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**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”)¹ submit this Freedom of Information Act (“FOIA”) request (the “Request”) for records pertaining to the authority under domestic and international law for the President of the United States to use U.S. military force in Syria with strikes that began on April 6, 2017 on the Shayrat airfield in Homs governorate, Syria.

I. Background

On the evening of Thursday, April 6, 2017, President Donald J. Trump announced that the U.S. military had launched 59 Tomahawk land attack missiles at the Shayrat airfield in Homs governorate, Syria. According to the Trump administration, the strike was conducted in response to a chemical weapons attack carried out by the Syrian government on Tuesday, April 4, 2017, that had killed over 80 civilians.² Also according to the Trump administration, the U.S. strike targeted the airfield from which the chemical attack was launched.³

The Trump administration has given a number of cursory justifications for the strike. President Trump asserted that it was in the “vital, national security interest of the United States to prevent and deter the spread and use of deadly chemical weapons.”⁴ President Trump further asserted that “[t]here can be no

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 Michael R. Gordon, Helene Cooper & Michael D. Shear, *Dozens of U.S. Missiles Hit Air Base in Syria*, N.Y. Times (Apr. 6, 2017), <https://www.nytimes.com/2017/04/06/world/middleeast/us-said-to-weigh-military-responses-to-syrian-chemical-attack.html>.

³ *Id.*

⁴ *Transcript and Video: Trump Speaks About Strikes in Syria*, N.Y. Times (Apr. 6, 2017), <https://www.nytimes.com/2017/04/06/world/middleeast/transcript-video-trump-airstrikes-syria.html>.

dispute that Syria used banned chemical weapons, violated its obligations under the Chemical Weapons Convention and ignored the urging of the U.N. Security Council.”⁵ He added that over the past several years, the crisis in Syria had destabilized the region, “threatening the United States and its allies.”⁶

Secretary of State Rex Tillerson reportedly stated that the United States acted because Syrian President Bashar al-Assad was “normalizing the use of chemical weapons, which then might be adopted by others.”⁷ The military strike was also “intended to prevent non-government groups or individuals who could harm Americans from obtaining chemical weapons amid the chaos of Syria’s civil war.”⁸

In a statement released by the Pentagon, Captain Jeff Davis asserted that “[t]he strike was a proportional response to Assad’s heinous act” and that it “was intended to deter the regime from using chemical weapons again.”⁹

These statements echo an internal talking points document circulated among government agencies, and obtained and published by the Washington Post. These talking points invoke Article II of the Constitution and the presidential power “to defend the U.S. national interest.”¹⁰ The document states that “[n]o authorization from Congress is necessary,” and that “[t]he U.S. strikes were a justified use of force because of several factors, including promoting regional stability, discouraging the use of chemical weapons, and protecting a civilian population from humanitarian atrocities.”¹¹ The document adds that “[w]eapons of mass destruction use by any actor lowers the threshold for others that may seek to follow suit and threatens the international legal regime prohibiting the use of chemical weapons.”¹²

⁵ *Id.*

⁶ *Id.*

⁷ Noah Bierman, *Rex Tillerson Said Russia ‘Failed in Its Responsibility’ to Secure Syria’s Chemical Weapons*, L.A. Times (Apr. 6, 2017, 8:17 PM), <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-1491533682-htmlstory.html>.

⁸ *Id.*

⁹ Press Release, Capt. Jeff Davis, Pentagon Spokesman, Statement on U.S. Strike in Syria (Apr. 6, 2017), <https://www.defense.gov/News/News-Releases/News-Release-View/Article/1144598/statement-from-pentagon-spokesman-capt-jeff-davis-on-us-strike-in-syria>.

¹⁰ Josh Rogin, *Trump Administration on Syria Strikes: ‘Russia Faces a Choice,’* Wash. Post (Apr. 6, 2017, 11:22 PM), <https://www.washingtonpost.com/news/josh-rogin/wp/2017/04/06/trump-administration-on-syria-strikes-russia-faces-a-choice>.

¹¹ *Id.*

¹² *Id.*

Many outside the Trump administration, including members of Congress and domestic and international law experts, have questioned President Trump's legal authority to order an airstrike in Syria without congressional authorization.¹³ According to the Los Angeles Times, "[l]awmakers are increasingly concerned that President Trump's military action in Syria needs to be authorized by Congress."¹⁴ House Minority Leader Nancy Pelosi sent a letter to House Speaker Paul Ryan, requesting that he "call the House back in session immediately" so that Congress could "live up to its Constitutional responsibility to debate an Authorization of the Use of Military Force against a sovereign nation."¹⁵ Senator Rand Paul remarked that "the United States was not attacked," and that "[t]he President needs Congressional authorization for military action as required by the Constitution."¹⁶ Senator Mike Lee stated that "President Trump should make his case in front of the American people and allow their elected representatives to debate the benefits and risks of further Middle East intervention to our national security interests."¹⁷ Senator Tim Kaine called President Trump's action without congressional approval "unlawful," and other members of Congress echoed this sentiment.¹⁸ Scholars have asserted that the airstrike violated international law as well.¹⁹

¹³ See, e.g., Spencer Ackerman, Ed Pilkington, Ben Jacobs & Julian Borger, *Syria Airstrikes: US Launches First Direct Military Action Against Assad*, Guardian (Apr. 7, 2017, 1:58 PM), <https://www.theguardian.com/world/2017/apr/06/trump-syria-missiles-assad-chemical-weapons>; Jeremy Herb, *How Trump's Syria Airstrike Is Different From—and Similar to—Obama's*, CNN (Apr. 7, 2017, 11:56 AM), <http://www.cnn.com/2017/04/07/politics/obama-syria-airstrikes-trump>; Conor Friedersdorf, *Trump's Syria Strike Was Unconstitutional and Unwise*, Atlantic (Apr. 7, 2017, 9:19 AM), <https://www.theatlantic.com/politics/archive/2017/04/president-trumps-syria-strike-was-unconstitutional-and-unwise/522228>.

¹⁴ Lisa Mascaro, *Leader Pelosi Wants Speaker Ryan to Return House from Recess for Debate on Authorization of Trump's Syria Strikes*, L.A. Times (Apr. 7, 2017, 6:36 AM), <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-leader-pelosi-wants-speaker-ryan-to-1491571750-htmllstory.html>; see also Joshua Keating, *Are Donald Trump's Airstrikes on Syria Legal?*, Slate (Apr. 7, 2017, 11:00 AM), http://www.slate.com/blogs/the_slatest/2017/04/07/are_donald_trump_s_airstrikes_on_syria_legal.html.

¹⁵ Press Release, Nancy Pelosi, House Minority Leader, Pelosi Letter to Speaker Ryan: House Must Come Back Into Session Immediately to Debate AUMF for Syria (Apr. 7, 2017), <http://www.democraticleader.gov/newsroom/4717>.

¹⁶ Rand Paul (@RandPaul), Twitter (Apr. 6, 2017, 9:41 PM), <https://twitter.com/RandPaul/status/850161484013481984>; Rand Paul (@RandPaul), Twitter (Apr. 6, 2017, 9:41 PM), <https://twitter.com/RandPaul/status/850161531094523906>.

¹⁷ Press Release, Senator Mike Lee, Sen. Lee Statement on Syria Chemical Attacks (Apr. 6, 2017), <https://www.lee.senate.gov/public/index.cfm/press-releases?ID=EA836EAA-01ED-489D-8499-B93C752F84C4>.

¹⁸ Jim Dalrymple II, *Here's How Lawmakers Are Responding to Trump's Airstrikes in Syria*, BuzzFeed (Apr. 7, 2017, 12:19 AM),

To provide the public with the full legal justifications for the U.S. strikes in Syria starting on April 6, 2017, and to ensure informed public debate about this use of military force and the use of such force in the future, the ACLU seeks such information through this FOIA request.

II. Requested Records

The ACLU seeks the release of any and all records—including any Department of Justice Office of Legal Counsel memoranda, other written legal opinions, policy memoranda, guidance documents, or talking points—that:

Pertain to the authority under domestic and international law of the President of the United States to use U.S. military force in Syria with strikes that began on April 6, 2017 on the Shayrat airfield in Homs governorate, Syria.

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).²⁰ 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

<https://www.buzzfeed.com/jimdalrympleii/lawmakers-praise-and-condemn-us-airstrikes-against-syria>.

