



October 15, 2013

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**Re: Request Under Freedom of Information Act  
(Expedited Processing Requested)**

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU” or “Requesters”)<sup>1</sup> submit this Freedom of Information Act (“FOIA”) request for copies of all records concerning (1) the legal and factual bases for the United States’ targeted-killing program; (2) the policy standards and evidentiary processes the government uses to evaluate (and approve or reject) the use of lethal force against individuals and groups under that program; and (3) the number, identities, legal status, and affiliations of those killed (intentionally or not) by the United States as part of the program.

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**I. Background**

Since 2001, the Central Intelligence Agency (“CIA”) and the military’s Joint Special Operations Command have used lethal force in so-called “targeted killings” in at least half a dozen countries—not just in areas of armed conflict, like Iraq and Afghanistan, but also in areas far from any battlefield, such as Yemen and Somalia.<sup>2</sup> As the President acknowledged during a national address in May 2013, in the course of those operations, the

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<sup>1</sup> The American Civil Liberties Union is a non-profit, 26 U.S.C. § 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. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 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 civil rights and civil liberties issues across the country, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators.

<sup>2</sup> See, e.g., Jo Becker & Scott Shane, *Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*, N.Y. Times, May 29, 2012, <http://nyti.ms/JKJjiM>.

U.S. government has killed American citizens.<sup>3</sup> It has also killed at least hundreds of civilian bystanders, including children, breeding resentment and anger in countries like Pakistan and Yemen, where targeted killing strikes frequently occur.<sup>4</sup> The government's reliance on these strikes in U.S. counterterrorism operations has increased dramatically in recent years, resulting in escalating public and congressional concern about those operations and their legal and factual underpinnings.<sup>5</sup>

In May 2013, in a so-called "Presidential Policy Guidance" document, the United States publicly announced guidelines that, the executive branch represented, place policy restrictions on the government's use of targeted killing strikes around the world.<sup>6</sup> Around the same time, administration officials represented in the media that the United States had already "begun transferring authority for drone strikes from the CIA to the Pentagon," in part to "open them up to greater congressional and public scrutiny."<sup>7</sup> Of late, however, administration officials have made clear that the executive branch can and has deviated from the policy restrictions it presented to the public as

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<sup>3</sup> See Barack Obama, President, Remarks by the President at the National Defense University (May 23, 2013), <http://wh.gov/hrTq> ("Obama NDU Speech"); see also Letter from Eric H. Holder, Jr., Att'y Gen., to Patrick J. Leahy, Chairman of the S. Comm. on the Judiciary (May 22, 2013), <http://1.usa.gov/11bGJZi> ("Holder Letter").

<sup>4</sup> See Jack Serle & Alice K. Ross, *August 2013 Update: US Covert Actions in Pakistan, Yemen and Somalia*, Bureau of Investigative Journalism, Sept. 2, 2013, <http://bit.ly/18yiits>; Gregory Johnsen, *How We Lost Yemen*, For. Pol'y, Aug. 6, 2013, <http://atfp.co/16xgZNC>; Ahmed Al-Haj & Aya Batrawy, *As US Drone Strikes Rise in Yemen, So Does Anger*, Associated Press, May 2, 2013, <http://bit.ly/160rxVv>; Scott Neuman, *Sen. Graham Says 4,700 Killed in U.S. Drone Strikes*, NPR News Two-Way Blog (Feb. 21, 2013 12:04 PM), <http://n.pr/157whqC>.

<sup>5</sup> See, e.g., Steve Coll, *Remote Control: Our Drone Delusion*, New Yorker, May 6, 2013, <http://nyr.kr/13y1H8g>; David Cole, *How We Made Killing Easy*, N.Y. Rev. Books Blog (Feb. 6, 2013, 11:13 AM), <http://bit.ly/11VUhcG>; see also Scott Shane & Thom Shanker, *Yemen Strike Reflects U.S. Shift to Drones in Terror Fight*, N.Y. Times, Oct. 1, 2011, <http://nyti.ms/qd0L4Q>.

