**U.S. Immigration
and Customs
Enforcement**

September 30, 2011

EMILY WILLARD, RESEARCH ASSOCIATE
THE NATIONAL SECURITY ARCHIVE
THE GEORGE WASHINGTON UNIVERSITY
GELMAN LIBRARY, SUITE 701
WASHINGTON, DC 20037

RE: OPLA11-227, 2011FOIA10067

Dear Ms. Willard:

This is in response to your letter dated July 14, 2011, appealing the adverse determination in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request asked for records regarding "Operation Streamline".

U.S. Immigration and Customs Enforcement Freedom of Information Act Office (ICE FOIA) partially denied your request by denying your request for a fee waiver as a representative of the new media. Instead ICE FOIA assigned you to the "non-commercial" requester category. You have appealed the denial of your fee waiver request, specifically the determination that you are not a representative of the news media. Our analysis follows.

The statutory definition of "representative of the news-media" is codified as "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."[1] However, as the Courts have previously adjudicated in cases involving the current requester, "merely making the information received available to the public (or others) is not sufficient to qualify a requester for placement in this fee category."[2]

In the present instance, the requester calls attention to the fact that the requester "has frequently written articles based on declassified documents for our website, and for Mexican magazines..." However, the Courts have held that "there is no reason to treat an entity with news media activities in its portfolio . . . as a 'representative of the news media' when it requests documents . . . in aid of its nonjournalistic activities."[3] In the case at hand, no specific mention of a news media activity associated with the current request has been mentioned in the request or appeal, but rather that the information is sought as part of a "scholarly research project".

Upon complete review, the determination to place the requester into the "non-commercial" requester category was proper in all respects and the fee category determination is affirmed pursuant to the applicable provisions of the OPEN Government Act cited above.

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[1] OPEN Government Act §3.
[2] Nat'l Sec. Archive v. DOD, 880 F.3d 1381, 1387 (D.C. Cir. 1989).
[3] Id. at 1387.

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Operation Streamline	

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

This decision is the final action of the Department of Homeland Security concerning your FOIA/PA request for expedited processing and a waiver of fees. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside, or in which the agency records are situated, or in the District of Columbia.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal", your appeal number, which is **OPLA11-227** and the FOIA case number, which is **2011FOIA10067**.

Sincerely,

Susan Mathias
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security