



June 13, 2017

National Security Agency  
Attn: FOIA/PA Office  
9800 Savage Road, Suite 6932  
Ft. George G. Meade, MD 20755-6932

Central Intelligence Agency  
Information and Privacy Coordinator  
Washington, D.C. 20505

Office of the Director of National Intelligence  
FOIA/Privacy Act Office  
Washington, DC 20511

Federal Bureau of Investigation  
Attn: FOI/PA Request  
Record/Information Dissemination Section  
170 Marcel Drive  
Winchester, VA 22602-4843

Department of Defense  
OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

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

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU")<sup>1</sup> submit this request under the

---

<sup>1</sup> The American Civil Liberties Union Foundation is a 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, directly lobbies legislators, and mobilizes the American Civil Liberties Union's members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for access to documents concerning international data-sharing arrangements between the United States and any other country.

## **I. Background**

Since the disclosures of Edward Snowden in June 2013, the foreign-intelligence surveillance practices of the United States and of other countries have come under intense public scrutiny. Media organizations have published numerous stories and documents exposing the vast reach of the National Security Agency (“NSA”) in its surveillance efforts. For example, we now know that the NSA engages in the bulk collection of metadata, the dragnet searching of Americans’ international communications, and the bulk collection of non-U.S. persons’ international communications, even when a U.S. person is on the other end of the communication. Perhaps the most expansive NSA surveillance program so far revealed is MYSTIC, under which the NSA can record “‘100 percent’ of a foreign country’s telephone calls, enabling the agency to rewind and review conversations as long as a month after they take place.”<sup>2</sup> As of 2014, the NSA apparently had deployed MYSTIC collection in at least two countries, including the Bahamas and one unnamed country.<sup>3</sup>

While much is now known about the NSA’s foreign-intelligence surveillance, very little is known about the extent to which the government shares information collected through that surveillance with other countries. It is known, of course, that the government does in fact share data collected under its various surveillance authorities with other countries. For example, the United States has agreements with the United Kingdom, Australia, Canada, and New Zealand, in a partnership known as the “Five Eyes,” through which those countries share raw data, intelligence reports, and operations centers.<sup>4</sup> The United States also shares U.S. and non-U.S. person information with other countries, including Germany, Israel, and Saudi Arabia.<sup>5</sup>

---

<sup>2</sup> Barton Gellman & Ashkan Soltani, *NSA Surveillance Program Reaches ‘Into the Past’ to Retrieve, Replay Phone Calls*, Wash. Post, Mar. 18, 2014, <https://perma.cc/53XG-S2WK>.

<sup>3</sup> Ryan Devereaux, Glenn Greenwald & Laura Poitras, *Data Pirates of the Caribbean*, The Intercept, May 19, 2014, <https://perma.cc/XR6D-3RYS>.

<sup>4</sup> Privacy International, *Eyes Wide Open 4–21* (Nov. 26, 2013), <https://perma.cc/VX82-89TF>.

<sup>5</sup> Mark Hosenball, Phil Stewart & Warren Strobel, *Exclusive: US Expands Intelligence Sharing with Saudis in Yemen Operation*, Reuters, Apr. 10, 2015, <https://perma.cc/5SAG-63Z2>;

Little is known, however, about these or other international information-sharing arrangements. The Five Eyes arrangements are not public but reportedly permit the sharing of raw data with minimal privacy safeguards. For example, the United Kingdom reportedly accesses raw NSA surveillance material without judicial authorization.<sup>6</sup> A memorandum of understanding between the United States and Israel has been disclosed by the press, but it also contains few protections. It permits the sharing of U.S. person information, contains no prohibition on the use of information to commit human rights abuses, allows sharing of non-U.S. person data with third parties, and contains no requirement that Israel adhere to U.S. policies regarding the treatment of non-U.S. person data.<sup>7</sup> Recently, both of these intelligence-sharing relationships have been the subject of widespread national attention and media controversy.<sup>8</sup>

The government has disclosed general policies that govern the dissemination of information collected under several of its foreign-intelligence surveillance authorities, but those policies impose few meaningful restrictions on the sharing of data with foreign governments. For example, Section 7 of U.S. Signals Intelligence Directive 18 limits the dissemination of data collected under Executive Order No. 12,333, but it imposes restrictions solely with respect to U.S.-person data, and even those restrictions are riddled with loopholes.<sup>9</sup> The same is generally true of the other policies that have been publicly disclosed.<sup>10</sup>

---

Glenn Greenwald, Laura Poitras & Ewen MacAskill, *NSA Shares Raw Intelligence Including Americans' Data with Israel*, *The Guardian*, Sept. 11, 2013, <https://perma.cc/F78X-MCUM>.

<sup>6</sup> James Ball, *GCHQ Views Data Without a Warrant, Government Admits*, *The Guardian*, Oct. 28, 2014, <https://perma.cc/P6E7-4NQ3>.

<sup>7</sup> Greenwald et al., *supra* note 5.

