



April 5, 2016

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**Re: FREEDOM OF INFORMATION ACT REQUEST  
(EXPEDITED PROCESSING REQUESTED)**

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”) submit this Freedom of Information Act (“FOIA”) request (the “Request”) for records related to attempts by the government to access encrypted messages sent using the messaging platforms of mobile communications providers.<sup>1</sup>

**I. Background**

On March 12, 2016, the *New York Times* reported on a dispute between the Department of Justice (“DOJ”) and WhatsApp Messenger (“WhatsApp”), a technology company that offers the world’s largest mobile messaging service.<sup>2</sup> The dispute stems from WhatsApp’s implementation of encryption on its messaging platform—which, according to the *Times* article, “mak[es] it impossible for the Justice Department to read or eavesdrop, even with a judge’s wiretap order.”<sup>3</sup> The *Times* reported that private debates between WhatsApp and the government regarding access to encrypted messages—although part of a “prolonged standoff”—came to a head in March of this year over a criminal investigation in which government investigators acting pursuant to a wiretap order were stymied by WhatsApp’s encryption.<sup>4</sup> As far as the ACLU is aware, the *Times* article is the first public mention of this case.

WhatsApp has one billion users internationally.<sup>5</sup> It began to implement open-source encryption software in November 2014,<sup>6</sup> and announced on April 5, 2016 that it has added encryption to every form of communication on its service.<sup>7</sup> This encryption allows for plaintext readable content to be

<sup>1</sup> For the purposes of this Request, a “mobile communications provider” is any entity that provides a messaging platform for users to communicate by voice, video, or text over the Internet. Examples of such platforms include WhatsApp Messenger, Apple’s iMessage mobile messaging service, the Signal mobile messaging application, and Telegram Messenger.

<sup>2</sup> Matt Apuzzo, *WhatsApp Encryption Said to Stymie Wiretap Order*, N.Y. Times (Mar. 12, 2016), <http://nyti.ms/1UoeeY6>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Sarah Frier, *WhatsApp Hits 1 Billion Users, Fulfilling Zuckerberg’s Promise*, Bloomberg (Feb. 1, 2016), <http://bloom.bg/203GsXA>.

<sup>6</sup> Andy Greenberg, *WhatsApp Just Switched on End-To-End Encryption for Hundreds of Millions of Users*, Wired (Nov. 18, 2014), <http://www.wired.com/2014/11/whatsapp-encrypted-messaging/>.

<sup>7</sup> Cade Metz, *Forget Apple vs. the FBI: WhatsApp Just Switched on Encryption for a Billion People*, Wired (Apr. 5, 2016), <http://www.wired.com/2016/04/forget-apple-vs-fbi-whatsapp-just-switched-encryption-billion-people/>.

transformed into a seemingly incomprehensible jumble of characters, known as ciphertext, which is readable only with the possession of a “key” that decrypts the scrambled information and returns it to its original form.<sup>8</sup> Encryption is commonly used to protect the privacy and security of information stored on or transmitted to and from computers, cell phones, tablets, and other electronic devices. Given the growing reliance on mobile phones for sensitive communications, financial transactions, and data storage, technology companies increasingly offer mobile phones that use encryption to protect data stored on the devices. Communications providers are also offering encryption to protect text messages and voice and video conversations.<sup>9</sup> Some technology and communications providers, including WhatsApp, use a form of encryption known as “end-to-end encryption,” according to which only the sender and receiver of a communication have the means to access the unencrypted messages.

WhatsApp has joined a growing list of technology companies that have clashed with the government because of their use of encryption. For example, on September 7, 2015, the *Times* reported that the DOJ had obtained a court order demanding that Apple provide the government messages sent between two suspects using Apple’s iMessage mobile messaging service.<sup>10</sup> As in the WhatsApp case, Apple’s encryption had prevented the government from eavesdropping pursuant to a wiretap order.

