

May 4, 2018

**BY FAX**

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505  
(703) 613-3007

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

To Whom It May Concern:

The American Civil Liberties Union Foundation (“ACLU”),<sup>1</sup> submits this Freedom of Information Act (“FOIA”) request (the “Request”) for records pertaining to CIA efforts to influence the legislative branch’s consideration of the nomination of Gina Haspel to lead the agency, including CIA efforts to influence the American public’s support of Ms. Haspel’s candidacy.

**I. Background**

On March 13, 2017, President Trump announced that he would nominate Gina Haspel to be the next CIA Director. In support of Ms. Haspel’s nomination, the CIA began a campaign to influence the legislative branch’s consideration of Ms. Haspel, including efforts to shape the American public’s view of Ms. Haspel. As CIA spokesman Ryan Trapani confirmed, “[i]f it appears C.I.A. is being more robust than normal in supporting this nomination, that’s because we are.”<sup>2</sup>

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<sup>1</sup> The American Civil Liberties Union Foundation is a 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. The American Civil Liberties Union is a separate 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.

<sup>2</sup> Adam Goldman & Matthew Rosenberg, *How the C.I.A. Is Waging an Influence Campaign to Get Its Next Director Confirmed*, N.Y. Times, Apr. 20, 2018, <https://www.nytimes.com/2018/04/20/us/politics/gina-haspel-cia-director-influence-campaign.html>

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The CIA's influence campaign has included issuing its own news releases claiming promoting Ms. Haspel,<sup>3</sup> as well as selectively declassifying information that is perceived as favorable to Ms. Haspel.<sup>4</sup> While the CIA has released no information relating to Ms. Haspel's role in the CIA's "Rendition, Detention, and Interrogation Program," the Agency has provided reporters with carefully selected facts, including Ms. Haspel's enthusiasm for college sports and Johnny Cash.<sup>5</sup> The CIA promotes press coverage of the information it selectively releases through the Agency's own press office and Twitter feed.<sup>6</sup> Between March 23 and April 20, the CIA's official Twitter account issued more than twenty tweets supportive of Ms. Haspel.<sup>7</sup>

At the same time as the CIA selectively released information in support of Ms. Haspel's nomination, the Agency for more than a year ignored requests from several U.S. Senators to provide the public with meaningful information about Ms. Haspel's actions at the CIA.<sup>8</sup> On April 13, Senators Martin Heinrich (D-N.M.), Ron Wyden (D-Ore.), and Dianne Feinstein (D-Calif.) wrote to then-CIA Director Pompeo, to repeat their earlier requests that the CIA declassify information about Haspel's background so that the American people could assess her fitness to lead.<sup>9</sup>

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<sup>3</sup> Press Release, *Bipartisan Support for Gina Haspel's Nomination to be CIA Director From Distinguished National Security Leaders* (Mar. 19, 2018), <https://www.cia.gov/news-information/press-releases-statements/2018-press-releases-statements/bipartisan-support-for-gina-haspel-nomination-to-be-cia-director.html>

<sup>4</sup> Adam Goldman & Matthew Rosenberg, *How the C.I.A. Is Waging an Influence Campaign to Get Its Next Director Confirmed*, N.Y. Times, Apr. 20, 2018, <https://www.nytimes.com/2018/04/20/us/politics/gina-haspel-cia-director-influence-campaign.html>

<sup>5</sup> Jeremy Herb, *CIA paints a fuller picture of director nominee Gina Haspel's biography*, CNN, Mar. 22, 2018, <https://www.cnn.com/2018/03/22/politics/gina-haspel-cia-biography-congress/index.html>

<sup>6</sup> Press Release, *ICYMI: CIA Introduces Gina Haspel to the American People* (Mar. 23, 2018), <https://www.cia.gov/news-information/press-releases-statements/2018-press-releases-statements/icymi-cia-introduces-gina-haspel-to-the-american-people.html>

<sup>7</sup> See, e.g., <https://twitter.com/CIA/status/977256581439148032> ("She leads w compassion, integrity, discipline, & humor.").

