

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
CITIZENS FOR RESPONSIBILITY AND)		
ETHICS IN WASHINGTON,)		
)		
Plaintiff,)		
)		
v.)	Civil Action No. 22-0457 (RDM)	
)		
U.S. DEPARTMENT OF HOMELAND)		
SECURITY,)		
)		
Defendant.)		
<hr/>)	

**DEFENDANT’S MOTION TO DISMISS OR, IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and 56, Defendant United States Department of Homeland Security (“Defendant”) respectfully move to dismiss this case or, in the alternative, for summary judgment. As set forth in the accompanying memorandum of points and authorities, Plaintiff Citizens for Responsibility and Ethics in Washington (“Plaintiff”) failed to submit a request to Defendant under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, that “reasonably describes” the records sought and failed to exhaust its administrative remedies, and therefore Plaintiff fails to plausibly allege a violation of FOIA. A proposed order is attached.

* * *

Dated: April 6, 2022

Respectfully submitted,

MATTHEW M. GRAVES, D.C. Bar # 481052
United States Attorney

BRIAN P. HUDAK
Acting Chief, Civil Division

/s/ Stephanie R. Johnson
STEPHANIE R. JOHNSON
D.C. Bar # 1632338
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-7874
Stephanie.Johnson5@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND)	
ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 22-0457 (RDM)
)	
U.S. DEPARTMENT OF HOMELAND)	
SECURITY,)	
)	
Defendant.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Introduction..... 1

Background..... 1

Legal Standards..... 3

Argument 5

 I. Plaintiff’s Complaint Should Be Dismissed for Failure to State a Claim Because
 Plaintiff’s FOIA Requests Failed to Reasonably Describe the Records Sought..... 5

 A. The Meaning of the Term “Reasonably Describes” As Used In FOIA 5

 B. Plaintiff’s FOIA Request is Too Vague and Overbroad to Reasonably Describe the
 Records Sought 7

 II. Plaintiff Failed to Exhaust Its Administrative Remedies under FOIA Because Plaintiff’s
 FOIA Request Fails to Comply with Department Regulations..... 12

Conclusion 14

TABLE OF AUTHORITIES

Cases	Page
<i>Acosta v. FBI</i> , Civ. A. No. 12-1578 (JEB), 2013 WL 1633068 (D.D.C. 2013).....	13
<i>Am. Fed. Gov’t Emps., Local 2782 v. Dep’t of Commerce</i> , 632 F. Supp. 1272 (D.D.C. 1986).....	10
<i>Amadis v. Dep’t of State</i> , No. 07-5435, 2008 WL 2519908 (S.D.N.Y. June 19, 2008)	12
<i>Amnesty Int’l v. CIA</i> , 177 F. Supp. 3d 450 (D.D.C. 2016).....	11-12
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	4
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	3
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	3
<i>Bonner v. Soc. Sec. Admin.</i> , 74 F. Supp. 2d 136 (D.D.C. 2008)	12-13
<i>Borden v. FBI</i> , No. 94-1029, 1994 U.S. App. LEXIS 16157 (1st Cir. 1994).....	7
<i>Bristol-Myers Co. v. FTC</i> , 424 F.2d 935 (D.C. Cir. 1970).....	6
<i>Cause of Action Inst. v. IRS</i> , 390 F. Supp. 3d 84 (D.D.C. 2019).....	5
<i>Celotex Corp. v. Catret</i> , 477 U.S. 317 (1986).....	4
<i>Chiquita Brands Int’l, Inc. v. SEC</i> , 806 F.3d 289 (D.C. Cir. 2015).....	7
<i>Citizens for Responsibility and Ethics in Wash. v. FEC</i> , 711 F.3d 180 (D.C. Cir. 2013).....	5

Cole v. Dep’t of Just.,
905 F. Supp. 2d 293(D.D.C. 2012)13

Dale v. IRS,
238 F. Supp. 2d 99 (D.D.C. 2002)7, 13

Evans v. BOP,
951 F.3d 578 (D.C. Cir. 2020)5

FCC v. AT&T Inc.,
562 U.S. 397 (2011)7

Flowers v. IRS,
307 F. Supp. 2d 60 (D.D.C. 2004)13

Freedom Watch v. Department of States,
925 F. Supp.2d 55 (D.D.C. 2013)8

Hidalgo v. FBI,
344 F.3d 1256 (D.C. Cir. 2003)13

Irons v. Schuyler,
465 F.2d 608 (D.C. Cir. 1972)6

Ivey v. Snow,
Civ. A. No. 05-1095, 2006 WL 2051339 (D.D.C. July 20, 2006).....13

Judicial Watch, Inc. v. Export-Import Bank,
108 F. Supp. 2d 19 (D.D.C. 2000)8

Jud. Watch, Inc. v. Dep’t of State,
177 F. Supp. 3d 450, 455-56 (D.D.C. 2016)..... 11-12

