



July 15, 2016

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
170 Marcel Drive
Winchester, VA 22602-4843
Phone: (540) 868-4500
Fax: (540) 868-4997

**RE: FOIA Request to U.S. Department of Justice and Federal Bureau of Investigation
Regarding Attorney General Loretta Lynch's June 27, 2016, Meeting With Bill
Clinton**

MEMORANDUM IN SUPPORT OF REQUESTED FEE WAIVER AND EXPEDITED PROCESSING

The American Center for Law and Justice ("ACLJ") respectfully submits this Memorandum for fee waiver and expedited processing in support of its Freedom of Information Act Request ("FOIA") request to the U.S. Department of Justice ("DOJ") and Federal Bureau of Investigation ("FBI").

I. FEE WAIVER REQUEST

The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ's mission is to educate, promulgate, conciliate, and where necessary, litigate, to ensure that those rights are protected under the law. The ACLJ regularly monitors governmental activity with respect to governmental accountability. The ACLJ and its globally affiliated organizations are committed to ensuring the ongoing viability of freedom and liberty in the United States and around the world. By focusing on U.S. constitutional law, European Union law, and human rights law, the ACLJ and its affiliated organizations are dedicated to the concept that freedom and liberty are universal, God-given, and inalienable rights that must be protected. Additionally, the ACLJ and its affiliated organizations also support training law students from around the world in order to protect religious liberty and safeguard human rights and dignity.

The ACLJ requests a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii). Under this section, fees may be waived or reduced if the requester falls within a category established under § (a)(4)(A)(ii), which includes a "representative of the news media," § (a)(4)(A)(ii)(II), and if "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 government and is not primarily in the

commercial interest of the requester.” § (a)(4)(A)(iii). The ACLJ qualifies for a fee waiver as a “representative of the news media,” *id.* § (a)(4)(A)(ii)(II), and because the information sought is “not for a commercial purpose,” § (a)(4)(A)(iii). Moreover, the ACLJ intends to widely disseminate the information obtained to the public because as explained in detail *infra*, “it is likely to contribute significantly to the public understanding of the operations or activities of the government,” § (a)(4)(A)(iii), agency and actors mentioned in the FOIA request.

A. The ACLJ Qualifies as a News Media Representative:

The ACLJ qualifies as a “representative of the news media,” as defined under 5 U.S.C. § 552(a)(4)(A)(ii), because the ACLJ, for the purposes explained above, “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.” § 552(a)(4)(A)(ii). The ACLJ’s audience is generally comprised of those interested in our mission and legal activities as described above. The ACLJ reaches a vast audience through a variety of media outlets, including the Internet (World Wide Web page, www.aclj.org), radio, television, press releases, and direct mailings to our supporters.

For example, the ACLJ’s Internet site received an average of 822,000 unique visitors per month in 2015, with 22,000,000 page views. Our current email list holds 1,050,000 active names (actual list size is 2,340,690). In 2015, the ACLJ sent 278,000,000 emails.

The ACLJ’s radio audience consists of more than 1,150,000 estimated daily listeners on 873 radio stations nationwide, including SiriusXM satellite radio. Additionally, the ACLJ hosts a weekly television program, *Sekulow*, broadcast on eight networks: Cornerstone Television, Daystar Television Network, AngelOne, KAZQ, TBN, VTN, The Walk TV, and HisChannel. See <http://aclj.org/radio-tv/schedule> (listing schedule).

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Moreover, our Chief Counsel, Jay Sekulow, has regularly appeared on various news and talk show programs to discuss the issues and events important to the ACLJ and its audiences. These include shows on FOX News, MSNBC, CNN, ABC, CBS, and NBC. In addition to television programs, Jay Sekulow has also appeared on national radio broadcasts. Beyond broadcast outlets, Jay Sekulow’s comments appear regularly in the nation’s top newspapers, in print and online editions, including but not limited to the Wall Street Journal, New York Times, Washington Times, Washington Post, L.A. Times, and USA Today. His comments also appear in major national newswire services that include, but are not limited to, Associated Press, Reuters, and Bloomberg.

B. The ACLJ’s FOIA Request Meets Fee Waiver Standards Set Forth Under DOJ Regulations Promulgated Under FOIA:

Under 28 C.F.R. § 16.10(c)(1)(i), “[r]equests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to

search fees.” § 16.10(c)(1)(i). And, “[n]o search fees will be charged for requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.” § 16.10(d). Moreover:

Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (c) of this section, where a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

§ 16.10(k)(1).

The DOJ, in making its determination, considers the following four factors regarding “whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government”:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as the requester’s ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make

value judgments about whether the information at issue is “important” enough to be made public.

§ 16.10(k)(2)(i)-(iv).

Under section 16.10(k)(3), the DOJ, in making its determination, considers the following two factors regarding “whether disclosure of the requested information is primarily in the commercial interest of the requester”:

(i) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

§ 16.10(k)(3). As the U.S. Court of Appeals for the D.C. Circuit has noted, “Congress amended FOIA to ensure that it is ‘liberally construed in favor of waivers for noncommercial requesters.’” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (citing *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Sen. Leahy))).

The ACLJ’s FOIA request meets the DOJ’s factors as listed above, qualifying the ACLJ for a waiver of fees, as set forth below.

