

December 6, 2019

SENT VIA E-MAIL (FOIA@acf.hhs.gov and FOIARequest@hhs.gov)
AND CERTIFIED MAIL

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**Re: FOIA Request Related to ORR Treatment of Pregnant
Individuals and Provision of Reproductive Health Care**

Dear Freedom of Information Officer:

The American Civil Liberties Union (“ACLU”) submits this Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, request for production of records (the “Request”). The ACLU also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 45 C.F.R. § 5.54, and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 45 C.F.R. § 5.27. The justification for the fee waiver and expedited processing are set out in detail following the Request.

Request for Information

The ACLU seeks any and all records that were prepared, received, transmitted, collected and/or maintained by the Department of Health and Human Services (“HHS”), including all its subcomponents and specifically including the Office of Refugee Resettlement (“ORR”), (collectively, hereafter, “HHS”), that describe, refer, or relate to the policies, guidelines, protocols, procedures, or practices followed or used by HHS and/or ORR and its grantees and/or subgrantees regarding the identification of and care provided to unaccompanied immigrant minors (“UCs”) in ORR custody who seek information about or access to contraception (including emergency contraception) and/or abortion. Unless otherwise noted, we request the records specified below from December 1, 2017 to the present.



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For purposes of this request, the term “records” includes but is not limited to any and all communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, spreadsheets, charts, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

For purposes of this request, the term “HHS” means the Department of Health and Human Services, and any components, subcomponents, offices, or personnel therein.

For purposes of this request, the term “ORR” means the Office of Refugee Resettlement, and any components, subcomponents, offices, or personnel therein, including, but not limited to, the Director of ORR, the Deputy Director of ORR, and Federal Field Specialists (“FFS”).

For purposes of this request, the term “UC Program” means the unaccompanied immigrant minors program, under which unaccompanied immigrant minors in the custody of ORR are cared for through a network of ORR-funded care providers.

For purposes of this request, the term “minors” or “UCs” refers to minors who are in the custody or care of ORR-funded care providers pursuant to the UC Program.

For purposes of this request, the term “grantee” means direct grantee in the UC Program and the term “subgrantee” means an entity receiving funding from a direct grantee in the UC Program for the provision of care and custody to UCs.

Specific records requested:

1. Any and all records, including, but not limited to, any ORR policies, memoranda, directives, and any correspondence between or among HHS personnel, HHS and any other federal agency, and/or ORR and its grantees or subgrantees, regarding:
 - a. Minors’ access to contraception (including emergency contraception) while in ORR custody.
 - b. The treatment of pregnant minors in ORR custody, including their ability to access prenatal care, information and/or counseling regarding pregnancy options (including

abortion and adoption), and to obtain an abortion, and their ability to keep their pregnancies and/or abortion decisions confidential from parents, sponsors, and other third parties.

- c. The handling of individual minors' requests for access to abortion or contraception (including emergency contraception), or for information or counseling regarding pregnancy options (including abortion and adoption).

2. Any and all records regarding the process for minors who elect to place a child for adoption disseminated to ORR grantees or subgrantees.
3. Any and all records that detail, track or monitor minors' pregnancies and information pertaining to their pregnancies and pregnancy outcomes, including, but not limited to, the dates of minors' last menstrual periods, circumstances that led to their becoming pregnant, their requests (if any) for access to abortion and/or information about abortion and the outcome of those requests, and notification of minors' parents and/or prospective sponsors of their pregnancy and/or decision to have an abortion.
4. Any and all records, including, but not limited to significant incident reports (SIRs) and associated documentation and completed treatment authorization forms, regarding minors' access to abortion or contraception and minors giving birth.
5. Any and all records that detail services available and provided to pregnant minors in ORR custody who are survivors of sexual assault.
6. Any and all records from January 1, 2016 until present that reflect the following:
 - a. The total number of minors in ORR custody identified as pregnant while in ORR custody, including any lists broken down by month and grantee and/or subgrantee facility at which minor is housed.
 - b. For each minor identified as pregnant in ORR custody, any records that contain the following data:
 - i. The total time period the minor remained in ORR custody, including the initial date of detention, date of release and date of any transfers of the minor between ORR's





grantees and/or subgrantees.

- ii. In cases where a minor identified as pregnant was transferred to another grantee and/or subgrantee as a result of the pregnancy, all records relating to that transfer, including but not limited to, all records related to the request to transfer (if any), the decision to arrange the transfer, and the processing, effectuation and outcome of those transfers.
 - iii. Any records indicating whether and the number of times each minor identified as pregnant received counseling regarding her pregnancy options, and the name of the entity from whom she received that counseling.
 - iv. Any records indicating whether and under what circumstances each pregnant minor's parents, prospective sponsor or other third parties were notified about her pregnancy and/or abortion.
7. Any and all records from January 20, 2017 until present regarding the use of restraints on pregnant minors, minors in active labor, or post-delivery recuperation.
8. Any and all records from January 20, 2017 until present reflecting correspondence between ORR and the HHS Center for Faith & Opportunity Initiatives (The Partnership Center) regarding minors' access to abortion or contraception, or information about pregnancy options, including, but not limited to:
- a. Records regarding entities to which unaccompanied minors should be referred for counseling or more information about their pregnancies and their pregnancy options.
 - b. Records regarding ORR policies, practices or procedures for handling minors' requests for access to abortion or contraception, and information about abortion or contraception, while in ORR custody.
9. Any and all records from January 20, 2017 until present, reflecting correspondence between the ORR and religiously affiliated grantees and subgrantees, including, but not limited to, the United States Catholic Conference of Bishops, Catholic Charities, Maryville

Academy, Bethany Christian Services, Lutheran Immigration and Refugee Service, regarding requests of minors in the care and custody those subgrantees for access to abortion or contraception (including emergency contraception), and/or information about pregnancy options, and the outcome of those requests.

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this Request should also be considered within the Request's scope.

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, with all metadata and load files. 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. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this Request would require HHS to provide multiple copies of identical material, the Request is limited so that only one copy of the identical material is requested. Please do not compress images or downsample the resolution, as this interferes with their legibility. To facilitate a speedy response, we ask that records responsive to this Request be produced on a rolling basis. The ACLU will accept records and other information that have been redacted pursuant to the Health Insurance and Portability Accountability Act¹ or other statutes or regulations protecting the privacy of individual minors.

In the event you determine that certain materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon.

Fee Waiver Request

The ACLU requests that any fees associated responding to this Request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54. Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, fees should be waived or reduced if disclosure is (1) in the public interest because it is "likely to contribute significantly to public understanding of the operations or

¹ 42 U.S.C. § 1320d-6.



activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. The ACLU also requests a waiver or reduction of 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).

- 1. Disclosure is in the public interest as it is likely to contribute significantly to the public’s understanding of the operations and activities of government.*

First, disclosure pursuant to this Request is in the public interest. The requested records pertain to the treatment of unaccompanied immigrant minors in federal custody, and federal agency policy regarding these minors’ ability to confidentially access vital reproductive health services while in federal care. This is a matter of widespread media and public interest, and the requested records will inform the public concern of this activity by ORR.

Unaccompanied immigrant minors are a highly vulnerable group. They come to the United States without their parents, often fleeing violence and abuse. They face considerable stress, including separation from family and the uncertainty of immigration proceedings. Unaccompanied immigrant minors also have an acute need for reproductive health care, in part because a high number of these young women are victims of sexual assault, immediately before, during and after their journeys to the United States.

Nevertheless, in March of 2017, ORR began implementing a new policy regarding the processing of pregnant minors’ requests for abortion information and/or abortion while in federal government custody. Pursuant to this policy, ORR announced that all federally funded shelters would be prohibited from taking any action that facilitates abortion access for unaccompanied minors in their care without direction and approval from the Director of ORR. This includes arranging for pregnancy options counseling, ensuring access to court to seek a judicial bypass in lieu of parental consent, and providing access to the abortion itself.

Shortly after his appointment, former-ORR Director Scott Lloyd began aggressively implementing this new policy, making it extremely difficult, if not impossible, for pregnant unaccompanied immigrant minors to obtain neutral information about and access to abortion care. Publicly filed court documents and news reports reveal that ORR implemented its policy of interfering with and obstructing minors’ access to care by, among other things, forcing minors seeking abortion to attend counseling sessions with crisis pregnancy centers that are hostile to abortion, forcing minors to inform their parents and/or prospective sponsors of their pregnancies and/or abortion

decision (or informing them over minors' objections), and blocking them from attending scheduled appointments for abortion counseling and care.²

ORR's policy has rightly provoked significant public scrutiny.³ It has also prompted ongoing class action litigation, filed by the ACLU on behalf of individual minors and a class of all pregnant unaccompanied immigrant minors in federal government custody. The litigation resulted in a federal court order certifying a class of all unaccompanied immigrant minors and appointing the ACLU as class counsel, and preliminarily enjoining ORR from further interfering with or obstructing any class member's access to, *inter alia*, abortion counseling, an abortion or any other pregnancy related care.⁴ ORR's policy regarding minors' access to abortion also prompted intense questioning from legislators in Congress,⁵ and caused some legislators to call for the firing of then-ORR Director Scott Lloyd.⁶



² See, e.g., Carter Sherman, A Raped Migrant Teen Asked Trump Officials for An Abortion. She Got Counseling With Bible Verses and Coloring, VICE News, Dec. 17, 2018, https://news.vice.com/en_us/article/pa5wz9/a-raped-migrant-teen-wanted-an-abortion-the-trump-administration-gave-her-anti-abortion-counseling; Christopher Mele, A.C.L.U. Goes to Court for 2 Undocumented Teenagers Seeking Abortions, Dec. 15, 2017, <https://www.nytimes.com/2017/12/15/us/abortion-undocumented-aclu.html>.