Krohn v. Dep’t of Justice,
628 F.2d 195 (D.C. Cir. 1980)7

Marks v. U.S. Dep’t of Justice,
578 F.2d 261 (9th Cir. 1978)8

Marshall Cnty. Health Care Auth. v. Shalala,
988 F.2d 122 (D.C. Cir .1993)8

Mason v. Callaway,
554 F.2d 129 (4th Cir. 1977)8

Massachusetts v. Dep’t of Health & Human Servs.,

727 F. Supp. 35 (D. Mass. 1989)9

Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
475 U.S. 574 (1986).....4

McKinley v. FDIC,
807 F. Supp. 2d 1 (D.D.C. 2011)10

Miller v. Casey,
730 F.2d 773, 777 (D.C. Cir. 1984)11

Nat’l Sec. Counselors v. CIA,
898 F. Supp. 2d 233 (D.D.C. 2012)).....8

Oglesby v. Dep’t of Army,
920 F.2d 57, 61-62 (D.C. Cir. 1990)..... 12-13

Papasan v. Allain,
478 U.S. 265 (1986).....3

Rhodes v. FBI,
Civ. A. No. 2:16-93, 2017 U.S. Dist. LEXIS 37464 (N.D. Ind. Mar. 16, 2017)8

Roman v. CIA,
Civ. A. No. 11-5944, 2013 U.S. Dist. 7837 (N.D.N.Y. Jan. 18, 2013)10

Steinberg v. Dep’t of Just.,
23 F.3d 548 (D.C. Cir. 1994)4

Tao v. Free,
27 F.3d 635 (D.C. Cir. 1994)4

Truitt v. Dep’t of State,
897 F.2d 540, 544 (D.C. Cir. 1990)6, 11

Wilbur v. CIA,
355 F.3d 675 (D.C. Cir. 2004)12

Statutes, Regulations, Rules, and Other Authorities

6 C.F.R. § 5.35, 12, 14

6 C.F.R. § 5.45

5 U.S.C. § 552.....1,5, 13

General’s Memorandum on the 1974 Amendments to FOIA..... 6-7

Fed. R. Civ. P. 12.....3

Fed. R. Civ. P. 56.....4

Freedom of Information Act and Amendments of 1974 (P.L. 93-502),
94th Cong., 1st Sess., 507, 518-19 (Jt. Comm. Print 1975).....6

H. Rep. No. 93-876.....6

Pub. L. No. 90-23, 81 Stat. 54 (1967).....6

S. Rep. No. 93-854, 93d Cong., 2d Sess. 10 (1974).....11

INTRODUCTION

Plaintiff Citizens for Responsibility and Ethics in Washington (“Plaintiff”) instituted this lawsuit under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to force Defendant U.S. Department of Homeland Security (the “Department”) to comply with its FOIA request seeking certain records pertaining the Center for Prevention Programs and Partnerships (“CP3”). Plaintiff’s FOIA request, however, fails to reasonably describe the records sought, which is a prerequisite to Defendant’s duty to act on a FOIA request. Also, Plaintiff did not comply with Department regulations and therefore failed to exhaust its administrative remedies. Plaintiff’s failure to plausibly allege a FOIA violation requires dismissal of its Complaint for failure to state a claim. Accordingly, the Court should grant Defendant’s Motion to Dismiss or, in the alternative, Motion for Summary Judgement.

BACKGROUND

On August 20, 2021, Plaintiff sent Defendant a FOIA request seeking seven categories of records pertaining to CP3 from January 1, 2021, to the present. *See* ECF No. 1, Compl. ¶ 17; *see also* Ex. A, Plaintiff’s FOIA request. Plaintiff summarizes its request as seeking:

1. All records and communications regarding the origins and creation of CP3, including but not limited to funding and priorities for the Center;
2. Documents sufficient to identify all senior agency leadership involved in creating and running CP3;
3. All records and communications relating to CP3 regarding collaboration with, outreach to, or input from religious or community groups such as the Arab-American Anti-Discrimination Committee, and 1 external entities or private sector partners including but not limited to, corporations, religious groups, technology companies, contractors, airports, civil society, academia, allies, and foreign partners;
4. All records and communications relating to CP3 regarding collaborations or partnerships with federal, state, local, tribal, or territorial law enforcement agencies;

5. All records and communications relating to the actual or potential impact of CP3 on any racial or religious communities, or individuals affiliated with particular ideologies;

6. All records and communications referencing the creation of or updates to a compilation of potential indicators of terrorism- or domestic terrorism-related mobilization, including iconography, symbology, phraseology, actions or other appearances, and previous or future Federal Government's Mobilization Indicators booklets; and

7. All records and communications created or received by CP3 staff and containing the keywords: "Countering Violent Extremism," "CVE," "Targeted Violence and Terrorism Prevention," "TVTP," "Muslim," "Islam," "Mosque," "Masjid," "Jihad," "White Supremacist," "Nationalist," "White Nationalist," "White Supremacy," "Black Lives Matter," "Riot," "Protests," "January 6th," "1/6," "Insurrection," "September 11th," "9/11," "Religion," "Equitable," "Bias," "Disparate impact," "Discriminatory," "Structural racism," "People of color," "Marginalization," "Equitable," "Race," "Racial," "Racist," "IG," or "Inspector General."

See Compl. ¶ 17; *see also* Ex. A. In the request Plaintiff further states,

We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

See Ex. A.

On October 6, 2021, the Department sent Plaintiff an acknowledgement letter, which included a request to Plaintiff to resubmit items 1-6 because they were overbroad and not limited in scope. *See* Ex. B, acknowledgment letter. The Department also informed Plaintiff that if it did not hear from them within 30 days from the date of the letter, the Department would assume Plaintiff was no longer interested in the FOIA request, and the case will be administratively closed.