§ 16.10(k)(2)(i): The subject of the request concerns identifiable operations or activities of the Federal Government.

The ACLJ has requested information and records specifically concerning DOJ and FBI actions surrounding the Attorney General Loretta Lynch’s meeting with former President Bill Clinton on June 27, 2016, which occurred on her airplane at the Sky Harbor International Airport in Phoenix, Arizona, and all participation in such DOJ/FBI briefings, meetings and communications by the DOJ/FBI and any of its personnel, and all other DOJ/FBI actions related to this meeting, is relevant to shed light on identifiable activities of the government.

§ 16.10(k)(2)(ii): Disclosure of the requested records will be meaningfully informative about government operations or activities and will be “likely to contribute” to an increased public understanding of those operations or activities.

The ACLJ’s request will contribute and provide meaningful understanding of United States Government operations or activities within the DOJ and FBI. With respect to the request for

records surrounding the meeting between the head of the DOJ and the husband of a person who, at the time, was under criminal investigation by the DOJ and FBI, and where such meeting occurred approximately within a week of the FBI's interview of the person under investigation and the DOJ's decision not to press charges, these records have not currently been released to the public and will most certainly inform and increase public knowledge (1) about who knew or was involved in the meeting; (2) who was involved in allowing the meeting to take place; (3) what was discussed in connection the meeting and decisions surrounding the meeting; (4) why the meeting was allowed to take place; and (5) who, outside the DOJ/FBI, communicated with DOJ/FBI officials before, during or after the meeting. The request will also reveal what involvement, if any, any other agency or governmental officials had with the meeting.

§ 16.10(k)(2)(iii): The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The requester has expertise in the subject area as well as the ability and intention to effectively convey information to the public. It shall be presumed that a representative of the news media will satisfy this consideration.

Releasing the requested information to the ACLJ will contribute "significantly" to the public's understanding of United States Government operations and activities. The ACLJ has researched and litigated to uphold governmental transparency and accountability. The ACLJ is qualified to analyze and assess whether official statements to the press, the actions those statements identify, and the actions actually taken and decisions actually made in connection with the meeting and in the meeting's aftermath, violate pertinent law or regulations.

The ACLJ intends to release the information, once analyzed and assessed, to the public through its numerous media outlets. Those outlets include but are not limited to its Internet website (www.aclj.org), email list, radio programs, television programs, press releases, and regular mailing list, as described above. The audience to which the ACLJ intends to disseminate the requested information is reasonably broad. The ACLJ has been disseminating relevant information concerning fundamental and constitutional freedoms and governmental accountability since its founding in 1990, and has since then expanded its work and notoriety on an international level, achieving credibility in a wide range of media outlets, as described above. Also as described above, the ACLJ qualifies as a representative of the news media and as such, it is presumed that this consideration is satisfied.

§ 16.10(k)(2)(iv): The public's understanding of the subject in question will be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether the information at issue is "important" enough to be made public.

Releasing the information described above will significantly contribute to the public's understanding through ACLJ review and assessment of the materials and information, and subsequent dissemination of the information to the public. Such review, assessment, and dissemination will help the public understand whether the DOJ or FBI complied with

applicable law and regulations concerning the meeting and its statements to the press concerning the meeting and its aftermath. Where current media reports, though extensive in number, on the subject of this request address the topic, apparently only one media source was at the location of the meeting, and the records requested will provide actual and authoritative sources for what actually happened, who was involved, and why.

§ 16.10(k)(3)(i): The requester has no commercial interest, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure.

As explained and described throughout this Memorandum, the ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law and the public dissemination of information by way of its numerous media platforms. The information sought by the ACLJ is in furtherance of its not-for-profit mission statement. The ACLJ has no commercial interest in the information sought or its dissemination thereof.

§ 16.10(k)(3)(ii): A waiver or reduction of fees is justified because the requester had no 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.

Again, the ACLJ has no commercial interest in the information sought or its dissemination thereof. Rather, its interest is purely to further its not-for-profit mission. Therefore, its interest cannot be founded “primarily” in a commercial interest. This is especially so because the ACLJ cannot operate for a commercial purpose under its grant of 501(c)(3) tax-exempt status.

For these reasons, the ACLJ is entitled to a fee waiver.

II. EXPEDITED PROCESSING REQUEST

The ACLJ seeks expedited processing of its request under 5 U.S.C. § 552(a)(6)(E), and the DOJ’s attendant regulation, 28 C.F.R. § 16.5(e). As defined by statute, a “compelling need” is one “with respect to a request made by a person primarily engaged in disseminating information,” where there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). According to 28 C.F.R. § 16.5(e)(1):

(e) Expedited processing. (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

....

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in

disseminating information;

....

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

§ 16.5(e)(1)(ii), (iv). The DOJ's regulation, 28 C.F.R. § 16.5(e)(3), provides:

A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

§ 16.5(e)(3).

