



September 18, 2019

FOIA Officer
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Re: Freedom of Information Act Request regarding Asylum Negotiations Between the U.S. and Guatemala

Dear FOIA Officer:

The American Immigration Council ("Council" or "Requester"), submits the following request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et. seq.* In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect that you will respond to this request within twenty working days, unless otherwise permitted by statute.

1. REQUEST FOR INFORMATION

Background

The Council seeks records¹ relating to negotiations and agreements between the U.S. government and the government of Guatemala in which Guatemala has or will agree to receive potential asylum seekers from the United States. These negotiations have been widely reported in the media.² At least one agreement between the two countries regarding the processing of asylum seekers, signed on July 26,

¹ The term "records" as used herein includes, but is not limited to: communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

² Nick Miroff, "Trump Officials Signed a Major Immigration Deal with Guatemala. Now They're Selling it to Guatemalans," WASH. POST (August 1, 2019), <https://wapo.st/329n7g4>; Zolan Kano-Youngs, "Asylum Deal with Guatemala is Contentious, Despite U.S. Assurances," NEW YORK TIMES (August 1, 2019), <https://nyti.ms/2NEC8IR>; Sonia Pérez D., "US DHS Chief, Guatemala President Meet on Asylum Agreement," ASSOCIATED PRESS (August 1, 2019), <http://bit.ly/2KZwb1c>; Hamed Aleaziz, "The Trump Administration is Scrambling to Make its 'Safe Third Country' Asylum Deal with Guatemala a Reality, Memo Shows," BUZZFEED NEWS (July 30, 2019), <http://bit.ly/2ZjktHA>; Ted Hesson, "Trump announces Asylum Deal with Guatemala," POLITICO (July 26, 2019), <https://politi.co/2LbSzDz>; Andrew Restuccia, "U.S., Guatemala Reach Agreement on Asylum Seekers," THE WALL STREET JOURNAL (July 26, 2019), <https://on.wsj.com/32fzxTP>; Steve Holland and Sofia Menchu, "Guatemala Agrees to New Migration Measures to Avoid Trump Sanctions Threat," REUTERS (July 26, 2019), <https://reut.rs/2MJSIBu>; Rishika Dugyala and Sabrina Rodriguez, "Trump Warns of Retaliation Against Guatemala After Immigration Deal Falls Through," POLITICO (July 23, 2019), <https://politi.co/2Zq29wD>; Elizabeth Malkin, "Trump Threatens Guatemala With Tariffs Over Migrants," NEW YORK TIMES (July 23, 2019), <https://nyti.ms/2LbVs7d>.

2019, was recently published by at least one media outlet.³ Thus, the Council has good reason to believe that records it seeks exist and further, that they are in the possession of the U.S. Department of Homeland Security (“DHS”).⁴

Specific description of the request:

The Council specifically requests the following documents:

- Written records between DHS officials relating to U.S. negotiations and/or agreements with Guatemala pertaining to the processing of asylum seekers in Guatemala;
- All records between DHS officials and any other U.S. government officials relating to U.S. negotiations and/or agreements with Guatemala pertaining to the processing of asylum seekers in Guatemala, including communication between DHS and the U.S. Department of State. This includes, but is not limited to, any records relating to the July 26th meeting between Secretary of State Pompeo, Acting DHS Secretary Kevin McAleenan, and President Trump described in the New York Times article “Trump Officials Argued Over Asylum Deal with Guatemala. Now Both Countries Must Make It Work”;
- All written records between DHS officials and Guatemalan government officials relating to the countries’ negotiations and/or agreements pertaining to the processing of asylum seekers in Guatemala;
- All draft and final records, including any final or draft agreements, by DHS officials or Guatemalan government officials pertaining to the processing of asylum seekers.
- All written records and communications relating to the process of determining whether the asylum system in Guatemala is capable of handling processing under the proposed asylum agreement between the United States and Guatemala.⁵

DHS must interpret the Council’s request for records liberally. *See Truitt v. Dep’t of State*, 897 F.2d 540, 544–45 (D.C.Cir.1990); *Founding Church of Scientology v. NSA*, 610 F.2d 824, 836–37 (D.C.Cir.1979) (same). As such, DHS must also construe the scope of the Council’s request to encompass records reasonably related to it. *Truitt v. Dep’t of State*, 897 F.2d 540 at 542. In this regard, DHS should include records in its response that relate to negotiations between the U.S. and Guatemala in furtherance of any agreement by Guatemala to receive asylum seekers, whether or not these separate written records and communications relate to asylum seekers only. Further, DHS should include any records that come

³Sonia Pérez D., “US DHS Chief, Guatemala President Meet on Asylum Agreement,” Associated Press (August 1, 2019), <http://bit.ly/2KZwb1c>.

