

SAF/AAll  
1000 Air Force Pentagon  
Washington, DC 20330-1000.

Dear FOIA Officer,

This is a Freedom of Information Act (FOIA) request under 5 U.S.C § 552. On behalf of the Demand Progress Education Fund, a Project of the New Venture Fund (hereinafter "Demand Progress"), I am writing to request the U.S. Airpower Summaries Reports (also known as "Combined Forces Air Component Commander Airpower Statistics") for March 2020 - the present. We also request, under 5 U.S.C § 552(a)(2)(D)(ii)(I) that the Department of Defense resume routinely publishing these documents on its public website.

Prior to February 2020, these summaries were routinely published on the U.S. Air Forces Central website.<sup>1</sup> This practice was discontinued after February 2020.

These statistics are very important to increasing public awareness about U.S. military operations. The Airpower Summaries allow the public to assess the level of U.S. engagement in foreign conflicts and the comparative levels of engagement in different geographic locations. The importance of these summaries is underscored by the fact that they used to be regularly released to the public.

Moreover, no portion of these documents should be redacted. Their regular public release for more than eight years undercuts any claim of classification or foreseeable harm.

#### *News Media Fee Category*

As a member of the news media, I request reduced fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II), which provides that "fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by... a representative of the news media." The FOIA statute, the courts, and the Department of Justice's Office of Information Policy (OIP) have all encouraged a broad reading of the definition of "representative of the news media." DOJ OIP states:

This type of requester includes "any person or 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." Additionally, Congress incorporated into the statutory definition the OMB Fee Guidelines' definition of "news" as "information that is about current events or that would be of current interest to the public." The statute also anticipates the potential growth of alternative news media

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<sup>1</sup> <https://www.afcent.af.mil/About/Airpower-Summaries/>

entities, specifically endorsing such alternative media as satisfying the statutory definition.<sup>2</sup>

Demand Progress publishes two weekly newsletters. The *First Branch Forecast* focuses on government, with a special focus on the legislature and on transparency.<sup>3</sup> *First Branch Forecast* has 1,200 subscribers, including many prominent government officials, journalists, and public policy specialists. Demand Progress also publishes the *Secure Liberties Newsletter*, a newsletter that covers war, peace, and everything in between.<sup>4</sup> It too is routinely distributed to government officials, journalists, and public policy specialists. The requested documents would be disseminated to the public with editorial commentary and analysis.

We also request a public interest fee waiver. According to the DOD's FOIA website:

Fee waivers may be granted when disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The following factors are weighed in making a fee waiver determination:

The subject of the request.

The informative value of the information to be disclosed.

The contribution to an understanding of the subject by the general public likely to result from the disclosure

The significance of the contribution to public understanding

Disclosure of the information is not primarily in the commercial interest of the requester.

The ability of the requester to disseminate the information.<sup>5</sup>

We believe that we meet all of these qualifications. As discussed above, the subject matter of this request is of high public interest and is very informative. The American people have an urgent need to know whether their government is escalating its campaign of airstrikes and where those strikes are being directed. The Airpower summaries are likely to contribute significantly to public understanding about the United States' involvement in airstrike campaigns, which is why these documents were previously routinely released to the public. Moreover, we have no commercial interest in these documents. Demand Progress Education Fund is a non profit organization which will use its newsletters, social media, and other platforms to disseminate this information broadly to the public, free of charge.

Though we believe we qualify for the news media fee category and deserve the public interest fee waiver, we consent to \$30 of expenses related to this request (though that would be an exorbitant amount of fees, given the narrowness of our request). However, we retain the right to

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<sup>2</sup> Department of Justice Guide to the Freedom of Information Act, Fees and Fee Waivers at 5, available at: <https://www.justice.gov/oip/page/file/1206606/download#page=2> [internal citations omitted]

<sup>3</sup> <https://firstbranchforecast.com/>

<sup>4</sup> <https://www.secureliberties.org/>

<sup>5</sup> <https://open.defense.gov/transparency/FOIA/FOIA-Handbook/#pay>

challenge the denial of our news media fee status and fee waiver via administrative appeal or in court.

### *Expedited Processing*

Per the Department of Defense's Freedom of Information Act Handbook:

[U]nder certain conditions, expedited access may be granted if there is a compelling need, such as a threat to life and safety, if a person engaged in disseminating information has an urgency to inform the public on actual or alleged Federal Government activity, an imminent loss of substantial due process rights, or a humanitarian need.<sup>6</sup>

As discussed above, Demand Progress is an entity engaged in disseminating information. And these documents are urgently needed to inform the public about a Federal Government activity that has substantial humanitarian consequences. In recent years, U.S. Airstrikes in Afghanistan alone have resulted in hundreds of civilian fatalities.<sup>7</sup> It is important for the public to be able to assess the U.S.'s level of engagement in military airstrikes around the world, to gauge whether conflict is lessening or increasing, to know where the U.S. is focusing its airstrike power, and to assess the humanitarian consequences of continued military engagement in these places.

Alternatively, should you decide that this request does not require placement in the expedited queue, we expect that it will be placed in the simple queue. We have specified a very limited, finite, and easily located document set (likely no more than 28 pages of documents - two pages for every month since the reports ceased to be released).

### *FOIA Deadlines and Legal Recourse*

We expect that this request will be fulfilled within FOIA's 20 business day deadline and, for the reasons discussed above, we do not expect that any redactions will be applied to this very limited set of documents.

If our request is not fulfilled or redactions are wrongly applied, after exhausting administrative remedies as required, we will be ready and empowered to file a civil lawsuit in D.C. District Court. If anything about this request requires clarification, please feel free to call us at 202-670-7910 or email [ginger@demandprogress.org](mailto:ginger@demandprogress.org).

We look forward to your timely response to our request.

Sincerely,

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<sup>6</sup> <https://open.defense.gov/transparency/FOIA/FOIA-Handbook/>

<sup>7</sup> Afghanistan's Rising Civilian Death Toll Due to Airstrikes, 2017-2020 Neta C. Crawford, 1 Dec. 7, 2020, available at:

[https://watson.brown.edu/costsofwar/files/cow/imce/papers/2020/Rising%20Civilian%20Death%20Toll%20in%20Afghanistan\\_Costs%20of%20War\\_Dec%207%202020.pdf](https://watson.brown.edu/costsofwar/files/cow/imce/papers/2020/Rising%20Civilian%20Death%20Toll%20in%20Afghanistan_Costs%20of%20War_Dec%207%202020.pdf)

Ginger P. McCall  
Legal Director  
Demand Progress  
[ginger@demandprogress.org](mailto:ginger@demandprogress.org)  
202-670-7910