¹⁹ *See, e.g.,* Marty Lederman, *Why the Strikes Against Syria Probably Violate the U.N. Charter and (Therefore) the U.S. Constitution*, Just Security (Apr. 6, 2017, 10:40 PM), <https://www.justsecurity.org/39674/syrian-strikes-violate-u-n-charter-constitution>; Ryan Goodman, *Humanitarian Military Options for Syrian Chemical Weapons Attack: “Illegal but Not Unprecedented,”* Just Security (Apr. 6, 2017, 9:56 AM), <https://www.justsecurity.org/39658/humanitarian-military-options-syrian-chemical-weapons-attack-illegal-unprecedented>.

²⁰ *See also* 32 C.F.R. § 286.8(e) (DoD); 28 C.F.R. § 16.5(e) (DOJ); 22 C.F.R. § 171.11(f) (State Department); 32 C.F.R. § 1900.34 (CIA).

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).²¹ 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”).²²

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,²³ and ACLU attorneys are interviewed frequently for news stories about

²¹ *See also* 32 C.F.R. § 286.8(e)(1)(i)(B) (DOD); 28 C.F.R. § 16.5(e)(1)(ii) (DOJ); 22 C.F.R. § 171.11(f)(2) (State Department); 32 C.F.R. § 1900.34(c)(2) (CIA).

²² 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).

²³ *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>.

documents released through ACLU FOIA requests.²⁴

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.²⁵ 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

²⁴ See, e.g., Cora Currier, *TSA's Own Files Show Doubtful Science Behind Its Behavioral Screening 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).

²⁵ 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.

disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

The ACLU website includes many features on information obtained through the FOIA.²⁶ 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.²⁷

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained

²⁶ 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 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=cpreldirect/32088>.

²⁷ *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>.

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.²⁸ Similarly, the ACLU produced an analysis of documents released in response to a FOIA request about the TSA’s behavior detection program²⁹; a summary of documents released in response to a FOIA request related to the FISA Amendments Act³⁰; 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 requests³¹; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.³²

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).³³ Specifically, the requested records relate to the legal authority of the President of the United States to use U.S. military force in Syria with strikes that began on April 6, 2017 on the Shayrat airfield in Homs governorate, Syria. As discussed in Part I, *supra*, the President’s legal authority to use military force in Syria and the legal justifications for the April 6th airstrike are the subject of widespread public

²⁸ *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.

²⁹ *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.

³⁰ *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

³¹ *Statistics on NSL’s Produced by Department of Defense*, ACLU, <https://www.aclu.org/other/statistics-nsls-produced-dod>.

³² 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>.

³³ *See also* 32 C.F.R. § 286.8(e)(1)(i)(B) (DOD); 28 C.F.R. § 16.5(e)(1)(ii) (DOJ); 22 C.F.R. § 171.11(f)(2) (State Department); 32 C.F.R. § 1900.34(c)(2) (CIA).

controversy and media attention, and more information is necessary as discussions about the future use of military force in Syria continue.³⁴

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).³⁵ The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative[] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A. The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the ACLU.

As discussed above, news accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Because little specific information about the legal justifications for the April 6, 2017 airstrike on the Shayrat airfield is publicly available, the records sought are certain to contribute significantly to the public’s understanding of the legality of such an action.

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.

³⁴ See *supra* Part I, nn. 2–19..

³⁵ See also 32 C.F.R. § 286.12(l)(1) (DOD); 28 C.F.R. § 16.10(k)(2) (DOJ); 22 C.F.R. § 171.16(a) (State Department); 32 C.F.R. § 1900.13(b)(2) (CIA).

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)³⁶; *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).³⁷

³⁶ *See also* 32 C.F.R. § 286.12(b)(6) (DOD); 28 C.F.R. § 16.10(b)(6) (DOJ); 22 C.F.R. § 171.14(b)(5)(ii)(C) (State Department); 32 C.F.R. § 1900.02(h)(3) (CIA).

³⁷ 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.”³⁸ 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) (DOD); 28 C.F.R. § 16.5(e)(4) (DOJ); 22 C.F.R. § 171.11(f)(4) (State Department); 32 C.F.R. § 1900.34(c) (CIA).

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

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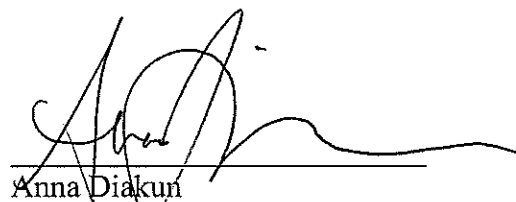
Thank you for your prompt attention to this matter. Please furnish the applicable records to:

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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,

³⁸ 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.



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