Whether the government should have the authority to compel technology companies to assist in accessing encrypted communications is a matter of increasing public concern and growing media attention. Over the last five years, several senior law enforcement officials have engaged in a high-profile, public campaign to gain expanded powers that would permit government agencies to force technology companies to redesign otherwise encrypted communications services and devices to be surveillance-friendly. Disclosure of the government’s wiretap applications and the corresponding court orders in the WhatsApp case—and others like it—would help the American public, legal scholars, and Congress better understand how the government interprets its existing powers to compel surveillance assistance from third parties and, as a result, how government agencies may obtain access to Americans’ encrypted electronic communications. James B. Comey, director of the Federal Bureau of Investigation, has said that he wants this

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<sup>8</sup> Tricia E. Black, Note, *Taking Account of the World as It Will Be: The Shifting Course of U.S. Encryption Policy*, 53 Fed. Comm. L.J. 289, 292 (2001).

<sup>9</sup> See *Riley v. California*, 134 S. Ct. 2473, 2489–90 (2014) (mobile phones provide storage and access to private and sensitive information, including calendars, photographs, videos, financial and medical records, and location data); *United States v. Cotterman*, 709 F.3d 952, 964 (9th Cir. 2013).

<sup>10</sup> See Matt Apuzzo et al., *Apple and Other Tech Companies Tangle with U.S. over Data Access*, N.Y. Times (Sept. 7, 2015), <http://nyti.ms/1M6DPSW>. The ACLU submitted a FOIA request for records relating to this case, which is attached as Exhibit A.

debate—over whether the government should be able to mandate surveillance “backdoors”—to be conducted publicly.<sup>11</sup> Disclosure of the records sought through this Request would further that important goal.

## **II. The Requested Records**

Accordingly, the ACLU seeks the release of the following records:

- (1) All motions, legal briefs, applications, responses, objections, court orders, court opinions, or other legal filings related to any effort to compel WhatsApp to provide access to encrypted messages sent using its messaging service, including but not limited to the case described in the March 12, 2016 *New York Times* article.
- (2) All motions, legal briefs, applications, responses, objections, court orders, court opinions, or other legal filings related to any effort to compel Apple to provide access to encrypted messages sent using its iMessage service, including but not limited to the Maryland case “involving guns and drugs” described in the September 7, 2015 *New York Times* article.
- (3) All motions, legal briefs, applications, responses, objections, court orders, court opinions, or other legal filings related to any effort to compel any mobile communications provider—including but not limited to WhatsApp, Apple, Signal, and Telegram Messenger—to provide access to end-to-end encrypted messages.

The above three requests include, but are not limited to, any application or motion seeking a court order to compel a mobile communications provider to provide access to encrypted messages sent using its service; any motion for sanctions filed by the government against a mobile communications provider for its inability to provide such access; any responses or objections to such filings; and any court orders or opinions relating to such filings.

## **III. Expedited Processing**

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for expeditious disclosure because the documents requested are urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.<sup>12</sup>

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<sup>11</sup> James B. Comey, *Encryption, Public Safety, and “Going Dark,”* Lawfare (July 6, 2015), <https://www.lawfareblog.com/encryption-public-safety-and-going-dark> (“Democracies resolve such tensions [between security and liberty] through robust debate.”).

<sup>12</sup> 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(e)(1)(ii).

1. *The ACLU is 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 and regulations.<sup>13</sup>

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU’s regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 390,000 households; email updates to 1.1 million subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog that attracts more than 40,000 unique visitors per month; heavily visited websites; and a video series.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.<sup>14</sup> ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.

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<sup>13</sup> 5 U.S.C. § 552(a)(6)(E)(v)(II); see also *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is “to serve as the site of record for relevant and up-to-the-minute civil rights news and information” and to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”); *ACLU v. DOJ*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that, like the ACLU, “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” is “primarily engaged in disseminating information”).

<sup>14</sup> See, e.g., Press Release, American Civil Liberties Union, *Erie County Sheriff Records Reveal Invasive Use of “Stingray” Technology* (Apr. 7, 2015), <https://www.aclu.org/news/erie-county-sheriff-records-reveal-invasive-use-stingray-technology>; Press Release, ACLU, *U.S. to Release Targeted Killing Memo Sought by ACLU FOIA Lawsuit* (May 20, 2014), <https://www.aclu.org/news/us-release-targeted-killing-memo-sought-aclu-foia-lawsuit>; Press Release, ACLU, *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>; Press Release, ACLU, *FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering* (Mar. 27, 2012), <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, ACLU, *FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of “Community Outreach”* (Dec. 1, 2011), <http://www.aclu.org/national-security/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community>; Press Release, ACLU, *FOIA Documents from FBI Show Unconstitutional Racial Profiling* (Oct. 20, 2011), <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, ACLU, *Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem* (Oct. 19, 2011), <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>.

