



International Refugee
Assistance Project

August 10, 2021

Attn: Mr. Monte Hawkins
Director, National Vetting Center
CBP National Targeting Center
12379 Sunrise Valley Drive
Reston, VA 20191

Sent via certified mail

**RE: FOIA Request for Records from the National Vetting Governance Board and
National Vetting Center**

Dear Director Hawkins:

This letter constitutes a request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, on behalf of the International Refugee Assistance Project (IRAP or Requestor). IRAP seeks disclosure of records pursuant to the FOIA from the National Vetting Center (NVC) and the National Vetting Governance Board (NVGB). Both the NVC and NVGB exercise substantial authority independent of the President; therefore, they are both agencies as defined by 8 U.S.C. § 552(f) and as such are subject to the FOIA. *See* 8 U.S.C. § 552(f); *Meyer v. Bush*, 981 F.2d 1288, 1301 (D.C. Cir. 1993) (an entity is an “agency” subject to the FOIA where it has “substantial independent authority in the exercise of specific functions,” but not where its “sole function is to advise and assist the President.”). *See also Energy Rsch. Found. v. Def. Nuclear Facilities Safety Bd.*, 917 F.2d 581, 584-85 (D.C. Cir. 1990) (An agency is subject to FOIA where it “does considerably more than merely offer advice,” including conducting investigations and evaluating standards); *Souci v. David*, 448 F.2d 1067, 1075-76 (D.C. Cir. 1971) (holding that the Office of Science and Technology is an agency for FOIA purposes “[b]y virtue of its independent function of evaluating federal [scientific] programs”).

Neither the NVC nor NVGB have publicized a method for receiving FOIA requests or designated a Chief FOIA officer. For that reason, this request is addressed to you in your capacities as the Director of the NVC and *ex officio* member of the National Vetting Governance Board. *See* National Vetting Governance Board Charter § 3(e) (providing *inter alia* that the NVC Director “will have full access to meetings and matters related to the Board as *ex officio* member”).

IRAP seeks a fee waiver and expedited processing.

BACKGROUND

On February 4, 2021, President Biden issued an Executive Order with the goal of rebuilding and reforming the United States Refugee Admissions Program consistent with its humanitarian purpose and the United States’ national values. “Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on

Migration” Exec. Order No. 14,013, 86 Fed. Reg. 8839 (Feb. 4, 2021) (“EO 14013”), *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/executive-order-on-rebuilding-and-enhancing-programs-to-resettle-refugees-and-planning-for-the-impact-of-climate-change-on-migration/>. The Executive Order announced the Biden Administration’s policy that “[s]ecurity vetting for USRAP applicants and applicants for other humanitarian programs should be improved to be more efficient, meaningful, and fair[.]” *Id.* § 1(d). To that end, President Biden ordered a review of the national vetting enterprise. *See generally id.* § 4. This review relies on the inter-agency vetting structures that were created by President Trump pursuant to National Security Presidential Memorandum No. 9, Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise (Feb. 6, 2018) (“NSPM-9”), *available at* <https://fas.org/irp/offdocs/nspm/nspm-9.pdf>. Pursuant to NSPM-9, a plan was created to implement NSPM-9 with a specific focus on the creation and operations of the NVC and, by extension, the NVGB which oversees it. *See* “Plan to Implement the Presidential Memorandum on Optimizing the use of Federal Government Information in Support of the National Vetting Enterprise,” (“Implementation Plan”) (Aug. 5, 2018), *available at* <https://www.dhs.gov/sites/default/files/publications/NSPM-9%20Implementation%20Plan.pdf>. Additionally, the NVGB is governed by its Charter. *See* National Vetting Governance Board Charter (“NVGB Charter”) (approved Aug. 20, 2018), *available at* https://www.dhs.gov/sites/default/files/publications/national-vetting-governance-board-charter_508.pdf.

RECORDS REQUESTED

IRAP seeks disclosure of:

1. The following records related to the implementation of Executive Order 14013:
 - a. Data submitted to the NVGB pursuant to Section 4(e), including but not limited to:
 - i. The number of staff performing refugee security vetting at each vetting agency;
 - ii. The thresholds for the checks; and
 - iii. The rates at which checks have returned an objection.

