

EXHIBIT A
TO
MOTION TO
TEMPORARILY
LIFT STAY

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT
INSTITUTE AT COLUMBIA UNIVERSITY
475 Riverside Drive, Suite 302
New York, NY 10115

COMMITTEE TO PROTECT
JOURNALISTS
330 7th Avenue, 11th Floor
New York, NY 10001

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

DEPARTMENT OF JUSTICE
950 Pennsylvania Ave., NW
Washington, DC 20530

NATIONAL SECURITY AGENCY
Fort George G. Meade,
Maryland 20755-6000

OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE
Washington, DC 20511

DEPARTMENT OF STATE
2201 C St., NW
Washington, DC 20520

Defendants.

Civil Action No. 18-2709-TNM

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. This lawsuit under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, concerns the recent killing of Jamal Khashoggi—a journalist, a U.S. resident, a Saudi national, and

a prominent critic of Saudi Arabia's current government—and seeks the immediate release of agency records concerning Defendants' compliance or non-compliance with the "duty to warn" set out in Intelligence Community Directive 191 ("Directive 191").

2. According to news reports, a team dispatched by the Saudi government killed Khashoggi in the Saudi consulate in Istanbul on October 2, 2018. Saudi prosecutors have said that Khashoggi was tied up, injected with an overdose of sedatives (or strangled, according to earlier accounts), and then dismembered. The CIA has reportedly concluded that Saudi Crown Prince Mohammed bin Salman personally ordered Khashoggi's killing.

3. Before the killing, U.S. intelligence agencies reportedly intercepted communications in which Saudi officials discussed a plan to capture Khashoggi. It is not publicly known precisely what the agencies learned from these communications, or what steps, if any, the agencies took to warn Khashoggi of the threat to him. However, Directive 191 provides that, when an Intelligence Community ("IC") element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, the element must "warn the intended victim or those responsible for protecting the intended victim, as appropriate." Directive 191 further obligates IC elements to "document and maintain records" on any actions taken pursuant to that duty. Directive 191, § F.13.

4. To learn whether the Intelligence Community complied with its duty to warn, Plaintiffs submitted FOIA requests to the Central Intelligence Agency ("CIA"), the Federal Bureau of Investigation ("FBI"), the National Security Agency ("NSA"), the Office of the Director of National Intelligence ("ODNI"), and the Department of State ("DOS"), seeking records concerning whether the agencies learned of the threat to Khashoggi before the events of October 2, 2018, what they learned, whether they considered their obligations under Directive 191, and whether and how

they complied with those obligations. Plaintiff Knight First Amendment Institute at Columbia University submitted its FOIA requests on October 19, 2018, and Plaintiff Committee to Protect Journalists submitted substantively identical requests to the same agencies on November 20, 2018.

5. Plaintiffs have commenced this action because only one of the Defendants has granted a request for expedited processing, and because none of the Defendants has released records in response to the requests.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

7. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

8. The Knight First Amendment Institute at Columbia University (“Knight Institute”) is a New York not-for-profit corporation based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education. Public education is essential to the Knight Institute’s mission. Obtaining information about government activity, analyzing that information, and publishing and disseminating it to the press and public are among the core activities the Knight Institute was established to conduct. The Knight Institute is a “person” within the meaning of 5 U.S.C. § 551(2).

9. The Committee to Protect Journalists (“CPJ”) is an independent, nonprofit organization that promotes press freedom worldwide. CPJ defends the right of journalists to report the news without fear of reprisal. CPJ regularly publishes news articles and special reports on journalists who are attacked, imprisoned, or killed. CPJ is a “person” within the meaning of 5 U.S.C. § 551(2).

10. The CIA is an “agency” within the meaning of 5 U.S.C. § 552(f). The CIA has possession and control over some or all of the requested records.

11. The Department of Justice (“DOJ”) is an “agency” within the meaning of 5 U.S.C. § 552(f). The FBI is a component of the DOJ. The DOJ and its component the FBI have possession and control over some or all of the requested records.

12. The NSA is an “agency” within the meaning of 5 U.S.C. § 552(f). The NSA has possession and control over some or all of the requested records.

13. The ODNI is an “agency” within the meaning of 5 U.S.C. § 552(f). The ODNI has possession and control over some or all of the requested records.

14. The DOS is an “agency” within the meaning of 5 U.S.C. § 552(f). The DOS has possession and control over some or all of the requested records.

FACTUAL ALLEGATIONS

The FOIA Requests

15. On October 19, 2018, the Knight Institute submitted FOIA requests to the CIA, the FBI, the NSA, the ODNI, and the DOS, seeking records relating to Jamal Khashoggi and the IC’s “duty to warn.”¹ Directive 191.

16. On November 20, 2018, CPJ submitted substantially identical requests to the same agencies.²

17. The requests sought the following documents:

(1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;

¹ True and correct copies of these requests are attached hereto as Exhibit A.

² CPJ sent a form letter to each agency seeking “the same documents requested by the [Knight Institute] on October 19, 2018” and attaching as an exhibit the pertinent Knight Institute request. A true and correct copy of the form letter is attached hereto as Exhibit B.

