



# Homeland Security

*Privacy Office, Mail Stop 0655*

[REDACTED]

Re: [REDACTED]

[REDACTED]

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated December 26, 2019, and received by this office on December 26, 2019. You are seeking a copy of the letter of request for each of the ten oldest pending requests at DHS Privacy Office as amended on January 13, 2020.

A search of Department of Homeland Security's, Privacy Office for documents responsive to your request produced a total of forty-five (45) pages. Of those pages, I have determined that twenty-eight (28) pages of the records are releasable in their entirety and seventeen (17) pages are partially releasable pursuant to Title 5 U.S.C. § 552 (b)(6), FOIA Exemptions 6.

Enclosed are seventeen (17) pages with certain information withheld as described below:

**FOIA Exemption 6** exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

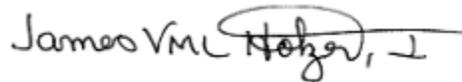
You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

In order to be sure your account is credited, you must reference the DHS FOIA Number 2020-HQFO-00351 on your check or money order and attach it to a copy of this letter. The Department may institute collection action pursuant to Federal debt collection statutes, which provide for recovery of interest, administrative charges, and penalty charges for handling a delinquent debt owed to the government.

If you need any further assistance or would like to discuss any aspect of your request, please contact the analyst below who processed your request and refer to **2020-HQFO-00351**. You may send an e-mail to [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov), call 202-343-1743 or toll free 1-866-431-0486, or you may contact our FOIA Public Liaison in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in black ink that reads "James V.M.L. Holzer, J." with a stylized flourish at the end.

James V.M.L. Holzer  
Deputy Chief FOIA Officer

Enclosure(s): Responsive Documents, 45 pages

This document is made available through the declassification efforts  
and research of John Greenwald, Jr., creator of:

# The Black Vault



The Black Vault is the largest online Freedom of Information Act (FOIA)  
document clearinghouse in the world. The research efforts here are  
responsible for the declassification of hundreds of thousands of pages  
released by the U.S. Government & Military.

**Discover the Truth** at: <http://www.theblackvault.com>

Edward Hasbrouck  
The Identity Project

(b)(6)

(b)(6)

(b)(6)

(b)(6)

January 21, 2016

Karen Neuman, Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW, STOP-0655  
Washington, D.C. 20528-0655

(by mail and by e-mail to foia@hq.dhs.gov)

**FOIA REQUEST**

**Fee benefit requested**

**Fee waiver requested**

Dear Ms. Neuman:

This is a request pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552.

We request (1) access to and copies of all records of or pertaining to individuals presenting driver's licenses that are or were not considered compliant, or from states or territories that are or were not considered compliant, with the REAL-ID Act of 2005, for purpose of accessing Federal facilities and/or passing through checkpoints at airports or elsewhere, including any records of the numbers of such individuals, statistical or descriptive records pertaining to such incidents, email messages pertaining to such incidents or reports, and any instructions regarding handling and/or reporting of such incidents, and (2) any records pertaining to the legal basis for denial or potential denial of access to Federal facilities, denial of passage through checkpoints at airports, or denial of transport by airlines or surface transportation carriers, on the basis of the REAL-ID Act of 2005, including any reports analyzing these issues and any email messages pertaining to them.

This request includes any responsive records of the DHS or any DHS component agency identifiable as having, or likely to have, responsive records, including any email messages or other communications within the DHS and any of its components or between the DHS or DHS components and other agencies, departments, contractors, airlines or other carriers, or other parties.

We request that all responsive records be provided in electronic form.

With respect to any records held in electronic form, we request that they be provided in the original electronic form in which they are held on workstations, servers, and/or backup, archival, or other storage media or devices, as complete bitwise digital copies of the original email message files,

The Identity Project FOIA request for records pertaining to the REAL-ID Act of 2005 (page 1 of 3)

spreadsheet files, word processor document files, PDF files, or other electronic files, including any file names, file headers, embedded metadata, file system information, and all other file content. All such data is subject to FOIA and is expressly included within the scope of this request for records.

We specifically request that you not create new documents in response to this request, not create “documents” such as page-view images or print views from digital records, and not substitute such newly-created “documents”, images, or views for requested records held by you as digital files.

In this regard, we call to your attention the recent OGIS report on TSA FOIA processing practices, available at <<https://ogis.archives.gov/Assets/Transportation+Security+Administration+%28TSA%29+Freedom+of+Information+Act+%28FOIA%29+Compliance+Report.pdf>> :

During our review, we also noted TSA converted all records into a PDF format prior to processing, making it difficult for TSA to meet FOIA’s requirement that agencies provide records “in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” PDF is an image format; converting a spreadsheet or information from a database into a PDF is akin to taking a page-sized picture of the information. In order for all of the information in the record to be seen in the PDF, the FOIA processor must make sure that text is not hidden by another cell and that the text fits within the page’s margins. Converting databases into PDFs also limits their use to the public, because the data in the record cannot be sorted or combined with other sources. In one particular instance, we noted a requester had specifically asked for a database in a “non-PDF” format; the requester specifically mentioned formats that would allow him or her to sort or otherwise use the data. TSA provided the requester with an alternative image -- based format -- TIFF, a format that is generally less searchable than PDF. We recommend that TSA look into how records can be processed and released in their native format when requested and incorporating any new processes into its SOPs.

According to “REAL ID Act of 2005 Implementation: An Interagency Security Committee Guide”, available at <[http://www.dhs.gov/sites/default/files/publications/isc-real-id-guide-august-2015-508\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/isc-real-id-guide-august-2015-508_0.pdf)>, Section 4.4, “Reporting Requirements”:

Your agency should also have a process for recording the number of encounters of individuals presenting driver’s licenses from noncompliant states for purpose of accessing Federal facilities. This data should be sent monthly to DHS (OSIIS@hq.dhs.gov) for collection no later than the tenth day of each month. DHS will use this data to evaluate the impact of REAL ID enforcement on the public. See Appendix E for a sample report template.

The records responsive to this request include the reports produced in response to this guidance. The scope of the search for responsive records should be from the date of enactment of the REAL-ID Act of 2005 through the date when the search for responsive records is conducted.

This information is being sought on behalf of The Identity Project (“IDP”). IDP provides advice, assistance, publicity, and legal defense to those who find their rights infringed or their legitimate activities curtailed by demands for identification, and builds public awareness about the

effects of ID requirements on fundamental rights. IDP is a program of the First Amendment Project, a nonprofit organization providing legal and educational resources dedicated to protecting and promoting First Amendment rights.

As a representative of the news media we are only required to pay for the direct cost of duplication after the first 100 pages. Through this request, we are gathering information on DHS policies and procedures that is of current interest to the public as part of widespread public interest in implementation of the REAL-ID Act and DHS policies, procedures, and practices related to access to public facilities and access transportation by airlines and other transportation carriers, and what if any legal basis, in what circumstances, the DHS believes exist for denial of access to facilities and/or transportation. This information is being sought on behalf of The Identity Project ("IDP"). IDP is a program of the First Amendment Project, a nonprofit organization providing legal and educational resources dedicated to protecting and promoting First Amendment rights.

This information will be made available to the public. The principal activity of IDP is publication of the informational and educational Web site at <<http://www.papersPlease.org>>, where we have published documents obtained in response to our previous FOIA requests.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. The records we are requesting clearly relate to government operations and activities in the management and control of access to Federal facilities and transportation by Federally-licensed air carriers. It is in the public interest for the public to know about the policies and practices which affect public access to public facilities, and the legal basis or lack thereof for these policies and practices. The Identity Project is a nonprofit organization with no commercial interest in this information.