Pursuant to 28 C.F.R. § 16.5(e)(3), the ACLJ's primary professional activity or occupation is information dissemination, though it is not the requester's sole occupation. As detailed above under Section I(A) concerning the requester's qualification as a news media representative:

- (1) The ACLJ reaches a vast audience through a variety of media outlets, including the Internet (World Wide Web page, www.aclj.org), radio, television, press releases, and direct mailings to our supporters.
- (2) The ACLJ's Internet site received an average of 822,000 unique visitors per month in 2015, with 22,000,000 page views. Our current email list holds 1,050,000 active names (actual list size is 2,340,690). In 2015, the ACLJ sent 278,000,000 emails.
- (3) The ACLJ's radio audience consists of more than 1,150,000 estimated daily listeners on 873 radio stations nationwide, including SiriusXM satellite radio. Additionally, the ACLJ hosts a weekly television program, *Sekulow*, broadcast on eight networks: Cornerstone Television, Daystar Television Network, AngelOne, KAZQ, TBN, VTN, The Walk TV, and HisChannel. See <http://aclj.org/radio-tv/schedule> (listing schedule).
- (4) The ACLJ also disseminates news and information to over 1,000,000 addresses on its mailing lists. In 2015, the ACLJ sent 15,000,000 pieces of mail.
- (5) ACLJ Chief Counsel, Jay Sekulow, has regularly appeared on various news and talk show programs to discuss the issues and events important to the ACLJ and its

audiences. These include shows on FOX News, MSNBC, CNN, ABC, CBS, and NBC. In addition to television programs, Jay Sekulow has also appeared on national radio broadcasts. Beyond broadcast outlets, Jay Sekulow's comments appear regularly in the nation's top newspapers, in print and online editions, including but not limited to the Wall Street Journal, New York Times, Washington Times, Washington Post, L.A. Times, and USA Today. His comments also appear in major national newswire services that include, but are not limited to, Associated Press, Reuters, and Bloomberg.

The District Court for the District of Columbia found that a non-profit public interest group, not unlike the ACLJ, qualified as "representative of the news media" where the group disseminated an electronic newsletter and published books. *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003).

Clearly, the ACLJ satisfies the requirement of being one "whose primary professional activity or occupation is information dissemination." 28 C.F.R. § 16.5(e)(3).

Also pursuant to 28 C.F.R. § 16.5(e)(3), the requester "must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally." § 16.5(e)(3). And, "[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an 'urgency to inform' the public on the topic." § 16.5(e)(3).

The ACLJ's FOIA request qualifies as compelling under the second statutory definition stated above and as one of particular urgency under the DOJ's regulations, because the ACLJ has an urgency to inform the public about the United States government activity that could seriously undermine or enhance the integrity of the justice system of the United States in its investigation of public figures. The DOJ and the FBI have come under significant criticism in connection with the meeting that is the subject of this FOIA Request. The records requested could exonerate the DOJ and the FBI and restore the public's confidence in those critical government offices. Or the records could confirm or refute the cause for criticism. Either way, the records will educate the public on what really happened.

As one district court explained, the required "compelling need" and "urgency to inform" are determined by three factors:

- (1) [W]hether the request concerns a matter of current exigency to the American public;
- (2) whether the consequences of delaying a response would compromise a significant recognized interest; and
- (3) whether the request concerns federal government activity.

ACLU v. United States DOJ, 321 F. Supp. 2d 24, 29 (D.D.C. 2004) (citing *Al-Fayed v. CIA*, 254 F.3d 300, 310 (2002)).

Such is the case presented by the ACLJ's FOIA request. The ACLJ's request is based upon

an urgency to inform the American public because a delay in review of the information would compromise the integrity of the public's confidence in the nation's law enforcement offices in connection with the investigation of and decision to not press charges against a public figure — which is a currently pressing issue. The actions of some of the highest-ranking officials in the United States are now under close scrutiny with regard to the DOJ and FBI's decisions concerning the meeting at issue. As mentioned in the ACLJ's request, which is incorporated by reference as if fully set forth herein, the press is currently and actively reporting on these very issues. *Numerous* media and press articles have been published on major and minor news outlets, which have not been cited or included herein for purposes of not burdening the request-recipients with excess paper.

Without the immediate release of the information requested, the American public will remain in the dark with respect to its own government's activities, functions, and decisions concerning the head of the DOJ meeting privately with the husband of a person under criminal investigation, and thus cannot hold their government officials accountable. Moreover, a delay in releasing the information prolongs justice and serves only to further embarrass the United States both domestically and internationally, and confuse the public about what actually happened, as delay is perceived as an attempt to cover up information or to shift or avoid blame or culpability. Thus, governmental accountability in justice and integrity serve as significant public interests at stake. The records requested herein are the subject of current and ongoing media reporting. This is a current, ongoing issue and the public's right to now is best served by expedited processing.

Clearly, "the request concerns a matter of current exigency to the American public"; "the consequences of delaying a response would compromise a significant recognized interest"; "the request concerns federal government activity." *ACLU*, 321 F. Supp. 2d at 29.

* * * * *

As noted in the ACLJ's FOIA request, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares that accountability and openness ought to prevail with regard to FOIA requests:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or

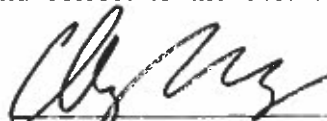
because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.¹

Accordingly, ACLJ respectfully submits a request for waiver of fees and expedited processing of its contemporaneously submitted FOIA request.