Id. On October 12, 2021, the Department sent Plaintiff other notification requesting Plaintiff to narrow the search of item 7 by providing the Department with conjunctive terms for the search.

See Ex. C, Action Needed Letter. The Department explained that the case would be placed on hold until it received clarification from Plaintiff. *Id.* To date, Plaintiff has not responded.

On February 22, 2022, Plaintiff filed its complaint against Defendant. Plaintiff alleges that it had not received a response to its request to the Department. See Compl. ¶ 21. Plaintiff further alleges that the Department “wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making determination on plaintiff’s request and by withholding from disclosure records response to plaintiff’s request.” *Id.* ¶ 25. Also, among other things, Plaintiff asks this Court to order Defendant “to immediately and fully process plaintiff’s August 20, 2021 FOIA request and disclose all non-exempt documents immediately to plaintiff.” *Id.* at Requested Relief.

LEGAL STANDARDS

I. Rule 12(b)(6)

Under Federal Rule of Civil Procedure (“Rule”) 12(b)(6), a court may dismiss a complaint where a plaintiff fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When resolving a motion to dismiss pursuant to Rule 12(b)(6), the pleadings are construed broadly so that all facts pleaded therein are accepted as true, and all inferences are viewed in a light most favorable to the plaintiff. See *Iqbal*, 556 U.S. at 678. However, a court is not required to accept conclusory allegations or unwarranted factual deductions as true. *Id.* “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* Likewise, a court need not “accept as true a legal conclusion couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

Ultimately, the focus is on the language in the complaint and whether that sets forth sufficient factual allegations to support a Plaintiff's claims for relief.

II. Summary Judgment

Summary judgment is appropriate when the pleadings and evidence show that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *accord Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Tao v. Freeh*, 27 F.3d 635, 638 (D.C. Cir. 1994). A genuine issue of material fact is one that “might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248.

The party seeking summary judgment must demonstrate the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 248. Once the moving party has met its burden, the nonmoving part may not rest upon the mere allegations or denials of his pleading but must instead establish more than “the mere existence of a scintilla of evidence” in support of his position. *Anderson*, 477 U.S. at 252. Thus, summary judgment is due if the non-moving party fails to offer “evidence on which the jury could reasonably find for the [nonmovant].” *Id.* When determining whether a genuine issue of material fact exists, the trier of fact must view all facts, and reasonable inferences drawn therefrom, in the light most favorable to the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986). To obtain summary judgment in a FOIA action, an agency must show, viewing the facts in a light most favorable to the requester, that there is no genuine issue of material fact as to the agency's compliance with FOIA. *Steinberg v. Dep't of Just.*, 23 F.3d 548, 551 (D.C. Cir. 1994).

ARGUMENT

I. Plaintiff’s Complaint Should Be Dismissed for Failure to State a Claim Because Plaintiff’s FOIA Requests Failed to Reasonably Describe the Records Sought.

FOIA states that “each agency, upon any request for records which (1) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A). As relevant here, the Department regulations also require that it and its components produce non-exempt records after a requestor reasonably describes the records sought. 6 C.F.R. §§ 5.3(b), 5.4. Thus, “[b]ecause . . . FOIA permits a court ‘to enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant[.]’ 5 U.S.C. § 552(a)(4)(B), ‘[a] FOIA plaintiff states a claim where it properly alleges that an agency has (1) improperly (2) withheld (3) agency records [.]’” *Cause of Action Inst. v. IRS*, 390 F. Supp. 3d 84, 92 (D.D.C. 2019). On the other hand, a plaintiff has failed to state a FOIA claim where its FOIA request fails to reasonably describe the records sought. *See Evans v. Bureau of Prisons*, 951 F.3d 578, 583 (D.C. Cir. 2020) (quoting 5 U.S.C. § 552(a)(3)(A)) (“[u]nder FOIA, an agency is only obligated to release nonexempt records if it receives a request that ‘reasonably describes such records.’”); *Citizens for Resp. & Ethics in Wash. v. FEC*, 711 F.3d 180, 185 n.3 (D.C. Cir. 2013) (“duties that FOIA imposes on agencies . . . apply only once an agency has received a proper FOIA request.”).

A. The Meaning of the Term “Reasonably Describes” as used in FOIA.

A brief overview of the history of 5 U.S.C. § 552(a)(3)(A) provides insight on the meaning of the term “reasonably describes” as used in FOIA. The counterpart to § 552(a)(3)(A) that existed in the 1967 enactment of FOIA stated: “Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in

accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person.” Pub. L. No. 90-23, 81 Stat. 54 (1967). The D.C. Circuit explained in *Irons v. Schuyler*, 465 F.2d 608 (D.C. Cir. 1972), that the “identifiable records” requirement “calls for a reasonable description enabling the Government employee to locate the requested records.” *Id.* at 612 (quoting *Bristol-Myers Co. v. FTC*, 424 F.2d 935, 938 (D.C. Cir. 1970)). Accordingly, it held that a request—for “all unpublished manuscript decisions of the Patent Office, together with such indices as are available”—was not a request for “identifiable records” because “the contours of the records . . . described are so broad in the context of the Patent office files as not to come within a reasonable interpretation of ‘identifiable records[.]’” *Id.* at 610, 613.

