



January 4, 2018

Department of Homeland Security
500 12th St, SW
Washington, D.C. 20536

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

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)¹ submit this Freedom of Information Act (“FOIA”) request (the “Request”) to the Department of Homeland Security (“DHS”), for all records pertaining to the “Presidential Commission on Election Integrity,” detailed in President Trump’s May 11, 2017 **Executive Order**, announcing the creation of the Commission.

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I. Background

In 2016, the President of the United States repeatedly alleged that “millions of votes” were “illegally” cast “for the other side” during the November 2016 General Election.² While no concrete evidence was ever provided to support the President’s allegations,³ these comments were the basis

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

² ABC News, *Transcript: ABC News Anchor David Muir Interviews President Trump*, Jan. 25, 2017, <http://abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602>.

³ Emily Schultheis, *Sean Spicer defends Trump’s unverified voter fraud claims*, CBS News, Jan. 24, 2017, <http://www.cbsnews.com/news/sean-spicer-defends-trumps-unverified-voter-fraud-claims>; Glenn Thrush, *Trump’s Voter Fraud Example? A Troubled Tale with Bernhard Langer*, Jan. 25, 2017, <https://www.nytimes.com/2017/01/25/us/politics/trump-bernhard-langer-voting-fraud.html>.

of an Executive Order,⁴ directing the establishment of a “Commission on Election Integrity.” Rather than addressing real threats to election integrity, the Commission sought to disenfranchise American voters and suppress election participation,⁵ improperly requesting sensitive personal data from states across the country.⁶

Following multiple lawsuits brought against the Commission, including one brought by a commission-member,⁷ and admonishments from a federal judge that the Panel had failed to comply with transparency laws,⁸ the President announced on January 3, 2017 the Commission would be dissolved and the Department of Homeland Security would take up investigating issues of election integrity.⁹

A White House official stated the Commission was disbanded because it “was unable to operate as structured under the Federal Advisory Committee Act... [the law that] mandates a degree of transparency around commission activities.”¹⁰ DHS, however, is subject to the Freedom of Information Act, and the Administration may not avoid public oversight of its voter suppression efforts.¹¹ To that end, this FOIA request demands that DHS release any

⁴ See Rebecca Savransky, *Trump to ask for ‘major investigation into voter fraud’*, The Hill, Jan. 25, 2017, <http://thehill.com/homenews/administration/316006-trump-to-ask-for-major-investigation-into-voter-fraud>.

⁵ See Christopher Ingraham, *How Trump’s nationwide voter data request could lead to voter suppression*, Washington Post: Wonkblog, Jun. 30, 2017, https://www.washingtonpost.com/news/wonk/wp/2017/06/30/how-trumps-nationwide-voter-data-request-could-lead-to-voter-suppression/?utm_term=.87355008b36d.

⁶ See Sam Levine, *Trump Suddenly Ends Voter Fraud Panel*, Huffington Post, Jan. 3, 2017, https://www.huffingtonpost.com/entry/trump-voter-fraud-panel_us_5a4d6ca1e4b0b0e5a7aad716.

⁷ See *id.*

⁸ See *Dunlap v. Presidential Advisory Commission on Election Integrity*, 1:17-cv-02361-CKK (D.D.C. Dec. 22, 2017).

⁹ See Statement by the Press Secretary on the Presidential Advisory Commission on Election Integrity (Jan. 3, 2017), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-presidential-advisory-commission-election-integrity/>. See also Elizabeth Landers, Eli Watkins & Kevin Liptak, *Trump dissolves voter fraud commission; adviser says it went ‘off the rails’*, CNN, Jan. 4, 2017, <http://www.cnn.com/2018/01/03/politics/presidential-election-commission/index.html>.

¹⁰ See Landers, Watkins & Liptak, *supra* note 9.

