EXHIBIT A

KNIGHT
FIRST AMENDMENT
INSTITUTE
at Columbia University

October 10, 2017

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
1425 New York Avenue NW, Suite 11050
Washington, DC 20530-0001

Melissa Golden
Lead Paralegal and FOIA Specialist
Office of Legal Counsel
Department of Justice
950 Pennsylvania Avenue NW, Room 5511
Washington, DC 20530-0001

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

National Security Agency
Attn: FOIA/PA Office
9800 Savage Road, Suite 6932
Ft. George G. Meade, MD 20755-6932

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

Stephen Kelley
Acting Director
Information Management Division
Office of the Director of National
Intelligence
Washington, DC 20511

Re: Freedom of Information Act Request
Expedited Processing Requested

To whom it may concern:

The Knight First Amendment Institute at Columbia University ("Knight Institute" or "Institute")[1] and the Freedom of the Press Foundation[2] ("FPF") submit this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for records concerning restrictions on government surveillance targeting members of the news media or otherwise implicating the First Amendment.

I. Background

Various statutes authorize government searches, seizures, and other forms of surveillance that implicate core First Amendment freedoms, including the freedoms of speech, association, and the press. Cognizant of these implications, Congress has prohibited the government from relying on many of these statutes to conduct surveillance based solely on activity protected by the First Amendment. *See, e.g.*, 12 U.S.C. § 3414(a)(5)(B); 18 U.S.C. § 2709(b). Based on the same concerns, the Department of Justice ("DOJ") and other federal agencies have adopted policy or regulatory constraints, such as those set forth in the DOJ's "Media Guidelines," on the use of law enforcement investigative authorities to obtain records and information from members of the news media. 28 C.F.R. 50.10.[3] Yet other investigative authorities, such as the government's authority to obtain records and information from third parties by secretly issuing national security letters ("NSLs"), 18 U.S.C. § 2709, do not appear to be subject to any such statutory or regulatory limitations.[4]

The Knight Institute and Freedom of the Press Foundation seek to inform the public about the scope of the government's investigative powers and the limitations placed on those powers to protect the freedoms of

[1] The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

[2] The Freedom of the Press Foundation is a non-profit organization based in San Francisco that works to preserve and strengthen the rights guaranteed to the press under the First Amendment through crowdfunding, digital security and internet advocacy.

[3] See U.S. Dep't of Justice, Updated Policy Regarding Obtaining Information From, or Records of, Members of the News Media, and Regarding Questioning, Arresting, or Charging Member[s] of the News Media, Jan. 14, 2015, *available at* https://perma.cc/C5FV-L7F6; U.S. Dep't of Justice, Report on Review of News Media Policies, July 12, 2013, *available at* https://perma.cc/HV4P-W77K.

[4] See Trevor Timm, *New Documents Shed Light on the Justice Dept's Secret Rules for Targeting Journalists with National Security Letters*, Freedom of the Press Found. (Jan. 8, 2016), https://perma.cc/7NA5-XH65.

speech, association, and the press. Recent reports of government investigations into journalists, political dissenters, and political protesters call into question the adequacy of those protections. For example, earlier this year the DOJ demanded that the web host for a website called DisruptJ20.org, which organized protests on the day of President Trump's inauguration, turn over the website's visitor logs and other user information.[5] The DOJ narrowed its demand only after widespread opposition on First Amendment grounds.[6] Additionally, on August 4, 2017, the DOJ announced that it had tripled the number of active investigations into leaks of government information since President Trump took office, and that it would be "reviewing policies affecting media subpoenas" in connection with those investigations.[7] Given this acknowledged increase in government investigations into activities that may be protected by the First Amendment, the need to inform the public of the limitations on the government's authority to conduct such investigations is particularly pressing.

