

BRENNAN  
CENTER  
FOR JUSTICE  
TWENTY  
YEARS

*at New York University School of Law*

*Via Certified Mail and Electronic Submission*

May 14, 2018

Bryan Whitener  
Director of Clearinghouse  
U.S. Election Assistance Commission  
1335 East West Highway, Suite 4300  
Silver Spring, MD 20910

*Re: Freedom of Information Act Request, Request for Expedited Processing, and Fee Waiver Request*

Dear Mr. Whitener:

This letter is a request on behalf of the Brennan Center for Justice at NYU School of Law (the “Brennan Center”) to the U.S. Election Assistance Commission (“EAC”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. This letter is also a request for expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e), as well as for a fee waiver pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii) & (iii) and 6 C.F.R. § 5.11. The information, expedited processing, and fee waiver that the Brennan Center seeks through this letter is collectively referred to as the “Request.”

## **I. Background**

On March 23, 2018, President Donald Trump signed into law the Consolidated Appropriations Act, 2018 (the “Omnibus Act”), to fund the United States government for Fiscal Year 2018. Pub. L. No. 115-141, 132 Stat. 348. The U.S. Election Assistance Commission was one among the various federal government agencies that was allocated funds under the Omnibus Act, which directed the EAC to use the money to assist election reform programs nationwide. Specifically, the EAC received \$380,000,000 “to make payments to States for activities to improve the administration of elections for Federal office, including to enhance election technology and make election security improvements” as provided for under the Help America Vote Act of 2002, 52 U.S.C. § 20901, et seq. (“HAVA” or the “Act”). Pub. L. No. 115-141, 132 Stat. 348.

The Omnibus Act gave the EAC, “no[ ] later than 45 days after the date of [its] enactment” – or until May 7, 2018 – to “make the payments to states . . . .” Pub. L. No. 115-141, 132 Stat. 348. The EAC, accordingly, has noted that the “States will receive grant award notification letters from

the EAC by early April 2018.”<sup>1</sup> Effective the date of the notification letter, States will be permitted “to incur costs, with prior EAC approval, against the forthcoming grant awards . . . .”<sup>2</sup> While the EAC will make the funding “available for states . . . when they return signed grant documents and the required certifications and assurances,” the States are still required to provide the EAC additional initial information as a condition of receiving the funds.<sup>3</sup> Specifically, the States must “submit a 2-3 page narrative overview of activities to be supported with the funds and a line item budget within 90 days of receiving their Notice of Grant Awards.”<sup>4</sup> On information and belief, the contents of the State’s submissions will include that information requested in forms “Election Security Award Packet,” “2018 HAVA Election Security Fund Budget,” “Template for State Requests,” “2018 HAVA Election Security Fund Budget,” “Budget Worksheet,” “Budget Worksheet Instructions,” and “Sample Budget Worksheet,” (collectively “Funding Documents”), all of which are posted on the EAC’s website.<sup>5</sup> On information and belief, the States have already begun to return the signed grant documents, certifications, and assurances, as well as their Funding Documents to the EAC. Yet, as of the date of this letter, the EAC has not made that information publicly available. As such, the Brennan Center requests that the EAC provide it with that information.

## II. Formal Request

The Brennan Center hereby requests, to the extent the following are in the possession, custody, or control of the EAC:

1. All documents and communications from the States to the EAC reasonably believed to be the “signed grant documents and the required certifications and assurances” required of the States for funding;
2. All documents and communications from the States to the EAC reasonably believed to be the “2-3 page narrative overview of activities to be supported with the funds;”
3. All documents and communications from the States to the EAC reasonably believed to be the “line item budget” that is required “within 90 days of receiving their Notice of Grant Awards”;
4. All documents and communications from the States to the EAC required or submitted to receive the funds, including the information reasonably believed to be submitted in accordance with the “Funding Documents”;

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<sup>1</sup> <https://www.eac.gov/payments-and-grants/frequently-asked-questions-for-grants/#what-is-the-process-for-applying-for-funds>.

<sup>2</sup> <https://www.eac.gov/payments-and-grants/frequently-asked-questions-for-grants/#what-is-the-process-for-applying-for-funds>.

<sup>3</sup> <https://www.eac.gov/payments-and-grants/frequently-asked-questions-for-grants/#what-is-the-process-for-applying-for-funds>. Notably, the EAC is making the funds “**available for drawdown prior to receipt of the plan overview to expedite and support any needed expenditures ahead of the 2018 Election.**” *Id.* (emphasis in original).

