



July 15, 2016

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Washington, D.C. 20530-0001
Attn: FOIA Request
Email: mrfoia.requests@usdoj.gov

Drug Enforcement Administration
Attn: FOIA/PA Unit (SARF)
8701 Morrisette Drive
Springfield, Virginia 22152
Email: dea.foia@usdoj.gov

Federal Bureau of Investigation
FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843
Email: foiparequest@ic.fbi.gov

United States Marshals Service
Attn: FOI/PA Officer
Office of General Counsel
CS-4, 10th Floor, U.S. Marshals Service Headquarters
Washington, D.C. 20530-1000
Email: usms.foia@usdoj.gov

Bureau of Alcohol, Tobacco, Firearms and Explosives
Attn: Disclosure Division, Room 4E.301
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Securities and Exchange Commission
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**Re: Request Under Freedom of Information Act
(Fee Waiver or Fee 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”) for records pertaining to law enforcement’s practice of “parallel construction” to obscure or withhold original sources of evidence from the public and the courts.

I. Background

“Parallel construction” is an informal term that refers to the law-enforcement practice of manufacturing a sanitized evidentiary basis for a criminal investigation in order to mask the actual methods used to obtain

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.

incriminating information about a suspect. According to media reports, these actual methods often take the form of controversial and potentially illegal or unconstitutional surveillance techniques. Because evidence derived from an unconstitutional search is generally inadmissible in court, law-enforcement agencies—in order to build a case against a defendant—may make their investigation appear legal on the surface, by reverse-engineering a trail of evidence that is more likely to pass Fourth Amendment muster.

Although there is little information available to the public about how widespread parallel construction is, or about how the government uses it to disguise the origin of illegally gathered evidence, it is clear that this tactic has been used in significant ways by law-enforcement agencies.

For example, in September 2013, Drug Enforcement Administration (“DEA”) training slides pertaining to a mass surveillance program called “Hemisphere” were publicly disclosed.² Under Hemisphere, AT&T employees supplied officials with telephony metadata from a database of calls dating back to 1987.³ In sections of the DEA slides—part of a presentation entitled “Protecting the Program”—law-enforcement officials were instructed to “keep the program under the radar” by recreating evidence obtained under the program through the use of subpoenas for call records from cell-phone carriers.⁴ The presentation advised that through the use of this technique, all relevant calls “c[ould] be attributed to the carrier’s records” instead of to Hemisphere, “thus ‘walling off’ the information obtained from Hemisphere” and making the government’s usage of the program untraceable.⁵

Similar language is found in a recently released non-disclosure agreement imposed by the Federal Bureau of Investigation (“FBI”) on the Oklahoma City Police Department in connection with the city’s use of cell-site simulators, also known as “stingray” devices.⁶ Stingrays are invasive electronic surveillance equipment used to track and locate cell phones.⁷ The non-disclosure agreement (“NDA”), obtained through a state open-records request, requires that the Oklahoma City Police Department use the technology “for lead purposes only” and that “[i]nformation obtained” therefrom “may not be used as primary

² Scott Shane & Colin Moynihan, *Drug Agents Use Vast Phone Trove, Eclipsing N.S.A.’s*, N.Y. Times, Sept. 1, 2013, <http://nyti.ms/24UAPO4>.

³ James Ball, *US Drug Agency Partners with AT&T for Access to ‘Vast Database’ of Call Records*, Guardian, Sept. 2, 2013, <http://gu.com/p/3teee>.

⁴ Office of National Drug Control Policy, *Los Angeles Hemisphere: Law Enforcement Sensitive*, <http://s3.documentcloud.org/documents/782287/database.pdf#page=10>.

⁵ *Id.*

⁶ Jenna McLaughlin, *FBI Told Cops to Recreate Evidence From Secret Cell-Phone Trackers*, Intercept, May 5, 2016, <http://interc.pt/1OfNkMm>.

⁷ *Id.*

evidence in any affidavits, hearings or trials.”⁸ The NDA further explained that the agency must “use additional and independent investigative means and methods . . . that would be admissible at trial” in lieu of disclosing to the defendant the fact that a stingray device was used.⁹

Similar instructions were given to FBI agents under the government’s warrantless-wiretapping program, Stellarwind. Agents were instructed that information obtained through the program was:

for lead purposes only and is intended solely for the background information of recipients in developing their own collateral leads. It cannot be used in affidavits, court proceedings, subpoenas, or for other legal or judicial purposes.¹⁰

According to former DEA officials, parallel construction is used on a “daily” basis.¹¹ It is also extremely secretive—when conducted, original evidence and techniques are hidden not only from judges, defense attorneys, and the public, but sometimes even from prosecutors.¹² Such lack of transparency violates the Constitution and undermines the right to a fair trial because it prevents defendants from knowing about unlawful investigative methods that played a role in their prosecutions.¹³ Defendants cannot ask to review potential sources of exculpatory or otherwise material evidence if they do not know that these sources exist in the first place. Meanwhile, the government can sidestep the need to defend the legality of its searches against suppression challenges.

