EXHIBIT A
May 23, 2017

U. S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D. C. 20522-0208

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer,

This letter constitutes a request made pursuant to the Freedom of Information Act, 5 U.S.C. § 552, on behalf of our client, the International Refugee Assistance Project.

We request all documents and information pertaining to the Chief of Mission (COM) process for the Special Immigrant Visa (SIV) programs for Iraqi and Afghan nationals under the National Defense Authorization Act for Fiscal Year 2006, as amended; the National Defense Authorization Act of 2008, as amended; and the Afghan Allies Protection Act of 2009 as enacted within the Omnibus Appropriations Act 2009, as amended. In particular, we request any rules of procedure, statements of general policy, staff manuals, or instructions to staff concerning the COM process.

In light of Congress’s intent that the FOIA’s fee waiver provision “be liberally construed in favor of waivers for noncommercial requesters”, we also request a fee waiver, which is appropriate here because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government” and our client has no commercial interest in the records sought. 5 U.S.C § 552(a)(4)(A)(iii); Judicial Watch, Inc. v. Rossotti, 326 F.3d 1309, 1312 (D.C. Cir. 2003). In particular, granting this request will further public understanding of government conduct regarding the adjudication of SIV applications. Should you conclude that a complete waiver of fees is not warranted, we will pay up to $25 for the processing of this request. If the estimated fees exceed this limit, please contact us to receive our permission prior to incurring any additional fees.

If our request is denied in whole or part, we ask that you justify all denials or deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt
material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter. We look forward to your reply within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i).

Please send all responsive documents and direct any inquiries to Charles Driscoll, 212 310 8395, charles.driscoll@weil.com.

Sincerely,

Charles Driscoll*
Associate

* Admitted to practice in the State of Victoria, Australia only
EXHIBIT B
December 13, 2019

U.S. Department of State  
Office of Information Programs and Services  
2201 C Street N.W., Suite 12A40A  
Washington, D.C. 20520-0000

Re: Freedom of Information Act ("FOIA") Request Regarding SIV Programs  
Fee Waiver/Limitation Requested

To Whom It May Concern:

The International Refugee Assistance Project ("IRAP"), by and through its undersigned counsel, submits this FOIA request (the "Request") seeking records relating to the Chief of Mission ("COM") phase of the Special Immigrant Visa ("SIV") application process for Iraqi and Afghan nationals. The Request is made pursuant to 5 U.S.C. § 552 et seq., and its relevant implementing regulations, 22 C.F.R. § 171 et seq.

IRAP is a 501(c)(3) 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.

I. Background

The United States relies on Afghan and Iraqi nationals to support its missions and military operations in Afghanistan and Iraq. These missions and operations cannot be completed without the aid of Afghan and Iraqi translators, engineers, security guards, logisticians, cultural advisors, and soldiers, among others, whose families and selves are seriously threatened by anti-American militants. Indeed, many of these allies and their families face death threats for their service to the United States. As a result, Congress created the Afghan and Iraqi SIV programs as a pathway to safety for individuals at risk of danger or persecution for their work on behalf of the United States. Under these programs, the Department of State has singular authority to issue SIVs to Iraqi and Afghan nationals who provide “faithful and valuable service” to the United States under the Refugee Crisis in Iraq Act of 2007 (the “RCIA”), as enacted within the National Defense Authorization Act of 2008, as amended; and the Afghan Allies Protection Act of 2009 (the “AAPA”), as enacted within the Omnibus Appropriations Act 2009, as amended.

recent years, the requirements for eligibility for the SIV programs—such as to the type or length of service—have changed. Among these changes, as of December 23, 2016, Afghan applicants must demonstrate that their service involved “sensitive and trusted activities” for the United States government before they can receive COM approval.\(^2\)

The Department of State is likely to have records responsive to this request because it oversees and administers the SIV program, including the process of granting COM approval.\(^3\)

**II. Requested Records**

IRAP requests disclosure of any and all records prepared, received, transmitted, collected, and/or maintained by the Department of State, or sub-offices thereof, reflecting or concerning the following:

1. All current guidance, standard operating procedures (“SOPs”), manuals, policies, procedures, handbooks, memoranda, instructions, guidelines, directives, trainings, and presentations related to the processing and adjudication of applications for COM approval submitted pursuant to the RCIA and AAPA, and any prior versions issued since 2008;

2. Any guidance provided to individuals involved in processing and adjudicating applications for COM approval regarding the requirement in the AAPA that an applicant “perform sensitive and trusted activities for the United States Government in Afghanistan”;

3. Any guidance provided to individuals involved in processing and adjudicating applications for COM approval on:
   - Determining whether an applicant “provided faithful and valuable service” as described in the RCIA and AAPA;
   - Verifying an applicant's employment;
   - Verifying contracts;
   - Exceptions to or alternative ways to meet employment verification requirements;
   - Employers that no longer have employment records; and
   - Employers that refuse to provide human resources letters.

