



Homeland
Security

Privacy Office, Mail Stop 0655

July 18, 2016

SENT VIA E-MAIL TO: EVAN.FEENEY@COLOROFCHANGE.ORG

Evan Feeney
Media Justice Campaign Manager
Color of Change



Re: **2016-HQFO-00490**

Dear Mr. Feeney:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated July 05, 2016, and to your request for expedited handling and a waiver of all assessable FOIA fees. Our office received your request on July 07, 2016. Specifically, you requested information regarding the Department of Homeland Security ("DHS") and Federal Bureau of Investigation ("FBI") policies and actions involving the monitoring and surveillance of public protests surrounding police violence, policing reform, racial justice, and the Black Lives Matter movement ("BLM"). You are specifically requesting the following: a. Communications, including records demonstrating or related to communications, between the FBI or DHS and state and local enforcement entities in the jurisdictions listed above relating to the Relevant Protests; b. Records, including memos, talking points, policies or protocols, regarding any type of coordination between the FBI or DHS and state and local enforcement entities in the jurisdictions listed above relating to the Relevant Protests; c. Communications, and records, such as memos, policies, protocols, manuals, talking points, or threat assessments, relating to Relevant Protests; d. Communications, and records, regarding the placement of individuals and/or groups and organizations associated with the Relevant Protests into the Nationwide Suspicious Activity Reporting system; e. Records or communication, including, but not limited to, emails, policies, protocols, memos, operation manuals, regarding the proposed or actual deployment and use of International Mobile Subscriber Identity (IMSI) catchers¹⁷ during the Relevant Protests; f. Any multimedia produced by, or in the possession, of the FBI or DHS [in the course of surveillance of the Relevant Protests; and any records or communications indicating the existence of or consideration of producing such multimedia; g. Records or communication, including emails, policies, protocols, memos, operation manuals, regarding the use of social media monitoring during the Relevant Protests. -Records or communication, regarding the use of social media surveillance software, including but not limited to programs such as Geofeedia, LifeRaft and Media Sonar; h. Records

or communication, received or regarding the existence, development or compilation of information by DHS or FBI, on specifically named individuals or groups associated with the Relevant protests; and I. Records or communication, including, but not limited to, emails, policies, protocols, memos, operation manuals, regarding the deployment and use of aerial surveillance vehicles or drones during the Relevant Protests.

As it relates to your request for expedited treatment, your request is denied.

Under the DHS FOIA regulation, expedited processing of a FOIA request is warranted if the request involves “circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,” 6 C.F.R. § 5.5(d)(1)(i), or “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information,” 6 C.F.R. § 5.5(d)(1)(ii). Requesters that seek expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing is denied because you do not qualify for either category. You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public’s right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS’ goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

As for your request for designation as a “representative of the news media,” your request is denied. DHS FOIA regulations specifically define “representative of the news media” as “any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6). Based on the information contained in your letter, I am denying your request for this fee status because you have not presented a convincing argument that Color of Change is an entity organized and operated to publish or broadcast news to the public.

However, you have requested a fee waiver. The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns “the operations or activities of the government,” (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) Whether disclosure of the requested

information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be “significant,” (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS regulations applicable to non-commercial requesters, provide two hours of search time and process the first 100 pages at no charge to you. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors. As a non-commercial requester you will be charged for any search time and duplication beyond the free two hours and 100 pages mentioned in the previous paragraph. You will be charged 10 cents per page for duplication and search time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

Additionally, your request has been referred to the Federal Emergency Management Agency (FEMA), Federal Law Enforcement Training Center (FLETC), Office of Intelligence and Analysis (I&A), and National Protection and Programs Directorate (NPPD) for processing and direct response to you. You may contact that office in writing at the contact information located on our website: <https://www.dhs.gov/foia-contact-information>.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2016-HQFO-00490**. Please refer to this identifier in any future correspondence. To check the status of your FOIA request, you may

contact this office at 1-866-431-0486 or 202-343-1743, or you may check the status of your request online at <http://www.dhs.gov/foia-status>.

Sincerely,

A handwritten signature in blue ink that reads "Mia Day". The signature is written in a cursive, flowing style.

Mia Day
FOIA Program Specialist