The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA. For example, the ACLU maintains an online “Torture Database,” a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>15</sup> The ACLU also maintains a “Torture FOIA” webpage containing commentary about the ACLU’s FOIA request, press releases, and analysis of the FOIA documents. (That webpage also notes that the ACLU, in collaboration with Columbia University Press, has published a book about the documents obtained through FOIA.)<sup>16</sup> Similarly, the ACLU’s webpage about the Office of Legal Counsel torture memos obtained through FOIA contains commentary and analysis of the memos; an original, comprehensive chart summarizing the memos; links to web features created by ProPublica (an independent, non-profit, investigative journalism organization) based on the ACLU’s information gathering, research, and analysis; and ACLU videos about the memos. In addition to websites, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through FOIA requests.

The ACLU plans to analyze and disseminate to the public the information obtained through this Request. The records requested are not sought for commercial use, and the ACLU plans to disseminate the information disclosed as a result of this Request to the public at no cost.

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

The requested records are urgently needed to inform the public about actual or alleged government activity.<sup>17</sup> Given the ongoing and contentious policy debate surrounding electronic communication and mobile device encryption, the government’s efforts to require third parties to decrypt communications data should not be shrouded in secrecy. The lack of transparency with respect to such access is all the more troubling because of the disputed nature of the authority provided by the All Writs Act—a statute that has been invoked by the government to justify conscripting private companies to assist in providing access to data stored on mobile devices in dozens of cases,<sup>18</sup> and which may have been relied upon in investigations

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<sup>15</sup> See The Torture Database, ACLU, [https://www.thetorturedatabase.org/search/apachesolr\\_search](https://www.thetorturedatabase.org/search/apachesolr_search).

<sup>16</sup> See Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (2007).

<sup>17</sup> See 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(e)(1)(ii).

<sup>18</sup> See Eliza Sweren-Becker, *This Map Shows How the Apple-FBI Fight Was about Much More than One Phone*, ACLU: Speak Freely (Mar. 30, 2016), <https://www.aclu.org/blog/speak-freely/map-shows-how-apple-fbi-fight-was-about-much-more-one-phone>.

involving access to encrypted communications.

Expedited release of the requested records is necessary to allow the public to better understand the conditions under which the government has compelled third parties to provide access to otherwise inaccessible communications and devices. This topic has been the subject of widespread public controversy and media attention in recent weeks,<sup>19</sup> including but not limited to the March 12, 2016 *New York Times* article on WhatsApp encryption. Indeed, in an article published on April 5, 2016—the occasion of WhatsApp’s announcement that it will encrypt all communications on its platform—one commenter described the ongoing clash between WhatsApp and the government as “a larger front” than the dispute between Apple and the FBI and “something much bigger than a locked iPhone.”<sup>20</sup> The requested records are therefore urgently needed to inform an important and ongoing public debate.

#### IV. Waiver 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.”<sup>21</sup> Because the ACLU is a non-commercial requester, its fee-waiver request must be construed broadly. *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.’”).

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 a matter of profound public importance. This is especially true given that little is publicly known about any court filings or orders pursuant to which the government seeks to access

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<sup>19</sup> See, e.g., Brandon Bailey, *The Apple-FBI Fight May Be the First Salvo in a Bigger War*, Wash. Times (Mar. 17, 2016), <http://www.washingtontimes.com/news/2016/mar/17/the-apple-fbi-fight-may-be-the-first-salvo-in-a-bi/?page=all>; Cyrus Farivar, *Encrypted WhatsApp Messages Frustrate New Court-Ordered Wiretap*, Ars Technica (Mar. 12, 2016), <http://arstechnica.com/tech-policy/2016/03/encrypted-whatsapp-voice-calls-frustrate-new-court-ordered-wiretap/>; Andy Greenberg, *In the FBI’s Crypto War, Apps May be the Next Target*, Wired (Mar. 14, 2016), <http://www.wired.com/2016/03/fbi-crypto-war-apps/>; Nate Cardozo, *The Next Front in the New Crypto Wars: WhatsApp*, EFF: Deeplinks Blog (Mar. 13, 2016), <https://www.eff.org/deeplinks/2016/03/next-front-new-crypto-wars-whatsapp>.