(2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;

(3) All records concerning any “issue aris[ing] among IC elements” regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

18. The request submitted to ODNI also sought the following documents:

(4) All records relating to any dispute referred to the DNI regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.2.

19. Plaintiffs requested expedited processing of the requests on the ground that they are organizations “primarily engaged in disseminating information” and there is a “compelling need” for the records sought because they contain information “urgent[ly]” needed to “inform the public concerning actual or alleged Federal Government Activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

20. The Knight Institute requested a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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); (b) the Knight Institute is a “representative of the news media” within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II); and (c) the Knight Institute is an “educational . . . institution” whose purposes include “scholarly . . . research” and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

21. CPJ also requested a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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), and (b) CPJ is a “representative of the news media” within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Agency Responses

22. By letter dated October 23, 2018, the ODNI acknowledged receipt of the Knight Institute’s request to it and assigned it reference number DF-2019-0032. The ODNI denied the Knight Institute’s request for expedited processing but granted the Knight Institute’s request for a fee waiver. On November 2, 2018, the Knight Institute submitted an administrative appeal to the ODNI challenging the agency’s denial of expedited processing, but it has yet to receive a decision. To date, the ODNI has not released any records responsive to the Knight Institute’s request.

23. By letter dated October 26, 2018, the CIA acknowledged receipt of the Knight Institute’s request and assigned it reference number F-2019-00158. The CIA denied the Knight Institute’s request for expedited processing but granted the Knight Institute’s request for a fee waiver. On November 2, 2018, the Knight Institute submitted an administrative appeal to the CIA challenging the agency’s denial of expedited processing on November 2, 2018, but it has yet to receive a decision. To date, the CIA has not released any records responsive to the Knight Institute’s request.

24. By email dated October 19, 2018, the FBI acknowledged receipt of the Knight Institute’s request. By letters dated October 30, 2018, the FBI assigned the Knight Institute’s request reference number 1420624-000, denied the Knight Institute’s request for expedited processing, and stated that it had not reached a decision regarding the Knight Institute’s request for a fee waiver.

25. On November 2, 2018, the Knight Institute submitted an administrative appeal to the DOJ Office of Information Policy (“OIP”) challenging the FBI’s denial of expedited processing. By letter dated November 9, 2018, the OIP affirmed that denial. To date, the FBI has not released any records responsive to the Knight Institute’s request.

26. By letter dated October 31, 2018, the DOS acknowledged receipt of the Knight Institute’s request and assigned it reference number F-2019-00752. The DOS granted the Knight Institute’s request for expedited processing and a fee waiver. To date, the DOS has not released any records responsive to the Knight Institute’s request.

27. By letter dated November 8, 2018, the NSA acknowledged receipt of the Knight Institute’s request and assigned it reference number 105522. The NSA denied the Knight Institute’s request for expedited processing but did not address the Knight Institute’s request for a fee waiver. To date, the NSA has not released any records responsive to the Knight Institute’s request.

28. By email dated November 20, 2018, the FBI acknowledged receipt of CPJ’s request. By letters dated November 28, 2018, the FBI assigned CPJ’s request reference number 1422759-000, denied CPJ’s request for expedited processing, and stated that it had not reached a decision regarding CPJ’s request for a fee waiver. To date, the FBI has not released any records responsive to CPJ’s request.

29. By email dated November 21, 2018, the ODNI acknowledged receipt of CPJ’s request and assigned it reference number DF-2019-00066. The ODNI denied CPJ’s request for expedited processing but granted CPJ’s request for a fee waiver. To date, the ODNI has not released any records responsive to CPJ’s request.

30. By letter dated November 28, 2018, the CIA acknowledged receipt of CPJ's request on November 21, 2018 and assigned it reference number F-2019-00522. The CIA denied CPJ's request for expedited processing and granted CPJ's request for a fee waiver. To date, the CIA has not released any records responsive to CPJ's request.

31. According to tracking information on the request sent to the NSA, that agency received CPJ's requests on November 21, 2018. By email dated November 29, 2018, the NSA acknowledged CPJ's request but did not address CPJ's requests for expedited processing and for a fee waiver. To date, the NSA has not released any records responsive to CPJ's request.

32. According to tracking information on the request sent to the DOS, that agency received CPJ's requests on November 21, 2018. To date, the DOS has not acknowledged receipt of CPJ's requests, has not addressed CPJ's requests for expedited processing and for a fee waiver, and has not released any records responsive to CPJ's requests.

33. By the date of this filing, twenty or more working days have passed since each agency first received the Knight Institute's and CPJ's requests.

34. Plaintiffs have exhausted all applicable administrative remedies.

CAUSES OF ACTION

35. Plaintiffs repeat, re-allege, and incorporate the foregoing paragraphs as if set forth in full.

36. Defendants' failure to make and communicate a determination whether to comply with Plaintiffs' requests within the statutory time limit violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and Defendants' corresponding regulations.

37. Defendants' failure to promptly make available records responsive to Plaintiffs' requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

38. Defendants' failure to process Plaintiffs' requests as soon as practicable violates FOIA, 5 U.S.C. § 552(a)(6)(E)(iii), and Defendants' corresponding regulations.

