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SENT VIA E-MAIL

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**Re: Request Under Freedom of Information Act
(Expedited Processing & Fee Waiver 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”) seeking the disclosure of records related to the National Archives and Records Administration’s (“NARA” or “National Archives”) decision to blur the text of at least four protest signs captured in a photograph of the 2017 Women’s March that was displayed as part of an exhibit, “Rightfully Hers: American Women and the Vote.”

I. Background

On January 17, 2020, while visiting the National Archives—administered

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, and educates the public about civil rights and civil liberties issues across the country. 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.



by NARA—reporter Joe Heim noticed that at least four of the protest signs captured in a large-scale photograph of the 2017 Women’s March had blurred words. The original photograph was taken by Getty Images photographer Mario Tama (“2017 Women’s March Photograph”). After comparing the original photograph to the one displayed by the National Archive, Mr. Heim discerned, and subsequently reported, that the images of four protests signs had been altered.² The word “Trump” was blurred out of a sign that read “God Hates Trump” and “Trump & GOP – Hands Off Women.” A sign that read “If my vagina could shoot bullets, it’d be less REGULATED” had the word “vagina” blurred out. And a sign that said “This Pussy Grabs Back” had the word “Pussy” blurred out.³

At first NARA defended its decision to alter the photograph, stating through a spokeswoman, “As a non-partisan, non-political federal agency, we blurred references to the President’s name on some posters so as not to engage in current political controversy.”⁴ NARA’s spokeswoman also said the references to women’s genitals were blurred because the museum hosted many young visitors, and that content could be perceived as inappropriate.⁵ NARA said that managers and museum staff members made the decision as the exhibit was being developed, and that David S. Ferriero, the archivist of the United States appointed by President Barack Obama in 2009, participated in talks regarding the exhibit and supported the decision to edit the photograph.⁶

On January 18, 2020, NARA reversed course and apologized.⁷ It issued a statement acknowledging it was “wrong to alter the image.”⁸ It committed both to “immediately” review its decision to alter the photograph and to replace the display “as soon as possible with one that uses the unaltered

² Joe Heim, *National Archives Exhibit Blurs Images Critical of President Trump*, WASH. POST. (Jan. 17, 2020), https://www.washingtonpost.com/local/national-archives-exhibit-blurs-images-critical-of-president-trump/2020/01/17/71d8e80c-37e3-11ea-9541-9107303481a4_story.html.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; see also Victoria Bekiempis, *National Archives Sorry for Blurring Anti-Trump Signs in Women’s March Photo*, GUARDIAN (Jan. 18, 2020), <https://www.theguardian.com/us-news/2020/jan/18/national-archives-sign-womens-march-photo>.

⁷ Maria Cramer, *National Archives Apologies for Altering Images of 2017 Women’s March*, N.Y. TIMES (Jan. 18, 2020), <https://www.nytimes.com/2020/01/18/us/national-archives-womens-march-images.html>.

⁸ *Id.*

image.”⁹ NARA also committed to “immediately start a thorough review of our exhibit policies and procedures so that this does not happen again.”¹⁰

The decision of NARA to blur a historical image and subsequent apology and commitment to display of the unaltered image generated significant media attention. Major outlets, including the *Washington Post*, the *New York Times*, the *Guardian*, *HuffPost*, *Slate*, *The Hill*, *Vox*, *The Daily Wire*, *Democracy Now!*, and the *Independent* — among others — have reported on the story.¹¹

