



August 27, 2019

Via Electronic Mail

FOIA Public Liaison
U.S. Citizenship and Immigration Services
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RE: Request Under the Freedom of Information Act U.S. Citizenship and Immigration Services Use of Social Media Data

To whom it may concern:

This letter constitutes a request under the Freedom of Information Act (“FOIA”) and is submitted on behalf of the Center for Democracy & Technology (“CDT”)¹ to United States Citizenship and Immigration Services (“USCIS”). CDT respectfully requests records pertaining to USCIS’s use of social media data in adjudicating immigration benefits.

I. Requested Documents

- 1) The “USCIS procedures and training focused on understanding data quality limitations associated with social media” referenced in DHS/USCIS/PIA-068 on page 18;²
- 2) The USCIS policy on the Operational Use of Social Media referred to in DHS/USCIS/PIA-013-01 on page 5 in this text: “USCIS is finalizing its policy for use of Social Media in compliance with the DHS Directive 110- 01, Privacy Policy for Operational Use of Social Media and Instruction 110-01-001”;³
- 3) USCIS training materials on the “USCIS Privacy Requirements for the Operational

¹ The Center for Democracy & Technology is a 501(c)(3) organization that advocates for global online civil liberties and human rights. CDT drives policy outcomes that keep the internet open, innovative, and free. The organization supports laws, corporate policies, and technology tools that protect privacy, and advocates for stronger legal controls on government surveillance. <https://cdt.org/about/>.

² U.S. Dep’t of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-068, Privacy Impact Assessment for the Refugee Case Processing and Security Vetting, 18 (July 21, 2017), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-refugee-july2017.pdf>.

³ U.S. Dep’t of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-013-01, Privacy Impact Assessment for the Fraud Detection and National Security Directorate, 5 (Dec. 16, 2014), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf.

Use of Social Media training” referred to in DHS/USCIS/PIA-068 on page 17 in footnote 38;⁴ and

- 4) USCIS “Rules of Behavior” for social media monitoring referred to in DHS/USCIS/PIA-068 on page 17 in footnote 38.⁵

II. Background

On December 16, 2014, USCIS issued a Privacy Impact Assessment (PIA), for “The Fraud Detection and National Security Directorate”,⁶ which provided a number of updates on how the FDNS directorate collects, uses, and maintains personally identifiable information. As a part of its work to “to verify the historical, biographical, financial, and personal information presented by applicants to detect the possibility of immigration benefit fraud and public safety and national security concerns,” FDNS personnel may review publicly available social media data.⁷ The PIA noted that, “USCIS is finalizing its policy for use of Social Media in compliance with the DHS Directive 110-01, Privacy Policy for Operational Use of Social Media and Instruction 110-01-001.”⁸ It also noted that FDNS personnel would have to sign “Rules of Behavior” and receive an annual training on the use of social media data.⁹

On July 21, 2017, USCIS issued a Privacy Impact Assessment (PIA), “Refugee Case Processing and Security Vetting DHS/USCIS/PIA-068,”¹⁰ examining a variety of issues regarding the implementation of the U.S. Refugee Admissions Program (USRAP). This report included a section on “Social Media Reviews” indicating that the agency’s FDNS directorate may use multiple methods to review the social media presence of “select applicant populations” in order to identify “publicly available information . . . that may impact eligibility for [refugees’] immigration filing.”¹¹ The social media information collected is handled in a manner “consistent with existing USCIS policies and rules of behavior regarding the use of social media information in adjudicative decision making.”¹² Furthermore, it is noted that “[a]ll FDNS personnel receive the USCIS Privacy Requirements for the Operational Use of Social Media training and sign Rules of Behavior before initial use is granted and annually thereafter.”¹³ This PIA also stated that there are policies and trainings provided to USCIS personnel regarding the data quality limitations in publicly available social media information.¹⁴

How USCIS personnel retrieve and assess social media information in the course of adjudicating

⁴ U.S. Dep’t of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-068, Privacy Impact Assessment for the Refugee Case Processing and Security Vetting, 17 (July 21, 2017), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-refugee-july2017.pdf>.

⁵ *Id.*

⁶ U.S. Dept’t of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-013-01, Privacy Impact Assessment for the Fraud Detection and National Security Directorate, (Dec. 16, 2014), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf.

⁷ *Id.* at 13.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ U.S. Dep’t of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-068, Privacy Impact Assessment for the Refugee Case Processing and Security Vetting, 7 (July 21, 2017), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-refugee-july2017.pdf>.

¹¹ *Id.*

¹² *Id.* at 17.

