



October 27, 2010

U.S. Department of Homeland Security
Federal Emergency Management Agency
FOIA Officer
500 C Street, S.W., Room 840
Washington, D.C. 20472

Re: FOIA Request Related to Orleans Parish Prison Rebuilding Efforts

Dear Freedom of Information Officer:

This letter constitutes a request (Request) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). The Request is submitted on behalf of the American Civil Liberties Union (ACLU). The ACLU is also requesting expedited processing for this Request, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d)(1)(ii), and a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k).

BACKGROUND

Even before Hurricane Katrina, New Orleans had the highest incarceration rate of any major city in the United States.¹ Today, even though it has a much smaller population and a somewhat smaller jail, New Orleans still holds that dubious title, and its incarceration rate is still three times the national average.² Nevertheless, Orleans Parish Sheriff Marlin Gusman plans to rebuild Orleans Parish Prison (OPP) as a much larger, 5,800-bed jail—large enough to incarcerate 1 out of every 60 residents of New Orleans. According to the sheriff, FEMA is providing between 85 and 90 percent of the \$270 million required to build this new prison.³

¹ Barry Gerharz and Seung Hong, *Down by Law: Orleans Parish Prison before and after Katrina*, DOLLARS & SENSE, March/April 2006, available at <http://www.dollarsandsense.org/archives/2006/0306gerharzhong.html>.

² Interview with Jon Wool, Vera Institute of Justice, Sept. 7, 2010. The figures were derived by combining the Bureau of Justice Statistics' midyear 2009 jail inmate data with the Census Bureau's July 2009 population estimates. See BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2009—STATISTICAL TABLES, NCJ 230122, tables 1 & 9a (June 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim09st.pdf>; U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR THE UNITED STATES, REGIONS, STATES, AND PUERTO RICO: APRIL 1, 2000 TO JULY 1, 2009, NST-EST2009-01, available at <http://www.census.gov/popest/states/tables/NST-EST2009-01.xls>; U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR COUNTIES (LOUISIANA): APRIL 1, 2000 TO JULY 1, 2009, available at <http://www.census.gov/popest/counties/tables/CO-EST2009-01-22.xls>. See also Gerharz & Hong, *supra*.

³ *Top 10 Construction Projects: Orleans Parish Prison complex, \$270 million*, NEW ORLEANS CITY BUSINESS, Feb. 22, 2010, at 15A, available at <http://neworleanscitybusiness.com/wp-files/events/construction-2010.pdf>.

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The sheriff has failed to produce a study validating the need to increase the size of OPP, and has even argued that the “population of Orleans Parish is totally irrelevant to a decision regarding bed space.”⁴ But outside experts have shown that the jail could easily be reduced from its present size if the city adopts commonsense criminal justice policies.

In the wake of Hurricane Katrina, the City Council commissioned a report from the Vera Institute of Justice, a nationwide nonprofit organization that assists leaders in government and civil society to improve criminal justice policies and practices. After interviewing key stakeholders and reviewing data provided by the City, Vera issued a series of practical recommendations for how to “increase public safety and justice . . . using national best practice” in New Orleans’ criminal justice system, focusing on those that could be implemented within 6 to 12 months that “promise the ‘biggest bang for the buck.’”⁵ Vera concluded that New Orleans should pursue four general policies: setting up mechanisms for early triage of cases and routine communication between police and prosecutors; expanding pretrial release options; providing community-service sentencing and greater use of alternatives to jail; and setting more appropriate and cost-effective sanctions for minor municipal offenses.⁶ Many of these reforms would reduce the number of people who go to jail for minor offenses or reduce the length of stay for those who do.⁷ One such reform—the creation of a pretrial services system that would release less-dangerous individuals pending trial—has already been funded by a federal grant from the Bureau of Justice Assistance.⁸

As the Vera report highlighted, New Orleans’ high incarceration rate stems in part from its failure to offer adequate opportunities for pretrial release of low-level offenders. According to Vera’s preliminary analysis, up to 41% of the pretrial detainees currently held at OPP would be eligible for pretrial release in other jurisdictions.⁹ And according to figures recently presented to the City Council, some 900 of the 3,200 prisoners presently held at OPP are serving state sentences, and they could be incarcerated at state prisons.¹⁰ There are other reforms that could easily and immediately be implemented that would further reduce the need for jail beds without affecting public safety, such as having police officers issue

⁴ Matt Davis, *Sheriff: I have never housed arrestees ‘to make money,’* THE LENS, Sept. 24, 2010, <http://thelensnola.org/2010/09/24/gusman-response-to-johnson/>.