II. Records Requested

The Knight Institute and Freedom of the Press Foundation request the following documents[8] created on or after May 1, 2013:

1. All documents concerning any limitations on investigative activities, including the use of law enforcement and national security investigative authorities,[9] to target, acquire, retain, disseminate, or use records or information of or about members of the news media.[10] This request includes but is not limited to:

    a. All documents concerning the Privacy Protection Act of 1980, 42 U.S.C. § 2000aa, and/or the DOJ's Media Guidelines, 28 C.F.R. 50.10;

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[5] Robinson Meyer, *Can the U.S. Government Seize Anti-Trump Website's Visitor Logs?* (Aug. 15, 2017), https://perma.cc/X2WY-RWEB.

[6] Morgan Chalfant, *DOJ Drops Request for IP Addresses from Trump Resistance Site*, The Hill (Aug. 22, 2017), https://perma.cc/9GZB-GX7W.

[7] News Release, U.S. Dep't of Justice, Attorney General Jeff Sessions Delivers Remarks at Briefing on Leaks of Classified Materials Threatening National Security (Aug. 4, 2017), *available at* https://perma.cc/NQQ8-82F2.

[8] As used herein, the term "documents" includes but is not limited to directives, policies, procedures, memoranda, guidance, training material, presentations, and emails.

[9] As used herein, the term "national security investigative authorities" includes but is not limited to NSLs, "exigent letters," and Foreign Intelligence Surveillance Act ("FISA") orders or directives.

[10] As used herein, the term "members of the news media" broadly includes journalists, reporters, bloggers, and other members of media, press, and news organizations.

b. All targeting, minimization, and/or other procedures adopted by the Federal Bureau of Investigation ("FBI"), National Security Agency ("NSA"), Central Intelligence Agency ("CIA"), and/or the National Counterterrorism Center ("NCTC") regarding the use of law enforcement and/or national security investigative authorities to obtain records or information of or about members of the news media;

c. All reports prepared by the DOJ Office of Inspector General ("OIG"), the NSA OIG, and/or the CIA OIG regarding the use of law enforcement and/or national security investigative authorities to obtain records or information of or about members of the news media; and

d. All requests or statistical information concerning requests to the DOJ National Security Division General Counsel and/or the Executive Assistant Director of the DOJ National Security Branch for approval to issue NSLs for the acquisition of records or information of or about members of the news media.

2. All documents concerning the limitations imposed upon any of the government's investigative authorities by the First Amendment. This request includes but is not limited to all documents concerning the following provisions, each of which limits governmental investigative authority on the basis of the First Amendment:

a. 5 U.S.C. § 552a(e)(7);

b. 12 U.S.C. § 3414(a)(5)(A);

c. 15 U.S.C. § 1681u(a)–(c);

d. 18 U.S.C. § 2709(b);

e. 50 U.S.C. § 1805(a)(2)(A);

f. 50 U.S.C. § 1824(a)(2)(A);

g. 50 U.S.C. § 1842(a)(1), (c)(2);

h. 50 U.S.C. § 1843(a), (b)(1);

i. 50 U.S.C. § 1861(a)(2)(B); and

j. 80 F.R. 9,355, at 9,356.

3. All portions of the current version of the FBI Domestic Investigations and Operations Guide ("DIOG") that discuss any limitations on any investigative activities, including the use of law enforcement and national security investigative authorities, to target, acquire, retain, disseminate, or use records or information of or about members of the news media, and/or any other limitations on those investigative activities imposed by the First Amendment. This request includes but is not limited to:

    a. All documents discussing the scope of, or setting forth any exceptions to, the portions of the current FBI DIOG described above;

    b. All portions of the current FBI DIOG that update or otherwise correspond to the following portions of the version of the FBI DIOG dated October 15, 2011:

        i. Appendices G and Q; and

        ii. Sections 2.84, 3.3.1.3–3.3.1.4, 3.5–3.6, 4.1–4.2, 4.4.4, 5.1, 5.3, 5.6.3.4.4.1, 5.7.1, 6.3, 6.10.1, 7.3, 7.10.1, 8.3, 8.8.1, 9.3, 9.10.1, 10.1.2.2.5, 10.1.3, 10.2.3, 16.1.3, 16.2.3, 16.2.3.5, 16.3.1.4.2, 16.3.1.5.3, 16.9.3, 18.2, 18.5.6.1, 18.5.6.4.8, 18.6.4.3.4.3, 18.6.5.3.5.1, 18.6.6.3.4, 18.6.6.3.7.4, 18.6.8.4.2.7, 18.6.9.5.1.1, and 19.10.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