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions. We will also expect you to release all segregable portions of otherwise exempt material. We, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees. Please respond as soon as possible to confirm your receipt of this request and to advise the expected date of completion of Departmental action with respect to this request. We look forward to your complete reply within 20 business days, as the FOIA statute requires.

(b)(6)

Sincerely,

Edward Hasbrouck  
Consultant on travel-related issues  
The Identity Project

**From:** Jason Leopold  
**To:** FOIA, NPPD; I&AFOIA; CRCL; FOIAOPS; FOIA; FOIA; FOIA  
**Subject:** Request for records under the Freedom of Information Act  
**Date:** Saturday, January 28, 2017 2:38:43 PM

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National Protection and Programs Directorate (NPPD)

U.S. Department of Homeland Security

Washington, D.C. 20528

FOIA Officer/Public Liaison: Sandy Ford Page

Phone: [703-235-2211](tel:703-235-2211)

Fax: [703-235-2052](tel:703-235-2052)

Office of Intelligence & Analysis (I&A)

U.S. Department of Homeland Security

Washington, D.C. 20528

FOIA Officer/Public Liaison: Priscilla Waters

Phone: [202-447-4883](tel:202-447-4883)

Fax: [202-612-1936](tel:202-612-1936)

Office of Civil Rights and Civil Liberties

U.S. Department of Homeland Security

Washington, D.C. 20528

Acting FOIA Officer/Public Liaison: Aeron Pineiro

Phone: [202-357-1218](tel:202-357-1218)

Office of Operations Coordination and Planning

U.S. Department of Homeland Security

Washington, D.C. 20528

FOIA Officer/Public Liaison: Michael Page

Phone: [202-447-4156](tel:202-447-4156)

Fax: [202-282-9811](tel:202-282-9811)

United States Secret Service

Freedom of Information and Privacy Acts Branch

245 Murray Drive, Building 410

Washington, D.C. 20223

FOIA Officer/Public Liaison: Latita Payne

Phone: [202-406-6370](tel:202-406-6370)

Fax: [202-406-5586](tel:202-406-5586)

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records. This request seeks expedited processing.

#### REQUESTER INFORMATION

Name: Jason Leopold

Position: Investigative Reporter

Address: (b)(6)

Email: (b)(6)

#### RECORDS SOUGHT

I request **any and all records**, which includes but is not limited to legal opinions, intelligence bulletins, threat assessments, reports, emails, memoranda, in the possession of certain divisions of the Department of Homeland Security, (see offices this request is addressed to above), Joint Terrorism Task Forces, that mentions or refers to President Donald Trump's Muslim Ban, also known as the "extreme vetting" executive order dated January 27, 2017. The title of the executive order is: "Protecting the Nation From Foreign Terrorist Entry Into The United States." The timeframe for my request is January 1, 2017 through the date the search for responsive records is conducted.

#### EXPEDITED PROCESSING

I am seeking expedited processing for this request. Since this executive order was signed on January 27, 2017, numerous individuals have been detained at airports around the United States and news reports have described the impact of the executive order as "complete chaos." [<http://www.usatoday.com/story/news/2017/01/28/complete-chaos-1000-calls-after-trump-immigrant-ban-hits/97184560/>]. Lawsuits have been filed challenging the constitutionality of the executive order. For many of these refugees this is now a life and death situation.

**INSTRUCTIONS REGARDING SEARCH** (for purposes of this search DHS components" refers to the components within DHS that have been identified as having responsive records)

1. Instructions Regarding "Leads":

As required by the relevant case law, the DHS components should follow any leads it discovers during the conduct of its searches and perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

2. Request for Public Records:

Please search for any records even if they are already publicly available.

3. Request for Electronic and Paper/Manual Searches:

I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted.

4. Request for Search of Filing Systems, Indices, and Locations:

I request that the DHS components search all of its offices and components, which are likely to contain responsive records.

5. Request regarding Photographs and other Visual Materials:

I request that any photographs or other visual materials responsive to my request be released to me in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the DHS components maintains a photograph digitally, I request disclosure of the original digital image file, not a reduced resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, I request disclosure of that photograph as a color image, not a black and white image. Please contact me for any clarification on this point.

6. Request for Duplicate Pages:

I request disclosure of any and all supposedly "duplicate" pages. Scholars analyze records not only for the information available on any given page, but also for the relationships between that information and information on pages surrounding it. As such, though certain pages may have been previously released to me, the existence of those pages within new context renders them functionally new pages. As such, the only way to properly analyze released information is to analyze that information within its proper context. Therefore, I request disclosure of all "duplicate" pages.

7. Request to Search Emails:

Please search for emails relating to the subject matter of my request.

8. Request for Search of Records Transferred to Other Agencies:

I request that in conducting its search, the DHS components disclose releasable records even if they are available publicly through other sources outside the DHS components, such as NARA.

9. Regarding Destroyed Records

If any records responsive or potentially responsive to my request have been destroyed, my request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

#### INSTRUCTIONS REGARDING SCOPE AND BREADTH OF REQUESTS

Please interpret the scope of this request broadly. The DHS components is instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

#### EXEMPTIONS AND SEGREGABILITY

I call your attention to President Obama's 21 January 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles

embodied in FOIA [...] The presumption of disclosure should be applied to all decisions involving FOIA.

In the same Memorandum, President Obama added that government information should not be kept confidential “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”

Finally, President Obama ordered that “The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails.”

Nonetheless, if any responsive record or portion thereof is claimed to be exempt from production, FOIA/PA statutes provide that even if some of the requested material is properly exempt from mandatory disclosure, all segregable portions must be released. If documents are denied in part or in whole, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Please provide a complete itemized inventory and a detailed factual justification of total or partial denial of documents. Specify the number of pages in each document and the total number of pages pertaining to this request. For “classified” material denied, please include the following information: the classification (confidential, secret or top secret); identity of the classifier; date or event for automatic declassification or classification review or downgrading; if applicable, identity of official authorizing extension of automatic declassification or review past six years; and, if applicable, the reason for extended classification beyond six years.

In excising material, please “black out” the material rather than “white out” or “cut out.” I expect, as provided by FOIA, that the remaining non-exempt portions of documents will be released.

Please release all pages regardless of the extent of excising, even if all that remains are the stationery headings or administrative markings.

In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

#### ADDITIONAL INSTRUCTIONS REGARDING REQUEST

Please produce all records with administrative markings and pagination included.

Please send a memo (copy to me) to the appropriate units in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction.

#### FORMAT

I request that any releases stemming from this request be provided to me in digital format (soft-copy) on a compact disk or other like media.

#### FEE CATEGORY AND REQUEST FOR A FEE WAIVER

I am an investigative reporter for VICE News covering a wide-range of issues, including Guantanamo, national security, counterterrorism, civil liberties, human rights, and open government. Additionally, my reporting has been published in the The Guardian, The Wall Street Journal, The Financial Times, Salon, CBS Marketwatch, The Los Angeles Times, The Nation, Truthout, Al Jazeera English and Al Jazeera America.

I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs pursuant to 5 U.S.C. §552(a)(4)(A)(iii) (“Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it 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.”). Disclosure in this case meets the statutory criteria, and 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.’”). I incorporate by reference the explanation and attached materials in the above sections which demonstrates why the requested information is in the public interest.

DoD 5400.7-R C6.1.4.1 provides that “documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in subsection C6.1.5., below, when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.”