⁵ VERA INSTITUTE OF JUSTICE, PROPOSALS FOR NEW ORLEANS’ CRIMINAL JUSTICE SYSTEM: BEST PRACTICES TO ADVANCE PUBLIC SAFETY AND JUSTICE, 1 (June 2007) (hereinafter “VERA REPORT”).

⁶ *Id.* at i.

⁷ *Id.* at 38.

⁸ Vera Institute of Justice, Press Release, *New Orleans to Develop a Comprehensive Pretrial Services System*, Oct. 1, 2010, available at <http://www.vera.org/news/new-orleans-develop-comprehensive-pretrial-services-system>.

⁹ VERA REPORT, *supra* at 18.

¹⁰ Laura Maggi, *Violent offenders, detainees mixed at Orleans Parish Prison, study finds*, THE TIMES-PICAYUNE (New Orleans), Oct. 15, 2010.

filed citations to persons who have missed their court dates on municipal offenses, rather than arresting these men and women and incarcerating them at OPP.

Particularly in the past year, New Orleans citizens have expressed mounting concerns about whether the sheriff's massive expansion of OPP is truly necessary. On July 1, 2010, these concerns led the City Council to postpone final approval of the sheriff's expansion plans until a special working group convened by Mayor Mitch Landrieu determines an optimal size for OPP.¹¹ Mayor Landrieu officially convened the working group by executive order on September 23, and the group is expected to release its findings in late November.¹² Thus, now may be the final window of opportunity to obtain further information about the sheriff's expansion plan.

Independent scrutiny of the sheriff's plans is vital to this policy debate. The sheriff's financial interest in maximizing the number of people incarcerated is considerable—he receives a \$22.39 per diem payment for every city detainee and a \$26.39 payment for every state prisoner he holds at OPP.¹³ These per diem payments add up: in his 2010 budget, for example, the sheriff anticipated that local and state per diem payments would together provide him more than \$30 million in revenue.¹⁴ Thus, the sheriff has a perverse incentive to maximize his per diem income by building a jail larger than what New Orleans actually needs and then keeping it as full as possible, regardless of whether that serves the broader interests of New Orleans citizens. And if FEMA pays for most or all of his construction costs, this only strengthens the sheriff's incentive to build a larger-than-necessary jail.

Additionally, it appears that the sheriff plans to use the FEMA funds to demolish OPP's existing city-owned buildings and replace them with buildings that he owns. If true, this change of ownership would make the sheriff even less accountable to the mayor and the City Council.

FEMA's records would help illuminate what funding FEMA is providing to the sheriff, what conditions FEMA has placed on the use of those funds, and whether those funds could be put to uses other than expanding OPP's already excessive capacity.

This information is currently missing from the public debate. Despite the controversy over the sheriff's rebuilding plans, his public statements on the issue

¹¹ Bruce Egler, *New prison complex plan approved by New Orleans City Council*, THE TIMES-PICAYUNE (New Orleans), July 1, 2010; Karen Gadbois, *Prison expansion on hold until advisory group speaks out*, THE LENS, July 1, 2010, <http://thelensnola.org/2010/07/01/council-on-opp/>.

¹² *Mayor Mitch Landrieu names panel to recommend 'optimal size' for parish prison*, THE TIMES-PICAYUNE (New Orleans), Sept. 23, 2010.

¹³ Bruce Egler, *New Orleans Sheriff Marlin Gusman asks City Council for millions more to run jail*, THE TIMES-PICAYUNE (New Orleans), July 31, 2009.

