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July 20, 2020

Via Email

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ATTN: FOIA/PA  
Office of the Director of National Intelligence  
Washington, D.C. 20511  
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**Re: Freedom of Information Act Request for ODNI report(s) on Jamal Khashoggi**

Dear Sir or Madam:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”) and the Office of the Director of National Intelligence (“ODNI”) implementing regulations, 32 C.F.R. § 1700.1 *et seq.* The Open Society Justice Initiative (“Justice Initiative”), an operating public interest law center that is part of the Open Society Institute (“OSI”), a New York State charitable trust and nonprofit organization, submits this Request to the Office of the Director of National Intelligence (“ODNI”). Expedited processing is requested pursuant to 5 U.S.C. § 552(a)(6)(E)(i).

**I. Background**

Jamal Khashoggi, a Saudi national, was a *Washington Post* columnist and a U.S. resident who had been a vocal critic of the Saudi government and Saudi Crown Prince Mohammed bin Salman.<sup>1</sup> On October 2, 2018, he disappeared after entering the Saudi Consulate in Istanbul.<sup>2</sup> On October 10, 2018, a bipartisan group of 22 senators wrote to President Trump, triggering an investigation and a sanctions determination in relation to Khashoggi’s disappearance.<sup>3</sup>

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<sup>1</sup> Donna Abu Nasr, *Who is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic*, [Bloomberg] (Oct. 20, 2018), [https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/20/0a996bea-d492-11e8-a4db-184311d27129\\_story.html?utm\\_term=.b99447153753](https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/20/0a996bea-d492-11e8-a4db-184311d27129_story.html?utm_term=.b99447153753).

<sup>2</sup> *Id.*

<sup>3</sup> Press Release, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi*, (Oct. 10, 2018), <https://www.foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi>.

After repeatedly saying that Khashoggi had left the consulate alive, the Saudi government finally acknowledged on October 19 that he had been killed inside the Saudi Consulate in Istanbul.<sup>4</sup> CIA Director Gina Haspel reportedly traveled to Turkey to review the case and listened to audio recordings that the Turkish government claimed captured Khashoggi's murder.<sup>5</sup> On November 16, 2018, the *Washington Post* reported that the CIA had "concluded that Saudi Crown Prince Mohammed bin Salman ordered the assassination of journalist Jamal Khashoggi in Istanbul."<sup>6</sup>

On November 20, 2018, President Trump issued a statement standing with Saudi Arabia.<sup>7</sup> He stated, "After great independent research, we now know many details of this horrible crime. . . . King Salman and Crown Prince Mohammad bin Salman vigorously deny any knowledge of the planning or execution of the murder of Mr. Khashoggi. Our intelligence agencies continue to assess all information, but it could very well be that the Crown Prince had knowledge of this tragic event – maybe he did and maybe he didn't!"<sup>8</sup> On another occasion, citing the CIA report in his possession, President Trump noted that the CIA "did not come to a conclusion" about the crown prince's involvement in the murder, adding that "[t]hey have feelings certain ways, but they didn't -- I have the report."<sup>9</sup>

The President's statement standing with Saudi Arabia has been the subject of extensive public debate. Senators have vigorously disputed the President's characterization of the CIA's report.<sup>10</sup> When asked if the President was lying about the CIA's conclusion, Senator Jack Reed (D-R.I.) said, "Yes. The CIA concluded that the crown prince of Saudi Arabia was directly involved in the assassination of Khashoggi."<sup>11</sup> A Wall Street Journal editorial wrote, "we are aware of no President, not even such ruthless pragmatists as Richard Nixon or Lyndon Johnson, who would have written a public statement like this without so much as a grace note about America's abiding

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<sup>4</sup> Kevin Sullivan, Loveday Morris and Tamer el-Ghobashy, *Saudi Arabia fires 5 top officials, arrests 18 Saudis, saying Khashoggi was killed in fight at consulate*, Wash. Post (Oct. 19, 2018), [https://www.washingtonpost.com/news/world/wp/2018/10/19/saudi-government-acknowledges-journalist-jamal-khashaoggi-died-while-in-that-countrys-consulate-in-istanbul/?utm\\_term=.76d983cad529](https://www.washingtonpost.com/news/world/wp/2018/10/19/saudi-government-acknowledges-journalist-jamal-khashaoggi-died-while-in-that-countrys-consulate-in-istanbul/?utm_term=.76d983cad529).

