



January 19, 2017

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

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)¹ submit this Freedom of Information Act (“FOIA”) request (the “Request”) for records pertaining to financial and

¹ The American Civil Liberties Union Foundation is a 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

other ethical conflicts of interest in connection with the presidential transition of President-Elect Donald J. Trump.

I. Background

The election of Donald J. Trump to be the 45th President of the United States has raised unprecedented questions of enormous public concern surrounding the President-Elect's various business entanglements and the risks that his potential financial, family, and other ethical conflicts of interest present to the longstanding American value of the impartiality of government decisionmaking. Compounding these pressing and complex questions, during both the presidential campaign and the presidential transition, the President-Elect has failed to provide detailed answers concerning how he intends to address the looming conflicts in order to assure the American public that his oath, duties, and sympathies will not be at risk of compromise during his presidency. The FOIA—one of America's most critical guarantors of government transparency and the central mechanism by which ordinary Americans can provide ongoing public checks and balances on elected officials in the political branches—demands that government records illuminating these issues be released forthwith in order to contribute to the ongoing public debate concerning the President-Elect's assumption of the powers of the presidency and the public trust.

Since the November 8 election, a crescendo of public concern surrounding the vast number of potential ethical issues facing the President-Elect has built across the political spectrum and even inside the government itself.² And even prior to the election, ethics lawyers from the past two presidential administrations voiced alarm at the wide-ranging conflicts presented by the President-Elect's business interests,³ which span the globe from Pennsylvania Avenue⁴ to Indonesia.⁵ Beyond these questions of business conflicts, questions have been raised concerning the President-Elect's more than

² See, e.g., Joel B. Pollak, *Donald Trump Should Appoint a Special Auditor for Conflicts-of-Interest*, Breitbart, Nov. 22, 2016, <http://www.breitbart.com/big-government/2016/11/22/conflicts-of-interest-special-auditor-donald-trump-appoint-business/>; Russ Choma, *Donald Trump's Conflicts of Interest Could Pose a Constitutional Problem*, Mother Jones, Nov. 11, 2016, <http://www.motherjones.com/politics/2016/11/trumps-conflicts-interest-could-be-constitutional-problem/>; see also, e.g., Michael D. Shear & Eric Lipton, *Ethics Office Praises Donald Trump for a Move He Hasn't Committed To*, N.Y. Times, Nov. 30, 2016, <http://nyti.ms/2gK988R>; Drew Harwell, *Trump's Conflicts of Interest Are Without Precedent in American Presidential History*, Wash. Post, Nov. 9, 2016, <http://wapo.st/2jmPwsG>.

³ See Richard Painter & Norman Eisen, *A Trump Presidency Would Be Ethically Compromised*, Wash. Post, Sept. 20, 2016, <http://wpo.st/DScQ2>.

⁴ Byron Tau, *Donald Trump's Washington Hotel Lease Back in Spotlight*, Wall St. J., Dec. 14, 2016, <http://on.wsj.com/2jmGb3Z>.

⁵ See, e.g., Jeremy Venook, *Trump's Interests vs. America's, Vornado Edition*, Atlantic, Jan. 17, 2017, <http://theatln.tc/2jmFZSj>.

half a billion dollars in debts,⁶ the numerous pending civil lawsuits against him,⁷ and the potential that his administration's staffing choices will violate anti-nepotism laws that date back more than half a century.⁸ While the President-Elect has indicated his general intention to address these ethical issues,⁹ he has also publicly minimized them,¹⁰ and ethics experts have widely criticized the plan his transition team unveiled last week as inadequate.¹¹ Meanwhile, the President-Elect's potential ethical conflicts are the subject of pending legislation in Congress.¹²

The myriad conflict-of-interest issues presented by Donald J. Trump's assumption of the presidency threaten to undermine the public's confidence in government, the global community's trust in our nation's chief executive, and potentially our national security. The FOIA entitles the American public to information relevant to the presidential transition that will enable democratic oversight and public accountability over the President-Elect's conduct and conflicts. In an effort to facilitate the public's indispensable role in checking the power of our public officials, to supplement the public record with information about the President-Elect's efforts to address these various concerns, and to assess the government's legal and policy assessments of the President-Elect's unprecedented number and nature of potential ethical conflicts, the ACLU seeks such information through this FOIA Request.