<sup>6</sup> Office of the Press Secretary, White House, Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities (May 23, 2013), <http://wh.gov/hCwI>.

<sup>7</sup> Mark Bowden, *The Killing Machines*, Atlantic, Aug. 14, 2013, <http://bit.ly/17vOcGm>.

hard limitations several months ago.<sup>8</sup>

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The ACLU has previously filed two separate FOIA requests concerning the United States' use of targeted killing. On January 13, 2010, the ACLU filed a request with the Departments of Defense, Justice, and State, as well as the CIA, seeking "records pertaining to the use of unmanned aerial vehicles ('UAVs')—commonly referred to as 'drones' and including the MQ-1 Predator and MQ-9 Reaper—by the CIA and the Armed Forces for the purpose of killing targeted individuals."<sup>9</sup> And on October 19, 2011, the ACLU filed a FOIA request with various components of the Departments of Defense and Justice seeking "records pertaining to the legal authority and factual basis for the targeted killing of" Anwar al-Aulaqi and "two other U.S. citizens by the United States Government."<sup>10</sup> Both requests are the subject of ongoing litigation.<sup>11</sup>

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The ACLU submits this Request principally in order to reach records *not* covered by its previous FOIA requests, including documents that post-date the other requests and documents that senior government officials have mentioned in public speeches, testimony before Congress, and statements to the media.

Additionally, Requesters seek legal memoranda concerning the government's legal authority to conduct targeted killings generally, to account for the possibility that agencies may have determined any such memoranda to be *non-responsive* to the ACLU's earlier requests. (The ACLU's 2010 request focused on the use of drones in targeted killing, while its 2011 request sought documents about the targeted killings of American citizens.)<sup>12</sup>

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<sup>8</sup> See Eric Schmitt, *Embassies Open, But Yemen Stays on Terror Watch*, N.Y. Times, Aug. 11, 2013, <http://nyti.ms/1crSPJB>.

<sup>9</sup> Request Under Freedom of Information Act by Jonathan Manes, ACLU, Jan. 13, 2010, <http://bit.ly/QBIBbR>.

<sup>10</sup> Request Under Freedom of Information Act by Nathan Freed Wessler, ACLU, Oct. 19, 2011, <http://bit.ly/15Lo7Zb>.

<sup>11</sup> See *N.Y. Times v. U.S. Dep't of Justice*, No. 13-445 (2d Cir. oral argument held Oct. 1, 2013), reviewing *N.Y. Times Co. v. U.S. Dep't of Justice*, 872 F. Supp. 2d 309 (S.D.N.Y. 2012); *Am. Civil Liberties Union v. Dep't of Justice*, No. 10-cv-436, remanded by *Am. Civil Liberties Union v. Dep't of Justice*, 628 F.3d 612 (D.C. Cir. 2011), reversing 808 F. Supp. 2d 280 (D.D.C. 2011).

<sup>12</sup> Thus, agencies should construe the Request to encompass any and all memoranda authored by the Office of Legal Counsel ("OLC") concerning the government's legal authority under domestic and international law to engage

## II. Requested Records

The ACLU seeks the release of the following records:

1. Any and all records pertaining to the **legal basis in domestic, foreign, and international law** upon which the government may use lethal force against individuals or groups, **including any record indicating which groups are considered to be “associated forces”** of Al-Qaeda under the Authorization for Use of Military Force, Pub. L. 107-40, 115 Stat. 224 (2001) (“AUMF”).
2. Any and all records pertaining to the **process by which the government designates individuals or groups for targeted killing**, including who is authorized to make such determinations and against what evidentiary standard factual evidence is evaluated to support such designations. Specifically included in this Request is the counterpart to the Presidential Policy Guidance, which Attorney General Holder described in his May 2013 letter to Congress as a document that “institutionalizes the Administration’s exacting standards and processes for reviewing and approving operations to capture or use lethal force against terrorist targets outside the United States and areas of active hostilities”—standards that are “either already in place or are