<sup>8</sup> See, e.g., February 23, 2017 Letter from Senators Heinrich and Wyden to CIA Director Pompeo; March 15, 2018 Letter from Senator Feinstein to CIA Director Pompeo and Deputy Director Haspel (in light of "troubling press reports on [Ms. Haspel's] involvement with torture programs," the Senate and "the American people deserve to know the actual role the person nominated to be the director of the CIA played in what I consider to be one of the darkest chapters in American history").

<sup>9</sup> April 13, 2018 Letter from Senators Heinrich, Wyden, and Feinstein to CIA Director Pompeo ("We are writing for a fifth time to request that you declassify information related to the

The Senators noted that “the more we review the classified facts, the more disturbed we are, both by the actions she has taken during her career and by the CIA’s failure to allow the public the opportunity to consider them.” Without “meaningful declassification” of Ms. Haspel’s actions, the Senators wrote, the Senate could not “properly fulfill its constitutional obligation to ‘advise and consent.’” Moreover, the “superficial narrative” the CIA had promoted through its publicity efforts “does a great disservice to the American people, who expect and deserve to understand the backgrounds of their government’s leaders.”<sup>10</sup>

On April 24, 2018, the CIA’s Director of Congressional Affairs wrote in response that the Agency “recognizes that the confirmation process for a nominee to be the new Director of CIA requires increased transparency with the American public.” Consequently, the response claimed, the CIA was “actively working towards sharing additional information with the public to the greatest extent possible.”<sup>11</sup>

The following week, the CIA, now led by Ms. Haspel as Acting Director, declassified information about a late-1980s encounter between Ms. Haspel and Mother Teresa, during which Mother Teresa “invite[d] Ms. Haspel to the local orphanage.”<sup>12</sup> (The CIA did not disclose whether Ms. Haspel in fact visited the orphanage.) White House Director of Legislative Affairs Marc Short announced that the administration was “trying to be as cooperative as possible with all inquiries into her background,” pointing to the now-declassified encounter between Haspel and Mother Teresa as “an example of declassifying additional documents.”<sup>13</sup>

With respect to Ms. Haspel’s involvement with the Rendition, Detention, and Interrogation Program, the CIA has declassified only a 2011 memorandum

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background of CIA Deputy Director Gina Haspel . . . Declassifying information about Ms. Haspel’s background is even more pressing in light of the public relations campaign currently being conducted on her behalf.”)

<sup>10</sup> April 13, 2018 Letter from Senators Heinrich, Wyden, and Feinstein to CIA Director Pompeo.

<sup>11</sup> April 24, 2018 Letter from Jaime Chesire to Senator Heinrich.

<sup>12</sup> *The Wall Street Journal*: “From Mother Teresa to Counterterrorism: CIA Unveils More on Gina Haspel,” White House News Clip, May 2, 2018, <https://www.whitehouse.gov/briefings-statements/wall-street-journal-mother-teresa-counterterrorism-cia-unveils-gina-haspel/>

<sup>13</sup> Olivia Gazis, *CIA director nominee Gina Haspel gets sudden full-court media press from WH*, CBS News, May 3, 2018, <https://www.cbsnews.com/news/gina-haspel-cia-director-nominee-sudden-full-court-media-press-white-house/>

containing a single paragraph discussing Ms. Haspel's role in the destruction of videotapes documenting the torture of CIA prisoners. The memorandum records Ms. Haspel's assertion that her actions were based on a misunderstanding and makes no attempt to corroborate her claim.<sup>14</sup>

The CIA's failure to respond to repeated requests from U.S. Senators for meaningful information about Ms. Haspel's actions in the Rendition, Detention, and Interrogation program is particularly troubling in light of the Agency's history of misleading the public and the legislature about its use of torture. The Senate Select Committee on Intelligence Study of the Central Intelligence Agency's Detention and Interrogation Program concluded that "[m]uch of the information the CIA provided to the media on the operation of the CIA's Detention and Interrogation Program and the effectiveness of its enhanced interrogation techniques was inaccurate and was similar to the inaccurate information provided by the CIA to the Congress."<sup>15</sup>

To date, the CIA has not declassified any additional facts about Ms. Haspel's role in torture, abuse, detention, or rendition, even as it continues to promote articles supporting her nomination through the Agency's official Twitter account.<sup>16</sup> The ACLU seeks the following records to inform the public about the CIA's efforts to influence support for Ms. Haspel's nomination.