⁶ Jean Eaglesham & Lisa Schwartz, *Trump's Debts Are Widely Held on Wall Street, Creating New Potential Conflicts*, Wall St. J., Jan. 5, 2017, <http://on.wsj.com/2jxObD2>.

⁷ Nick Penzenstadler & John Kelly, *How 75 Pending Lawsuits Could Distract a Donald Trump Presidency*, USA Today, Oct. 25, 2016, <http://usat.ly/2eOeq2d>.

⁸ Aaron Blake, *Donald Trump's 'First Attempt to Ignore the Law'*, Wash. Post, Jan. 10, 2017, <http://wapo.st/2icq4F6>; Maxwell Tani, *Report: Jared Kushner to Join White House as Senior Adviser in Test of Nepotism Laws*, Business Insider, Jan. 9, 2017, <http://read.bi/2iwwK26>.

⁹ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 30, 2016, 6:59 AM), <https://twitter.com/realDonaldTrump/status/803931490514075648>; see also Shear & Lipton, *supra* note 2 ((quoting Reince Priebus, the President-Elect's Chief of Staff) "You should know that he's got the best people in the world working on it.").

¹⁰ Rebecca Savransky, *Trump on Concerns About Business: "It's Not A Big Deal"*, Hill, Dec. 28, 2016, <http://thehill.com/homenews/campaign/312065-trump-on-business-its-not-a-big-deal> ("It's not a big deal. You people are making that a big deal, the business, because look, No. 1, when I won, they all knew I had a big business all over the place," Trump told reporters Wednesday outside his Mar-a-Lago resort in Florida.); *Donald Trump's New York Times Interview: Full Transcript*, N.Y. Times, Nov. 23, 2016, <http://nyti.ms/2gk8qQo> ("Even though the president of the United States—I hope whoever is writing this story, it's written fairly—the president of the United States is allowed to have whatever conflicts he wants—he or she wants.").

¹¹ Richard W. Painter, Laurence H. Tribe, Norman L. Eisen & Joshua Matz, *Emoluments: Trump's Coming Ethics Trouble*, Atlantic, Jan. 18, 2017, <http://theatlantic.com/2joNkC3>; Maggie Haberman, Julie Hirschfeld Davis & Eric Lipton, *Sons to Run Trump Business Via Trust; Ethicists Still See Conflict*, N.Y. Times, Jan. 11, 2017, <http://nyti.ms/2ikCazj>.

¹² Elana Schor, *Democratic Bill Would End Trump's Conflict-of-Interest Exemptions*, Politico, Jan. 9, 2017, <http://politi.co/2jmHj7M>.

II. Requested Records

The ACLU seeks the release of the following records created on or between November 9, 2016 and January 20, 2017:

- (1) **Legal opinions, memoranda, or advisories addressing actual or potential financial or other ethical conflicts of interest, including interpretations of the U.S. Constitution, federal criminal laws, or government regulations.** Such laws and regulations include, but are not limited to:
- the Foreign Emoluments Clause of the U.S. Constitution, Art. I, § 9, cl. 8;
 - the Domestic Emoluments Clause of the U.S. Constitution, Art. II, § 1, cl. 7;
 - the criminal conflicts-of-interest statutes, 18 U.S.C. §§ 202–03, 205, 207–09;
 - the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635;
 - executive branch–wide regulations on public and confidential financial disclosure, outside employment limitations, ethics training, certain financial interests, and post-government employment, 5 C.F.R. parts 2634, 2636–38, 2640–41;
 - the Government Employees Training Act, 5 U.S.C. § 4111;
 - prohibitions on gifts of travel from non-federal sources, 31 U.S.C. § 1353;
 - procurement-integrity restrictions, 41 U.S.C. § 423;
 - prohibitions on nepotism, 5 U.S.C. § 3110;
 - regulations on divestment of financial interests and certificates of divestiture, 5 C.F.R. part 2634, subpart J;
- (2) **Policy, educational, or program-management memoranda, advisories, or evaluations addressing actual or potential financial or other ethical conflicts of interest.**