<sup>4</sup> <https://www.eac.gov/payments-and-grants/frequently-asked-questions-for-grants/#what-is-the-process-for-applying-for-funds>.<sup>4</sup> Template for State Requests HAVA Election Security Grants “2018 HAVA Election Security Fund Budget,” including those “Budget Worksheet,” “Budget Worksheet Instructions,” and “Sample Budget Worksheet”

<sup>5</sup> <https://www.eac.gov/payments-and-grants/frequently-asked-questions-for-grants/#what-is-the-process-for-applying-for-funds>.

5. To the extent that they are not covered by items 1 – 4, all documents and communications between EAC and the States regarding State Requests for Security Funds, including the requirements for their contents and any exemptions therefrom; and
6. To the extent that they are not covered by requests 1 - 5, all documents and communications between the EAC and the States regarding the requirements for the receipt or use of the States' allocated share of the \$380,000,000, including exemptions therefrom.

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this FOIA request should also be considered within the request's scope. In lieu of providing responsive documents to the Brennan Center, the EAC may comply with this request by making all responsive documents publicly available on its website.

### **Definitions**

As used in this request:

- “*Communications*” means disclosures, transfers, or exchanges of information or opinions, however made, including, but not limited to, any transmissions of information by oral, graphic, written, pictorial, electronic, or other perceptible means.
- “*Documents*” means all written, printed, or electronically stored information of any kind in the possession, custody, or control of EAC, including, but not limited to, information stored on social media accounts (e.g. Facebook, Twitter, Snapchat, etc.), chats, instant messages, and documents contained in Collaborative Work Environments and other document databases. The term includes agreements; letters; calendar appointments; telegrams; inter-office communications; memoranda; reports; records; instructions; notes; notebooks; diaries; plans; diagrams; charts; photographs; photocopies; descriptions; drafts (whether or not they resulted in a final document); agendas and minutes of meetings, conferences, and telephone or other conversations or communications; recordings; published or unpublished speeches and articles; publications; transcripts of telephone conversations; phone mail; electronic-mail; and computer print-outs.
- “*Including*” means including, but not limited to.
- “*States*” means all fifty states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Unless otherwise noted, the Request includes documents and communications dated, created, identified, or modified between September 8, 2017 and the date of EAC's search. In addition, the Brennan Center requests that responsive electronic records be provided electronically, in a text searchable, static-image (PDF) format (in the best image quality available to the agency), pursuant to 5 U.S.C. § 552(a)(3)(A)(B) and (C).

### III. Request for Expedited Processing

The Brennan Center requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). The Brennan Center intends to disseminate the information obtained in response to this Request to enable the public to effectively monitor, evaluate, participate in, and respond to the work performed by the EAC and the States, particularly in the lead up to the 2018 general election. The security of elections in the United States has generated extensive public interest and media coverage, reflecting the public's urgent concern about election integrity.<sup>6</sup> Accordingly, this request meets the criteria for expedited processing because there is "[a]n urgency to inform the public about an actual or alleged Federal Government activity" and this Request concerns "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 6 C.F.R. § 5.5(e)(1)(ii) and (iv).

The Brennan Center is a 501(c)(3) non-profit organization "primarily engaged in disseminating information" within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(e)(1)(ii). The Brennan Center regularly writes and publishes reports and newspaper articles and makes appearances on various media outlets regarding the democracy in the United States, including the risks posed by inadequate technology and security measures. Through practical policy proposals, litigation, advocacy, and communications, the Brennan Center works to ensure that voting is free, fair, secure, and accessible for all Americans.

Furthermore, the Brennan Center urgently requires the information sought by this Request in order to inform the public of federal government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). The information requested herein concerns federal government activity that is of vital interest to the general public. The Brennan Center intends to share any new information about EAC and the integrity of federal elections obtained from this Request with the public.

The Brennan Center needs this information expeditiously to monitor the EAC's work adequately and to inform the public about it. The information sought in this Request is critical for the public's monitoring and evaluation of and response to those immediate activities. The information is also critical to public evaluation and monitoring of the EAC's work in "assist[ing] in the administration of Federal elections and to otherwise provid[ing] assistance with the administration of certain Federal election laws and programs," including its requirement for "minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections." Pub. L. No. 107-252, 116 Stat. 1666. Given the importance of the matters that the EAC is charged with addressing, effective public monitoring and involvement is urgently needed. The EAC's work will either enhance or undermine public confidence in our elections.

