



April 15, 2013

FOIA Officer
U.S. Immigration and Customs Enforcement
800 North Capitol St., NW
5th Floor, Suite 585
Washington, DC 20528

Re: FOIA Request for Records Related to ICE Detainers Issued in Maryland

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

Dear Freedom of Information Officer:

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

This letter is a request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted on behalf of the American Civil Liberties Union of Maryland (“the ACLU”).

We seek records relating to immigration detainers, Form I-247, issued by ICE to law enforcement agencies and/or correctional facilities located in Maryland.

FIELD OFFICE
6930 CARROLL AVENUE
TAKOMA PARK, MD 20912
T/301-270-2258

The ACLU seeks expedited processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E) and agency regulations, and a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

WWW.ACLU-MD.ORG

Please provide:

OFFICERS AND DIRECTORS
ALLI HARPER
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

1. All records regarding each detainer (Form I-247) issued by ICE to another law enforcement entity in the State of Maryland, on or after January 1, 2010, including but not limited to:
 - a. the date on which the detainer was issued;
 - b. the date, if any, on which the detainer was cancelled or lifted, as well as the reason the detainer was cancelled or lifted;
 - c. the offense code, if any;
 - d. the crimes and/or violations of which the subject of the detainer has been accused and/or convicted;
 - e. the date, if any, that the subject was taken into ICE custody;
 - f. the receiving agency, jail, police department, or sheriff's office to which the detainer was sent;

C. CHRISTOPHER BROWN
GENERAL COUNSEL

- g. the date of release from state custody of the subject of the detainer;¹
 - h. the date, if any, on which the receiving agency, jail, police department or sheriff's office provided notice of the anticipated date of release of the subject of the detainer to ICE;
 - i. the country of origin of the subject of the detainer.
 2. All records relating to guidance, training, or instruction provided to members of particular police departments, sheriff's offices, or correctional facilities in the State of Maryland regarding the legal authority for honoring ICE detainees, the scope and extent of the legal force of ICE detainees, and/or the legal standard for issuing and/or honoring an ICE detainee.
 3. All records relating to policies, memoranda, guidance, training, or presentations regarding the legal authority for issuing and/or honoring ICE detainees, the scope and extent of the legal force of ICE detainees, and/or the legal standard for issuing and/or honoring an ICE detainee.

The Requestor

The ACLU of Maryland is a non-profit, tax-exempt organization dedicated to the public interest: protecting the civil rights and liberties of all Marylanders and visitors to Maryland. We request this information in order to inform the public and to carry out our charitable mission, specifically, to ensure that the policies which control the use of immigration detainees respect the constitutional rights of Maryland's citizens and visitors. We plan to publicize any information gained from this request in order to further public understanding of how immigration detainees are used in the State of Maryland. As a nonprofit organization with regular print and web publications, we are well-situated to disseminate information obtained from this request to the general public.

The ACLU is therefore an organization whose "main professional activity or occupation is information dissemination." 6 C.F.R. § 5.5(d)(3). The ACLU is also a "representative of the news media" within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that "gathers information of potential interest to a segment of the public" and "uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience"); *see also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); 6 C.F.R. § 5.11(b)(6) (defining representative of the news media as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.").

¹ This item refers to the date the subject of the detainee posts bond or has charges dismissed or completes his or her sentence or otherwise becomes no longer detainable on state grounds.

Expedited Processing

The ACLU requests Track 1 expedited treatment for this FOIA request, which qualifies for expedited treatment under 5 U.S.C. § 552(a)(6)(E) and applicable regulations. There is a “compelling need” for expedited processing of this request, *see* 5 U.S.C. § 552(a)(6)(E)(i)(I), namely, an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(d)(1)(ii). The ACLU is therefore entitled to expedited processing of this request.

Fee Waiver

“Public Interest” Fee Waiver Request

We request a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest 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.” See 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.11(k)(1).

The records sought here will significantly contribute to public understanding of the use and impact of immigration detainers in our local communities. See 28 C.F.R. § 16.11(k)(1)(i).

The ACLU of Maryland plans to analyze, publish, and disseminate widely to the public records disclosed as a result of this FOIA request through its website, www.aclu-md.org. This website provides in-depth information and materials on civil rights and civil liberties issues, features on civil rights and civil liberties issues in the news, and hundreds of documents relating to the issues on which the ACLU is focused. The site also contains a regularly-updated list of news stories pertaining to immigrants’ rights and racial justice issues. Information obtained through this FOIA request will also be analyzed and disseminated to the public through the national ACLU’s widely-read “Blog of Rights,” (<http://blog.aclu.org>), where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily.

The ACLU of Maryland publishes a newsletter at least two times a year that reports on and analyzes civil liberties-related current events. This newsletter often includes description and analysis of information obtained through FOIA or state public records requests. The newsletter is widely disseminated to approximately 14,000 people. The ACLU of Maryland also publishes an electronic newsletter, which is distributed once a week to subscribers (both ACLU members and non-members) by e-mail. The electronic newsletter is widely disseminated to approximately 7,600 people.

Disclosure of the requested records is not in the requester’s commercial interest. The records requested are not sought for commercial use and the ACLU of Maryland plans to disseminate the information disclosed as a result of this FOIA

request to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA's fee waiver provisions. 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.'") (citation omitted).

News Media Status Fee Limitation Request

We also request a waiver of document reproduction fees on the grounds that the requester qualifies as a "representative of the news media" and the records are not sought for commercial use. 28 C.F.R. § 16.11(d). The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gather[s] 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); see also *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that "gathers information from a variety of sources," 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); cf. *ACLU v. Dep't of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information").² As discussed above, the ACLU of Maryland, by itself and in conjunction with the national ACLU, routinely gathers information from a variety of sources (including from the government through FOIA), and organizes, creates web-hubs for, analyzes, publishes, and widely disseminates that information to the public.

Notably, courts have found other organizations whose missions, functions, publishing, and public education activities are similar in kind to the ACLU's to be "representatives of the news media" for purposes of FOIA. See, e.g., *Elec. Privacy Info. Ctr. v. Dep't of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the media" for purposes of FOIA); *Nat'l Security Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester for purposes of FOIA).³

² Fees associated with responding to FOIA requests are regularly waived for the ACLU, and a number of agencies have determined that the ACLU is a "representative of the news media for the purposes of FOIA, including the Departments of Justice, State, and Commerce. In December 2008, the Department of Justice found that the ACLU was a "representative of the news media" for the purposes of FOIA in the context of a request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists.

³ Courts have founds 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 *Judicial Watch, Inc.*, 133 F. Supp.

* * *

Thank you for your consideration of this request. If this request is denied in whole or in part, please justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all reasonably segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Should our request for expedited processing be denied, we alternatively look forward to your reply within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

Please notify us in advance if the cost of photocopying the documents requested exceeds \$100.

I certify under penalty of perjury that, to the best of my knowledge and belief, the above information is true and correct.

Sincerely,



Sirine Shebaya
ACLU of Maryland
3600 Clipper Mill Rd, Suite 350
Baltimore, MD 21211
(410) 889-8550, ext. 140
shebaya@aclu-md.org

2d at 53-54; see also *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference to be primarily engaged in disseminating information even though it engages in substantial amounts of legislative advocacy beyond its publication and public education functions).