



BRIGITTE AMIRI  
SENIOR STAFF ATTORNEY  
T/212.519.7897

July 31, 2009

By Electronic Mail  
S. Lankford  
FOIA Team Leader  
Information & Records Division  
Office of Administrative Services  
United States Agency for International Development  
Room 2.07C, RRB  
Washington, D.C. 20523-2701  
foia@usaid.gov

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
REPRODUCTIVE  
FREEDOM PROJECT  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2633  
F/212.549.2652  
WWW.ACLU.ORG

Dear S. Lankford:

This is a request for production of records under the Freedom of Information Act, 5 U.S.C. § 552, and the implementing regulations of the United States Agency for International Development (USAID) at 22 C.F.R. § 212.1 *et seq.*

OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

RICHARD ZACKS  
TREASURER

### Definitions

For purposes of this request, the term “**materials**” includes but is not limited to any and all objects, writings, drawings, graphs, charts, tables, electronic or computerized data compilations, budgets, accountings, balance sheets or other financial statements, invoices, receipts, minutes, emails, electronic or computerized documents, photographs, audiotapes, videotapes, transcripts, drafts, correspondence, notes, notes of oral communications, and non-identical copies, including but not limited to copies with notations.

### Requests

Please provide the following materials from Fiscal Year 2004 until present:

1. All materials related to USAID’s Abstinence and Behavior Change for Youth (“ABY”) Program, including but not limited to:

- a. All materials demonstrating the contours of the

program, including the goals of the program and limitations on how the funds should be spent;

- b. Any requests for proposals, announcement of funding opportunities, or any other information about the availability of grants under the ABY program;
- c. Any agreements or contracts between private entities and USAID to provide abstinence education through a grant from the ABY program;
- d. The curricula or other materials used by grantees in the ABY program referenced in the Office of Inspector General's Audit of USAID's Faith-Based and Community Initiatives, No.9-000-09-009-P, Appendix II at 25 (July 22, 2009);

2. All materials related to communications between USAID and the White House Office of Faith-Based and Neighborhood Partnerships, including but not limited to the meeting on April 21, 2009, about the use of religious instruction, references, and activities in curricula used in the ABY program.

3. All material related to communications between USAID and its grantees and/or potential grantees in the ABY program about the limitations or restrictions on the use of religious instruction, references, or activities in abstinence curricula.

4. All materials related to or identifying any statutory and regulatory basis and authorization for the ABY program, including but not limited to any congressional enactments or appropriations to provide for the ABY program.

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 USAID to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested.

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. *See* 22 C.F.R. § 212.36(a).

### Fee Waiver

We request that the fees associated with this request be waived because (1) disclosure is in the public interest and the Requestor does not seek the records for commercial purposes, and (2) the Requestor is considered a member of the news media.

Under § 212.35(e), 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. *See also* 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure in this case meets both of these tests, and 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.'").

The records pertain directly to the operations and activities of the federal government, and more specifically USAID as an administrator of federal taxpayer funds. In particular, the records include the use of USAID funded abstinence education curricula and whether such funds were used constitutionally. Ensuring adherence to the Constitution is in the public interest. Moreover, disclosure will advance the understanding of the general public. This FOIA request seeks information about government funded abstinence-only programs. The ACLU has significant knowledge and expertise regarding abstinence education programs, as demonstrated by publications written by ACLU staff and litigation brought by the organization to challenge funding of certain abstinence education programs.<sup>1</sup> *See* Lorraine Kenny and Julie Sternberg, *Abstinence-Only in the Courts*, SIECUS Report, volume 31, number 6 (Fall 2003); [www.takeissuecharge.org](http://www.takeissuecharge.org) (an ACLU website currently devoted to providing fact sheets, news articles, studies, and other

---

<sup>1</sup> Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU, or the ACLU is not charged fees. For example, ACF waived the fees associated with abstinence-related FOIA requests in 2005-2009.

information on sexuality education, particularly abstinence programs); *ACLU of Massachusetts v. Leavitt*, No. 05-11000-JLT (D. Mass.); *ACLU of Louisiana v. Foster*, No. 02-1440 (E.D. La.). A review of the requested documents will permit us to assess, and bring to light any issues with, the disbursement and use of taxpayer dollars intended to promote abstinence only programs. Because the ACLU has expertise regarding the subject matter of the information requested, we are in a position to contribute to public understanding. Lastly, disclosure is not in the Requesters' commercial interest. The Requesters have no intention of applying for any of the funding mentioned in this request.

Furthermore, the ACLU meets the definition 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 raw materials into a distinct work, and distributes that work to an audience." *National Sec. Archive v. Department of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). See also 22 C.F.R. § 212.35(a)(8) (defining representative of the media as a publisher of periodicals that make their products available to the general public, and an entity that distributes news through alternative forms of media). The ACLU regularly gathers information on issues of public significance; uses its editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials; and distributes those materials to the general public through various channels, such as its heavily subscribed Web site ([www.aclu.org](http://www.aclu.org)), and newsletter sent to its more than 400,000 members, as well as an electronic newsletter, which is distributed to subscribers by e-mail. The ACLU is therefore a "news media entity." Cf. *Electronic Privacy Information Ctr. v. Department of Defense*, 241 F.Supp.2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the media" for purposes of FOIA).

Accordingly, the ACLU requests that the fees be waived. In the event that you decide not to waive the fees, if you determine that the fees authorized by 5 U.S.C. § 552(a)(4)(A) and 22 C.F.R. § 212.35 will exceed \$200, please provide us with prior notice so that we can discuss arrangements.

\* \* \*

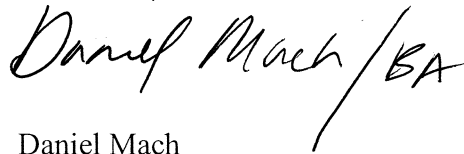
We look forward to a determination on this request from you within 10 (ten) working days pursuant to 22 C.F.R. § 212.34(a). Thank you for your prompt attention to this request. Please call Brigitte Amiri at (212) 519-7897 if you have any questions or wish to obtain further information about the nature of the documents in which we are interested. The records

should be sent to Brigitte Amiri, ACLU, 125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004.

Sincerely,

A handwritten signature in black ink, appearing to be 'BA' with a long horizontal flourish extending to the right.

Brigitte Amiri

A handwritten signature in black ink that reads 'Daniel Mach / BA'.

Daniel Mach

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION