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April 1, 2025

Via Regular and Electronic Mail

Patricia H. Hyde
John Charpentier
ICE Enforcement and Removal Operations Boston Field Office
1000 District Avenue
Burlington, MA 01803

**RE: FOIA Request Regarding Maine Jails
(Fee Waiver & Expedited Processing Requested)**

Dear Freedom of Information Officer:

This letter is a request for public records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. §5, *et seq.* The request is submitted by the American Civil Liberties Union of Maine Foundation (“ACLU of Maine” or “Requestor”).

Requestor seeks the disclosure of records related to efforts to increase ICE detention capacity in Maine.

Requesters also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. §5.11(k) and expedited processing of this request, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. §5.5(d).

I. Background

The purpose of this request is to understand any efforts on behalf of the ICE Boston Field Office to expand capacity for ICE detentions in Maine. According to the minutes of the Lincoln and Sagadahoc Multicounty Jail Authority July 10, 2024 meeting, “Trish Hyde-Deputy Field Officer and John Charpentier—Assistant Field Officer were present to put forth a PowerPoint presentation and a short video with discussion surrounding the recent and ongoing challenges ICE is having with boarding detainees in the Northeast Region.”¹

¹ Minutes, Regular Meeting of the Lincoln and Sagadahoc Multicounty Jail Authority (July 10, 2024) at 2 (available at <https://www.tbrj.org/copy-of-2023-minutes>).

This record request seeks records to provide necessary public oversight into ICE's enforcement and removal operations, and their impact on Maine public safety and resources.

II. Records Requested

This Request seeks, for the period from July 10, 2024 to the present, the following documents:

1. A copy of the PowerPoint presentation shown to the Lincoln and Sagadahoc Jail Authority on July 10, 2024 concerning challenges ICE is having with boarding detainees in the Northeast Region.
2. The most recent updated version of the PowerPoint presentation referenced above.
3. A copy of the short video shown to the Lincoln and Sagadahoc Jail Authority on July 10, 2024 concerning challenges ICE is having with boarding detainees in the Northeast Region.
4. The most recent updated version of the short video referenced above.

III. Fee Waiver Requested

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. See 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

A. Disclosure of Information is in the Public Interest

Disclosure of the information is in the public interest because it will contribute significantly to public understanding of the use of Maine facilities to house federal prisoners and detainees.

Such information is of great public interest because it affects a large population of individuals: not only people concerned with federal immigration enforcement, but also Maine taxpayers. See 6 C.F.R. § 5.11(k)(2)(iii) (stating that disclosure contributes to public understanding when it affects a “reasonably broad audience of persons interested in the subject”). Requestor has the ability, intent, and means to disseminate the requested information to the

public at large. Requestor's FOIA requests, and the documents it publishes as a result, routinely generate public interest and media coverage.²

Requestor will review, analyze and/or summarize the information obtained through this FOIA internally and may make the information available through their publicly accessible website and through action alerts, social media, emails and newsletters. Finally, Requestor has frequent contact with regional and national print and news media and plan to share information gleaned from FOIA disclosures with interested media, further guaranteeing that the information will be publicly accessible.

B. Disclosure of Information is Not in the Commercial Interest of the Requestor

Second, Requestor is not filing this request to further a commercial interest. Requestor is a 501(c)(3) not-for-profit organization and therefore has no commercial interest. Requestor intends to make any relevant information obtained through this FOIA available to the public. Requestor publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

Requestor also publishes, analyzes, and disseminates information through its heavily visited website, www.aclumaine.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which Requestor is focused. Requestor's website also includes many features on information obtained through FOIA requests. For example, "Municipal Risk Pool: Legal Settlements Against Maine Counties;" Treatment of Unhoused Residents in Lewiston, Auburn, Bangor, Sanford, and Portland; and "Maine State Police: Cooperation with Federal Immigration Enforcement Agencies."³ Requestor plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and Requestor plans to disseminate the information disclosed as a result of this Request to the public at no cost.

IV. Request for a Limitation of Search and Review Fees

Requestor seek a limitation of processing fees because of their qualification as "representatives of the media" pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . educational or noncommercial scientific institution . . . or a representative of the news media") and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to "representatives of the news media"). "[A] representative of the news

² <https://mainebeacon.com/judge-ice-must-conduct-additional-search-for-records-on-detention-in-maine-planned-scarborough-facility/>; <https://reason.com/volokh/2023/08/23/maine-high-court-finds-bad-faith-in-denial-of-public-records-request-orders-payment-of-requesters-fees/>; <https://www.mainepublic.org/news/2022-03-23/maine-legal-groups-say-bias-culture-of-suspicion-at-boston-asylum-office-hurt-their-clients>.

³ See also <https://www.aclumaine.org/en/our-work/public-records>; <https://www.aclumaine.org/en/publications/human-rights-defense-center-transparency-maine-jails-and-prisons>

media’ means any person or 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)(III).

Courts have previously found that the ACLU is considered a “representative of the media” for FOIA-related purposes. *See ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that Washington’s ACLU affiliate was an organization 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”); *ACLU v. DOJ*, 321 F. Supp. 2d 24, 30 n.5 (D. D.C. 2004) (finding nonprofit public interest group to be “primarily engaged in disseminating information”).

Per the statutory definition, the Requestors do not have to be a part of the traditional media; instead, if the requester meets the definition in any aspect of its work, it qualifies for fee limitations. *See Cause of Action v. FTC*, 799 F.3d 1108, 1125 (D.C. Cir. 2015). Requesters qualify as a “representative of the news media” under the statute, because they routinely gather information for public interest, turn it into distinct work, and publicly distribute this work. *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees).⁴ Courts have reaffirmed that non-profit requesters that are not traditional media outlets can qualify as media for FOIA-related purposes. *See Cause of Action v. FTC*, 799 F.3d 1108, 1125 (D.C. Cir. 2015). Thus, fees must be limited to duplication costs.

V. Expedited Processing

Expedited processing of this request is required because there is a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need” is established when there exists an “urgency to inform the public concerning actual or alleged Federal Government activity,” when the requester is a “person primarily engaged in disseminating information,” 28 C.F.R. § 16.5(e)(1)(ii), and when “a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence” exists. 28 C.F.R. § 16.5(e)(1)(iv).

There is an urgent need for public information regarding the housing of federal immigration detainees in Maine jails.

VI. Format of Production

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive documents be provided electronically in their native format (e.g., Excel spreadsheets in Excel). We request that any responsive documents for which native format production is

⁴ *See also* <https://mainelaw.maine.edu/news/report-boston-asylum-office-violates-rights-of-asylum-seekers/> (report created by American Civil Liberties Union of Maine and other organizations, based on records received in response to ACLU FOIA request).

impossible be provided *electronically* in text-searchable, static-image format (PDF), in the best image quality the agency can produce. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM, DVD, or USB;
- Each record in a separately saved file;
- Emails should include date and time stamps and author and recipient information, including BCC and any other hidden fields, and “parent-child” relationships should be maintained, meaning that the Requesters must be able to identify the attachments with emails;
- With any other metadata preserved.

VII. Certification

The Requesters certify that the above information is true and correct to the best of the Requesters’ knowledge. *See* 6 C.F.R. § 5.5(e)(3).

Please furnish the applicable records to:

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Respectfully submitted,

/s/ Zachary L. Heiden
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