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes pursuant to DoD 5400.7-R C6.1.5.7. According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of Nat’l Security Archive v. Dep’t of Defense, 880 F.2d 1381 (D.C. Cir. 1989), the term “a representative of the news media” means any person or 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. This is consistent with the definition provided in DoD 5400.7-R C6.1.5.7.1.

As the legislative history of FOIA reveals, “It is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) “A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision.” 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

I have the intent and ability to disseminate this significant expansion of public understanding of government operations. The public interest in this significant expansion of public understanding of government operations far outweighs any commercial interest of my own in the requested release. Accordingly, my fee waiver request amply satisfies the rules of DoD 5400.7-R C6.1.4.1. Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request a full waiver of fees be granted. I will appeal any denial of my request for a waiver administratively and to the courts if necessary.

\*\*\*

Please do not hesitate to contact me if you have any questions concerning this request.

Thank you. I appreciate your time and attention to this matter.

--

JASON LEOPOLD  
Investigative Reporter

(b)(6)

A rectangular box with a black border, containing the text "(b)(6)" in the top-left corner. The rest of the box is empty, indicating a redacted signature.

**From:** Jason Leopold  
**To:** [FOIA](#), [NPPD](#); [I&AFOIA](#); [CRCL](#); [FOIAOPS](#); [FOIA](#); [FOIA](#); [FOIA](#)  
**Subject:** Fwd: Request for records under the Freedom of Information Act  
**Date:** Sunday, January 29, 2017 6:51:43 PM

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National Protection and Programs Directorate (NPPD)

U.S. Department of Homeland Security

Washington, D.C. 20528

FOIA Officer/Public Liaison: Sandy Ford Page

Phone: [703-235-2211](tel:703-235-2211)

Fax: [703-235-2052](tel:703-235-2052)

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United States Secret Service

Freedom of Information and Privacy Acts Branch

245 Murray Drive, Building 410

Washington, D.C. 20223

FOIA Officer/Public Liaison: Latita Payne

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Fax: [202-406-5586](tel:202-406-5586)

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#### REQUESTER INFORMATION

Name: Jason Leopold

Position: Investigative Reporter

Address: (b)(6)

Email: (b)(6)

#### RECORDS SOUGHT

I request **any and all talking points**, in draft and final form, that refers to President Donald Trump's Muslim Ban, also known as the "extreme vetting" executive order dated January 27, 2017. The title of the executive order is: "Protecting the Nation From Foreign Terrorist Entry Into The United States." The timeframe for my request is January 1, 2017 through the date the search for responsive records is conducted.

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Nonetheless, if any responsive record or portion thereof is claimed to be exempt from production, FOIA/PA statutes provide that even if some of the requested material is properly exempt from mandatory disclosure, all segregable portions must be released. If documents are denied in part or in whole, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Please provide a complete itemized inventory and a detailed factual justification of total or partial denial of documents. Specify the number of pages in each document and the total number of pages pertaining to this request. For “classified” material denied, please include the following information: the classification (confidential, secret or top secret); identity of the classifier; date or event for automatic declassification or classification review or downgrading; if applicable, identity of official authorizing extension of automatic declassification or review past six years; and, if applicable, the reason for extended classification beyond six years.

In excising material, please “black out” the material rather than “white out” or “cut out.” I expect, as provided by FOIA, that the remaining non-exempt portions of documents will be released.

Please release all pages regardless of the extent of excising, even if all that remains are the stationery headings or administrative markings.

In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

#### ADDITIONAL INSTRUCTIONS REGARDING REQUEST

Please produce all records with administrative markings and pagination included.

Please send a memo (copy to me) to the appropriate units in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction.

#### FORMAT

I request that any releases stemming from this request be provided to me in digital format (soft-copy) on a compact disk or other like media.

#### FEE CATEGORY AND REQUEST FOR A FEE WAIVER

I am an investigative reporter for VICE News covering a wide-range of issues, including Guantanamo, national security, counterterrorism, civil liberties, human rights, and open government. Additionally, my reporting has been published in the The Guardian, The Wall Street Journal, The Financial Times, Salon, CBS Marketwatch, The Los Angeles Times, The Nation, Truthout, Al Jazeera English and Al Jazeera America.

I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs pursuant to 5 U.S.C. §552(a)(4)(A)(iii) (“Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it 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.”). Disclosure in this case meets the statutory criteria, and 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.’”). I incorporate by reference the explanation and attached materials in the above sections which demonstrates why the requested information is in the public interest.

DoD 5400.7-R C6.1.4.1 provides that “documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in subsection C6.1.5., below, when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.”

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes pursuant to DoD 5400.7-R C6.1.5.7. According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of Nat’l Security Archive v. Dep’t of Defense, 880 F.2d 1381 (D.C. Cir. 1989), the term “a representative of the news media” means any person or 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. This is consistent with the definition provided in DoD 5400.7-R C6.1.5.7.1.

As the legislative history of FOIA reveals, “It is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) “A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision.” 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

I have the intent and ability to disseminate this significant expansion of public understanding of government operations. The public interest in this significant expansion of public understanding of government operations far outweighs any commercial interest of my own in the requested release. Accordingly, my fee waiver request amply satisfies the rules of DoD 5400.7-R C6.1.4.1. Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request a full waiver of fees be granted. I will appeal any denial of my request for a waiver administratively and to the courts if necessary.

\*\*\*

Please do not hesitate to contact me if you have any questions concerning this request.

Thank you. I appreciate your time and attention to this matter.

--

JASON LEOPOLD  
Investigative Reporter

(b)(6)

PGP

--

JASON LEOPOLD  
Investigative Reporter

(b)(6)

**From:** (b)(6)@requests.muckrock.com  
**To:** FOIA  
**Subject:** Freedom of Information Request: Cybersecurity executive order at DHS  
**Date:** Tuesday, January 31, 2017 7:23:21 PM

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January 31, 2017  
Department of Homeland Security  
U.S. Department of Homeland Security  
Privacy Office  
Director, Disclosure & FOIA  
245 Murray Drive SW, Building 410  
STOP-655  
Washington, D.C. 20528-0655

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

All records, communications relating to and versions of President Donald Trump's cybersecurity executive order (titled "Strengthening U.S. Cyber Security and Capabilities") on cybersecurity.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Patrick Howell O'Neill

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Filed via MuckRock.com  
E-mail (Preferred): (b)(6)@requests.muckrock.com

For mailed responses, please address (see note):  
MuckRock  
DEPT MR 32737  
411A Highland Ave  
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than

"MuckRock News" and the department number) requests might be returned as undeliverable.

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February 14, 2017

VIA ELECTRONIC MAIL

Jonathan Cantor  
Acting Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, DC 20528-0655

Sabrina Burroughs  
FOIA Officer  
MS1181  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229-1181

Freedom of Information Act Office  
500 12th Street, SW, Stop 5009  
Washington, D.C. 20536-5009  
FOIA Officer: Catrina Pavlik-Keenan  
FOIA Requester Service Center Contact: Fernando PineiroRe: Freedom of Information Act (FOIA) Request

Dear FOIA Officers:

The American Immigration Council, the ACLU Immigrants' Rights Project, and the National Immigration Project of the National Lawyers Guild ("Requesters") submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*

**1. REQUEST FOR INFORMATION**

The Requesters request any and all records<sup>1</sup> that, on or after January 20, 2017, were prepared, received, transmitted, and/or collected by the Department of Homeland Security

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<sup>1</sup> The term "records" as used herein includes, but is not limited to: 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, 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,

(DHS), including its Office of Legal Counsel and its components, U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), that describe, refer, or relate to the expedited removal process set forth in section 235(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1225 (hereinafter “expedited removal”).