39. The failure of Defendants CIA, DOJ, NSA, and ODNI to grant the Knight Institute's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

40. The failure of all Defendants to grant CPJ's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

41. The failure of Defendants DOJ and NSA to grant the Knight Institute's request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), (iii), and Defendants' corresponding regulations.

42. The failure of Defendants DOJ, DOS, and NSA to grant CPJ's request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), (iii), and Defendants' corresponding regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order Defendants to conduct a thorough search for records responsive to Plaintiffs' requests;
 - B. Order Defendants immediately to process any responsive records for release, and to release them to both Plaintiffs;
 - C. Enjoin Defendants from charging Plaintiffs search, review, and duplication fees relating to Plaintiffs' requests;
 - D. Award Plaintiffs their reasonable costs and attorney's fees incurred in this action;
- and

E. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Jameel Jaffer

Jameel Jaffer (MI0067)
Ramya Krishnan (admitted *pro hac vice*)
Adi Kamdar (application for *pro hac vice*
admission to be filed soon)
Alex Abdo (admitted *pro hac vice*)
Knight First Amendment Institute
at Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
(646) 745-8500
ramya.krishnan@knightcolumbia.org

*Counsel for Plaintiff Knight First Amendment
Institute at Columbia University*



Timothy K. Beeken (NY0083)
Jeremy Feigelson (application for *pro hac vice*
admission to be filed soon)
Alexandra P. Swain (application for *pro hac*
vice admission to be filed soon)
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
(212) 909-6000
jfeigels@debevoise.com

*Counsel for Plaintiff Committee to Protect
Journalists*

January 17, 2019

EXHIBIT A
TO
AMENDED
COMPLAINT

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

Information and Privacy Coordinator
Central Intelligence Agency
Washington, DC 20505

**Re: Freedom of Information Act Request
Expedited Processing Requested**

To whom it may concern,

The Knight First Amendment Institute at Columbia University (“Knight Institute” or “Institute”)¹ submits this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community (“IC”) element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 (“Directive 191”) requires the element to “warn the intended victim or those responsible for protecting the intended victim, as appropriate.”² Directive 191 further obligates IC elements to “document and maintain records” on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.³ The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to

¹ The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

² Director of National Intelligence, Intelligence Community Directive 191 § E.1 (July 21, 2015), <https://perma.cc/49P8-J69X>.

³ *Jamal Khashoggi: Saudi Journalist Vanishes in Istanbul*, BBC News (Oct. 4, 2018), <https://perma.cc/VD23-B3NX>; David D. Kirkpatrick & Carlotta Gall, *Audio Offers Gruesome Details of Jamal Khashoggi Killing, Turkish Official Says*, N.Y. Times (Oct. 17, 2018), <https://perma.cc/8RGV-7CVE>.

capture Khashoggi.⁴ It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

II. Records requested

The Knight Institute seeks the following records:

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;
2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;⁵
3. All records concerning any “issue aris[ing] among IC elements” regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

III. Application for Expedited Processing

The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Obtaining, analyzing, and publicly disseminating information

⁴ Loveday Morris, Souad Mekhennet & Kareem Fahim, *Saudis Are Said To Have Lain in Wait for Jamal Khashoggi*, Wash. Post (Oct. 9, 2018), <https://perma.cc/82WY-EUJT>.

⁵ “Duty to warn actions” include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Federal Bureau of Investigation) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim. *See* Directive 191, § F.13.

about government activity are among the Institute's core activities.⁶ Furthermore, the requested records are urgently needed to inform the public about actual or alleged government activity. The disappearance of Jamal Khashoggi is the subject of national attention. Last week, a bipartisan group of 22 senators sent a letter to President Donald Trump expressing concern about the incident and requesting that the President make a determination on the imposition of sanctions on the responsible party within 120 days.⁷

IV. Application for Waiver or Limitation of Fees

The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan
Ramya Krishnan
Adi Kamdar
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
ramya.krishnan@knightcolumbia.org
(646) 745-8500

⁶ About the Knight Institute, <https://perma.cc/S9PN-J4ZY>.

⁷ Press Release, Sen. Bob Corker, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi* (Oct. 10, 2018).

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
170 Marcel Drive
Winchester, VA 22602-4483

**Re: Freedom of Information Act Request
Expedited Processing Requested**

To whom it may concern,

The Knight First Amendment Institute at Columbia University (“Knight Institute” or “Institute”)¹ submits this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community (“IC”) element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 (“Directive 191”) requires the element to “warn the intended victim or those responsible for protecting the intended victim, as appropriate.”² Directive 191 further obligates IC elements to “document and maintain records” on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.³

¹ The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

² Director of National Intelligence, Intelligence Community Directive 191 § E.1 (July 21, 2015), <https://perma.cc/49P8-J69X>.

