

# EXHIBIT A



September 16, 2019

**VIA Electronic Delivery**

FOIA/PA Mail Referral Unit  
U.S. Department of Justice  
Room 115  
LOC Building  
Washington, D.C. 20530-0001  
mrfoia.requests@usdoj.gov

**Re: Freedom of Information Act Records Request**

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and the U.S. Department of Justice (DOJ) FOIA Regulations at 28 C.F.R. Part 16, Democracy Forward Foundation makes the following request for records.

**I. Background**

On July 2, 2019 the U.S. Department of Housing and Urban Development (HUD)'s Office of Special Needs Assistance Programs (SNAPS), in conjunction with the U.S. Department of Justice's Office for Victims of Crimes (OVC), announced a Notice of Funding Availability (NOFA) worth up to \$14.5 million titled "[Specialized Housing and Services for Victims of Human Trafficking Announcement](#)" (CFDA Number 14.279).

The grant opportunity described the purpose of the NOFA: "SNAPS and OVC are promoting collaboration between Continuums of Care (CoCs) funded by HUD and organizations funded by DOJ to address the housing and service needs of victims of human trafficking. This NOFA promotes trauma-informed, victim-centered services, including in tribal areas. Organizations awarded funds through this NOFA are expected to work with other organizations within the CoC's geographic area to train service providers on how to identify victims of human trafficking and connect these victims to appropriate housing. SNAPS and OVC plan to identify best practices for addressing this population that may assist in framing future funding opportunities for victims of human trafficking." This grant competition had two deadlines, August 30, 2019 and October 30, 2019.

On August 22, 2019 the United States Interagency Council on Homelessness (USICH) hosted a [webinar](#) for potential applicants. On September 4, 2019 HUD [posted](#) on its website an "Updates FY 2019

Specialized Housing and Services for Victims of Human Trafficking NOFA to Include Non-citizens” which stated “HUD has added minor and adult foreign national victims to Section III.F.1.g of the FY 2019 Specialized Housing and Services for Victims of Human Trafficking Notice of Funding Availability to allow recipients to serve non-citizens under this program.” Subsequently, on September 9, 2019, after the first deadline for applicants and with no public explanation, HUD cancelled the NOFA.

## **II. Records Requested**

In an effort to understand and explain to the public the reason for the sudden, unexplained, cancellation of the NOFA, Democracy Forward requests that DOJ produce the following within twenty (20) business days:

1. Any records, including interagency communications and communications with third-parties, discussing or addressing modification, postponement, or cancellation of the NOFA (FY 2019 Specialized Housing and Services for Victims of Human Trafficking Notice of Funding Availability).
2. Any records, including interagency communications and communications with third-parties, discussing the NOFA which contain the words “non-citizens,” “foreign national(s),” “minor and adult foreign national victims,” “immigrants,” “aliens,” or “illegals,” or any variants thereof.
3. Any records, including interagency communications and communications with third-parties, discussing the addition of minor and adult foreign national victims as eligible participants, as published on September 4, 2019.

Please search for records responsive to this request created between July 2, 2019 and the date on which DOJ completes its search for responsive documents.

Please search for records within the following DOJ offices and personnel: Office of the Assistant Attorney General, Office of Justice Programs, and OVC (including Director Darlene Hutchinson Biehl).

## **III. Format of Production**

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive recordings, however, please exclude publicly available materials such as new clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by specific exception or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can reasonably be segregated. See 5 U.S.C. § 552(a)(8)(A)(ii)(II), (b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what portions of the information in a document are non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

### **III. Request for Fee Waiver**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28C.F.R. § 16.10(k), Democracy Forward Foundation requests a waiver of all fees associated with processing records for this request. FOIA requires documents to be furnished to requesters at no fee or reduced fees when the “disclosure of the information is in the public interest because it 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). The disclosure of records sought by this Request meets this standard.

As described above, information regarding the late and unexplained cancellation of the NOFA will contribute to the public’s understanding of the Administration’s approach to providing assistance to victims of human trafficking and the Administration’s overall approach to administering funding opportunities.

Democracy Forward Foundation is able to, and regularly does, disseminate records obtained through FOIA requests to a broad audience of persons interested in the subject matter.

In determining whether a fee waiver is appropriate, courts consider whether a requester has a “demonstrated . . . ability to disseminate the requested information,” *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1116-17 (D.C. Cir. 2015), and whether the requester regularly disseminates records obtained through FOIA to “a reasonably broad audience of persons interested in the subject” of its work. *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). FOIA does not require a requester to describe exactly how it intends to disseminate the information requested, as that would require “pointless specificity”; all that is necessary is for a requester to adequately demonstrate its “ability to publicize

disclosed information.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). In evaluating a fee waiver request, courts consider how a requester actually communicates information collected through FOIA to the public, including press releases or a website where documents received are made available, see *id.*, or whether the requester has a history of “contacts with any major news[] companies” that suggest an ability to disseminate materials of interest through the press. *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (upholding a denial of a fee waiver to a requester who had failed to identify his relationships with newspaper companies that could disseminate documents). DFF has a demonstrated ability to disseminate information of public interest requested through FOIA, and intends to publicize records DFF receives that contribute significantly to the public’s understanding of the unexplained cancellation of this NOFA.

