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December 4, 2018

Via Facsimile and Federal Express
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505
(703) 613-3007 (facsimile)

**Re: Freedom of Information Act Request for Records Relating to the
killing of 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 Central Intelligence Agency (“CIA”) implementing regulations, 32 C.F.R. § 1900.01 *et seq.* The Open Society Justice Initiative, an operating public interest law center that is part of the Open Society Foundations, submits this Request. 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.¹ On October 2, 2018, he disappeared after entering the Saudi Consulate in Istanbul.² 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.³

¹ 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.

² *Id.*

³ 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.⁴ 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.⁵ 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."⁶

On November 20, 2018, President Trump issued a statement standing with Saudi Arabia.⁷ 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!"⁸ 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."⁹

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.¹⁰ 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."¹¹ 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

⁴ 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.

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

⁶ 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.

⁷ 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/>.

⁸ *Id.*

⁹ 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>.

¹⁰ *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.

¹¹ 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.”¹² 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.”¹³ 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.”¹⁴

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.¹⁵ 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.”¹⁶

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.’”¹⁷ 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.’ ”¹⁸ The CIA assessment reportedly states,

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

¹³ 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>.

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

¹⁵ 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.

¹⁶ 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/>.

¹⁷ 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>.

¹⁸ *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.”¹⁹

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.”²⁰

II. Records Requested

The Open Society Justice Initiative requests disclosure of all records²¹ relating to the killing of U.S. resident Jamal Khashoggi, including but not limited to the CIA’s findings on and/or assessment of the circumstances under which he was killed and/or the identities of those responsible.

III. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c). There is a “compelling need” for the requested records because they are “relevant to a subject of public urgency 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. § 1900.34(c)(2).

As reflected in the news today, information relating to the circumstances of Khashoggi’s killing is the subject of urgent public debate.²² 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.

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.

¹⁹ *Id.*

²⁰ 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>.

²¹ For the purpose of this request, the term “records” includes any and all reports, statements, examinations, memoranda, correspondence, notes, indices, audio or video recordings, digital files, or other records. In the event that such records once existed but have now been destroyed, please disclose any records that are integrally related to, summarize, or are interchangeable with said records.

²² 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>; A *New CIA Leak Adds to the Evidence Against MBS. Congress Must Act*, Wash. Post (Dec. 4, 2018), https://www.washingtonpost.com/opinions/global-opinions/the-trump-administration-is-denying-the-reality-of-saudi-arabias-role-in-khashoggis-death/2018/12/03/db2304ce-f724-11e8-8d64-4e79db33382f_story.html?utm_term=.321533852566.

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.”²³ 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.”²⁴ Since October 2018, when news about Jamal Khashoggi’s disappearance first broke, the subject of the United States’ assessment of what happened to him and its response has been the subject of intense bipartisan Congressional concern and public debate.²⁵

Furthermore, the Open Society Justice Initiative is “primarily engaged in disseminating information” within the meaning of the above-cited statute and regulations. *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.*, 241 F. Supp. 2d at 11-12 (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 Open Society Justice Initiative is an operational public interest law center dedicated to upholding human rights and the rule of law. It is part of the Open Society Foundations, a tax-exempt, not-for-profit organization. Disseminating information is among the Justice Initiative’s core activities. To accomplish these goals, the Open Society Justice Initiative maintains a website, <http://www.justiceinitiative.org>, through which it disseminates publications, articles, and

²³Lindsey 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>.

²⁴*Id.*

²⁵*Id.*; 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>; *Can Donald Trump handle the truth about Jamal Khashoggi?* USA Today, (Oct. 15, 2018), <https://www.usatoday.com/story/opinion/2018/10/15/can-donald-trump-handle-truth-jamal-khashoggis-fate-editorials-debates/1646308002/>; *There can be no coverup of this act of pure evil*, Wash. Post, (Oct. 19 2018), https://www.washingtonpost.com/opinions/global-opinions/there-can-be-no-coverup-of-this-act-of-pure-evil/2018/10/19/415a662e-d308-11e8-83d6-291fceed2ab1_story.html?utm_term=.9bd21f340393; *Jamal Khashoggi, missing activist and writer, killed in fight, Saudi state media reports*, Fox News (Oct. 19, 2018), <https://www.foxnews.com/world/jamal-khashoggi-missing-activist-and-writer-killed-in-fight-saudi-state-media-reports>; *Saudi Arabia after Khashoggi*, N.Y. Times (Nov. 15, 2018), <https://www.nytimes.com/2018/11/15/opinion/saudi-arabia-mohammed-bin-salman-trump-khashoggi.html>; Lisa Mascaro, *Senators Set to Grill Trump Administration Officials Over the Response to Jamal Khashoggi's Killing*, Time.com (Nov. 28, 2018), <http://time.com/5465388/senators-closed-door-briefing-jamal-khashoggi/>.

multimedia files relating to its mission. It also directly distributes hard copies of publications. An index of Justice Initiative publications (currently 377 in number) on a broad range of human rights issues is available at <https://osf.to/2zr15cP>. In addition, the Justice Initiative disseminates information through quarterly email newsletters (*see, e.g.,* <https://us1.campaign-archive.com/home/?u=52d98944f5466486ab8567329&id=80d33e3910>), blogs (*see* <https://www.opensocietyfoundations.org/voices>), Twitter (*see* <https://twitter.com/OSFJustice>) and Facebook (*see* <https://www.facebook.com/OpenSocietyFoundations>). The Open Society Justice Initiative plans to analyze and disseminate to the public the information gathered through this Request.

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. § 1900.13(b)(2) (same).

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 available at no cost on its website.

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.”)

* * * * *

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 furnish all applicable records to:

Amrit Singh
Director, Accountability, Liberty and
Transparency Division
Open Society Justice Initiative
224 West 57th Street
New York, New York 10019
Email: 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 that reads "Amrit Singh".

Amrit Singh
James Goldston
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