



November 6, 2017

U. S. Department of State
 Office of Information Programs and Services
 A/GIS/IPS/RL
 SA-2, Suite 8100
 Washington, D. C. 20522-0208

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

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)¹ submit this Freedom of Information Act (“FOIA”) request (the “Request”) for records pertaining to the Trump administration’s recent decision to withdraw the United States from the United Nations Educational, Scientific, and Cultural Organization (“UNESCO”).

I. Background

On October 12, 2017, the State Department announced its plan to withdraw the United States from further participation in UNESCO by January 2019 and to retain “permanent observer status” thereafter.² The announcement was made less than one month after President Trump delivered his first remarks to the United Nations General Assembly, where he emphasized the U.S.’ national sovereignty and independence.³ “For too long, the American people were told that mammoth

¹ The American Civil Liberties Union Foundation is a 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, 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.

² U.S. Department of State, Press Release: United States Withdraws From UNESCO (2017), <https://www.state.gov/r/pa/prs/ps/2017/10/274748.htm>.

³ Greg Jaffe and Karen DeYoung, *In Trump’s U.N. Speech, Emphasis on Sovereignty Echoes His Domestic Agenda*, Wash. Post, Sept. 19, 2017, <https://www.washingtonpost.com/world/national-security/in-trumps-un-speech-an-emphasis-on->

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multinational trade deals, unaccountable international tribunals, and powerful global bureaucracies were the best way to promote their success,” President Trump said.⁴ In the days since the announcement became public, a number of media outlets have given the Trump administration’s decision to withdraw from UNESCO substantial attention – and for good reason.

The United States helped to establish UNESCO in 1945, immediately after World War II, to promote “a genuine culture of peace.”⁵ Since then, UNESCO has been at the forefront of several important global initiatives, designating over 1000 Cultural Heritage Sites around the world, advancing literacy and science education for girls and women, promoting Holocaust awareness projects and fighting against antisemitism, and reporting on the negative impacts of climate change on various parts of the globe.⁶ UNESCO has also been involved in the global call for the protection of journalists who report in dangerous environments and face violent retaliation by armed forces.⁷ The U.S. has been a key role player in UNESCO’s success, including by funding over 20 percent of UNESCO’s budget.⁸ And although the U.S. withdrew from UNESCO in 1984,⁹ it returned in 2002 under President Bush and continued to participate as a contributing member of the organization.¹⁰

sovereignty-jostled-with-threats-of-intervention/2017/09/19/98a7a13e-9d3b-11e7-8ea1-ed975285475e_story.html?utm_term=.14d5068446ca_

⁴ Remarks by President Trump to the 72nd Session of the United Nations General Assembly, White House, Sept. 19, 2017, <https://www.whitehouse.gov/the-press-office/2017/09/19/remarks-president-trump-72nd-session-united-nations-general-assembly>.

⁵ UNESCO’s History, <http://www.unesco.org/new/en/unesco/about-us/who-we-are/history/> (last visited Oct. 12, 2017).

⁶ UNESCO, *World Heritage and Tourism in a Changing Climate*, <http://whc.unesco.org/en/tourism-climate-change/> (last visited November 3, 2017).

⁷ UNESCO, *Time to Break the Cycle of Violence Against Journalists*, (2016) https://en.unesco.org/sites/default/files/unesco_report_english_rgb.pdf.

⁸ Harriet Sherwood, *US Pulls UNESCO Funding After Palestine Is Granted Full Membership*, *Guardian*, Oct. 31, 2011, <https://www.theguardian.com/world/2011/oct/31/unesco-backs-palestinian-membership>.

⁹ Joanne Omang, *UNESCO Withdrawal Announced*, *Wash. Post*, Dec. 20, 1984, https://www.washingtonpost.com/archive/politics/1984/12/20/unesco-withdrawal-announced/b9c6dc92-a31f-443a-977b-f3468faf44fe/?utm_term=.5eba1e1f28ac; Bernard Gwertzman, *U.S. Is Quitting UNESCO, Affirms Backing For U.N.*, *N.Y. Times*, Dec. 30, 1983, <http://www.nytimes.com/1983/12/30/world/us-is-quitting-unesco-affirms-backing-for-un.html>.

