

Exhibit A

October 25, 2018

By E-Request Form

Michael Marquis
Freedom of Information Officer
Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, D.C. 20201



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

National Office
125 Broad Street, 18th floor
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Brigitte Amiri
Deputy Director
Reproductive
Freedom Project

**Re: Request Under Freedom of Information Act
Expedited Processing & Fee Waiver/Limitation Requested**

Dear Mr. Marquis:

This is a request for production of records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the implementing regulations of the Department of Health and Human Services (“HHS”), 45 C.F.R. Part 5, on behalf of the American Civil Liberties Union (“ACLU”).

The ACLU seeks all documents related to changes to the Title X regulations, including the proposed regulations to be published on June 1, 2018, titled “Compliance with Statutory Program Integrity Requirements,” (RIN 0937-ZA00, Docket No. HHS-OS-2018-0008).

I. Definitions

For purposes of this request, the term “materials” includes but is not limited to any and all objects, writings, drawings, graphs, charts, tables, electronic or computerized data compilations, budgets, accountings, balance sheets or other financial statements, invoices, receipts, minutes, emails, electronic or computerized documents, photographs, audiotapes, videotapes, transcripts, drafts, correspondence, notes, notes of oral communications, and non-identical copies, including but not limited to copies with notations.

For purposes of this request, the term “HHS” means any individual or group of individuals working for HHS and any sub-department, office, board, program, group, agency, bureau, administration, and/or other subdivision within HHS.

II. Requests

Please provide *all materials* related to changes to the Title X family planning program, including the proposed “Compliance with Statutory Program Integrity Requirements” rule, since November 9, 2016. These materials should include but are not limited to:

- 1) All communications, memoranda, notes, guidelines, bulletins in HHS, including any sub-agencies;
- 2) All communications between HHS and any other federal agency;
- 3) All communications between HHS and any elected or appointed state or federal official, including prior to their election or appointment;
- 4) All communications between HHS and any non-governmental party, including but not limited to non-profit advocacy organizations such as Susan B. Anthony’s List, Alliance Defending Freedom, Becket, American Association of Pro-Life OBGYNs.



With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this request would require HHS to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to receive

notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon.

III. Fee Waiver/Limitation Request

Because we ask that you respond to our request as quickly as possible, and thus do not wish to slow down the agency's response, we do not ask for a fee waiver if the fee pursuant to 5 U.S.C. § 552(a)(4)(A) associated with this request is less than \$500.00.

If, however, the fee exceeds \$500.00, we request that the fee be waived pursuant to 28 CFR § 16.10. Under § 16.10, fees should be waived or reduced if disclosure is (1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) not primarily in the commercial interest of the requester. Disclosure in this case meets both of these tests; and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"). Fees should thus be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Disclosure pursuant to this request is in the public interest. The records pertain directly to the operations and activities of the federal government; the information to be learned from the requested documents is not already public knowledge; and disclosure will contribute to the public good in a significant way because the requested records, which are all materials related to grant review and funding for family planning services, concern the operations of a federal agency. "[W]hat could be more important to the public's understanding of [agency] operations" than understanding the grantmaking process and workload of the federal government? *Judicial Watch*, 326 F.3d at 1313; *see also NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 153–54 (1975).

Moreover, disclosure is not in the ACLU's commercial interest. The ACLU is a "non-profit, non-partisan, public interest organization." *See Judicial Watch*, 326 F.3d at 1310. Additionally, the purpose of the request is to monitor and vindicate legal rights; it is unrelated to business, trade, or profit.

Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.



Disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the requester, and if the fee exceeds \$500.00, it should therefore be waived. In the event that you decide not to waive the fees if over \$500.00, please provide me with prior notice so that we can discuss arrangements.

IV. Expedited Processing Request

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Please see the attached Certified Statement Explaining The Compelling Need For Expedited Processing for further information.



We look forward to a determination on this request from you within ten working days pursuant to 45 C.F.R. § 5.27(c). Thank you for your prompt attention to this request. Please call me at (212) 519-7897 if you have any questions or wish to obtain further information about the nature of the documents in which we are interested. The records should be sent to Brigitte Amiri at bamiri@aclu.org, and at ACLU Foundation, 125 Broad Street, 18th Floor, New York, NY 10004.

Sincerely,

Dated: October 25, 2018

/s/ Brigitte Amiri

**Certified Statement Explaining The Compelling Need For
Expedited Processing Pursuant to 5 U.S.C. § 552 (6)(E)(vi) and 45
C.F.R. § 5.27(b)(2)**

The American Civil Liberties Union (“ACLU”) requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)¹. There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).



This constitutes a certified statement, pursuant to 5 U.S.C. § 552 (6)(E)(vi) and 45 C.F.R. § 5.27(a)&(b), explaining the compelling need.

I. Background

HHS published a proposed rule on June 1, 2018, titled “Compliance with Statutory Program Integrity Requirements,” (RIN 0937-ZA00, Docket No. HHS-OS-2018-0008). Public comments are due July 31, 2018.

II. The ACLU Is An Organization Primarily Engaged In Disseminating Information In Order To Inform The Public About Actual Or Alleged Government Activity.

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).² Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in

¹See also 45 C.F.R. § 5.27(b)(2).