DFF operates a dedicated communications staff with deep relations with a wide variety of national publications. When DFF obtains materials through FOIA requests that are of significant public interest, DFF’s communications staff regularly works to ensure that these materials and their contents are featured in press articles educating the public about the operation of government; many articles feature additional commentary and analysis from DFF staff about those materials and their relevance to policy issues of public interest.<sup>1</sup>

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<sup>1</sup> See, e.g., Alexander Nazaryan, *Why did right-wing troll Charles C. Johnson meet with Commerce Secretary Wilbur Ross?*, Yahoo News (May 14, 2019), <https://news.yahoo.com/why-did-rightwing-troll-charles-c-johnson-want-to-meet-with-commerce-secretary-wilbur-ross-090000636.html>; Derek Kravitz and Jack Gillum, “Happy to Do It”: Emails Show Current FAA Chief Coordinated With Ex-Lobbyist Colleagues on Policy, ProPublica (Mar. 27, 2019), <https://www.propublica.org/article/dan-elwell-current-faa-chief-coordinated-with-ex-lobbyist-colleagues-on-policy>; Hamid Aleaziz, *Emails Show US Border Officials Didn’t Receive “Zero Tolerance” Guidance Until After the Policy Was Enacted*, BuzzFeed News (Feb. 28, 2019), <https://www.buzzfeednews.com/article/hamedaleaziz/zero-tolerance-policy-guidance-dhs-family-separation>; Jonathan Cohn and Jeffrey Young, *Emails Show Trump Administration Was Told Obamacare Ad Cuts Could Hurt Enrollment*, HuffPost (Dec. 17, 2018), [https://www.huffingtonpost.com/entry/trump-verma-obamacare-advertising-cut\\_us\\_5c115061e4b084b082ff8dba](https://www.huffingtonpost.com/entry/trump-verma-obamacare-advertising-cut_us_5c115061e4b084b082ff8dba); Madison Pauly, *When the Biggest Prison Company Complained About a California Sanctuary Law, ICE Listened*, Mother Jones (Dec. 7, 2018), <https://www.motherjones.com/politics/2018/12/geo-memo-private-prison-california-immigration/>; Eliza Rellman, *‘Just answer the question and kill this story’: In internal emails, Heather Nauert criticized Rex Tillerson’s refusal to deny reports that he called Trump a ‘moron,’* Business Insider (Nov. 2, 2018), <https://www.businessinsider.com/heather-nauert-rex-tillerson-trump-moron-2018-11>; Rebecca Klein, *Lawsuit Accuses Betsy DeVos And Her Deputies Of Being Motivated By Sexism*, HuffPost (Oct. 31, 2018), [https://m.huffpost.com/us/entry/us\\_5bd9ff6ee4b01abe6a1ad4a9](https://m.huffpost.com/us/entry/us_5bd9ff6ee4b01abe6a1ad4a9); Nick Penzenstadler, *A year after Vegas shooting, ATF emails reveal blame, alarm over bump stocks*, USA Today (Oct. 1, 2018), <https://www.usatoday.com/story/news/2018/10/01/year-after-vegas-shooting-atf-emails-reveal-blame-alarm-over-bump-stocks/1432137002/>; Jessica Kwong, *Ivanka Trump was more than complicit in Obama equal pay rollback-she had a hand in it, watchdog alleges*, Newsweek (Aug. 29, 2018), <https://www.newsweek.com/ivanka-trump-equal-pay-complicit-obama-1093833>; Vera Bergengruen, *New Emails Show What Happens When The Pentagon Has To Scramble To Catch Up To Trump*, BuzzFeed News (July 25, 2018), <https://www.buzzfeednews.com/article/verabergengruen/these-emails-show-what-happens-when-the-white-house-keeps>; Erin Dooley, *Exclusive: Former for-profit college executive shaped Education Department policy that could benefit former employers: Documents*, ABC News (May 15, 2017), <https://abcnews.go.com/US/exclusive-profit-college-executive-shaped-education-department-policy/story?id=55108>

Additionally, DFF regularly sends press releases and other materials to over 6,000 members of the press and the over 7,000 members on our organization's email list discussing ongoing legal developments related to executive branch policymaking. These materials often include descriptions and analysis of information obtained by DFF through its FOIA requests.<sup>2</sup> In addition, DFF operates a verified Twitter account with over 6,000 followers, and frequently uses the account to circulate significant documents received through FOIA requests.<sup>3</sup>