³ *Jamal Khashoggi: Saudi Journalist Vanishes in Istanbul*, BBC News (Oct. 4, 2018), <https://perma.cc/VD23-B3NX>; David D. Kirkpatrick & Carlotta Gall, *Audio*

The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to capture Khashoggi.⁴ It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

II. Records requested

The Knight Institute seeks the following records:

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;
2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;⁵
3. All records concerning any “issue aris[ing] among IC elements” regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to Jamal Khashoggi. *See* Directive 191, § G.1.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

Offers Gruesome Details of Jamal Khashoggi Killing, Turkish Official Says, N.Y. Times (Oct. 17, 2018), <https://perma.cc/8RGV-7CVE>.

⁴ Loveday Morris, Souad Mekhennet & Kareem Fahim, *Saudis Are Said To Have Lain in Wait for Jamal Khashoggi*, Wash. Post (Oct. 9, 2018), <https://perma.cc/82WY-EUJT>.

⁵ “Duty to warn actions” include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Central Intelligence Agency) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim. *See* Directive 191, § F.13.

III. Application for Expedited Processing

The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Obtaining, analyzing, and publicly disseminating information about government activity are among the Institute's core activities.⁶ Furthermore, the requested records are urgently needed to inform the public about actual or alleged government activity. The disappearance of Jamal Khashoggi is the subject of national attention. Last week, a bipartisan group of 22 senators sent a letter to President Donald Trump expressing concern about the incident and requesting that the President make a determination on the imposition of sanctions on the responsible party within 120 days.⁷

IV. Application for Waiver or Limitation of Fees

The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan
Ramya Krishnan
Adi Kamdar
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
ramya.krishnan@knightcolumbia.org
(646) 745-8500

⁶ About the Knight Institute, <https://perma.cc/S9PN-J4ZY>.

⁷ Press Release, Sen. Bob Corker, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi* (Oct. 10, 2018).

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

FOIA Officer
National Security Agency
Attn: FOIA/PA Office
9800 Savage Road, Suite 6932
Ft. George G. Meade, MD 20755-6932

**Re: Freedom of Information Act Request
Expedited Processing Requested**

To whom it may concern,

The Knight First Amendment Institute at Columbia University (“Knight Institute” or “Institute”)¹ submits this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community (“IC”) element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 (“Directive 191”) requires the element to “warn the intended victim or those responsible for protecting the intended victim, as appropriate.”² Directive 191 further obligates IC elements to “document and maintain records” on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.³

¹ The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

² Director of National Intelligence, Intelligence Community Directive 191 § E.1 (July 21, 2015), <https://perma.cc/49P8-J69X>.

³ *Jamal Khashoggi: Saudi Journalist Vanishes in Istanbul*, BBC News (Oct. 4, 2018), <https://perma.cc/VD23-B3NX>; David D. Kirkpatrick & Carlotta Gall, *Audio Offers Gruesome Details of Jamal Khashoggi Killing, Turkish Official Says*, N.Y. Times (Oct. 17, 2018), <https://perma.cc/8RGV-7CVE>.

The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to capture Khashoggi.⁴ It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

II. Records requested

The Knight Institute seeks the following records:

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;
2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;⁵
3. All records concerning any “issue aris[ing] among IC elements” regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

⁴ Loveday Morris, Souad Mekhennet & Kareem Fahim, *Saudis Are Said To Have Lain in Wait for Jamal Khashoggi*, Wash. Post (Oct. 9, 2018), <https://perma.cc/82WY-EUJT>.

⁵ “Duty to warn actions” include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Federal Bureau of Investigation or the Central Intelligence Agency) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim. *See* Directive 191, § F.13.

III. Application for Expedited Processing

The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Obtaining, analyzing, and publicly disseminating information about government activity are among the Institute's core activities.⁶ Furthermore, the requested records are urgently needed to inform the public about actual or alleged government activity. The disappearance of Jamal Khashoggi is the subject of national attention. Last week, a bipartisan group of 22 senators sent a letter to President Donald Trump expressing concern about the incident and requesting that the President make a determination on the imposition of sanctions on the responsible party within 120 days.⁷

IV. Application for Waiver or Limitation of Fees

The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan
Ramya Krishnan
Adi Kamdar
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
ramya.krishnan@knightcolumbia.org
(646) 745-8500

⁶ About the Knight Institute, <https://perma.cc/S9PN-J4ZY>.

⁷ Press Release, Sen. Bob Corker, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi* (Oct. 10, 2018).

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

Patricia Gaviria, Director
Information Management Division
ATTN: FOIA/PA
Office of the Director of National
Intelligence
Washington, D.C. 20511

**Re: Freedom of Information Act Request
Expedited Processing Requested**

To whom it may concern,

The Knight First Amendment Institute at Columbia University (“Knight Institute” or “Institute”)¹ submits this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community (“IC”) element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 (“Directive 191”) requires the element to “warn the intended victim or those responsible for protecting the intended victim, as appropriate.”² Directive 191 further obligates IC elements to “document and maintain records” on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.³

¹ The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

² Director of National Intelligence, Intelligence Community Directive 191 § E.1 (July 21, 2015), <https://perma.cc/49P8-J69X>.

