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

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)¹ submit this Freedom of Information Act request for records pertaining to President Donald Trump’s decision to remove FBI Director James Comey from office.

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION

I. Background

On May 9, 2017, President Trump fired James Comey, the Director of the Federal Bureau of Investigation, whose responsibilities included overseeing an ongoing investigation into Russian interference in the presidential election and possible collusion between Trump campaign officials and the Russian government. According to the initial White House accounts, the President dismissed Mr. Comey based on the recommendation of Attorney General Jeff Sessions and Deputy Attorney General Rod Rosenstein.² Subsequent accounts indicate that the President had already decided to fire Mr. Comey, and that he sought assistance from the Attorney General and Deputy Attorney General to justify his decision.³ The Attorney General and Deputy Attorney General ultimately prepared memoranda asserting that Mr. Comey had mishandled the investigation of Hillary Clinton’s private email server and had violated Department of Justice policies when he publicly announced the results of that investigation.⁴ Previously, however, both President Trump and Attorney General Sessions had lauded Mr. Comey’s actions in that investigation.⁵ Moreover, in an

¹ 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.

² See Jenna Johnson, *After Trump Fired Comey, White House Staff Scrambled to Explain Why*, Wash. Post (May 10, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/05/10/as-trump-fired-comey-his-staff-scrambled-to-explain-why/>.

³ See Josh Dawsey, *Behind Comey’s Firing: An Enraged Trump, Fuming about Russia*, Politico (May 10, 2017), <http://www.politico.com/story/2017/05/10/comey-firing-trump-russia-238192>.

⁴ See Michael D. Shear & Matt Apuzzo, *F.B.I. Director James Comey Is Fired by Trump*, N.Y. Times (May 9, 2017), <https://www.nytimes.com/2017/05/09/us/politics/james-comey-fired-fbi.html>.

⁵ See Matt Pearce, *Trump’s Shifting Stances on FBI Director James Comey*, L.A. Times (May 9, 2017), <http://www.latimes.com/nation/la-na-trump-comey-timeline-20170509-htmlstory.html>; Michael Edison Hayden, *AG Sessions Praised Comey’s Handling of Clinton Email Investigation during the 2016 Election*, ABC News (May 10, 2017),

interview on May 11, 2017, President Trump stated that he had fired Mr. Comey because, “He’s a showboat, he’s a grandstander,” and that he was going to “fire [Mr. Comey] regardless of recommendation.”⁶ President Trump also stated that he had the Russia investigation in mind when he fired Mr. Comey.⁷ Subsequently, President Trump suggested that he may have taped his conversations with Mr. Comey.⁸ Media accounts indicate that Mr. Comey had requested additional resources for the FBI’s investigation in the days before he was dismissed.⁹

In short, the White House’s explanations for firing Mr. Comey have shifted significantly over a matter of days, and the public does not know the actual basis for this decision. The public is entitled to know the real reasons for President Trump’s decision to fire Mr. Comey. The public is also entitled to know the role played by the Department of Justice in this dismissal, as well as any concerns or objections raised within the Department of Justice or the FBI.

The position of FBI Director is critically important because of the responsibilities of that office. In order to insulate the position from political interference, Congress established a ten-year term, so that it spans presidential administrations. The FBI plays a central role in defending the rule of law, conducting domestic law enforcement investigations, and protecting against civil rights and civil liberties violations. As a result, the FBI has tremendous power to affect the lives of ordinary people, for good or ill. For those reasons also, its use of those powers should not be affected by political interests.

The President’s actions and shifting justifications threaten the rule of law. As the President himself suggested in an interview, by firing Mr. Comey, he sought to hasten an end to the FBI’s ongoing investigation into his own campaign. But the rule of law requires that investigators and prosecutors have

<http://abcnews.go.com/Politics/ag-sessions-praised-comeys-handling-clintons-email-investigation/story?id=47327009>.

⁶ See Ali Vitali & Corky Siemaszko, *Trump Interview With Lester Holt: President Asked Comey If He Was Under Investigation*, NBC News (May 11, 2017), <http://www.nbcnews.com/news/us-news/trump-reveals-he-asked-comey-whether-he-was-under-investigation-n757821>.

⁷ See Mark Hensch, *Trump Says ‘Made Up’ Russia Story Part of Decision to Fire Comey*, The Hill (May 11, 2017), <http://thehill.com/policy/national-security/fbi/333056-trump-made-up-russia-story-part-of-comey-firing>; *White House: Comey Firing May Hasten Russia Probe’s End*, CNN (May 11, 2017), <http://www.cnn.com/videos/politics/2017/05/11/whpb-sanders-trump-russia-investigation-end-sot.cnn>.

⁸ See Philip Rucker, *Trump Suggests There May Be ‘Tapes’ of His Private Conversations with Former FBI Director*, Wash. Post (May 12, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/05/12/trump-suggests-there-may-be-tapes-of-his-private-conversations-with-former-fbi-director/>.

⁹ See Matthew Rosenberg & Matt Apuzzo, *Days Before Firing, Comey Asked for More Resources for Russia Inquiry*, N.Y. Times (May 10, 2017), <https://www.nytimes.com/2017/05/10/us/politics/comey-russia-investigation-fbi.html>.

the independence to follow the facts wherever they lead, even if they lead to the President's door. It is a firmly rooted tradition in our democracy that the President does not interfere with individual criminal investigations—let alone those that implicate the President's own interests or the interests of his family, friends, or political associates. To intervene in such an investigation, or to obstruct its progress, threatens to place the President above the law. It would subvert our system of justice, which requires the FBI and Department of Justice to hold even the powerful to account.

This request seeks documents that will aid the public in assessing what appears to be a grave abuse of process by the President and a failure by Department of Justice officials to defend the independence of their office.