<sup>1</sup> [981](https://www.nbcnews.com/politics/politics-news/notes-emails-reveal-trump-appointees-war-end-hhs-teen-pregnancy-n857686); Heidi Przybyla, *Notes, emails reveal Trump appointees' war to end HHS teen pregnancy program*, NBC News (Mar. 20, 2018),

<https://www.nbcnews.com/politics/politics-news/notes-emails-reveal-trump-appointees-war-end-hhs-teen-pregnancy-n857686>; Dominic Holden, *Documents Show The Trump Administration Approved Bump Stocks Before It Opposed Them*, BuzzFeed News (Mar. 22, 2018),

<https://www.buzzfeednews.com/article/dominicholden/trump-administration-bump-stocks>; Bernard Condon, *Trump Advisor Denies He Cheered End of Tunnel Funding Deal*, Associated Press (Feb. 13, 2018), available at

<https://www.usnews.com/news/business/articles/2018-02-13/trump-advisor-denies-he-cheered-end-of-tunnel-funding-deal>; Celeste Katz, *Interior Department tapped wildfire preparedness funds for Ryan Zinke helicopter tour*, Newsweek (Dec. 29, 2017),

<https://www.newsweek.com/ryan-zinke-interior-department-helicopters-wildfires-757857>

<sup>2</sup> See, e.g., *BREAKING: At Congressional Hearing, Sec. DeVos Confronted With Records Revealing Trump Administration's Unlawful Decision to Permit Federal Funds to Arm Teachers* (Apr. 10, 2019),

<https://democracyforward.org/press/breaking-at-congressional-hearing-sec-devos-confronted-with-records-revealing-trump-administrations-unlawful-decision-to-permit-federal-funds-to-arm-teachers/>;

*BREAKING: New Evidence Reinforces Claim Trump's Title IX Policy Was Based on Sexist Stereotypes, Rendering it Unconstitutional* (Nov. 1, 2018),

<https://democracyforward.org/press/breaking-new-evidence-reinforces-claim-trumps-title-ix-policy-was-based-on-sexist-stereotypes-rendering-it-unconstitutional/>;

*On 1-Year Anniversary of Equal Pay Roll Back, New Documents Reveal Ivanka Trump's Role in Trump Administration Decision to Roll Back Protections for Women and Working Families* (Aug. 29, 2018),

<https://democracyforward.org/press/on-1-year-anniversary-of-equal-pay-roll-back-new-documents-reveal-ivanka-trumps-role-in-trump-administration-decision-to-roll-back-protections-for-women-and-working-families/>;

*Democracy Forward Demands Ethics Investigation into White House Official's Role in Developing Special Drug Pricing Project With Novartis* (July 11, 2018),

<https://democracyforward.org/press/democracy-forward-demands-ethics-investigation-into-white-house-officials-role-in-developing-special-drug-pricing-project-with-novartis/>;

*BREAKING: New Records Reveal DeVos Senior Advisor And Former For-Profit College Executive Directed Rollback of Protections Against Predatory Student Loans* (May 15, 2018),

<https://democracyforward.org/press/breaking-new-records-reveal-devos-senior-advisor-former-profit-college-executive-directed-rollback-protections-predatory-student-loans/>;

*BREAKING: New Records Suggest Trump-Appointed Political Officials Drove HHS Decision To End Program Grants That Have Helped Reduce Teen Pregnancy Rates To All-Time Low* (Mar. 20, 2018),

<https://democracyforward.org/press/breaking-new-records-suggest-trump-appointed-political-officials-drove-hhs-decision-end-program-grants-helped-reduce-teen-pregnancy-rates-time-low/>.

<sup>3</sup> See, e.g., the following tweets and tweet threads from @DemocracyFwd:

<https://twitter.com/DemocracyFwd/status/910123899035226112> (Sep. 19, 2017);

<https://twitter.com/DemocracyFwd/status/976991060680462336> (Mar. 22, 2018);

<https://twitter.com/DemocracyFwd/status/996480908877271042> (May 15, 2018);

<https://twitter.com/DemocracyFwd/status/998986714105483264> (May 22, 2018);

<https://twitter.com/DemocracyFwd/status/1022870550769754112> (July 27, 2018);

<https://twitter.com/DemocracyFwd/status/1035144352345903105> (Aug. 30, 2018);

<https://twitter.com/DemocracyFwd/status/1053294640382779392> (Oct. 19, 2018);

<https://twitter.com/DemocracyFwd/status/1071105652867690496> (Dec. 7, 2018).