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<sup>6</sup> *See, e.g.*, Kim Zetter, *The Myth of the Hacker-Proof Voting Machine*, N.Y. Times, Feb. 21, 2018, <https://www.nytimes.com/2018/02/21/magazine/the-myth-of-the-hacker-proof-voting-machine.html>; Jeremy Herb and Manu Raju, *Senate Panel Proposes Ways to Improve Election Security*, CNN, Mar. 20, 2018, <https://www.cnn.com/2018/03/20/politics/senate-intelligence-improve-election-security/index.html>; Martin Matishak, *Lawmakers Gather Behind Election Security Bill – At Last*, Politico, Mar. 22, 2018, <https://www.politico.com/story/2018/03/22/election-security-bill-congress-437472>; Morgan Chalfant, *Government Doles out Election Security Funds to States*, The Hill, Mar. 30, 2018, <http://thehill.com/policy/cybersecurity/381015-government-doles-out-election-security-funds-to-states>; Sarah Zimmerman, *Federal Funds to Bolster Election Security may not be Enough*, Chicago Tribune, Apr. 7, 2018, <http://www.chicagotribune.com/news/sns-bc-il--outdated-voting-machines-20180407-story.html>.

#### **IV. Application for Waiver or Limitation of All Fees**

The Brennan Center requests a waiver of all search, review, and duplication fees associated with this request. Th Brennan is eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. § 5.11(k), and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k).

First, the Brennan Center plans to analyze, publish, and disseminate the information obtained from this Request to the public. The requested records are not sought for commercial use and will be disclosed to the public at no cost.

Second, the Brennan Center qualifies as a “representative of the news media” for the same reasons that it is “primarily engaged in dissemination of information,” i.e., because it will “gather[ ] 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); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As such, the Brennan Center is entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. § 5.11(k).

As a noncommercial requester, the Brennan Center also qualifies for waivers as an “educational institution” pursuant to 6 C.F.R. § 5.11 because it is affiliated with the New York University School of Law, which is plainly an educational institution.

The Brennan Center is likewise entitled to a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). First, the subject of the requested records clearly concerns “the operations or activities of the federal government.” Disclosure of the requested records is therefore in the public interest because it is likely to contribute significantly to public understanding of how the government is regulating elections, which is plainly of interest to the public.

Furthermore, disclosure is not primarily for commercial interests. As stated above, the Brennan Center plans to make any disclosed information available to the public at no cost. Therefore, a fee waiver would fulfill Congress’s legislative intent that FOIA be “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Statement of Sen. Leahy)).

However, in the event you deny our waiver request, please contact me if you expect the costs to exceed the amount of \$500.00.

#### **V. Response Requested in 10 Days**

Your attention to this Request is greatly appreciated, and the Brennan Center anticipates your determination regarding expedited processing within ten calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(e)(4). The Brennan Centers affirms that the information provided supporting the request for expedited processing is true and correct to the best of its knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

The Brennan Center also requests that you provide us with an estimated completion date, as required by 5 U.S.C. § 552(a)(7)(B)(ii). If the Request is denied in whole or in part, the Brennan Center asks that you justify all deletions by reference to specific exemptions to FOIA. The Brennan Center expects the release of all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish all applicable records to:

Lawrence D. Norden  
Deputy Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
120 Broadway, Suite 1750  
New York, NY 10271  
(646) 292-8310  
nordenl@brennan.law.nyu.edu

Should you have any questions regarding this Request, please contact Mr. Norden at the address above, by phone at (646) 292-8326, or by email at nordenl@brennan.law.nyu.edu.

Sincerely,

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Lawrence D. Norden, Deputy Director  
Wilfred U. Codrington III, Counsel  
Elizabeth Howard, Counsel

Democracy Program  
Brennan Center for Justice  
at NYU School of Law  
120 Broadway, Suite 1750  
New York, NY 10271

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May 14, 2018

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Director of Clearinghouse  
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1335 East West Highway, Suite 4300  
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*Re: Freedom of Information Act Request*

Dear Mr. Whitener:

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### **I. Background**

On March 23, 2018, President Donald Trump signed into law the Consolidated Appropriations Act, 2018 (the “Omnibus Act”), to fund the United States government for Fiscal Year 2018. Pub. L. No. 115-141, 132 Stat. 348. The U.S. Election Assistance Commission was one among the various federal government agencies that was allocated funds under the Omnibus Act, which directed the EAC to use the money to assist election reform programs nationwide. Specifically, the EAC received \$380,000,000 “to make payments to States for activities to improve the administration of elections for Federal office, including to enhance election technology and make election security improvements” as provided for under the Help America Vote Act of 2002, 52 U.S.C. § 20901, et seq. (“HAVA” or the “Act”). Pub. L. No. 115-141, 132 Stat. 348. Congress, through a joint explanatory statement, further clarified how it intended these funds to be spent, stating, the “states may use this funding to: replace voting equipment that only records a voter's intent electronically with equipment that utilizes a voter-verified paper record; implement a post-election audit system that provides a high-level of confidence in the accuracy of the final vote tally; upgrade election-related computer systems to address cyber vulnerabilities identified through DHS or similar scans or assessments of existing election systems; facilitate cybersecurity training for the state chief election official's office and local election officials; implement established cybersecurity best practices for election systems;

and fund other activities that will improve the security of elections for federal office” (“Joint Explanatory Statement”).