NARA is tasked with preserving historical records of significant events in



⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., Heim, WASH. POST., *supra* note 2; Cramer, N.Y. TIMES, *supra* note 7; Bekiempis, GUARDIAN, *supra* note 6; Colleen Flaherty, *Historians Object to National Archives’ Altered Photo*, INSIDE HIGHER ED (Jan. 21, 2020), <https://www.insidehighered.com/quicktakes/2020/01/21/historians-object-national-archives-altered-photo>; *National Archives Doctored Photo of 2017 Women’s March to Blur Messages Critical of Trump*, DEMOCRACY NOW! (Jan. 21, 2020), https://www.democracynow.org/2020/1/21/national_archives_womens_march_doctored_photo; Mary Papenfuss, *National Archives Blurred Out Anti-Trump Messages in Women’s March Photo*, HUFFPOST (Jan. 18, 2020), https://www.huffpost.com/entry/national-archives-womens-march_n_5e22ba72c5b6321176140359; Daniel Politi, *National Archives Blurs Anti-Trump Messages in Women’s March Photo*, SLATE (Jan. 18, 2020), <https://slate.com/news-and-politics/2020/01/national-archives-blurs-anti-trump-messages-womens-march-photo.html>; Tal Axelrod, *National Archives Says It Altered Trump Signs, Other Messages in Women’s March Photo*, THE HILL (Jan. 17, 2020), <https://thehill.com/blogs/blog-briefing-room/news/478903-national-archives-says-it-altered-womens-march-photo-to-blur>; Catherine Kim, *The National Archives Edited a Women’s March Picture To Be Less Critical of Trump*, VOX (Jan. 18, 2020), <https://www.vox.com/policy-and-politics/2020/1/18/21071935/womens-march-picture-less-critical-trump-national-archives>; Emily Zanotti, *National Archives Forced to Apologize After Blurring Profane Women’s March Signs in Captured Photos*, DAILY WIRE (Jan. 20, 2020), <https://www.dailywire.com/news/national-archives-forced-to-apologize-after-blurring-profane-womens-march-signs-in-captured-photos>; Staff, *Anti-Trump Slogans Blurred Out from Photo in U.S. National Archives*, INDEPENDENT (Jan. 18, 2020), <https://www.independent.co.uk/news/world/americas/trump-march-photo-blur-national-archives-exhibit-a9289876.html>.

American life—it is the “the nation’s record keeper.”¹² In its own words, it is “committed to preserving . . . archival holdings, without alteration.”¹³ After all, “[a]n archives is a place where people can go to gather firsthand facts, data, and evidence from letters, reports, notes, memos, photographs, and other primary sources.”¹⁴ Yet in this case, NARA intentionally altered a historical photograph to avoid “political controversy” or possible impropriety. To provide the American public with information about NARA’s alteration of the 2017 Women’s March Photograph, as well as its policies, procedures, and practices for alteration of documents and handling of potentially sensitive materials, the ACLU seeks such information through this FOIA request.



II. Requested Records

The ACLU seeks the following records. The terms “communication” and “records” are defined below.

- (1) All communication or other records concerning NARA’s display of and decision to blur portions of the photograph of the 2017 Women’s March, including but not limited to all communication or other records between managers, museum staff, and/or David S. Ferriero.
- (2) All communication or other records concerning the materials to be displayed in the exhibit or to promote the exhibit, “Rightfully Hers: American Women and the Vote.”
- (3) All communication with Getty Images concerning the licensing of the 2017 Women’s March photograph, or any records related to or providing guidance for that communication.
- (4) All communication with other agencies or government officials concerning the National Archives’ display of the 2017 Women’s March Photograph.
- (5) All records concerning images for any other NARA exhibit that have been altered in any way before being displayed to the public, including but not limited to being altered in order to avoid (a) political controversy and/or (b) being “inappropriate” to young

¹² *What is the National Archives and Records Administration?*, National Archives, www.archives.gov/about (last visited Jan. 21, 2020).

¹³ Cramer, N.Y. TIMES, *supra* note 7.

¹⁴ *What’s an Archives?*, National Archives, <https://www.archives.gov/about/info/whats-an-archives.html> (last visited Jan. 21, 2020).

people, but excluding purely aesthetic reasons such as minor, non-substantive cropping.

- (6) All communication or other records involving David S. Ferriero about modification or alteration of records owned, licensed, or used by NARA.
- (7) Any policy directives, guidance documents, legal or other memoranda, training materials, or other records related to (a) the display of records at the National Archives and/or (b) the display of or use of promotional material by NARA.
- (8) All communication or other records concerning a review of NARA's exhibit policies and procedures regarding guidelines for decisions relating to alteration of any image, display, exhibit, or record.



For purposes of this Request, the term “records” includes but is not limited to any and all communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, spreadsheets, charts, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

For the purposes of this Request, “communication” is collectively defined to include, but is not limited to: talking points, intelligence notes, assessments, bulletins, instructions, directives, guidance documents, formal and informal presentations, training documents, alerts, updates, advisories, reports, contracts or agreements, minutes or notes of meetings and phone calls, other memoranda, legal opinions, evaluations, memorializations, guidelines, emails, and social media posts.

