

Exhibit A



HARVARD LAW SCHOOL | BERKMAN KLEIN CENTER FOR INTERNET & SOCIETY

Access Now
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December 9, 2022

Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065

Re: Freedom of Information Act Request

Dear FOIA Officer:

We submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to the Department of Homeland Security (“DHS”) on behalf of Access Now (“Access Now”).

Requested Records

Access Now requests all records from January 1, 2008 to the present concerning biometric data sharing agreements between the United States and any foreign government. Specifically, Access Now requests the following records:

1. The full text of any data sharing agreements between the United States and any foreign government, including but not limited to:
 - The full text of the U.S.-Mexico Bicentennial Framework for Security, Public Health, and Safe Communities; and
 - The full text of any Memoranda of Cooperation regarding biometric data sharing with Guatemala, Honduras, or El Salvador.
2. Records describing any biometric database used in conjunction with any data sharing agreements and any other government, including but not limited to:
 - The schema or textual description of the structure of such databases;
 - The capabilities of such databases to determine the location of people on the move before, during, or after their visit to the United States; and
 - The interoperability of such biometric databases for the purposes of data sharing.
3. Records describing the intended, permitted, limited, or prohibited uses of biometric data of people on the move, including but not limited to use of biometric data in conjunction with other aggregated data of migrant populations.

Definitions

For the purpose of this request, these terms have the following defined meanings:

- **Biometric data** means data capturing any unique physical characteristics of a person, including but not limited to fingerprint, iris, gait, voice, and personal appearance.
- **Biometric database** means any technology that is or will be used to collect, process, or share biometric data with foreign governments, humanitarian organizations, or any other public or private entities, including but not limited to:
 - The Electronic Nationality Verification (ENV), Enforcement Integrated Database (EID), Criminal History Information Sharing (CHIS), and Traveler Verification Service (TVS) databases used by DHS;
 - The Biometric Identification Transnational Migration Alert Program (BITMAP) database used by Immigration and Customs Enforcement;
 - The CBP One database used by Customs and Border Protection;
 - The Migration Information and Data Analysis System (MIDAS) database used by the International Organization for Migration (IOM); and
 - The Population Registration and Identity Management EcoSystem (PRIMES) database used by the UN High Commissioner for Refugees (UNHCR).
- **Data sharing agreement** means any agreement, framework, or memorandum that is currently in force and allows biometric information sharing between the United States and a foreign government, humanitarian organization, or other public or private entity.
- **People on the move** means migrants, refugees, asylum seekers, stateless people, and other similarly situated persons.
- **United States** means any agency, subunit, contractor, or service provider of the United States government.

Request for News Media Requester Status

Access Now requests a limitation on search and review fees on the ground that they are a “representative of the news media” and do not seek the requested records for commercial use.¹ Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs.

Access Now “actively 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.”² Specifically, Access Now conducts research on a variety of issues related to privacy, freedom of expression, digital security, Business & Human Rights, and net discrimination. It then publishes its research in a variety of formats, including but not limited to research reports,³

¹ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

² 6 C.F.R. § 5.11(b)(6).

³ See, e.g., *Digital Dictatorship: Authoritarian Tactics and Resistance in Eastern Europe and Central Asia*, ACCESS NOW (Oct. 2022), <https://www.accessnow.org/cms/assets/uploads/2022/10/Digital-dictatorship-authoritarian-tactics-and-resistance-in-Eastern-Europe-and-Central-Asia-Access-Now.pdf>.

policy papers,⁴ and frequent blog posts.⁵ This information is made available to the public via Access Now's website. Access Now intends to use its editorial skills to turn any information obtained through this request into a report, blog post, or other relevant product, freely distributed to educate the public.

Request for a Public Interest Fee Waiver

In the alternative, Access Now requests a waiver of search, review, and duplication fees because disclosure of the requested records "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."⁶

First, the request concerns "identifiable operations or activities of the federal government."⁷ The request seeks information regarding identifiable guidance, programs, or training provided by the DHS related to how information about migrants' biometric data is collected and processed. Specifically, the requested records will shed light on the role of the DHS officials in the sharing and exchange of migrant biometric data between foreign governments.

Second, disclosure of the requested records will be "meaningfully informative about government operations or activities" so as to be "likely to contribute to an increased public understanding of those operations or activities."⁸ U.S. security practices at the border and in collaborate with foreign governments to collect biometric data of migrants is a matter of great public interest and concern. The requested records will reveal substantial new information about U.S. border processing and data collection practices. Access Now believes that such information will bring greater transparency to the U.S. government's treatment of migrants and other people on the move and any related implications on civil liberties.

The requested records will also "contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester" and significantly enhance "the public's understanding of the subject in question."⁹ Access Now has regularly published the results of their FOIA requests on its website.¹⁰ Consistent with this practice, Access Now also intends to disseminate any information obtained through this request to the public, contributing to the public's enhanced understanding of foreign security assistance provided by the U.S. government.

⁴ See, e.g., *Policy Brief: How to Strengthen Jordan's Data Protection Law*, ACCESS NOW (Apr. 2022), https://www.accessnow.org/cms/assets/uploads/2022/05/Access-Now-Policy-Brief_Jordan-Data-Protection-bill-vs-GDPR.pdf.

⁵ See, e.g., Estelle Massé, *Why Data Minimisation Matters for Safe Data Transfers and More*, ACCESS NOW, (Sept. 8, 2022), <https://www.accessnow.org/why-data-minimisation-matters-for-data-transfers/>.

⁶ 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ 6 C.F.R. § 5.11(k)(2)(i).

⁸ *Id.* § 5.11(k)(2)(ii).

⁹ *Id.* § 5.11(k)(2)(iii).

¹⁰ See, e.g., *FOIA Requests Show U.S. FBI Could Be Spying on Advocacy Groups*, ACCESS NOW (Jan. 15, 2020), <https://www.accessnow.org/foia-requests-show-fbi-could-be-spying-on-u-s-advocacy-groups/>; *OIA Documents Reveal Intensity of US Lobbying Against the DPR*, ACCESS NOW (June 12, 2013), <https://www.accessnow.org/foia-documents-reveal-intensity-of-us-lobbying-against-the-dpr/>.

Finally, Access Now does not have a commercial interest in the disclosure of the requested records. Access Now is a New York-based 501(c)(3) non-profit organization. They aim to encourage companies and governments to protect individuals' digital rights by submitting information requests about data usage and distributing that information on the Access Now website.

For the reasons above, Access Now respectfully requests that all fees related to the search, review, and duplication of the requested records be waived. If the fees will not be waived, Access Now agrees to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please contact us before you begin processing.

Request for Records in Electronic Format

Access Now requests that responsive electronic records be provided electronically in their native file format, if possible.¹¹ Alternatively, Access Now requests that the records be provided electronically in text-searchable PDF, in the best image quality in the DHS's possession, and in separate, Bates-stamped files. Access Now further requests that you provide an estimated date on which you will finish processing this request.¹²

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at mkortz@law.harvard.edu.

Yours,

/s/ Ángela Alarcón

Ángela Alarcón, Campaigner
Access Now

By their counsel

/s/ Mason A. Kortz

Mason Kortz, Clinical Instructor
Harvard Law School Cyberlaw Clinic

¹¹ 5 U.S.C. § 552(a)(3)(B).

¹² *Id.* § 552(a)(7)(B)(ii).