¹⁴ ORLEANS PARISH CRIMINAL SHERIFF'S OFFICE, ANNUAL BUDGET REPORT FOR THE YEAR ENDED DECEMBER 31, 2010, at 2 (Oct. 9, 2009).

continue to be opaque, vague, and even self-contradictory. Most recently, he claimed that the FEMA funding would only pay for a 1400-bed facility,¹⁵ which is difficult to reconcile with his earlier claim that FEMA funding would pay for 85 to 90 percent of the construction costs for an expanded jail complex.¹⁶

The sheriff's plans seem to change depending on whom the sheriff speaks to and when.¹⁷ Most recently, for example, the sheriff began construction of a "temporary" 400-bed facility which—according to the sheriff—will also be paid for entirely with FEMA funds.¹⁸ In September 2010, he told reporters that the temporary facility would not result in any increase in the total number of prisoners, because he would merely be transferring prisoners to it after shutting down another facility.¹⁹ But after the press obtained a March 2010 loan letter in which the sheriff predicted that the new buildings would result in "inmates increasing from approximately 3,500 to 3,900," he reversed himself and stated that the 3,900 number was correct.²⁰

In short, the sheriff seems unable to provide a complete and internally consistent explanation of his plans. The public therefore needs to see the relevant documents from FEMA to clarify what construction plans FEMA approved and how much of the project FEMA is actually funding.

THE REQUESTOR

The ACLU is a nationwide, nonprofit, nonpartisan organization dedicated to protecting human rights and civil rights in the U.S. It is the largest civil liberties organization in the country, with offices in 50 states and over 500,000 members. The ACLU is specifically dedicated to holding the U.S. government accountable to universal human rights principles in addition to rights guaranteed by the U.S. Constitution.

The ACLU has long been concerned with conditions at OPP. In the year after Hurricane Katrina, the National Prison Project of the ACLU received and reviewed written accounts from over 1,300 prisoners who were in OPP when Katrina struck. The information gleaned from those reports—along with information obtained through Louisiana Public Records Act requests—was

¹⁵ Laura Maggi, *Violent offenders, detainees mixed at Orleans Parish Prison, study finds*, THE TIMES-PICAYUNE (New Orleans), Oct. 15, 2010.

¹⁶ See *Top 10 Construction Projects: Orleans Parish Prison complex, \$270 million*, NEW ORLEANS CITY BUSINESS, Feb. 22, 2010, at 15A, available at <http://neworleanscitybusiness.com/wp-files/events/construction-2010.pdf>.

¹⁷ See Matt Davis, *Gusman: I've always advocated for smaller jail*, THE LENS, Oct. 15, 2010, <http://thelensnola.org/2010/10/15/gusmansmallerjail/> (describing how Gusman has variously described his plans as being for 4,200 beds, 5,800 beds, and 8,000 beds).

¹⁸ Matt Davis, *Sheriff building 400 jail beds before working group meets*, THE LENS, Sept. 28, 2010, <http://thelensnola.org/2010/09/28/temp-jail-beds/>.

¹⁹ *Id.*

²⁰ Matt Davis, *Temporary beds will expand jail population after all*, THE LENS, Oct. 19, 2010, <http://thelensnola.org/2010/10/19/gusman-temp-jail/>.

collected in a comprehensive report revealing what happened to the thousands of men, women, and children trapped in OPP before, during, and after the storm.²¹ One year later, the ACLU released a follow-up report, describing continuing concerns about conditions inside of OPP buildings reopened since the storm.²² Most recently, the ACLU released a report critiquing the rise of modern-day debtors' prisons, including OPP in New Orleans.²³ The ACLU has urged local officials to work with the Vera Institute to implement the recommendations in their report,²⁴ which would largely obviate the need to inject hundreds of millions of federal dollars into a rebuilding effort that is unnecessary, is not supported by local officials, does not promote public safety, and will subordinate the best interests of the city's residents to the political influence and coffers of the Orleans Parish Criminal Sheriff's Office.²⁵

RECORDS REQUESTED

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The NPP is seeking disclosure of any and all record(s)²⁶ created after August 29, 2005, concerning:

1. Any plans or proposals concerning the demolition, rebuilding, repair, or expansion of Orleans Parish Prison (OPP), including but not necessarily limited to plans or proposals concerning:
 - a. Destruction, removal, or repair of existing buildings;
 - b. Construction of new buildings; or
 - c. Construction of any other facilities concerning OPP, including temporary facilities;
2. Any funds FEMA has allocated or disbursed for such demolition, rebuilding, repair, or expansion;
3. Anything that governs or in any way restricts the use of the funds referenced in responses to the above;
4. Anything reflecting how the funds referenced in responses to the above are being used, how FEMA has monitored their use, reporting by the Orleans Parish Criminal Sheriff on the use of the funds, and/or oversight by FEMA or its agents of the use of the funds.