In an effort to supplement the public record with information about agencies’ use of parallel construction, and to identify the practice’s potential

⁸ FBI, Approved Non-Disclosure Notice (2014), <https://www.documentcloud.org/documents/2823907-OKCPDFBI-MOU2.html#document/p1>.

⁹ *Id.*

¹⁰ Offices of the Inspectors General of the DOD, DOJ, CIA, NSA, and ODNI, Report on the President’s Surveillance Program PDF401 (2009), <http://nyti.ms/1HkMjOO>; *see also id.* at PDF44 (describing “scrubbing” procedures with respect to applications under the Foreign Intelligence Surveillance Act).

¹¹ John Shiffman & Kristina Cooke, *Exclusive: U.S. Directs Agents to Cover Up Program Used to Investigate Americans*, Reuters, Aug. 5, 2013, <http://reut.rs/1XsmsRF>.

¹² Kevin Johnson, *Justice Department Reviewing DEA’s Shielding of Sources*, USA Today, Aug. 5, 2013, <http://usat.ly/1Xskzo1>; Brad Heath, *FBI Warned Agents Not to Share Tech Secrets with Prosecutors*, USA Today, Apr. 20, 2016, <http://usat.ly/1XsnrBi>; Department of Justice, Review of the Organized Crime Drug Enforcement Task Forces Fusion Center (2014), available at <http://1.usa.gov/1Xsmuc6>; Tim Cushing, *FBI Hides Its Surveillance Techniques From Federal Prosecutors Because It’s Afraid They’ll Become Defense Lawyers*, Techdirt, Apr. 25, 2016, <https://www.techdirt.com/articles/20160423/20522034256/fbi-hides-surveillance-techniques-federal-prosecutors-because-afraid-theyll-become-defense-lawyers.shtml>.

¹³ *See Brady v. Maryland*, 373 U.S. 83 (1963).

impacts on individuals' constitutional rights and government transparency and accountability, the ACLU seeks such information through this FOIA request.

II. Requested Records

The ACLU seeks the release of records—including legal and policy memoranda; guidance documents; instructions; training documents; formal and informal presentations; directives; contracts or agreements; and memoranda of understanding—that:

- (1) contain the phrase “for lead purposes only”;
- (2) contain the phrase “collateral leads”;
- (3) instruct or advise officials, agents, or lawyers that certain investigative information or techniques are for “background purposes only”;
- (4) instruct or advise officials, agents, or lawyers that certain information or techniques are not to be used as “primary evidence”;
- (5) instruct or advise officials, agents, or lawyers that certain information or techniques are not to be used or described in reports, subpoenas or other legal process, affidavits, court applications, court submissions, testimony, or communications with defendants or defense counsel;
- (6) instruct or advise officials, agents, or lawyers to “scrub,” remove, or omit certain information or techniques from reports, subpoenas or other legal process, affidavits, court applications, court submissions, testimony, or communications with defendants or defense counsel; and
- (7) instruct or advise officials or agents to withhold information from prosecutors in order to avoid disclosure to defendants.

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 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).¹⁴ 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, 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. Because little specific information about the government’s use of parallel construction is publicly available, the records sought are certain to contribute significantly to the public’s understanding of the law, policies, and process being applied by government agencies in their reviews of authors’ works.

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)).

The ACLU regularly publishes a newsletter that reports on and analyzes civil liberties-related current events. The newsletter is disseminated to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members) by email. The electronic newsletter is disseminated to approximately 300,000 people. Both of these newsletters 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,¹⁵

¹⁴ *See also* 28 C.F.R. § 16.10(k)(1)(i)-(ii); 17 C.F.R. § 200.80(e)(4)(i)(A)-(B); 26 C.F.R. § 601.702(f)(2)(i); 6 C.F.R. § 5.11(k)(1)(i)-(ii); 39 C.F.R. § 265.9(g)(3).

¹⁵ *See, e.g.*, Press Release, American Civil Liberties Union, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014),

and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁶

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. Since 2011 alone, ACLU national projects have published and disseminated dozens of reports, many of which include a description and analysis of government documents obtained through FOIA requests.¹⁷ The ACLU also regularly publishes books, “know

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<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>; Press Release, American Civil Liberties Union, FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering (Mar. 27, 2012), <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of “Community Outreach” (Dec. 1, 2011), <https://www.aclu.org/news/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community-outreach>; Press Release, American Civil Liberties Union, FOIA Documents from FBI Show Unconstitutional Racial Profiling (Oct. 20, 2011), <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem (Oct. 19, 2011), <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, ACLU Lawsuit Seeks Information from FBI on Nationwide System for Collecting “Suspicious Activity” Information (Aug. 25, 2011), <https://www.aclu.org/national-security/aclu-lawsuit-seeks-information-fbi-nationwide-system-collecting-suspicious>; Press Release, American Civil Liberties Union, New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison, Says ACLU (June 24, 2009), <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>.

