



November 18, 2009

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Washington, D.C. 20530-0001

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Department of Justice
950 Pennsylvania Avenue, N.W., Room 4726
Washington, D.C. 20530-0001

Office of Legal Counsel
Room 5515, 950 Pennsylvania Avenue, NW
Department of Justice
Washington, DC 20530-0001
(202) 514-2038

Office of the Director of National Intelligence (ODNI)
Washington, D.C. 20511

Office of the Director of National Intelligence (ODNI)
Attn: Office of the Inspector General
Washington, D.C. 20511

National Security Agency
Attn: FOIA/PA Office (DC34)
9800 Savage Road, Suite 6248
Ft. Mead, MD 20755-6248

FOIA Requester Service Center
Department of Defense
Office of the Inspector General
400 Army Navy Drive, Suite 1021
Arlington, VA 22202-4704

Re: Request Under Freedom of Information Act/Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request ("Request") by the American Civil Liberties Union and the American Civil Liberties Foundation (collectively

“ACLU”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, the Department of Justice implementing regulations, 28 C.F.R. § 16.1, the Department of Defense implementing regulations, 32 C.F.R. § 286.1, and the Office of the Director of National Intelligence implementing regulations, 32 C.F.R. § 1700.1 The Request is submitted by the American Civil Liberties Union Foundation and the American Civil Liberties Union (collectively, the “ACLU”).¹

On July 10, 2008, President Bush signed into law the Foreign Intelligence Surveillance Act Amendments Act of 2008 (“FISA Amendments Act” or “FAA”). This controversial piece of legislation not only effectively legalized the secret warrantless surveillance program that President Bush had authorized in late 2001,² it gave the National Security Agency (“NSA”) new power to conduct dragnet surveillance of Americans’ international telephone calls and e-mails. The FAA gives the government virtually limitless power to collect Americans’ international communications *en masse*, without a warrant, without suspicion of any kind, and with only very limited judicial oversight. The massive electronic surveillance power the FAA places in the hands of executive agencies implicates core privacy and free-speech concerns for all Americans.

The FAA has now been in effect for more than one year. However, the public remains largely in the dark about how the government has interpreted and actually implemented its sweeping spying power under the FAA.

Furthermore, the scant information that has surfaced regarding implementation of the FAA is troubling. News reports suggest that the government has interpreted the FAA authority broadly to permit mass collection of U.S. communications, and that the NSA has systematically abused its (already broad) FAA power. *See Eric Lichtblau & James Risen, Officials Say U.S. Wiretaps Exceeded Law*, N.Y. Times, Apr. 15, 2009

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, and educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its 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 Media reports in 2005 first revealed that soon after the September 11 terrorist attacks, President Bush authorized the NSA to conduct warrantless electronic surveillance of Americans inside the nation’s borders even though the Foreign Intelligence Surveillance Act expressly prohibited the practice. *See, e.g., James Risen and Eric Lichtblau, Bush Let U.S. Spy on Callers Without Courts*, N.Y. Times, Dec. 16, 2005

(stating that the NSA's "overcollection" of American's communications has been "significant and systemic"); James Risen & Eric Lichtblau, *E-Mail Surveillance Renews Concerns in Congress*, N.Y. Times, June 16, 2009 (highlighting the NSA's over-collection of Americans' personal e-mails). This Request seeks records that will illuminate how agencies responsible for implementing the FAA are interpreting this invasive electronic surveillance power; how the FAA spying power is being used; and what safeguards are in place to prevent abuse of Americans' privacy rights.

Requested Records

1. Any and all records created since July 10, 2008 indicating the number of:
 - A. Acquisition applications submitted to the Foreign Intelligence Surveillance Court ("FISC") pursuant to Section 702 of the FISA Amendments Act of 2008, Pub. L. No. 110-261 (2008).³
 - B. Acquisition orders the FISC has issued pursuant to Section 702 of the FAA.
 - C. Acquisition orders the FISC has granted with modifications.
 - D. Acquisition applications the FISC has granted without modifications.
 - E. Acquisition applications the FISC has rejected.

