

February 24, 2025

Sent via Email (BOP & DHS) / SecureRelease Portal (DHS)

FOIA/PA Section
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320 First Street, N.W.
Washington, DC 20534
Email: BOP-OGC-EFOIA-S@BOP.GOV

Freedom of Information Act Office
Department of Homeland Security
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
Email: ice-foia@ice.dhs.gov

**Re: FOIA Request for Records Related to Use of BOP FCI Berlin Facility for Immigration Detention
(Fee Waiver & Expedited Processing Requested)**

To Whom It May Concern:

The American Civil Liberties Union Foundation of New Hampshire (“ACLU-NH”¹ or “Requestor”) submits this Freedom of Information Act (“FOIA”) request (“Request”) for **records related to the use of Bureau of Prisons’ (“BOP”) FCI Berlin facility for immigration detention, from the period of November 1, 2024 through the present, including but not limited to policy memoranda, detention standards, contracts and any other documents regarding the use of FCI Berlin to hold people in the custody of U.S. Department of Homeland Security/Immigration and Customs Enforcement (collectively “ICE”)**. This letter constitutes a request pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, and the relevant implementing regulations. *See* 28 C.F.R. § 16.1, *et seq.*; 28 C.F.R. § 513 *et seq.*

Requestor also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A), 28 C.F.R. § 16.10(k), and 28 C.F.R. § 513.67, and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E), 28 C.F.R. § 16.5(e), and 28 C.F.R. § 513.68. The justifications for the fee waiver and expedited processing are set out in detail below.

I. Background

As part of its processing and removal operations, ICE detains noncitizens, often for prolonged periods of time stretching weeks, months, and years. While ICE maintains some of its own detention centers

¹ The American Civil Liberties Union Foundation of New Hampshire is a 501(c)(3) organization that defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire.

and its own contracts with private companies for additional detention space, ICE has also relied on a range of facilities from other sources ranging from commercial lodging facilities to converted military bases.

On February 12, 2025, the Los Angeles Times published a news article about ICE’s plan to use BOP’s prison facilities to detain noncitizens.² The article says that “a captain at FCI Sheridan – a medium-security facility in Oregon – emailed staff there to round up volunteers willing to work across the country at FCI Berlin, a medium-security facility in rural New Hampshire that the email said is expected to receive at least 500 migrants from ICE.”³ The article further quotes Captain Joseph Cerone that “[g]iven [BOP] anticipate[s] 500+ detainees going to Berlin, in addition to custody help [FCI Berlin] will likely need[s] assistance in Health Services and Psychology.”⁴ However, “[t]he email did not specify when the immigrants are expected to arrive.”⁵

In addition, on February 15, 2025, KTVU Fox 2 San Francisco publicly shared a leaked agreement between BOP and ICE on the use of FCI Berlin to detain ICE detainees.⁶ According to this agreement, FCI Berlin will allow ICE to use “up to 4 units[.]”⁷ However, it states that “[t]he units at FCI Berlin are not currently available due to a substantial amount of preparation and resources needed before it will be ready to accept ICE Detainees, including but not limited to additional funding for staffing, food, utilities, clothing, training and other necessary items. BOP will inform ICE when FCI Berlin is ready to accept ICE detainees and ICE will be responsible for all costs associated with preparing and maintaining FCI Berlin for this expanded mission.”⁸

In light of these articles and agreement, Requestor seeks to understand how FCI Berlin will be used for ICE as part of President Trump’s mass deportation system.

III. Definitions

For the purpose of this Request, the terms listed below are defined as follows:

“DOCUMENTS” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

² https://www.latimes.com/california/story/2025-02-12/trump-administration-immigrants-dublin-federal-prison?fbclid=IwZXh0bgNhZW0CMTEAAR3wpTJ7AqJmdjTtKpVskF4WG65CR7MktUYAhNPzE7aPe3nvsCdv_qAT_2U_aem_3nHRF5OUkIVQCUX-cDiC1Q.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ <https://www.ktvu.com/news/trump-administration-turning-prisons-ice-lockups-leaked-memo-shows>.

⁷ <https://acrobat.adobe.com/id/urn:aaid:sc:US:6a021944-bf1e-4963-9493-2652e2c39533>.

⁸ *Id.*

“ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

“BOP” means Bureau of Prisons, and any components, subcomponents, offices, or personnel therein.

“BOP FACILITY” means any prison or other detention facility operated by or on behalf of BOP.

