

EXHIBIT C



August 31, 2018

SENT VIA E-MAIL TO: JHUTT@ACLU.ORG

Jacob J. Hutt
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, New York 10004

Re: **FEMA FOIA Appeal Number 2018-FEAP-00023**
FEMA FOIA Request Number 2018-FEFO-00405

Dear Mr. Hutt:

This is the final response to your Freedom of Information Act (FOIA) appeal to the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), dated June 14, 2018.

In your FOIA request, dated January 23, 2018, you sought copies of the following enumerated categories of records, “pertaining to cooperation between federal, state, and local law enforcement entities and between federal law enforcement entities and private security companies around preparations for anticipated protests against the Keystone XL pipeline.”

- 1- Legal and policy analyses and recommendations related to law enforcement funding for and staffing around oil pipeline protests. Such recommendations may include, but are not limited to, declarations of a state of emergency by state and local entities in order to marshal additional funds, and requests by state or local entities for federal agencies to provide funding or personnel for counter-protest operations;
- 2- Travel of federal employees to speaking engagements, private and public meetings, panels, and conferences on the subject of preparation for oil pipeline protests and/or cooperation with private corporations in furtherance thereof;
- 3- Meeting agendas, pamphlets, and other distributed matter at speaking engagements, private and public meetings, panels, and conferences where federal employees are present to discuss preparation for oil pipeline protests and/or cooperation with private corporations in furtherance thereof;
- 4- Communications between federal employees and state or local law enforcement entities or employees thereof, and between federal employees and private security companies or employees thereof, discussing cooperation in preparation for oil pipeline protests.

With respect to the Office of the Secretary of Defense, the ACLU seeks the release of all records created since January 25, 2017, concerning:

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- 5- Purchases, requests for purchase, and requests by state and local law enforcement officials of riot gear, including but not limited to tear gas, concussion grenades, and water cannons, from the U.S. Department of Defense's Law Enforcement Support Office, also known as the 1033 program.

By letter dated March 23, 2018, FEMA's Information Management Division, Disclosure Branch, provided a final response to the subject FOIA request, informing you that a search was conducted within FEMA's Region VIII for records responsive to your request. Unfortunately, we were unable to locate or identify any responsive records. You appealed the agency's search alleging that FEMA failed to conduct an adequate search for records.

After consideration of your appeal, and a comprehensive review of the administrative record, I am denying your appeal. I determined that a search reasonably calculated to uncover responsive records was conducted.

While FEMA's Mission Statement states that FEMA assists "before, during, and after disasters," FEMA prioritizes the assistance contemplated in the Mission Statement for major, repeating disasters such as floods and hurricanes. For instance, around the time of the Dakota Access Pipeline protests, the State of North Dakota incurred significant law enforcement costs associated with that event. The State submitted a formal declaration request seeking federal financial assistance from FEMA. That request was denied by the President on the grounds that the Stafford Act did not cover that particular event. During the protest, FEMA monitored the situation due to the potential for and eventual receipt of the State's formal request for federal funding, as well as the fact that the State utilized the Emergency Management Assistance Compact, which is assistance from other states, to supplement its own resources. FEMA therefore may have records related to the Dakota Access Pipeline event.

By contrast, FEMA's Region VIII advised Disclosure Branch it received no similar request for assistance regarding any Keystone XL Pipeline protests that may have occurred.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
(OGIS) 8601 Adelphi Road
College Park, MD 20740-6001

E-mail: ogis@nara.gov

Web: <https://ogis.archives.gov>

Telephone: 202-741-5770/Facsimile: 202-741-5769/Toll-free: 1-877-684-6448

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Judicial review of my final action on your appeal is available to you in the United States District Court for the judicial district in which you reside, or in the District of Columbia.

If you have any questions or would like to discuss this matter, please refer to **FEMA 2018-FEAP-00023**.

You may contact this office at (202) 646-3323 or electronically at FEMA-FOIA@fema.dhs.gov.

Sincerely,

William H. Holzerland
Senior Director for Information Management
Office of the Chief Administrative Officer
Federal Emergency Management Agency
U.S. Department of Homeland Security