<sup>5</sup> *Khashoggi murder: CIA director Gina Haspel briefs Trump*, BBC News (Oct. 26, 2018), <https://www.bbc.com/news/world-us-canada-45977041>.

<sup>6</sup> Shane Harris, Greg Miller, and Josh Dawsey, *CIA concludes Saudi crown prince ordered Jamal Khashoggi's assassination*, Wash. Post (Nov. 16, 2018), [https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d\\_story.html?utm\\_term=.b940c2f30d5b](https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html?utm_term=.b940c2f30d5b).

<sup>7</sup> Statement from President Donald J. Trump on Standing with Saudi Arabia (Nov. 20, 2018),

<https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-standing-saudi-arabia/>.

<sup>8</sup> *Id.*

<sup>9</sup> Kate Sullivan and Zachary Cohen, *Senate Dem on Armed Services panel: Trump lying about CIA report on Khashoggi*, CNN (Nov. 23, 2018), <https://www.cnn.com/2018/11/23/politics/senate-dem-armed-services-cia-khashoggi/index.html>.

<sup>10</sup> *Id.*; Karoun Dimirjian, Carol Morello and John Hudson, *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), [https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993\\_story.html?utm\\_term=.4dde49d6aeeb](https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb).

<sup>11</sup> Kate Sullivan and Zachary Cohen, *Senate Dem on Armed Services panel: Trump lying about CIA report on Khashoggi*, CNN (Nov. 23, 2018), <https://www.cnn.com/2018/11/23/politics/senate-dem-armed-services-cia-khashoggi/index.html>.

values and principles,” and that it was “startling to see a U.S. President brag [about commercial deals with the Saudis] in a statement about a bloodthirsty murder.”<sup>12</sup> A State Department official who had seen the CIA’s assessment on Khashoggi’s killing reportedly told ABC News that it was “blindingly obvious” that the Crown Prince had ordered the killing and that there was “overwhelming consensus that the [Saudi] leadership is involved—no one is debating it within the government.”<sup>13</sup> On November 20, 2018, former CIA Director John Brennan called for Congress to declassify the report, tweeting, “Since Mr. Trump excels in dishonesty, it is now up to members of Congress to obtain & declassify the CIA findings on Jamal Khashoggi’s death. No one in Saudi Arabia—most especially the Crown Prince—should escape accountability for such a heinous act.”<sup>14</sup>

On November 28, 2018, Secretary of State Mike Pompeo and Defense Secretary James Mattis briefed Senators behind closed doors in relation to Saudi Arabia, Yemen and the Khashoggi case. Despite bipartisan frustration at not hearing directly from CIA Director Gina Haspel on the Khashoggi case, she did not attend.<sup>15</sup> After that briefing, Secretary Pompeo refused to answer reporters’ questions about why Gina Haspel did not attend, and told them, “I do believe I’ve read every piece of intelligence . . . There is no direct reporting connecting the crown prince to the order to murder of Jamal Khashoggi.”<sup>16</sup>

Subsequent news reports suggest that Secretary Pompeo’s choice of words obscure the CIA’s conclusion that the Crown Prince is culpable. The *Wall Street Journal*, based on its review of excerpts of the CIA’s assessment of the murder, has reported that the excerpts “state that the CIA has ‘medium-to-high confidence’ that Prince Mohammed ‘personally targeted’ Khashoggi and ‘probably ordered his death.’”<sup>17</sup> The CIA reportedly notes in its assessment that it “‘lack[s] direct reporting of the Crown Prince issuing a kill order,’ ” but its “‘judgment on Prince Mohammed’s likely culpability . . . is based on the crown prince’s personal focus on Mr. Khashoggi, his tight control over the Saudi operatives sent to Istanbul to kill him, ‘and his authorizing some of the same operators to violently target other opponents.’ ”<sup>18</sup> The CIA assessment reportedly states,

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<sup>12</sup> *Trump’s Crude Realpolitik*, Wall St. J. (Nov. 20, 2018), <https://www.wsj.com/articles/trumps-crude-realpolitik-1542763629>.