¹⁰ Joseph Fitchett and International Herald Tribune, *Bush Gains Praise Over U.S. Return to UNESCO*, *N.Y. Times*, Sept. 14, 2002, <http://www.nytimes.com/2002/09/14/news/bush-gains-praise-over-us-return-to-unesco.html>.

The decision to withdraw is troubling for several reasons. First, it reflects a patterned retrenchment from active participation in international cooperation, diplomacy and dialogue carried out by the Trump administration. Since January 2017, the United States has abandoned the Trans-Pacific Partnership trade talks,¹¹ withdrawn from the Paris climate deal,¹² and spurred tension with key U.N. human rights officials.¹³ The Trump administration has also admonished the U.N. Human Rights Council that it may withdraw due to perceived “anti-Israel bias”.

Second, the decision to withdraw appears to have been made without coordination among certain key allies. The State Department claimed in their statement that the withdrawal was carefully decided and “not taken lightly,” but news reports say that the Israeli government was largely unaware that Washington planned to withdraw. This is odd considering part of the reason for the withdrawal, according to the State Department, was UNESCO’s “continuing anti-Israel bias.”¹⁴ Yet, *Haaretz* reports that Israeli officials said they only learned of the U.S.’ decision after a report was already posted by *Foreign Policy*.¹⁵

The effect of the U.S.’ withdrawal from UNESCO may be detrimental. Irina Bokova, former head of UNESCO, said that it is “a loss for multilateralism” and a “profound regret”.¹⁶ The French and German ambassadors to UNESCO have also expressed their dismay at the prospect of the U.S.’ departure.¹⁷ In the long term, the effect of the U.S.’ disengagement with international bodies, and especially human rights systems, is an inability for the country to effectively

¹¹ Motoko Rich, *TPP, the Trade Deal Trump Killed, Is Back in Talks Without U.S.*, N.Y. Times, Jul. 14, 2017, <https://www.nytimes.com/2017/07/14/business/trans-pacific-partnership-trade-japan-china-globalization.html>.

¹² Michael D. Shear, *Trump Will Withdraw U.S. From Paris Climate Agreement*, N.Y. Times, Jun. 1, 2017, <https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html>.

¹³ Nick Cumming-Bruce, *U.N. Human Rights Chief Condemns Trump’s Attacks on Media*, N.Y. Times, Aug. 30, 2017, <https://www.nytimes.com/2017/08/30/world/europe/trump-press-united-nations.html>.

¹⁴ See *supra* note 2.

¹⁵ Barak Ravid, *U.S. Exit From UNESCO Took Israel by Surprise, Was Uncoordinated*, *Haaretz*, Oct. 16, 2017, <https://www.haaretz.com/israel-news/1.817213>.

¹⁶ Statement by Irina Bokova, UNESCO, Oct. 12, 2017, <http://en.unesco.org/sites/default/files/statement-irina-bokova-director-general-unesco-occasion-withdrawal-united-states-america-unesco.html>.

¹⁷ Pater Beaumont, *UNESCO: Israel Joins US in Quitting UN heritage Agency Over ‘Anti-Israel Bias,’* *Guardian*, Oct. 12, 2017, <https://www.theguardian.com/world/2017/oct/12/us-withdraw-unesco-december-united-nations>; *‘A severe blow’: Reactions to UNESCO Withdrawal*, *DW.com*, Oct. 13, 2017, <http://www.dw.com/en/a-severe-blow-reactions-to-unesco-withdrawal/a-40935593>.

participate and collaborate across similar issues with key global partners. In addition, the U.S.' withdrawal could potentially cause a ripple effect on other states that are crucial to establishing, monitoring, and enforcing human rights standards at home.