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in targeted killings. In February 2013, Senator Dianne Feinstein revealed that the Senate Select Committee on Intelligence (“SSCI”) was seeking access to “all nine OLC opinions” on the “legal authority to strike U.S. citizens,” Feinstein Press Release, but later clarified that there were “a total of 11 OLC opinions related to targeted killing,” four of which had been released to the SSCI. Ryan Reilly, *Seven Other Targeted Killing Memos Still Undisclosed*, Huffington Post, Feb. 13, 2013, <http://huff.to/12gSbZC>; *see also* “Open Hearing on the Nomination of John O. Brennan to be Director of the Central Intelligence Agency Before the S. Select Comm. on Intelligence at 5:18–20, 113th Cong. (Feb. 7, 2013), <http://1.usa.gov/15fr1Sx> (“Brennan Hearing Tr.”) (“The Office of Legal Counsel advice establishes the legal boundaries within which we can operate” with respect to targeted killing.); White House, Press Gaggle by Press Secretary Jay Carney (Feb. 7, 2013), <http://1.usa.gov/TQ3MLw> (“[T]he President directed the Department of Justice to provide the congressional Intelligence Committee’s access to classified Office of Legal Counsel advice related to the subject of the Department of Justice white paper that we’ve been discussing these last several days.”); *Oversight of the U.S. Department of Justice Before the S. Comm. on the Judiciary at 1:51:36–1:52:24*, 113th Cong. (Mar. 6, 2013), <http://1.usa.gov/14pKfSc> (testimony of Eric Holder, Att’y Gen.) (“I think that white paper becomes more clear if it can be read in conjunction with the underlying OLC advice.”).

to be transitioned into place.”<sup>13</sup>

3. Any and all records pertaining to **before-the-fact assessments of civilian or bystander casualties** in targeted-killing strikes and any and all records concerning **“after-action” investigations into individual targeted-killing strikes**.
4. Any and all records pertaining to the **number and identities** of individuals killed or injured in targeted-killing strikes, *including but not limited to* records regarding the **legal status** of those killed or injured, with these separated out by **individuals intentionally targeted and collateral casualties or injuries**.

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, we request 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) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(d); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b). There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2). In addition, the records sought relate to a “breaking news story of general public interest.” 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when “the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity”); *see also* 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2)(i).

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<sup>13</sup> Holder Letter at 4; *see also* Karen DeYoung, *A CIA Veteran Transforms U.S. Counterterrorism Policy*, Wash. Post, Oct. 24, 2012, <http://wapo.st/RkL6zx> (“The ‘playbook,’ as [former chief White House counterterrorism advisor and now CIA Director John] Brennan calls it, will lay out the administration’s evolving procedures for the targeted killings that have come to define its fight against al-Qaeda and its affiliates. It will cover the selection and approval of targets from the ‘disposition matrix,’ the designation of who should pull the trigger when a killing is warranted, and the legal authorities the administration thinks sanction its actions in Pakistan, Yemen, Somalia and beyond.”).

- 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 and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 22 C.F.R. § 171.12(b)(2); *see Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a 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” is “primarily engaged in disseminating information” (citation omitted)); *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is “to serve as the site of record for relevant and up-to-the-minute civil rights news and information” and to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”).