³ *Jamal Khashoggi: Saudi Journalist Vanishes in Istanbul*, BBC News (Oct. 4, 2018), <https://perma.cc/VD23-B3NX>; David D. Kirkpatrick & Carlotta Gall, *Audio*

The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to capture Khashoggi.⁴ It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

II. Records requested

The Knight Institute seeks the following records:

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;
2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;⁵
3. All records concerning any “issue aris[ing] among IC elements” regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.
4. All records relating to any dispute referred to the DNI regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.2.

Offers Gruesome Details of Jamal Khashoggi Killing, Turkish Official Says, N.Y. Times (Oct. 17, 2018), <https://perma.cc/8RGV-7CVE>.

⁴ Loveday Morris, Souad Mekhennet & Kareem Fahim, *Saudis Are Said To Have Lain in Wait for Jamal Khashoggi*, Wash. Post (Oct. 9, 2018), <https://perma.cc/82WY-EUJT>.

⁵ “Duty to warn actions” include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Federal Bureau of Investigation or the Central Intelligence Agency) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim. *See* Directive 191, § F.13.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

III. Application for Expedited Processing

The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Obtaining, analyzing, and publicly disseminating information about government activity are among the Institute's core activities.⁶ Furthermore, the requested records are urgently needed to inform the public about actual or alleged government activity. The disappearance of Jamal Khashoggi is the subject of national attention. Last week, a bipartisan group of 22 senators sent a letter to President Donald Trump expressing concern about the incident and requesting that the President make a determination on the imposition of sanctions on the responsible party within 120 days.⁷

IV. Application for Waiver or Limitation of Fees

The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan
Ramya Krishnan

⁶ About the Knight Institute, <https://perma.cc/S9PN-J4ZY>.

⁷ Press Release, Sen. Bob Corker, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi* (Oct. 10, 2018).

Adi Kamdar
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
ramya.krishnan@knightcolumbia.org
(646) 745-8500

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

RAMYA KRISHNAN
Staff Attorney

October 19, 2018

FOIA Officer
U.S. Department of State
Office of Information Programs and
Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D.C. 20522-0208

**Re: Freedom of Information Act Request
Expedited Processing Requested**

To whom it may concern,

The Knight First Amendment Institute at Columbia University (“Knight Institute” or “Institute”)¹ submits this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi.

I. Background

When an Intelligence Community (“IC”) element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, Intelligence Community Directive 191 (“Directive 191”) requires the element to “warn the intended victim or those responsible for protecting the intended victim, as appropriate.”² Directive 191 further obligates IC elements to “document and maintain records” on any actions taken pursuant to that duty. Directive 191, § 13.

Jamal Khashoggi, a columnist for the *Washington Post*, is believed to have been killed after entering a Saudi consulate in Istanbul on October 2, 2018.³

¹ The Knight First Amendment Institute is a New York not-for-profit organization based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education.

² Director of National Intelligence, Intelligence Community Directive 191 § E.1 (July 21, 2015), <https://perma.cc/49P8-J69X>.

³ *Jamal Khashoggi: Saudi Journalist Vanishes in Istanbul*, BBC News (Oct. 4, 2018), <https://perma.cc/VD23-B3NX>; David D. Kirkpatrick & Carlotta Gall, *Audio*

The *Washington Post* reports that, before his disappearance, U.S. intelligence agencies intercepted communications of Saudi officials discussing a plan to capture Khashoggi.⁴ It is not publicly known, however, whether the U.S. government warned Khashoggi of that threat. The Knight Institute seeks to inform the public about the U.S. government's compliance, or failure to comply, with its duty to warn Khashoggi of any known and impending threats to his safety.

II. Records requested

The Knight Institute seeks the following records:

1. All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;
2. All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;⁵
3. All records concerning any “issue aris[ing] among IC elements” regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

Offers Gruesome Details of Jamal Khashoggi Killing, Turkish Official Says, N.Y. Times (Oct. 17, 2018), <https://perma.cc/8RGV-7CVE>.

⁴ Loveday Morris, Souad Mekhennet & Kareem Fahim, *Saudis Are Said To Have Lain in Wait for Jamal Khashoggi*, Wash. Post (Oct. 9, 2018), <https://perma.cc/82WY-EUJT>.

⁵ “Duty to warn actions” include but are not limited to senior officer reviews of threat information and determinations; justifications not to warn the intended victim based on waiver criteria; coordination with other IC elements (such as the Federal Bureau of Investigation or the Central Intelligence Agency) to determine how best to pass threat information to the intended victim; and communication of threat information to another IC element or U.S. government agency for delivery to the intended victim. *See* Directive 191, § F.13.

III. Application for Expedited Processing

The Knight Institute requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Obtaining, analyzing, and publicly disseminating information about government activity are among the Institute's core activities.⁶ Furthermore, the requested records are urgently needed to inform the public about actual or alleged government activity. The disappearance of Jamal Khashoggi is the subject of national attention. Last week, a bipartisan group of 22 senators sent a letter to President Donald Trump expressing concern about the incident and requesting that the President make a determination on the imposition of sanctions on the responsible party within 120 days.⁷

IV. Application for Waiver or Limitation of Fees

The Knight Institute requests a waiver of document search, review, and duplication fees on three grounds. First, the disclosure of the requested records is in the public interest and that disclosure is "likely to contribute significantly to the 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). Second, the Institute is a "representative of the news media" within the meaning of FOIA and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Third, the Institute qualifies as an "educational . . . institution" whose purposes include "scholarly . . . research" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your attention to our request.