¹¹ Freedom of Information Act (FOIA), <https://www.dhs.gov/freedom-information-act-foia> (last visited Jan. 4, 2018).

documents related to the Election Integrity Commission, as well as the factual bases and evidence supporting the President’s allegations of voter fraud.

This request is especially important because the President has suggested that new voting restrictions will be enacted on the basis of the findings of DHS and a concurrent Department of Justice investigation.¹² For nearly 150 years—from the ratification of the Fifteenth Amendment granting African Americans the right to vote in 1870, to the years following dramatic increases in African-American turnout in 2008 and 2012—politicians have consistently perpetuated unsupported claims of widespread voter fraud to justify discriminatory restrictions on the right to vote.¹³ If, consistent with history, federal and state governments are planning to rely on the results of the Department of Homeland Security and Department of Justice investigations to justify voting discrimination, then the health of our democracy urgently demands that the public know the bases for such potential discrimination immediately.

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II. Requested Records

The ACLU seeks the release of the following records created on or between November 9, 2016 and January 4, 2018:

1. All documents, notes and internal/external communications—including but not limited to emails, letters, and texts—concerning or exchanged with the Presidential Advisory Commission on Election Integrity described in the President’s May 11, 2017 Executive Order—including but not limited to any and all Commissioners and Commission staff.
2. All documents, notes and internal/external communications—including but not limited to emails, letters, and texts—concerning changes or potential changes to any rules, regulations, guidance, or guidelines contemplated in connection with the Presidential Advisory Commission on Election Integrity.

¹² See John Wagner, *Trump abolishes controversial commission studying alleged voter fraud*, Jan. 4, 2017, https://www.washingtonpost.com/politics/trump-abolishes-controversial-commission-studying-voter-fraud/2018/01/03/665b1878-f0e2-11e7-b3bf-ab90a706e175_story.html?utm_term=.e34f4ca4e392. See also Savransky, *supra* note 4.

¹³ See Lorraine Minnite, *The Politics of Voter Fraud*, Project Vote, Mar. 2007, http://www.projectvote.org/wp-content/uploads/2007/03/Politics_of_Voter_Fraud_Final.pdf, pp. 14-18; Vann R. Newkirk II, *Trump Abandons the Secret Code of ‘Voter Fraud,’* The Atlantic, Jan. 27, 2017, <https://www.theatlantic.com/politics/archive/2017/01/trump-voter-fraud-story/514715/>; Rachel Weiner, *Black voters turned out at higher rate than white voters in 2012 and 2008*, Wash. Post, Apr. 29, 2013, https://www.washingtonpost.com/news/the-fix/wp/2013/04/29/black-turnout-was-higher-than-white-turnout-in-2012-and-2008/?utm_term=.4d19e215f436.

3. All documents, notes and internal/external communications—including but not limited to emails, letters, and texts—concerning allegations of improper voter registration, improper voting, fraudulent voter registration, and/or fraudulent voting, as those terms are defined in the President’s May 11, 2017 Executive Order, in the November 2016 General Election.
4. Legal opinions, memoranda, findings, factual evidence, studies, audits or advisories concerning allegations of improper voter registration, improper voting, fraudulent voter registration, and/or fraudulent voting, as those terms are defined in the President’s May 11, 2017 Executive Order, in the November 2016 General Election.
5. Proposed findings, recommendations, policies, and/or draft legislation for enhancing “election integrity” or promoting “confidence in the integrity of the voting processes” in connection with the Presidential Advisory Commission on Election Integrity.

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

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).¹⁴ 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).¹⁵ Obtaining information about government activity, analyzing that information, and widely

¹⁴ *See also* 31 C.F.R. § 1.5(e).

¹⁵ *See also* 31 C.F.R. § 1.5(e)(2)(ii).

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”).¹⁶

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to ACLU members, who number over 1.5 million individuals. The ACLU also publishes regular updates and alerts via email to approximately 1.9 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,¹⁷ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁸

¹⁶ 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).