Congress inserted the term “reasonably describes” “in 1974 in replacement of the words ‘request for identifiable records,’ the terminology of Section 3 [of FOIA] as originally enacted in 1967.” *Truitt v. Dep’t of State*, 897 F.2d 540, 544 (D.C. Cir. 1990). The House Judiciary Committee explained that the change in language was “designed to ensure that a requirement for a specific title or file number cannot be the only requirement of an agency for the identification of documents.” H. Rep. No. 93-876 at 125. “A ‘description’ of a requested document would be sufficient if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort.” *Id.* at 125-26.

The Attorney General’s Memorandum on the 1974 Amendments to FOIA promulgated by Attorney General Edward H. Levi (the “Attorney General’s Memorandum”) in 1975¹ contains the Executive Branch’s contemporaneous interpretation of the 1974 amendments to FOIA, which the

¹ The Attorney General’s Memorandum was reprinted in the House Committee on Government Operations and Senate Committee on the Judiciary, *Freedom of Information Act and Amendments of 1974 (P.L. 93-502)*, 94th Cong., 1st Sess., 507, 518-19 (Jt. Comm. Print 1975).

Supreme Court and the D.C. Circuit have viewed as “a reliable guide in interpreting FOIA.” *Chiquita Brands Int’l, Inc. v. SEC*, 805 F.3d 289, 295-96 (D.C. Cir. 2015) (quoting *FCC v. AT&T Inc.*, 562 U.S. 397, 409 (2011)). The Attorney General’s Memorandum explains the change from “identifiable” to “reasonably describes” as “serv[ing] basically to clarify rather than to alter the law as it has been understood by several courts and many agencies.” Attorney General’s Mem. at 22. “It is not enough that the request provide enough data to locate the record; it must enable it to be located in a manner which does not involve an unreasonable amount of effort.” *Id.* at 23.

In addition, the professional-employee test is an objective test, and courts are equipped to make this determination by resort to the FOIA request alone. *See Dale v. IRS*, 238 F. Supp. 2d 99, 105 (D.D.C. 2002) (noting that document request was deficient “on its face”). In other words, agencies need not introduce evidence showing that, based on a particular document request, *their* professionals are incapable of locating the requested records with a reasonable amount of effort. *See Borden v. FBI*, No. 94-1029, 1994 U.S. App. LEXIS 16157, at *1-2 (1st Cir. 1994) (per curiam) (“[T]he request which plaintiff allegedly presented . . . does not reasonably describe the records sought. Since the complaint shows on its face that the plaintiff did not present a proper request, we need not consider defendant’s remaining arguments.” (citations omitted)).

B. Plaintiff’s FOIA Request is Too Vague and Overbroad to Reasonably Describe the Records Sought.

Plaintiff’s FOIA request is vague and overbroad because Plaintiff fails to specifically identify the records it is seeking. *See generally* Ex. A. A vague request is impermissible. *See, e.g., Krohn v. Dep’t of Just.*, 628 F.2d 195, 198 (D.C. Cir. 1980) (holding that the request was “fatally flawed by lack of a reasonable description” because the request was “too vague” as it would require “the agency to review the entire record of ‘each and every . . . criminal case’ in order to determine whether it contains any evidence of the data, information or statistics that appellant

requests”); *Rhodes v. FBI*, Civ. A. No. 16-0093, 2017 U.S. Dist. LEXIS 37464, at *8 (N.D. Ind. Mar. 16, 2017) (citing *Marks v. Dep’t of Just.*, 578 F.2d 261, 263 (9th Cir. 1978)); *Mason v. Callaway*, 554 F.2d 129, 131 (4th Cir. 1977)) (“Courts have held that vague, unspecified requests are not proper and need not trigger mandatory agency disclosure.”); *Jud. Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 27 (D.D.C. 2000) (“it is the requester’s responsibility to frame requests with sufficient particularity[.]”).²

Also, in terms of overboard, the Court’s decision in *Freedom Watch v. Department of State*, 925 F. Supp. 2d 55 (D.D.C. 2013) is instructive. In that case, the plaintiff sent the defendant agencies a FOIA request it claims was for “information about waivers the Department of State may have granted to citizens, corporations, or other countries to trade with Iran despite very tough sanctions against that country to prevent its development of nuclear missiles.” *Id.* at 57. The plaintiff set forth “a list of 63 categories of records . . . ranging from ‘(1) [i]nternational sanctions (diplomatic, economic, military, or otherwise) created and/or signed into law by the United States, . . . or the European Union against the country of Iran,’ to (63) ‘[a]ny and all enumerated documents and things which discuss Iran in the context of American politics and/or elections from 1992 to the present.’” *Id.* Each category “requested ‘all’ records that ‘refer or relate’ to that category.” *Id.* The defendant agencies moved to dismiss “because the FOIA requests, all identical, were not valid in the first place.” *Id.* at 60. The defendant agencies maintained that “the FOIA requests . . . did not reasonably describe the records sought and [did] not comply with

² See *Nat’l Sec. Counselors v. CIA*, 898 F. Supp. 2d 233, 274 (D.D.C. 2012) (quoting *Marshall Cnty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993)) (determining that “[w]hether or not the CIA’s interpretation of the term ‘reasonably describes’ in the FOIA is inconsistent with the FOIA is a purely legal question of statutory interpretation: and that “‘because a court can fully resolve any purely legal questions on a motion to dismiss, there is no inherent barrier to reaching the merits at the 12(b)(6) stage’”).

agency regulations,” but rather “were ‘an all-encompassing fishing expedition . . . at taxpayer expense.’” *Id.* at 60-61. The Court agreed. *Id.* at 61.

