

EXHIBIT C



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June 19, 2019

Via Email, FOIA@hq.dhs.gov and Certified Mail, Return Receipt Requested

Privacy Office
ATTN: FOIA Appeals
U.S. Department of Homeland Security
245 Murray Lane, SW Mail Stop 0655
Washington, D.C. 20528-0655

Re: FOIA Appeal of DHS Response to Requests Under Freedom of Information Act (Reference Number 2019-HQFO-00491)

To Whom it May Concern:

We are in receipt of the Department of Homeland Security (“DHS”)’s March 18, 2019 letter in which DHS stated that the agency is unable to respond to the Freedom of Information Act (“FOIA”) requests made on February 25, 2019 by the American Civil Liberties Union of Northern California, Muslim Advocates, and the International Refugee Assistance Project (collectively, the “Requestors”) because the requests are “too broad in scope” or “did not sufficiently identify” the records sought. While DHS suggested that the Requestors reformulate and resubmit the request, DHS also indicated that the request would be administratively closed if Requestors did not do so. We write to appeal this decision.¹

The Requestors’ FOIA Request and DHS’s Responses

As you know, the Requestor’s FOIA requests to DHS, among other agencies, seek information pertaining to the surveillance and criminal investigation of refugees in the United States of America. DHS’s response claims that Requestor’s requests, writ large, are either “too broad” or are not detailed enough to identify specific records sought. The response, however, fails to differentiate between requests that are

¹ DHS’s March 18, 2019 letter also failed to respond to Requestors’ request for a Public Interest Fee Waiver. To the extent that DHS’s decision to administratively close Requestors’ FOIA requests amounts to a denial of their request for a fee waiver, we appeal that decision as well.

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purportedly “too broad” and requests that allegedly fail to “sufficiently identify records.” The response also fails to provide any information as to how or why certain requests are “too broad” or what specific additional information is needed to “sufficiently identify records” responsive to any of the requests. In the response, DHS suggested that Requestors resubmit their requests “containing a reasonable description of the records [they] are seeking” but provided no insight as what specific information DHS needs to understand and process the requests.

Basis for Appeal

Agency regulations require only that requestors “describe the records sought in sufficient detail to enable DHS personnel to locate them with a reasonable amount of effort.” 6 C.F.R. § 5.3(b). The regulations further provide that, “*to the extent possible*, requestors should include specific information that may assist a component in identifying the requested records,” and lists several ways that information can be specified. *Id.* (emphasis added). The regulations also include the general guideline that requestors should include “as much detail *as possible*,” but list no requirements as to the necessary level of detail. *Id.* (emphasis added). Further, the regulations provide that, “if after receiving a request, a component determines that it does not reasonably describe the records sought, the component should inform the requester what additional information is needed or why the request is otherwise insufficient.” *Id.*

DHS administratively closed Requestors’ request (Reference Number 2019-HQFO-00491) after Requestors did not resubmit it because of Requestors’ asserted failure to sufficiently describe the records sought or narrow the scope of the requests. But the requests do in fact “describe the records sought in sufficient detail” to enable DHS to locate them with a reasonable amount of effort. And, the requests are already narrow in scope. The requests are based on detailed definitions and apply only to the period from January 19, 2017 to present. Our understanding is that DHS should be able to use search terms in its various databases to identify responsive information. That aside, as noted above, DHS has not informed Requestors – beyond boilerplate suggestions that are inapplicable in the specific context of the requests – “what additional information is needed or why the request is otherwise insufficient.” 6 C.F.R. § 5.3(b).

We are open to working with DHS to understand what specific information is needed to allow a search of agency records that would result in the identification of responsive information. To the extent possible, we are also open to reformulating the requests, but cannot do so until we know what specific information DHS needs. Please contact Sean Riordan at sriordan@aclunc.org or Elyssa Romino at

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elyssa.romino@pillsburylaw.com to communicate about the specific additional information that DHS requires to properly respond to the requests. If you are not the person who can provide this information, please us know who at DHS can assist us with this matter.

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

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