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"journalists, editors, correspondents, social media influencers, [and] bloggers."[2] For each news source, DHS requests that the database include analysis of the media's "sentiment" and "type of influence"; for each "influencer," DHS seeks "contact details"—which can be exported into a list—and any other information that could be relevant, including publications th[e] influencer writes for, and an overview of [the influencer's] previous coverage."[3]

DHS's stated objective is to enable "NPPD/OUS to monitor traditional news sources as well as social media [and] identify any and all media coverage related to [DHS] or a particular event" in order to "better reach federal, state, local, tribal, and private partners."[4] The Statement of Work does not define the scope of "particular event[s]" regarding which media might be monitored, who the agency's "partners" of interest are, or what "reaching" them would entail.

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In light of this minimal information, members of the public have been questioning the database's purpose and scope since it was publicly announced. Some have expressed concerns that it is part of the government's "increasing . . . encroachment on the freedom of the press" and that those in the database may soon face difficulties traveling abroad.[5] Others have hypothesized that the database is a reaction to "heightened concern about accuracy in the media and the potential for foreigners to influence U.S. elections and policy through 'fake news.'"[6]

Responding to the media's concerns about DHS's plan to build a media monitoring database, an agency spokesman stated that the database reflects "nothing more than the standard practice of monitoring current events in the media" He went on to state "[a]ny suggestion otherwise is fit for tinfoil hat

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[2] Statement of Work for Media Monitoring Services at 1, DEP'T OF HOMELAND SEC. (Apr. 3, 2018), available at https://www.fbo.gov/index.php?s=opportunity&mode=form&id=22aa793f75ce05efd160cfa36d7a8acc&tab=core&tabmode=list&=.

[3] Id.

[4] Id. at 1.

[5] Michelle Fabio, Department Of Homeland Security Compiling Database Of Journalists And 'Media Influencers,' FORBES (Apr. 6, 2018), https://www,

wearing, black helicopter conspiracy theorists."[7] Following this statement, news reports continued to question "why [and] how the contradiction would play out."[8]

Little is publicly known about the intended purpose and functioning of this new database. To provide the public with information about DHS's monitoring of news, social media conversations, and journalists, the ACLU submits this FOIA Request.

II. Requested Records

The ACLU seeks the release of records (including emails, voicemail messages, reports, memoranda, guidance documents, instructions, training documents, formal and informal presentations, directives, contracts or agreements, memoranda of understanding, minutes or notes of meetings and phone calls, and written or electronic communications) concerning DHS's April 3, 2018 Statement of Work for Media Monitoring Services.[9] This includes but is not limited to all records concerning why the system is being put in place and what it will be used for, as well as all communications to and from any private business and/or its employees concerning the Media Monitoring Services.

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

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).[10] There is a "compelling need" for these records, as defined in the statute, because the information requested is "urgently needed" by an organization primarily engaged in disseminating information "to inform the

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[7] Tweet available at https://twitter.com/SpoxDHS/status/982372727309963264?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Fthehill.com%2Fhomenews%2Fadministration%2F382039-dhs-spokesman-dismisses-critics-of-agency-news-database-as-conspiracy

[8] See, e.g., Sam Machkovech, DHS defends media-monitoring database, calls critics 'conspiracy theorists,' ARS TECHNICA (Apr. 6, 2018), https://arstechnica.com/tech-policy/2018/04/dhs-defends-media-monitoring-database-calls-critics-conspiracy-theorists/

[9] Statement of Work for Media Monitoring Services at 1-2, DEP'T OF HOMELAND SEC. (Apr. 3, 2018), available at https://www.fbo.gov/index.php?s=opportunity&mode=form&id=22aa793f75ce05efd160cfa36d7a8acc&tab=core&tabmode=list&=.

[10] See also 6 C.F.R. § 5.5(e)

and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.[14]

Similarly, the ACLU 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 and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.[15] The ACLU also regularly publishes books, "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 creates and disseminates original editorial and educational content on civil rights and civil liberties news through multimedia projects, including videos, podcasts, and interactive features.[17] The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU focuses. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multimedia features.

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The ACLU website includes many features on information obtained through the FOIA.[18] For example, the ACLU's "Predator Drones FOIA" webpage contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.[19] Similarly, the ACLU maintains an online "Torture Database," which compiles more than 100,000 pages of documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.[20]

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[17] See https://www.aclu.org/multimedia.

[18] See, e.g., Nathan Freed Wessler & Dyan Cortez, FBI Releases Details of 'Zero-Day' Exploit Decisionmaking Process (June 26, 2015, 11:00 AM), https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process; Nathan Freed Wessler, FBI Documents Reveal New Information on Baltimore Surveillance Flights (Oct. 30, 2015, 8:00 AM), https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights; ACLU v. DOJ – FOIA Case for Records Relating to the Killing of Three U.S. Citizens,

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources—including the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.[21] Similarly, the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program,[22] a summary of documents released in response to a FOIA request related to the FISA Amendments Act,[23] a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA requests,[24] and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.[25]

The ACLU 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.

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).[26] Specifically, the requested records relate to DHS' monitoring of the news media and individual journalists. As discussed in Part I, supra, DHS is seeking bids for a contract to build an expansive media monitoring database, but little information is available to the public regarding the nature and purpose of that monitoring.

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collection/tsa-behavior-detection-foia-database; Targeted Killing FOIA Database, ACLU, https://www.aclu.org/foia-collection/targeted-killing-foia-database.

[21] Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance, ACLU (Mar. 5, 2009), https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

[22] Bad Trip: Debunking the TSA's 'Behavior Detection' Program, ACLU (2017), https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf.

[23] Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010, ACLU, https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf

[24] Statistics on NSL's Produced by Department of Defense, ACLU, https://www.aclu.org/other/statistics-nsls-produced-dod.

[25] Nathan Freed Wessler, FBI Documents Reveal New Information on Baltimore Surveillance Flights (Oct. 30, 2015, 8:00 AM), https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights.

[26] See also 6 C.F.R. § 5.5(e)(1)(ii).

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

IV. Application for Waiver or Limitation of Fees

The ACLU 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 that 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).[27] The ACLU also requests a waiver of search fees on the

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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." See 5 U.S.C. § 552(a)(4)(A)(ii)(III);[29] see also Nat'l Sec. Archive v. DOD, 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); Nat'l Women's Action Network v. DOD, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including the 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. DOJ, 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 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 is therefore a "representative of the news media" for the same reasons that it is "primarily engaged in the dissemination of information."

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Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar to the ACLU's to be "representatives of the news media." 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. DOJ, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding that Judicial Watch, self-described as a "public interest law firm," is a news media requester).[30]

Given these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a "representative of the news media."[31]

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[29] See also 6 C.F.R. § 5.11(b)(6).

[30] 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 1386; see also Leadership Conference on Civil Rights, 404 F. Supp. 2d at 260; Judicial Watch, Inc., 133 F. Supp. 2d at 53–54.

[31] In August 2017, CBP granted a fee waiver request regarding a FOIA request for records relating to a muster sent by CBP in April 2017. In May 2017, CBP granted a fee waiver request regarding a FOIA request for documents related to electronic device searches at the border. In April 2017, the CIA and the Department of State granted fee waiver requests in relation to a FOIA request for records related to the legal authority for the use of military force in Syria.