³ See e.g., *supra* n. 2; see also Jeremy W. Peters, Under Trump, an Office Meant to Help Refugees Enters the Abortion Wars, New York Times, Apr. 5, 2018, <https://www.nytimes.com/2018/04/05/us/politics/refugee-office-abortion-trump.html>; Mark Joseph Stern, The Trump Administration is Preventing Undocumented Immigrant Minors From Getting Abortions, Slate, Oct. 11, 2017, <https://slate.com/news-and-politics/2017/10/trump-administration-wont-let-unaccompanied-immigrant-minors-get-abortions.html>.

⁴ See NBC News, Federal court rules government can't block detained immigrant teens from abortion, Mar. 30, 2018, <https://www.nbcnews.com/news/us-news/federal-court-rules-government-can-t-block-detained-immigrant-teens-n861671>; ABA Journal, DC Circuit rules against blanket ban on abortions for unaccompanied immigrant teens in US custody, June 17, 2019, <http://www.abajournal.com/news/article/dc-circuit-rules-against-blanket-ban-on-abortions-for-unaccompanied-immigrant-teens-in-us-custody>.

⁵ See, e.g., Rebecca Harrington, Business Insider, Trump's official behind the Jane Doe case urged 'savvy' lawmakers to make women get men's permission before getting abortions, Oct. 29, 2019, <https://www.businessinsider.com/scott-lloyd-jane-doe-abortion-case-controversial-past-2017-10>; Murray, Feinstein Demand Answers After Report Reveals Trump Administration Tracked Pregnancies of Young Women in Its Custody, March 26, 2019, <https://www.help.senate.gov/ranking/newsroom/press/murray-feinstein-demand-answers-after-report-reveals-trump-administration-tracked-pregnancies-of-young-women-in-its-custody>; Tina Vasquez, Rewire, Senator Calls Out Lie About Trump Official Blocking Immigrant Teens From Abortion Care, Apr. 27, 2019, <https://rewire.news/article/2018/04/27/senator-calls-lie-trump-official-blocking-immigrant-teens-abortion-care/>.

⁶ See Press Release, ICYMI: Pro-Choice Leaders: HHS Should Stop Forced Dissemination of Deceptive Anti-Abortion Brochure and HHS Secretary Alex Azar Should Fire ORR Director Scott Lloyd, Congressman Jerry Nadler, May 1, 2018, <https://nadler.house.gov/news/documentsingle.aspx?DocumentID=391742>.

Given the significant attention to this issue by advocacy groups, media groups, and legislators, the requested records will contribute significantly to the public's understanding of the treatment of pregnant minors in ORR custody.

2. *Disclosure is not primarily in the commercial interest of the ACLU.*

Second, the ACLU is not filing this request to further a commercial interest. The ACLU is a 501(c)(3) nonprofit organization and therefore has no commercial interest. The ACLU intends to make any relevant information obtained through this FOIA request available to the public. The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee.

The ACLU also publishes, analyzes, and disseminates information through its heavily subscribed website, <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 website also includes many features on information obtained through FOIA requests. 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.⁷ 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, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program. The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request at no cost.

3. *The ACLU also qualifies for a fee waiver because it is representative of the news media and the records are not sought for commercial use.*

⁷ See also The Torture Database, <https://www.thetorturedatabase.org> (last visited Sept. 19 2019); see also *Countering Violent Extremism FOIA Documents*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>.



The ACLU is also entitled to a fee waiver 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); 45 C.F.R. § 5.53. 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); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 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); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).⁸

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. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

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.⁹ These reports, analysis, multi-media features, including videos and podcasts, as well as case related news and archives addressing civil rights and liberties issues are disseminated widely through various ACLU channels, including the website. The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,¹⁰ and ACLU attorneys are interviewed frequently for news

⁸ Other courts have found that the ACLU and organizations with similar missions engaging in information-dissemination similar to the ACLU’s are “primarily engaged in disseminating information.” *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

⁹ *See e.g. Fatal Neglect: How ICE Ignores Deaths in Detention*, ACLU, <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>.

