



18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

March 25, 2019

FOIA Officers, Swanton Sector
U.S. Customs & Border Protection
155 Grand Avenue
Swanton, Vermont 05488

FOIA Officer
U.S. Customs & Border Protection
1300 Pennsylvania Avenue, NW Room 3.3D
Washington, D.C. 20229

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

To Whom It May Concern:

The American Civil Liberties Union Foundation of New Hampshire (“ACLU-NH”)¹ submits this Freedom of Information Act (“FOIA”) request (“Request”) for records about U.S. Customs and Border Protection (“CBP”) non-checkpoint patrol operations conducted in New Hampshire to surveil and arrest undocumented and documented immigrants.

On September 26 and 28, 2018, ACLU-NH identified that CBP operated its non-checkpoint patrol missions, which resulted in the apprehension of at least two undocumented immigrants in West Lebanon and Manchester, respectively. By this letter, which constitutes a request pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, and the relevant implementing regulations. *See* 6 C.F.R. § 5 *et seq.*, the ACLU-NH seeks information concerning CBP’s non-checkpoint patrol operations within the purview of the Swanton sector office. Through this request, the ACLU-NH aims to facilitate the public’s indispensable role in checking the power of our public officials.

For the purpose of this Request, “Records” are collectively defined to include, but are not limited to: text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message); e-mails; images, video, and audio recorded on cell phones; voicemail messages; social-media posts; instructions; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; legal and policy memoranda; contracts or agreements; minutes or notes of meetings and phone calls; and memoranda of understanding. The request is limited records created after January 1, 2017.

The ACLU-NH seeks the release of the following:

¹ The American Civil Liberties Union Foundation of New Hampshire is a 501(c)(3) organization that defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire.

1. Record containing descriptions of CBP non-checkpoint patrol operations in the State of New Hampshire, including the dates, times, and exact locations at which CBP agents were deployed; and the number, titles, and job ranks of CBP officers involved on each date and at each location;
2. Records from CBP or other federal agencies authorizing the non-checkpoint patrol operations in any cities or towns including but not limited to Manchester or West Lebanon in the States of New Hampshire, or addressing the legality of stops, patrols, questioning, seizures, or searches conducted by CBP;
3. Records of New Hampshire or local law enforcement agency involvement with CBP, including, but not limited to, participating in any surveillance and apprehension of undocumented/documentated immigrants.
4. Records sent by CBP to any federal, state, or local government agencies, including but not limited to U.S. Immigration and Customs Enforcement, the Federal Bureau of Investigation, U.S. Department of Homeland Security, New Hampshire Police, and local law enforcement agencies in New Hampshire, relating to the purpose, methods, conduct, or results from the citizenship inquiries;
5. With regard to persons subjected to any citizenship inquiry, records showing: a) the total number of people questioned; b) the country of origin of people questioned; c) the race and/or ethnicity of people questioned; d) the criminal or immigration charges filed against the person questioned, if applicable; e) the location and duration of the person's detention, if applicable; f) the date of the person's voluntary departure from the United States, if applicable; g) the date of the person's removal from the United States, if applicable.

We request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of our Request be conducted. This includes the personal email accounts and work phones of all employees and former employees who may have sent or received emails or text messages regarding the subject matter of this request, as well as all institutional, shared, group, duty, task force, and all other joint and/or multi-user email accounts and work phones which may have been utilized by each employee or former employee.

Additionally, for each relevant email account identified, all storage areas must be searched, including the inbox "folder" (and all subfolders therein), sent folder, deleted folder, and all relevant archive files.

If any records responsive or potentially responsive to the Request have been destroyed, our Request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

As required by the relevant case law, the agency, here CBP, should follow any leads it discovers during the conduct of its searches and should perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU-NH requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU-NH 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.

APPLICATION FOR EXPEDITED PROCESSING

The ACLU-NH requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).² 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).

A. The ACLU-NH is an organization primarily engaged in disseminating information to inform the public about actual or alleged government activity.

The ACLU-NH is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).³ 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. U.S. 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 disseminating information”).⁴

The ACLU-NH regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and the ACLU-NH staffs are interviewed frequently for news stories about documents released through the ACLU-NH FOIA requests.

Similarly, the ACLU-NH publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public. The ACLU-NH also regularly publishes “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-NH publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <http://www.aclu-nh.org/en/NEWS>.

The ACLU-NH 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 requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

² *See* 6 C.F.R. § 5.5(e)(1).

³ *See* 6 C.F.R. § 5.5(e)(1)(ii).

⁴ 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. U.S. Dep't of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

- B. 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).⁵ Specifically, as discussed below, the requested records seek to inform the public about the CBP's current practice of conducting patrol operations in New Hampshire.

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

APPLICATION FOR WAIVER OR LIMITATION OF FEES

The ACLU-NH requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure 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.” 5 U.S.C. § 552(a)(4)(A)(iii).⁶ The ACLU-NH also requests a waiver of search fees on the grounds that the ACLU-NH qualifies as a “representative of the news media,” and the records are not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(II).