See EO 14013 § 4(e). As specified by the Executive Order, the aforementioned data was submitted to the NVGB by “all agencies involved in the Security Advisory Opinion process” and “shall be disaggregated by age range, gender, and nationality of the refugee applicant.” *See* EO 14013 § 4(e).
 - b. Any final “recommendations to increase [security vetting processes’] efficiency, fairness, and effectiveness” arising from the “review of refugee security vetting processes” required by Section 5(a) of the Executive Order.
 - c. Any plans to address USRAP processing backlogs, reviews of refugee vetting, and recommendations developed pursuant to Section 5(a).

2. Any and all current guidance, policies, directives, training materials, and similar documents regarding the operations of the National Vetting Enterprise, the National Vetting Center, and National Vetting Governance Board, including but not limited to:
 - a. Any and all Standard Operating Procedures documenting the use of NVC systems created pursuant to the NVC Implementation Plan and any supplemental training materials. *See* Implementation Plan at 12 (“Standard operating procedures documenting the use of NVC systems will be developed to ensure that intelligence and other information used to inform adjudicative decisions, is recorded in a manner that facilitates redress, and is protected from disclosure, as appropriate.”).
 - b. All guidance, policies, directives, training materials, and similar documents on the use of the “single technology interface” as described in the NVC Implementation Plan, including but not limited to the “NVC Case Management Solution.” Implementation Plan at 9.
 - c. All guidance adopted or issued by the NVGB to agencies pursuant to the NVGB Charter Section 2(a) (“The Board will . . . [c]onsider, adopt, and issue appropriate guidance for departments and agencies (hereinafter, “agencies”) involved in conducting or supporting vetting activities to enable the successful execution of the national vetting enterprise.”).
3. Agendas and meeting minutes, or similar records, documenting the substance of the meetings of the NVGB. *See, e.g.*, NVGB Charter Section 3(d) (“The Chair will be responsible for calling and preparing agendas for meetings of the Board, preparing and distributing minutes of Board meetings . . .”); *see also id.* Section 3(g) (“[T]he Board will meet on an as-needed basis, but not less than quarterly, or otherwise as determined by the Chair, or upon the written request of a Board member.”).
4. All reports and/or recommendations produced by the NVGB, as referenced in the NVGB Charter Section 3(d) (“The Chair will be responsible for . . . leading and overseeing the production of reports from the Board, and communicating recommendations to other agencies, as necessary.”)
5. All reports produced by the Director of the NVC to the NVGB pursuant to the NVGB Charter Section 3(f) (“The Director of the NVC will make regular reports to the Board concerning the ongoing activities of the Center, make recommendations as appropriate, and raise issues for consideration and decision by the Board.”).
6. All budget requests submitted for Fiscal Years 2019, 2020, and 2021, as part of the NVC’s resourcing strategy to fund the operations of the NVC or NVGB. *See* Implementation Plan at 21.
7. All contracts with third parties engaged in any aspect of developing technology utilized or implemented by the NVC for vetting purposes.
8. Any and all updates on implementation of NSPM-9, as directed by NSPM-9, produced after the publication of the Implementation Plan. *See* Implementation Plan at 22 (“The

next update will provide a status of Phase One implementation, an after action, as well as further details on Phase Two planning.”).

THE REQUESTOR

IRAP is a 501(c)(3) nonprofit and nonpartisan organization that organizes law students and lawyers to develop and enforce a set of legal and human rights for refugees and displaced persons. IRAP utilizes media and systemic policy advocacy, direct legal aid, and impact litigation to serve the world’s most persecuted individuals and empower the next generation of human rights leaders.

IRAP publishes reports, know-your-rights documents, and other educational materials that are widely disseminated to the public, including through its website. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, lawyers, law students, refugees, and other displaced people—free of charge. IRAP also maintains a blog; publishes an electronic newsletter distributed to subscribers via email; and releases information via social media platforms such as Twitter and Facebook. Material obtained through FOIA are an integral part of this work, and IRAP routinely publishes materials that it obtains through FOIA.

Accordingly, IRAP is a “representative of the news media” within the meaning of the FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that “gathers information of potential interest to a segment of the public” and “uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience”); *accord Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989). Other non-profits who similarly engage in media advocacy, in addition to other policy advocacy and legal work, have been found to be a “representative of a news media” within the meaning of the FOIA. *See, e.g., Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (concluding that the ACLU is a news representative); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (same for the EPIC); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (same for Judicial Watch, a public interest law firm with a website and a radio show).