III. CERTIFICATION

In satisfaction of certification requirements under 5 U.S.C. § 552(a)(6)(E)(vi) and corresponding regulations, the ACLJ incorporates by reference herein all relevant facts, media reports, and information as stated in the ACLJ's FOIA request in support thereof and certifies that the information provided and stated herein is true and correct to the best of the undersigned's knowledge and belief.



Colby M. May
Senior Counsel
American Center for Law and Justice
201 Maryland Avenue, NE
Washington, DC 20002-5703
(202) 546-8890
(202) 546-9309 fax
cmmay@aclj-dc.org

cc: FOIA/PA Mail Referral Unit, Department of Justice
Director of Public Affairs, Office of Public Affairs, Department of Justice

¹PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.



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FOIA/PA Mail Referral Unit
Department of Justice
Room 115, LOC Building
Washington, DC 20530-0001
Phone: (202) 616-3837
E-mail: MRUFOIA.Requests@usdoj.gov

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The ACLJ’s FOIA request meets the DOJ’s factors as listed above, qualifying the ACLJ for a waiver of fees, as set forth below.

§ 16.10(k)(2)(i): The subject of the request concerns identifiable operations or activities of the Federal Government.

The ACLJ has requested information and records specifically concerning DOJ and FBI actions surrounding the Attorney General Loretta Lynch’s meeting with former President Bill Clinton on June 27, 2016, which occurred on her airplane at the Sky Harbor International Airport in Phoenix, Arizona, and all participation in such DOJ/FBI briefings, meetings and communications by the DOJ/FBI and any of its personnel, and all other DOJ/FBI actions related to this meeting, is relevant to shed light on identifiable activities of the government.

§ 16.10(k)(2)(ii): Disclosure of the requested records will be meaningfully informative about government operations or activities and will be “likely to contribute” to an increased public understanding of those operations or activities.

The ACLJ’s request will contribute and provide meaningful understanding of United States Government operations or activities within the DOJ and FBI. With respect to the request for records surrounding the meeting between the head of the DOJ and the husband of a person who,

at the time, was under criminal investigation by the DOJ and FBI, and where such meeting occurred approximately within a week of the FBI's interview of the person under investigation and the DOJ's decision not to press charges, these records have not currently been released to the public and will most certainly inform and increase public knowledge (1) about who knew or was involved in the meeting; (2) who was involved in allowing the meeting to take place; (3) what was discussed in connection the meeting and decisions surrounding the meeting; (4) why the meeting was allowed to take place; and (5) who, outside the DOJ/FBI, communicated with DOJ/FBI officials before, during or after the meeting. The request will also reveal what involvement, if any, any other agency or governmental officials had with the meeting.

§ 16.10(k)(2)(iii): The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The requester has expertise in the subject area as well as the ability and intention to effectively convey information to the public. It shall be presumed that a representative of the news media will satisfy this consideration.

Releasing the requested information to the ACLJ will contribute "significantly" to the public's understanding of United States Government operations and activities. The ACLJ has researched and litigated to uphold governmental transparency and accountability. The ACLJ is qualified to analyze and assess whether official statements to the press, the actions those statements identify, and the actions actually taken and decisions actually made in connection with the meeting and in the meeting's aftermath, violate pertinent law or regulations.

The ACLJ intends to release the information, once analyzed and assessed, to the public through its numerous media outlets. Those outlets include but are not limited to its Internet website (www.aclj.org), email list, radio programs, television programs, press releases, and regular mailing list, as described above. The audience to which the ACLJ intends to disseminate the requested information is reasonably broad. The ACLJ has been disseminating relevant information concerning fundamental and constitutional freedoms and governmental accountability since its founding in 1990, and has since then expanded its work and notoriety on an international level, achieving credibility in a wide range of media outlets, as described above. Also as described above, the ACLJ qualifies as a representative of the news media and as such, it is presumed that this consideration is satisfied.

§ 16.10(k)(2)(iv): The public's understanding of the subject in question will be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether the information at issue is "important" enough to be made public.

Releasing the information described above will significantly contribute to the public's understanding through ACLJ review and assessment of the materials and information, and subsequent dissemination of the information to the public. Such review, assessment, and dissemination will help the public understand whether the DOJ or FBI complied with applicable law and regulations concerning the meeting and its statements to the press

concerning the meeting and its aftermath. Where current media reports, though extensive in number, on the subject of this request address the topic, apparently only one media source was at the location of the meeting, and the records requested will provide actual and authoritative sources for what actually happened, who was involved, and why.

§ 16.10(k)(3)(i): The requester has no commercial interest, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure.

As explained and described throughout this Memorandum, the ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law and the public dissemination of information by way of its numerous media platforms. The information sought by the ACLJ is in furtherance of its not-for-profit mission statement. The ACLJ has no commercial interest in the information sought or its dissemination thereof.

§ 16.10(k)(3)(ii): A waiver or reduction of fees is justified because the requester had no 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.

Again, the ACLJ has no commercial interest in the information sought or its dissemination thereof. Rather, its interest is purely to further its not-for-profit mission. Therefore, its interest cannot be founded “primarily” in a commercial interest. This is especially so because the ACLJ cannot operate for a commercial purpose under its grant of 501(c)(3) tax-exempt status.

For these reasons, the ACLJ is entitled to a fee waiver.