<sup>13</sup> Tara Palmeri, ‘Blindingly obvious’ that Saudi crown prince ordered Khashoggi murder: Source, ABC News (Nov. 20, 2018), <https://abcnews.go.com/Politics/blindingly-obvious-saudi-crown-prince-ordered-khashoggi-murder/story?id=59305430>.

<sup>14</sup> John O. Brennan (@JohnBrennan), Twitter (Nov. 20, 2018, 10:31 AM), <https://twitter.com/JohnBrennan/status/1064949331868954629>.

<sup>15</sup> Karoun Dimirjian, Carol Morello and John Hudson, *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), [https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993\\_story.html?utm\\_term=.4dde49d6aeeb](https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb).

<sup>16</sup> Dierdre Shesgreen, *Lawmakers livid after CIA director Gina Haspel a no-show for closed-door briefing on Khashoggi murder*, USA Today (Nov. 28, 2018), <https://www.usatoday.com/story/news/world/2018/11/28/mike-pompeo-blasts-lawmakers-over-jamal-khashoggis-murder-saudi-arabia-yemen/2136140002/>.

<sup>17</sup> Warren P. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018), <https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>.

<sup>18</sup> *Id.* (quoting excerpts from the report).

“We assess it is highly unlikely this team of operators . . . carried out the operation without Muhammed bin Salman's authorization.”<sup>19</sup>

In a December 4, 2018, editorial in the Wall Street Journal, Senator Lindsey Graham (R-S.C.) said, “Given the evidence U.S. intelligence has gathered on Khashoggi’s killing, denying the crown prince’s involvement amounts to willful blindness.”<sup>20</sup>

In December 2019, Congress enacted the National Defense Authorization Act for Fiscal Year 2020 (NDAA) requiring the Director of National Intelligence to provide to Congress reports on the killing of Jamal Khashoggi.<sup>21</sup> Specifically, section 1277 of the NDAA required the Director to submit to appropriate congressional committees a report in unclassified form (which could include a classified annex) consisting of:

- (1) a determination and presentation of evidence with respect to the advance knowledge and role of any current or former official of the Government of Saudi Arabia or any current or former senior Saudi political figure over the directing, ordering, or tampering of evidence in the killing of Washington Post columnist Jamal Khashoggi; and
- (2) a list of foreign persons that the Director of National Intelligence has high confidence—
  - (A) were responsible for, or complicit in, ordering, controlling, or otherwise directing an act or acts contributing to or causing the death of Jamal Khashoggi;
  - (B) knowingly and materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in subparagraph (A); or
  - (C) impeded the impartial investigation of the killing of Jamal Khashoggi, including through the tampering of evidence relating to the investigation.<sup>22</sup>

Section 5714 of the NDAA required the Director to submit to Congress a report, in unclassified form, on the death of Jamal Khashoggi, that included “identification of those who carried out, participated in, ordered, or were otherwise complicit in or responsible for the death of Jamal Khashoggi.”<sup>23</sup>

The Director failed to comply with NDAA’s requirements that the aforementioned reports be provided within 30 days of law’s enactment.<sup>24</sup> In February 2020, ODNI sent Congress a classified report along with a letter stating that the office could not provide any unclassified information about Khashoggi’s death due to concerns about revealing sources and methods.<sup>25</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), <https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186>.

<sup>21</sup> S. 1790, National Defense Authorization Act for Fiscal Year 2020 (NDAA) (P.L. 116-92), §§ 1277, 5714.

<sup>22</sup> NDAA, § 5714.

<sup>23</sup> NDAA, §§ 1277, 5714.

<sup>24</sup> *Id.* Emma Loop, *A Law Required The US’s Top Intelligence Official To Turn Over A Report On Jamal Khashoggi’s Killing. He Blew The Deadline.*, BuzzFeed News, Jan. 23, 2020, <https://www.buzzfeednews.com/article/emmaloop/jamal-khashoggi-report-odni>; Andrew Desiderio, *Burr, Warner ask DNI to declassify Khashoggi info*, Politico, Mar. 3, 2020, <https://www.politico.com/news/2020/03/03/congress-ask-declassify-khashoggi-information-119458>.