## **II. Requested Records**

All records concerning CIA efforts to support Ms. Haspel's nomination for Director, including but not limited to:

1. All records regarding the selective declassification of information concerning Ms. Haspel, including the decision to declassify Ms. Haspel's encounter with Mother Teresa while keeping classified Ms. Haspel's actions in the Rendition, Detention, and Interrogation Program;
2. Any records regarding whether Ms. Haspel serves as the original classification authority over information concerning her own participation in abuse, torture, rendition, and detention, and any consideration of possible conflicts of interest in this position;

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<sup>14</sup> Memorandum from Michael J. Morell to CIA Director on "Disciplinary Review Related to Destruction of Interrogation Tapes," Dec. 20, 2011, <https://www.thecipherbrief.com/wp-content/uploads/2018/04/Morell-Memo.pdf>

<sup>15</sup> Senate Select Committee on Intelligence, *Study of the Central Intelligence Agency's Detention and Interrogation Program*, April 3, 2014, Findings and Conclusions at 9.

<sup>16</sup> See, e.g., <https://twitter.com/CIA/status/987428250413686789>

3. Communications between CIA personnel and journalists regarding Ms. Haspel's nomination, including Agency efforts to promote public perception of Ms. Haspel as "fair," "objective," and "committed to the rule of law,"<sup>17</sup> and to discredit accounts of Ms. Haspel's involvement in torture, destruction of evidence of torture, and other actions in the Rendition, Detention, and Interrogation program;
4. Communications between current CIA personnel and former CIA employees seeking statements of support or other legislative and/or media outreach for Ms. Haspel's nomination, including efforts to promote perception of Ms. Haspel as "fair," "objective," and "committed to the rule of law";
5. Records concerning CIA decisions to promote coverage deemed favorable of Ms. Haspel, including through the Agency's official Twitter account;
6. Records documenting the use of CIA resources, including expenditures of personnel time and money, to support Ms. Haspel's nomination;
7. Records showing actions undertaken by career, nonpolitical CIA employees in support of Ms. Haspel's nomination;
8. Records concerning coordination with nongovernmental actors to promote Ms. Haspel's nomination, including any records concerning CIA contacts with public relations firms and nongovernmental organizations;
9. All CIA guidance on the permissibility of using Agency resources, including expenditures of nonpolitical personnel time, to promote a nominee facing Senate confirmation;
10. Communications from CIA staff to the White House concerning efforts to promote Ms. Haspel's nomination;

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

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<sup>17</sup> *See, e.g.,* Press Release, *Bipartisan Support for Gina Haspel's Nomination to be CIA Director From Distinguished National Security Leaders* (Mar. 19, 2018), <https://www.cia.gov/news-information/press-releases-statements/2018-press-releases-statements/bipartisan-support-for-gina-haspels-nomination-to-be-cia-director.html>

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) 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).

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).<sup>18</sup> 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").<sup>19</sup>

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 980,000 people. The ACLU also publishes regular updates and alerts via

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<sup>18</sup> *See also* 6 C.F.R. § 5.5(d)(1)(ii); 28 C.F.R. § 16.5(d)(1)(ii); 22 C.F.R. § 171.11(f)(2).

<sup>19</sup> 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).

email to over 3.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 3.8 million social media followers. 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,<sup>20</sup> and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>21</sup>

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.<sup>22</sup> The ACLU also

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<sup>20</sup> 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>.

<sup>21</sup> See, e.g., Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept, Feb. 8, 2017, <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); 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).