The Court reasoned that “[t]he requests failed to identify the documents sought with any modicum of specificity and were thus fatally overbroad and burdensome.” *Id.* “[S]ince the requests asked for ‘all’ records that ‘relate to’ each subject area, . . . they were inevitably ‘subject to criticism as overbroad since life, like law, is a seamless web, and all documents relate to all others in some remote fashion.’” *Id.* (quoting *Massachusetts v. Dep’t of Health & Human Servs.*, 727 F. Supp. 35, 36 n.2 (D. Mass. 1989)). For instance, category 33 “sought ‘all’ records that ‘refer or relate to . . . [a]ny and all communications to or from President Obama, his administration, or the White House in general regarding China.’” *Id.* That category, however, “did not in any way limit the scope of [President Obama’s] administration[] or ‘the White House in general’ to those persons, for instance, which might have had something to do with China or the waivers of Iran sanctions with which [the plaintiff said] it [was] concerned.” *Id.* As another example, the Court referenced categories six through eight of the request, which “sought ‘all’ records that ‘refer or relate to’ ‘[w]aivers or other exceptions to international sanctions granted to any country that has relations with’ China, Venezuela, or Russia.” *Id.* at 62. “There were also requests for ‘all’ records that ‘refer or relate to’ dissolution of sanctions against Iran, China, Venezuela and Russia; the breadth of ‘refer or relate to’ in this request would not even require actual dissolution of sanctions to require searches by Defendant Agencies—and possible production of records. Instead, they would require search and production if dissolution were ever, even vaguely, mentioned.” *Id.*

Similar to *Freedom Watch*, Plaintiff’s FOIA request is “an all-encompassing fishing expedition.” For example, Plaintiff requests, in item 1, “[a]ll records and communications

regarding the origins and creation of CP3, including but not limited to funding and priorities for the Center” and also requests, in item 4, “[a]ll records and communications relating to CP3 regarding collaborations or partnerships with federal, state, local, tribal, or territorial law enforcement agencies.” *See* Ex. A. Further, Plaintiff states “We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence... Our request also includes any attachments to emails and other records[.]” *See id.* Plaintiff fails to include specific information about each record sought, such as the date, title or name, author, and recipients, or the Department component or office who created and/or controls the record.

Plaintiff’s description of the records requested does not permit the Department to locate responsive records with a reasonable amount of effort because as phrased the requests covers all records of any kind and communications to, from, and between any and all Defendant’s employees, and even those outside of the Department, that are even remotely related to the seven categories Plaintiff provides. The language in Plaintiff’s FOIA request “is analogous to requests for records that relate ‘in any way’ to a person or event, which courts have repeatedly found to be overly broad and unreasonable.” *McKinley v. FDIC*, 807 F. Supp. 2d 1, 7 (D.D.C. 2011) (citing cases). Such “[b]road, sweeping requests lacking specificity are not permissible.” *Am. Fed’n of Gov’t Emps. v. Dep’t of Com.*, 632 F. Supp. 1272, 1277-78 (D.D.C. 1986); *see also Roman v. CIA*, Civ. A. No. 11-5944, 2013 U.S. Dist. 7837, at *18 (N.D.N.Y. Jan. 18, 2013) (finding “Plaintiff’s request for ‘all files and/or reports’ on ‘Arch of the Covenant,’ and ‘military or non-military reports of angels and persons dressed in white’ are not specific enough for an employee of the agency to find all files regarding this information with a ‘reasonable amount of effort.’”) (citing *Dale*, 238 F. Supp. 2d 105).

As explained, Congress inserted the term “reasonably describes” in Section 3 of FOIA “in 1974 in replacement of the words ‘request for identifiable records,’ the terminology of Section 3 of FOIA as originally enacted in 1967.” *Truitt*, 897 F.2d at 544. The Senate Judiciary Committee Report explained that “the committee [did] not intend by this change to authorize broad categorical requests where it is impossible for the agency to reasonably determine what is sought[.]” *Id.* at 545 (quoting S. Rep. No. 93-854, 93d Cong., 2d Sess. 10 (1974)). That is the case here where the plain language of Plaintiff’s FOIA request seeks documents generated by any of Defendant’s employees or departments if the document falls into one of the overly broad seven categories referenced by Plaintiff in its FOIA request. *See Amadis v. Dep’t of State*, 971 F.3d 364, 370 (D.C. Cir. 2020) (quoting *Miller v. Casey*, 730 F.2d 773, 777 (D.C. Cir. 1984) (“Agencies must read FOIA request ‘as drafted.’”). Ultimately, FOIA does not require an agency to engage in such “an all-encompassing fishing expedition . . . , at taxpayer expense.” *Dale*, 238 F. Supp. 2d at 105.

Further, some of the items listed in Plaintiff’s FOIA request are questions posed as a request for records. For example, item 2 says “[d]ocuments sufficient to identify all senior agency leadership involved in creating and running CP3” which is really a question that asks “what senior agency leadership was involved in creating and running CP3?” Also, the request in item 5 states “[a]ll records and communications relating to the actual or potential impact of CP3 on any racial or religious communities, or individuals affiliated with particular ideologies” which is really asking the Department to identify or form an opinion on “what actual or potential impact CP3 had on racial or religious communities, or individuals affiliated with particular ideologies.” A question is not a request for records under FOIA and an agency has no duty to answer a question posed as a FOIA request. *See, e.g., Jud. Watch, Inc. v. Dep’t of State*, 177 F.