We also ask that you provide responsive electronic records in their native file format or a generally accessible electronic format (*e.g.*, for tabular data, XLS or CSV). *See* 5 U.S.C. § 552(a)(3)(B).

III. Application for Expedited Processing

The Knight Institute and Freedom of the Press Foundation request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a "compelling need" for the records sought because the information they contain is "urgent[ly]" needed by organizations primarily engaged in disseminating information "to inform the public about actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

A. The Knight Institute and Freedom of the Press Foundation are primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

The Knight Institute and Freedom of the Press Foundation are "primarily engaged in disseminating information" within the meaning of FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II).

The Knight Institute is a newly established organization at Columbia University dedicated to defending and strengthening the freedoms of speech and the press in the digital age. Research and public education are central to the Institute's mission.[11] Obtaining information about government activity, analyzing that information, and publishing and disseminating it to the press and the public are among the core activities the Institute was established to perform. *See ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding 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").

The Freedom of the Press Foundation is a non-profit organization established under the laws of the State of California, with its primary office in San Francisco, California. The mission of FPF is to advocate for government transparency and accountability by preserving the rights guaranteed to the press under the First Amendment and fortifying the public's right to know. As a core part of that mission, FPF educates the public about government protocols and procedures involving the press and uses FOIA to obtain and publish documents detailing government activities that impinge on press freedom. Like the Knight Institute, therefore, FPF is "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II).

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

The requested 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). The records sought concern possible government intrusion on freedoms of speech, association, and the press, including the government's investigations into DisruptJ20.org visitors and into suspected leakers of government information.[12] Indeed, Attorney General Jeff Sessions recently announced

[11] Mike McPhate, *Columbia University To Open a First Amendment Institute*, N.Y. Times (May 17, 2016), https://perma.cc/YC9M-LUAD; James Rosen, *New Institute Aspires To Protect First Amendment in Digital Era*, McClatchy DC (May 20, 2016), https://perma.cc/ZS2K-FPED.

[12] Robinson Meyer, *Can the U.S. Government Seize Anti-Trump Website's Visitor Logs?* (Aug. 15, 2017), https://perma.cc/X2WY-RWEB; News Release, U.S. Dep't of Justice, Attorney

an increase in FBI resources devoted to leak cases and the creation of a new counterintelligence unit to manage these cases, along with a review of policies "that impact leak investigations," including policies regarding media subpoenas.[13]

Moreover, the scope of the government's authority to conduct investigations into activities protected by the First Amendment, and in a manner that may otherwise violate the First Amendment, has become a matter of widespread debate and increasing public interest.[14] For instance, the recent publication of actual NSLs by companies such as Google, Yahoo, and the Internet Archive has generated significant public interest.[15] Yet lack of broader transparency with respect to current policies and practices stymies meaningful debate over the scope of the government's authority to obtain records and information of and about members of the press without their consent and often without their knowledge.

The public's interest in the records sought is even greater because current practices may violate constitutional rights. The First Amendment safeguards individuals' rights to anonymous speech and private association. As the Supreme Court has explained, "[p]rosecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all. Identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance." *Talley v. California*, 362 U.S. 60, 64 (1960). The Supreme Court has similarly recognized that "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). The First Amendment further guarantees the freedom of the press from unjustified intrusion into the newsgathering process. Courts therefore "apply the warrant requirements with particular exactitude when First Amendment interests would be endangered by [a] search." *Zurcher v. Stanford Daily*, 436 U.S. 547, 565 (1978). At present, the public can neither determine the degree to which freedoms of speech,

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General Jeff Sessions Delivers Remarks at Briefing on Leaks of Classified Materials Threatening National Security, (Aug. 4, 2017), *available at* https://perma.cc/NQQ8-82F2.