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\(^2\) See AAPA § 602(b)(2)(A).

4. Any guidance provided to the National Visa Center related to processing and adjudicating applications for COM approval.

5. Any guidance provided to individuals involved in processing and adjudicating SIV applications on when to send a case with COM approval back to COM for re-verification of eligibility and possible withdrawal of COM approval.

IRAP further requests disclosure of any and all records prepared, received, transmitted, collected, and/or maintained by the Department of State, or sub-offices thereof, pertaining to legislative changes to the Afghan SIV program, namely the:

1. National Defense Authorization Act for Fiscal Year 2014, Section 1219, which introduced procedural improvements to the COM appeal process;


3. National Defense Authorization Act for Fiscal Year 2016, Section 1216, which clarified that the International Security Assistance Force related eligibility includes any International Security Assistance Force successor mission; and which increased the minimum period for eligibility from one year to two years—a decision that generated extensive publicity and, as a result, a change in the Department of State’s initial decision to apply the legislation retroactively to it only applying the legislation to new applicants; and

4. National Defense Authorization Act for Fiscal Year 2017, Section 1214, which introduced the requirement that applicants must have performed “sensitive and trusted activities for the United States Government in Afghanistan.”

III. Definitions and Instructions

Time frame. This Request covers records created on or after January 1, 2008 through the date of the search undertaken in response this Request.

“Records” as used in this Request shall be afforded the broadest possible meaning under federal law and shall include all records preserved in electronic or written form, including but not limited to: e-mails; text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text messages, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message); images, video, and audio recorded or stored on mobile phones; voicemail messages; social-media posts; formal and informal presentations; alerts; bulletins; advisories; and minutes or notes of meetings and phone calls. N.B. Should any responsive record contain
the personally identifying information of any third party, IRAP requests that such responsive record be produced with such personally identifying information redacted as necessary.

**Scope of Search.** IRAP requests searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of our Request. This includes any email accounts and mobile phones used by employees or former employees for agency business, whether they are personal or agency systems. For each relevant email account identified, all storage areas are included in this Request, including, but not limited to, the inbox “folder” (and all subfolders therein), sent folder, deleted folder, outbox folder, and all relevant archive files.

If any records responsive or potentially responsive to the Request have been destroyed, our Request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

**Format of production.** Please produce all responsive electronic records, including, but not limited to, emails, word-processing documents, PDFs, spreadsheets, and like records in native electronic and fixed formats. See 5 U.S.C. § 552(a)(3)(B); 22 C.F.R. § 171.11(k). Please produce responsive data in searchable Excel spreadsheets. Additionally, please produce emails in native format, as well as in searchable PDF format, with parent-child relationships (the association between an attachment to an email or other record and its parent record) preserved. If production in the format requested is not possible, please provide the records electronically in a text-searchable PDF format, in the best image quality in the agency’s possession, in separate, Bates-stamped files.

**IV. Request for Expedited Processing**

IRAP requests expedited processing under 5 U.S.C. § 552(a)(6)(E)(i)(I) because there is a “compelling need” for the requested records as (1) there is a significant risk of harm to substantial humanitarian interests; and (2) IRAP is an organization “primarily engaged in disseminating information” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity,” 5 U.S.C. § 552(a)(6)(E)(v)(I-II).

First, delay in furnishing this information will harm substantial humanitarian interests. By virtue of their “faithful and valuable” service to the United States Government, SIV applicants face the prospect of violent retaliation by anti-American militants—danger that is prolonged as they wait for their applications to be adjudicated. The United States has long embraced its obligation to protect those who

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face persecution, especially individuals like SIV applicants who are at risk of retaliation as a direct result of their service to the United States Government. Disclosure of the requested information will furnish IRAP with critical information necessary to provide legal services to these applicants to ensure that they have a fair opportunity to access the pathway to safety that Congress created for them. Therefore, this Request should be granted expedited processing so that the United States can continue to meaningfully uphold its humanitarian commitments.