<sup>22</sup> See, e.g., Hugh Handeyside, *New Documents Show This TSA Program Blamed for Profiling Is Unscientific and Unreliable — But Still It Continues* (Feb. 8, 2017, 11:45 AM), <https://www.aclu.org/blog/speak-freely/new-documents-show-tsa-program-blamed-profiling-unscientific-and-unreliable-still>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal*

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](http://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.<sup>23</sup> For example, the ACLU’s “Predator Drones FOIA”

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*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>; Brett Max Kaufman, *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>; Nathan Freed Wessler, *ACLU- 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>; Ashley Gorski, *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](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

<sup>23</sup> See, e.g., Nathan Freed Wessler & Dyan Cortez, *FBI Releases Details of ‘Zero-Day’ Exploit Decisionmaking Process* (June 26, 2015, 11:00 AM), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; *ACLU v. DOJ – FOIA Case for Records Relating to the Killing of Three U.S. Citizens*, ACLU Case Page, <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; *ACLU v. Department of Defense*, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-department-defense>; *Mapping the FBI: Uncovering Abusive Surveillance and Racial Profiling*, ACLU Case Page, <https://www.aclu.org/mappingthefbi>; *Bagram FOIA*, ACLU Case Page <https://www.aclu.org/cases/bagram-foia>; *CSRT FOIA*, ACLU Case Page, <https://www.aclu.org/national-security/csrt-foia>; *ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance*

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 and other documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>24</sup>

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.<sup>25</sup> Similarly, the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program<sup>26</sup>; a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>27</sup>; 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 requests<sup>28</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>29</sup>

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*FOIA Request*, ACLU Case Page, <https://www.aclu.org/aclu-v-doj-lawsuit-enforce-nsa-warrantless-surveillance-foia-request>; *Patriot FOIA*, ACLU Case Page, <https://www.aclu.org/patriot-foia>; *NSL Documents Released by DOD*, ACLU Case Page, <https://www.aclu.org/nsl-documents-released-dod?redirect=cpreirect/32088>.

<sup>24</sup> *The Torture Database*, ACLU, <https://www.thetorturedatabase.org>; see also *Countering Violent Extremism FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

<sup>25</sup> *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance*, ACLU (Mar. 5, 2009), [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf).

<sup>26</sup> *Bad Trip: Debunking the TSA's 'Behavior Detection' Program*, ACLU (2017), [https://www.aclu.org/sites/default/files/field\\_document/dem17-tsa\\_detection\\_report-v02.pdf](https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf).

<sup>27</sup> *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>28</sup> *Statistics on NSL's Produced by Department of Defense*, ACLU, <https://www.aclu.org/other/statistics-nsls-produced-dod>.

<sup>29</sup> Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

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). Specifically, the requested records relate to the CIA's actions to support Ms. Haspel's nomination for CIA Director. As Ms. Haspel's confirmation hearing is set for May 9, 2018, the records are urgently needed.

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

#### **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." *See* 5 U.S.C. § 552(a)(4)(A)(iii).<sup>30</sup> 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. *See* 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, this request concerns actions undertaken by the CIA to influence the legislature and the American public. 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 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)).

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<sup>30</sup> *See also* 6 C.F.R. § 5.11(k); 28 C.F.R. § 16.11(k); 22 C.F.R. § 171.17.

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. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II).<sup>31</sup> 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.” *See* 5 U.S.C. § 552(a)(4)(A)(ii)(III); *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).<sup>32</sup>

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<sup>31</sup> *See also* 6 C.F.R. § 5.11(d)(1); 28 C.F.R. § 16.11(d); 22 C.F.R. § 171.14(b).

<sup>32</sup> 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 at 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.

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.”<sup>33</sup> As was true in those instances, the ACLU meets the requirements for a fee waiver here.

\* \* \*

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).

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.

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

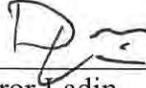
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<sup>33</sup> In August 2017, CBP granted a fee-waiver request regarding a FOIA request for records relating to a muster sent by CBP in April 2017. In May 2017, CBP granted a fee-waiver request regarding a FOIA request for documents related to electronic device searches at the border. In April 2017, the CIA and the Department of State granted fee-waiver requests in relation to a FOIA request for records related to the legal authority for the use of military force in Syria. In March 2017, the Department of Defense Office of Inspector General, the CIA, and the Department of State granted fee-waiver requests regarding a FOIA request for documents related to the January 29, 2017 raid in al Ghayil, Yemen. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued 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 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.

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,



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Dror Ladin

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FOUNDATION**