The requested records include, but are not limited to, those describing, referring, or relating to:

- (1) The implementation of section 11(c) of President Trump’s January 25, 2017 Executive Order entitled “Border Security and Immigration Enforcement Improvements (hereinafter “the Border Security EO”).<sup>2</sup>
- (2) The expansion of expedited removal beyond the 2004 policy set forth in 69 Fed. Reg. 48877 (August 11, 2004) that limited its application to noncitizens who are apprehended within one hundred miles of the border and within fourteen days of entry (hereinafter “the 2004 limits”), including the 11 page DHS memorandum discussing the expansion of expedited removal that is referenced in the Los Angeles Times article “Not just ‘bad hombres’: Trump is targeting up to 8 million people for deportation,” Brian Bennett (Feb. 10, 2017), available at <http://www.latimes.com/politics/la-na-pol-trump-deportations-20170204-story.html>.
- (3) Policies, procedures, recommendations or guidelines relating to the planned or current implementation of expedited removal beyond the 2004 limits.
- (4) Communications, whether electronic or conventional, within or among DHS and its components, or any of their agents, agencies, subagencies, or offices, relating to expansion of expedited removal beyond the 2004 limits, including any communications regarding the implementation of section 11(c) of the Border Security EO.

The Requesters request that any records that exist in electronic form be provided in their native electronic format on a compact disc, digital video disk, or equivalent electronic medium. Requesters ask that any documents stored in Portable Document Format (“PDFs”) be provided as individual files in a searchable PDF format. Finally, Requesters ask that reasonable metadata be transmitted along with files, including but not limited to maintaining parent-child relationships between emails and their attachments, author information, as well as date and time stamp information. If any of the requested records or information are not kept in a succinct format, we request the opportunity to view the documents in your offices.

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as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

<sup>2</sup> Section 11(c) states in full: “Pursuant to section 235(b)(1)(A)(iii)(I) of the INA, the Secretary shall take appropriate action to apply, in his sole and unreviewable discretion, the provisions of section 235(b)(1)(A)(i) and (ii) of the INA to the aliens designated under section 235(b)(1)(A)(iii)(II).”

If, under applicable law, any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

## 2. REQUEST FOR WAIVER OF FEES

Requesters ask that the agency waive all fees associated with this FOIA request. Such a waiver is warranted because disclosure of the information 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); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requesters have the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

### A. *Disclosure of the Information Is in the Public Interest*

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to use of expedited removal. Such information is of great public interest as shown by the interest surrounding President Trump’s executive orders. Multiple articles have been written that discuss plans to expand expedited removal beyond the 2004 limits, including the Los Angeles Times article cited above.<sup>3</sup> Because expedited removal is by its very nature rapid, with limited review, the requested information is critically important to inform attorneys, noncitizens, and the general public about any plans to expand it and to implement section 11(c) of the Border Security EO.

As discussed below, the Requesters have the capacity, intent and demonstrated ability to disseminate the requested information to a broad cross-section of the public.

The American Immigration Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of the immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America’s immigrants. The Council’s policy department researches issues related to immigration, and regularly provides information to leaders on Capitol Hill, the media, and the general public. The Immigration Council has synthesized and disseminated

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<sup>3</sup> *See, e.g.*, Ryan Devereux, “Trump Administration prepares to execute vicious executive order on deportations,” *The Intercept* (Feb. 9, 2017); Thomas Reese, “Asylum Seekers endangered by Trump’s executive order,” *National Catholic Reporter* (Feb. 2, 2017); Allan Wernick, “Reasons to fear Trump for both legal and undocumented immigrants,” *New York Daily News* (Jan. 16, 2017).

information from prior FOIA requests to facilitate the sharing of this information with a broad public audience.<sup>4</sup>

The ACLU is a nationwide, nonprofit, and nonpartisan organization dedicated to protecting civil rights and civil liberties in the United States. It is the largest civil liberties organization in the country, with offices in the fifty states and over one million members. It publishes news briefings, right-to-know handbooks, and other materials that are widely disseminated to the public. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, and law students and law faculty—for either no cost or for a nominal fee through its public education department. The ACLU also disseminates information through its high-traffic website, <http://www.aclu.org>. The website provides in-depth information on a range of civil liberties issues, addresses civil liberties issues that are currently in the news, and contains hundreds of documents relating to the ACLU's work. The website specifically features information obtained through FOIA. *See, e.g.*, <http://www.aclu.org/safefree/torture/torturefoia.html>; [http://www.aclu.org/patriot\\_foia/index.html](http://www.aclu.org/patriot_foia/index.html). In addition, the ACLU publishes a print magazine (STAND) with a circulation of over 400,000, as well as an electronic newsletter distributed to subscribers via email; airs regular podcasts; maintains a blog, [www.aclu.org/blog](http://www.aclu.org/blog); releases information via social media platforms such as Facebook and Twitter; and has produced a television series on civil liberties issues.

The National Immigration Project of the National Lawyers Guild (NIPNLG) is national, tax-exempt 501(c)(3) non-profit organization dedicated to advancing the rights of noncitizens. NIPNLG provides technical and litigation support to immigrant communities, legal practitioners, and advocates, provides training to the bar and the bench on immigration consequences of criminal conduct, and is the author of four treatises on immigration law published by Thomson Reuters. In addition, NIPNLG staff members give presentations and regularly publish written materials, including practice advisories and reports, on immigration law topics, which are disseminated to its members as well as to a large public audience through its website, [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org). NIPNLG also makes available documents obtained through FOIA requests and litigation on its website.

Requesters will analyze and post information obtained through this FOIA request on their publicly accessible websites. Additionally, all Requesters have regular contact with national print and news media and plan to share information gleaned from FOIA disclosures with interested media.

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<sup>4</sup> *See, e.g.*, American Immigration Council, No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse, (May 2014), available at <https://www.americanimmigrationcouncil.org/research/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>; American Immigration Council, Fact Sheet, CBP Restrictions on Access to Counsel, available at [https://www.americanimmigrationcouncil.org/sites/default/files/foia\\_documents/access\\_to\\_counsel\\_cbp\\_foia\\_factsheet.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/access_to_counsel_cbp_foia_factsheet.pdf)

*B. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requesters*

Requesters are all not-for-profit organizations. We seek the requested information for the purpose of disseminating it to members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

\* \* \*

Thank you for your prompt attention to this request. If you have any questions, please do not hesitate to contact me by telephone or email.

Sincerely,

Aaron Reichlin-Melnick  
Staff Attorney  
American Immigration Council  
1331 G Street NW, Suite 200  
Washington, DC 20005

(b)(6)

Email: (b)(6)

**From:** Bryan Johnson  
**To:** [FOIA](#)  
**Subject:** Request for all records of communication of Gene Patrick Hamilton  
**Date:** Friday, February 24, 2017 10:06:23 AM

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Dear Sir/Madam:

I request all records of communications of Gene Patrick Hamilton that reference any of the following: "asylum", "credible fear", "reasonable Fear; "unaccompanied alien children."

I request a fee waiver as this information will be used to educate the public on the influence of a Ms. Shah, a former aide to former Senator Jeffrey Sessions, on the current immigration policies of President Donald Trump.

Thank you for your prompt attention to this matter.

