



Northern
California

March 21, 2018

VIA U.S. POSTAL SERVICE, CERTIFIED MAIL
RETURN RECEIPT REQUESTED

VIA EMAIL ICE-FOIA@dhs.gov

U.S. Immigration and Customs Enforcement
FOIA Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

Re: Freedom of Information Act Request
Expedited Processing Requested

Attention:

I am a staff attorney at the American Civil Liberties Union Foundation of Northern California. I write on behalf of the American Civil Liberties Union of Northern California to request records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 522 *et seq.*, implementing regulations 6 C.F.R. § 5.1 *et seq.*, and any other applicable regulations.

I. REQUEST FOR INFORMATION

The American Civil Liberties Union of Northern California (the "ACLU-NC") hereby requests disclosure of certain records in your possession relating to certain contracts by and between the U.S. Immigration and Customs Enforcement ("ICE") and contractors related to Automated License Plate Reader ("ALPR") systems, databases, and technology.¹

¹ The term "records" as used herein includes all records or communications preserved in written or electronic form, including but not limited to: correspondence, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, training manuals, other manuals, or studies. With respect to privacy concerns for members of the public, we will accept copies that are redacted to protect identifying information such as names, social security numbers, and alien numbers, but we would object to the redaction of birthdates and birthplaces that would interfere with our ability to determine the ages and countries of origin for members of the public. In addition, we request that members of the public whose identifying information is redacted be identified with an alphanumeric code so that multiple records related to the same individual will be recognized as such. This redaction agreement does not apply to identifying information such as names and badge numbers for federal agents.

American Civil Liberties Union Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Magan Pritam Ray
SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

On December 15, 2017, ICE issued a Request for Quotation No. 70CDCR18Q00000005, “Request for Quote for Access to License Plate Reader (LPR) Database” (the “Request for Quotation”), attached hereto as Attachment A. On December 27, 2017, ICE issued a “Privacy Impact Assessment Update for the Acquisition and Use of License Plate Reader (LPR) Data from a Commercial Service,” DHS/ICE/PIA-039(a) (the “Updated PIA”), in which it referenced a contract with a vendor (the “Vendor”) related to access to a commercial ALPR database.² ICE also published a Solicitation and Contract Award No. 70CDCR18P000000017, “Access to Commercially Available LPR Database” (the “Commercial ALPR Database Contract”).³

In particular, we request disclosure of records containing the following information:

1. Any quotations, information, offers, proposals or other responses provided in response to Request for Quotation No. 70CDCR18Q00000005, “Request for Quote for Access to License Plate Reader (LPR) Database,” issued by ICE/Detention Compliance & Removals on December 15, 2017 (the “Request for Quotation”), attached hereto as Attachment A;
2. Any training materials, written instructions, presentations, manuals, or publications regarding the commercial ALPR database contract referenced in the Updated PIA, the contracts discussed by the Request for Quotation, and the Commercial ALPR Database Contract, including but not limited to training or written instructions referenced on pages 6–7 of the Request for Quotation;
3. The document titled “Privacy Guidance: Agency Access to and Use of License Plate Reader Data and Technology,” issued December 2017 from the ICE Office of Information Governance & Privacy that is referenced in footnote 2 of the Updated PIA;
4. Any communications between agency personnel and any representative of any law enforcement agency in the state of California regarding the use or sharing of license plate reader data by agency personnel, or by third parties;
5. Audit logs for ICE’s use of the Vendor’s ALPR database, exported in Excel format, which are available through the Vendor’s web interface (as described on page 16 of the Updated PIA), including any statistical reports generated by the Vendor (as described on page 17 of the Updated PIA);
6. Any information tending to show ALPR data⁴ from other entities to which ICE has access, including but not limited to a sharing report, in Excel format, generated by the Vendor’s system listing all entities sharing data with ICE and all entities with which ICE has shared ALPR data;

² See <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-lpr-january2018.pdf>.

³ https://www.fbo.gov/index?s=opportunity&mode=form&id=5629706f5736d22bd174b11965f5ac4c&tab=core&_cview=0.

⁴ “ALPR data” means information or data collected through the use of an automated license-plate reader system.

7. The names of any “hot” or “alert” lists that ICE has created, maintains, shares, or receives, including but not limited to any such lists stored in the Vendor’s ALPR system; and
8. Audit logs for ICE’s use of the database(s) to which it has access pursuant to the Commercial ALPR Database Contract, exported in Excel format.

II. REQUEST FOR EXPEDITED PROCESSING

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and the statute’s implementing regulations. There is a “compelling need” for these records, as defined in the statute and regulations, because there is urgency to inform the public concerning actual or alleged Federal Government activity and the request has been made by an organization primarily engaged in disseminating information. *See* 5 U.S.C. § 552(a)(6)(E)(v); 6 C.F.R. § 5.5(e)(1)(ii).

First, the ACLU-NC is a requestor “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). The ACLU-NC is an affiliate of the ACLU, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. The ACLU-NC is responsible for serving the population of northern California. ACLU-NC staff persons are frequent spokespersons in television and print media and make frequent public presentations at meetings and events. The ACLU-NC plans to analyze and disseminate to the public the information gathered through this Request at no cost, and the records are not sought for any commercial purpose.