2. Any and all records created since July 10, 2008 indicating the number of:
 - A. U.S. persons⁴ whose communications have been collected or intercepted pursuant to Section 702 of the FAA.
 - B. U.S. persons who have been targeted by surveillance conducted pursuant to Section 702 of the FAA.
 - C. Targets of surveillance conducted pursuant to Section 702 of the FAA who were later determined to be located in the United States.
 - D. U.S. persons who have been identified in disseminated intelligence reports resulting from or related to surveillance conducted pursuant to Section 702 of the FAA.
 - E. Disseminated intelligence reports resulting from or related to surveillance conducted pursuant to Section 702 of the FAA that contain a reference to a U.S. person's identity.

³ The term "acquisition applications" means requests made by the Attorney General and/or the Director of National Intelligence for FISC approval of surveillance "targeting . . . persons reasonably believed to be located outside the United States to acquire foreign intelligence information" under authority granted by Section 702 of the FAA. Requesters do not seek any records pertaining to acquisitions or surveillance conducted pursuant to other sections of the FAA or the Foreign Intelligence Surveillance Act more generally.

⁴ The term U.S. person means any U.S. citizen or legal permanent resident.

3. Any and all records created since July 10, 2008 pertaining to the collection, analysis, or dissemination of purely domestic communications pursuant to Section 702 of the FAA.⁵
4. Any and all legal memoranda (including Office of Legal Counsel memoranda), procedures, policies, directives, practices, guidance, or guidelines created since July 10, 2008 pertaining to:
 - A. Surveillance conducted under Section 702 of the FAA.
 - B. The scope of authority granted by Section 702 of the FAA.
 - C. The implementation of Section 702 of the FAA.
 - D. Targeting and minimization procedures adopted pursuant to Section 702 of the FAA.
 - E. Interception, collection, analysis, dissemination, or analysis of U.S. persons' communications pursuant to Section 702 of the FAA (whether or not a U.S. person is the target of the interception).
5. Any and all inter or intra-agency correspondence pertaining to the scope of authority granted by Section 702 of the FAA, legal interpretations of any part of Section 702 of the FAA, or rules governing the interception, collection, analysis, or dissemination of U.S. communications.
6. Any and all reports, assessments, or reviews issued or conducted pursuant to Section 702(l) of the FAA since July 10, 2008, including any by the Attorney General, Director of National Intelligence, the head of another intelligence agency, the Inspector General of the Department of Justice, or the Inspector General of any other intelligence agency.
7. Any and all records created since July 10, 2008 concerning complaints about, investigations of, or disciplinary actions related to surveillance conducted pursuant to Section 702 of the FAA.

I. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. § 16.5(d); 32 C.F.R. § 286.4(d)(3); and 32 C.F.R. § 1700.12. There is a "compelling need" for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged Federal government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1700.12(c)(2). In addition, the records sought relate to a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence," 28 C.F.R. § 16.5(d)(1)(iv), as well

⁵ The term "purely domestic communication" means a communication where both parties to the communication are located in the United States.

as a “breaking news story of general public interest,” 32 C.F.R. § 286.4(d)(3)(ii)(A).

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1700.2(h)(4). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public is a critical and substantial component of the ACLU’s work and one of its primary activities. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 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” (internal citation omitted)).

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The ACLU regularly publishes a newsletter at least twice a year that reports on and analyzes civil liberties-related current events. The newsletter is widely disseminated to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members) by e-mail. The electronic newsletter is widely disseminated to approximately 300,000 people. Both of these newsletters often include descriptions and analysis of information obtained through FOIA.

The ACLU regularly publishes reports about government activity and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. Since 2007 alone, ACLU national projects have published and disseminated over 30 reports. Many ACLU reports include description and analysis of government documents obtained through FOIA.⁶ The ACLU also regularly publishes books, “know your rights” publications, 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.⁷

⁶ *See, e.g., Reclaiming Patriotism*, (March 2009), available at http://www.aclu.org/pdfs/safefree/patriot_report_20090310.pdf; *The Excluded: Ideological Exclusion and the War on Ideas* (Oct. 2007), available at http://www.aclu.org/pdfs/safefree/the_excluded_report.pdf; *History Repeated: The Dangers of Domestic Spying by Federal Law Enforcement* (May 2007), available at http://www.aclu.org/images/asset_upload_file893_29902.pdf; *No Real Threat: The Pentagon’s Secret Database on Peaceful Protest* (Jan. 2007), available at http://www.aclu.org/pdfs/safefree/spyfiles_norealthreat_20070117.pdf; *Unpatriotic Acts: The FBI’s Power to Rifle Through Your Records and Personal Belongings Without Telling You* (July 2003), available at http://www.aclu.org/FilesPDFs/spies_report.pdf.