As stated in its Charter, the purpose of UNESCO is "to contribute to peace and security by promoting collaboration among the nations through education, science and culture."¹⁸ Particularly in a time when violent extremism is on the rise globally, and public confidence in the United States' international affairs is in question,¹⁹ the need for stronger multilateral participation by key players is necessary. The withdrawal of the United States from UNESCO raises several questions about the specific reasons why the decision was made and to what extent it serves American values and interests.

To provide the American public with this information, the ACLU seeks such information through this FOIA request.

* * *

The ACLU has previously filed a FOIA request concerning President Trump's plan to change the relationship between the United States and the international human rights system. On June 16, 2017, the ACLU filed the request (No. F-2017-13150) with the Department of State seeking "records pertaining to the Trump administration's plans to redefine the United States' role in the international human rights system with respect to: (1) changes in the U.S.' voluntary funding of international organization, (2) its commitment to multilateral agreements, and (3) its participation in international human rights forums."²⁰

The ACLU submits this Request principally in order to reach records *not* covered by its previous FOIA requests, including documents that post-date the other requests and documents that senior government officials have mentioned in public speeches, testimony before Congress, and statements to the media.

¹⁸ UNESCO Constitution, http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html, (last visited Oct. 19, 2017).

¹⁹ Richard Wike, Bruce Stokes, Jacob Poushter, Janell Fetterolf, *U.S. Image Suffers as Publics Around World Question Trump's Leadership*, Pew Research Center, Jun. 26, 2017, <http://www.pewglobal.org/2017/06/26/u-s-image-suffers-as-publics-around-world-question-trumps-leadership/>.

²⁰ Request Under Freedom of Information Act by Jamil Dakwar, Director of Human Rights Program, ACLU, June 16, 2017, <https://www.aclu.org/letter/trump-foia-seeking-records-about-future-us-involvement-human-rights-bodies>.

II. Requested Records

The ACLU seeks the release of the following records:

- (1) All records created or held by the State Department since January 20, 2017 that mention the federal government's intent and/or plans to withdraw from UNESCO.

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

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

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).²¹ 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); 22 C.F.R. 171.11(f)(2).

- 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).²² Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and general public are critical and substantial components of the ACLU's work and are among its

²¹ *See also* 22 C.F.R. § 171.11(f).

²² *See also* 22 C.F.R. § 171.11(f)(2). ("Requests...shall receive expedited processing when a request demonstrates that a 'compelling need' for the information exists.")

primary activities. See *ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that a 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.”).²³

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to nearly 990,000 people. The ACLU also publishes regular updates and alerts via email to over 3.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 3.83 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,²⁴ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.²⁵

²³ 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).

²⁴ 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>.

²⁵ 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>

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.²⁶ The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

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

(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).

²⁶ *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.

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.²⁷ For example, the ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online “Torture Database,” a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.²⁸

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.²⁹ Similarly, the ACLU produced an

²⁷ See, e.g., ACLU, *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>; ACLU, *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>; *ACLU v. DOJ – FOIA Case for Records Relating to the Killing of Three U.S. Citizens*, ACLU (last updated Dec. 30, 2016), <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; *ACLU v. Department of Defense*, ACLU (last updated Aug. 18, 2015), <https://www.aclu.org/cases/aclu-v-department-defense>; *Mapping the FBI*, ACLU (last visited Oct. 17, 2017), <https://www.aclu.org/mappingthefbi>; *Bagram FOIA*, ACLU (last updated Apr. 18, 2013), <https://www.aclu.org/cases/bagram-foia>; *CSRT FOIA*, ACLU (last visited Oct. 17, 2017), <https://www.aclu.org/national-security/csrt-foia>; *ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance FOIA Request*, ACLU (last visited Oct. 17, 2017), <https://www.aclu.org/aclu-v-doj-lawsuit-enforce-nsa-warrantless-surveillance-foia-request>; *PATRIOTt FOIA*, ACLU (last visited Oct. 17, 2017), <https://www.aclu.org/patriot-foia>; *NSL Documents Released by DOD*, ACLU (last visited Oct. 17, 2017), <https://www.aclu.org/nsl-documents-released-dod?redirect=credirect/32088>.