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.

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to

this FOIA Request should also be considered within the Request's scope. To facilitate a speedy response, we ask that records responsive to this request be produced on a rolling basis.

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). 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. *See id.* Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. Dep’t of Justice*, 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”).¹⁵

The ACLU regularly publishes a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 900,000 people. The ACLU also publishes regular updates and alerts via email to over 3.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over four 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

¹⁵ 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).



documents obtained through FOIA requests, as well as other breaking news,¹⁶ and ACLU attorneys are interviewed frequently for news stories



¹⁶ See, e.g., Press Release, ACLU, Federal Court Permanently Blocks Billions of Dollars in Border Wall Construction (June 28, 2019), <https://www.aclu.org/press-releases/federal-court-permanently-blocks-billions-dollars-border-wall-construction>; Press Release, ACLU, New Documents Reveal NSA Improperly Collected Americans' Call Records Yet Again (June 26, 2019), <https://www.aclu.org/press-releases/new-documents-reveal-nsa-improperly-collected-americans-call-records-yet-again>; Press Release, ACLU, ACLU and Center for Media Justice Sue FBI for Records on Surveillance of Black Activists (Mar. 21, 2019), <https://www.aclu.org/press-releases/aclu-and-center-media-justice-sue-fbi-records-surveillance-black-activists>; Press Release, ACLU, ACLU, Privacy International Demand Government Disclose Nature and Extent of Hacking Activities (Dec. 21, 2018), <https://www.aclu.org/press-releases/aclu-privacy-international-demand-government-disclose-nature-and-extent-hacking>; Press Release, ACLU, New Documents Reveal Government Plans to Spy on Keystone XL Protesters (Sept. 4, 2018), <https://www.aclu.org/news/new-documents-reveal-government-plans-spy-keystone-xl-protesters>; Press Release, ACLU, ACLU Obtains Documents Showing Widespread Abuse of Child Immigrants in U.S. Custody (May 22, 2018), <https://www.aclu.org/news/aclu-obtains-documents-showing-widespread-abuse-child-immigrants-us-custody>; Press Release, ACLU, ACLU Demands CIA Records on Campaign Supporting Haspel Nomination (May 4, 2018), <https://www.aclu.org/news/aclu-demands-cia-records-campaign-supporting-haspel-nomination>; Press Release, ACLU, Advocates File FOIA Request For ICE Documents on Detention of Pregnant Women (May 3, 2018), <https://www.aclu.org/news/advocates-file-foia-request-ice-documents-detention-pregnant-women>; Press Release, ACLU, Civil Rights Organizations Demand Police Reform Documents from Justice Department (Jan. 4, 2018), <https://www.aclu.org/news/civil-rights-organizations-demand-police-reform-documents-justice-department>; Press Release, ACLU, ACLU Files Lawsuits Demanding Local Documents on Implementation of Muslim Ban (Apr. 12, 2017), <https://www.aclu.org/news/aclu-files-lawsuits-demanding-local-documents-implementation-trump-muslim-ban>; 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, ACLU Sues for Bureau of Prisons Documents on Approval of CIA Torture Site (Apr. 14

about documents released through ACLU FOIA requests.¹⁷

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. The ACLU regularly publishes and disseminates reports that include description and analysis of government documents obtained through FOIA requests.¹⁸ 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, *Speak Freely*, where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See ACLU, Blogs, <https://www.aclu.org/blog>. The

2016), <https://www.aclu.org/news/aclu-sues-bureau-prisons-documents-approval-cia-torture-site>.

¹⁷ See, e.g., Charlie Savage, *N.S.A. Gathered Domestic Calling Records It Had No Authority to Collect*, *N.Y. Times* (June 26, 2019), <https://www.nytimes.com/2019/06/26/us/telecom-nsa-domestic-calling-records.html>.

¹⁸ See, e.g., ACLU, *Bad Trip: Debunking the TSA’s ‘Behavior Detection’ Program* (2017), https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf; 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), <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), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (2016), <https://www.aclu.org/report/leaving-girls-behind>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>.