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU’s regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU also regularly issues press releases to call attention to documents released through FOIA and other breaking news.<sup>14</sup> ACLU

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<sup>14</sup> *See, e.g.*, Press Release, American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012), *available at* <http://www.aclu.org/node/36742>; Press Release, American Civil Liberties Union, FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering (Mar. 27, 2012), *available at* <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of “Community Outreach” (Dec. 1, 2011), *available at* <http://www.aclu.org/national-security/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community>; Press Release, American

attorneys are frequently interviewed for news stories about documents released through ACLU FOIA requests.<sup>15</sup>

The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA.<sup>16</sup> For example, the ACLU maintains an online “Torture Database,” a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>17</sup> The ACLU also maintains a “Torture FOIA” webpage containing commentary about the ACLU’s FOIA requests, press releases, and analysis of the FOIA documents.<sup>18</sup> (That webpage also

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Civil Liberties Union, FOIA Documents from FBI Show Unconstitutional Racial Profiling (Oct. 20, 2011), *available at* <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem (Oct. 19, 2011), *available at* <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison, Says ACLU (June 24, 2009), *available at* <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>.

<sup>15</sup> See, e.g., Carrie Johnson, *Delay in Releasing CIA Report Is Sought; Justice Dept. Wants More Time to Review IG’s Findings on Detainee Treatment*, WASH. POST, June 20, 2009 (quoting ACLU staff attorney Amrit Singh); Peter Finn & Julie Tate, *CIA Mistaken on ‘High-Value’ Detainee, Document Shows*, WASH. POST, June 16, 2009 (quoting ACLU staff attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosures by C.I.A.*, N.Y. TIMES, June 10, 2009 (quoting ACLU National Security Project director Jameel Jaffer); Joby Warrick, *Like FBI, CIA Has Used Secret ‘Letters,’* WASH. POST, Jan. 25, 2008 (quoting ACLU staff attorney Melissa Goodman).

<sup>16</sup> See, e.g., <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <http://www.aclu.org/torturefoia>; <http://www.aclu.org/olcmemos>; <http://www.aclu.org/mappingthefbi>; <http://www.aclu.org/national-security/bagram-foia>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/natsec/foia/search.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <http://www.aclu.org/patriotfoia>; <http://www.aclu.org/spyfiles>; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>; and <http://www.aclu.org/exclusion>.

<sup>17</sup> <http://www.torturedatabase.org/>.

<sup>18</sup> <http://www.aclu.org/torturefoia/>.

notes that the ACLU, in collaboration with Columbia University Press, has published a book about the documents obtained through FOIA. See JAMEEL JAFFER & AMRIT SINGH, ADMINISTRATION OF TORTURE: A DOCUMENTARY RECORD FROM WASHINGTON TO ABU GHRAIB AND BEYOND (Columbia Univ. Press 2007)). Similarly, the ACLU's webpage about the OLC torture memos it obtained through FOIA contains commentary and analysis of the memos; an original, comprehensive chart summarizing the memos; links to web features created by ProPublica (an independent, non-profit, investigative-journalism organization) based on the ACLU's information gathering, research, and analysis; and ACLU videos about the memos.<sup>19</sup> In addition to websites, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through FOIA.

The ACLU plans to analyze 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.<sup>20</sup>

*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; moreover, the records sought relate to a breaking news story of general public interest. Specifically, the requested records relate to the government's legal foundation for secretly targeting and killing individuals both within and outside the context of an armed conflict. *See* 32 C.F.R. § 1900.34(c)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii)(A); 22 C.F.R. § 171.12(b)(2).

As discussed in Part I, the government's legal position vis-à-vis its targeted-killing program has been the subject of widespread public controversy and media attention. Throughout 2013, the legal memoranda justifying the government's targeted-killing program have been the subject of sustained attention. The records sought through this Request would contribute to the public's understanding of the government's positions and policy because, as Senator Feinstein explained when discussing congressional

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<sup>19</sup> [http://www.aclu.org/safefree/general/olc\\_memos.html](http://www.aclu.org/safefree/general/olc_memos.html).