²¹ ACLU, ABANDONED & ABUSED: ORLEANS PARISH PRISONERS IN THE WAKE OF HURRICANE KATRINA (Aug. 2006), available at <http://www.aclu.org/opp>.

²² ACLU, BROKEN PROMISES: 2 YEARS AFTER KATRINA (Aug. 2007), available at <http://www.aclu.org/brokenpromises>.

²³ ACLU, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS (Oct. 2010), available at <http://www.aclu.org/prisoners-rights-racial-justice/penny-rise-americas-new-debtors-prisons>.

²⁴ *Id.* at 40.

²⁵ See David Morton, *Empire Falls: The Rise and Decline of the New Orleans Jail*, THE NEW REPUBLIC, Aug. 10, 2006.

²⁶ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical specifications, training manuals, or studies.

EXPEDITED PROCESSING

We request expedited treatment pursuant to 5 U.S.C. § 552(a)(6)(E) and corresponding regulations because the records at issue are urgently needed by an organization “primarily engaged in disseminating information” in order to “inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). *See also* 6 C.F.R. § 5.5(d)(1)(ii).

First, the ACLU is “primarily engaged in disseminating information” to the public within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1)(ii). Dissemination of information to the public is a critical and substantial component of the ACLU’s mission and work. *See American 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” to be “primarily engaged in disseminating information”).

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Specifically, the ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee through its public education department. The ACLU also disseminates information through its heavily subscribed website, <http://www.aclu.org>. The website addresses civil liberties issues in depth, provides features on civil liberties issues in the news, and contains hundreds of documents that relate to the issues addressed by the ACLU. The website also contains the ACLU’s two reports pertaining to Orleans Parish Prison, materials obtained through Louisiana Public Records Act requests, and video testimonials of people affected by Hurricane Katrina and the New Orleans criminal justice system. *See* <http://www.aclu.org/opp>; <http://www.aclu.org/brokenpromises>. Both reports have been brought to the attention of local, national, and international bodies.

The website specifically includes features on information obtained through the FOIA. *See, e.g.*, <http://www.aclu.org/torturefoia>; <http://www.aclu.org/spyfiles>; http://www.aclu.org/patriot_foia/index.html; <http://www.aclu.org/exclusion>; <http://www.aclu.org/safefree/nationalsecurityletters/32088res20071014.html>.

The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail. Finally, the ACLU produces an in-depth television series on civil liberties.²⁷ Depending on the results of this Request, the ACLU will

²⁷ In addition to the national ACLU offices, there are 53 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. The ACLU also makes archived

likely disseminate the information obtained about government funding of OPP reconstruction efforts to the public through these kinds of publications in these kinds of channels.

Second, the records sought concern actual or alleged federal government activity—specifically, the nature and scope of the sheriff’s financial relationship with FEMA.

Third, this request concerns a matter of current exigency to the American public, and the consequences of delaying a response would compromise a significant recognized interest. *See ACLU*, 321 F. Supp. 2d at 29 (setting forth the standard). The matter of current exigency is the City Council’s decision to approve or reject the sheriff’s expansion plans, which will occur soon after the working group releases its findings in late November. A delayed response to this request would compromise the significant interest of the public in being fully informed about the nature and scope of the sheriff’s OPP expansion plans when the Council makes its final decision.

As described above, the sheriff has proven unable to provide a complete and internally consistent explanation of his plans. In his public statements, the sheriff has provided inconsistent information about the planned size of the prison, the nature of the temporary facilities (which he alleges are fully funded by FEMA), and the extent to which construction of the permanent facilities will be funded by FEMA. Because of the sheriff’s failure to be transparent, only FEMA can provide this information—information that is necessary to an informed public debate and decision about the future of OPP.