⁴ See e.g., Michael D. Shear and Zolan Kanno-Youngs, “Trump Officials Argued Over Asylum Deal with Guatemala. Now Both Countries Must Make It Work,” NEW YORK TIMES (August 2, 2019), <https://nyti.ms/2UazQwg> (discussing the State Department’s role in finalizing the agreement, including the role played by Secretary of State Pompeo).

⁵ See Hamed Aleaziz, Sept. 10, 2019: <https://twitter.com/Haleaziz/status/1171493728487264256> (“DHS and State Department leaders told congressional staffers Tuesday that the US is in the process of determining whether the asylum system in Guatemala is capable of handling processing, according to a source with knowledge of the meeting.”)

within the possession of the agency prior to initiating a search for records responsive to the Council's request.

2. FEE WAIVER REQUEST

The Council requests a fee waiver because the information it seeks 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 [requesters]...." 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1).

A. Disclosure Will Contribute to Public Understanding of Governmental Operations and Activities

In this case, the Council's request has a "direct and clear" connection to operations and activities of the Federal Government, given that it encompasses negotiations and potential agreements between the U.S. government and Guatemala regarding the adjudication of asylum claims. See 6 C.F.R. § 5.11(k)(2)(i). Further, the only information to date available on the negotiations and potential agreements between the U.S. and Guatemala is that which has been reported in the press; the U.S. government has itself not released any information publicly relating to these discussions, including how it intends to implement any agreements which will impact various stakeholders. Thus, the records that the Council seeks will be "meaningfully informative" to the public and "'likely to contribute' to an increased public understanding" of these negotiations and any agreements. 6 C.F.R. §§ 5.11(k)(2)(ii); (iii). Additionally, the Council's request is intended to inform a "reasonably broad audience." 6 C.F.R. § 5.11(k)(2)(iv). The Council regularly provides information to the public based on its FOIA requests.⁶ In keeping with its track record of synthesizing or otherwise publishing information on governmental operations gleaned from FOIA requests, the Council intends to post documents received in response to this FOIA request on its publicly accessible website. For calendar year 2018 (Jan. 1 - Dec. 31, 2018), the Council's website had over 3.1 million-page views from 1.8 million unique visitors.

B. Disclosure of the Information Is Not in the Commercial Interest of the Council

The Council is a not-for-profit organization and has no commercial interest in the present request. See e.g. 6 C.F.R. § 5.11(k)(1)(ii). This request furthers the Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws and protect the legal rights of noncitizens. As with all other reports and information available on the Council's website, the information that Council receives in response to this FOIA request will be available to stakeholders and other interested members of the public free of charge.

⁶ Guillermo Cantor, Emily Ryo, and Reed Humphrey, "Changing Patterns of Interior Immigration Enforcement in the United States, 2016 -2018," AMERICAN IMMIGRATION COUNCIL (July 1, 2019), <https://americanimmigrationcouncil.org/research/interior-immigration-enforcement-united-states-2016-2018>; American Immigration Council, "Stays of Removal Responses from EOIR," (May 2019), https://americanimmigrationcouncil.org/sites/default/files/foia_documents/board_of_immigration_appeals_interpretation_of_stay_of_removal_foia_production.pdf; American Immigration Council, *Legal Orientation Program Overview* (September 6, 2018), <https://bit.ly/2U7VUdu>; Guillermo Cantor and Walter Ewing, "Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered," AMERICAN IMMIGRATION COUNCIL (August 2, 2017).

Given that FOIA's fee-waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

3. EXEMPTIONS

If DHS concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

Please note that the Council has filed a similar request for records with the Department of State. If you have any questions regarding this request, please feel free to email or call me at the contact information below.

Sincerely,



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