

OSD/JS FOIA Requester Service Center  
Freedom of Information Division  
1155 Defense Pentagon  
Washington, DC 20301-1155  
Fax (571) 372-0500

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 all materials transmitted by The Office of the Secretary of Defense to the United States Senate Committee on Foreign Relations (or any of the Committee’s members, Committee staff, or members’ personal staff) related to that Committee’s closed hearing entitled *Understanding the Policy and Legal Rationale of U.S. Airstrikes in Syria* held on March 15, 2021 at 6PM.<sup>1</sup> This includes, but is not limited to, statements for the record, follow-up answers submitted after the hearing, and supporting documents submitted to the Committee related to this hearing (submitted before or after the hearing, at the Committee’s request or proactively by your agency). This request includes all documents related to this hearing submitted to any Committee members, committee staff, or the personal office staff supporting Members of the Committee - not just those documents submitted for the official record. This request is for both print documents and electronic media - including documents or communications transmitted via email. This request does not include any discussions or communications related to scheduling or logistics.

The February 2021 airstrikes on Syria were the subject of intense public discussion and scrutiny.<sup>2</sup> Many experts, including members of Congress, questioned the legal basis and factual justifications for the strikes.<sup>3</sup> Some experts even went so far as to question the constitutionality of these strikes and the United States’ overall activities in Syria.<sup>4</sup> If the U.S. is engaging in hostilities in Syria, the public needs to know the full legal and factual justifications for those attacks so that the public can have informed opinions about the United States’ military engagement in Syria and can democratically engage with the U.S. government on this issue.

*News Media Fee Category*

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<sup>1</sup> Details here:

<https://www.foreign.senate.gov/hearings/understanding-the-policy-and-legal-rationale-of-us-airstrikes-in-syria-030821>

<sup>2</sup> See e.g. *Biden orders airstrikes in Syria, retaliating against Iran-backed militias*, Dan De Luce, Mosheh Gains, Charlene Gubash and Kristen Welker, NBC News, Feb. 25, 2021, <https://www.nbcnews.com/news/us-news/biden-airstrikes-syria-retaliating-against-iran-backed-militias-n1258912>

<sup>3</sup> See e.g. *Democrats question Biden's legal justification for Syria strike*, Alex Rogers, CNN, Feb. 26, 2021 <https://www.cnn.com/2021/02/26/politics/democratic-reaction-syria-strike/index.html>

<sup>4</sup> See e.g. *The Constitution and Biden's Syria Air Strike*, Ilya Somin, The Volokh Conspiracy, Mar. 2, 2021, <https://reason.com/volokh/2021/03/02/the-constitution-and-bidens-syria-air-strike/>

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 entities, specifically endorsing such alternative media as satisfying the statutory definition.<sup>5</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>6</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>7</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 FOIA.gov, 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.”<sup>8</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 has or is engaging in airstrikes in Syria. The documents submitted for this closed hearing (on the “Policy and Legal Rationale of the U.S. Airstrikes in Syria”) are directly responsive to that question and are likely to contribute significantly to public understanding about the United States’ reason for engaging in these airstrikes. 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 \$50 of expenses related to this request. However, we retain the right

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<sup>5</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>6</sup> <https://firstbranchforecast.com/>

<sup>7</sup> <https://www.secureliberties.org/>

<sup>8</sup> <https://www.foia.gov/faq.html>

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

### *Expedited Processing*

Per FOIA.gov:

[I]f there is an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information, his or her request will be expedited.<sup>9</sup>

As discussed above, Demand Progress is an entity primarily engaged in disseminating information (indeed, it is the first listed activity on our website).<sup>10</sup> 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 have resulted in hundreds of civilian fatalities.<sup>11</sup> It is important for the public to be able to assess whether the casualties and cost of U.S. airstrikes are actually justified (both legally and factually).

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.

### *FOIA Deadlines and Legal Recourse*

We expect that this request will be fulfilled within FOIA's 20 business day deadline.

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,

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

<sup>9</sup> <https://www.foia.gov/faq.html>

<sup>10</sup> <https://demandprogresseducationfund.org/#/>

<sup>11</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)

202-670-7910