⁷ A recent search of Amazon.com produced over 60 books published by the ACLU.

The ACLU operates a widely-read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <http://blog.aclu.org/>. 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* <http://www.aclu.org/multimedia/index.html>. The ACLU has also produced an in-depth television series on civil liberties called "The Freedom Files." *See* <http://aclu.tv/>.

The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, the ACLU also provides the public with educational material about the particular civil liberties issue or problem; recent news about the issue; analyses of Congressional or executive branch action on the issue; government documents obtained through FOIA about the issue; and more in-depth analytic and educational multi-media features on the issue.⁸

The ACLU website includes many features on information obtained through the FOIA.⁹ For example, the ACLU's "Torture FOIA" webpage, www.aclu.org/torturefoia, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA, and advises that the ACLU in collaboration with Columbia

⁸ For example, the ACLU's website about national security letter ("NSL") cases, www.aclu.org/nsl, includes, among other things, an explanation of what NSLs are; information about and document repositories for the ACLU's NSL cases, links to documents obtained through FOIA about various agencies' use of NSLs; NSL news in the courts, Congress, and executive agencies; links to original blog posts commenting on and analyzing NSL-related news; educational web features about the NSL gag power; public education reports about NSLs and the Patriot Act; news about and analysis of the Department of Justice Inspector General's reviews of the FBI's use of NSLs; the ACLU's policy analysis and recommendations for reform of the NSL power; charts with analyzed data about the government's use of NSL; myths and facts documents; and links to information and analysis of related issues.

⁹ *See, e.g.*, www.aclu.org/torturefoia; <http://www.aclu.org/olcmemos/>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/natsec/foia/search.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; www.aclu.org/patriotfoia; www.aclu.org/spyfiles; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>; www.aclu.org/exclusion.

University Press has published a book about the documents obtained through the FOIA.

The ACLU has also published a number of charts that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources – including information obtained from the government through FOIA – the ACLU has created an original chart that provides the public and news media with a comprehensive index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition and surveillance which describes what is publicly known about the memos and their conclusions, who authored them and for whom, and whether the memos remain secret or have been released to the public in whole or in part.¹⁰ Similarly, the ACLU produced 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.¹¹

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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.

Furthermore, the records sought are urgently needed to inform the public about actual or alleged federal government activity. The records sought pertain to the NSA’s (and perhaps other U.S. agencies) virtually unchecked collection of Americans’ international communications. The records sought also pertain to the government’s interpretation and implementation of a controversial federal statute that seriously impacts American’s privacy and free speech rights. The records sought are urgently needed because almost nothing is known about how the government has interpreted the scope of its intrusive FAA surveillance powers, how it has actually used those powers, and how many Americans’ have been affected. Moreover, this information is vitally needed to inform the ongoing public and congressional debate about whether the government’s electronic surveillance power should be narrowed or surveillance laws should be amended.

The requested records also relate to a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence,” 28 C.F.R. § 16.5(d)(1)(iv), and to a “breaking news story of general public interest that concerns actual or alleged Federal government activity.” *See* 32 C.F.R. § 286.4(d)(3)(ii)(A); 28 C.F.R. § 16.5(d)(1)(ii).

¹⁰ The chart is available at http://www.aclu.org/safefree/general/olcmemos_chart.pdf.

¹¹ The chart is available at http://www.aclu.org/safefree/nationalsecurityletters/released/nsl_stats.pdf.

The government's intrusive electronic surveillance power has been a significant matter of public concern (and media interest) for many years, particularly after the revelation of the NSA's warrantless wiretapping program. The legislation that emerged out of that controversy – the FAA – has been the subject of widespread interest and debate since the moment it was introduced. Indeed, in the weeks leading up to its enactment, the law was the subject of particularly intense coverage. *See, e.g.*, Sean Lengell, *House Approves Update of Bipartisan Spy Laws*, Wash. Times, June 21, 2008; Editorial, *Mr. Bush v. the Bill of Rights*, N.Y. Times, June 18, 2008 (stating that “all indications are” that many of the FAA's provisions are “both unnecessary and a threat to the Bill of Rights”). The law was also strongly criticized in many of the nation's leading editorial pages. *See, e.g.*, Editorial, *Compromising the Constitution*, N.Y. Times, July 8, 2008 (stating that the FAA would “make it easier to spy on Americans at home, reduce the courts' powers and grant immunity to the companies that turned over Americans' private communications without warrant”); Editorial, *Election-Year Spying Deal is Flawed, Overly Broad*, USA Today, June 25, 2008.