Sincerely,

/s/ Ramya Krishnan
Ramya Krishnan
Adi Kamdar
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
ramya.krishnan@knightcolumbia.org
(646) 745-8500

⁶ About the Knight Institute, <https://perma.cc/S9PN-J4ZY>.

⁷ Press Release, Sen. Bob Corker, *Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation into Disappearance of Jamal Khashoggi* (Oct. 10, 2018).

EXHIBIT B
TO
AMENDED
COMPLAINT



Committee to Protect Journalists

To Whom It May Concern:

The Committee to Protect Journalists (“CPJ”) submits this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for records relating to the journalist Jamal Khashoggi. CPJ seeks the same documents requested by the Knight First Amendment Institute at Columbia University (“Knight Institute”) on October 19, 2018. The Knight Institute’s request is attached as Exhibit A.

CPJ requests expedited processing for the same reasons laid out in the Knight Institute’s request.

CPJ requests a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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), and (b) CPJ is a “representative of the news media” within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

KNIGHT FIRST AMENDMENT
INSTITUTE AT COLUMBIA UNIVERSITY
475 Riverside Drive, Suite 302
New York, NY 10115

Plaintiff **COMMITTEE TO PROTECT
JOURNALISTS**

330 7th Avenue, 11th Floor
New York, NY 10001

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

DEPARTMENT OF JUSTICE
950 Pennsylvania Ave., NW
Washington, DC 20530

NATIONAL SECURITY AGENCY
Fort George G. ~~Mead~~Meade,
Maryland ~~207550~~20755-6000

OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE
Washington, DC 20511

DEPARTMENT OF STATE
2201 C St., NW
Washington, DC 20520

Defendants.

Civil Action No. 18-
2709-TNM

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. This lawsuit under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, concerns the recent killing of Jamal Khashoggi—a journalist, a U.S. resident, a Saudi national, and

a prominent critic of Saudi Arabia's current government—and seeks the immediate release of agency records concerning Defendants' compliance or non-compliance with the "duty to warn" set out in Intelligence Community Directive 191 ("Directive 191").

2. According to news reports, a team dispatched by the Saudi government killed Khashoggi in the Saudi consulate in Istanbul on October 2, 2018. Saudi prosecutors have said that Khashoggi was tied up, injected with an overdose of sedatives (or strangled, according to earlier accounts), and then dismembered. The CIA has reportedly concluded that Saudi Crown Prince Mohammed bin Salman personally ordered Khashoggi's killing.

3. Before the killing, U.S. intelligence agencies ~~apparently~~reportedly intercepted communications in which Saudi officials discussed a plan to capture Khashoggi. It is not publicly known precisely what the agencies learned from these communications, or what steps, if any, the agencies took to warn Khashoggi of the threat to him. However, Directive 191 provides that, when an Intelligence Community ("IC") element acquires information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person, the element must "warn the intended victim or those responsible for protecting the intended victim, as appropriate." Directive 191 further obligates IC elements to "document and maintain records" on any actions taken pursuant to that duty. Directive 191, § F.13.

4. ~~Plaintiff Knight First Amendment Institute at Columbia University~~To learn whether the Intelligence Community complied with its duty to warn, Plaintiffs submitted FOIA requests ~~on October 19, 2018~~ to the Central Intelligence Agency ("CIA"), the Federal Bureau of Investigation ("FBI"), the National Security Agency ("NSA"), the Office of the Director of National Intelligence ("ODNI"), and the Department of State ("DOS"). ~~The requests sought~~), seeking records concerning whether the Defendants~~agencies~~ learned of the threat to Khashoggi

before the events of October 2, 2018, what they learned, whether they considered their obligations under Directive 191, and whether ~~they complied with those obligations, and how they complied with those obligations.~~ Plaintiff Knight First Amendment Institute at Columbia University submitted its FOIA requests on October 19, 2018, and Plaintiff Committee to Protect Journalists submitted substantively identical requests to the same agencies on November 20, 2018.

5. ~~Plaintiff has~~Plaintiffs have commenced this action because only one of the Defendants has granted ~~its~~a request for expedited processing, and because none of the Defendants has released records in response to the requests.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

7. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

8. The Knight First Amendment Institute at Columbia University (“Knight Institute”) is a New York not-for-profit corporation based at Columbia University that works to preserve and expand the freedoms of speech and the press through strategic litigation, research, and public education. Public education is essential to the Knight Institute’s mission. Obtaining information about government activity, analyzing that information, and publishing and disseminating it to the press and public are among the core activities the Knight Institute was established to conduct. The Knight Institute is a “person” within the meaning of 5 U.S.C. § ~~551(2)~~.