¹⁶ See, e.g., Brad Knickerbocker, *ACLU: FBI Guilty of “Industrial Scale” Racial Profiling*, The Christian Science Monitor, Oct. 21, 2011, <http://www.csmonitor.com/USA/Justice/2011/1021/ACLU-FBI-guilty-of-industrial-scale-racial-profiling>; Joshua E.S. Phillips, *Inside the Detainee Abuse Task Force*, The Nation, May 13, 2011, <http://www.thenation.com/article/inside-detainee-abuse-task-force/> (quoting ACLU staff attorney Alexander Abdo); Scott Shane & Benjamin Weiser, *Dossier Shows Push for More Attacks After 9/11*, N.Y. Times, Apr. 25, 2011, <http://nyti.ms/ty47ZA> (quoting ACLU project director Hina Shamsi); Eric Lichtblau, *Court Revives Lawsuit Over Government Surveillance*, N.Y. Times, Mar. 21, 2011, <http://nyti.ms/tgFpkd> (quoting ACLU deputy legal director Jameel Jaffer).

¹⁷ See, e.g., ACLU, FBI Releases Details of ‘Zero-Day’ Exploit Decisionmaking Process (June 26, 2015), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; 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/aclu-eye-fbi-documents-reveal-lack-privacy-safeguards-and>

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* <http://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* <http://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, and further in-depth analytic and educational multi-media features.

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The ACLU website includes many features on information obtained through the FOIA.¹⁸ For example, the ACLU’s “Predator Drones FOIA”

guidance-governments-suspicious-activity-0; ACLU, Unleashed and Unaccountable: The FBI’s Unchecked Abuse of Authority (Sept. 2013), <https://www.aclu.org/unleashed-and-unaccountable-fbis-unchecked-abuse-authority>; Yale Law School and ACLU, Victims of Complacency: The Ongoing Trafficking and Abuse of Third Country Nationals by U.S. Government Contractors (June 2012), https://www.aclu.org/sites/default/files/field_document/hrp_traffickingreport_web_0.pdf; Human Rights Watch and ACLU, Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System (July 2010), https://www.aclu.org/files/assets/usdeportation0710_0.pdf; ACLU, Reclaiming Patriotism: A Call to Reconsider the Patriot Act (March 2009), https://www.aclu.org/files/pdfs/safefree/patriot_report_20090310.pdf; ACLU, The Excluded: Ideological Exclusion and the War on Ideas (Oct. 2007), https://www.aclu.org/sites/default/files/field_document/the_excluded_report.pdf; ACLU, History Repeated: The Dangers of Domestic Spying by Federal Law Enforcement (May 2007), https://www.aclu.org/sites/default/files/field_document/asset_upload_file893_29902.pdf; ACLU, No Real Threat: The Pentagon’s Secret Database on Peaceful Protest (Jan. 2007), <https://www.aclu.org/report/no-real-threat-pentagons-secret-database-peaceful-protest>; ACLU, Unpatriotic Acts: The FBI’s Power to Rifle Through Your Records and Personal Belongings Without Telling You (July 2003), http://www.aclu.org/FilesPDFs/spies_report.pdf.

¹⁸ *See, e.g.*, <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-defense>; <http://www.aclu.org/mappingthefbi>; <https://www.aclu.org/cases/bagram-foia>; <https://www.aclu.org/national-security/csrt-foia>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; [8](https://www.aclu.org/patriot-</p></div><div data-bbox=)

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.¹⁹

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA—the ACLU created an original chart that provides the public and news media with a comprehensive summary of index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.²⁰ Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act²¹; a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA²²; and an analysis of documents obtained through FOIA about FBI surveillance flights over Baltimore.²³

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 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

foia; <http://www.aclu.org/spyfiles>; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>; <https://www.aclu.org/national-security/ideological-exclusion>.

¹⁹ <http://www.torturedatabase.org>. See also <https://www.aclu.org/national-security/aclu-v-department-defense>.

²⁰ https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

²¹ <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

²² https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

²³ <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

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)²⁴; *see also Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women’s Action Network v. DOD*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. DOJ*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. *See, e.g., Cause of Action v. IRS*, No. 13-0920, 2015 WL 5120863 (D.C. Cir. Aug. 28, 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).²⁵

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.”²⁶ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

²⁴ *See also* 28 C.F.R. § 16.10(b)(6); 26 C.F.R. § 601.702(f)(3)(ii)(B); 6 C.F.R. § 5.11(b)(6).

²⁵ 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.

²⁶ 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

* * *

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) (Department of Justice); 17 C.F.R. 200.80(d)(5)(iii) (Securities and Exchange Commission); 26 C.F.R. § 601.702(c)(6)(iv) (Internal Revenue Service); 6 C.F.R. § 5.5(d)(4) (Department of Homeland Security); 39 C.F.R. § 265.7(g)(3) (United States Postal Inspection Service).

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

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

Brett Max Kaufman
American Civil Liberties Union
125 Broad Street—18th Floor
New York, New York 10004
T: 212.549.2500

“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 October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. 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 Department of Justice 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 submitted in November of 2006. 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 and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

F: 212.549.2654
bkaufman@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,



Brett Max Kaufman
American Civil Liberties Union
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