<sup>8</sup> See, e.g., Zachary Cohen, *How US Intelligence Leaks Upset Two Allies in One Week*, *CNN* (May 26, 2017, 11:40 AM), <https://perma.cc/5Z7W-GF9N>; Kathryn Watson, *U.K. Resumes Intelligence Sharing With U.S.*, *CBS News* (May 25, 2017, 5:58 PM), <https://perma.cc/X8QC-8TM3>; Ellen Mitchell, *Israel Alters US Intelligence-Sharing Rules After Trump's Russia Meeting: Report*, *The Hill* (May 24, 2017, 1:30 PM), <https://perma.cc/EJG9-22GR>.

<sup>9</sup> U.S. Signals Intelligence Directive SP0018, Legal Compliance and U.S. Persons Minimization Procedure § 7 (Jan. 25, 2011), <https://perma.cc/FVW3-QP3G>.

<sup>10</sup> See, e.g., PPD-28 Section 4 Procedures § 7.2 (Jan. 12, 2015) (permitting sharing of “unevaluated SIGINT” on the only apparent condition that the government “inform the recipient that the dissemination may contain personal information so that the recipient can take appropriate steps to protect that information”), <https://www.nsa.gov/news-features/declassified-documents/nsa-css-policies/assets/files/PPD-28.pdf>; Minimization Procedures Used by the NSA in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of FISA (July 10, 2015), <https://perma.cc/FPM4-D3V2>; Office of the Dir. of Nat'l Intelligence,

In short, the arrangements through which the U.S. government shares foreign-intelligence surveillance with other governments dramatically implicate the privacy of U.S. and non-U.S. persons. And yet those arrangements are largely shrouded in secrecy.

This FOIA request seeks information necessary to understand the United States' international information-sharing arrangements.

## **II. Requested Records**

The ACLU seeks the release of the following records:

1. All agreements, memoranda of understanding, or other arrangements with foreign countries concerning the sharing between the United States and any other country of foreign-intelligence surveillance data.<sup>11</sup>;
2. All policies, guidelines, opinions, reports, and memoranda concerning:
  - a. The circumstances in which the United States may share foreign-intelligence surveillance data with another country.
  - b. Any limitations on the sharing of foreign-intelligence surveillance data with other countries.
  - c. The circumstances in which the United States may request or otherwise acquire electronic-surveillance data from another country.
  - d. Any limitations on the acquisition (whether by request or otherwise) of electronic-surveillance data from another country.
  - e. Any limitations on the United States' retention, use, or dissemination of electronic-surveillance data requested or otherwise acquired from another country, including the use of

---

Intelligence Community Directive 403, Foreign Disclosure and Release of Classified National Intelligence (Mar. 13, 2013), <https://perma.cc/CR2X-B83Z>; Office of the Dir. of Nat'l Intelligence, Intelligence Community Directive 403.1, Criteria for Foreign Disclosure and Release of Classified National Intelligence (Mar. 13, 2013), <https://perma.cc/8BUK-G6U9>.

<sup>11</sup> For purposes of this letter:

1. the term "electronic foreign-intelligence surveillance data" is defined as data acquired through or derived from electronic surveillance conducted for foreign-intelligence purposes, and
2. the term "electronic-surveillance data" is defined as data acquired through or derived from electronic surveillance.

such data (or data derived from it) in civil, criminal, administrative, or other proceedings.

- f. The circumstances, if any, in which the United States may request or otherwise acquire electronic-surveillance data from another country where the United States itself could not lawfully acquire the same data in the same manner.

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>12</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>13</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 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>14</sup>

---

<sup>12</sup> *See also* 32 C.F.R. § 286.8(e); 32 C.F.R. § 1900.34; 32 C.F.R. § 1700.12; 28 C.F.R. § 16.5(e); 32 C.F.R. § 286.8(e).

<sup>13</sup> *See also* 32 C.F.R. § 286.8(e)(1)(i)(B); 32 C.F.R. § 1900.34(c)(2); 32 C.F.R. § 1700.12(c)(2); 28 C.F.R. § 16.5(e)(1)(ii); 32 C.F.R. § 286.8(e)(1)(i)(B).

<sup>14</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*,

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 over 2.6 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 3.2 million social media followers. The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>15</sup> and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>16</sup>

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available

---

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>15</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>16</sup> See, e.g., Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept, Feb. 8, 2017, <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

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>17</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>18</sup> For example, the ACLU’s “Predator Drones FOIA”

---

<sup>17</sup> See, e.g., Hugh Handeyside, *New Documents Show This TSA Program Blamed for Profiling Is Unscientific and Unreliable — But Still It Continues* (Feb. 8, 2017, 11:45 AM), <https://www.aclu.org/blog/speak-freely/new-documents-show-tsa-program-blamed-profiling-unscientific-and-unreliable-still>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; Nathan Freed Wessler, *ACLU- Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems* (Oct. 29, 2013), [https://www.aclu.org/sites/default/files/assets/eye\\_on\\_fbi\\_-\\_sars.pdf](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