9. The Committee to Protect Journalists (“CPJ”) is an independent, nonprofit organization that promotes press freedom worldwide. CPJ defends the right of journalists to report the news without fear of reprisal. CPJ regularly publishes news articles and special reports on

journalists who are attacked, imprisoned, or killed. CPJ is a “person” within the meaning of 5 U.S.C. § 551(2).

~~9-10.~~ The CIA is an “agency” within the meaning of 5 U.S.C. § 552(f). The CIA has possession and control over some or all of the requested records.

~~10-11.~~ The Department of Justice (“DOJ”) is an “agency” within the meaning of 5 U.S.C. § 552(f). The FBI is a component of the DOJ. The DOJ and its component the FBI have possession and control over some or all of the requested records.

~~11-12.~~ The NSA is an “agency” within the meaning of 5 U.S.C. § 552(f). The NSA has possession and control over some or all of the requested records.

~~12-13.~~ The ODNI is an “agency” within the meaning of 5 U.S.C. § 552(f). The ODNI has possession and control over some or all of the requested records.

~~13-14.~~ The DOS is an “agency” within the meaning of 5 U.S.C. § 552(f). The DOS has possession and control over some or all of the requested records.

FACTUAL ALLEGATIONS

The FOIA Requests

~~14-15.~~ On October 19, 2018, the Knight Institute submitted FOIA requests to ~~all Defendants~~ the CIA, the FBI, the NSA, the ODNI, and the DOS, seeking records relating to Jamal Khashoggi and the IC’s “duty to warn.”¹ Directive 191.

16. On November 20, 2018, CPJ submitted substantially identical requests to the same agencies.²

~~15-17.~~ The requests sought the following documents:

¹ True and correct copies of these requests are attached hereto as Exhibit A.

² CPJ sent a form letter to each agency seeking “the same documents requested by the [Knight Institute] on October 19, 2018” and attaching as an exhibit the pertinent Knight Institute request. A true and correct copy of the form letter is attached hereto as Exhibit B.

(1) All procedures or guidance for determining whether to warn, or for delivering a warning to, an intended victim or those responsible for protecting the intended victim, pursuant to Directive 191;

(2) All records concerning the duty to warn under Directive 191 as it relates to Jamal Khashoggi, including any records relating to duty to warn actions taken with respect to him;

(3) All records concerning any “issue aris[ing] among IC elements” regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.1.

~~16.18.~~ The request submitted to ODNI also sought the following documents:

(4) All records relating to any dispute referred to the DNI regarding a determination to warn Jamal Khashoggi or waive the duty to warn requirement, or regarding the method for communicating threat information to him. *See* Directive 191, § G.2.

~~17.19. The Knight Institute Plaintiffs~~ requested expedited processing of the requests on the ground that ~~it is an organization~~ they are organizations “primarily engaged in disseminating information” and there is a “compelling need” for the records sought because they contain information “urgent[ly]” needed to “inform the public concerning actual or alleged Federal Government Activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

~~18.20.~~ The Knight Institute requested a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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); (b) the Knight Institute is a “representative of the news media” within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II); and (c) the Knight Institute is an “educational . . . institution” whose

purposes include “scholarly . . . research” and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

21. CPJ also requested a waiver of document search, review, and duplication fees on the grounds that (a) disclosure of the requested records is in the public interest and 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), and (b) CPJ is a “representative of the news media” within the meaning of FOIA and the records are not sought for commercial use, 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Agency Responses

19-22. By letter dated October 23, 2018, the ODNI acknowledged receipt of the Knight Institute’s request to it and assigned it reference number DF-2019-0032. The ODNI denied the Knight Institute’s request for expedited processing but granted the Knight Institute’s request for a fee waiver. TheOn November 2, 2018, the Knight Institute submitted an administrative appeal to the ODNI challenging the agency’s denial of expedited processing ~~on November 2, 2018~~, but it has yet to receive a decision. To date, the ODNI has not released any records responsive to the Knight Institute’s request.

20-23. By letter dated October 26, 2018, the CIA acknowledged receipt of the Knight Institute’s request and assigned it reference number F-2019-00158. The CIA denied the Knight Institute’s request for expedited processing but granted the Knight Institute’s request for a fee waiver. TheOn November 2, 2018, the Knight Institute submitted an administrative appeal to the CIA challenging the agency’s denial of expedited processing on November 2, 2018, but it has yet to receive a decision. To date, the CIA has not released any records responsive to the Knight Institute’s request.

~~21-24.~~ By ~~letter~~email dated October ~~30~~19, 2018, the FBI acknowledged receipt of the Knight Institute's request ~~and~~. By letters dated October 30, 2018, the FBI assigned it the Knight Institute's request reference number 1420624-000. ~~The FBI~~ denied the Knight Institute's request for expedited processing, and stated that it had not reached a decision regarding the Knight Institute's request for a fee waiver.

~~22-25.~~ On November 2, 2018, the Knight Institute submitted an administrative appeal to the DOJ Office of Information Policy ("OIP") challenging the FBI's denial of expedited processing. By letter dated November 9, 2018, the OIP affirmed that denial. To date, the FBI has not released any records responsive to the Knight Institute's request.