¹⁷ *See, e.g.*, Press Release, ACLU, 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, ACLU, 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, ACLU, 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>.

¹⁸ *See, e.g.*, Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA*

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.¹⁹ The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

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

The ACLU website includes many features on information obtained

Torture Report to Remain Secret, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

¹⁹ See, e.g., ACLU, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site*, Speaking Freely Blog (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most*, Speaking Freely Blog (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *ACLU- Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida*, Free Future Blog (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, *New NSA Documents Shine More Light into Black Box of Executive Order 12333*, Speak Freely Blog (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.

through the FOIA.²⁰ 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, detention, and interrogation.²¹

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.²² Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act²³; a chart of original statistics about the Defense Department’s use of National Security Letters based on its own analysis of

²⁰ See, e.g., ACLU, *FBI Releases Details of 'Zero-Day' Exploit Decisionmaking Process*, Free Future Blog (June 26, 2015, 11:00 AM), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; ACLU, *FBI Documents Reveal New Information on Baltimore Surveillance Flights*, Free Future Blog (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; ACLU, *ACLU v. DOJ - FOIA Case for Records Relating to Killing of Three U.S. Citizens* (Dec. 30, 2016), <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; ACLU, *ACLU v. Dep't of Defense* (Aug. 18, 2015), <https://www.aclu.org/cases/aclu-v-department-defense>; ACLU, *Mapping the FBI*, <https://www.aclu.org/mappingthefbi>, (last visited May 11, 2017); ACLU, *Bagram FOIA* (Apr. 18, 2013), <https://www.aclu.org/cases/bagram-foia>; ACLU, *CSRT FOIA*, <https://www.aclu.org/national-security/csrt-foia>, (last visited May 11, 2017); ACLU, *ACLU v. DOJ, Lawsuit to Enforce NSA Warrantless Surveillance FOIA* <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>, (last visited May 11, 2017); ACLU, *Patriot FOIA*, <https://www.aclu.org/patriot-foia> (last visited May 11, 2017); ACLU, *NSL Documents Released by DOD*, <https://www.aclu.org/nsl-documents-released-dod?redirect=cpredirect/32088> (last visited May 11, 2017).

²¹ The Torture Database, ACLU, <https://www.thetorturedatabase.org> (last visited May 11, 2017). See also ACLU, *Targeted Killing FOIA Database*, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>, (last visited May 11, 2017).

²² ACLU, *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance* (Mar. 5, 2009), https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

²³ ACLU, *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010* <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>, (last visited May 11, 2017).

records obtained through FOIA requests²⁴; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.²⁵

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).²⁶ Specifically, the requested records relate to the President of the United States' efforts to abridge the fundamental right to vote. As discussed in Part I, *supra*, the President's attempts to obscure Administration plans to curtail this crucial act of American democracy raise unprecedented questions of enormous public concern. 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." 5 U.S.C. § 552(a)(4)(A)(iii).²⁷ 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).

²⁴ ACLU, *Statistics on NSLs Produced by Dep't of Defense*, https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf (last visited May 11, 2017).

²⁵ ACLU, *FBI Documents Reveal New Information on Baltimore Surveillance Flights*, Free Future Blog (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

²⁶ *See also* 31 C.F.R. § 1.5(e)(2)(ii).

²⁷ *See also* 31 C.F.R. § 1.7(d)(1).

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

As discussed above, news accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Especially because little specific information about how the President and the government justify, and plan to address, the President's claims of widespread voter fraud is publically available, the records sought are certain to contribute significantly to the public's understanding of these issues.

The ACLU is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

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

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct 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. 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.

²⁸ *See also* 31 C.F.R. § 1.7(a)(3).

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).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.

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 submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the DOJ granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU on a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The DOJ did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the DOJ Office of Information

* * *

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); 31 C.F.R. § 1.5(e)(4).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific exemptions to the FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

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

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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,



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and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.