The Joint Explanatory Statement currently appears in the “How can states use the funds?” section of the EAC’s website page related to HAVA Security Grant funds.<sup>1</sup> Upon information and belief, the Joint Explanatory Statement has been intermittently removed from the EAC’s website (the “Removal”). The EAC has not provided information related to the Removal of this important instruction from Congress. Any instruction provided, or retracted, by the EAC related to permissible HAVA Security Grant fund expenditures may impact the security of the 2018 General Election and beyond. As such, the Brennan Center requests that the EAC provide it with that information.

## **II. Formal Request**

The Brennan Center hereby requests, to the extent the following are in the possession, custody, or control of the EAC:

1. All communications related to how states may spend the HAVA Security Grant funds between or among EAC staff and EAC Commissioners;
2. All communications related to how states may spend the HAVA Security Grant funds received by or sent from an EAC staff member or EAC Commissioner and: 1) any member of Congress, 2) any congressional staff, or 3) any other representative of a member of Congress;
3. All communications related to the Removal that were sent from or received by any EAC staff or EAC Commissioner; and
4. All communications related to how states may spend the HAVA Security Grant funds between EAC staff or EAC Commissioners and any individual not specified in #2 above.

Please provide all responsive records from March 21, 2018, to May 14, 2018 within twenty (20) business days.

In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

We are seeking all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and

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<sup>1</sup> <https://www.eac.gov/2018-hava-election-security-funds/>.



transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>2</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; we have a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>3</sup>

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered EAC prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>4</sup> Furthermore, 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 EAC’s archiving tools would capture that email under Capstone. Accordingly, we insist that EAC 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. We are available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>5</sup> If it is your position that any portion of the requested records is exempt from disclosure, we request that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). As you are aware, a Vaughn index must 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>6</sup>

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<sup>2</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>3</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 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)).

<sup>4</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-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>5</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>6</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

Moreover, the Vaughn index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.”<sup>7</sup> Further, “the withholding agency must 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>8</sup>

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>9</sup> Claims of nonsegregability must be made 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.

### **III. Application for Waiver or Limitation of All Fees**

The Brennan Center requests a waiver of all search, review, and duplication fees associated with this request. The Brennan Center is eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. § 5.11(k), and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k).

First, the Brennan Center plans to analyze, publish, and disseminate the information obtained from this Request to the public. The requested records are not sought for commercial use and will be disclosed to the public at no cost.

Second, the Brennan Center qualifies as a “representative of the news media” for the same reasons that it is “primarily engaged in dissemination of information,” i.e., because it will “gather[ ] 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); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As such, the Brennan Center is entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. § 5.11(k).

As a noncommercial requester, the Brennan Center also qualifies for waivers as an “educational institution” pursuant to 6 C.F.R. § 5.11 because it is affiliated with the New York University School of Law, which is plainly an educational institution.

The Brennan Center is likewise entitled to a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). First, the subject of the requested records clearly concerns “the operations or activities of the federal government.” Disclosure of the requested records is therefore in the public interest because it is likely to contribute significantly to public understanding of how the government is regulating elections, which is plainly of interest to the public.

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<sup>7</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>8</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>9</sup> *Mead Data Central*, 566 F.2d at 261.

Furthermore, disclosure is not primarily for commercial interests. As stated above, the Brennan Center plans to make any disclosed information available to the public at no cost. Therefore, a fee waiver would fulfill Congress's legislative intent that FOIA be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Statement of Sen. Leahy)).

However, in the event you deny our waiver request, please contact me if you expect the costs to exceed the amount of \$500.00.

The Brennan Center also requests that you provide us with an estimated completion date, as required by 5 U.S.C. § 552(a)(7)(B)(ii). If the Request is denied in whole or in part, the Brennan Center asks that you justify all deletions by reference to specific exemptions to FOIA. The Brennan Center expects the release of all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish all applicable records to:

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Deputy Director, Democracy Program  
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120 Broadway, Suite 1750  
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Should you have any questions regarding this Request, please contact Mr. Norden at the address above, by phone at (646) 292-8326, or by email at nordenl@brennan.law.nyu.edu.

Sincerely,

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Lawrence D. Norden, Deputy Director  
Wilfred U. Codrington III, Counsel  
Elizabeth Howard, Counsel

Democracy Program  
Brennan Center for Justice  
at NYU School of Law  
120 Broadway, Suite 1750  
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