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November 27, 2023

FOIA Request: DOS & DHS

U. S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
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Washington, D.C. 20520-0000
foiarequest@state.gov

U.S. Department of Homeland Security
Privacy Office, Mail Stop 0655
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065
foia@hq.dhs.gov

RE: Freedom of Information Act Request

Dear FOIA Officer,

This is a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et seq., (“FOIA”), to the Department of State (“DOS”) implementing regulations, 22 C.F.R. § 171.11, and Department of Homeland Security (“DHS”) implementing regulations 6 C.F.R. § 5.1, by the Center for Constitutional Rights (“CCR”). Please direct this request to all appropriate offices, field offices, departments, bureaus, missions, and officials within each agency including but not limited to DOS’s Bureau of Consular Affairs, Consular Affairs Secretary, Under Secretary for Management, Deputy Secretary; DHS’s U.S. Customs and Border Protection, Transportation Security Administration, Office of Intelligence and Analysis, and Deputy Secretary.

A. Background

This request seeks information relating to all of the Memoranda of Understanding (MOU) signed by the U.S. Department of Homeland Security (DHS) and/or the U.S. Department of State (DOS), and the government of Israel which formed the basis for Israel’s designation into the Visa Waiver Program (VWP) under Immigration and Nationality Act (INA) § 217 and 8 C.F.R. § 217.

On July 19, 2023, DHS, DOS, and the government of Israel signed an MOU—entitled “Memorandum of Understanding between The Government of the State of Israel And The Government of the United States of America On Extension of Reciprocal Privileges and the Visa

Waiver Program.”¹ Thereafter, on September 26, 2023, DHS and DOS released statements designating Israel into the VWP, which referenced “updates” made by Israel “to its entry policies to meet the VWP requirement to extend reciprocal privileges to all U.S. citizens without regard to national origin, religion, or ethnicity.”² Most recently, on October 19, 2023, DHS announced “the start of visa-free travel for short term visits to the United States for eligible Israeli citizens and nationals following Israel’s admission into the [VWP].”³ In light of these public releases and Israel’s designation into the VWP, we believe that there exist *at least two* MOUs or *at least two versions* of one MOU regarding Israel’s designation into the VWP.

Given the public’s interest in understanding the terms of the MOU(s) signed by DHS, DOS, and the government of Israel, as well as Israel’s designation into the VWP, the requested information must be immediately disclosed and produced.

B. Request for Information

The Center for Constitutional Rights (CCR) requests the following records, documents, and/or information which were prepared, received, transmitted, collected, and/or maintained by DHS and/or DOS:⁴

- a) The MOU signed by DHS, DOS, and the government of Israel on July 19, 2023, entitled “Memorandum of Understanding between The Government of the State of Israel And The Government of the United States of America On Extension of Reciprocal Privileges and the Visa Waiver Program”;
- b) The MOU signed by DHS, DOS, and the government of Israel which was in existence on September 26, 2023—the date Israel was formally designated into the VWP; and
- c) Any records, documents, or information reflecting changes to the MOU between September 26, 2023, through the date of fulfillment of this FOIA request. 22 C.F.R. § 171.11(j); 6 C.F.R. § 5.4(a).

C. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records, see 5 U.S.C. § 522(a)(3)(B). We request that the records be provided in the following format:

¹ See Letter from Chris Van Hollen to Secretary Antony Blinken (Sept. 8, 2023). Available at https://www.vanhollen.senate.gov/imo/media/doc/van_hollen_vwp_letter_to_blinken_090823.pdf (accessed Nov. 15, 2023).

² See DHS, Secretary Mayorkas and Secretary Blinken Announce Designation of Israel into the Visa Waiver Program. Available at <https://www.dhs.gov/news/2023/09/27/secretary-mayorkas-and-secretary-blinken-announce-designation-israel-visa-waiver> (accessed Nov. 15, 2023).

³ See DHS, DHS Announces Start of Applications for Visa-Free Travel to U.S. for Eligible Israeli Travel to U.S. For Eligible Israeli Citizens and Nationals. Available at <https://www.dhs.gov/news/2023/10/19/dhs-announces-start-applications-visa-free-travel-us-eligible-israeli-citizens> (accessed Nov. 15, 2023).

⁴ Including components, divisions, subdivisions, or sections of the DHS and the DOS.

- Saved on a CD, CD-ROM, or DVD;
- In PDF or TIFF format wherever possible;
- Electronically searchable text wherever possible;
- Each paper record in a separately saved file;
- “Parent-child” relationships maintained, meaning that the requestor must be able to identify the attachments with emails;
- Emails should include BCC and any other hidden fields;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- With any other metadata preserved; and
- A glossary containing definitions of acronyms, numerical codes or terms contained documents responsive to this request, if those terms are not publicly defined.