DFF's website also houses a great deal of information obtained through its FOIA requests, accessible to the public at no cost. DFF's website logged over 187,000 page views in 2018 alone.

Finally, DFF frequently incorporates documents received through FOIA into related legal actions brought by DFF on behalf of its clients, and in doing so further publicizes documents received by explaining their legal significance.<sup>4</sup>

*Democracy Forward Foundation is a purely noncommercial requester.*

DFF is not filing this Request to further its commercial interest, and any information disclosed by DFF as a result of this FOIA request will be disclosed at no cost. A fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch*, 326 F.3d at 1312 ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

*Democracy Forward is a representative of the news media.*

A representative of the news media is one that "publishes or otherwise disseminates information to the public," and in particular one that "gathers information from a variety of sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aids; and distributes the resulting work to the public." *Nat'l Sec. Archive v. US Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Representatives of the news media qualify for a waiver of all fees except "reasonable standard charges for document duplication" as a representative of the news media pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

As documented above, DFF extensively disseminates information gathered through FOIA requests to the public, via sharing that information with other news outlets, publishing and sending press releases and other updates to our website and email list, and alerting our followers on social media to new developments in our work, including highlights from documents obtained through FOIA. This process entails a great degree of editorial discretion in deciding which documents to highlight and how to organize them for the public, as our team of lawyers and policy experts carefully examine and build a thorough understanding of the documents we receive from FOIA and their relationship to policies of interest to the public.

Beyond disseminating information to reporters for them to publish, and sharing press releases and updates, Democracy Forward has also sought to disseminate information directly to the public through reports and opinion pieces written by our staff.<sup>5</sup>

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<sup>4</sup> See, e.g., Second Amended Complaint for Injunctive Relief at 31, *SurvJustice, Inc., et al. v. DeVos et al.*, No. 3:18-cv-00535-JSC (N.D. Cal. Oct. 31, 2018), ECF No. 86, reported on in Klein, *supra* n.5; Memorandum of Law in Support of Plaintiffs' Motion for Preliminary and Permanent Injunction at 14-15, *Healthy Teen Network and Mayor and City Council of Baltimore v. Azar and U.S. Dep't of Health and Human Services*, No. 1:18-cv-00468-CCB (D. Md. Mar. 27, 2018), ECF No. 18-1, reported on in Przybyla, *supra* n.5.

<sup>5</sup> See, e.g., *A Blueprint for Cronyism: President Trump's Illegal Infrastructure Plan to Enrich His Friends*, Democracy Forward Foundation (Jan. 30, 2018), <https://democracyforward.org/wp-content/uploads/2018/01/Infrastructure-Report.pdf>; Elana Schor, *Trump critics*

For all the foregoing reasons, Democracy Forward Foundation qualifies for a fee waiver.

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

#### **IV. Conclusion**

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 10-day period, please contact Robin Thurston as soon as possible at FOIA@democracyforward.org or (202) 448-9090.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Robin Thurston

Democracy Forward Foundation

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*seize on developer ties to infrastructure plan*, Politico (Jan. 30, 2018), <https://www.politico.com/story/2018/01/30/trump-infrastructure-developers-state-of-union-376326> (press coverage of DFF's report on White House infrastructure policy); *Airlines and the Trump Administration*, Democracy Forward Foundation (Jan. 11, 2018), <https://democracyforward.org/updates/airlines-and-the-trump-administration/>; Bart Jansen, *Lost bags, airline fees: Protections for travelers rights stall under Trump*, USA Today (Jan. 19, 2018), <https://www.usatoday.com/story/news/2018/01/19/lost-bags-airline-fees-protections-travelers-rights-stall-under-trump/1043879001/> (press coverage utilizing the information DFF organized regarding regulatory changes); *What Has Trump Done on Guns? A Lot.*, Democracy Forward Foundation (Feb. 21, 2018), <https://democracyforward.org/updates/trump-done-guns-lot/>; Christi Parsons, *Trump 'supportive' of tougher gun law, but his record suggests that may not mean much*, LA Times (Feb. 20, 2018) (press coverage utilizing the information DFF organized regarding regulatory changes); Anne Harkavy and Farhana Khera, *When the Trump administration lies, it might literally be illegal: Learn about the Information Quality Act*, NY Daily News (Feb. 14, 2019), <https://www.nydailynews.com/opinion/ny-oped-when-the-trump-administration-lies-it-might-literally-be-illegal-2019-02-13-story.html> (piece co-authored by DFF executive director); Meg Uzzell and Rachael Klarman, *Why These Women Are Suing Trump to Help End the Gender Pay Gap*, Teen Vogue (Nov. 28, 2017), <https://www.teenvogue.com/story/women-sue-trump-gender-pay-gap> (piece authored by two members of DFF's staff).