



September 9, 2009

By Electronic Mail

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OFFICERS AND DIRECTORS  
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RICHARD ZACKS  
TREASURER

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.*

**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. Materials related to USAID’s New Partners Initiative (“NPI”), including:

- a. All materials demonstrating the contours of the program, including the goals of the program, limitations on how the funds should be spent, and accountability procedures set up for monitoring use of the funds;
  - b. All materials referring, relating, or evidencing the use of religious curricula, instruction, references, or activities by any recipient or potential recipient of NPI grants or funds, including but not limited to site-visit reports and investigation documents created, submitted, or otherwise maintained by in-country personnel and/or grant managers;
  - c. All requests for proposals, announcements of funding opportunities, or any other information about the availability of NPI grants or funds for the purpose of providing HIV/AIDS prevention services;
  - d. All agreements or contracts between private entities and USAID to provide HIV/AIDS prevention services with NPI grants or funds;
  - e. All documents reflecting past and/or planned future disbursements of NPI grants or funds for the purpose of providing HIV/AIDS prevention services.
2. All materials related to communications between USAID, the Office of the Global AIDS Coordinator, and/or the White House Office of Faith-Based and Neighborhood Partnerships about the use of religious curricula, instruction, references, and activities by any recipient or potential recipient of NPI grants or funds.
  3. All materials related to communications between USAID and its grantees and/or potential NPI grantees about the limitations or restrictions on the use of religious curricula, instruction, references, or activities in providing HIV/AIDS prevention services.
  4. All materials related to or identifying any statutory and regulatory basis and authorization for the NPI program, including but not limited to any congressional enactments or appropriations to provide for the NPI program.
  5. All materials relating or referring to efforts to recoup or recover from recipients those grants or funds awarded under NPI or the Abstinence and Behavior Change for Youth ("ABY") Program, which

were used to promote religious curricula, instruction, references, or activities, including but not limited to:

- a. All materials referring or relating to the procedures available to recoup or recover USAID funds used by recipients in violation of their contracts with USAID, USAID policy, or U.S. law, including but not limited to policies, guidelines, and/or materials reflecting any statutory or regulatory basis for recoupment;
- b. All materials evidencing the actual return of NPI or ABY grants or funds used to promote religious curricula, instruction, references, or activities.

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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 requested records pertain directly to the operations and activities of the federal government, and more specifically, to USAID as an administrator of federal taxpayer funds. In particular, the requested records pertain to the use of USAID funds to operate HIV/AIDS prevention services, including abstinence-education programs, 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. The ACLU has significant knowledge and expertise regarding government-funded religious programs, including religious 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 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 religious HIV/AIDS prevention 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

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<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, the Administration for Children and Families waived the fees associated with abstinence-related FOIA requests in 2005-2009

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.

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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.

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Sincerely,



Daniel Mach / BA

Brigitte Amiri  
Daniel Mach