

# **Exhibit 1**



February 8, 2022

*Submitted online at <https://foiarequest.dhs.gov/>*

Privacy Office, Mail Stop 0655  
Department of Homeland Security  
2707 Martin Luther King Jr. AVE SE  
Washington, DC 20528-0655

Re: Records relating to the implementation of the Synthetics Trafficking and Overdose Prevention (STOP) Act of 2018 (Title VIII of Public Law 115-271, “the STOP Act”)

Dear Freedom of Information Act Officer:

The Functional Government Initiative (FGI) submits this request (the “request”) for records under the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA), and the implementing regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5. FGI, which is a non-partisan organization, engages in research, investigation, and education to promote transparency in government and support values that help to build a solid infrastructure for a bright American future.

Your prompt response pursuant to the requirements of FOIA, 5 U.S.C. § 522(a)(6)(A), is appreciated.

#### REQUESTED RECORDS

FGI requests from DHS all records held by the DHS employees identified below from January 1, 2021, to the date the DHS conducts the search with the following criteria:

1. All records, including but not limited to meeting memos, briefing documents, emails with attachments, calendar items, text messages, phone call notes, meeting notes, or any other record (as defined below), in the possession of any DHS employees defined below relating to the implementation of the Synthetics Trafficking and Overdose Prevention (STOP) Act of 2018. This should include any drafts of proposed regulations, Federal Register notices, and other similar documents and any discussion of implementation of the STOP Act among DHS staff.
2. All records of any communications with employees of the U.S. Postal Service (USPS) regarding the implementation of the STOP Act.
3. All records of any communications with persons who work for or represent non-governmental entities (lobbyists, corporations, etc.) regarding the implementation of the STOP Act.



4. All records of any communication with staff for any member or committee of the U.S. House of Representatives or the U.S. Senate regarding the implementation of the STOP Act.

Please provide records matching the criteria above held by any of the following DHS employees:

- Any Presidentially appointed, Senate confirmed (PAS), non-career SES, or Schedule C personnel;
- Any career federal employees acting in positions typically occupied by one of those types of appointees;
- Staff in the immediate office of the Secretary, including the Secretary;
- Staff in the immediate office of the Deputy Secretary, including the Deputy Secretary;
- Staff in the Office of Legislative Affairs;
- Staff in the Office of General Counsel; and
- Staff in the Office of Public Affairs.

While we cannot know if the list below is comprehensive, as someone at DHS familiar with the issues may have knowledge for additional terms to include, we can recommend the following key words to facilitate a search:

- “Synthetics Trafficking and Overdose Prevention Act”,
- “STOP Act”,
- “Title VIII of Public Law 115-271”,
- “Public Law 115-271”,
- “Synthetics trafficking”,
- “Shipments of synthetics”,
- “Mandatory Advance Electronic Information”,
- “AEI”,
- “Mandatory Advance Electronic Data”,
- “AED”,
- References to Federal Register notices 86 FR 14245, 86 FR 27973, or 86 FR 38553,
- References to Section 343(a)(3)(K) of the Trade Act of 2002 or 19 USC 1415, and
- Any additional citations to the Code of Federal Regulations (CFR) or other relevant terms in the regulation information found here:

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1651-AB33>.

The term “all records” in this request refers to, but is not limited to, any and all documents, letters, correspondence, emails including attachments, schedules and calendar entries, facsimiles, memoranda, text messages, letters, notes, telephone records, telephone notes, minutes of meetings, meeting notes, agendas of meetings, databases, comments, files,



presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, digital meeting logs such as those produced by Microsoft Teams, papers published or unpublished, reports, studies, photographs and other images, maps, and/or all other responsive records, in draft or final form that fall within the definition of “agency records” subject to FOIA.

This request is not meant to exclude any other records that, although not specifically requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, we ask that you indicate this fact and the reasons therefore in your response.

We ask that you please provide all records in an electronic format. To the extent practicable, we desire electronic documents in native file format, or, if not practicable, with full metadata for all fields. See, e.g., 5 U.S.C. § 552(a)(3)(B), which states that “an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”

Please provide records in either:

1. Load-ready format with a .csv file index or Excel spreadsheet, or
2. In .pdf format without any “portfolios” or “embedded files,” and not in a single “batched” .pdf file.

If you should seek to withhold or redact any responsive records, we request that you:

1. Identify each such record with specificity (including date, author, recipient, and parties copied),
2. Explain in full the basis for withholding responsive material,
3. Provide all segregable portions of the records for which you claim a specific exemption (see 5 U.S.C. § 552(b)), and
4. Correlate any redactions with specific exemptions under FOIA.

Agencies are prohibited from denying requests for information under the FOIA (per the FOIA Improvement Act of 2016) unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.<sup>1</sup>

Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger that includes:

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<sup>1</sup> FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A)



1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit.<sup>2</sup>

To most efficiently facilitate our request, we request that the FOIA office use DHS's enterprise storage system to search and process the email portion of this request.

FGI is willing to receive records on a rolling basis.