<sup>20</sup> Cade Metz, *Forget Apple vs. the FBI: WhatsApp Just Switched on Encryption for a Billion People*, Wired (Apr. 5, 2016), <http://www.wired.com/2016/04/forget-apple-vs-fbi-whatsapp-just-switched-encryption-billion-people/>.

<sup>21</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k).

communications on platforms such as WhatsApp.<sup>22</sup> Similarly little is known about litigation over compliance with any such orders.

The Request satisfies all of the considerations set forth in the applicable regulation for deciding whether “requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.”<sup>23</sup> The ACLU seeks records that pertain directly to federal government activities.<sup>24</sup> Because the requested records are scattered across various sources and may be under seal, disclosure would enhance “to a significant extent” the public understanding of government policies and practices apparently developed in secret without public scrutiny.<sup>25</sup> Due to their relevance to the ongoing policy debate, the records would be of interest to a broad audience, including legal scholars, organizations that protect constitutional rights, other members of the news media, and the public at large.<sup>26</sup>

As a nonprofit organization and “representative of the news media”—discussed more fully in Part V, below—the ACLU is well-situated to disseminate information it gains from this Request to the general public and to groups that protect constitutional rights. The ACLU does not have a commercial interest in the records, and will disseminate them free of charge.<sup>27</sup> Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are routinely waived for the ACLU by agencies throughout the executive branch, including the DOJ.<sup>28</sup>

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<sup>22</sup> To the extent the government has relied on the All Writs Act for authority to access encrypted communications—a distinct possibility given its reliance on this statute in seeking access to encrypted devices, *see supra* Note 18 and accompanying text—that reliance circumvents the ongoing and heated public debate about whether the government should be able to require mobile communications providers to retain the ability to grant law enforcement access to encrypted communications, which adds special urgency to the information sought through this Request.

<sup>23</sup> 28 C.F.R. § 16.10(k)(2).

<sup>24</sup> *Id.* § 16.10(k)(2)(i).

<sup>25</sup> *Id.* § 16.10(k)(2)(ii), (iv).

<sup>26</sup> *Id.* § 16.10(k)(2)(iii). As described below, *see infra* Part V, the ACLU is a “representative of the news media.” This criterion is therefore presumptively satisfied. *Id.*

<sup>27</sup> *Id.* § 16.10(k)(1)(ii); *see also id.* § 16.10(k)(3)(ii) (“A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester.”).

<sup>28</sup> For example, in May 2014, Amtrak granted a fee waiver with respect to the ACLU’s request for records regarding the collection of data about Amtrak passengers. In December 2013, the National Security Division of the DOJ granted a fee waiver to the ACLU with respect to a request for documents regarding policies, procedures, and practices followed to obtain search queries from search engine operators for law enforcement or intelligence purposes. In June 2011, the National Security Division also granted a fee waiver to the ACLU



## V. Limitation of Fees for News Media Requesters

The ACLU also requests a waiver of search fees on the ground that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use.<sup>29</sup>

The ACLU meets the definition 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.”<sup>30</sup>

As discussed above,<sup>31</sup> dissemination of information to the public is a critical and substantial component of the ACLU’s mission and work. Specifically, the ACLU publishes newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly disseminated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, and law students and faculty, for no cost or for a nominal fee through the ACLU’s communications department and website. 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 website’s blog attracts more than 40,000 unique visitors per month, and includes features on information obtained through FOIA. For example, the ACLU’s “Accountability for Torture FOIA” webpage contains commentary about the ACLU’s FOIA request for documents related to the treatment of detainees, press releases, analysis of the FOIA documents disclosed, and an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA.<sup>32</sup>

The ACLU publishes a newsletter at least twice a year that reports on and analyzes civil-liberties-related current events. The newsletter is distributed

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with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The DOJ granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006.

