

# **EXHIBIT L**



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

October 20, 2017

Joshua A. Rosenthal  
Staff Attorney  
National Immigration Law Center  
rosenthal@nilc.org

**Re: FOIA Tracking No. FY17-297**

Dear Mr. Rosenthal:

This letter acknowledges receipt of your September 22, 2017 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC"), among others, on behalf of the National Immigration Law Center ("NILC"), Make the Road New York ("MRNY"), and Make the Road Connecticut ("MRCT"). Your request seeks ten categories of "records related to or referring to the process and decision to terminate the DACA program[,] . . . [from] January 20, 2017 to the present," and "[a] list of all search terms used and databases accessed to respond to [your] FOIA request." We received your request on September 22, 2017, and it has been assigned tracking number **FY17-297**. Based on our preliminary review of your request, and pursuant to 28 C.F.R. § 16.5(b), your request has been tentatively assigned to the "complex" processing track. If you would like to narrow your request so that it can be transferred to the "simple" track and processed more quickly, please contact Melissa Golden at the address and phone number provided below.

I have determined that your request for expedited processing under 28 C.F.R. § 16.5(e)(1)(ii) should be denied. While you have stated that "[a]s part of its work, NILC disseminates information to the public," you have not established that the NILC is "primarily engaged in disseminating information." Courts have held that to qualify under this standard, an organization must be "primarily, and not just incidentally, engaged in information dissemination." *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012). Put another way, information dissemination must be "*the* main activity" of the requestor, and not merely "*a* main activity." *ACLU of N. Cal. v. DOJ*, No. 04-4447, 2005 WL 588354, at \*14 (N.D. Cal. Mar. 11, 2005). Accordingly, courts have upheld the denial of requests for expedited processing from such legal policy advocacy organizations as the American Civil Liberties Union of Northern California and the Landmark Legal Foundation. *See Landmark Legal Found.*, 910 F. Supp. 2d at 275-76; *ACLU of N. Cal.*, 2005 WL 588354, at \*14. As described in your letter, "NILC is a nonprofit national legal advocacy organization that engages in policy analysis, advocacy, education and litigation to promote and advance the rights of low-income immigrants and their families," which indicates that, like these organizations, NILC's primary activity is legal policy advocacy and not information dissemination. Similarly, while "MRNY's mission includes educating the public about civil rights issues affecting working-class and immigrant communities," and "MRCT frequently releases media statements, and disseminates information," according to the descriptions in your letter, neither organization is primarily engaged in the dissemination of information. As information dissemination is not the main activity of MRNY, MRCT, or NILC, you have not satisfied 28 C.F.R. § 16.5(e)(1)(ii).



You also requested expedited treatment of your request under 28 C.F.R § 16.5(e)(1)(iii), which requires expedited processing for a request that involves the “loss of substantial due process rights.” All requests for expedited processing must “explain[] in detail the basis” for the request. *Id.* § 16.5(e)(2). The summary argument that you have provided does not satisfy this requirement. Accordingly, we are denying your request for expedited processing under § 16.5(e)(1)(iii).

Finally, you requested expedited treatment of your request under 28 C.F.R § 16.5(e)(1)(iv). On September 22, 2017, we referred your request to the Director of the Office of Public Affairs (“OPA”), who determines whether a request pertains to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R § 16.5(e)(1)(iv); *see id.* § 16.5(e)(2). On October 17, 2017, we were informed that OPA has denied your request for expedited processing under standard (iv) because, in the judgment of the Director of OPA, the topic of your request is not a matter “in which there exist possible questions about the government’s integrity that affect public confidence.” *Id.* § 16.5(e)(1)(iv). Accordingly, your request for expedited processing has been denied under this standard.

Because of the considerable number of FOIA requests received by OLC before your request, our staff has not yet been able to complete a search to determine whether there are documents within the scope of your request. Please note that it also is likely that we will be unable to respond to your request within the twenty-day statutory deadline. I regret the necessity of this delay, but I assure you that your request will be given priority and processed as soon as practicable. In the meantime, if you have any questions or wish to discuss your request, you may contact Melissa Golden, OLC’s FOIA Public Liaison, at (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Room 5511, Washington, DC 20530.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. We note that in the event your fee waiver is denied, you have agreed to pay fees up to \$50.

You have the right to an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy (“OIP”), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,



Paul P. Colborn  
Special Counsel