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IMMIGRANTS' RIGHTS PROJECT

Via Electronic Mail, Facsimile, and U.S. Mail

April 20, 2018

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

**AMERICAN CIVIL LIBERTIES
UNION FOUNDATION**

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Dear Freedom of Information Officer:

The American Civil Liberties Union Foundation (“ACLU”) submits this Freedom of Information Act (“FOIA”) request for records. *See* 5 U.S.C. § 552 et seq.; 6 C.F.R. § 5 et seq. This is a request for records concerning the Social Security Administration’s sharing of tax return information obtained from the Internal Revenue Service with the Department of Homeland Security.

I. Background

This request reflects recent proposals, reported on in the media, to promote the sharing of information between the Social Security Administration (SSA), the Internal Revenue Service (IRS), and the Department of Homeland Security (DHS). *See, e.g.*, Robert Kraychik, “Exclusive – Rep. Steve King: GOP Leadership Blocked My E-Verify Improvement Proposal,” April 7, 2018, <http://www.breitbart.com/radio/2018/04/07/exclusive-king-gop-leadership-blocked-e-verify-improvement-proposal/> (discussing a proposal that “would mandate cooperation between the IRS, Homeland Security, and the Social Security Administration”). The question of information-sharing between federal government agencies is a current and continuing topic of public concern. *See, e.g.*, Joshua Rodriguez, “How Does Information Sharing Between DHS and Other Non-Enforcement Executive Agencies Work,” Bipartisan Policy Center, April 17, 2018, <https://bipartisanpolicy.org/blog/how-does-information-sharing-between-dhs-and-other-non-enforcement-executive-agencies-work/> (explaining

that because of tax laws, “DHS does not have the unilateral ability to access any IRS information solely to assist in identifying and locating undocumented immigrants for possible deportation”).

Any proposal to require information sharing between the SSA, IRS, and DHS for the purpose of worksite immigration enforcement is particularly concerning because it could violate existing federal law. Title 26 U.S.C. §§ 6103(a) and (b) (of the Internal Revenue Code) provide that tax returns and return information – including, for example, information in Forms W-2 – are confidential unless a specific exception authorizes disclosure elsewhere in § 6103.¹ Although § 6103 authorizes the IRS to disclose return information to the SSA “for purposes of its administration of the Social Security Act,” *see* §§ 6103(l)(1)(A)-(B), § 6103(l)(5), no provision of § 6103 authorizes SSA to share such information with DHS for immigration enforcement purposes. The strict confidentiality of tax returns and related return information is critical to encourage and ensure public compliance with the federal tax laws.



Significantly, the U.S. Court of Appeals for the D.C. Circuit has specifically held that the IRS Code prohibits SSA from disclosing information concerning employers with the highest number of employees with “no-matches” – discrepancies between name and Social Security Number information reported on a Form W-2 and the information in SSA’s records. *Judicial Watch v. Social Security Administration*, 701 F.3d 379 (D.C. Cir. 2012). As the Court held, information concerning employers derived from W-2s is confidential “‘return information’ and [is] protected from disclosure by the Tax Code.” *Id.* at 380.

In light of the clear prohibition on SSA’s sharing of information obtained from IRS forms, and consistent with the SSA’s (and Department of Justice’s) legal position in the *Judicial Watch* case, SSA officials have long recognized that under existing law, SSA *cannot* share this information with DHS. For example, in 2006 an SSA official testified before Congress that because SSA’s “Earnings Suspense File” – a database containing no-match information – “contains privileged taxpayer data, SSA cannot share this information with DHS without specific legislative authorization.” *See* Testimony before the Subcommittees on Social Security and on Oversight, Committee on Ways and Means, House of Representatives, Social Security Numbers: Coordinated Approach to SSN Data

¹ Tax return information is defined broadly to include “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.” 26 U.S.C. § 6103(b).



Could Help Reduce Unauthorized Work, Statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, at 9 (GAO-06-458T) (Feb. 16, 2006), <https://www.gao.gov/new.items/d06458t.pdf>. *See also id.* (“SSA’s Office of Inspector General has recommended that SSA seek legislative authority to share this data with DHS, but SSA responded that it is beyond the agency’s purview to advance legislation to amend the Internal Revenue Code in order to allow DHS access to tax return information. IRS officials have also expressed concern that sharing this data could decrease tax collections and compliance.”); *id.* at 11 (“The ESF also has the potential to provide useful information to DHS, but this information has protected tax status.”).

Notably, when the federal government sought in 2007 to use SSA information concerning mismatches between employee names and Social Security Numbers reported on W-2 forms to justify requiring employers to fire the affected employees, the ACLU and its partners obtained a court injunction blocking the policy. *See AFL-CIO v. Chertoff*, 552 F.Supp.2d 999 (N.D. Cal. 2007). As the plaintiffs in that case asserted, there are many reasons unrelated to an employee’s work-authorization status that W-2 earnings reports may not match SSA records. These include: 1) administrative errors at SSA (for example, erroneous assignment of an SSN previously assigned to another individual); 2) transcription errors in spelling an employee’s name or recording the SSN; 3) employee name changes after marriage or divorce; 4) employees who use a less “foreign” sounding first name for work purposes; and 5) different naming conventions (such as the use of multiple surnames) that are common in many parts of the world, particularly in some Latin American and Asian countries. As a result, many U.S. citizens and other legally authorized workers may have mismatches between the information reported on a W-2 and the information in SSA’s records.