As illustrated by the press coverage cited elsewhere in this request, the future of OPP is a matter of intense public interest and debate. The need for this request to be timely answered goes beyond the public’s right to know about government activity generally, because the information requested is likely to affect the outcome of the Council’s vote in late November. And that vote will impact the city’s criminal justice system—and, by extension, the citizens of New Orleans—for decades to come.

Thus, records pertaining to FEMA’s financial support for the sheriff’s plans to rebuild OPP are urgently needed to inform the public concerning an “actual or alleged federal government activity.” 6 C.F.R. § 5.5(d)(1)(ii). The imminence of the Mayor’s and the City Council’s decisions to approve or reject the OPP expansion plan makes the need for this information particularly urgent, and sets this request apart from the “public’s right to know about government activity generally.” 6 C.F.R. § 5.5(d)(3). The ACLU has historically been engaged in disseminating information to the public, has specifically disseminated information

material available at the American Civil Liberties Union Archives at Princeton University Library. Additionally, ACLU publications are often disseminated to relevant groups across the country, which then further distribute them to their members or to other parties.

gleaned from past FOIA and Public Records Act requests to the public, and has a demonstrated history of disseminating information about Orleans Parish Prison and rebuilding efforts following Hurricane Katrina. Accordingly, expedited processing is appropriate in this case.

FEE WAIVER

The ACLU requests a total 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 the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k).²⁸

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Orleans Parish Prison and the New Orleans criminal justice system have received enormous national and local attention since Hurricane Katrina. *See, e.g., Jury awards tourists \$650K in Katrina jail suit*, ASSOCIATED PRESS, Oct. 14, 2010; Joel Schectman, *The Return of Debtors’ Prisons in Louisiana*, NEWSWEEK, Sept. 30, 2010; Rick Jervis, *Mental Health Crisis Plagues N.O.*, USA TODAY, Mar. 5, 2008; Mary Foster, *Mentally Ill Find Facilities Lacking in New Orleans*, ASSOCIATED PRESS, Feb. 20, 2008; Laura Maggi, *New Light Shed on N.O. Jail Jam*, THE TIMES-PICAYUNE (New Orleans), Dec. 29, 2007; Laura Maggi, *Gusman Says City Was Billed Too Much But \$2 Million Error is Paid Back, He Says*, THE TIMES-PICAYUNE (New Orleans), Nov. 22, 2007; Laura Maggi, *ACLU Blasts Conditions at Parish Prison*, THE TIMES-PICAYUNE (New Orleans), Aug. 21, 2007; ASSOCIATED PRESS, *Report Details Prisoners’ Plight During Katrina*, Aug. 11, 2006; David Morton, *Empire Falls: The Rise and Decline of the New Orleans Jail*, THE NEW REPUBLIC, Aug. 10, 2006; Adam Nossiter, *Teenage Prisoners Describe Hurricane Horrors*, THE NEW YORK TIMES, May 10, 2006.

The subject of this specific Request—FEMA’s role in funding rebuilding efforts connected to Orleans Parish Prison—is similarly a matter of intense public interest. *See, e.g., Bruce Egger, New prison complex plan approved by New Orleans City Council*, THE TIMES-PICAYUNE (New Orleans), July 1, 2010; Bruce Egger, *Vote on prison rebuilding plan delayed by New Orleans City Council*, THE TIMES-PICAYUNE (New Orleans), June 18, 2010; Bruce Egger, *New Orleans Sheriff Marlin Gusman asks City Council for millions more to run jail*, THE TIMES-PICAYUNE (New Orleans), July 31, 2009; Laura Maggi, *Prison Blues: City’s Jail Complex Needs Overhaul, Sheriff Says*, THE TIMES-PICAYUNE (New Orleans), Mar. 12, 2008; Laura Maggi, *N.O. Jailhouse Demolitions Begin; FEMA Will Pay For Replacement*, THE TIMES-PICAYUNE (New Orleans), Feb. 19, 2008; U.S. FEDERAL NEWS, *State, Federal Officials Commit Funds to Rebuild Destroyed Jails in Orleans Parish*, Feb. 18, 2008; Jaime Guillet, *Debtor Prison: Orleans Parish Criminal Sheriff’s Office Needs More Money to Care for Prisoners*, NEW ORLEANS CITYBUSINESS, Dec. 3, 2007; U.S. FEDERAL NEWS,

²⁸ In the alternative, the ACLU requests a limitation on fees pursuant to 6 C.F.R. § 5.11(d).