The eventual passage and enactment of the FAA garnered similarly widespread coverage and attention. *See* Peter Grier, *White House Scores Key Victory on Government Eavesdropping*, Christian Science Monitor, July 10, 2008; Eric Lichtblau, *Senate Approves Bill to Broaden Wiretap Powers*, N.Y. Times, July 10, 2008; Shailagh Murray, *Obama Joins Fellow Senators in Passing New Wiretapping Measure*, Wash. Post, July 10, 2008; Antonio Vargas, *Obama Defends Compromise on New FISA Bill*, Wash. Post, July 4, 2008. Major editorial pages continued to weigh in on the law. *See, e.g.*, Editorial, *The Day of the New Surveillance Law*, N.Y. Times, July 11, 2008; Editorial, *FISA Follies*, Wash. Post, July 3, 2008. The immediate filing of a constitutional challenge to the law was the subject of widespread media interest as well. *See* Ryan Singel, *Bush Signs Spy Bill, ACLU Sues*, Wired, July 10, 2008; Grant Gross, *ACLU Files Lawsuit to Challenge Surveillance Law*, PC World, July 10, 2008.

Media attention to the FAA surged, once again, in April 2009 when *The New York Times* reported that the NSA was using its FAA powers to vacuum up U.S. communications by the millions, that it was potentially abusing its sweeping FAA power, and that it was possibly “overcollecting” purely domestic communications in a systematic manner. *See* Eric Lichtblau & James Risen, *Officials Say U.S. Wiretaps Exceeded Law*, N.Y. Times, Apr. 15, 2009; *see also* Joby Warrick, *Problems in Wiretapping Bring Change*, Wash. Post, Apr. 16, 2009; Pamela Heiss, *Senate Panel to Probe Wiretapping Violations*, Assoc. Press, Apr. 16, 2009; Glenn Greenwald, *The NYT's Predictable Revelation: New FISA Law Enabled Massive Abuses*, Salon, Apr. 15, 2009.

Early this summer, similar reports that the NSA was “over-collecting” Americans’ personal e-mails again drew significant media attention. See James Risen & Eric Lichtblau, *E-Mail Surveillance Renews Concerns in Congress*, N.Y. Times, June 16, 2009; see also Editorial, *The Eavesdropping Continues*, N.Y. Times, June 18, 2009; Kim Zetter, *NSA Secret Database Ensnared President Clinton’s Private E-mail*, Wired, June 17, 2009; Marc Ambinder, *Pinwale and the New NSA Revelations*, The Atlantic Online, June 16, 2009.

In the past month, there has been a resurgence of public interest, speculation, and concern about the FAA and the NSA’s massive surveillance capabilities. It was sparked by revelation of the construction of a 1 million-square-foot data warehouse designed to house intercepted communications and potentially serve as a clearinghouse for both domestic and international monitoring. See Alfred M. McCoy, *Surveillance State, U.S.A.*, CBS News, Nov. 12, 2009 (op-ed); Connor Boyack, *Do We Really Want an NSA Data Center in Utah*, The Salt Lake Tribune, Nov. 5, 2009; *NSA Confirms Plans for Utah Data Center*, UPI, Oct. 24, 2009; *NSA to Build Secretive Data Center in Utah*, Assoc. Press, Oct. 23, 2009; James Bamford, *The NSA is Still Listening to You*, Salon, July 22, 2009. Many of these stories highlighted how little is known about the government’s surveillance of Americans’ communications and personal records, particularly under the FAA. Recent public comments by Representative Hoekstra about electronic surveillance of the Ft. Hood shooting suspect has also sparked renewed speculation about FAA surveillance powers. See, e.g., Marc Ambinder, *Did Hoekstra Compromise A Sensitive Intelligence Program?*, The Atlantic Online, Nov. 12, 2009 (speculating about dragnet surveillance by the NSA).