II. EXPEDITED PROCESSING REQUEST

The ACLJ seeks expedited processing of its request under 5 U.S.C. § 552(a)(6)(E), and the DOJ’s attendant regulation, 28 C.F.R. § 16.5(e). As defined by statute, a “compelling need” is one “with respect to a request made by a person primarily engaged in disseminating information,” where there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). According to 28 C.F.R. § 16.5(e)(1):

(e) Expedited processing. (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

....

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;

....

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

§ 16.5(e)(1)(ii), (iv). The DOJ's regulation, 28 C.F.R. § 16.5(e)(3), provides:

A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

§ 16.5(e)(3).

Pursuant to 28 C.F.R. § 16.5(e)(3), the ACLJ's primary professional activity or occupation is information dissemination, though it is not the requester's sole occupation. As detailed above under Section I(A) concerning the requester's qualification as a news media representative:

- (1) The ACLJ reaches a vast audience through a variety of media outlets, including the Internet (World Wide Web page, www.aclj.org), radio, television, press releases, and direct mailings to our supporters.
- (2) The ACLJ's Internet site received an average of 822,000 unique visitors per month in 2015, with 22,000,000 page views. Our current email list holds 1,050,000 active names (actual list size is 2,340,690). In 2015, the ACLJ sent 278,000,000 emails.
- (3) The ACLJ's radio audience consists of more than 1,150,000 estimated daily listeners on 873 radio stations nationwide, including SiriusXM satellite radio. Additionally, the ACLJ hosts a weekly television program, *Sekulow*, broadcast on eight networks: Cornerstone Television, Daystar Television Network, AngelOne, KAZQ, TBN, VTN, The Walk TV, and HisChannel. See <http://aclj.org/radio-tv/schedule> (listing schedule).
- (4) The ACLJ also disseminates news and information to over 1,000,000 addresses on its mailing lists. In 2015, the ACLJ sent 15,000,000 pieces of mail.
- (5) ACLJ Chief Counsel, Jay Sekulow, has regularly appeared on various news and talk show programs to discuss the issues and events important to the ACLJ and its audiences. These include shows on FOX News, MSNBC, CNN, ABC, CBS, and

NBC. In addition to television programs, Jay Sekulow has also appeared on national radio broadcasts. Beyond broadcast outlets, Jay Sekulow's comments appear regularly in the nation's top newspapers, in print and online editions, including but not limited to the Wall Street Journal, New York Times, Washington Times, Washington Post, L.A. Times, and USA Today. His comments also appear in major national newswire services that include, but are not limited to, Associated Press, Reuters, and Bloomberg.

The District Court for the District of Columbia found that a non-profit public interest group, not unlike the ACLJ, qualified as "representative of the news media" where the group disseminated an electronic newsletter and published books. *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003).

Clearly, the ACLJ satisfies the requirement of being one "whose primary professional activity or occupation is information dissemination." 28 C.F.R. § 16.5(e)(3).

Also pursuant to 28 C.F.R. § 16.5(e)(3), the requester "must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally." § 16.5(e)(3). And, "[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an 'urgency to inform' the public on the topic." § 16.5(e)(3).

The ACLJ's FOIA request qualifies as compelling under the second statutory definition stated above and as one of particular urgency under the DOJ's regulations, because the ACLJ has an urgency to inform the public about the United States government activity that could seriously undermine or enhance the integrity of the justice system of the United States in its investigation of public figures. The DOJ and the FBI have come under significant criticism in connection with the meeting that is the subject of this FOIA Request. The records requested could exonerate the DOJ and the FBI and restore the public's confidence in those critical government offices. Or the records could confirm or refute the cause for criticism. Either way, the records will educate the public on what really happened.

As one district court explained, the required "compelling need" and "urgency to inform" are determined by three factors:

- (1) [W]hether the request concerns a matter of current exigency to the American public;
- (2) whether the consequences of delaying a response would compromise a significant recognized interest; and
- (3) whether the request concerns federal government activity.

ACLU v. United States DOJ, 321 F. Supp. 2d 24, 29 (D.D.C. 2004) (citing *Al-Fayed v. CIA*, 254 F.3d 300, 310 (2002)).

Such is the case presented by the ACLJ's FOIA request. The ACLJ's request is based upon an urgency to inform the American public because a delay in review of the information

would compromise the integrity of the public's confidence in the nation's law enforcement offices in connection with the investigation of and decision to not press charges against a public figure — which is a currently pressing issue. The actions of some of the highest-ranking officials in the United States are now under close scrutiny with regard to the DOJ and FBI's decisions concerning the meeting at issue. As mentioned in the ACLJ's request, which is incorporated by reference as if fully set forth herein, the press is currently and actively reporting on these very issues. *Numerous* media and press articles have been published on major and minor news outlets, which have not been cited or included herein for purposes of not burdening the request-recipients with excess paper.

Without the immediate release of the information requested, the American public will remain in the dark with respect to its own government's activities, functions, and decisions concerning the head of the DOJ meeting privately with the husband of a person under criminal investigation, and thus cannot hold their government officials accountable. Moreover, a delay in releasing the information prolongs justice and serves only to further embarrass the United States both domestically and internationally, and confuse the public about what actually happened, as delay is perceived as an attempt to cover up information or to shift or avoid blame or culpability. Thus, governmental accountability in justice and integrity serve as significant public interests at stake. The records requested herein are the subject of current and ongoing media reporting. This is a current, ongoing issue and the public's right to now is best served by expedited processing.