<sup>18</sup> See, e.g., Nathan Freed Wessler & Dyan Cortez, *FBI Releases Details of ‘Zero-Day’ Exploit Decisionmaking Process* (June 26, 2015, 11:00 AM), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00

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>19</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>20</sup> Similarly, the ACLU produced an analysis of documents released in response to a FOIA request about the TSA’s behavior detection program<sup>21</sup>; a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>22</sup>; a chart of original statistics about the Defense Department’s use of National Security Letters based

---

AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; *ACLU v. DOJ – FOIA Case for Records Relating to the Killing of Three U.S. Citizens*, ACLU Case Page, <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; *ACLU v. Department of Defense*, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-department-defense>; *Mapping the FBI: Uncovering Abusive Surveillance and Racial Profiling*, ACLU Case Page, <https://www.aclu.org/mappingthefbi>; *Bagram FOIA*, ACLU Case Page <https://www.aclu.org/cases/bagram-foia>; *CSRT FOIA*, ACLU Case Page, <https://www.aclu.org/national-security/csrt-foia>; *ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance FOIA Request*, ACLU Case Page, <https://www.aclu.org/aclu-v-doj-lawsuit-enforce-nsa-warrantless-surveillance-foia-request>; *Patriot FOIA*, ACLU Case Page, <https://www.aclu.org/patriot-foia>; *NSL Documents Released by DOD*, ACLU Case Page, <https://www.aclu.org/nsl-documents-released-dod?redirect=cpredirect/32088>.

<sup>19</sup> *The Torture Database*, ACLU, <https://www.thetorturedatabase.org>; see also *Countering Violent Extremism FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

<sup>20</sup> *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance*, ACLU (Mar. 5, 2009), [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf).

<sup>21</sup> *Bad Trip: Debunking the TSA’s ‘Behavior Detection’ Program*, ACLU (2017), [https://www.aclu.org/sites/default/files/field\\_document/dem17-tsa\\_detection\\_report-v02.pdf](https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf).

<sup>22</sup> *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.



on its own analysis of records obtained through FOIA requests<sup>23</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>24</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.

*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>25</sup> Specifically, the requested records relate to the United States’ international information-sharing arrangements. As discussed in Part I, *supra*, these arrangements are the subject of widespread public controversy and media attention.

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>26</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.*

---

<sup>23</sup> *Statistics on NSL’s Produced by Department of Defense*, ACLU, <https://www.aclu.org/other/statistics-nsls-produced-dod>.

<sup>24</sup> Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

<sup>25</sup> *See also* 32 C.F.R. § 286.8(e)(1)(i)(B); 32 C.F.R. § 1900.34(c)(2); 32 C.F.R. § 1700.12(c)(2); 28 C.F.R. § 16.5(e)(1)(ii); 32 C.F.R. § 286.8(e)(1)(i)(B).

<sup>26</sup> *See also* 32 C.F.R. § 286.12(l)(1); 32 C.F.R. § 1900.13(b)(2); 32 C.F.R. § 1700.6(b)(2); 28 C.F.R. § 16.10(k)(2); 32 C.F.R. § 286.12(l)(1).

As discussed above, credible media and other investigative accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Because little specific information about the United States' international data-sharing arrangements is publicly available, the records sought are certain to contribute significantly to the public's understanding of such arrangements.

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

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

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).<sup>27</sup> 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>28</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

---

<sup>27</sup> *See also* 32 C.F.R. § 286.12(l)(2)(ii)(b); 32 C.F.R. § 1900.13(i)(2); 32 C.F.R. § 1700.6(i)(2); 28 C.F.R. § 16.10(k)(2)(ii)-(iii); 32 C.F.R. § 286.12(l)(2)(ii)(b).

<sup>28</sup> *See also* 32 C.F.R. § 286.12(b)(6); 32 C.F.R. § 1900.02(h)(3); 32 C.F.R. § 1700.2(h)(4); 28 C.F.R. § 16.10(b)(6); 32 C.F.R. § 286.12(b)(6).

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>29</sup>

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>30</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); 32 C.F.R. § 286.8(e)(1); 32 C.F.R. § 1900.34(c); 32 C.F.R. § 1700.12(b); 28 C.F.R. § 16.5(e)(4); 32 C.F.R. § 286.8(e)(1). [Click here to enter text.](#)

---

<sup>29</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.

<sup>30</sup> In May 2017, CBP granted a fee-waiver request regarding a FOIA request for documents related to electronic device searches at the border. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. 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.

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

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

Brett Max Kaufman  
American Civil Liberties Union  
125 Broad Street—18th Floor  
New York, New York 10004  
T: 212.549.2500  
F: 212.549.2654  
bkaufman@aclu.org

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

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

Respectfully,



---

Brett Max Kaufman  
American Civil Liberties Union  
Foundation  
125 Broad Street—18th Floor  
New York, New York 10004  
T: 212.549.2603  
F: 212.549.2654  
bkaufman@aclu.org