The sharing of tax-related information with DHS also raises numerous other concerns. It not only threatens to undermine public compliance with the tax laws, but may lead to rights violations in the context of worksite raids. DHS’s Immigration and Customs Enforcement (ICE) has conducted multiple worksite enforcement actions in recent months that have had widespread negative impacts on children, families, and the broader community, as well as on local economies. *See, e.g.*, Ryan Devereaux, Alice Speri, “The Day After Trump’s ICE Raid in a Small Tennessee Town, 550 Kids Stayed Home From School,” *the Intercept*, April 10, 2018, <https://theintercept.com/2018/04/10/ice-raids-tennessee-meatpacking-plant/>; Brenda Medina, “Family pleads for release of immigrant with Down syndrome arrested during recent raid,” *Miami Herald*, April 17, 2018, <http://www.miamiherald.com/news/local/immigration/article209114679.html>; Hamed Aleaziz, “Immigration agents raid 77 Northern California workplaces; no arrests reported,” *San Francisco Chronicle*, Feb. 2, 2018, <https://www.sfgate.com/bayarea/article/ICE-workplace-sweep-hits-Northern->

California-12544863.php.

In order to answer the questions raised by the media reports discussed above, and in light of the public's interest in ensuring that confidential tax return and related information is not being unlawfully disclosed to DHS, this request seeks information about the SSA's sharing of information with DHS.

II. Records Requested

Specifically, this request seeks, from January 2017 to the present:

- (1) Any documents and/or communications between SSA and DHS (including ICE or any other component of DHS) concerning the sharing of information or data held by SSA with DHS, ICE, or any other component of DHS.
- (2) Any documents and/or communications between SSA and DHS (including ICE or any other component of DHS) concerning the potential or planned sharing of information or data held by SSA with DHS, ICE, or any other component of DHS.
- (3) Any documents and/or communications concerning the feasibility or lawfulness of, or any other concerns about, the sharing of information or data held by SSA with DHS, ICE, or any other component of DHS.
- (4) Any documents and/or communications between SSA and IRS concerning the actual or potential sharing of information or data held by SSA with DHS, ICE, or any other component of DHS.
- (5) Any documents/or communications between SSA and the SSA Inspector General (IG) related to the lawfulness or feasibility of sharing information between SSA and DHS (including ICE or any other components of DHS), including information that helped form the basis for the SSA's IG determination that additional legislative authority could be required to facilitate information sharing between SSA and DHS, referenced in the GAO report, "Coordinated Approach to SSN Data Could Help Reduce Unauthorized Work," (GAO-06-458T), <https://www.gao.gov/new.items/d06458t.pdf>.
- (6) Any documents and/or communications related to SSA's obligation not to disclose information obtained from tax returns or tax-return related information to other federal agencies.

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). *See also* 6 C.F.R. § 5.5(e)(1). 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 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); 6 C.F.R. § 5.5(e)(1)(ii).

The requested records seek to inform the public about the government's information sharing policies and practices. There is a compelling and urgent need to inform the public about new policies or practices regarding SSA's sharing of information with DHS for immigration enforcement purposes. The potential adverse impact of any such information sharing on the confidentiality of tax-related information, as well as the potential harm to communities potentially affected by DHS's worksite enforcement activities, warrant prompt and immediate review of the bases, interpretation, and implementation of any such information sharing policies or practices.

- B. *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 FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II). *See also* 6 C.F.R. § 5.5(e)(1)(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

The ACLU regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,³ and ACLU

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 *See, e.g.,* Press Release, ACLU, *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, ACLU, *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, 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>; Press Release, ACLU, *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, ACLU, *Documents Show FBI Monitored Bay Area*

attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁴

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. 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.⁵

The ACLU publishes several widely-read blogs 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



Occupy Movement (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

⁴ *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/world/national-security/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856_story.html (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://abcnews.go.com/US/newly-released-cia-documents-reveal-torture-detention-program/story?id=39873389> (quoting ACLU staff 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 Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://www.npr.org/2015/12/09/459026249/cia-torture-report-may-remain-secret> (quoting ACLU project director Hina Shamsi).

⁵ *See, e.g.,* ACLU, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA's Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, *Details Abound in Drone 'Playbook' – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government's "Suspicious Activity Report" Systems* (Oct. 29, 2013), https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf.

cases, as well as 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 educational multi-media features.

The ACLU website includes many features on information obtained through the FOIA.⁶ 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. 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.⁷



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.⁸ Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act⁹; 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 requests¹⁰; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.¹¹

⁶ See, e.g., <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; <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/nsl-documents-released-dod?redirect=cpredirect/32088>.

⁷ <https://www.thetorturedatabase.org>. See also <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

⁸ https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

⁹ <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

¹⁰ https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

¹¹ <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.



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.

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

IV. 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). *See also* 6 C.F.R. § 5.11(k). 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).

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 the sharing of information between SSA and DHS, the records sought are certain to contribute significantly to the public’s understanding of these issues.

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 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.*

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* 6 C.F.R. § 5.11(b)(6); *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”). 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. 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,” a news media requester).¹²

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

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 / 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.

¹³ 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.

As was true in those instances, the ACLU meets the requirements for a fee waiver here.

* * *

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); 6 C.F.R. § 5.5(e)(4).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific FOIA exemptions. 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:



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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.

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,



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