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* ACLU, Multimedia, <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, including 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.¹⁹

¹⁹ *See, e.g., ACLU v. ODNI*—FOIA Lawsuit Seeking Records About Government Surveillance Under the USA Freedom Act, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-odni-foia-lawsuit-seeking-records-about-government-surveillance-under-usa-freedom-act>; *ACLU v. DOJ*—FOIA Lawsuit Seeking Information on Federal Agencies' Surveillance of Social Media, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-seeking-information-federal-agencies-surveillance-social-media>; *ACLU v. DOJ*—FOIA Case for Records Relating to Targeted Killing Law, Policy, and Casualties, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-case-records-relating-targeted-killing-law-policy-and-casualties>; Executive Order 12,333—FOIA Lawsuit, ACLU Case Page, <https://www.aclu.org/cases/executive-order-12333-foia-lawsuit>; ACLU Motions Requesting Public Access to FISA Court Rulings on Government Surveillance, ACLU Case Page, <https://www.aclu.org/cases/aclu-motions-requesting-public-access-fisa-court-rulings-government-surveillance>; *ACLU v. DOJ*—FOIA Lawsuit Demanding OLC Opinion “Common Commercial Service Agreements, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-demanding-olc-opinion-common-commercial-service-agreements>; FOIA Request for Justice Department Policy Memos on GPS Location Tracking, ACLU Case Page, <https://www.aclu.org/cases/foia-request-justice-department-policy-memos-gps-location-tracking>; Florida Stingray FOIA, ACLU Case Page, <https://www.aclu.org/cases/florida-stingray-foia>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida*, (Feb. 22, 2015) <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida?redirect=blog/national-security-technology-and-liberty/aclu->



The ACLU website includes many features on information obtained through the FOIA. 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 its contents relating to government policies on rendition, detention, and interrogation.²⁰ The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA.²¹

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). As discussed in Part I, *supra*, NARA’s decision to blur portions of the 2017 Women’s March Photograph displayed at the National Archives is the subject of widespread public controversy and media attention.²² The records sought relate to a matter of widespread and exceptional media interest.²³ Given this media interest and the lack of public information,

obtained-documents-reveal-breadth-secretive-sting.

²⁰ *The Torture Database*, ACLU Database, <https://www.thetorturedatabase.org>; *see also Countering Violent Extremism FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

²¹ *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; *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU (Nov. 29, 2010), <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>; *Statistics on NSL’s Produced by Department of Defense*, ACLU, https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

²² *See supra* note 11.

²³ *See id.*



there is an urgent need to inform the public about NARA’s treatment of the 2017 Women’s March Photograph, as well as its policies and practices for altering images. Expedited processing is therefore appropriate under 5 U.S.C. § 552(a)(6)(E).

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). 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, this Request concerns NARA’s decision to alter the 2017 Women’s March Photograph as part of an exhibit at the National Archives and its related policy. Little information is publicly available regarding the inquiry at issue in this Request, so the records sought are certain to contribute significantly to the public’s understanding..

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). The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v.*



Dep't of 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. Dep’t of Justice*, 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. Dep’t of Justice*, 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).²⁴

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.”²⁵ As was true in those instances, the ACLU meets the

²⁴ 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 and 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.

²⁵ The ACLU regularly receives FOIA fee waivers from federal agencies. For example, in June 2018, the U.S. Citizenship and Immigration Services granted a fee-waiver request regarding a FOIA request for documents relating to the use of social media surveillance. In

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. *See* NARA, FOIA Reference Guide (2018), <https://www.archives.gov/foia/foia-guide> (“[I]f only part of a record must be withheld, the National Archives will redact that specific information and provide access to the rest of the record.”). The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.



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 June 2017, the Department of Defense granted a fee-waiver request regarding a FOIA request for records pertaining to the authorities approved by President Trump in March 2017 which allowed U.S. involvement in Somalia. In June 2017, the Department of Defense, the CIA, and the Office of Inspector General granted fee-waiver requests regarding a FOIA request for records pertaining to U.S. involvement in the torture of detainees in prisons in Yemen, Eritrea, and aboard Yemeni or Emirati naval vessels. 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 June 2016, the Office of the Director of National Intelligence granted a fee-waiver request regarding a FOIA request related to policies and communications with social media companies’ removal of “extremist” content. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the Department of Justice for documents related to Countering Violent Extremism Programs.

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

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JCalvo-Friedman@aclu.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).



Respectfully,

/s Jennessa Calvo-Friedman
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Louise Melling
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