.” *Leadership Conf. on C.R. v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Priv. Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

⁸ *See, e.g., Fatal Neglect: How ICE Ignores Deaths in Detention*, ACLU, <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>.

as other breaking news,⁹ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁰ ACLU national projects also regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.¹¹ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

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. In addition, 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>. In 2022 alone, the ACLU's online articles were viewed 6.92 million times. The ACLU also 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>. Therefore, when it conducts these public education and dissemination activities, the ACLU is a representative of the news media.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU's are “representatives of the news media” as well. *See, e.g., Serv. Women's Action Network v.*

⁹ *See, e.g.,* 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/press-releases/new-records-detail-dhs-purchase-and-use-vast-quantities-cell-phone-location-data-0>; Press Release, ACLU, *CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit* (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, *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>.

¹⁰ *See, e.g.,* Julia Ainsley, *DHS spent millions on cellphone data to track Americans and foreigners inside and outside U.S., ACLU report says*, NBC News, July 18, 2022, <https://www.nbcnews.com/politics/immigration/dhs-spent-millions-cellphone-data-track-americans-foreigners-us-says-a-rca38684> (quoting ACLU attorney Nate Wessler); Cora Currier, *TSA's Own Files Show Doubtful Science Behind Its Behavioral Screening 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); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About 'Torture' in Its Former Detention Program*, ABC News, June 15, 2016, <http://abcn.ws/2jy40d;3> (quoting ACLU staff attorney Dror Ladin).

¹¹ *See, e.g.,* GALEN SHERWIN ET AL., ACLU, *LEAVING GIRLS BEHIND: AN ANALYSIS OF WASHINGTON D.C.'S "EMPOWERING MALES OF COLOR" INITIATIVE* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>; Vera Eidelman, *We Sued for Records About Trump's Muslim Bans. Here's What We Found Out*, ACLU (Oct. 24, 2017, 3:15 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA's Torture Site*, ACLU (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/criminal-law-reform/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias>; Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation*, ACLU (Jan. 24, 2018, 3:45 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>.

U.S. Dep't of Def., 888 F. Supp. 2d 282 (D. Conn. 2012) (finding that nonprofit organizations, including ACLU, are representatives of news media because they “have submitted an extensive list of past publications and adequately allege that they intend to publish” on topic of requested records); *Cause of Action v. Internal Revenue Serv.*, 125 F. Supp. 3d 145 (D.D.C. 2015); *Elec. Priv. Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Judicial Watch, Inc. v. Dep't of Just.*, 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); *Nat'l Sec. Archive*, 880 F.2d at 1387 (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 FOIA purposes).¹²

As a representative of the news media, the ACLU plans to analyze and disseminate to the public any relevant information gathered through this Request. The records requested are not sought for commercial use. 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.”¹³ Additionally, a fee waiver would fulfill Congress's legislative intent in amending FOIA.¹⁴

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requestors, and because the ACLU is a representative of the news media, the Requestors are entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide me with prior notice so that we can discuss arrangements.

* * *

Thank you for your prompt attention to this Request. We look forward to receiving

¹² 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., Nat'l Sec. Archive*, 880 F.2d at 1387; *Elec. Priv. Info. Ctr.*, 241 F. Supp. 2d 5; *see also Leadership Conf. on C.R.*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53–54.

¹³ For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted 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 the fee-waiver request related to the same FOIA request issued to the DOJ.

¹⁴ *See Rossotti*, 326 F.3d at 1312 (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requestors.’”) (citation omitted); *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Educ.*, 593 F. Supp. 2d 26 1, 268 (D.D.C. 2009) (“[FOIA's] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

from you an acknowledgement of receipt of this Request within ten working days, 45 C.F.R § 5.24(a), and a determination on this Request within twenty working days pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and 45 C.F.R § 5.24(b). If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the 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 deny a waiver of fees. Please furnish all responsive records to:

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Please call Chelsea Tejada at (332) 204-2832 if you have any questions or wish to obtain further information about the nature of the documents in which we are interested.

Respectfully,



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