<sup>25</sup> Olivia Beavers, *Schiff presses top intel official to declassify part of report on Khashoggi killing*, Feb. 27, 2020, *The Hill*, <https://thehill.com/policy/national-security/485055-schiff-presses-top-intelligence-official-to-declassify->

In a February 27, 2020 letter, House Intelligence Committee Chairman Adam Schiff (D-Calif.) urged the Acting Director of National Intelligence, Richard Grenell, to declassify the report.<sup>26</sup> Chairman Schiff's letter stated:

The House Permanent Select Committee on Intelligence ("Committee") is in receipt of your office's submission to Congress of a classified annex regarding the killing of U.S. resident Jamal Khashoggi, provided in response to the Intelligence Authorization Act (IAA) and the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92). The Committee requests that the Office of the Director of National Intelligence immediately declassify the annex in order to produce an unclassified report, as required by law. . . .

The Committee shares ODNI's concerns regarding the protection of sensitive Intelligence Community sources and methods. However, after reviewing the classified annex, the Committee believes that the annex could be declassified with appropriate redactions that should not alter or obscure in any way the Intelligence Community's determinations, presentation of evidence, or identification of relevant persons, as required by law. In doing so, ODNI would fulfill Congress' requirement and intent that your office submit an unclassified report on the killing of Mr. Khashoggi.<sup>27</sup>

The letter added that it did not "foresee that any harm to U.S. national security would result from immediately declassifying the findings contained in DNI's classified annex with redactions as necessary" and that "[f]ailure to declassify the annex and produce an unclassified report could give rise to concerns that ODNI is using the classification process impermissibly in order to shield information of intense public interest from public release."<sup>28</sup>

In March 2020, Senator Richard Burr (R-N.C.), chairman of the Senate Intelligence Committee, and Senator Mark Warner (D-Va.), the vice chairman, sent a letter to Richard Grenell, the acting director of national intelligence, urging him to reconsider his agency's decision not to declassify information related to the Khashoggi murder.<sup>29</sup> According to Senator Ron Wyden, ODNI's

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part-of; Emma Loop, Congress Is Ratcheting Up Its Efforts To Force The Trump Administration To Publicly Reveal Who Ordered Jamal Khashoggi's Killing, BuzzFeed News, May 1, 2020;

<https://www.buzzfeednews.com/article/emmaloop/jamal-khashoggi-death-mbs-report-congress-declassify>.

<sup>26</sup> See Letter from Adam Schiff, Chairman, House Permanent Select Committee on Intelligence, to Richard Grenell, Acting Director of National Intelligence, Feb. 27, 2020,

[https://twitter.com/Olivia\\_Gazis/status/1233152575106580487/photo/1](https://twitter.com/Olivia_Gazis/status/1233152575106580487/photo/1), attached hereto as Exhibit A; Olivia Beavers, Schiff presses top intel official to declassify part of report on Khashoggi killing, The Hill (Feb. 27, 2020),

<https://thehill.com/policy/national-security/485055-schiff-presses-top-intelligence-official-to-declassify-part-of>;

Emma Loop, Congress Is Ratcheting Up Its Efforts To Force The Trump Administration To Publicly Reveal Who Ordered Jamal Khashoggi's Killing, BuzzFeed News (May 1, 2020);

<https://www.buzzfeednews.com/article/emmaloop/jamal-khashoggi-death-mbs-report-congress-declassify>.

<sup>27</sup> Exhibit A (Letter from Adam Schiff, Chairman, House Permanent Select Committee on Intelligence, to Richard Grenell, Acting Director of National Intelligence, Feb. 27, 2020).

<sup>28</sup> *Id.*

<sup>29</sup> Ellen Nakashima, Lawmakers want the DNI to make public the intelligence community's assessment of who's responsible for killing Jamal Khashoggi, Wash. Post (Mar. 3, 2020), <https://www.washingtonpost.com/national->

response to the NDAA’s requirements was “[a] total and complete coverup,” and “said simply that ODNI would not provide any unclassified information.”<sup>30</sup> However, the classified annex provided to Congress reportedly “made clear what CIA Director Gina Haspel and other officials have briefed to lawmakers in classified sessions — that Mohammed played a direct role in Khashoggi’s killing.”<sup>31</sup>

## **II. Records Requested**

Reports (including annexes) related to the killing of Jamal Khashoggi provided in 2020 by ODNI to Congress pursuant to sections 1277 and 5714 of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92) and the Intelligence Authorization Act.