Clearly, "the request concerns a matter of current exigency to the American public"; "the consequences of delaying a response would compromise a significant recognized interest"; "the request concerns federal government activity." *ACLU*, 321 F. Supp. 2d at 29.

* * * * *

As noted in the ACLJ's FOIA request, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares that accountability and openness ought to prevail with regard to FOIA requests:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on

an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.¹

Accordingly, ACLJ respectfully submits a request for waiver of fees and expedited processing of its contemporaneously submitted FOIA request.

III. CERTIFICATION

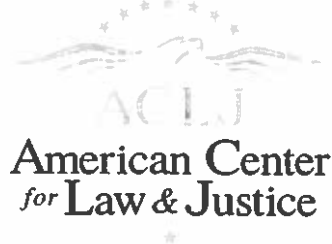
In satisfaction of certification requirements under 5 U.S.C. § 552(a)(6)(E)(vi) and corresponding regulations, the ACLJ incorporates by reference herein all relevant facts, media reports, and information as stated in the ACLJ's FOIA request in support thereof and certifies that the information provided and stated herein is true and correct to the best of the undersigned's knowledge and belief.



Colby M. May
Senior Counsel
American Center for Law and Justice
201 Maryland Avenue, NE
Washington, DC 20002-5703
(202) 546-8890
(202) 546-9309 fax
cmmay@aclj-dc.org

cc: David M. Hardy, Chief, Record/Information Dissemination Section, Records Management Division, Federal Bureau of Investigation
Director of Public Affairs, Office of Public Affairs, Department of Justice

¹PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), available at https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.



July 15, 2016

Director of Public Affairs
Office of Public Affairs
Department of Justice
950 Pennsylvania Avenue N.W.
Washington, DC 20530-0001

**RE: FOIA Request to U.S. Department of Justice and Federal Bureau of Investigation
Regarding Attorney General Loretta Lynch's June 27, 2016, Meeting With Bill Clinton**

MEMORANDUM IN SUPPORT OF REQUESTED FEE WAIVER AND EXPEDITED PROCESSING

The American Center for Law and Justice ("ACLJ") respectfully submits this Memorandum for fee waiver and expedited processing in support of its Freedom of Information Act Request ("FOIA") request to the U.S. Department of Justice ("DOJ") and Federal Bureau of Investigation ("FBI").

I. FEE WAIVER REQUEST

The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ's mission is to educate, promulgate, conciliate, and where necessary, litigate, to ensure that those rights are protected under the law. The ACLJ regularly monitors governmental activity with respect to governmental accountability. The ACLJ and its globally affiliated organizations are committed to ensuring the ongoing viability of freedom and liberty in the United States and around the world. By focusing on U.S. constitutional law, European Union law, and human rights law, the ACLJ and its affiliated organizations are dedicated to the concept that freedom and liberty are universal, God-given, and inalienable rights that must be protected. Additionally, the ACLJ and its affiliated organizations also support training law students from around the world in order to protect religious liberty and safeguard human rights and dignity.

The ACLJ requests a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii). Under this section, fees may be waived or reduced if the requester falls within a category established under § (a)(4)(A)(ii), which includes a "representative of the news media," § (a)(4)(A)(ii)(II), and if "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 government and is not primarily in the commercial interest of the requester," § (a)(4)(A)(iii). The ACLJ qualifies for a fee waiver as a

“representative of the news media,” *id.* § (a)(4)(A)(ii)(II), and because the information sought is “not for a commercial purpose,” § (a)(4)(A)(iii). Moreover, the ACLJ intends to widely disseminate the information obtained to the public because as explained in detail *infra*, “it is likely to contribute significantly to the public understanding of the operations or activities of the government,” § (a)(4)(A)(iii), agency and actors mentioned in the FOIA request.

A. The ACLJ Qualifies as a News Media Representative:

The ACLJ qualifies as a “representative of the news media,” as defined under 5 U.S.C. § 552(a)(4)(A)(ii), because the ACLJ, for the purposes explained above, “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.” § 552(a)(4)(A)(ii). The ACLJ’s audience is generally comprised of those interested in our mission and legal activities as described above. The ACLJ reaches a vast audience through a variety of media outlets, including the Internet (World Wide Web page, www.aclj.org), radio, television, press releases, and direct mailings to our supporters.

For example, the ACLJ’s Internet site received an average of 822,000 unique visitors per month in 2015, with 22,000,000 page views. Our current email list holds 1,050,000 active names (actual list size is 2,340,690). In 2015, the ACLJ sent 278,000,000 emails.

The ACLJ’s radio audience consists of more than 1,150,000 estimated daily listeners on 873 radio stations nationwide, including SiriusXM satellite radio. Additionally, the ACLJ hosts a weekly television program, *Sekulow*, broadcast on eight networks: Cornerstone Television, Daystar Television Network, AngelOne, KAZQ, TBN, VTN, The Walk TV, and HisChannel. See <http://aclj.org/radio-tv/schedule> (listing schedule).

The ACLJ also disseminates news and information to over 1,000,000 addresses on its mailing lists. In 2015, the ACLJ sent 15,000,000 pieces of mail.