FOIA's "frequently requested record" provision, enacted as part of the 1996 Electronic Freedom of Information Act Amendments, requires all federal agencies to give "reading room" treatment to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records."<sup>3</sup> FOIA's Rule of 3, enacted as part of the 2016 FOIA Improvement Act, requires all federal agencies to proactively "make available for public inspection in an electronic format," "copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times."<sup>4</sup> Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

#### REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552, we request a waiver of fees that DHS would otherwise charge for searching and producing the records described above, because this request satisfies both fee waiver requirements. FOIA provides for fee waivers when:

1. "[D]isclosure of the requested information is in the public interest because it is

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<sup>2</sup> 5 U.S.C. § 552(b)

<sup>3</sup> 5 U.S.C. § 552(a)(2)(D)(ii)(I)

<sup>4</sup> Id.



likely to contribute significantly to public understanding of the operations or activities of the government”; and

2. Disclosure “is not primarily in the commercial interest of the requester.”<sup>5</sup>

### I. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester.” See 5 U.S.C. § 552(a)(4)(A)(iii), and the DHS FOIA regulations at 6 CFR § 5.11(k)(1)-(3) establish substantially similar standards.

Thus, DHS must consider four factors to determine whether a request is in the public interest:

1. Whether the subject of the requested records concerns “the operations or activities of the Federal government,”
2. Whether the disclosure is “likely to contribute” to an understanding of government operations or activities,
3. Whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject, and
4. Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

As shown below, FGI meets each of these factors.

#### **A. The Requested Records Concern the Operations and Activities of the Federal Government.**

The subject matter of this request concerns the operations and activities of the U.S. Postal Service. The Department of Justice Freedom of Information Act Guide acknowledges that “in most cases records possessed by a federal agency will meet this threshold.”<sup>6</sup> This request asks for records related to the implementation of a statute enacted by Congress, and the threshold is met here because the records sought are possessed by the DHS staff and are by nature about the Department’s work as part of the Federal Government and its oversight of the work of Customs and Border Protection (CBP).

Thus, FGI meets this factor.

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<sup>5</sup> 5 U.S.C. § 552(a)(4)(A)(iii)

<sup>6</sup> <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>



**B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.**

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

In the case of this request, disclosure of the requested records is “likely to contribute” to an “increased public understanding” of government operations or activities. Disclosure of the requested information will enable the public to better understand how DHS is meeting their statutory obligations relating to the shipment of illegal drugs and progress on implementing the requirements enacted in the STOP Act. Once the information is made available, FGI will evaluate the information and present it to its followers and the general public in a manner that will meaningfully enhance the public’s understanding of this topic.

Thus, FGI meets this factor.

**C. Disclosure of the Requested Records Will Contribute to the Understanding of a Reasonably Broad Audience of Persons.**

The requested records will contribute to public understanding of how DHS is working to implement the STOP Act. As explained above, the records will contribute to public understanding of this topic.

FGI will use the information it obtains from the disclosed records to educate the public at large about whether the decisions made by DHS further its statutory mission in a lawful and timely manner.

FGI has the ability and intention to effectively convey this information to the public (by means discussed in Section II, below), and disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. Indeed, the public does not currently have an ability to easily evaluate the requested records. We also are unaware of these records having been released to date.

Disclosure of these records not only is “likely to contribute” but also is certain to contribute to public understanding of how the Commission is continuing to fulfill its statutory mission. The public is always well served when it knows how the government conducts its activities, particularly matters involving efforts to address the shipment of synthetic drugs using the U.S. Postal Service. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about whether the agency has been making decisions in an objective and legal way.



Thus, FGI meets this factor.

**D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.**

FGI is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public's understanding of the soundness of decision-making in implementing the requirements of the STOP Act. Indeed, public understanding will be significantly increased as a result of disclosure because the requested records will help reveal more about this subject matter.

The records are also certain to shed light on DHS's compliance with their own missions and responsibilities. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA.

Thus, FGI meets this factor, as well.

**II. FGI HAS THE ABILITY AND INTENT TO DISSEMINATE THE INFORMATION TO A REASONABLY BROAD AUDIENCE OF PERSONS INTERESTED IN THE SUBJECT.**

FGI is a non-partisan organization that informs, educates, and counsels the public about government operations. A key component of being able to fulfill this mission and educate the public about these duties is access to information that articulates what obligations exist for senior government officials. FGI has robust mechanisms in place to share information obtained from the requested records with the general public and other interested organizations, including a website, social media channels, and other similar platforms. FGI intends to make use of these channels to publish the information from these requested records as well as expert analysis. FGI intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Through these means, FGI will ensure that:

1. The information requested contributes significantly to the public's understanding of the government's operations or activities,
2. The information enhances the public's understanding to a greater degree than currently exists,
3. FGI possesses the expertise to explain the requested information to the public,
4. FGI possesses the ability to disseminate the requested information to the general public, and
5. The news media recognizes FGI as a reliable source in the relevant field.





Public oversight and enhanced understanding of DHS's duties are absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject. See *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). FGI need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity."<sup>7</sup> It is sufficient for FGI to show how it distributes information to the public generally.<sup>8</sup>

### III. OBTAINING THE REQUESTED RECORDS IS OF NO COMMERCIAL INTEREST TO FGI.

Disclosure is in no way connected with any commercial interest of the requestors. FGI is a non-partisan organization with supporters and members of the public who seek information that promotes transparency in government and supports values that help to build a solid infrastructure for a bright American future. FGI has no commercial interest and will realize no commercial benefit from the release of the requested records.

### IV. FGI QUALIFIES FOR A FULL FEE WAIVER

For all the foregoing reasons, FGI qualifies for a full fee waiver. We hope that the Department will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

Thank you for your prompt attention to this request. If you have any questions, please contact me. All records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

Chris Stanley  
Policy Director  
Functional Government Initiative  
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Washington, DC 20011-5125  
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<sup>7</sup> *Judicial Watch*, 326 F.3d at 1314.

<sup>8</sup> *Id.*