Very Truly Yours,

--

Bryan S. Johnson, Esq.  
Amoachi & Johnson, PLLC  
Attorneys at Law  
1918 Union Boulevard  
Bay Shore, NY 11706

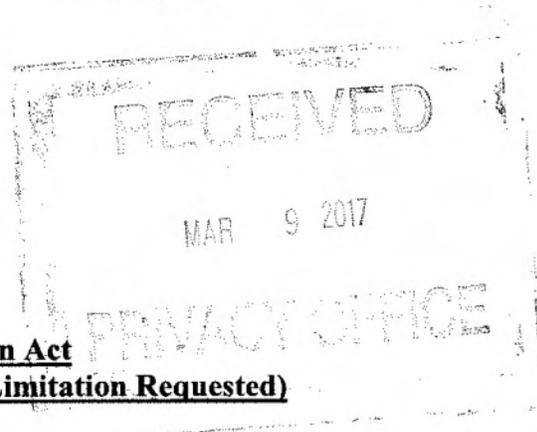
(b)(6)

[www.amjolaw.com](http://www.amjolaw.com)



March 7, 2017

The Privacy Office  
 U.S. Department of Homeland  
 Security  
 245 Murray Lane SW  
 STOP-0655  
 Washington, D.C. 20528-0655  
 foia@hq.dhs.gov



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

AMERICAN CIVIL LIBERTIES  
 UNION FOUNDATION  
 NATIONAL OFFICE  
 125 BROAD STREET, 18TH FL.  
 NEW YORK, NY 10004-2400  
 T/212.549.2500  
 WWW.ACLU.ORG

OFFICERS AND DIRECTORS  
 SUSAN N. HERMAN  
 PRESIDENT

ANTHONY D. ROMERO  
 EXECUTIVE DIRECTOR

ROBERT B. REMAR  
 TREASURER

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU")<sup>1</sup> submit this Freedom of Information Act ("FOIA") request (the "Request") to the Office of the General Counsel for records pertaining to all memoranda from the Department of Homeland Security ("DHS") General Counsel or the Acting General Counsel to at least one DHS component head, created on or between November 9, 2016, and the present.

### **I. Background**

Since the inauguration of Donald J. Trump as the 45th President of the United States, DHS has been involved in the design and implementation of administrative policy in various respects. For example, the agency was tasked with the implementation of Executive Order 13,769, the president's travel ban that suspended the U.S. Refugee Admissions Program for 120 days, prohibited the entry of Syrian refugees indefinitely, and banned the entry of nationals from seven Muslim-majority countries.<sup>2</sup> The president also signed two additional

<sup>1</sup> 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.

<sup>2</sup> Press Release, Off. of the Press Sec'y, Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States (Jan. 27, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>. See Press Release, Dep't of Homeland Sec., Department of Homeland Security Response to Recent

executive orders directing DHS to expand the ranks of U.S. Customs and Border Protection (“CBP”) by 5,000 agents<sup>3</sup> and U.S. Immigration and Customs Enforcement (“ICE”) by 10,000 officers.<sup>4</sup> Since the president’s issuance of these orders, DHS has released two memoranda, which, among other enforcement guidelines, directs the Director of ICE to “expeditiously hire 10,000 agents and officers”<sup>5</sup> and the Commissioner of CBP to “immediately begin the process of hiring 5,000 additional Border Patrol agents, as well as 500 Air & Marine Agents/Officers.”<sup>6</sup>

Additionally, testifying before the House Homeland Security Committee on February 7, DHS Secretary John Kelly told Congress that the DHS was considering a measure that would require travelers to the U.S. to hand over social-media passwords before entering the country.<sup>7</sup> Secretary Kelly informed the committee that the measure is one of several strategies under consideration aimed at vetting people traveling from the seven Muslim-majority countries included in Trump’s travel ban.<sup>8</sup> Secretary Kelly testified that DHS seeks to know “what websites [travelers] visit” so that it “can see what [travelers] do on the internet.”<sup>9</sup>

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Litigation (Jan. 29, 2017), <https://www.dhs.gov/news/2017/01/29/department-homeland-security-response-recent-litigation>; Emily Schultheis, *John Kelly, Homeland Security Chief, Defends Trump Travel Ban Implementation*, CBS News, Jan. 31, 2017, <http://www.cbsnews.com/news/john-kelly-homeland-security-chief-defends-trump-travel-ban>.

<sup>3</sup> Press Release, Off. of the Press Sec’y, Executive Order: Border Security and Immigration Enforcement Improvements (Jan. 25, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

<sup>4</sup> Press Release, Off. of the Press Sec’y, Executive Order: Enhancing Public Safety in the Interior of the United States (Jan. 25, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

<sup>5</sup> Memorandum from Sec’y John Kelly to Acting Comm’r. Kevin McAleenan, Acting Dir. Thomas Homan, Acting Dir. Lori Scialabba, Acting Gen. Couns. Joseph Maher, and Acting Assistant Sec’y for Int’l. Aff. Dimple Shah (Feb. 20, 2017), <https://www.dhs.gov/publication/enforcement-immigration-laws-serve-national-interest>.

<sup>6</sup> Memorandum from Sec’y John Kelly to Acting Comm’r. Kevin McAleenan, Acting Dir. Thomas Homan, Acting Dir. Lori Scialabba, Acting Gen. Couns. Joseph Maher, Acting Assistant Sec’y for Int’l. Aff. Dimple Shah, and Acting Undersecretary for Mgmt. Chip Fulghum (Feb. 20, 2017), <https://www.dhs.gov/publication/implementing-presidents-border-security-and-immigration-enforcement-improvement-policies>.

<sup>7</sup> Alexander Smith, *U.S. Visitors May Have to Hand Over Social Media Passwords: DHS*, NBC News, Feb. 8, 2017, <http://nbcnews.to/2kNdJwC>.

<sup>8</sup> Devin Coldewey, *Passwords for Social Media Accounts Could be Required for Some to Enter Country*, Tech Crunch, Feb. 8, 2017, <http://tcrn.ch/2k4h2Lg>.

<sup>9</sup> *Ending the Crisis: America’s Borders and the Path to Security: Hearing Before the Comm. on Homeland Sec.*, 115th Cong. (2017), <https://homeland.house.gov/hearing/ending-crisis-americas-borders-path-security/> (testimony of John Kelly, Sec’y, Dep’t of Homeland Sec.).

And reports indicate that DHS has also been involved in the drafting of an expected cybersecurity executive order, which calls for a review of critical cyber vulnerabilities and for recommendations for revamping computer systems to protect against foreign hacking.<sup>10</sup> A DHS official told Politico that the agency has “consulted and helped craft the directive,” which has not yet been issued.<sup>11</sup>

DHS’s role in developing and implementing new administration policies has been the subject of ongoing and widespread public concern and debate. Following nationwide protests over Trump’s controversial travel ban, and “in response to congressional requests and whistleblower and hotline complaints,”<sup>12</sup> the DHS Office of Inspector General initiated a review of DHS’s implementation of the ban,<sup>13</sup> and of the agency’s “adherence to court orders and allegations of misconduct on the part of DHS personnel.”<sup>14</sup> Trump’s executive orders calling for a surge in ICE and CBP agents have sparked controversy over logistical and financial challenges,<sup>15</sup> the possibility of employee corruption—as previous large-scale hiring efforts have demonstrated<sup>16</sup>—and whether increasing border staff will achieve enhanced security.<sup>17</sup> Furthermore, Secretary Kelly’s proposal to mandate social-media-password handovers at the border has alarmed technology advocacy groups, trade associations, and members of Congress—all of whom have raised serious civil-liberties and privacy-related objections.<sup>18</sup>

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<sup>10</sup> See Jose Pagliery, *Big Changes in Trump’s Cybersecurity Executive Order*, CNN, Jan. 31, 2017, <http://money.cnn.com/2017/01/31/technology/trump-cybersecurity-executive-order/>.