<sup>20</sup> In addition to the national ACLU offices, there are fifty-three ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived materials available at the American Civil Liberties Union Archives at Princeton University Library.

oversight of the program, “it is really necessary to understand what the official legal interpretation is” when weighing the legality of controversial government action.<sup>21</sup> That is also true when it comes to the public’s oversight role because “making sure that the American people are brought into these debates . . . is what you need to preserve a republic.”<sup>22</sup> For the same reason, the records sought relate to a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(d)(1)(iv).

Given the foregoing, expedited processing should be granted for this request.

#### **IV. Application for Waiver or Limitation of Fees**

*A. Release of records is in the public interest.*

The ACLU requests a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the United States government’s operations or activities and is not primarily in the Requester’s commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17.

Numerous news accounts reflect the considerable public interest in the records the ACLU seeks. See *supra* Part I. The ACLU makes this Request to further the public’s understanding of the government’s legal position on its targeted-killing program. Moreover, disclosure is not in the ACLU’s commercial interest. Any information obtained by the ACLU as a result of this FOIA Request will be made available to the public at no cost. See 32 C.F.R. § 1900.13(b)(2); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17. Therefore, a fee waiver would fulfill Congress’ legislative intent in amending FOIA to provide for fee waivers such as the one sought herein. 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.’” (citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that “disclosure, not secrecy, is the dominant objective of the Act”).

The legal memoranda and other records sought through this Request, containing legal viewpoints and justifications as well as explanations of evidentiary and legal standards being employed within the Executive Branch

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<sup>21</sup> Brennan Hearing Tr. at 28:5–6.

<sup>22</sup> *Id.* at 55:5–7 (statement of Sen. Wyden).

as part of its targeted-killing program, are of crucial significance to the public's understanding of the legality of the use of lethal force and the circumstances under which the government believes it can kill people. As a result, the public has a compelling interest in the production of the records sought through this Request.

*B. The ACLU qualifies as a representative of the news media.*

A waiver of search and review fees is warranted because 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); *see also* 32 C.F.R. § 1900.02(h)(3); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17. Accordingly, fees associated with the processing of this request should be "limited to reasonable standard charges for document duplication." 28 C.F.R. § 16.11(k); *see* 28 C.F.R. § 16.11(d) (search and review fees shall not be charged to "representatives of the news media"); 32 C.F.R. § 1900.02(h)(3); 32 C.F.R. § 286.28(d); 22 C.F.R. § 171.17.

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 work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information").

The ACLU is a "representative of the news media" for the same reasons that it is "primarily engaged in the dissemination of information." *See Elec. Privacy Info. Ctr. v. Dep't of Def.*, 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 news media" for FOIA purposes).<sup>23</sup> The ACLU disseminates information through many

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<sup>23</sup> On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. In June 2011, the National Security Division of the Department of Justice 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 October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services

channels, including its websites, blogs, press releases, books, reports, newsletters, news briefings, fact sheets, educational brochures, pamphlets, television series, and public speaking engagements. See *supra* part II(A). As Senator Leahy said during a debate about FOIA's fee-waiving provisions: "[A]ny person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132 Cong. Rec. S14292 (daily ed. Sept. 30, 1986). Indeed, the ACLU recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Def.*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at \*3 (D. Conn. May 14, 2012); *accord Am. Civil Liberties Union of Wash. v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

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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)(I); 32 C.F.R. § 1900.21(d); 28 C.F.R. § 16.5(d)(4); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).

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

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granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. 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 with regard to 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 Department of Justice 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 Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

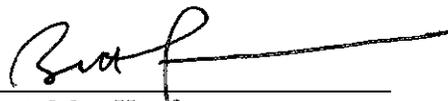
Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Brett Max Kaufman  
American Civil Liberties Union  
125 Broad Street—18th Floor  
New York, NY 10004  
Tel: 212.549.2603  
Fax: 212.549.2654  
bkaufman@aclu.org

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).

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Respectfully,

A handwritten signature in black ink, appearing to read "Brett Max Kaufman", written over a horizontal line.

Brett Max Kaufman  
American Civil Liberties Union Foundation