D. The Requester

The Requester, CCR, is a non-profit, public interest legal and advocacy organization that engages in the fields of civil and international human rights. CCR’s diverse issue areas include litigation and advocacy around militarism, mass incarceration and prisoners’ rights, Palestinian solidarity, and the protection of human rights defenders and the right to dissent.

One of CCR’s primary activities is the publication of newsletters, know-your-rights handbooks, legal analysis of current human rights issues, and other similar materials for public dissemination. Records received through FOIA requests have served as the basis for some of these materials. These and other materials are available through CCR’s Development, Communications, and Advocacy Departments. CCR operates a website, <http://ccrjustice.org>, which addresses the issues on which the Center works, as well as through its various social media channels. CCR staff members often serve as sources for journalists and media outlets, including on issues related to international human rights, war crimes, the War on Terror, detention practices, and abusive practices against refugees, asylum seekers, and immigrants, among others. In addition, CCR regularly issues press releases, has an active social media presence with tens of thousands of followers, and also issues regular email updates sent to over 50,000 supporters about developments and news pertaining to CCR’s work.

E. Fees

The Requester, CCR, is entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 32 CFR § 1700.6(b), 22 CFR § 171.16(a), and 32 CFR § 286.12(l) on the grounds that “disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The Requester meets the requirements for a fee waiver because the subject of the request concerns the operations or activities of the government, the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities, the Requester’s primary interest is in disclosure; and the Requester has no commercial interest in the information. *See* 22 C.F.R. § 171.16.

Furthermore, CCR has a track-record of publicizing and explaining government records received through their Open Records Project: FOIA for the Movement which has led to the release of hundreds of thousands of pages of government documents, all of which are made available to the public.⁵

Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters’”).

In the alternative, if no fee waiver is granted and the fees exceed \$50.00, please contact the Requester's undersigned representative to obtain consent to incur additional fees. Processing fees should be limited pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by ... a representative of the news media”).

F. Expedited Processing

CCR's requests and is entitled to expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); 32 C.F.R. § 286.8(e)(1)(i), (e)(1)(ii)(B), and (e)(3); 22 C.F.R. § 171.11(f)(1)-(4); and 6 C.F.R. § 5.5(e)(1)(i)-(ii) on the ground that CCR has a compelling need for the information.

First, CCR's primary professional activity and occupation is information dissemination, and CCR has an urgent need to inform the public, including the numerous U.S. citizens and advocates for the Palestinian cause who are rightfully questioning the the terms of the MOU(s), as well as the legitimacy of Israel's designation into the VWP.⁶ 22 C.F.R. § 171.11(f)(2) and 6 C.F.R. § 5.5(e)(1)(ii). As a result, CCR urgently needs access to the requested records.

This is entirely consistent with, and central to, CCR's core mission as a national non-profit legal and advocacy organization. CCR engages in litigation, public advocacy, and educational programming to defend constitutional and human rights law, and in particular, on issues pertaining to immigrants, asylum seekers, and civilians of countries the U.S. has waged war or violence in. Dissemination of information to the public is a crucial component of CCR's mission and work. CCR disseminates information about government misconduct through the work of its staff, Board, and volunteer, cooperating, and co-counsel attorneys. Specifically, it publishes reports and newsletters, maintains a public website, issues press releases, and offers educational materials, and programming to the public within the U.S. and internationally. Additionally, CCR's staff, Board, and volunteer, cooperating and co-counsel attorneys further disseminate information through press releases, interviews, reports, educational programming and other means.

⁵ See CCR, Open Records Project: FOIA for the Movement, <https://ccrjustice.org/FOIA>.

⁶ For example, See Abu Irshaid, Osama, *Israel has no place in the US Visa Waiver Program*, Al Jazeera, (Sep. 28, 2023), <https://www.aljazeera.com/opinions/2023/9/28/israel-has-no-place-in-the-us-visa-waiver-program>; Hassan, Zaha, *Israel Is Unlikely to Respect US Visa Waiver Program Rules*, Arab Center Washington DC, (Aug. 22, 2023), <https://arabcenterdc.org/resource/israel-is-unlikely-to-respect-us-visa-waiver-program-rules/>.

Given the public's interest in understanding the terms of the MOU(s) signed by DHS, DOS, and the government of Israel, as well as Israel's designation into the VWP, the requested information must be immediately disclosed and produced.

G. Response

CCR expects each agency to make a determination of this request within 20 days, as provided by statute. See 5 U.S.C. § 552(a)(6)(A)(i).

If CCR's request is denied, in whole or in part, we ask that each agency justify all deletions by reference to specific exemptions to FOIA. We also expect each agency to release all segregable portions of otherwise exempt material. CCR reserves the right to appeal each agency's decision to withhold any information.

Thank you for your prompt attention to this matter. Please furnish all applicable records to: Ian Head, Center for Constitutional Rights, at ihead@ccrjustice.org (**preferred**) or by mail at 666 Broadway, 7th Fl., New York, NY 10012; (212) 614-6470.

I certify that the above information is true and correct to the best of my knowledge.



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