



October 11, 2018

Kevin Krebs, Assistant Director, FOIA/Privacy Staff
Executive Office for United States Attorneys
Department of Justice
175 N Street, NE
Suite 5.400
Washington, DC 20530-0001

Dear Mr. Krebs:

Muslim Advocates submits this request to the Executive Office for United States Attorneys (“EOUSA”) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* We seek that you grant a fee waiver for this request. Please also refer the requests contained in this letter to any other agency or component agency as appropriate.

I. Background

Muslim Advocates seeks records pertaining to the involvement of the U.S. Attorney’s Office for Colorado (“USAO-CO”) with Denver Police Department’s (“DPD”) efforts directed at Countering Violent Extremism (“CVE”). In its 2016 CVE grant application to the Department of Homeland Security (“DHS”), DPD identified USAO-CO as one of its federal partners.¹ DPD stated that it is working with the U.S. Attorney’s Office and DHS Office of Strategic Engagement to “develop an intervention model aimed at preventing and intervening before an individual becomes radicalized to commit acts of violence.”² This request covers information regarding USAO-CO’s role in assisting DPD with the development of their CVE program.

II. Description of Records

This request seeks records³ that pertain to USAO-CO’s involvement with CVE in collaboration with the DPD.

¹ FY 2016 Countering Violent Extremism Grants Funding Opportunity Number: DHS-16-OCP-132-00-01, Denver Police Department Application EMW-2016-CA-APP-00381.

² *Id.* at 9.

³ The terms “records” is intended in the broadest possible sense and includes without limitation all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, legal and policy memoranda, minutes or notes of meetings and phone calls, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message), training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations. No category of material should be omitted from search, collection, and production.

Records requested are as follows:

1. Procedures, policies, guidelines, or legal memoranda drafted or circulated in the course of USAO-CO and DPD developing a CVE program;
2. Correspondence or any other communication between USAO-CO and DPD or between USAO and any other parties affiliated with the proposed CVE program in Denver, including DHS Office of Strategic Engagement, DOIRA, or DPS, discussing the development and implementation of an intervention model or any other techniques related to CVE efforts;
3. Records concerning any events, meetings, conferences, briefings, workshops, and/or trainings attended by USAO-CO employees relating to Denver CVE efforts;
4. Records or communications by USAO-CO employees concerning CVE training of Colorado state and local law enforcement officers, investigators, and any other related law enforcement, including the DPD and the Aurora Police Department;
5. Communications between USAO-CO employees and the Colorado Muslim Connection, DHS, the National Counterterrorism Center, and other Department of Justice affiliates discussing officer education on CVE and training, and partnering with community groups on CVE;
6. Records or communications stemming from work or efforts DPD, DOIRA, DPS, and/or DHS' Office of Strategic Engagement have undertaken in conjunction with USAO, and any reports, documents, meetings, briefings, conferences, workshops and trainings stemming from a collaboration between USAO-CO, DPD, DOIRA, DPS, and/or DHS' Office of Strategic Engagement;
7. Copies of written agreements between USAO-CO and DPD for the development or implementation of CVE programs;
8. Correspondence or any other communications involving USAO-CO personnel and representatives of DPD where CVE is discussed;
9. Records or communications involving USAO-CO employees that discuss DPD's Citizens' Academy or Citizens' Police Academy, community-based strategies for engagement, intervention models, Gang Reduction Initiative of Denver (GRID), and/or Denver's Bridging the Gap Program;
10. Records or communications involving USAO-CO employees and DPD that discuss the Strong Cities Network, Denver's designation as a Strong City, and collaboration or information sharing between Denver and the Strong Cities Network on any efforts related to CVE; and
11. Records describing the processing of this request, including but not limited to records sufficient to identify the search terms used and the search queries conducted; records sufficient to identify the locations and custodians searched; any tracking sheets used to

track the processing of this request; and any FOIA questionnaires or certifications completed by individual custodians or components used to determine whether they possess responsive materials or to describe how they conducted searches.