- A. The Request 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 ACLU-NH.

The ACLU-NH is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU-NH as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending the 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.” (quotation marks omitted)).

- B. The ACLU-NH is a representative of the news media and the records are not sought for commercial use.

The ACLU-NH also requests a waiver of search fees on the grounds that the ACLU-NH qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. 552(a)(4)(A)(ii)(II). The ACLU-NH meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that 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.” 5 U.S.C. § 552(a)(4)(A)(ii)(III);⁷ *see also Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F. 2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women's Action Network v. U.S. Dep't of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. V. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “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

⁵ *See* 6 C.F.R. § 5.5(e)(1)(ii).

⁶ *See* 5 C.F.R. 5.11(k).

⁷ *See* 6 C.F.R. § 5.11(b)(6).

audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU-NH is, therefore, a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar to the ACLU-NH’s to be “representative of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10-15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F. 2d at 1387; *Judicial Watch, Inc., v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 53, 54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).⁸

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU-NH as a “representative of the news media.”

* * *

Pursuant to applicable statutes and regulations, the ACLU-NH expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 6 C.F.R. § 5.5(e)(4).

If the Request is denied in whole or in part, the ACLU-NH asks that you justify all deletions by reference to specific FOIA exemptions. The ACLU-NH expects the release of all segregable portions of otherwise exempt material. The ACLU-NH reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

ACLU Foundation of New Hampshire
c/o SangYeob Kim
18 Low Ave, # 12
Concord, New Hampshire 03301
sangyeob@aclu-nh.org

I affirm 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).

Respectfully,



SangYeob Kim, Immigration Legal Fellow

⁸ Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F. 2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

CBP-2019-038942 Request Details



Submitted



Evaluation



Assignment



Processing



Closed

Contact Information

Full Name	SangYeob Kim
Organization	ACLU of New Hampshire
Email Address	SangYeob@aclu-nh.org
Phone Number	6033332081
Fax Number	6036177264
Mailing Address Location	United States/US Territories
Address Line 1	18 Low Ave #12
Address Line 2	
City	Concord
State/Province	NH
Zip Code/Postal Code	03301

Request Information

Agency	Non-Traveler Responsive Records
Will Pay Up To	\$0.00
Date Submitted	03/25/2019
Estimated Date of Completion	04/23/2019
Fee Category	N/A
Request Track	Expedited
Request Phase	Processing
Final Disposition	Undetermined

Additional Information

Type of Records Requested	Other
On Behalf Of First	N/A
On Behalf Of Middle	N/A
On Behalf Of Last	N/A
Date of Birth	N/A
Aliases	N/A
Alien Number	N/A

Parents' Names

N/A

Description

Description

(See attachment) The request is limited records created after January 1, 2017. The ACLU-NH seeks the release of the following: 1. Record containing descriptions of CBP non-checkpoint patrol operations in the State of New Hampshire, including the dates, times, and exact locations at which CBP agents were deployed; and the number, titles, and job ranks of CBP officers involved on each date and at each location; 2. Records from CBP or other federal agencies authorizing the non-checkpoint patrol operations in any cities or towns including but not limited to Manchester or West Lebanon in the States of New Hampshire, or addressing the legality of stops, patrols, questioning, seizures, or searches conducted by CBP; 3. Records of New Hampshire or local law enforcement agency involvement with CBP, including, but not limited to, participating in any surveillance and apprehension of undocumented/documentated immigrants. 4. Records sent by CBP to any federal, state, or local government agencies, including but not limited to U.S. Immigration and Customs Enforcement, the Federal Bureau of Investigation, U.S. Department of Homeland Security, New Hampshire Police, and local law enforcement agencies in New Hampshire, relating to the purpose, methods, conduct, or results from the citizenship inquiries; 5. With regard to persons subjected to any citizenship inquiry, records showing: a) the total number of people questioned; b) the country of origin of people questioned; c) the race and/or ethnicity of people questioned; c) the race and/or ethnicity of people questioned; d) the criminal or immigration charges filed against the person questioned, if applicable; e) the location and duration of the person's detention, if applicable; f) the date of the person's voluntary departure from the United States, if applicable; g) the date of the person's removal from the United States, if applicable.

Request Expedited Processing

Made Request?

Yes

Expedited Justification

(See attachment) The ACLU-NH 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).

Request a Fee Waiver

Made Request?

Yes

Expedited Justification

The ACLU-NH requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure 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." 5 U.S.C. § 552(a)(4)(A)(iii). The ACLU-NH also requests a waiver of search fees

on the grounds that the ACLU-NH qualifies as a “representative of the news media,” and the records are not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Supporting Files

Download	Attached File Name	Size (MB)	File Type
<input type="checkbox"/>	FOIA - Request - CBP non-checkpoint operations in NH.pdf	0.1517	Adobe PDF Document