²⁸ The Torture Database, <https://www.thetorturedatabase.org> (last visited Oct. 17, 2017); see also Targeted Killing FOIA Database, ACLU (last visited Oct. 17, 2017), <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

²⁹ *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.

analysis of documents released in response to a FOIA request about the TSA's behavior detection program³⁰; a summary of documents released in response to a FOIA request related to the FISA Amendments Act³¹; 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 requests³²; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.³³

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).³⁴ Specifically, the requested records relate to the Trump administration's recent decision to withdraw the United States from participation in UNESCO. As discussed in Part I, *supra*, the United States' pattern of threatening to separate itself from international diplomacy, specifically human rights treaties and bodies, including previous calls to withdraw from the Paris Climate Accord, United Nations Human Rights Council, and the Trans-Pacific Partnership, are the subject of widespread public controversy and media attention.³⁵ The records sought relate to a matter of widespread and exceptional media interest in the United States' commitment to international human rights and multilateralism.³⁶

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

³⁰ *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.

³¹ *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

³² *Statistics on NSL's Produced by Department of Defense*, ACLU, <https://www.aclu.org/other/statistics-nsls-produced-dod>.

³³ ACLU, *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>.

³⁴ *See also* 22 C.F.R. § 171.11(f)(2).

³⁵ *See supra* note 6, 9, 13, 14 and accompanying text.

³⁶ *See id.*

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).³⁷ 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, 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 particular reasons for the United States’ withdrawal from UNESCO is publicly available, and in light of the Trump administration’s propensity to justify distancing the country from international diplomacy because of national sovereignty, the records sought are certain to contribute significantly to the public’s understanding of these issues.

The ACLU is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending 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).³⁸ The ACLU meets

³⁷ See also 22 C.F.R. § 171.16(a).

³⁸ See also 22 C.F.R. § 171.16 (a)(iii).

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)³⁹; *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).⁴⁰

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news

³⁹ *See also* 22 C.F.R. § 171.14(b)(5)(ii)(C).

⁴⁰ 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.

media.”⁴¹ 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); 22 C.F.R. § 171.11(f)(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 FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

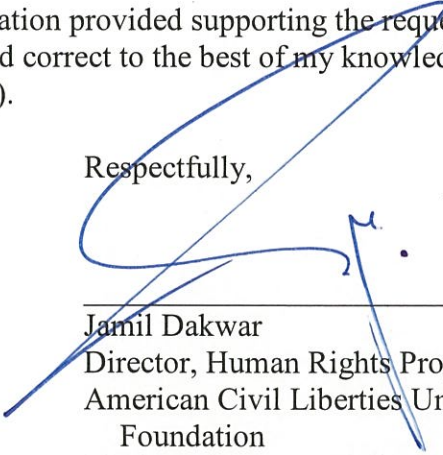
Thank you for your prompt attention to this matter. Please furnish the applicable records to:

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New York, New York 10004
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⁴¹ In June 2017, DOS granted a fee-waiver request regarding a FOIA request for documents related to the Trump administration’s plans to diminish ties with international human rights treaties and bodies. In May 2017, CBP granted a fee-waiver request regarding a FOIA request for documents related to electronic device searches at the border. In April 2017, the CIA and the Department of State granted fee-waiver requests in relation to a FOIA request for records related to the legal authority for the use of military force in Syria. In March 2017, the Department of Defense Office of Inspector General, the CIA, and the Department of State granted fee-waiver requests regarding a FOIA request for documents related to the January 29, 2017 raid in al Ghayil, Yemen. In 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.

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

Respectfully,



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