III. Description of Processing

Muslim Advocates requests disclosure of the following records that were prepared, received, transmitted, collected and/or maintained by the Recipients and any other agency components thereof.

Please search all records regarding agency business. Please do not rely solely on custodian-driven searches; the government-wide requirements to manage information electronically by the end of 2016 have rendered it unreasonable to rely exclusively on custodian-driven searches.⁴ However, please do perform custodian-driven searches; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts. Please do not exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts; records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.⁵ Please do not omit such searches merely because the agency has policies and procedures requiring officials to move records to official systems within a certain period of time; separate searches are still necessary in case the policies or procedures were not followed.⁶ Please use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched.⁷ Muslim Advocates is available to work with you to craft appropriate search terms, if necessary.

Please produce records in electronic form. Where possible, please provide responsive material in electronic format by email to nimra@muslimadvocates.org. Please furnish any responsive material being sent by mail to:

Muslim Advocates
P.O. Box 34440

⁴ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

⁶ See Order, *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765,*8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work- related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)), ECF no. 31.

⁷ For example: agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but the agency’s archiving tools would capture that email under Capstone.

Washington, DC 20043

Please produce electronic records in their native format. With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), Muslim Advocates requests that responsive electronic records be provided electronically in their native file format, if possible. In particular, please produce electronic files in a format that contains the original metadata of the files.⁸ If the records cannot be produced in their native format, please (1) provide an explanation why the records cannot be so produced; and (2) please produce records electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and in separate, Bates-stamped files.

Please produce documents as they become available. Muslim Advocates would prefer a rolling production. I would be happy to discuss a search priority and schedule for production.

If you withhold records or parts of records, please provide the justification for the withholding. If it is your position that any portion of the requested records is exempt from disclosure, please provide an index of those records as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”⁹ Please ensure that the *Vaughn* index “describe[s] each document or portion thereof withheld, and for each withholding . . . discuss[es] the consequences of disclosing the sought-after information.”¹⁰ Please also “supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”¹¹

If you withhold portions of a record, please produce all segregable portions. In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹² Please state claims of non-segregability with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

⁸ As a non-exhaustive list of examples: Microsoft Excel spreadsheets are to be produced as files that open in Excel, with all original data and formulas intact; Microsoft Word documents are to be produced in the same file format they are stored in, such that they contain all tracked changes and comments present in the documents; and emails are to be produced with all metadata fields intact, including but not limited to the date and time the email was sent, the full names and email addresses of all recipients, any data contained in the bcc: field, and all attachments.

⁹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹⁰ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

¹¹ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹² *Mead Data Central, Inc.*, 566 F.2d at 261.

V. Application for Waiver or Limitation of Fees

Muslim Advocates is a non-profit civil rights and advocacy organization; it focuses on issues of particular relevance to the American Muslim community.¹³ We request a waiver of fees for document search, review, and duplication on the grounds that 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 grounds that the Requestor 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).

A. This request 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 Requestor.

An agency must waive or limit FOIA-related fees if a request 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). This Request meets both these requirements.

Here, the requested records detail the development of CVE programs in Colorado and the relationship between the DPD and partner organizations working on CVE programs. The value and implementation of such programs are highly debated, especially among parts of the Muslim community.¹⁴ Members of the public residing in Colorado—particularly concerned Muslim residents—have a significant and urgent interest in knowing how the Denver model for CVE operates in and affects their communities and their rights. We do not seek to use the information requested for commercial use, 22 C.F.R. § 171.16(a)(2), and do not have a commercial interest that would be furthered by the disclosure. Instead, our primary interest in the disclosure of information is to educate the public and advocate for the rights of Americans to be free from racial and religious profiling. § 171.16(a)(2)(i)-(ii).

These records will shed light on current government practices. The stated goals of the grant include designing programs that instruct hundreds of police officers on preventing and combating violent extremism as well as programs where police officers mentor students designated troubled or at-risk within Denver Public Schools.¹⁵ The grant application also references a community outreach component targeted at immigrant populations throughout the city. This information directly impacts the lives of Denverites, especially those who are immigrants, refugees, religious minorities, parents, and schoolchildren.