EXPEDITED PROCESSING

Requestor seeks expedited treatment for this FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E) because of a “compelling need” for the requested records. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). As noted above, IRAP is a “representative of the news media,” 5 U.S.C. § 552(a)(4)(A)(iii), and there is an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

In particular, there is an urgent need to inform the public about the records subject to this Request, which would shed light on the increasingly long delays refugees have experienced seeking resettlement in the United States. Over the past four years, the Trump Administration implemented a series of changes and expansions to vetting procedures. *See generally* International Refugee Assistance Project, Debunking “Extreme Vetting”: Recommendations to Build Back the U.S. Refugee Admissions Program, (last updated June 2021), <https://refugeerights.org/wp-content/uploads/2021/06/Vetting-Report-2020-v6-REVISED-JUNE-2021-1.pdf>. As IRAP has publicly reported, these measures have drastically increased the backlog of refugees stuck in security checks during the resettlement process, as well as discretionary denials based on security

screenings. *See id.*; *see also* Meredith Hoffman, *Trump Has Slowed Refugee Admissions to a Crawl*, POLITICO (Feb. 26, 2018), <https://www.politico.com/magazine/story/2018/02/26/refugee-resettlement-confusion-executive-orders-217038> (attributing delays in follow-to-join refugee petitions to “changes in screening and vetting”). Tens of thousands of refugees, including IRAP’s own clients, have had their resettlement delayed or denied due to these “extreme vetting” measures. IRAP, *DEBUNKING “EXTREME VETTING,”* at 30. President Biden has recognized the crisis caused by the Trump-era vetting changes, and has specifically ordered that vetting processes for refugee applicants “should be improved to be more efficient, meaningful, and fair.” EO 14013 § 1(e). To that end, President Biden ordered an expansive review and reform of the national vetting enterprise, *see generally* EO 14013 § 4, pursuant to which some of the requested records were created. There is an urgent need to ensure public understanding of that review, which will inform the critically needed effort to rebuild the United States refugee program consistent with its humanitarian purpose and the United States’ national values.

REQUEST FOR FEE WAIVER OR OF LIMITATION OF FEES

IRAP seeks a full fee waiver on the grounds that disclosure of the requested records is in the public interest and 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 requestor.” 5 U.S.C. § 552(a)(4)(A)(iii). IRAP has no commercial interest in the records requested, and this request is aimed at furthering public understanding of government conduct: specifically, as described above, the requested records were created pursuant to a review of vetting procedures implemented during the Trump Administration. There is very little public understanding of the current processes or capacity for vetting petitions by refugees to resettle in the United States. The Biden Administration now seeks to rebuild USRAP, but there is an urgent for the public—including refugees awaiting resettlement and their service providers—to understand how it intends to accomplish that task. The requested records will significantly contribute to that public understanding and will promote transparency in the Biden administration’s attempt to ensure that refugee security vetting is “efficient, meaningful, and fair.” EO 14013 § 1(e).

In any event, as discussed *supra*, IRAP is a “representative of the news media” and does not seek the records requested for commercial use. Accordingly, should the government assess fees for the processing of this request, those fees should be “limited to reasonable standard charges for document duplication” alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

We expect your response within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). In any response, please describe the search that was undertaken to locate records responsive to this request. If the request is denied in part or in whole, please justify all withholdings and/or redactions by reference to specific FOIA exemptions, with an explanation of their applicability. Please also release all segregable portions of otherwise exempt material.

Thank you for your consideration of this request. Please provide the requested records to:

Yael Ben Tov
International Refugee Assistance Project
One Battery Park Plaza, 4th floor

New York, NY 10004
ybentov@refugeerights.org

Please notify us in advance if the cost of producing the documents requested exceeds \$100.00. If you have any questions regarding this request, please contact Yael Ben Tov at 646-531-0496 or ybentov@refugeerights.org.

Sincerely,



Yael Ben Tov
Equal Justice Works Fellow*
Sponsored by Paul, Weiss, Rifkind, Wharton
& Garrison LLP
International Refugee Assistance Project

Mariko Hirose
International Refugee Assistance Project

**New York Bar admission pending. Supervised by attorneys who are members of the New York Bar.*