Second, dissemination of information is an integral component of IRAP’s mission to educate and cultivate the next generation of human rights leaders. See Leadership Conference on Civil Rights v. Gonzales, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding that an organization whose mission is to serve as the site of record for relevant and up-to-the-minute civil rights news and information is primarily engaged in disseminating information). IRAP routinely engages in gathering, analyzing, and distributing information through its advocacy and policy work. IRAP has published a number of policy reports on refugee resettlement issues, maintains “Know Your Rights” and other educational materials on its website, and routinely issues press releases and blog posts on its work relating to refugee policy. IRAP publishes a quarterly newspaper that reaches over 25,000 individuals and also publishes shorter

various threats and acts of violence stemming from their “faithful and valuable service” to the U.S. government); Doe v. United States Dep’t of State, 2015 WL 9647660, at *3 (D.D.C. Nov. 3, 2015) (recognizing the danger posed by the SIV application process and permitting a party to adjudicate his SIV application under a pseudonym to “conceal his work with the U.S.-led reconstruction efforts and protect his wife and minor child from the anti-U.S. insurgents who he says have been and continue to be a threat to their lives”).


newsletter that is released every 2-3 weeks. It maintains a Facebook account with over 40,000 followers,\(^9\) and a Twitter account with over 15,000 followers.\(^{10}\) Because IRAP is an organization “primarily engaged in disseminating information” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity,” expedited processing should be granted for this Request.

We certify that the foregoing statements made in support of expedited processing to be true and correct under 5 U.S.C. § 552(a)(6)(E)(vi). Please provide a determination regarding expedited processing within 10 days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 22 C.F.R. § 171.11(f)(4).

V.  *Request for Waiver or Limitation of Fees*

IRAP seeks fee waivers on the grounds described below. A fee waiver is warranted here because “Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters” like IRAP. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal quotation marks and citations omitted).

A.  *All Fees Should Be Waived Because Disclosure Is in the Public Interest.*

IRAP requests that all fees associated with this FOIA request be waived because the 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 requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see also 22 C.F.R. § 171.16(a).

The Request meets each of the factors that the agency should consider under 22 C.F.R. § 171.16(a)(1) in determining whether the disclosure is “likely to contribute significantly to public understanding of operations or activities of the government.” First, the Request pertains directly to “operations or activities of the federal government.” *Id.* § 171.16(a)(1)(i). Second, the Request is “likely to contribute to an increased public understanding of” the government’s operations or activities, *id.* § 171.16(a)(1)(ii), specifically by helping the public determine the procedural guidelines and efficacy of the SIV program. Third, the disclosure of the requested records will contribute to “the understanding of a reasonably broad audience of persons interested in the subject,” *id.* § 171.16(a)(1)(iii), because IRAP intends to analyze the responsive records and publish its findings in support of its policy and advocacy work. Finally, disclosure will enhance the public’s understanding of the subject of the Request “to a significant extent.” *Id.* § 171.16(a)(1)(iv). Despite significant media and public attention to these issues, as described above,

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\(^{10}\) *See* IRAP (@RefugeeAssist), Twitter, https://twitter.com/RefugeeAssist.
much remains unknown, and the requested records will greatly enhance the public’s understanding of
the SIV application process.

The Request is also not in the commercial interest of IRAP. Any records obtained as a result of this
FOIA request will be made available to the public at no cost.

B. In the Alternative, Search and Review Fees Should Be Waived Because IRAP Is a
Representative of the News Media.

If the agency does not waive all fees as requested above, it should at minimum waive search and review
fees because IRAP meets the statutory and regulatory definitions of “representative of the news media.”
5 U.S.C. § 552(a)(4)(A)(ii)(II). This term refers to any “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 also 22 C.F.R. §
171.14(b)(5)(ii)(C).

As described above, IRAP routinely gathers information through its legal and policy work, including
through FOIA requests, processes the information, and distributes that work to a broad audience. Other
non-profit organizations similarly engaging in media advocacy, in addition to other policy advocacy and
legal work, have been found to be “representative[s] of the news media” for purposes of a fee waiver.
(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) (concluding the 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) (concluding the same for Judicial Watch, a public
interest law firm with a website and a radio show).

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Please respond to this Request within twenty (20) business days, as required under 5 U.S.C. §
552(a)(6)(A)(i). In your response, please specify the search that was undertaken to locate records
responsive to this Request. Please justify all redactions or withholdings by reference to specific FOIA
exemptions and release all segregable portions of otherwise exempt material as provided in 22 C.F.R. §
171.11(l).

Please furnish copies of all applicable information to:

Victor S. Leung
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Victor.Leung@weil.com
As provided in 22 C.F.R. § 171.11 (d), please notify us in advance if any costs relating to the Request exceed $100.00.

If you have any questions regarding this request, please contact me at (212) 310-8688 or Victor.Leung@weil.com. Thank you in advance for your timely cooperation.

Sincerely,

Victor S. Leung
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8688
Victor.Leung@weil.com