Moreover, our Chief Counsel, Jay Sekulow, has regularly appeared on various news and talk show programs to discuss the issues and events important to the ACLJ and its audiences. These include shows on FOX News, MSNBC, CNN, ABC, CBS, and NBC. In addition to television programs, Jay Sekulow has also appeared on national radio broadcasts. Beyond broadcast outlets, Jay Sekulow’s comments appear regularly in the nation’s top newspapers, in print and online editions, including but not limited to the Wall Street Journal, New York Times, Washington Times, Washington Post, L.A. Times, and USA Today. His comments also appear in major national newswire services that include, but are not limited to, Associated Press, Reuters, and Bloomberg.

B. The ACLJ’s FOIA Request Meets Fee Waiver Standards Set Forth Under DOJ Regulations Promulgated Under FOIA:

Under 28 C.F.R. § 16.10(c)(1)(i), “[r]equests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees.” § 16.10(c)(1)(i). And, “[n]o search fees will be charged for requests by

educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.” § 16.10(d). Moreover:

Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (c) of this section, where a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

§ 16.10(k)(1).

The DOJ, in making its determination, considers the following four factors regarding “whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government”:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as the requester’s ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is “important” enough

to be made public.

§ 16.10(k)(2)(i)-(iv).

Under section 16.10(k)(3), the DOJ, in making its determination, considers the following two factors regarding “whether disclosure of the requested information is primarily in the commercial interest of the requester”:

(i) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

§ 16.10(k)(3). As the U.S. Court of Appeals for the D.C. Circuit has noted, “Congress amended FOIA to ensure that it is ‘liberally construed in favor of waivers for noncommercial requesters.’” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (citing *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Sen. Leahy))).

The ACLJ’s FOIA request meets the DOJ’s factors as listed above, qualifying the ACLJ for a waiver of fees, as set forth below.

§ 16.10(k)(2)(i): The subject of the request concerns identifiable operations or activities of the Federal Government.

The ACLJ has requested information and records specifically concerning DOJ and FBI actions surrounding the Attorney General Loretta Lynch’s meeting with former President Bill Clinton on June 27, 2016, which occurred on her airplane at the Sky Harbor International Airport in Phoenix, Arizona, and all participation in such DOJ/FBI briefings, meetings and communications by the DOJ/FBI and any of its personnel, and all other DOJ/FBI actions related to this meeting, is relevant to shed light on identifiable activities of the government.

§ 16.10(k)(2)(ii): Disclosure of the requested records will be meaningfully informative about government operations or activities and will be “likely to contribute” to an increased public understanding of those operations or activities.

The ACLJ’s request will contribute and provide meaningful understanding of United States Government operations or activities within the DOJ and FBI. With respect to the request for records surrounding the meeting between the head of the DOJ and the husband of a person who, at the time, was under criminal investigation by the DOJ and FBI, and where such meeting

occurred approximately within a week of the FBI's interview of the person under investigation and the DOJ's decision not to press charges, these records have not currently been released to the public and will most certainly inform and increase public knowledge (1) about who knew or was involved in the meeting; (2) who was involved in allowing the meeting to take place; (3) what was discussed in connection the meeting and decisions surrounding the meeting; (4) why the meeting was allowed to take place; and (5) who, outside the DOJ/FBI, communicated with DOJ/FBI officials before, during or after the meeting. The request will also reveal what involvement, if any, any other agency or governmental officials had with the meeting.

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Releasing the requested information to the ACLJ will contribute "significantly" to the public's understanding of United States Government operations and activities. The ACLJ has researched and litigated to uphold governmental transparency and accountability. The ACLJ is qualified to analyze and assess whether official statements to the press, the actions those statements identify, and the actions actually taken and decisions actually made in connection with the meeting and in the meeting's aftermath, violate pertinent law or regulations.

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§ 16.10(k)(2)(iv): The public's understanding of the subject in question will be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether the information at issue is "important" enough to be made public.

Releasing the information described above will significantly contribute to the public's understanding through ACLJ review and assessment of the materials and information, and subsequent dissemination of the information to the public. Such review, assessment, and dissemination will help the public understand whether the DOJ or FBI complied with applicable law and regulations concerning the meeting and its statements to the press concerning the meeting and its aftermath. Where current media reports, though extensive in

number, on the subject of this request address the topic, apparently only one media source was at the location of the meeting, and the records requested will provide actual and authoritative sources for what actually happened, who was involved, and why.

§ 16.10(k)(3)(i): The requester has no commercial interest, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure.

As explained and described throughout this Memorandum, the ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law and the public dissemination of information by way of its numerous media platforms. The information sought by the ACLJ is in furtherance of its not-for-profit mission statement. The ACLJ has no commercial interest in the information sought or its dissemination thereof.

§ 16.10(k)(3)(ii): A waiver or reduction of fees is justified because the requester had no 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.

Again, the ACLJ has no commercial interest in the information sought or its dissemination thereof. Rather, its interest is purely to further its not-for-profit mission. Therefore, its interest cannot be founded “primarily” in a commercial interest. This is especially so because the ACLJ cannot operate for a commercial purpose under its grant of 501(c)(3) tax-exempt status.