<sup>11</sup> Eric Geller, *Trump Abruptly Punts on Order to Hold Cabinet Accountable for Cyber Failures*, Politico, Jan. 31, 2017, <http://politi.co/2jzjf11>.

<sup>12</sup> Off. of Inspector Gen., Dep’t of Homeland Sec., *Inspector General Announces Review of Implementation of Executive Order* (2017), <https://www.oig.dhs.gov/assets/pr/2017/oigpr-020217.pdf>.

<sup>13</sup> David Wright, *DHS Watchdog Announces Review of Trump’s Travel Ban*, CNN, Feb. 2, 2017, <http://www.cnn.com/2017/02/02/politics/dhs-inspector-general-trump-travel-ban-review/>; Matt Zapotosky, *Homeland Security Inspector General Will Review Implementation of Refugee Ban*, Wash. Post, Feb. 2, 2017, <http://wapo.st/2kYoY1J>.

<sup>14</sup> Off. of Inspector Gen., *supra* note 12.

<sup>15</sup> See Tal Kopan, *Six Barriers to Trump’s Border Security Plans*, CNN, Feb. 22, 2017, <http://www.cnn.com/2017/02/22/politics/barriers-donald-trumps-border-security/>

<sup>16</sup> See Amanda Holpuch, *White House Plan to Hire More Border Agents Raises Vetting Fear, Ex-Senior Official Says*, Guardian, Feb. 26, 2017, <https://www.theguardian.com/us-news/2017/feb/26/trump-plan-border-agents-vetting-james-tomscheck>; Michelle Mark, *Trump’s Immigration Crackdown is Paving the Way for a “Deportation Force”*, Bus. Insider, Feb. 23, 2017, <http://read.bi/2mgmQDL>.

<sup>17</sup> See Mica Rosenberg, *Former Border Patrol Officials Question Trump Plan to Add Agents*, Reuters, Feb. 25, 2017, <http://reut.rs/2mlkinY>.

<sup>18</sup> See Letter, *Coalition Condemns DHS Proposal to Demand Passwords to Enter the U.S.* (Feb. 21, 2017), <https://www.cciagnet.org/wp-content/uploads/2017/02/Statement-DHS-Social-Media-Password-Requirement-%E2%80%93-FINAL-20-February-signatories.pdf>; Letter from Ron Wyden, Sen., U.S. S., to John Kelly, Sec’y, Dep’t of Homeland Sec. (Feb. 20, 2017), <https://www.wyden.senate.gov/download/?id=B947731A-2394-484B-81E3->

In an effort to inform the ongoing public debate surrounding DHS's involvement in and implementation of the president's new policy agenda, the ACLU seeks such information through this FOIA request.

## **II. Requested Records**

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

### **All memoranda from the DHS General Counsel or the Acting General Counsel to at least one DHS component head.**

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).<sup>19</sup> 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).<sup>20</sup> Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU's work and are among its primary activities. *See ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding

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FDD49530EBF4&download=1; Andrew Blake, *Ron Wyden Seeks Answers from DHS over Border Searches of Smartphones and Social Media Accounts*, Wash. Times, Feb. 21, 2017, <http://go.shr.lc/2mfljAi>; Taylor Hatmaker, *Tech Coalition Slams Homeland Security Proposal to Collect Social Media Passwords*, TechCrunch, Feb. 22, 2017, <http://tcrn.ch/211qRu6>.

<sup>19</sup> *See also* 6 C.F.R. § 5.5(e).

<sup>20</sup> *See also* 6 C.F.R. § 5.5(e)(1)(ii).

non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).<sup>21</sup>

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. 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,<sup>22</sup> and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>23</sup>

Similarly, the ACLU publishes reports about government conduct and

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<sup>21</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” See, e.g., *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

<sup>22</sup> See, e.g., Press Release, American Civil Liberties Union, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, Justice Department White Paper Details Rationale for Targeted Killing of Americans (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

<sup>23</sup> 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 Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.<sup>24</sup> 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](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

The ACLU website includes many features on information obtained through the FOIA.<sup>25</sup> For example, the ACLU’s “Predator Drones FOIA”

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<sup>24</sup> *See, e.g.*, ACLU, ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, New NSA Documents Shine More Light into Black Box of Executive Order 12333 (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems (Oct. 29, 2013), [https://www.aclu.org/sites/default/files/assets/eye\\_on\\_fbi\\_-\\_sars.pdf](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

<sup>25</sup> *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>; <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-defense>;

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.<sup>26</sup>

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.<sup>27</sup> Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>28</sup>; a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA requests<sup>29</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>30</sup>

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.

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<https://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>; <https://www.aclu.org/patriot-foia>;  
<https://www.aclu.org/nsl-documents-released-dod?redirect=cpreirect/32088>.

<sup>26</sup> <https://www.thetorturedatabase.org>. See also <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

<sup>27</sup> [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf).

<sup>28</sup> <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>29</sup> [https://www.aclu.org/sites/default/files/field\\_document/nsl\\_stats.pdf](https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf).

<sup>30</sup> <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

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).<sup>31</sup> Specifically, the requested records relate to memoranda from the DHS General Counsel or the Acting General Counsel to at least one DHS component head. As discussed in Part I, *supra*, the DHS's involvement in and implementations of the president's policy agenda raise 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).<sup>32</sup> The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. 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. Especially because little information about DHS's involvement in the president's policy agenda is publically available, the records sought are certain to contribute significantly to the public's understanding of its involvement.

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

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<sup>31</sup> *See also* 6 C.F.R. § 5.5(e)(1)(ii).

<sup>32</sup> *See also* 6 C.F.R. § 5.11(k)(1)(i)-(ii).

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)<sup>33</sup>; *see also Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women’s Action Network v. DOD*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. DOJ*, No. C09–0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).<sup>34</sup>

<sup>33</sup> *See also* 6 C.F.R. § 5.11(b)(6); 6 C.F.R. § 5.11(k)(2)(iii).

<sup>34</sup> Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53–54.

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”<sup>35</sup> As was true in those instances, the ACLU meets the requirements for a fee waiver here.

\* \* \*

Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(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:

Brett Max Kaufman  
Staff Attorney  
American Civil Liberties Union

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<sup>35</sup> 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 and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

125 Broad Street—18th Floor  
New York, New York 10004

(b)(6)  
(b)(6)

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,

(b)(6)

Brett Max Kaufman  
Staff Attorney  
American Civil Liberties Union  
Foundation  
125 Broad Street—18th Floor  
New York, New York 10004

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

**From:** (b)(6)@hq.dhs.gov  
**To:** FOIA  
**Subject:** Form submission from: DHS FOIA Request Submission Form  
**Date:** Tuesday, March 14, 2017 2:32:06 PM

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Submitted on Tuesday, March 14, 2017 - 14:32  
Submitted by user: Anonymous  
Submitted values are:

Select the DHS component you wish to submit your request to: : Privacy Office

Title: Ms.