¹⁰ *See, e.g.*, Press Release, ACLU, CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture->



stories about documents released through ACLU FOIA requests.¹¹ ACLU national projects also regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.¹² This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

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. In addition, 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>. In the past year alone, the ACLU’s online articles were viewed 11.3 million times. ACLU content gets more reader engagement – shares, clicks, and likes – than sites operated by many traditional media companies. The ACLU’s social media content has 2.2 million total page “likes,” which is more than The Atlantic, ThinkProgress, and Vox. The ACLU also 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>. Therefore, when it conducts

documents-response-aclu-lawsuit; Press Release, ACLU, 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, ACLU, 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>.

¹¹ *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); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC News, 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).

¹² *See, e.g.*, GALEN SHERWIN ET AL., ACLU, LEAVING GIRLS BEHIND: AN ANALYSIS OF WASHINGTON D.C.’S “EMPOWERING MALES OF COLOR” INITIATIVE (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out*, ACLU (Oct. 24, 2017, 3:15 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site*, ACLU (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/criminal-law-reform/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias>; Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation*, ACLU (Jan. 24, 2018, 3:45 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>.

these public education and dissemination activities, the ACLU is a representative of the news media.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU's are "representatives of the news media" as well. *See, e.g., Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Cause of Action v. Internal Revenue Serv.*, 125 F. Supp. 3d 145 (D.D.C. 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); *Judicial Watch, Inc. v. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000).¹³

As a representative of the news media, the ACLU plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. 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."¹⁴ Additionally, a fee waiver would fulfill Congress's legislative intent in amending FOIA.¹⁵

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the requester, and because the ACLU is a representative of the news media, the ACLU is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document



¹³ 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 and public education activities. *See, e.g., Nat'l Sec. Archive*, 880 F.2d at 1387; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

¹⁴ For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to "national security letters" issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

¹⁵ *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 requestors.'") (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) ("[FOIA's] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.") (internal quotation marks and citation omitted).

duplication. In the event that you decide not to waive the fees, please provide me with prior notice so that we can discuss arrangements.

Expedited Processing Request

The ACLU requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 45 C.F.R. § 5.27(b)(2). 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); *see also* 45 C.F.R. § 5.27.

1. *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). As detailed *supra*, the ACLU has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, 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. Dep’t of Justice*, 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”).¹⁶ Moreover, as mentioned *supra*, the ACLU intends to distribute the information obtained through this FOIA request via the ACLU website and/or other means available to us.

2. *The records sought are urgently needed to inform the public about actual or alleged government activity.*

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). For the reasons described *supra*, the treatment of unaccompanied minors in

¹⁶ 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. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).



federal custody, and particularly their ability to confidentially access vital, time-sensitive health care services in a timely manner while in federal custody, is of great concern to the public. The information sought in this Request will meaningfully further public understanding on this issue of pressing national concern. The urgency to inform the public goes beyond the general public interest in government transparency—it responds to ongoing serious concerns from members of Congress and the public regarding ORR’s treatment of minors in its custody, and will answer specific questions regarding the nature, impact and implications of ORR’s treatment of minors in its care, including questions regarding minors’ ability to access vital reproductive health care services while in ORR custody and to keep their intensely private medical information and decisions confidential. Especially because little specific information about the details of ORR’s and/or its grantees’ and subgrantees’ policies regarding unaccompanied immigrant minors’ access to abortion and contraception is publically available, the records sought are certain to contribute significantly to the public’s understanding of these issues.



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

Pursuant to 5 U.S.C. § 552(a)(6)(E)(vi) and 45 C.F.R. § 5.27(a), the undersigned certifies that the information provided above as the basis for requesting expedited processing is true to the best of her knowledge and belief.

* * *

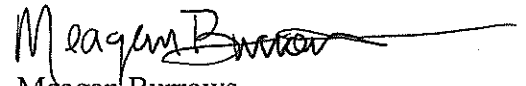
Thank you for your prompt attention to this Request. If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or deny a waiver of fees. We look forward to a determination on this Request from you within ten working days pursuant to 45 C.F.R. § 5.27(c). Please furnish all responsive records to:

Meagan Burrows
American Civil Liberties Union
Reproductive Freedom Project
125 Broad Street, 18th Floor
New York, NY 10004
T: 212-549-2601
mburrows@aclu.org

* * *

Please call me at (212) 549-2601 if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Respectfully,

A handwritten signature in black ink that reads "Meagan Burrows". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Meagan Burrows
American Civil Liberties Union
Reproductive Freedom Project
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2601