February 7, 2018

VIA Electronic Delivery

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Freedom of Information Officer
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Kimberly Epstein
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FOIA@acf.hhs.gov

Re: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 *et seq*., and the U.S. Department of Health and Human Services ("HHS") FOIA regulations beginning at 45 C.F.R. Part 5, the Democracy Forward Foundation submits this request for records on behalf of Muslim Advocates.

Background

In September 2017, several news outlets reported that that Trump Administration was seeking to assess whether a refugee could assimilate and contribute to the United States in making determinations about which refugees to accept for resettlement.[1] This reporting was based on

[1] *See, e.g.*, Felicia Schwartz, *In Vetting Refugees, U.S. Plans to Assess Ability to Assimilate*, The Wall Street Journal (Sept. 27, 2017), https://www.wsj.com/articles/in-vetting-refugees-u-s-plans-to-assess-ability-to-assimilate-1506557243; Tal Kopan, *Trump admin to consider refugee 'assimilation and contribution'*, CNN (Sept. 28, 2017), http://www.cnn.com/2017/09/28/politics/trump-refugees-assimilation/index.html.

language in the Proposed Refugee Admissions for Fiscal Year 2018 Report to Congress ("2018 Refugee Report"), which stated

> "PRM and DHS/USCIS will work closely with [the United Nations High Commissioner for Human and Civil Rights ("UNHCR")] to ensure that, in addition to referrals of refugees with compelling protection needs, referrals may also take into account ***certain criteria that enhance a refugee's likelihood of successful assimilation and contribution to the United States***."[2]

The 2018 Refugee Report did not elaborate what those "certain criteria" are, or how they would be applied in practice.

Records Requested

In an effort to understand, and explain to the public, whether and how HHS is implementing a policy to select refugees for resettlement on the basis of "certain criteria that enhance a refugee's likelihood of successful assimilation and contribution to the United States," Democracy Forward Foundation requests that HHS produce the following within twenty (20) business days:

1. Any and all records received from, or sent to, members of the White House Domestic Policy Council or the National Security Council discussing or pertaining to the Proposed Refugee Admissions for Fiscal Year 2018 Report to Congress.

2. Any and all records discussing or pertaining to a requirement that Priority 1, or P-1, referrals from UNHCR demonstrate an ability to assimilate or contribute to the United States.

3. Any and all records containing the term "refugee" and the phrase "successful assimilation and contribution."

4. Any and all records received from, or sent to, UNHCR discussing, instructing, or otherwise pertaining to UNHCR's role in referring refugees for resettlement in the United States.

In completing this request, please search for records within the following HHS offices: Office of the Secretary of Health and Human Services; Office of Intergovernmental and External Affairs; Office of the Assistant Secretary for Legislation; Office of the Assistant Secretary for Public Affairs; Office for the Administration for Children and Families;

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

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,

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[2] United States Department of State et al., Report to the Congress: Proposed Refugee Admissions for Fiscal Year 2018 at 8, *available at* https://www.state.gov/documents/organization/274857.pdf.

telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

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); *id.* at § 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.[3] Additionally, in 2009, Muslim Advocates pursued FOIA litigation against the FBI that resulted in public disclosure of previously withheld information.[4]

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 foia@democracyforward.org or 202-448-9090.

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

Sincerely,

/s/ Karianne Jones
Democracy Forward Foundation
Counsel for Muslim Advocates

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[3] *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-belief/invasive-questioning-border.

[4] *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.