Funding for CVE programs is particularly controversial because it prejudicially targets Muslim communities, casting them under suspicion and labeling them as inherently susceptible to terrorism – even as numerous crime statistics and surveys indicates that American Muslims have

¹³ *About*, MUSLIM ADVOCATES, <https://www.muslimadvocates.org/about/>.

¹⁴ *See, e.g., Countering Violent Extremism (CVE)*, available at <https://www.muslimadvocates.org/cve-countering-violent-extremism/>.

¹⁵ FY 2016 Grant, *supra* note 4.

no greater predilection for violence than any other American religious group.¹⁶ Muslim Advocates serves these communities through legal advocacy and educational outreach and it is imperative we understand how CVE-related funding is dedicated in each city with a program.

Further, the information in these documents has the potential to either reveal or confirm the absence of government misconduct, which is inherently in the public interest. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1313-14 (D.C. Cir. 2003) (“[T]he public is always well served when it knows how government activities, particularly matters touching on legal and ethical questions, have been conducted.”). News accounts¹⁷ underscore the substantial public interest in the records sought through this request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance.

The Requestor is not filing this Request to further its commercial interest. Requester Muslim Advocates is a 501(c)(3) non-profit organization. Any information disclosed by the Requestor as a result of this FOIA request will be made available to the public at no cost through a combination of outreach to media outlets and our website (available at www.muslimadvocates.org). Thus, granting a fee waiver for this Request would fulfill Congress’s legislative intent in amending the FOIA. *See Rossotti*, 326 F.3d at 1312 (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation marks omitted)).

B. The Requestor is a representative of the news media and the records are not sought for commercial use.

Muslim Advocates qualifies as a “representative of the news media” and the records are not sought for commercial use. 6 C.F.R. § 5.11(b)(6). Muslim Advocates 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); *see also Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that “gathers information from a variety of sources,” 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); *cf. ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). Courts have found other organizations whose mission, function, publishing, and public education activities that are similar in kind to Muslim Advocates’ to be “representatives of the news media.” *See, e.g., Elec. Privacy*

¹⁶ *See, e.g., Group Efforts Aimed at ‘Countering Violent Extremism’ Spread*, DENVER POST (Jul 5, 2016), <https://www.denverpost.com/2016/07/05/group-efforts-aimed-at-countering-violent-extremism-spread/>; Julia Edwards Ainsley, Dustin Volz, & Kristina Cooke, *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>.

¹⁷ *See, e.g., Elizabeth Hernandez, Denver Police Department Uses \$240K Grant to Battle Violent Extremism*, DENVER POST (Jun. 7, 2018), <https://www.denverpost.com/2018/06/07/denver-police-grant-violent-extremism/>; Waqas Mirza, *Denver’s Counterterrorism Program Sets Sights on Black Lives Matter, LGBTQ Groups, and Refugees*, MUCKROCK (Mar, 9, 2017), <https://www.muckrock.com/news/archives/2017/mar/09/denvers-counterterrorism-BLM/>.

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 media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).

Because these factors weigh in favor of a fee waiver, fees associated with responding to FOIA requests should be waived for Muslim Advocates as a “representative of the news media.”

To the extent that our request encompasses records, whether responsive or potentially responsive, that have been destroyed, our request should be interpreted to include, but is not limited to, any and all records relating or referring to the destruction of those records.

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We expect the release of all segregable portions of otherwise exempt material. If you deny the request for waiver, please notify us before compiling records for which the copying charge will exceed \$50.00 so that we can discuss narrowing the request to cover only the information we seek. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

With respect to the form of production under 5 U.S.C. § 552(a)(3)(B), we request that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (e.g., PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

VI. Conclusion

Thank you for your prompt attention to this matter. We would welcome the chance to discuss this matter with you. If you would like to discuss any part of this Request, please contact Nimra Azmi at nimra@muslimadvocates.org.

Very truly yours,

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