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Founded in 1986, the Immigration Reform Law Institute (IRLI) is a nonprofit legal organization defending the rights and interests of Americans.

IRLI is a supporting organization of the Federation for American Immigration Reform (FAIR).

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November 30, 2023

Dear FOIA Officer:

I write on behalf of the Immigration Reform Law Institute (IRLI), a national, nonprofit public interest, membership organization of concerned Americans who share a common belief that our nation's immigration policies must be reformed to serve the national interest.

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, IRLI hereby requests that you produce the following records:

1. All records of communication, including email, between State Department employees and any university or college employee, from and including October 7, 2023 up to and including November 30, 2023. These emails can be limited to messages that include the words "Israel", "Palestine", "Gaza", "Hamas", "suspension", "expulsion" or "collateral consequence".

For fee purposes, IRLI requests that search, review, production and any and all other fees for this request be waived because of IRLI's public interest purpose and non-profit status. IRLI is entitled to a complete waiver of fees because of its public-interest purpose, the public interest in the information IRLI seeks, and IRLI's status as "representative of the news media." FOIA's fee waiver provision is contained at 5 U.S.C. § 552(a)(4)(A)(ii)(II). This states as follows:

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if 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.

The State Department considers certain factors when deciding whether the disclosure of the requested information is in the public interest for purposes of a waiver (or reduction) of fees. *See* 22 C.F.R. § 171.16(j), which provides in pertinent part (emphasis added):

(1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested 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.

(2) The Department must furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (j)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public shall be considered. ***The Department will presume that a representative of the news media satisfies this consideration.***

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the information is primarily in the commercial interest of the requester, the Department will consider the following factors:

(A) The Department must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the Department must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirement of paragraphs (j)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Department ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (j)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction must be granted for those records..

IRLI easily satisfies each of the relevant factors for media requester fee status and a fee waiver. First, the information responsive to our request clearly “would shed light on the operations or activities of the government ... with a connection that is direct and clear, not remote or attenuated.”

Second, information responsive to IRLI’s request would be “meaningfully informative” and “add[] to the public’s understanding” because it is not “already is in the public domain, in either the same or a substantially identical form.”

Third, the disclosure will “contribute significantly” to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to IRLI’s individual understanding, as IRLI intends to use its analytical and editorial skills to publish and disseminate to the general public the records obtained pursuant to this FOIA request through news articles, press releases, studies, and reports. Notably, IRLI has a special expertise in the subject matter of this FOIA request it has disseminated information to the public about immigration-related current events through the various media forms discussed below.

The law does not require a FOIA requester who qualifies for a fee waiver to spell out to the government in exacting detail how the disclosed information will significantly contribute to the public’s understanding of the government’s operations. Instead, a requester needs to merely “pinpoint the type of government activity he is investigating”¹ and describe with reasonable specificity the link between the request and the enhancement of public awareness and understanding of governmental activities. Also, agencies should administer the fee provision in

¹ *Jarvik v. CIA*, 495 F. Supp. 2d 67, 73 (D.D.C. 2007).

“an objective manner and should not rely on their own, subjective view as to the value of the information.”²

Finally, the disclosure would not be in the commercial interest of IRLI. IRLI is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code and does not seek this information for any commercial benefit. IRLI is committed to protecting the public’s right to be aware of the immigration-related activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies.

As multiple United States Courts of Appeals have noted, “Congress amended FOIA to ensure that it is ‘liberally construed in favor of waivers for noncommercial requesters.’”³ Of the information requested, there is no possibility, let alone plans, of pursuing profit-making opportunities. The information will be used to further the knowledge of interests of the general public. IRLI intends of disseminating its analysis of the requested information through its regular channels, discussed below. IRLI thus satisfies this element.

IRLI is entitled to a complete waiver of fees because IRLI undeniably qualifies as a “representative of the news media, or news media requester” under 5 U.S.C. § 552(a)(4)(A)(ii)(II). This provision defines “representative[s] of the news media” broadly to include organizations like IRLI that disseminate news through electronic communications, including “publishers of periodicals ... who make their products available for purchase by or subscription by or free distribution to the general public.” The statutory definition unequivocally requires that organizations which electronically disseminate information and publications via “alternative media shall be considered to be news-media entities.” *See also* 22 C.F.R. § 171.16(b) (providing a substantially similar definition as the statute).

What is more, in *National Security Archive v. U.S. Dep’t of Defense*,⁴ the United States Court of Appeals for the District of Columbia Circuit noted FOIA’s legislative history demonstrates that “it is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected... In fact, any person or organization which regularly publishes or disseminates information to the public...should qualify for waivers as a representative of the news media.”⁵

² 132 Cong. Rec. S14,298 (daily ed. Sept. 30, 1986) (statement of Sen. Leahy).

³ *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1311 (D.C. Cir. 2003) (quoting *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987)).

⁴ 880 F.2d 1381 (D.C. Cir. 1989).

⁵ *Id.* at 1386 (citations omitted).

The statutory definition in FOIA requires that organizations which electronically disseminate information and publications via “alternative media shall be considered to be news-media entities.”⁶ FOIA’s legislative history demonstrates “[i]t is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected... In fact, any person or organization which regularly publishes or disseminates information to the public... should qualify for waivers as a ‘representative of the news media.’”

For instance:

- IRLI maintains a frequently visited website at <http://www.irli.org/> that contains numerous news articles, press releases, studies, and reports authored by IRLI staff members;
- IRLI disseminates information via YouTube, Facebook, Twitter, Instagram and Rumble;
- IRLI staff members regularly give interviews and disseminate information on MSNBC, CNN, ABC, NBC, CBS, Fox News, C-SPAN, among other TV stations, and hundreds of radio stations;
- IRLI staff members give interviews for news articles and author news pieces that appear in the New York Times, USA Today, Washington Post, and hundreds of other newspapers, magazines, and websites;
- IRLI staff members have testified before congressional and state legislative committees as experts on immigration-related issues.

IRLI will use its staff’s multi-decades of combined experience in policy and legal analysis, investigative reporting, government oversight, and public interest litigation to turn the documents request in this FOIA request into distinct works that will disseminate through the aforementioned media outlets. Based on these extensive publication activities, IRLI qualifies for a fee waiver as a “representative of the news media or news media requester,” under FOIA and the regulations.

Finally, for the reasons set forth above, it is self-evident that the requested information constitutes “news” for purposes of FOIA.

If you have questions about this request, please contact me by e-mail at foia@irli.org or by phone at 202-792-1081.

Thank you for your attention to this matter.

Sincerely,

⁶ 5 U.S.C. § 552(a)(4)(A)(ii)(III). *See generally Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S.

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Jason Hopkins