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**August 25, 2021**

*via email/online portal*

**DEPARTMENT OF HOMELAND  
SECURITY**

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

**U.S. CITIZENSHIP AND  
IMMIGRATION SERVICES**

National Records Center (NRC)  
FOIA/PA Office  
P.O. Box 648010  
Lee's Summit, MO 64064-8010  
uscis.foia@uscis.dhs.gov

**Re: Freedom of Information Act Request—Fee Waiver Requested**

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the implementing regulations of your agency, submitted on behalf of the Open Society Justice Initiative (“Justice Initiative”), an operational program of the Open Society Institute (“OSI”), a New York State charitable trust and nonprofit organization. We request records concerning ATLAS (not an acronym), an automated, rule-based screening platform developed by the U.S. Department of Homeland Security (“DHS”) U.S. Citizenship and Immigration Services (“USCIS”). We respectfully ask that this Request is forwarded to any other component agency as appropriate. A fee waiver is requested pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

**A. BACKGROUND**

USCIS is responsible for adjudicating immigration-related applications, screening each request to identify information that may affect an individual’s eligibility for a benefit or admissibility into the United States. In 2014, USCIS developed ATLAS “to automate, streamline, and support accurate exchange of data among USCIS, DHS, and non-DHS systems used to support biometric and biographic-based screening and vetting of immigration requests.”<sup>1</sup> ATLAS is used as both an automated check service platform and rule-based screening platform for USCIS. In both capacities, ATLAS screens immigration requests related to applicants, beneficiaries, petitioners, sponsors, or other individuals associated with a request.

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<sup>1</sup> U.S. DEPARTMENT OF HOMELAND SECURITY (DHS), PRIVACY IMPACT ASSESSMENT FOR ATLAS, DHS Reference No. DHS/USCIS/PIA-084 (October 30, 2020) at 2, *available at* [https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis084-atlas-october2020\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis084-atlas-october2020_0.pdf) [hereinafter, ATLAS PIA].

ATLAS channels data between adjudicative case management systems, and systems used for background checks, to perform automated background checks for immigration requests. The results filter through a predefined set of rules to determine whether the information provided by the individual or obtained through the required checks presents a “potential fraud, public safety, or national security concern.”<sup>2</sup> If the automated check results indicate potential fraud, public safety or national security concerns (i.e. if the rule criteria are met), a System Generated Notification (“SGN”) is transmitted to the Fraud Detection and National Security Directorate (“FDNS”) and inputted into the FDNS-Data System (“FDNS-DS”).<sup>3</sup> The case is set for manual review by an analyst, known as a “Gatekeeper,” who determines whether the SGN is actionable and necessitates an administrative investigation. USCIS adjudication personnel use the results to determine eligibility for the benefit sought.

The data elements that ATLAS receives and transmits during automated screening varies depending on the type of immigration request. ATLAS compares information in the immigration request against various government systems to automate identification of potential “derogatory information” that matches to information in the immigration request. ATLAS interfaces with several USCIS and DHS systems, as well as non-DHS systems, in order to process data.

USCIS states that the agency is prohibited from considering “race or ethnicity in investigation, screening, and law enforcement activities in all but the most exceptional instances and limiting the consideration of an individual’s simple connection to a particular country, by birth or citizenship, as a screening criterion, unless such consideration is based on an assessment of intelligence and risk and in which alternatives do not meet security needs.”<sup>4</sup> Further, vetting activities carried out through the ATLAS system “may not be used to collect, access, use, or retain information on an individual solely on the basis of actual or perceived race, ethnicity, citizenship, or nationality.”<sup>5</sup> According to USCIS, the agency “works through its structured governance process to review ATLAS rules, keywords, and referral criteria so that they are tailored to minimize the impact on ... civil rights and civil liberties and are in compliance with all relevant legal authorities, regulations, and DHS policies.”<sup>6</sup>

USCIS states that FDNS performs compliance reviews on data captured through ATLAS and “produces analyses to identify and develop information on fraud indicators, patterns, and trend,” which “include considerations to preserve the...civil rights/civil liberties of all individuals who undergo screening and vetting.”<sup>7</sup> The ATLAS Screening and Analytics Team also performs SGN quality reviews. For certain SGN populations, this is performed monthly, and for others, checks are performed at random. ATLAS relies on the accuracy of the information as it is collected from the immigration requestor and from the other government source systems. As such, the accuracy of the information in ATLAS is equivalent to the accuracy of the source information at the point in time when it is collected by ATLAS.

