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BY CERTIFIED AND
ELECTRONIC MAIL

May 5, 2017

FOIE Appeal
FOIE and Transparency
Privacy, Transparency, and Records
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Re: **FOIA APPEAL of Denial of Expedited Processing**
RE: 2017-02-121

To Whom It May Concern:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a)(6), Centro de Periodismo Investigativo (“CPI”), LatinoJustice PRLDEF (“LJP”), and the Center for Constitutional Rights (“CCR”) (collectively “the Requesters”), hereby appeal the Department of Treasury’s (“Treasury”) March 22, 2017 denial of expedited processing of our FOIA request (“the Request”) dated January 27, 2017, and failure to respond to the substance of the request. Requesters seek documents related to the establishment, composition, appointment process and functioning of the federal fiscal control (or oversight) board that was authorized under the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”), 48 U.S.C.A. § 2121.

Treasury denied our request for expedited processing in an email dated March 22, 2017 (“Expedited Processing Denial”). The Expedited Processing Denial contained no findings, but instead recited the requirements for granting expedited processing and claimed our request did not demonstrate how not receiving the information in an expeditious manner would ‘compromise a significant recognized interest.’”

Expedited Processing

The Expedited Processing Denial stated that under 31 CFR § 1.5(e), “[t]here are two categories of requests that merit expedited review under Treasury’s FOIE regulations: (1) requests for which a lack of expedited treatment ‘could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;’ or (2) where there is an ‘urgency to inform the public about an actual or alleged Federal Government activity,’ if made by a person primarily engaged in disseminating information. Based upon my review of the information contained in your request, and in consideration of the two factors identified above, I have

determined to deny your request for expedited processing. You have not adequately demonstrated how not receiving the information in an expeditious manner would ‘compromise a significant recognized interest.’” This language fails to analyze or reference the facts documented in the Request. The Requesters have indeed demonstrated an “urgency to inform the public” about the promulgation and implementation of the fiscal control board, which continues to make economic and governmental decisions about Puerto Rico. Further, the Requesters have demonstrated that they are “primarily engaged in disseminating information.”

(a) Urgency to Inform the Public about Federal Government Activity

It is clear that the creation and implementation of the fiscal control board and enforcement of PROMESA are federal government activity. There is urgent need for public transparency and information about how the fiscal control board was implemented and the effects it has on the people of Puerto Rico that Requesters advocate for. On March 28, 2017, students from the University of Puerto Rico began a strike to protest “plans by a federally appointed oversight control board to cut \$450 million from the university’s budget to help pay the island’s debt to bondholders.”¹ Over 100k signatures were collected by the Citizens’ Front for the Audit of the Public Debt calling for the “reestablishment of the Commission for the Integral Audit of the Public Credit to continue the” independent audit of the debt in Puerto Rico.² A significant number of direct actions have occurred across the island denouncing the fiscal control board as the “now [] de facto government, banker, judge, jury, and executioner of Puerto Rico. [The board] will supervise and approve the entire Commonwealth budget; reduce or eliminate public pensions; restructure the public workforce (meaning, fire government employees); preside over all leases, union contracts and collective bargaining agreements; and ensure the payment of debt obligations.”³

Particularly in light of the policies and budget cuts proposed by the fiscal control board, it is clear that clarity about PROMESA and the fiscal control board is a matter of urgent public concern. It is paramount that the public have the requested information in order to meaningfully engage in a public debate surrounding the utility, constitutionality, and necessity of PROMESA and the fiscal control board. The Request thus meets the first requirement of 31 CFR § 1.5(e).

(b) Primarily Engaged in Disseminating Information

Further, as documented in the Request, Requesters are primarily engaged in disseminating information. Indeed, dissemination of information is the primary function of CPI as an organization dedicated to the promotion of journalism and the method of advocacy for LJP and CCR, which organize public events and publish reports, action alerts, and educational materials to be distributed to an extensive membership, community members, elected officials, and the public. *See* Request at 3-4. Among many examples is the publication of in-depth reports and weekly articles concerning the activities of the fiscal control board and an on-line document

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https://www.democracynow.org/2017/3/30/headlines/puerto_rican_public_university_students_strike_against_budget_cuts. Since then, proposed cuts to the University have been estimated to reach \$510 million.

² <http://caribbeanbusiness.com/100k-signatures-collected-for-the-audit-of-puerto-ricos-debt/>

³ <https://www.thenation.com/article/after-a-century-of-american-citizenship-puerto-ricans-have-little-to-show-for-it/>

archive to make information under past gubernatorial administrations available and accessible to the public. CPI also has an institute to train journalists as well as a series for journalists in understanding PROMESA and its implications for Puerto Rico.

The Requester's primary activity, like that of plaintiffs in *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246 (D.D.C. 2005) (finding non-profit coalition promoting civil rights entitled to expedited processing) is information dissemination. Further, legislative history establishes that information dissemination "need not be [a requester's] sole occupation." H.R. Rep. No. 104-795, at 26 (1996). One of the requesters is a journalism non-profit and the other two are advocacy organizations whose mission is to engage the public and its members in efforts to advance and protect the rights of marginalized communities, including Puerto Rican communities. Requesters' primary means of doing so is through information dissemination through their respective websites, social media platforms, listservs, and media appearances. Thus, like the Leadership Conference on Civil Rights, Requesters "disseminate[] information regarding civil rights ... to educate the public, promote effective civil rights laws, and ensure their enforcement..." 404 F. Supp. 2d at 260. The Request, made by organizations primarily engaged in information dissemination and thus meets the second requirement of 31 CFR § 1.5(e).

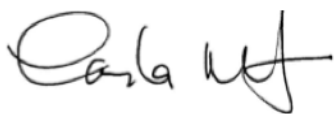
Failure to Respond to Substance of the Request

On March 22, 2017, Treasury sent Requesters a letter acknowledging that a search was underway and notifying us that it would take an addition ten (10) days to respond. While we have been in touch with Treasury officials, to date we have received no documents responsive to our request.

For all these reasons, the Requesters are entitled to expedited processing under 6 C.F.R. § 5.5(e)(1)(ii).

Thank you for your consideration, and if you have any questions, please feel free to contact me.

Sincerely,



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