Supp. 3d 450, 455-56 (D.D.C. 2016) (Defendant is not obligated to answer the Plaintiff's question posed as FOIA request); *see also Amnesty Int'l v. CIA*, No. 07-5435, 2008 WL 2519908, at *12-13 (S.D.N.Y. June 19, 2008) (agency had no duty to compile a list of persons it deemed subject to secret detention in response to request for records relating to such persons). "FOIA is a mechanism to obtain access to records, not answers to questions." *Amnesty Int'l*, 2008 WL 2519908, at *12-13.

Accordingly, Defendant's motion should be granted because Plaintiff fails to reasonably describe the records sought in its FOIA request.³

II. Plaintiff Failed to Exhaust Its Administrative Remedies under FOIA Because Plaintiff's FOIA Request Fails to Comply with Department Regulations.

Prior to seeking relief in federal court, a plaintiff must exhaust the administrative remedies available under the FOIA. *Oglesby v. Dep't of Army*, 920 F.2d 57, 61-62 (D.C. Cir. 1990); *see also Wilbur v. CIA*, 355 F.3d 675, 677 (D.C. Cir. 2004) ("exhaustion of administrative remedies is a mandatory prerequisite to a lawsuit under FOIA") (citation and internal quotation marks omitted). As the D.C. Circuit has explained, exhaustion is necessary "so that [an] agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Oglesby*, 920 F.2d at 61. Generally, exhaustion of administrative remedies is a "condition precedent" to filing suit, and failure to exhaust operates as a "jurisprudential doctrine" to bar premature judicial review. *Bonner v. Soc. Sec. Admin.*, 574 F.

³ Defendant notes that consistent with 6 C.F.R. § 5.3(b), by letter dated October 6, 2021, the Department informed Plaintiff that its request failed to reasonably describe the records sought in terms of items 1-6 and offered Plaintiff the opportunity to resubmit a request within 30 days of the Department's letter. *See Ex. B.* Also, by email dated October 12, 2021, the Department requested that Plaintiff narrow the search in terms of item 7. *See Ex. C.* To date, the Department has not received response.

Supp. 2d 136, 138-39 (D.D.C. 2008) (citing *Hidalgo v. FBI*, 344 F.3d 1256, 1258, 1260 (D.C. Cir. 2003)) (remanding for dismissal for failure to state a claim upon which relief may be granted); accord *Ivey v. Paulson*, 227 F. App'x 1 (D.C. Cir. 2007); see also *Acosta v. FBI*, Civ. A. No. 12-1578 (JEB), 2013 WL 1633068, at *2 (D.D.C. 2013) (quoting *Oglesby*, 920 F.2d at 61) (“Exhaustion is required so ‘the agency has an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision.’”). In short, exhaustion of administrative remedies in a FOIA case is treated as an element of a FOIA claim, which, as with all elements of any claim, must be proved by the plaintiff to prevail.

When a FOIA plaintiff attempts to obtain judicial review without first fully and timely exhausting available administrative remedies, summary judgment may be granted for the agency Defendant. See *Bonner*, 574 F. Supp. 2d at 140 (holding that where “there is no genuine dispute that plaintiff did not exhaust his administrative remedies . . . prior to filing [a] lawsuit, [the agency is] entitled to judgment as a matter of law”); cf. *Cole v. Dep’t of Just.*, 905 F. Supp. 2d 293, 296-97 (D.D.C. 2012). A requester must comply with an agency’s published regulations for filing a proper FOIA request. 5 U.S.C. § 552(a)(3)(A). The failure to comply with an agency’s FOIA regulations is the equivalent of a failure to exhaust. *Ivey v. Snow*, Civ. A. No. 05-1095, 2006 WL 2051339, at *3 (D.D.C. July 20, 2006); *Flowers v. IRS*, 307 F. Supp. 2d 60, 68 (D.D.C. 2004); *Dale*, 238 F. Supp. 2d at 103.

As noted, the Department has regulations pertaining to it and its components that incorporate FOIA’s reasonably describes requirement. See 6 C.F.R. § 5.3(b). Department regulations further explain that “a reasonable description contains sufficient information to permit an organized, non-random search for the record based on the component’s filing arrangements and existing retrieval systems.” *Id.* In this case, the Department notified Plaintiff that its FOIA request

did not comply with 6 C.F.R. § 5.3(b) because Plaintiff failed to reasonably describe the records it sought. *See* Exs. B, C. The scope of Plaintiff's request would require Defendant to engage in a random search for records based on its breadth as discussed above. Plaintiff failed to respond to the Department's request to narrow its FOIA request. Thus, Plaintiff failed to exhaust its administrative remedies by perfecting its request, and Defendant's motion should be granted.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court grant Defendant's Motion to Dismiss and enter judgment in its favor.