## **B. RECORDS REQUESTED**

The Justice Initiative requests disclosure of all responsive records,<sup>8</sup> as soon as practicable, and at least within thirty business days, including:

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

<sup>3</sup> See DHS, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS), PRIVACY IMPACT ASSESSMENT FOR THE FRAUD DETECTION AND NATIONAL SECURITY DATA SYSTEM (FDNS-DS), DHS/USCIS/PIA-013 (2008 and subsequent updates), *available at* <https://www.dhs.gov/uscis-pias-and-sorns>.

<sup>4</sup> ATLAS PIA *supra* note 1 at 8.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> ATLAS PIA *supra* note 1 at 8.

<sup>8</sup> For the purpose of this Request, the term “records” includes agreements; analyses; correspondence; data; databases; directives; documents; e-mails and e-mail attachments; reports; rules; studies; talking points; technical specifications; training materials; examinations; faxes; files; guidance; guidelines; evaluations; instructions; letters; manifests; manuals; memoranda; orders; prepared documentation for meetings, policies; procedures; protocols; and any other relevant materials. *Press clippings and news articles that are unaccompanied by any commentary are not requested.*

1. The algorithm used by ATLAS to generate SGNs, including but not limited to the system's "pre-defined criteria" or set of rules;
2. A list of all items considered as "derogatory information";
3. A list of all "SGN populations," all directives/protocols/guidance establishing how the populations are formulated, and which populations are reviewed monthly versus ad hoc;
4. All directives/protocols/guidance used by FDNS officers (i.e. gatekeepers) when manually reviewing SGN-flagged cases;
5. A list of the data elements that ATLAS uses during automated screening broken down by type of immigration request;
6. A list of all systems that provide data to or pass information through ATLAS for analysis;
7. A list of instances of when race or ethnicity are permitted in screening;
8. A list of considerations used to preserve the civil rights/liberties of individuals who undergo screening through ATLAS;
9. The number of cases processed through ATLAS and the number of SGNs generated per year since 2014, broken down by:
  - a. the corresponding nationalities of origin of applicant, and
  - b. the corresponding ethnicity of applicant;
10. All records that include "ATLAS" AND the following terms:
  - a. "countr! of origin"
  - b. "COB"
  - c. "race"
  - d. "ethnicit!"
  - e. "special interest! countr!"
  - f. "special interest! alien!"
  - g. "SIA!"

### C. APPLICATION FOR FEE WAIVER

We request a waiver of search, review and duplication fees on the grounds that disclosure of the requested information "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). The Justice Initiative, a non-profit entity, does not seek disclosure of these records for commercial gain and intends to disseminate the information disclosed from this Request to the public at no cost.

The Justice Initiative is an operating public interest law center dedicated to upholding human 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 ([www.justiceinitiative.org/publications](http://www.justiceinitiative.org/publications)) relating to its mission, as well as records produced through FOIA requests.<sup>9</sup> It also directly distributes hard copies of publications and disseminates information via quarterly

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<sup>9</sup> See e.g., *Open Soc'y Just. Initiative v. Central Intelligence Agency (CIA) et al.*, 44795-Jamal-Khashoggi-FOIA, available at <https://www.documentcloud.org/public/search/projectid:44795-Jamal-Khashoggi-FOIA>; *Open Soc'y Just. Initiative v. U.S. Dep't of*

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 is an organization “primarily engaged in disseminating information...to inform the public concerning” that activity. 5 U.S.C. § 552(a)(6)(E)(v)(I-II). The Justice Initiative is “primarily engaged in disseminating information” within the meaning of the FOIA.<sup>10</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 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). *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”). **The Justice Initiative has been granted a fee waiver on these grounds in all previous FOIA requests to DHS and USCIS.**<sup>11</sup>

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We request that the responsive records are 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 part, please justify all withholdings by reference to specific exemptions and statutes, as applicable. For each withholding, please also detail why your agency “reasonably foresees that disclosure would harm an interest protected by an exemption” or why “disclosure is prohibited by law[.]” 5 U.S.C. § 552(a)(8)(A)(i). We seek the 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 prompt attention to this Request. Please send all records and correspondence by email to **Natasha Arnpriester** at [Natasha.Arnpiester@opensocietyfoundations.org](mailto:Natasha.Arnpiester@opensocietyfoundations.org).

Sincerely,

*/s/ Natasha Arnpriester*

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*Def. et al. and U.S. Dep’t of Health & Human Serv. et al.*, COVID-19-FOIA-50320, available at <https://www.documentcloud.org/app?q=project%3ACOVID-19-FOIA-50320>.

<sup>10</sup> *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).

<sup>11</sup> *See e.g.*, Compl. ¶ 59, *Open Soc’y Just. Initiative v. Dep’t of Health & Human Serv. et al.* (S.D.N.Y. 2020) (No. 20-CV-06359); Compl. ¶ 43, *Open Soc’y Just. Initiative v. Dep’t of Justice et al.* (S.D.N.Y. 2020) (No. 20-CV-00706).