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August 31, 2017

VIA EMAIL

Sam Kaplan
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
E-mail: foia@hq.dhs.gov

Brendan Henry
FOIA Officer/Public Liaison for Office of Intelligence and Analysis
U.S. Department of Homeland Security
Washington, D.C. 20528
Phone: 202-447-3783
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Re: Freedom of Information Act Records Request

Dear Mr. Kaplan and Mr. Henry:

Democracy Forward Foundation makes this request on behalf of Muslim Advocates pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 *et seq.* and Department of Homeland Security ("DHS") FOIA regulations beginning at 6 C.F.R. Part 5.

Background

In April 2017, former DHS Secretary Kelly made remarks to George Washington University in which he discussed "radical Islam" and the threat that he believed it posed to the United States.

In that speech, he discussed 36 terrorist cases that had been identified in the prior 12 months.

All of those cases were identified as "jihadist." See *Home and Away: DHS and the Threats to America*, DHS (Apr. 18, 2017),

<https://www.dhs.gov/news/2017/04/18/home-and-away-dhs-and-threats-america>.

The Administration's focus, including by DHS, on "radical Islam" has been widely reported. See Emily Tamkin et al., *Trump's Focus on 'Radical Islam' Downplays Growing Risk from Right-Wing Extremism, Experts Fear*, Foreign Policy, Feb. 15, 2017, <http://foreignpolicy.com/2017/02/15/trumps-focus-on-radical-islam-downplays-growing-risk-from-right-wing-extremism-experts-fear/>; Julia Edwards Ainsley et al., *Exclusive: Trump to Focus Counter-Extremism Program Solely on Islam-Sources*, Reuters, Feb. 1, 2017, <https://www.reuters.com/article/us-usa-trump-extremists-program-exclusiv-idUSKBN15G5VO>.

Records Requested

In an effort to understand, and explain to the public, the government's work regarding what it terms "radical Islam," Muslim Advocates requests that DHS produce the following within twenty (20) business days:

- All records discussing or using the phrases: radical Islam, radical Islamic terrorism, Islamist, Islamist extremist, Islamic extremist, jihadi, jihadist, sharia, or derivations thereof (including, for example, the substitution of "terrorist" for "terrorism" and "extremism" for "extremist").

The time period for this request is from January 20, 2017 to the date the search is conducted.

Please search the following DHS components, including subcomponents thereof: the Office of the Secretary, including but not limited to the Office of Policy and the Office of Legislative Affairs subcomponents, the Office of Partnership and Engagement, including but not limited to the Office for Community Partnerships, and the Office of Intelligence and Analysis

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.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption 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 be reasonably segregated. See 5 U.S.C. § 552(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 proportion of the information in a document is 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.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Request for Fee Waiver

Muslim Advocates requests a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and 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.” 5 U.S.C. § 552(a)(4)(A)(iii). Muslim Advocates also requests a waiver of search fees on the ground that it qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because, as discussed above, news accounts underscore the substantial public interest in the records sought through this request. 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing and widespread media attention, the records sought will contribute significantly to public understanding of an issue of profound public importance. Moreover, Muslim Advocates is a nonprofit organization organized under Internal Revenue Code § 501(c)(3) and is dedicated to promoting policy engagement and civic education. As a nonprofit organization, it does not have a commercial interest in the records. The records obtained from this request will be made available to the public at no cost.

Muslim Advocates also requests a waiver of search fees because it is a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Muslim Advocates meets the definition of “representative[s] of the news media” because it gathers information, exercises editorial discretion in selecting and organizing documents, and “distributes the resulting work to the public.” *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). It is therefore a “representative of the news media” for the same reasons it is “primarily engaged in disseminating information.” 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), 552(a)(6)(E)(v)(II). Muslim Advocates has performed its function as a representative of the news media with regard to past FOIA requests. For example, Muslim Advocates joined with the American Civil Liberties Union in disseminating the records obtained

from the CBP in response to a joint 2010 FOIA request.¹ Additionally, in 2009, Muslim Advocates pursued FOIA litigation against the FBI that resulted in public disclosure of previously withheld information.²

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.

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 20-day period, please contact Robin Thurston as soon as possible at rthurston@democracyforward.org or 202-771-1775.

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

Sincerely,

/s/ Robin Thurston
Democracy Forward Foundation
Counsel for Muslim Advocates

¹ See *Invasive Questioning at the Border*, ACLU (last visited Aug. 29, 2017), <https://www.aclu.org/invasive-questioning-border?redirect=free-speech-national-security-racial-justice-religion-belif/invasive-questioning-border>.

² See *Press Advisory: U.S. Department of Justice Continues to Cloak Public Access to Guidelines on FBI Surveillance of Mosques & Communities*, Muslim Advocates (Oct. 15, 2009), https://d3n8a8pro7vhmx.cloudfront.net/muslimadvocates/pages/191/attachments/original/1361200382/10-15-09_Amended_Complaint_Press_Release.pdf?1361200382.