Dated: April 6, 2022

Respectfully submitted,

MATTHEW M. GRAVES, D.C. Bar # 481052
United States Attorney

BRIAN P. HUDAK
Acting Chief, Civil Division

/s/ Stephanie R. Johnson
STEPHANIE R. JOHNSON
D.C. Bar # 1632338
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-7874
Stephanie.Johnson5@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
CITIZENS FOR RESPONSIBILITY AND)	
ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 22-0457 (RDM)
)	
U.S. DEPARTMENT OF HOMELAND)	
SECURITY,)	
)	
Defendant.)	
<hr/>)	

[PROPOSED] ORDER

Upon consideration of Defendant’s Motion to Dismiss or, in the alternative, Motion for Summary Judgment and the entire record herein, it is hereby

ORDERED that the Defendant’s Motion is GRANTED; and it is further

ORDERED that this action is DISMISSED.

SO ORDERED.

Date

RANDOLPH D. MOSS
United States District Judge

EXHIBIT A



August 20, 2021

BY ONLINE PORTAL: [DHS Public Access Link](#)

Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065

Re: Freedom of Information Act Request

Dear Ms. Parker Dupree:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Homeland Security (“DHS”) regulations.

Specifically, CREW requests all records and communications from January 1, 2021 to the present concerning DHS’ Center for Prevention Programs and Partnerships (“CP3”). This request includes without limitation the following records as they relate to CP3:

1. All records and communications regarding the origins and creation of CP3, including but not limited to funding and priorities for the Center;
2. Documents sufficient to identify all senior agency leadership involved in creating and running CP3;
3. All records and communications relating to CP3 regarding collaboration with, outreach to, or input from religious or community groups such as the Arab-American Anti-Discrimination Committee,¹ and external entities or private sector partners including but not limited to, corporations, religious groups, technology companies, contractors, airports, civil society, academia, allies, and foreign partners;
4. All records and communications relating to CP3 regarding collaborations or partnerships with federal, state, local, tribal, or territorial law enforcement agencies;

¹ Betsy Woodruff Swan, [DHS stands up domestic terror intelligence team](https://www.politico.com/news/2021/05/11/dhs-domestic-terror-intelligence-487145), POLITICO, May 11, 2021, available at <https://www.politico.com/news/2021/05/11/dhs-domestic-terror-intelligence-487145>.



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

5. All records and communications relating to the actual or potential impact of CP3 on any racial or religious communities, or individuals affiliated with particular ideologies;
6. All records and communications referencing the creation of or updates to a compilation of potential indicators of terrorism- or domestic terrorism-related mobilization, including iconography, symbology, phraseology, actions or other appearances, and previous or future Federal Government's Mobilization Indicators booklets; and
7. All records and communications created or received by CP3 staff and containing the keywords: "Countering Violent Extremism," "CVE," "Targeted Violence and Terrorism Prevention," "TVTP," "Muslim," "Islam," "Mosque," "Masjid," "Jihad," "White Supremacist," "Nationalist," "White Nationalist," "White Supremacy," "Black Lives Matter," "Riot," "Protests," "January 6th," "1/6," "Insurrection," "September 11th," "9/11," "Religion," "Equitable," "Bias," "Disparate impact," "Discriminatory," "Structural racism," "People of color," "Marginalization," "Equitable," "Race," "Racial," "Racist," "IG," or "Inspector General."

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). 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. See 5 U.S.C. § 552(b). 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. See *Mead Data Central v. U.S. Dept of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation reasonably is



foreseeable, DHS should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DHS regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Countering Violent Extremism (“CVE”) and Targeted Violence and Terrorism Prevention Program (“TVTP”), DHS’s previous grant programs for national security and preventing violent extremism, have been met with concern over their effectiveness and disproportionate impact on racial and religious communities. A 2017 Government Accountability Office report on CVE stated that “it was not able to determine if the United States is better off today than it was in 2011 as a result of these tasks.”² CVE was later updated and renamed TVTP, which continued to employ unsuccessful and harmful methods. Recognizing the flaws in TVTP, President Biden promised to end the program during his 2020 presidential campaign in order to “confront discriminatory policies that single out Arab Americans and cast entire communities under suspicion.”³ CP3 has been marketed as an overhaul of TVTP and CVE, but given this history it is unclear if that will be true in practice. The requested records would provide a clearer picture for the American public of what has been included in the updated program, and whether CP3 has made necessary changes or still continues the same harmful practices of CVE and TVTP.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to

² Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts, April 2017, available at <https://www.gao.gov/assets/gao-17-300.pdf>.

³ Joe Biden and the Arab American Community: A Plan for Partnership, *Joe Biden for President*, 2021, available at <https://joebiden.com/joe-biden-and-the-arab-american-community-a-plan-for-partnership/>.



analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website, which has been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact Hajar Hammado at hhammado@citizensforethics.org. Where possible, please produce records in electronic format. Please send the requested records to Hajar Hammado at hhammado@citizensforethics.org. Thank you for your assistance in this matter.