## **III. Application for Expedited Processing**

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1700.12. There is a “compelling need” for the requested records because they relate to an “urgency to inform the public concerning an actual or alleged Federal Government activity” and are requested by an organization “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1700.12.

As reflected in the news, information relating to the circumstances of Khashoggi’s killing remains the subject of significant media interest and public debate.<sup>32</sup> The records requested herein are directly “relevant to a subject of public urgency concerning an actual or alleged Federal Government activity.” They are urgently needed for a public evaluation of the Federal Government’s efforts to investigate and hold accountable those responsible for Khashoggi’s killing. Indeed, the public is unable meaningfully to evaluate the Federal Government’s response to the Khashoggi killing without reliable information about the circumstances of the killing and documents currently in the Government’s possession.

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[security/lawmakers-want-the-dni-to-make-public-the-intelligence-communitys-assessment-of-whos-responsible-for-killing-jamal-khashoggi/2020/03/03/aafa70ee-5d07-11ea-9055-5fa12981bbbf\\_story.html](https://www.middleeastmonitor.com/2020/03/03/aafa70ee-5d07-11ea-9055-5fa12981bbbf_story.html).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Saudi ambassador in Turkey during Khashoggi murder gets promoted*, Middle East Monitor (July 16, 2020), <https://www.middleeastmonitor.com/20200716-saudi-ambassador-in-turkey-during-khashoggi-murder-gets-promoted/>; Mark Landler, *Britain, Charting Its Own Course on Human Rights, Imposes New Sanctions*, N.Y. Times (July 6, 2020), <https://www.nytimes.com/2020/07/06/world/europe/britain-human-rights-sanctions.html>; Ipek Yezdani et al, *Saudi consulate staff describe strange events on day of Khashoggi's death*, CNN (July 3, 2020), <https://www.cnn.com/2020/07/03/middleeast/jamal-khashoggi-murder-trial-intl/index.html>; Talia Kaplan, *Saudi officials go on trial in absentia in Turkey for Khashoggi murder*, Fox News (July 3, 2020), <https://www.foxnews.com/world/saudi-officials-trial-turkey-khashoggi>; Philip Bump, *Trump would rather embrace an alleged murderer than have Ivanka face scrutiny*, Wash. Post (June 18, 2020), <https://www.washingtonpost.com/politics/2020/06/18/trump-would-rather-embrace-an-alleged-murderer-than-have-ivanka-face-scrutiny/>; Emma Loop, *Congress Is Ratcheting Up Its Efforts To Force The Trump Administration To Publicly Reveal Who Ordered Jamal Khashoggi's Killing*, BuzzFeed News (May 1, 2020); <https://www.buzzfeednews.com/article/emmaloop/jamal-khashoggi-death-mbs-report-congress-declassify>

Mr. Khashoggi was a U.S. resident and a *Washington Post* journalist who was killed in a brutal manner, possibly for being a vocal critic of the Saudi government and the Saudi Crown Prince. The American public has a right to know what its government is doing to uphold human rights and the rule of law in this context. Indeed, as Senator Lindsey Graham has aptly noted, “In the long run, America’s power as well as its principles depends on an international system in which strongmen can’t act on their violent whims and the rule of law enables social stability and the free flow of trade.”<sup>33</sup> He has observed, “Given the evidence U.S. intelligence has gathered on Khashoggi’s killing, denying the crown prince’s involvement amounts to willful blindness. Failing to censure him would give authoritarians a green light to murder their critics. To borrow a Churchill phrase, inaction wouldn’t only give the disturbing impression the U.S. has a price, but also that its price is quite low.”<sup>34</sup>

The subject of the United States’ assessment of what happened to Khashoggi and its response has been the subject of intense bipartisan Congressional concern and public debate.<sup>35</sup> In requesting immediate declassification of the classified annex provided by ODNI to Congress pursuant to the NDAA, Representative Adam Schiff, Chairman of the House Permanent Select Committee on Intelligence, stated that “[e]nsuring full accountability for the brutal murder of U.S. resident Jamal Khashoggi remains a strong bipartisan concern for Congress.”<sup>36</sup> Senator Ron Wyden described ODNI’s response to the NDAA’s disclosure requirements as “[a] total and complete coverup.”<sup>37</sup>

Furthermore, the Justice Initiative is “primarily engaged in disseminating information” within the meaning of the FOIA.<sup>38</sup> *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that a non-profit, public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information” within the meaning of the statute and regulations); *cf. Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 11-12 (D.D.C. 2003) (finding that the Electronic Privacy Information Center was a representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (National Security Archive deemed a representative of the news media after publishing one book and indicating its intention to publish a set of documents on national and international politics and nuclear policy).