For these reasons, the ACLJ is entitled to a fee waiver.

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- (4) The ACLJ also disseminates news and information to over 1,000,000 addresses on its mailing lists. In 2015, the ACLJ sent 15,000,000 pieces of mail.
- (5) ACLJ Chief Counsel, Jay Sekulow, has regularly appeared on various news and talk show programs to discuss the issues and events important to the ACLJ and its audiences. These include shows on FOX News, MSNBC, CNN, ABC, CBS, and NBC. In addition to television programs, Jay Sekulow has also appeared on

national radio broadcasts. Beyond broadcast outlets, Jay Sekulow's comments appear regularly in the nation's top newspapers, in print and online editions, including but not limited to the Wall Street Journal, New York Times, Washington Times, Washington Post, L.A. Times, and USA Today. His comments also appear in major national newswire services that include, but are not limited to, Associated Press, Reuters, and Bloomberg.

The District Court for the District of Columbia found that a non-profit public interest group, not unlike the ACLJ, qualified as "representative of the news media" where the group disseminated an electronic newsletter and published books. *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003).

Clearly, the ACLJ satisfies the requirement of being one "whose primary professional activity or occupation is information dissemination." 28 C.F.R. § 16.5(e)(3).

Also pursuant to 28 C.F.R. § 16.5(e)(3), the requester "must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally." § 16.5(e)(3). And, "[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an 'urgency to inform' the public on the topic." § 16.5(e)(3).

The ACLJ's FOIA request qualifies as compelling under the second statutory definition stated above and as one of particular urgency under the DOJ's regulations, because the ACLJ has an urgency to inform the public about the United States government activity that could seriously undermine or enhance the integrity of the justice system of the United States in its investigation of public figures. The DOJ and the FBI have come under significant criticism in connection with the meeting that is the subject of this FOIA Request. The records requested could exonerate the DOJ and the FBI and restore the public's confidence in those critical government offices. Or the records could confirm or refute the cause for criticism. Either way, the records will educate the public on what really happened.

As one district court explained, the required "compelling need" and "urgency to inform" are determined by three factors:

- (1) [W]hether the request concerns a matter of current exigency to the American public;
- (2) whether the consequences of delaying a response would compromise a significant recognized interest; and
- (3) whether the request concerns federal government activity.

ACLU v. United States DOJ, 321 F. Supp. 2d 24, 29 (D.D.C. 2004) (citing *Al-Fayed v. CIA*, 254 F.3d 300, 310 (2002)).

Such is the case presented by the ACLJ's FOIA request. The ACLJ's request is based upon an urgency to inform the American public because a delay in review of the information would compromise the integrity of the public's confidence in the nation's law enforcement

offices in connection with the investigation of and decision to not press charges against a public figure — which is a currently pressing issue. The actions of some of the highest-ranking officials in the United States are now under close scrutiny with regard to the DOJ and FBI's decisions concerning the meeting at issue. As mentioned in the ACLJ's request, which is incorporated by reference as if fully set forth herein, the press is currently and actively reporting on these very issues. *Numerous* media and press articles have been published on major and minor news outlets, which have not been cited or included herein for purposes of not burdening the request-recipients with excess paper.

Without the immediate release of the information requested, the American public will remain in the dark with respect to its own government's activities, functions, and decisions concerning the head of the DOJ meeting privately with the husband of a person under criminal investigation, and thus cannot hold their government officials accountable. Moreover, a delay in releasing the information prolongs justice and serves only to further embarrass the United States both domestically and internationally, and confuse the public about what actually happened, as delay is perceived as an attempt to cover up information or to shift or avoid blame or culpability. Thus, governmental accountability in justice and integrity serve as significant public interests at stake. The records requested herein are the subject of current and ongoing media reporting. This is a current, ongoing issue and the public's right to now is best served by expedited processing.

Clearly, "the request concerns a matter of current exigency to the American public"; "the consequences of delaying a response would compromise a significant recognized interest"; "the request concerns federal government activity." *ACLU*, 321 F. Supp. 2d at 29.

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As noted in the ACLJ's FOIA request, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares that accountability and openness ought to prevail with regard to FOIA requests:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense


of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.¹

Accordingly, ACLJ respectfully submits a request for waiver of fees and expedited processing of its contemporaneously submitted FOIA request.

III. CERTIFICATION

In satisfaction of certification requirements under 5 U.S.C. § 552(a)(6)(E)(vi) and corresponding regulations, the ACLJ incorporates by reference herein all relevant facts, media reports, and information as stated in the ACLJ's FOIA request in support thereof and certifies that the information provided and stated herein is true and correct to the best of the undersigned's knowledge and belief.



Colby M. May
Senior Counsel
American Center for Law and Justice
201 Maryland Avenue, NE
Washington, DC 20002-5703
(202) 546-8890
(202) 546-9309 fax
cmmay@aclj-dc.org

cc: David M. Hardy, Chief, Record/Information Dissemination Section, Records Management Division, Federal Bureau of Investigation
FOIA/PA Mail Referral Unit, Department of Justice

¹PRESIDENT BARACK OBAMA, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES RE: FREEDOM OF INFORMATION ACT (Jan. 21, 2009), *available at* https://www.whitehouse.gov/the_press_office/FreedomofInformationAct.