First Name: Meredith

Middle Initial: R

Last Name: Mandell

Suffix:

Email Address: (b)(6)

Country: United States

Address 1: 30 Rockefeller Plaza

Address 2:

City: New York

State: New York

Zip Code: 10112

Telephone Number: (b)(6)

Fax Number:

Are you requesting records on yourself? No

If yes, you must check the perjury statement:

By initialing here you are providing your electronic signature.: (b)(6)

Please describe the records you are seeking as clearly and precisely as possible:

March 14, 2017

VIA EMAIL TO: foia@hq.dhs.gov

TO: The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655

(b)(6)

(b)(6)

MSNBC

30 Rockefeller Plaza

New York, NY

(b)(6)

(b)(6)@nbcuni.com

(b)(6)@nbcuni.com

FROM:

Dear Sir or Madam,

I am a journalist working for MSNBC (www.nbcnews.com), a cable news network and online news publication. I am requesting records under the provisions of the Freedom of Information Act. 5 U.S.C. § 552.

## Request

I am seeking all documents relating to the commission (the “Commission”) assembled by former New York City Mayor Rudolph “Rudy” Giuliani for the purpose of advising President Trump how to draft Executive Order 13769 (“Protecting the Nation from Foreign Terrorist Entry into the United States”).

Specifically, I seek:

- 1) Any documents drafted by, or at the behest of, members of the Commission relating to the structuring of the Executive Orders 13769 or its replacement, 13780.
- 2) Any contracts, retainer agreements, engagement letters between members of the Commission and the government.
- 3) All correspondence to (including carbon copies and blind carbon copies), from, or referencing:
  - a. Rudy Giuliani
  - b. Judge Michael Mukasey
  - c. Congressman Michael McCaul (R-TX)
  - d. Congressman Peter King (R-NY)
  - e. Giuliani Partners LLC
  - f. Any other Commission members not specifically identified above.

You may limit the date range to correspondence after November 8, 2016.

## Background

On January 27, 2017, President Donald Trump signed an executive order that places limits on travel to the U.S. from certain countries and by all refugees. The order has been challenged by numerous lawsuits, including *State of Washington v. Trump*, which resulted in a temporary restraining order on February 3 that blocked much of the executive order pending further litigation.

According to Mayor Giuliani, prior to signing his executive order banning individuals from seven countries from entering the country, President Donald Trump consulted him for guidance. In an interview with Jeanine Pirro on Fox News, Giuliani stated: “When he first announced it, he said ‘Muslim ban.’ He called me up. He said, ‘Put a commission together. Show me the right way to do it legally.’”

Giuliani has stated that he consulted with former federal judge Michael Mukasey, United States Congressmen Mike McCaul and Peter King, and “a group of very expert lawyers,” asserting that “what we did was, we focused on — instead of religion, danger - the areas of the world that create danger for us. Which is a factual basis, not a religious basis. Perfectly legal, perfectly sensible. And that’s what the ban is based on.”

See

<https://www.yahoo.com/news/giuliani-says-trump-asked-him-how-to-legally-enact-muslim-ban-174303609.html>  
(attached as PDF)

On March 6, 2017, President Trump signed a subsequent order revoking 13769 and replacing it with Executive Order 13780.

Accordingly, I seek to understand what guidance Giuliani and the Commission provided to the President and the Department of Homeland Security concerning Executive Order 13769 and its successor, Executive Order 13780.

#### Fee Waiver

MSNBC (www.nbcnews.com) is a news organization. Under 5 U.S.C. § 552(a)(4)(A)(iii), I am entitled to a fee waiver on the grounds that disclosure of the information sought is in the public interest because it 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.

#### Expedited Processing

This request has been the subject of the request is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affects public confidence.

Given the numerous legal challenges against the executive order taking place, it is of critical importance for the public to understand how the policy was conceived and drafted.

#### Certification

The above information is true and correct to the best of my knowledge.

#### Electronic Records

Please furnish all responsive records in electronic format.

#### Further Correspondence

All correspondence regarding this request can be directed to me at

(b)(6)

Please be aware that under 5 U.S.C. § 552(a)(6)(A), a FOIA request is considered constructively denied after twenty business days.

If you have any questions, do not hesitate to contact us at (b)(6)

Thank you for your prompt attention to this request.

Sincerely,

Ari Melber  
Meredith Mandell

I am willing to pay fees for this request up to the amount of \$: See attached

Select from the list below: A representative of the news media seeking information as part of a news gathering effort and not for commercial use.

I request a waiver of all fees for this request.: I request a waiver of all fees for this request.

Please provide an explanation for your request for a fee waiver: MSNBC (www.nbcnews.com) is a news organization. Under 5 U.S.C. § 552(a)(4)(A)(iii), I am entitled to a fee waiver on the grounds that disclosure of the information sought is in the public interest because it 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.

Please select and describe in detail if you believe your request warrants expeditious handling: An urgency to inform the public concerning actual or alleged Federal Government activity exists (This option available only for PERSONS ENGAGED IN DISSEMINATING INFORMATION).

Please provide information to support your selection:

This request has been the subject of the request is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affects public confidence.

Given the numerous legal challenges against the executive order taking place, it is of critical importance for the public to understand how the policy was conceived and drafted.

**From:** FOIA  
**To:** (b)(6)  
**Cc:**  
**Subject:** FW: media FOIA request (expedited processing requested)  
**Date:** Monday, March 20, 2017 3:42:24 PM

---

Good Day (b)(6)

Please login the following request below.

**Thank you.**

(b)(6)

FOIA Specialist  
Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane, SW , STOP 0655  
Washington, DC 20528

(b)(6)

*Great is Thy Faithfulness*

---

**From:** Justin Elliott (b)(6)  
**Sent:** Monday, March 20, 2017 3:11 PM  
**To:** FOIA <FOIA@HQ.DHS.GOV>  
**Subject:** Re: media FOIA request (expedited processing requested)

Here it is — thank you:

March 19, 2017

U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655  
E-mail: [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

**FOIA REQUEST**

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of

\* all emails dated between January 20, 2017, and the present (up to and including the day this request is processed) sent to or from Frank Wuco, Senior White House Adviser at DHS, containing the following terms:

- Muslim
- Muslims
- Islam
- Islamic
- Islamist

- terrorism
- terrorist
- terror
- jihad
- jihadist
- jihadi
- sharia
- mosque
- Syria
- ISIS
- surveillance

\* all calendars dated between January 20, 2017, and the present (up to and including the day this request is processed) for Frank Wuco

I would like to receive the information in the following format: electronic.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. This information is being sought on behalf of ProPublica, an independent non-profit news organization, for dissemination to the general public.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities, including the formulation of policies on terrorism and surveillance which have implications for millions of Americans.

**I am requesting expediting processing** for this request under (f)(1)(iv) of the law:

“An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.”

In this case, I am a journalist seeking information about quickly changing policies related to terrorism and surveillance of Muslim Americans under the new presidential administration. Before joining the government, Mr. Wuco was a widely quoted commentator who said, for example, that said that a “mosque surveillance” program is key to finding “out what’s going on behind the walls” of “mosques and Islamic reading centers.”