~~23-26.~~ By letter dated October 31, 2018, the DOS acknowledged receipt of the Knight Institute's request and assigned it reference number F-2019-00752. The DOS granted the Knight Institute's request for expedited processing and a fee waiver. To date, the DOS has not released any records responsive to the Knight Institute's request.

~~24-27.~~ By letter dated November 8, 2018, the NSA acknowledged receipt of the Knight Institute's request and assigned it reference number 105522. The NSA denied the Knight Institute's request for expedited processing but did not address the Knight Institute's request for a fee waiver. To date, the NSA has not released any records responsive to the Knight Institute's request.

28. By email dated November 20, 2018, the FBI acknowledged receipt of CPJ's request. By letters dated November 28, 2018, the FBI assigned CPJ's request reference number 1422759-000, denied CPJ's request for expedited processing, and stated that it had not reached a decision regarding CPJ's request for a fee waiver. To date, the FBI has not released any records responsive to CPJ's request.

29. By email dated November 21, 2018, the ODNI acknowledged receipt of CPJ's request and assigned it reference number DF-2019-00066. The ODNI denied CPJ's request for expedited processing but granted CPJ's request for a fee waiver. To date, the ODNI has not released any records responsive to CPJ's request.

30. By letter dated November 28, 2018, the CIA acknowledged receipt of CPJ's request on November 21, 2018 and assigned it reference number F-2019-00522. The CIA denied CPJ's request for expedited processing and granted CPJ's request for a fee waiver. To date, the CIA has not released any records responsive to CPJ's request.

31. According to tracking information on the request sent to the NSA, that agency received CPJ's requests on November 21, 2018. By email dated November 29, 2018, the NSA acknowledged CPJ's request but did not address CPJ's requests for expedited processing and for a fee waiver. To date, the NSA has not released any records responsive to CPJ's request.

32. According to tracking information on the request sent to the DOS, that agency received CPJ's requests on November 21, 2018. To date, the DOS has not acknowledged receipt of CPJ's requests, has not addressed CPJ's requests for expedited processing and for a fee waiver, and has not released any records responsive to CPJ's requests.

33. By the date of this filing, twenty or more working days have passed since each agency first received the Knight Institute's and CPJ's requests.

34. Plaintiffs have exhausted all applicable administrative remedies.

CAUSES OF ACTION

35. Plaintiffs repeat, re-allege, and incorporate the foregoing paragraphs as if set forth in full.

36. Defendants' failure to make ~~records responsive to Plaintiff~~ and communicate a determination whether to comply with Plaintiffs' requests within the statutory time limit violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and Defendants' corresponding regulations.

25-37. Defendants' failure to promptly make available records responsive to Plaintiffs' requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

26-38. Defendants' failure to process ~~Plaintiff's~~ Plaintiffs' requests as soon as practicable violates FOIA, 5 U.S.C. § 552(a)(6)(E)(iii), and Defendants' corresponding regulations.

27-39. The failure of Defendants CIA, DOJ, NSA, and ODNI to grant ~~Plaintiff's~~ the Knight Institute's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

40. ~~Defendant DOJ's and Defendant NSA's failure to grant Plaintiff's~~ The failure of all Defendants to grant CPJ's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

41. The failure of Defendants DOJ and NSA to grant the Knight Institute's request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), (iii), and Defendants' corresponding regulations.

28-42. The failure of Defendants DOJ, DOS, and NSA to grant CPJ's request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), (iii), and Defendants' corresponding regulations.

PRAYER FOR RELIEF

WHEREFORE, ~~Plaintiff~~ Plaintiffs respectfully ~~requests~~ request that this Court:

- A. Order Defendants to conduct a thorough search for records responsive to Plaintiff's Plaintiffs' requests;

- B. Order Defendants immediately to process any responsive records for release, and to release them to both Plaintiffs;
- C. Enjoin Defendants from charging PlaintiffPlaintiffs search, review, and duplication fees relating to thePlaintiffs' requests;
- D. Award Plaintiff itsPlaintiffs their reasonable costs and attorney's fees incurred in this action; and
- E. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

~~Respectfully submitted,~~

/s/ Jameel Jaffer

Jameel Jaffer (MI0067)

Ramya Krishnan (admitted pro hac vice)

~~Alex Abdo~~

Adi Kamdar (application for ~~bar~~pro hac vice
admission ~~pending~~to be filed soon)

Alex Abdo (admitted pro hac vice)

Knight First Amendment Institute

at Columbia University

475 Riverside Drive, Suite 302

New York, NY 10115

(646) 745-8500

jameel.jafferramya.krishnan@knightcolumbia.org

Counsel for ~~the plaintiff~~Plaintiff Knight First
Amendment Institute at Columbia University

Timothy K. Beeken (NY0083)

Jeremy Feigelson (application for pro hac vice
admission to be filed soon)

Alexandra P. Swain (application for pro hac vice
admission to be filed soon)

DEBEVOISE & PLIMPTON LLP

919 Third Avenue

New York, NY 10022
(212) 909-6000
jfeigels@debevoise.com

Counsel for Plaintiff Committee to Protect Journalists

January 17, 2019

~~November 20, 2018~~