²See also 45 C.F.R. § 5.27(b)(2).

disseminating information”).³

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil rights and civil liberties-related current events. The magazine is disseminated to over 620,000 people. The ACLU also provides regular updates and alerts on these topics via email to over 2.6 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 3.2 million social media followers. The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,⁴ and ACLU attorneys are interviewed frequently for



³ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

⁴ *See, e.g.,* Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, ACLU, Justice Department White Paper Details Rationale for Targeted Killing of Americans (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, ACLU, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

news stories about documents released through ACLU FOIA requests.⁵

Similarly, ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.⁶ This material is broadly circulated to the public and widely available to



⁵ See, e.g., Cora Currier, *TSA's Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept, Feb. 8, 2017, <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About 'Torture' in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU National Security project director Hina Shamsi); Victoria Bekiempis, *Sexual Trauma Victims Lose Out on PTSD Benefits: Report*, Newsweek, Nov. 8, 2013, <http://www.newsweek.com/va-discriminates-against-survivors-military-sexual-trauma-report-2856>.

⁶ See, e.g., Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018, 3:45 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump's Muslim Bans. Here's What We Found Out*. (Oct. 24, 2017, 3:15 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Hugh Handeyside, *New Documents Show This TSA Program Blamed for Profiling Is Unscientific and Unreliable — But Still It Continues* (Feb. 8, 2017, 11:45 AM), <https://www.aclu.org/blog/speak-freely/new-documents-show-tsa-program-blamed-profiling-unscientific-and-unreliable-still>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA's Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/new-documents-show-tsa-program-blamed-profiling-unscientific-and-unreliable-still>.



everyone for no cost or, sometimes, for a small fee. For example, the ACLU published a report entitled *Battle for Benefits: VA Discrimination Against Survivors of Military Sexual Violence*, which analyzed data obtained from the U.S. Department of Veterans Affairs pursuant to a FOIA request.⁷ The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. See <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused.

The ACLU website includes many features on information obtained through FOIA requests.⁸ For example, the ACLU’s

[freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture](https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most); Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; Galen Sherwin, ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>; Nathan Freed Wessler, *ACLU- Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>.

⁷ See ACLU & SWAN, *Battle for Benefits: VA Discrimination Against Survivors of Military Sexual Trauma* (2013), <https://www.aclu.org/sites/default/files/assets/lib13-mst-report-11062013.pdf>.

⁸ See, e.g., *SWAN v. Dep’t of Defense*, ACLU Case Page, <https://www.aclu.org/cases/service-womens-action-network-v->



“Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.⁹ Similarly, the ACLU maintains an online “Torture Database,” a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.¹⁰

department-defense; Nathan Freed Wessler & Dyan Cortez, *FBI Releases Details of ‘Zero-Day’ Exploit Decisionmaking Process* (June 26, 2015, 11:00 AM), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; *ACLU v. DOJ – FOIA Case for Records Relating to the Killing of Three U.S. Citizens*, ACLU Case Page, <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; *ACLU v. Department of Defense*, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-department-defense>; *Mapping the FBI: Uncovering Abusive Surveillance and Racial Profiling*, ACLU Case Page, <https://www.aclu.org/mappingthefbi>; *Bagram FOIA*, ACLU Case Page <https://www.aclu.org/cases/bagram-foia>; *CSRT FOIA*, ACLU Case Page, <https://www.aclu.org/national-security/csrt-foia>; *ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance FOIA Request*, ACLU Case Page, <https://www.aclu.org/aclu-v-doj-lawsuit-enforce-nsa-warrantless-surveillance-foia-request>; *Patriot FOIA*, ACLU Case Page, <https://www.aclu.org/patriot-foia>; *NSL Documents Released by DOD*, ACLU Case Page, <https://www.aclu.org/nsl-documents-released-dod?redirect=cpreirect/32088>.

⁹ The Torture Database, <https://www.thetorturedatabase.org> (last visited Sept. 19, 2017); *see also Countering Violent Extremism FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

¹⁰ The Torture Database, <https://www.thetorturedatabase.org> (last visited Sept. 19, 2017); *see also Countering Violent Extremism*

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program.¹¹

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the ACLU plans to disseminate the information disclosed as a result of this Request to the public at no cost.



III. The Records Sought Are Urgently Needed To Inform The Public About Actual Or Alleged Government Activity.

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).¹² Specifically, the requested records relate to HHS's proposed rule that would radically change the nation's family planning program. The massive change in policy is the subject of widespread public controversy and media attention.¹³ The records are needed before the public comment period ends on July 31, 2018, to ensure government transparency in the rule-making process.

FOIA Database, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database, ACLU*, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database, ACLU*, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

¹¹ ACLU, *Bad Trip: Debunking the TSA's 'Behavior Detection' Program* (2017), https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf.

¹² *See also* 45 C.F.R. § 5.27(b)(2).

¹³ *See, e.g.*, Ariana Eunjung Cha, "Trump administration will pull funds from groups that perform abortions or provide referrals," *Washington Post* (May 18, 2018), available at https://www.washingtonpost.com/news/to-your-health/wp/2018/05/18/planned-parenthood-likely-to-lose-millions-under-trump-administrations-new-title-x-family-planning-rules/?noredirect=on&utm_term=.5d8d10d4964b; Jennifer Haberkorn,

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

I, Brigitte Amiri, hereby certify that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); 45 C.F.R. § 5.27(a).

Dated: October 25, 2018

/s/ Brigitte Amiri

“Trump to target Planned Parenthood with new abortion curbs,”
Politico (May 18, 2018),
<https://www.politico.com/story/2018/05/18/trump-planned-parenthood-abortion-curbs-552171>.