II. Requested Records

The ACLU requests the release of the following records:

All records related to the dismissal of FBI Director Comey, including but not limited to memoranda, correspondence, electronic mail or messages, voicemails, meeting minutes, performance reviews, drafts, and notes.

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

III. Preservation of Records

Given the public significance of the records sought by this Request, the ACLU requests that the Department of Justice and FBI take immediate steps to ensure that all records relating in any way to the Request are preserved. These records are the subject of potential litigation, including potential litigation over the adequacy of the agency's searches for responsive records, its interpretation of which records are responsive to the Request, and any withholding of information from the public. Accordingly, all such records must be preserved. *See Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 44 (D.D.C. 1998) (agencies are not permitted "to evade the FOIA by removing documents from their control after the filing of a FOIA request"); *Gerlich v. Dep't of Justice*, 711 F.3d 161, 170–71 (D.C. Cir. 2013) (duty to preserve arises "when a party *should have known* that the evidence may be relevant to future litigation") (emphasis in original) (quoting *Kronisch v. United States*, 150 F.3d 112, 126 (2d Cir. 1998)).

IV. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).¹⁰ There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).¹¹ 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”).¹²

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. The ACLU also provides regular updates and alerts on these topics via email to over 2.6 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 3.2 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,¹³

¹⁰ *See also* 28 C.F.R. § 16.5(e).

¹¹ *See also* 28 C.F.R. § 16.5(e)(1)(ii).

¹² 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).

¹³ *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),

and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁴

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.¹⁵ The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and

<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>.

¹⁴ 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).

¹⁵ 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 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.

educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. See <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

The ACLU website includes many features on information obtained through the FOIA.¹⁶ For example, the ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online "Torture Database," a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition,

¹⁶ 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 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=cpreldirect/32088>.

detention, and interrogation.¹⁷

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.¹⁸ Similarly, the ACLU produced an analysis of documents released in response to a FOIA request about the TSA’s behavior detection program¹⁹; a summary of documents released in response to a FOIA request related to the FISA Amendments Act²⁰; 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 requests²¹; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.²²

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 ACLU plans 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).²³ Specifically,

¹⁷ *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>.

¹⁸ *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.

¹⁹ *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.

²⁰ *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

²¹ *Statistics on NSL’s Produced by Department of Defense*, ACLU, <https://www.aclu.org/other/statistics-nsls-produced-dod>.

²² 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>.

²³ *See also* 28 C.F.R. § 16.5(e)(1)(ii).

the requested records relate to the decision to remove FBI Director Comey from office. As discussed in Part I, *supra*, President Trump’s decision to fire Mr. Comey is the subject of widespread public controversy and media attention. Members of both political parties have expressed grave concern about the President’s decision, given the ongoing FBI investigation into Trump campaign officials, and have demanded information about how and why that decision was made.²⁴ Moreover, reporting over the past several days leaves no doubt that the records sought relate to a matter of widespread and exceptional media interest.²⁵

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

V. Application for Waiver or Limitation of Fees

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).²⁶ The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A. *The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the ACLU.*

As discussed above, credible media and other investigative accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Especially because the publicly available

²⁴ See, e.g., Euan McKirdy, *Reactions to FBI Director Comey’s Firing: ‘Devastating,’ ‘Surprising’*, CNN (May 10, 2017), <http://www.cnn.com/2017/05/10/politics/james-comey-fired-reactions/>; Washington Post Staff, *Comey Firing: Reaction from Members of Congress on FBI Director’s Dismissal*, Wash. Post (May 9, 2017), <https://www.washingtonpost.com/news/powerpost/wp/2017/05/09/comey-firing-reaction-from-members-of-congress-on-fbi-directors-dismissal/>.

²⁵ See, e.g., Peter Baker & Michael D. Shear, *Trump Shifts Rationale for Firing Comey, Calling Him a ‘Showboat’*, N.Y. Times (May 11, 2017), <https://www.nytimes.com/2017/05/11/us/politics/trump-comey-showboat-fbi.html>; Josh Dawsey, *Behind Comey’s Firing: An Enraged Trump, Fuming about Russia*, Politico (May 10, 2017), <http://www.politico.com/story/2017/05/10/comey-firing-trump-russia-238192>; Jenna Johnson, *After Trump Fired Comey, White House Staff Scrambled to Explain Why*, Wash. Post (May 10, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/05/10/as-trump-fired-comey-his-staff-scrambled-to-explain-why/>.

²⁶ See also 28 C.F.R. § 16.10(k)(2).

information about President Trump’s decision to fire Mr. Comey has been conflicting, and has shifted over time, the records sought are certain to contribute significantly to the public’s understanding of how and why this decision was made.

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)).

B. *The ACLU is a representative of the news media and the records are not sought for commercial use.*

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).²⁷ 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)²⁸; *see also Nat’l Sec. Archive v. Dep’t of Defense*, 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. Dep’t of Defense*, 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

²⁷ *See also* 28 C.F.R. § 16.10(k)(2)(ii)–(iii).

²⁸ *See also* 28 C.F.R. § 16.10(b)(6).

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).²⁹

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."³⁰ 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); 28 C.F.R. § 16.5(e)(4).

If the Request is denied in whole or in part, the ACLU asks that the agency 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:

Patrick Toomey
American Civil Liberties Union
125 Broad Street—18th Floor
New York, New York 10004

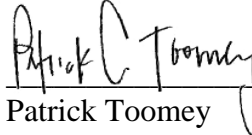
²⁹ Courts have found these organizations to be "representatives of the news media" even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat'l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53–54.

³⁰ 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.

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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,



Patrick Toomey
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Foundation

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