Moreover, electronic surveillance – and questions about the scope (and wisdom) of many recent pieces of surveillance legislation – remain hotly debated in Congress. In the past two months, discussions over the fate of certain surveillance-related provisions of the USA Patriot Act that are set to expire at the end of this year have attracted significant attention from the media. See Daphne Eviatar, *Patriot Act Amendments Disappoint Civil Libertarians*, Wash. Ind., Oct. 1, 2009; Editorial, *Reining in the Patriot Act*, Phila. Inquirer, Sept. 21, 2009; Charlie Savage, *Battle Looms Over the Patriot Act*, N.Y. Times, Sept. 20, 2009; Carrie Johnson and Ellen Nakashima, *White House Seeks Renewal of Surveillance Laws*, Wash. Post, Sept. 16, 2009.

The Patriot Act debate has included some debate about electronic surveillance as well. In fact, a handful of Patriot Act reauthorization bills and amendments have sought to narrow or alter the FISA Amendment Act of 2008. See, e.g., Daphne Eviatar, *Bill Introduced to Repeal Telecom Immunity*, Wash. Ind., Sept. 29, 2009; Grant Gross, *Senators Want to End Telecom Immunity for Spying Program*, PC World, Sept. 29, 2009; David Kravets,

Telco Spy Immunity Up for Grabs, Wired, Sept. 24, 2009; Wendy Kaminer, *The Justice Act*, Atlantic, Sept. 18, 2009.

As the sustained media interest concerning the scope and privacy implications of the government's electronic surveillance power clearly attests, the implementation (and potential abuse) of the FAA, constitutes a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence," 28 C.F.R. § 16.5(d)(1)(iv). Moreover, the recent attention to and speculation about the scope of the NSA's monitoring power and its data analysis and storage capabilities constitutes a "breaking news story of general public interest." 32 C.F.R. § 286.4(d)(3)(ii)(A).

Accordingly, expedited processing is appropriate in this case.

Application for Waiver or Limitation of Fees

We request 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 the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *See* 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 286.28(d); 28 C.F.R. § 16.11(k); 32 C.F.R. § 1700.6(b).

As discussed above, numerous news accounts reflect the considerable public interest in the records we seek. Given the ongoing and widespread media attention to this issue, the records sought in the instant Request will significantly contribute to public understanding of the operations and activities of the NSA and other agencies that are responsible for implementing the FAA. *See* 32 C.F.R. § 286.28(d); 28 C.F.R. § 16.11(k)(1)(i); 32 C.F.R. § 1700.6(b)(2). Given that very little is known about how the government has interpreted and implemented its FAA power in practice, the records sought are certain to contribute significantly to the public's understanding of the issue. In addition, disclosure is not in the ACLU's 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.'") (citation omitted).

We also request a waiver of document reproduction fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. 32 C.F.R. § 286.28(e)(7); 28 C.F.R. § 16.11(d); 32 C.F.R. § 1700.6(i)(2). 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); see also *Nat’l Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); cf. *ACLU v. 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”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”¹²

Notably, 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.” See, e.g., *Elec. Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA); *Nat’l Security Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. Dep’t of Justice*, 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).¹³

¹² On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in March 2009, the Department of State granted a fee waiver to the ACLU with respect to its request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request. In May 2005, the United States Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with respect to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views. Also, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in August of 2004. In addition, the Office of Science and Technology Policy in the Executive Office of the President said it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003. Finally, three separate agencies – the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice – did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

¹³ Courts have founds 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 *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54; see also *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference to be primarily engaged in disseminating information even though it engages in substantial amounts of legislative advocacy beyond its publication and public education functions).

* * *

Pursuant to the applicable regulations and statute, we expect the determination regarding expedited processing within 10 calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 286.4(d)(3).

If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to 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 to deny a waiver of fees.

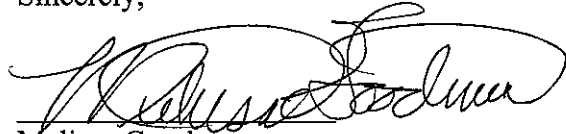
Thank you for your prompt attention to this matter. Please furnish all applicable records to:

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Melissa Goodman
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Melissa Goodman
Staff Attorney
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Tel. 212-549-2622