- (3) **Communications—including but not limited to emails, letters, social-media posts, Twitter direct messages—to, from, or about the presidential transition addressing actual or potential financial or other ethical conflicts of interest.**

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).¹³ 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 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 statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).¹⁴ 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. DOJ*, 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”).¹⁵

The ACLU regularly publishes *STAND*, a print magazine that reports on

¹³ *See also* 5 C.F.R. § 2604.301(e); 28 C.F.R. § 16.5(e); 41 C.F.R. § 105-60.402-2(c).

¹⁴ *See also* 5 C.F.R. § 2604.301(e)(2)(ii); 28 C.F.R. § 16.5(e)(ii); 41 C.F.R. § 105-60.402-2(c)(2).

¹⁵ 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. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. The ACLU also publishes regular updates and alerts via email to approximately 1.9 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,¹⁶ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁷

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.¹⁸ The ACLU also

¹⁶ See, e.g., Press Release, American Civil Liberties Union, 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, American Civil Liberties Union, 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, American Civil Liberties Union, 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, American Civil Liberties Union, 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, American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

¹⁷ See, e.g., Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (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://abcn.ws/2jy40d3> (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://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

¹⁸ 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-*

regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog 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 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.¹⁹ 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

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.

¹⁹ *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=cpreldirect/32088>.

searches of FOIA documents relating to government policies on rendition, detention, and interrogation.²⁰

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.²¹ Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act²²; 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 requests²³; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.²⁴

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.

B. 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).²⁵ Specifically, the requested records relate to the next President of the United States’ potential ethical and financial conflicts of interest. As discussed in Part I, *supra*, the President-Elect’s various business entanglements and the risks posed by his potential financial, family, and other ethical conflicts of interest raise unprecedented questions of enormous public concern.

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

²⁰ <https://www.thetorturedatabase.org>. *See also* <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

²¹ https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

²² <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

²³ https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

²⁴ <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

²⁵ *See also* 5 C.F.R. § 2604.301(e)(2)(ii); 28 C.F.R. § 16.5(e)(ii); 41 C.F.R. § 105-60.402-2(c)(2).

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).²⁶ 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 about how the President-Elect and the government plan to address the President-Elect’s ethical and financial conflict issues is publically available, 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

²⁶ See also 5 C.F.R. § 2604.503(c); 28 C.F.R. § 16.10(k)(1); 5 C.F.R. § 294.109(f); 41 C.F.R. § 105-60.402-2(c)(2).

work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III)²⁷; *see also Nat’l Sec. Archive v. DOD*, 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. DOD*, 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. DOJ*, 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. DOJ*, 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).²⁸

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.”²⁹ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

²⁷ *See also* 5 C.F.R. § 2604.103; 28 C.F.R. § 16.10(b)(6); 5 C.F.R. § 294.103(c); 41 C.F.R. § 105-60.305-1(i).

²⁸ 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.

²⁹ In May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted 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 the

* * *

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); 5 C.F.R. § 2604.305(a)(3); 28 C.F.R. § 16.5(e); 5 C.F.R. § 294.108(f); 41 C.F.R. § 105-60.305-10(d).

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

**AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION**

Brett Max Kaufman
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125 Broad Street—18th Floor
New York, New York 10004
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F: 212.549.2654
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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. 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 DOJ 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 on 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,



Anthony D. Romero
Executive Director
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**AMERICAN CIVIL
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FOUNDATION**