“DETENTION STANDARDS” means any set of requirements, regulations, or guidelines involving medical care, mental health care, dental care, access to counsel, visitation, searches of people’s bodies or their possessions, shackling, food, water, telephones, programming, library access, or religious services for people detained in a facility, including ICE’s National Detention Standards, Performance-Based National Detention Standards, and Family Residential Standards; the Bureau of Prisons Clinical Guidance and Program Statements; and the US Marshals Service Federal Performance-Based Detention Standards.

IV. Records Requested

This Request seeks:

1. DOCUMENTS sufficient to show all contracts, agreements, and communications between BOP and ICE, dated between January 20, 2025 and the present, regarding the use of BOP FCI Berlin to hold ICE detainees;
2. Policy memoranda, FCI Berlin Institution Supplements, and other DOCUMENTS, effective between November 1, 2024 and the present, setting out FCI Berlin policy with respect to holding people in the legal custody of other agencies (such as immigration detainees for ICE or pretrial inmates for the U.S. Marshals Service) in FCI Berlin (This request does not seek any nationwide BOP program statements or policies, and instead seeks only policies specific to FCI Berlin.);
3. DOCUMENTS sufficient to show all potential and already incurred costs for the preparation and operation of detaining ICE detainees at FCI Berlin; and
4. DOCUMENTS sufficient to show the criteria or categories (including but not limited to security classifications, nationality, location of apprehension, categories/procedural posture of immigration proceedings of the ICE detainees) of ICE detainees who will be detained at FCI Berlin.

Please construe this as an ongoing FOIA request, so that any records that come into the possession of the agency prior to your final response to this FOIA request should also be considered within the request’s scope.

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

APPLICATION FOR EXPEDITED PROCESSING

The Requestor requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).⁹ There is a “compelling need” for these records, as defined in the statute because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

A. The ACLU-NH is an organization primarily engaged in disseminating information to inform the public about actual or alleged government activity.

The ACLU-NH is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).¹⁰ Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).¹¹

The ACLU-NH regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and the ACLU-NH staffs are interviewed frequently for news stories about documents released through the ACLU-NH FOIA requests.

Similarly, the ACLU-NH publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public. The ACLU-NH also regularly publishes “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU-NH publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <http://www.aclu-nh.org/en/NEWS>.

The ACLU-NH 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 the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).¹² Specifically, as discussed above, the requested records seek to inform the public about ICE’s and BOP’s plan and preparation of detaining ICE detainees at FCI Berlin.

⁹ *See* 6 C.F.R. § 5.5(e)(1).

¹⁰ *See* 6 C.F.R. § 5.5(e)(1)(ii).

¹¹ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

¹² *See* 6 C.F.R. § 5.5(e)(1)(ii).

Given the foregoing, the ACLU-NH has satisfied the requirements for expedited processing of this Request.

APPLICATION FOR WAIVER OR LIMITATION OF FEES

The Requestor requests a waiver of document search, review, and duplication fees 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).¹³ The Requestor also requests a waiver of search fees on the grounds that the ACLU-NH 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. The 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 ACLU-NH.

The ACLU-NH is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU-NH as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F. 3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

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

The ACLU-NH also requests a waiver of search fees on the grounds that the ACLU-NH 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). The ACLU-NH 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)(III);¹⁴ *see also Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F. 2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, 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); *Serv. Women’s Action Network v. U.S. Dep’t of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *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 the ACLU of Washington 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”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU-NH is, therefore, a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar to the ACLU-NH’s to be “representative of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp.

¹³ *See* 5 C.F.R. 5.11(k).

¹⁴ *See* 6 C.F.R. § 5.11(b)(6).

2d at 10-15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F. 2d at 1387; *Judicial Watch, Inc., v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 53, 54 (D.D.C. 2000) (finding *Judicial Watch*, self-described as a “public interest law firm,” a news media requester).¹⁵

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU-NH as a “representative of the news media.”

* * *

Pursuant to applicable statutes and regulations, the ACLU-NH expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 6 C.F.R. § 5.5(e)(4).

If the Request is denied in whole or in part, the ACLU-NH asks that you justify all deletions by reference to specific FOIA exemptions. The ACLU-NH expects the release of all segregable portions of otherwise exempt material. The ACLU-NH reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

ACLU Foundation of New Hampshire
c/o SangYeob Kim
18 Low Ave, # 12
Concord, New Hampshire 03301
sangyeob@aclu-nh.org
603-333-2081

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Respectfully,



SangYeob Kim, Senior Staff Attorney

¹⁵ Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F. 2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.