Now that Wuco is in a position of influence inside the government, this request will shed light on his role developing policies that could affect hundreds of thousands of Americans. A surveillance program like the one Wuco proposed would raise civil liberties concerns that would need to be addressed quickly lest widespread harm occur. If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Justin Elliott  
ProPublica

155 Avenue of the Americas, 13th Floor  
New York, New York 10013

(b)(6)

How to contact ProPublica securely: <https://www.propublica.org/article/how-to-leak-to-propublica>

Wuco was hired on the DHS "beachhead team" in the SES category. See data from OPM at:  
<https://projects.propublica.org/graphics/beachhead>

<https://www.law.cornell.edu/cfr/text/15/4.6>

See: [http://www.huffingtonpost.com/entry/frank-wuco-anti-muslim-white-house\\_us\\_58c98cdf4b03b1fc5cfb300](http://www.huffingtonpost.com/entry/frank-wuco-anti-muslim-white-house_us_58c98cdf4b03b1fc5cfb300)

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On Mar 20, 2017, at 3:09 PM, FOIA <[FOIA@HQ.DHS.GOV](mailto:FOIA@HQ.DHS.GOV)> wrote:

Good Day,

Thank you for contacting the Department of Homeland Security's Privacy Office. Please be advised that we do not open attachments for security purposes. Please resubmit your request with attachment in the body of email, via fax or USPS.

Regards,

The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655  
Phone: 202-343-1743 or 866-431-0486  
Fax: 202-343-4011

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**From:** Justin Elliott (b)(6)  
**Sent:** Sunday, March 19, 2017 7:57 PM  
**To:** FOIA <[FOIA@HQ.DHS.GOV](mailto:FOIA@HQ.DHS.GOV)>  
**Subject:** media FOIA request (expedited processing requested)

Hi,

Please find my request attached.

Don't hesitate to contact me with any questions about this request. I'm happy to discuss ways that it can be narrowed or modified to make processing quicker. I can be reached at (b)(6)

Thank you.

Justin

--

Justin Elliott  
Reporter  
ProPublica

(b)(6)

PGP

[How to contact ProPublica securely](#)

## Busch, Maura

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**From:** Jason Leopold (b)(6)  
**Sent:** Thursday, March 30, 2017 5:30 PM  
**To:** FOIA; I&AFOIA; FOIA, NPPD; CRCL; ICE-FOIA; CBP FOIA  
**Subject:** Request for records under the Freedom of Information Act

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.

### REQUESTER INFORMATION

**Name:** Jason Leopold

**Affiliation:** Senior Investigative Reporter/BuzzFeed News

**Address:** (b)(6)

(b)(6)

(b)(6)

### RECORDS SOUGHT

I request disclosure from the Department of Homeland Security (DHS) and its sub offices listed in the email address the following records:

1. Any and all records, which includes but is not limited to emails, memos, letters, text messages, instant messages, threat assessments, WASP reports, legal analyses, talking points, communications between the DHS divisions addressed here and the White House, mentioning or referring to a policy decision to bar passengers on more than a dozen Middle East and African airlines from bringing laptops and other large electronics into the cabin as carry-ons.

Details of this policy were reported by CNN on March 21, 2017.

### INSTRUCTIONS REGARDING SEARCH

1. *Instructions Regarding "Leads":*

As required by the relevant case law, the agencies should follow any leads it discovers during the conduct of its searches and perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

2. *Request for Public Records:*

Please search for any records even if they are already publicly available.

3. *Request for Electronic and Paper/Manual Searches:*

I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted. I further request that the agencies conduct a search of its "soft files" as well as files in its locked cabinets.

4. *Request for Search of Filing Systems, Indices, and Locations:*

I request that the agencies conduct a search of all of its directorates and indices, filing systems, and locations to locate responsive records.

5. *Request regarding Photographs and other Visual Materials:*

I request that any photographs or other visual materials responsive to my request be released to me in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the agencies maintains a photograph digitally, I request disclosure of the original digital image file, not a reduced resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, I request disclosure of that photograph as a color image, not a black and white image. Please contact me for any clarification on this point.

6. *Request for Duplicate Pages:*

I request disclosure of any and all supposedly "duplicate" pages. Scholars analyze records not only for the information available on any given page, but also for the relationships between that information and information on pages surrounding it. As such, though certain pages may have been previously released to me, the existence of those pages within new context renders them functionally new pages. As such, the only way to properly analyze released information is to analyze that information within its proper context. Therefore, I request disclosure of all "duplicate" pages.

7. *Request to Search Emails:*

Please search for emails relating to the subject matter of my request.

8. *Request for Search of Records Transferred to Other Agencies:*

I request that in conducting its search, the agencies disclose releasable records even if they are available publicly through other sources outside the agencies, such as NARA.

10. *Regarding Destroyed Records*

If any records responsive or potentially responsive to my request have been destroyed, my request include, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

INSTRUCTIONS REGARDING SCOPE AND BREADTH OF REQUESTS

Please interpret the scope of this request broadly. The agencies is instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

## EXEMPTIONS AND SEGREGABILITY

I call your attention to President Obama's 21 January 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA [...]  
The presumption of disclosure should be applied to all decisions involving FOIA.<sup>[1]</sup>

In the same Memorandum, President Obama added that government information should not be kept confidential "merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Finally, President Obama ordered that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nonetheless, if any responsive record or portion thereof is claimed to be exempt from production, FOIA/PA statutes provide that even if some of the requested material is properly exempt from mandatory disclosure, all segregable portions must be released. If documents are denied in part or in whole, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Please provide a complete itemized inventory and a detailed factual justification of total or partial denial of documents. Specify the number of pages in each document and the total number of pages pertaining to this request. For "classified" material denied, please include the following information: the classification (confidential, secret or top secret); identity of the classifier; date or event for automatic declassification or classification review or downgrading; if applicable, identity of official authorizing extension of automatic declassification or review past six years; and, if applicable, the reason for extended classification beyond six years.

In excising material, please "black out" the material rather than "white out" or "cut out." I expect, as provided by FOIA, that the remaining non-exempt portions of documents will be released.

Please release all pages regardless of the extent of excising, even if all that remains are the stationery headings or administrative markings.

In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

## ADDITIONAL INSTRUCTIONS REGARDING REQUEST

Please produce all records with administrative markings and pagination included.

Please send a memo (copy to me) to the appropriate units in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction.

## FORMAT

I request that any releases stemming from this request be provided to me in digital format (soft-copy) on a compact disk or other like media.

## FEE CATEGORY AND REQUEST FOR A FEE WAIVER

I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs pursuant to 5 U.S.C. §552(a)(4)(A)(iii) ("Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it 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."). Disclosure in this case meets the statutory criteria, and 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.'"). I incorporate by reference the explanation and attached materials in the above sections which demonstrates why the requested information is in the public interest.

Under 32 C.F.R. 1900.13(b), "Records will be furnished without charge or at a reduced rate whenever the Agency determines . . . (2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester."

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes pursuant to 32 C.F.R. 1900.02(h)(3). According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), the term "a representative of the news media" means any person or 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. This is consistent with the definition provided in 32 C.F.R. 1900.02(h)(3)

As the legislative history of FOIA reveals, "It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) "A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision." 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes. According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), the term "a representative of the news media" means any person or 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.

As the legislative history of FOIA reveals, "It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) "A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision." 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

I have the intent and ability to disseminate this significant expansion of public understanding of government operations. The public interest in this significant expansion of public understanding of government operations far outweighs any commercial interest of my own in the requested release. Accordingly, my fee waiver request amply satisfies my request for a fee waiver. Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request a full waiver of fees be granted. I will appeal any denial of my request for a waiver administratively and to the courts if necessary.

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[1] President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act," 21 January 2009; <[http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct/](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/)>



Jason Leopold | BuzzFeed News | Senior Investigative Reporter | (b)(6)

(b)(6)

**Send me documents and tips, anonymously and securely:** [contact.buzzfeed.com](mailto:contact.buzzfeed.com)

[My personal PGP](#)