New Orleans Criminal Justice Recovery Advances With FEMA's Help, Aug. 27, 2007; U.S. Federal News, *Orleans Parish Prison Restoration Gets FEMA's Financial Backing*, May 23, 2007; Laura Maggi, *Crime Camera Bid Pending; Federal Money's Reach Limited So Far*, THE TIMES-PICAYUNE (New Orleans), Jan. 20, 2007.

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Given the ongoing and widespread media attention to this issue, the records sought in the instant Request will significantly contribute to the public's understanding of the federal government's role in rebuilding Orleans Parish Prison with FEMA's funds. *See* 6 C.F.R. § 5.11(k)(1)(i). First, the obligation of federal funds to local rebuilding efforts is clearly relevant to "identifiable operations of activities of the federal government." 6 C.F.R. § 5.11(k)(2)(i). Second, the records requested would contain significant informative value, because they are not presently available in the public domain, but would inform the news reports that have merely exposed the hundreds of millions of dollars at stake in this matter. *See* 6 C.F.R. § 5.11(k)(2)(ii). Third, a "reasonably broad audience of persons interested in the subject" will develop a greater understanding of the subject of this request through disclosure to the ACLU. 6 C.F.R. § 5.11(k)(2)(iii). As described above, the ACLU has an enormous ability to disseminate information to the public. Moreover, the ACLU has a particular expertise in matters pertaining to Orleans Parish Prison. Since Hurricane Katrina, the ACLU has produced and distributed two significant reports detailing problems at OPP and discussing concerns regarding the expansion of OPP since the storm. Moreover, because the ACLU qualifies as a "representative of the news media" pursuant to the terms of the FOIA statute and the agency's regulations, it is assumed that the ACLU satisfies this criterion. *Id.* Finally, the disclosure of these records will contribute "significantly" to the public's understanding of this issue, because little information is currently in the public domain about the relationship between FEMA and the various stakeholders involved in building and operating OPP. *See* 6 C.F.R. § 5.11(k)(2)(iv). To date, the public is generally aware of the huge sums of money obligated by FEMA to OPP's rebuilding plan, but has no context within which to understand this arrangement.

In addition, disclosure is not in the ACLU's 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. *See* 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3). Thus, 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 requestors.'") (citation omitted).

On account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.²⁹

²⁹ The following are recent examples of requests for which agencies did not charge the ACLU fees associated with responding to a FOIA request: (1) The Department of State did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in April 2005; (2) The

In any event, as discussed *supra*, the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. Accordingly, should fees be assessed for the processing of this Request, such fees should be “limited to reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). *See also* 6 C.F.R. § 5.11(d).

The ACLU is therefore entitled to a total waiver of fees associated with this request and should, in no event, be required to pay more than reasonable standard charges for document duplication alone.

* * *

Thank you for your consideration of this request. If this request is denied in whole or part, the ACLU asks that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny expedited processing or a waiver of fees. We look forward to your reply to the request for expedited processing within ten (10) calendar days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 6 C.F.R. § 5.5(d)(4). Notwithstanding your decision on the matter of expedited processing, we look forward to your reply to the records request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

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Thank you for your prompt attention to this matter. We eagerly await your response, and thank you for your assistance. Please furnish all responsive records to:

Carl Takei
Staff Attorney
ACLU National Prison Project
915 15th St. NW, 7th Floor
Washington, DC 20005

* * *

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

National Institute of Standards and Technology did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in April 2005; (3) The Office of Science and Technology Policy in the Executive Office of the President did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2003; (4) The Federal Bureau of Investigation did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (5) The Office of Intelligence Policy and Review did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (6) 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.

Sincerely,

/s/ Carl Takei

Carl Takei

Eric Balaban

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