Sincerely,

Anna Selbrede
Policy Intern

EXHIBIT B



**Homeland
Security**

Privacy Office, Mail Stop 0655

October 6, 2021

SENT VIA E-MAIL TO: hihammado@gmail.com

Hajar Hammado
1331 F St NW
Washington, DC

Re: **2021-HQFO-01574**

Dear Hajar Hammado:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated September 30, 2021, and seeking:

1. All records and communications regarding the origins and creation of CP3, including but not limited to funding and priorities for the Center;
2. Documents sufficient to identify all senior agency leadership involved in creating and running CP3;
3. All records and communications relating to CP3 regarding collaboration with, outreach to, or input from religious or community groups such as the Arab-American Anti-Discrimination Committee, and 1 external entities or private sector partners including but not limited to, corporations, religious groups, technology companies, contractors, airports, civil society, academia, allies, and foreign partners;
4. All records and communications relating to CP3 regarding collaborations or partnerships with federal, state, local, tribal, or territorial law enforcement agencies;
5. All records and communications relating to the actual or potential impact of CP3 on any racial or religious communities, or individuals affiliated with particular ideologies;
6. All records and communications referencing the creation of or updates to a compilation of potential indicators of terrorism- or domestic terrorism-related mobilization, including iconography, symbology, phraseology, actions or other appearances, and previous or future Federal Government's Mobilization Indicators booklets; and
7. All records and communications created or recieved by CP3 staff and containing the keywords: "Countering Violent Extremism," "CVE," "Targeted Violence and Terrorism Prevention," "TVTP," "Muslim," "Islam," "Mosque," "Masjid," "Jihad," "White Supremacist," "Nationalist," "White Nationalist," "White Supremacy," "Black Lives Matter," "Riot," "Protests," "January 6th," "1/6," "Insurrection," "September 11th,"

“9/11,” “Religion,” “Equitable,” “Bias,” “Disparate impact,” “Discriminatory,” “Structural racism,” “People of color,” “Marginalization,” “Equitable,” “Race,” “Racial,” “Racist,” “IG,” or “Inspector General.” (Date Range for Record Search: From 1/1/2021 To 10/5/2021). Your request was received in this office on September 30, 2021.

After careful review of your FOIA request, we determined that **items 1-6** of your request are too broad in scope or did not specifically identify the records which you are seeking. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, 6 C.F.R. Part 5 §5.3(b) of the DHS FOIA regulations require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record. The FOIA does not require an agency to create new records, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records.

Please resubmit **items 1-6** of your request containing a reasonable description of the records you are seeking. This is not a denial of your request. Upon receipt of a perfected request, you will be advised as to the status of your request. If we do not hear from you within 30 days from the date of this letter, we will assume you are no longer interested in this FOIA request, and the case will be administratively closed.

Please note this office will be conducting a search for **item 7**.

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. Part 5 § 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 under 6 C.F.R. Part 5 § 5.5(c). 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 6 C.F.R. Part 5 § 5.5(c). 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.

You have requested a fee waiver. The DHS FOIA regulations at 6 C.F.R. Part 5 § 5.11(k) 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 FOIA regulations applicable to media requesters, process the first 100 pages free of charge. 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.

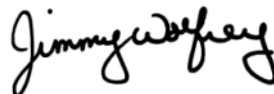
In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to media requesters. As a media requester you will be charged 10 cents per page for duplication; the first 100 pages are free. 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.

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 analysts 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 **2021-HQFO-01574**. Please refer to this identifier in any future correspondence. The status of your FOIA request is now available online and can be accessed at: <https://foiarequest.dhs.gov/app/CheckStatus.aspx>, by using this FOIA request number.

If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or at 202-343-1743.

Sincerely,

A handwritten signature in black ink, appearing to read "Jimmy Wolfrey". The signature is fluid and cursive, with the first name "Jimmy" and last name "Wolfrey" clearly distinguishable.

Jimmy Wolfrey
Senior Director, FOIA Operations and Management
(Acting)

EXHIBIT C

Email Details

From:	foia@hq.dhs.gov
To:	hihammado@gmail.com
Cc:	
Bcc:	fabio.vanegas@hq.dhs.gov
Subject:	[ACTION NEEDED] Department of Homeland Security FOIA 2021-HQFO-01574
Date Sent:	10/12/2021 2:54:24 PM
Body:	<p>Good afternoon,</p> <p>The program office tasked for item 7 of your request (OCIO) conducted a search and the search yielded a voluminous search that our servers won't be able to manage, 104 GB of data. We wanted to reach out to you to see if you could narrow the search by providing us with conjunctive terms for the search. The search as is, was conducted using any of the keywords you provided. What we suggest for a more concise and targeted search would be to use an "AND" operator for the Boolean Search and specify a topic of your interest that we can focus on.</p> <p>We will place this case on hold until we receive clarification from you.</p> <p>OCIO conducted the search below:</p> <p>("Countering Violent Extremism") OR ("CVE") OR ("Targeted Violence and Terrorism Prevention") OR ("TVTP") OR ("Muslim") OR ("Islam") OR ("Mosque") OR ("Masjid") OR ("jihad") OR ("White Supremacist") OR ("Nationalist") OR ("White Nationalist") OR ("white Nationalist") OR ("White Supremacy") OR ("Black Lives Matter") OR ("Riot") OR ("Protests") OR ("January 6th") OR ("1/6") OR ("insurrection") OR ("September 11th") OR ("9/11") OR ("Religion") OR ("Equitable") OR ("Bias") OR ("Disparate impact") OR ("Discriminatory") OR ("Structural racism") OR ("People of color") OR ("Marginalization") OR ("Equitable") OR ("Racial") OR ("Racist") OR ("IG") OR ("Inspector General")</p> <p>Regards,</p> <p>DHS Privacy Office Disclosure & FOIA Program STOP 0655 Department of Homeland Security 245 Murray Drive, SW Washington, DC 20528-0655 Telephone: 1-866-431-0486 or 202-343-1743 Fax: 202-343-4011 Visit our FOIA website</p>

