

Exhibit B



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

January 31, 2018

Jacob Hutt
American Civil Liberties Union
jhutt@aclu.org

Re: FOIA Tracking No. FY18-058

Dear Mr. Hutt:

This letter acknowledges receipt of your January 23, 2018 Freedom of Information Act (“FOIA”) request to the Office of Legal Counsel (“OLC”), among others, seeking four 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,” “created since January 27, 2017.” We received your request on January 23, 2018, and it has been assigned tracking number **FY18-058**. Based on our preliminary review of your request, and pursuant to 28 C.F.R. § 16.5(b), your request has been tentatively assigned to the “complex” processing track. If you would like to narrow your request so that it can be transferred to the “simple” track and processed more quickly, please contact Melissa Golden at the address and phone number provided below.

You have requested expedited treatment of your request on the ground that the documents sought are “urgently needed to inform the public about actual or alleged government activity.” *See* 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. § 16.5(e)(1)(ii). Department of Justice regulations set forth the basis for expedited processing, providing for expedited treatment when a request involves “[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.” 28 C.F.R. § 16.5(e)(1)(ii).

I have determined that your request for expedited processing under 28 C.F.R. § 16.5(e)(1)(ii) should be denied. While you have stated that publishing and disseminating information “are critical and substantial components of the ACLU’s work and are among its primary activities,” you have not established that the ACLU is “primarily engaged in disseminating information.” Courts have held that to qualify under this standard, an organization must be “primarily, and not just incidentally, engaged in information dissemination.” *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012). Put another way, information dissemination must be “the main activity” of the requestor, and not merely “a main activity.” *ACLU of N. Cal. v. DOJ*, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005). Accordingly, courts have upheld the denial of requests for expedited processing from such legal policy advocacy organizations as the American Civil Liberties Union of Northern California and the Landmark Legal Foundation. *See Landmark Legal Found.*, 910 F. Supp. 2d at 275-76;

ACLU of N. Cal., 2005 WL 588354, at *14. A review of the ACLU's public statements about its mission and work indicates that, like these organizations, its primary activity is legal policy advocacy and not information dissemination. *See, e.g., About the ACLU*, <https://www.aclu.org/about-aclu> (last visited January 24, 2018) (describing the ACLU as "our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve . . . individual rights and liberties"). Therefore, because information dissemination is not the ACLU's main activity, you have not satisfied this standard.

Because of the considerable number of FOIA requests received by OLC before your request, our staff has not yet been able to complete a search to determine whether there are documents within the scope of your request. Please note that it also is likely that we will be unable to respond to your request within the twenty-day statutory deadline. I regret the necessity of this delay, but I assure you that your request will be given priority and processed as soon as practicable. In the meantime, if you have any questions or wish to discuss your request, you may contact Melissa Golden, our Lead Paralegal and FOIA Specialist, at (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Room 5511, Washington, DC 20530.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

You have the right to an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy ("OIP"), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Paul P. Colborn
Special Counsel