[13] News Release, U.S. Dep't of Justice, Attorney Jeff Sessions Delivers Remarks at Briefing on Leaks of Classified Materials Threatening National Security, (Aug. 4, 2017), *available at* https://perma.cc/NQQ8-82F2.

[14] *See, e.g.*, Laura Wamsley, *DOJ Demands Files on Anti-Trump Activists, and a Web Hosting Company Resists*, NPR (Aug. 15, 2017), https://perma.cc/4LB5-VDTF; Charlie Savage & Eileen Sullivan, *Leak Investigations Triple Under Trump, Sessions Says*, N.Y. Times (Aug. 4, 2017), https://perma.cc/C3YD-82PJ.

[15] Richard Salgado, *Sharing National Security Letters with the Public*, Google (updated Aug. 10, 2017), https://perma.cc/Q5S6-S7GW; *see* Rachel Revesz, *Google Publishes Secret FBI Customer Information Requests Two Months After Gag Order Is Lifted*, Independent (Dec. 19, 2016), https://perma.cc/N7KU-V5LR; Chris Madsen, *Yahoo Announces Public Disclosure of National Security Letters*, Yahoo! (June 1, 2016), *available at* https://perma.cc/AK9D-VVAE.

association, and the press are being abridged under existing policies, nor assess how proposed policies could further curtail those freedoms.

For these reasons, the Knight Institute and Freedom of the Press Foundation are entitled to expedited processing of this request.

IV. Application for Waiver or Limitation of Fees

The Knight Institute and Freedom of the Press Foundation request a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and that 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). For the reasons explained above, disclosure of the records would be in the public interest. Moreover, disclosure would not further the Knight Institute's or FPF's commercial interests. The Institute and FPF will make any disclosed information available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA to ensure "that it be liberally construed in favor of waivers for noncommercial requesters." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (citation omitted).

In addition, the Knight Institute and Freedom of the Press Foundation request a waiver of search and review fees on the ground that each is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The Institute and FPF qualify as "representative[s] of the news media" because each 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); *see Nat'l Sec. Archive v. DOD*, 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 FOIA); *Serv. Women's Action Network v. DOD*, 888 F. Supp. 2d 282, 287–88 (D. Conn. 2012); *ACLU*, 321 F. Supp. 2d at 30 n.5. Courts have found other non-profit organizations with research and public education missions similar to that of the Institute and FPF to be representatives of the news media. *See, e.g.*, *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding non-profit group that disseminated an electronic newsletter and published books was a "representative of the news media" for purposes of FOIA); *Nat'l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester).

Finally, the Knight Institute requests a waiver of search and review fees on the ground that it qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The Knight Institute has a substantial educational mission. Situated within a prominent academic research university, the Institute performs scholarly research on the application of the First Amendment in the digital era. The Institute has recently inaugurated a research program bringing together academics and practitioners of different disciplines to study contemporary First Amendment issues and offer informed, non-partisan commentary and solutions. It will publish that commentary in many forms — in scholarly publications, in long-form reports, and in short-form essays.

For these reasons, the Knight Institute and Freedom of the Press Foundation are entitled to a fee waiver.

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Thank you for your attention to our request. We would be happy to discuss its terms with you over the phone or via email to clarify any aspect of the request or, where reasonable, to narrow it.

I certify that the foregoing is true and correct.

Sincerely,

/s/ Carrie DeCell

Carrie DeCell
Alex Abdo
Knight First Amendment Institute at
Columbia University
314 Low Library
535 West 116th Street
New York, NY 10027
carrie.decell@knightcolumbia.org
(212) 854-9600

Trevor Timm
Freedom of the Press Foundation
601 Van Ness Ave.
Suite E731
San Francisco, CA 94102
trevor@freedom.press