<sup>29</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 C.F.R. § 16.10(c)(1)(i).

<sup>30</sup> *Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

<sup>31</sup> *See supra* Part III.1.

<sup>32</sup> *The Torture Database*, <https://www.aclu.org/torturefoia>; *see also Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch to be a news-media requester because it posted documents obtained through FOIA on its website).

to approximately 390,000 households. The ACLU also sends email updates to 1.1 million subscribers. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data.<sup>33</sup>

The ACLU also regularly publishes books,<sup>34</sup> “know your rights” publications,<sup>35</sup> fact sheets,<sup>36</sup> and educational brochures and pamphlets designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These materials are specifically designed to be educational and widely disseminated to the public.<sup>37</sup>

The ACLU plans to disseminate the information it receives through this Request broadly through these kinds of publications in these kinds of channels. The ACLU is therefore a “representative of the news media.”

Finally, it is plain that the records described in this Request are not sought for commercial use. The ACLU is a non-profit, non-partisan, public interest organization, and any information disclosed by the ACLU as a result of this Request will be available to the public at no cost.

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<sup>33</sup> Cf. *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding the Electronic Privacy Information Center to be a representative of the news media because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements.”).

<sup>34</sup> Some of the recent books published by the ACLU include: Susan N. Herman, *Taking Liberties: The War on Terror and the Erosion of American Democracy* (2011); Lenora M. Lapidus, Emily J. Martin & Namita Luthra, *The Rights of Women: The Authoritative ACLU Guide to Women’s Rights* (4th ed. 2009); Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (2007) (a book based on documents obtained through FOIA).

<sup>35</sup> “Know your rights” publications include: *Know Your Rights: Demonstrations and Protests*, ACLU (Nov. 2011), [http://www.aclu.org/files/assets/kyr\\_protests.pdf](http://www.aclu.org/files/assets/kyr_protests.pdf); *Gender-Based Violence & Harassment: Your School, Your Rights*, ACLU (May 2011), [http://www.aclu.org/files/assets/genderbasedviolence\\_factsheet\\_0.pdf](http://www.aclu.org/files/assets/genderbasedviolence_factsheet_0.pdf); *Know Your Rights: What to Do If You’re Stopped by Police, Immigration Agents or the FBI*, ACLU (June 2010), [http://www.aclu.org/files/assets/bustcard\\_eng\\_20100630.pdf](http://www.aclu.org/files/assets/bustcard_eng_20100630.pdf).

<sup>36</sup> See, e.g., *Military Abortion Ban in Cases of Rape and Incest (Factsheet)*, ACLU (2011), <http://www.aclu.org/reproductive-freedom/military-abortion-ban-cases-rape-and-incest-factsheet>; *The Facts About “The No Taxpayer Funding For Abortion Act”*, ACLU (2011), [http://www.aclu.org/files/assets/Chris\\_Smith\\_bill-ACLU\\_Fact\\_Sheet-UPDATED-4-30-11.pdf](http://www.aclu.org/files/assets/Chris_Smith_bill-ACLU_Fact_Sheet-UPDATED-4-30-11.pdf); *Fact Sheet on H.R. 3, the No Taxpayer Funding for Abortion Act*, ACLU (2011), <http://www.aclu.org/reproductive-freedom/fact-sheet-hr-3-no-taxpayer-funding-abortion-act>.

<sup>37</sup> See *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding the Electronic Privacy Information Center to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties).

\* \* \*

Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 calendar days of the receipt of this Request.<sup>38</sup> The ACLU also requests that you provide an estimated date on which you will finish processing this Request.<sup>39</sup>

If this Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific FOIA exemptions. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

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

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Esha Bhandari  
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I certify that the foregoing is true and correct.

Sincerely,

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<sup>38</sup> See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 28 C.F.R. § 16.5(e)(4).

<sup>39</sup> See 5 U.S.C. § 552(a)(7)(B).