Dissemination of information about actual or alleged governmental activity is a critical and substantial component of the ACLU’s mission and work. The ACLU-NC actively disseminates and frequently garners extensive media coverage of the information it obtains about actual or alleged government activity through FOIA and California’s statutory counterpart, the California Public Records Act. It does so through a heavily visited website (averaging between 10,000 and 20,000 visitors per week) and a paper newsletter distributed to its members, who now number over 170,000. In the past, FOIA requests, litigation over FOIA responses, and information obtained by the ACLU-NC through FOIA about the federal government’s immigration enforcement, ethnic and racial profiling, and detention operations have been the subject of articles on the ACLU-NC’s website.⁵ They have also garnered coverage by other news media.⁶ ACLU-NC staff persons are frequent spokespersons in television and print media and make frequent public presentations at meetings and events.

⁵ *See, e.g.*, <https://www.aclunc.org/news/aclu-northern-california-files-demands-documents-implementation-trumps-muslim-ban> (FOIA request for CBP detention and deportation records); <https://www.aclunc.org/news/aclu-northern-california-files-lawsuit-demanding-documents-implementation-trumps-muslim-ban> (lawsuit challenging government’s response to FOIA request for CBP records) <https://www.aclunc.org/news/aclu-seeks-records-immigration-enforcement-actions-northern-california> (FOIA request for ICE enforcement action records); <https://www.aclunc.org/news/lawsuit-seeks-documents-regarding-ice-raids> (lawsuit challenging government’s response to FOIA request for ICE enforcement action records);

⁶ *See, e.g.*, Eric Tucker, *5 Men Sue Over Anti-Terror Info-Sharing Program*, Associated Press, July 9, 2014, <http://goo.gl/NYgF8p>; Hameed Aleaziz, *Lawsuit Against ICE Seeks Information on Asylum Seekers*, SFGate.com,

Courts have found that the ACLU and similar organizations are “primarily engaged in disseminating information” for purposes of expedited processing under FOIA. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information” (internal citation omitted)); *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”).

Second, there is urgency to inform the public concerning actual or alleged federal government activity. Recent news articles reflect the significant media and public interest in the use of ALPR technology by governments. *See* Russel Brandom, *ICE Is About to Start Tracking License Plates Across the US*, THE VERGE (Jan. 26, 2018), <https://www.theverge.com/2018/1/26/16932350/ice-immigration-customs-license-plate-recognition-contract-vigilant-solutions>; Tal Kopan, *ICE Inks Contract for Access to License Plate Database*, CNN (Jan. 26, 2018), <https://www.cnn.com/2018/01/26/politics/ice-license-plate-readers/index.html>; Chantal Da Silva, *City Refuses to Let Ice Track License Plates With 'Digital Deportation Machine'*, NEWSWEEK (Feb. 14, 2018), <http://www.newsweek.com/city-refuses-let-ice-track-licenses-places-digital-deportation-machine-806845>. This request will inform an urgent ongoing debate about the use of ALPR tracking by governments agencies, and specifically seeks to inform the public’s understanding of how federal agencies utilize ALPR data in immigration enforcement.

III. APPLICATION FOR WAIVER OR LIMITATION OF FEES

A. Release of the records is in the public interest.

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the United States government’s operations or activities and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k).

As discussed above, numerous news accounts reflect the considerable public interest in the requested records. Given the ongoing and widespread media attention to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities of the Department of Homeland Security and ICE, and will be of

Oct. 20, 2016, <http://goo.gl/VjBJYZ>; Luke Darby, *What Surveillance Looks Like Under the Trump Administration*, GQ Magazine, May 1, 2017, <http://goo.gl/oYvQfq>; Daisy Alioto, *How Taking a Photograph Can Land You a Visit from the FBI*, Artsy.com, June 20, 2017, <http://goo.gl/bGZvPh>; Nicole Narea, *ICE To Hand Over Asylum Seeker Detention Policy Data*, Law360.com, Aug. 9, 2017, <http://goo.gl/Q4y34D>.

interest to a broad interest. See 6 C.F.R. § 5.11(k)(1)(i), (k)(2)(iii). In addition, disclosure is not in the ACLU-NC's commercial interest. As described above, any information disclosed as a part of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. 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); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

B. The ACLU-NC qualifies as a representative of the news media.

A waiver of search and review fees is warranted because the ACLU-NC qualifies as a "representative of the news media" and the requested records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); see also 6 C.F.R. §§ 5.11(b)(6), (k)(2)(iii). Accordingly, fees associated with the processing of this request should be "limited to reasonable standard charges for document duplication." The ACLU-NC 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." 5 U.S.C. § 552(a)(4)(A)(ii)(II); see also *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); cf. *ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU-NC is a "representative of the news media" for the same reasons that it is "primarily engaged in the dissemination of information." See *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes). The ACLU-NC recently was held to be a "representative of the news media." *Serv. Women's Action Network v. Dep't of Def.*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at *3 (D. Conn. May 14, 2012); see also *ACLU of Wash. v. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a "representative of the news media"), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

* * *

Pursuant to the applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(e)(4).

If this request for information is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to the Freedom of Information Act. We expect you to release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please furnish all applicable records to Vasudha Talla, American Civil Liberties Union of Northern California, 39 Drumm Street, San Francisco, California 94111, telephone (415) 621-2493 ext. 308.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Executed on the 21st day of March, 2018.

Sincerely,

A handwritten signature in black ink that reads "Vasudha Talla" with a long horizontal flourish extending to the right.

Vasudha Talla

Staff Attorney

American Civil Liberties Union Foundation of Northern California