¹³ *Id.*

¹⁴ *Id.* at 18.

immigration benefits is an issue of great public interest. USCIS's determinations on who may or may not receive an immigration benefit are highly consequential for the applicant and their loved ones. The U.S. government's decision to review public social media data to aid these consequential decisions has raised numerous concerns about the preservation of immigrants' rights to free speech and association. Further there is significant concern that inaccurate information and inferences will be derived from a review of an individual's social media presence. Social media data can be an unreliable reflection of an applicant, a fact that both of the above referenced PIAs acknowledge.¹⁵ And the inclusion of social media data in these decision-making processes can leave applicants vulnerable to pretextual denials.

Agency documents acknowledge a need for standardized procedures when assessing social media data. Internal USCIS assessments of pilots involving social media use have noted a need for "clear guidance" on the evaluation of what social media records are derogatory and "worth future investigation," the use of any allegedly derogatory information, and the sharing of "potential concerns" with law enforcement officers.¹⁶ Similarly, agency privacy evaluations recognize the need for a standardized procedure for the handling of social media data given the sensitive nature of the data, calling for the implementation of "Rules of Behavior for the Operational Use of Social Media" to ensure proper training and use by agency employees.¹⁷

The collection and use of social media data by agencies such as USCIS may have a substantial chilling effect on those seeking an immigration benefit, particularly absent clarity as to the treatment of their expressive activity. Proper training of USCIS personnel on the data quality limitations of social media could be a significant safeguard to prevent harm to applicants. However without access to this training or other policy guidance on how USCIS adjudicators should evaluate social media data, the public cannot be confident that the agency has adopted sufficient measures. The PIAs reveal that USCIS has endeavored to guide personnel on how to use social media data in the adjudication of immigration benefits. The release of the requested documents will either shore up confidence in the agency's training and guidance materials, or reveal gaps in protection that must be addressed. In order to ensure that immigrants' rights are appropriately safeguarded, we respectfully request the above listed documents be made publicly available.

III. Application for Waiver of Fees

CDT 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

¹⁵ U.S. Dep't of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-068, Privacy Impact Assessment for the Refugee Case Processing and Security Vetting, 18 (July 21, 2017), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-refugee-july2017.pdf>; U.S. Dept't of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-013-01, Privacy Impact Assessment for the Fraud Detection and National Security Directorate, 14 (Dec. 16, 2014), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf.

¹⁶ U.S. Dep't of Homeland Sec., U.S. Citizenship and Immigration Services, Review of [redacted] Adjustment of Status Social Media Pilots, 33 (Feb. 16, 2017), <https://www.thedailybeast.com/obama-team-did-some-extreme-vetting-of-muslims-before-trump-new-documents-show>.

¹⁷ U.S. Dep't of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-013(a), Fraud Detection and National Security Data System, 14 (May 18, 2016), <https://www.dhs.gov/publication/dhs-uscis-pia-013-01-fraud-detection-and-national-security-directorate>; U.S. Dep't of Homeland Sec., U.S. Citizenship and Immigration Services, DHS/USCIS/PIA-013(a), Fraud Detection and National Security Directorate, 5 (Dec. 16, 2014), <https://www.dhs.gov/publication/dhsuscis-pia-013-01-fraud-detection-and-national-security-directorate>.

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). CDT also requests a waiver of search fees on the grounds that the CDT 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).

1. *Disclosure of the requested records is likely to contribute significantly to public understanding of operations or activities of the government and is not primarily in the commercial interest of CDT.*

USCIS monitoring and collection of social media information is a topic of substantial public attention, and the government's collection of social media data in screening immigration visa and benefit applicants has received coverage from the news media.¹⁸ The expansion of persons from whom the government is collecting social media information has received media attention.¹⁹ The Trump administration's plans to expand collection of social media information as part of President Trump's "extreme vetting" proposal has also received extensive news coverage.²⁰ Civil society organizations are concerned about the expansion of social media monitoring and collection by government agencies and have specifically addressed the lack of publicly available guidelines explaining how federal agencies monitor, collect, and use social media information.²¹

CDT is not filing this FOIA to fulfill a commercial interest. This request is made in furtherance of the work CDT does for the public interest.

¹⁸ See, e.g., Matt Novak, *US Homeland Security Says Tracking Social Media of Immigrants is Nothing New*, Gizmodo (Sept. 28, 2017), <https://gizmodo.com/us-homeland-security-says-tracking-social-media-of-immi-1818875395>; Shirin Jaafari, *The new DHS plan to gather social media information has privacy advocates up in arms*, PRI (Oct. 12, 2017), <https://www.pri.org/stories/2017-10-12/new-dhs-plan-gather-social-media-information-has-privacy-advocates-arms>; Rachel Levinson-Waldman, *How ICE and Other DHS Agencies Mine Social Media in the Name of National Security*, Common Dreams (June 5, 2019), <https://www.commondreams.org/views/2019/06/05/how-ice-and-other-dhs-agencies-mine-social-media-name-national-security>.

