

August 6, 2018

**VIA ELECTRONIC MAIL**

Angela Washington  
Public Liaison  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528  
[foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

**Re: Freedom of Information Act Request Regarding DHS Grant to National Governors Association Center for Best Practices**

To Whom It May Concern:

On behalf of Muslim Advocates (“Requestor”), I submit this letter to the Department of Homeland Security (“Agency”) as a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. §552, *et seq.* Please 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.

**Background**

On June 23, 2017, the Department of Homeland Security (“DHS”) announced that it had chosen the National Governors Association’s (“NGA”) Center for Best Practices as a recipient for a Fiscal Year 2016 Countering Violent Extremism (“CVE”) Grant, in the amount of \$500,000 (the “Grant”).<sup>1</sup> On April 27, 2018, NGA announced that the Grant would be used to establish a policy academy aimed at developing strategic plans for preventing ideologically-inspired violence in four states: Colorado, Illinois, Michigan, and Virginia.<sup>2</sup> According to the application submitted in conjunction with the grant, NGA’s Center for Best Practices is planning, with ongoing support from DHS, to develop and implement a CVE roadmap that is designed to provide training and engagement strategies. Muslim Advocates seeks records pertaining to DHS’s funding and involvement with NGA regarding its Grant.

---

<sup>1</sup> *DHS Countering Violent Extremism Grants*, DEP’T OF HOMELAND SEC., <https://www.dhs.gov/cvegrants> (last visited June 11, 2018).

<sup>2</sup> *States Focus on Preventing Targeted Violence*, NAT’L GOVERNORS ASS’N (Apr. 27, 2018), <https://www.nga.org/cms/home/news-room/news-releases/2018--news/col2-content/states-focus-on-preventing-targete.html>.



## **Records Requested**

We request the following records:

1. Any and all records between NGA and DHS concerning the Grant, including correspondence and emails.
2. Any and all records relating to NGA's "policy academies,"<sup>3</sup> including but not limited to records pertaining to: (i) any scheduled meetings of the policy academies; (ii) any scheduled workshops of the policy academies; and (iii) any scheduled conference calls or webinars of the policy academies.<sup>4</sup>
3. Any and all records relating to the organizations from Illinois, Michigan, Colorado, and Virginia that are participating in the DHS-funded NGA policy academy through the Grant.
4. Any and all records regarding the distribution of resources, including funding, to organizations or entities in Illinois, Michigan, Colorado, and Virginia of the \$500,000 awarded to NGA from the Grant.
5. Any and all records relating to the review and evaluation of NGA's Grant application.
6. Any and all communications DHS has received involving complaints about the Grant, including DHS's responses to those complaints.

## **Description of Processing**

The Requestor requests disclosure of the following records<sup>5</sup> that were prepared, received, transmitted, collected and/or maintained by the Recipients and any other agency components thereof.

---

<sup>3</sup> *States Focus on Preventing Targeted Violence*, *supra* note 2.

<sup>4</sup> *Id.* ("Each state will participate in two policy academy meetings, an in-state workshop and a series of conference calls and webinars during implementation of the plans.")

<sup>5</sup> 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.

**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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> The Requestor 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 [juvaria@muslimadvocates.org](mailto:juvaria@muslimadvocates.org).

**Please produce electronic records in their native format.** With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the Requestor 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.<sup>10</sup> If the

---

<sup>6</sup> 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>.

<sup>7</sup> *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).

<sup>8</sup> *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.

<sup>9</sup> 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.

<sup>10</sup> 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.

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.** The Requester 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.”<sup>11</sup> 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.”<sup>12</sup> 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.’”<sup>13</sup>

**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.<sup>14</sup> 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.

### **Application for Waiver or Limitation of Fees**

The Requestor seeks 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). The Requestor also requests a waiver of search fees on the grounds that the

---

<sup>11</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>12</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

<sup>13</sup> *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)).

<sup>14</sup> *Mead Data Central, Inc.*, 566 F.2d at 261

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.

These records will shed light on current government practices. The requested records detail the development of a preventing targeted violence program in Colorado, Illinois, Michigan, and Virginia. The requested records also detail the relationship between DHS, NGA, and Grant recipient organizations. The value and implementation of such programs are highly debated, especially among parts of the American Muslim community. Individuals residing in Colorado, Illinois, Michigan, and Virginia—particularly Muslim community members—have a significant interest in knowing how CVE programs, especially those funded by the federal government, operate in and impact their communities.

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.”).

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 the Requestor’s website (available at [www.muslimadvocates.org](http://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.*

The Requestor also requests a waiver of search fees on the grounds that the Requestor qualifies as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The Requestor meets the statutory and regulatory definitions of “representative[s] of the news media” because they gather information, exercise editorial discretion in selecting and organizing documents, and “distribute 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). The

Requestor is therefore a “representative of the news media” for the same reasons: it is “primarily engaged in [the] dissemination of information.” 5 U.S.C. § 552(a)(4)(A)(ii)(II), (6)(E)(v)(II).

Courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the Requestor’s to be “representative[s] of the news media” as well. The Requestor has pursued FOIA litigation against many agencies that resulted in the disclosure of previously withheld information, including against the FBI in 2009 and multiple suits against DHS in 2017. *Cf. Judicial Watch, Inc. v. U.S. 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); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11-12 (D.D.C. 2003) (finding legal advocacy non-profit qualifies as news media requester).

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

### **Conclusion**

If you have any questions concerning this request, you may contact me at [juvaria@muslimadvocates.org](mailto:juvaria@muslimadvocates.org) or at (202) 897-1896.

Sincerely,



Juvaria Khan  
Muslim Advocates  
Staff Attorney  
P.O. Box 34440  
Washington D.C. 20043  
[juvaria@muslimadvocates.org](mailto:juvaria@muslimadvocates.org)