The Justice Initiative is an operating public interest law center dedicated to upholding human

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<sup>33</sup>Lindsey Graham, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), <https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186>.

<sup>34</sup>*Id.*

<sup>35</sup> Emma Loop, *Congress Is Ratcheting Up Its Efforts To Force The Trump Administration To Publicly Reveal Who Ordered Jamal Khashoggi’s Killing*, Buzzfeed News (May 1, 2020); Ellen Nakashima, *Lawmakers want the DNI to make public the intelligence community’s assessment of who’s responsible for killing Jamal Khashoggi*, Wash. Post (March 3, 2020), [https://www.washingtonpost.com/national-security/lawmakers-want-the-dni-to-make-public-the-intelligence-communitys-assessment-of-whos-responsible-for-killing-jamal-khashoggi/2020/03/03/aafa70ee-5d07-11ea-9055-5fa12981bbbf\\_story.html](https://www.washingtonpost.com/national-security/lawmakers-want-the-dni-to-make-public-the-intelligence-communitys-assessment-of-whos-responsible-for-killing-jamal-khashoggi/2020/03/03/aafa70ee-5d07-11ea-9055-5fa12981bbbf_story.html).

<sup>36</sup> Exhibit A (Letter from Adam Schiff, Chairman, House Permanent Select Committee on Intelligence, to Richard Grenell, Acting Director of National Intelligence, Feb. 27, 2020).

<sup>37</sup>*Id.*

<sup>38</sup> *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).

rights and the rule of law through litigation, advocacy, research, and technical assistance, with offices in New York, London, and Berlin. It is part of the Open Society Institute (“OSI”), a tax-exempt, non-partisan, not-for-profit organization, headquartered in New York City. OSI believes that solutions to national, regional, and global challenges require the free exchange of ideas and thought, and works to build vibrant and inclusive societies, grounded in respect for human rights and the rule of law, whose governments are accountable and open to the participation of all people. In support of their shared mission, OSI and the Justice Initiative share information with the public free of charge, through their websites, newsletters, and other publications to promote public understanding and robust debate. Disseminating information is among the Justice Initiative’s core activities. To accomplish its goals, the Justice Initiative maintains a website, [www.justiceinitiative.org](http://www.justiceinitiative.org), through which it disseminates reports, briefing papers, fact sheets and other publications relating to its mission (<https://www.justiceinitiative.org/publications>). It also directly distributes hard copies of publications and disseminates information via quarterly email newsletters, blogs ([www.opensocietyfoundations.org/voices](http://www.opensocietyfoundations.org/voices)), Twitter ([www.twitter.com/OSFJustice](http://www.twitter.com/OSFJustice)) and Facebook ([www.facebook.com/OpenSocietyFoundations](http://www.facebook.com/OpenSocietyFoundations)).

The Justice Initiative intends to publicly disseminate records received in response to this Request, just as it did with respect to previous FOIA requests for records related to the killing of Jamal Khashoggi.<sup>39</sup>

For all of the aforementioned reasons, this request warrants expedited processing.

#### **IV. Application for Fee Waiver**

We request a waiver of search, review, and duplication fees on the grounds that “disclosure of the requested records is in the public interest because it 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* 32 C.F.R. § 1700.6(b)(2).

As set forth in Section III above, the records at issue will contribute significantly to public understanding of the government’s assessment of and response to Khashoggi’s killing. Moreover, the Open Society Justice Initiative, a non-profit entity, does not seek disclosure of these records for any commercial gain, and intends to make all disclosed records publicly available at no cost.

In addition, for the same reasons that render it “primarily engaged in disseminating information,” *see* Section III *supra*, the Open Society Justice Initiative is also a “representative of the news media” within the meaning of the FOIA. As such, it is entitled to a fee waiver. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II) (providing that fees shall be limited to duplication fees when request made for noncommercial purpose by representative of the news media); *see also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (recognizing Congress’s intent that FOIA’s fee waiver provision is to be “liberally construed in favor of waivers for noncommercial requesters.”)