¹⁹ See, e.g., Sandra E. Garcia, *U.S. Requiring Social Media Information From Visa Applicants*, New York Times (June 2, 2019) <https://www.nytimes.com/2019/06/02/us/us-visa-application-social-media.html>; Jackie Bischof, *The US just added one more requirement for visa applicants to stress about*, Quartz (June 2, 2019), <https://qz.com/1633061/us-visa-applications-will-now-include-social-media-screening/>; Rachel Levinson-Waldman, *Government surveillance of social media related to immigration more extensive than you realize*, The Hill (May 29, 2019), <https://thehill.com/opinion/immigration/445766-government-surveillance-of-social-media-related-to-immigration-extensive>.

²⁰ See, e.g., Tal Kopan, *US to require would-be immigrants to turn over social media handles*, CNN (March 29, 2018), <https://www.cnn.com/2018/03/29/politics/immigrants-social-media-information/index.html>; Saagar Enjeti, *Trump administration to ask most US visa applicants for social media information*, The Hill (May 31, 2019), <https://thehill.com/hilltv/rising/446336-trump-admin-to-ask-most-us-visa-applicants-for-social-media-information>; Faiza Patel, *Snooping on Foreigners' Facebook Feeds Is Ineffective and Creepy*, The Atlantic (June 14, 2019), <https://www.theatlantic.com/ideas/archive/2019/06/if-us-takes-visa-applicants-social-media-handles/591544/>.

²¹ See, e.g., Hugh Handeyside, *The FBI 'Can Neither Confirm nor Deny' That It Monitors Your Social Media Posts*, American Civil Liberties Union (Jan. 17, 2019), <https://www.aclu.org/blog/free-speech/internet-speech/fbi-can-neither-confirm-nor-deny-it-monitors-your-social-media>; Sophia Cope, *DHS Should Stop the Social Media Surveillance of Immigrants*, Electronic Frontier Foundation (Oct. 3, 2017), <https://www.eff.org/deeplinks/2017/10/dhs-should-stop-social-media-surveillance-immigrants>; *Coalition Letter Opposing DHS Social Media Retention*, Ctr. For Democracy and Tech. (Oct. 19, 2017), <https://cdt.org/insight/coalition-letter-opposing-dhs-social-media-retention/>; Kimberly McCullough, *Why Government Use of Social Media Monitoring Software Is a Direct Threat to Our Liberty and Privacy*, American Civil Liberties Union (May 6, 2016), <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/why-government-use-social-media-monitoring>; Faiza Patel, *Social Media Monitoring*, Brennan Ctr. For Justice (May 22, 2019), <https://www.brennancenter.org/publication/social-media-monitoring>.

2. *CDT qualifies as “a representative of the news media” and the records requested are not sought for commercial use.*

CDT also requests a waiver of search fees on the grounds that CDT 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). CDT 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). CDT maintains an active website and social media presence that helps it distribute its commentary and reporting on topical issues related to its mandate.²² CDT also maintains a bi-weekly newsletter through which it disseminates new material like blog posts and insights to subscribers. CDT will release the requested documents to the public without charge.

For these reasons CDT requests that fees for this FOIA request be waived.

Please furnish materials associated with this request to:

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Thank you for your attention to this matter.

Respectfully,

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²² See, e.g., Natasha Duarte, *5 Takeaways from the New DHS Privacy Guidance*, Ctr. For Democracy & Tech. (May 17, 2017), <https://cdt.org/blog/5-takeaways-from-the-new-dhs-privacy-guidance/>; Mana Azarmi, *Location Data: The More They Know*, Ctr. For Democracy & Tech. (Nov. 27, 2017), <https://cdt.org/blog/location-data-the-more-they-know/>; Greg Nojeim & Mana Azarmi, *Court Steps in to Protect Constitutional Rights at the Border*, Ctr. For Democracy & Tech. (May 11, 2018), <https://cdt.org/blog/courts-step-in-to-protect-constitutional-rights-at-the-border/>; Mana Azarmi, *CBP's Border Searches Struggle to Comply with Constitution and Agency Policy*, Ctr. For Democracy & Tech. (Dec. 18, 2018), <https://cdt.org/blog/cbps-border-searches-struggle-to-comply-with-constitution-and-agency-policy/>.