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<sup>39</sup> See <https://www.justiceinitiative.org/newsroom/khashoggi-foia-case-documents-available-online>.



Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 5 U.S.C. § 552(a)(6)(A)(i) respectively, we look forward to your reply to the Request for expedited processing within 10 calendar days, and to the Request for disclosure within twenty days.

The Open Society Justice Initiative requests that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

If this request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. See 5 U.S.C. § 552(b). We also reserve the right to appeal any decision in relation to this Request.

Thank you for your attention to this Request. Please **email all correspondence and records to [amrit.singh@opensocietyfoundations.org](mailto:amrit.singh@opensocietyfoundations.org)**.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amrit Singh".

Amrit Singh  
James Goldston  
Open Society Justice Initiative  
224 W. 57th St.  
New York, New York 10019  
Ph: 212-5480600  
Fax: 212-5484662

# **EXHIBIT A**



**Permanent Select Committee  
on Intelligence  
U.S. House of Representatives**

February 27, 2020

The Honorable Richard Grenell  
Acting Director of National Intelligence  
Office of the Director of National Intelligence  
Washington, D.C. 20511

Dear Acting Director Grenell:

The House Permanent Select Committee on Intelligence (“Committee”) is in receipt of your office’s submission to Congress of a classified annex regarding the killing of U.S. resident Jamal Khashoggi, provided in response to the Intelligence Authorization Act (IAA) and the National Defense Authorization Action (NDAA) for Fiscal Year 2020 (P.L. 116-92). The Committee requests that the Office of the Director of National Intelligence (ODNI) immediately declassify the annex in order to produce an unclassified report, as required by law.

As your office acknowledged in unclassified correspondence accompanying the annex (attached), Section 1277 of the NDAA requires an unclassified report from the Director of National Intelligence (DNI) that includes a “determination and presentation of evidence with respect to the advance knowledge and role of any current or former official of the Government of Saudi Arabia or any current or former Saudi political figure over the directing, ordering, or tampering of evidence in the killing of Washington Post columnist Jamal Khashoggi.” Section 1277 further requires “a list of foreign persons that the Director of National Intelligence has high confidence... were responsible for, or complicit in, controlling or otherwise directing an act or acts contributing to our causing the death of Jamal Khashoggi...” Additionally, as your office’s unclassified correspondence acknowledges, Section 5714 of the NDAA provides for an unclassified report from the ODNI on the death of Jamal Khashoggi, consistent with protecting sources and methods, including “identification of those who carried out, participated in, and ordered or were otherwise complicit in or responsible for the death of Jamal Khashoggi.”

The Committee shares ODNI’s concerns regarding the protection of sensitive Intelligence Community sources and methods. However, after reviewing the classified annex, the Committee believes that the annex could be declassified with appropriate redactions that should not alter or obscure in any way the Intelligence Community’s determinations, presentation of evidence, or identification of relevant persons, as required by law. In doing so, ODNI would fulfill Congress’

requirement and intent that your office submit an unclassified report on the killing of Mr. Khashoggi.

Moreover, there is a robust body of credible unclassified reporting regarding the issues outlined in the IAA and NDAA related to the killing of Mr. Khashoggi, to include the comprehensive report that the United Nations' Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions issued in June 2019. The Committee, therefore, does not foresee that any harm to U.S. national security would result from immediately declassifying the findings contained in DNI's classified annex, with redactions as necessary.

Failure to declassify the annex and produce an unclassified report could give rise to concerns that ODNI is using the classification process impermissibly in order to shield information of intense public interest from public release. Executive Order 13526 states that "in no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law...(2) prevent embarrassment to a person, organization, or agency...or (4) prevent or delay the release of information that does not require protecting in the interest of the national security."

Ensuring full accountability for the brutal murder of U.S. resident Jamal Khashoggi remains a strong bipartisan concern for Congress. It also is an important factor in Congress' ongoing review of the U.S. intelligence relationship with the Kingdom of Saudi Arabia. I look forward to receiving the unclassified report, required by the FY 2020 NDAA, together with any additional assessment that Intelligence Community experts may consider appropriate.

Sincerely,



Adam B. Schiff  
Chairman