

EXHIBIT C

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FOR FREEDOM OF THE PRESS

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Jonathan Cantor
Acting Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

April 17, 2017

Via FOIAonline

Re: FREEDOM OF INFORMATION ACT REQUEST
Fee benefit and fee waiver requested

Dear Mr. Cantor,

The Reporters Committee for Freedom of the Press (“RCFP” or “Reporters Committee”) submits this expedited request pursuant to the Freedom of Information Act (“FOIA” or the “Act”), 5 U.S.C. § 552 and agency regulations¹ for records from Customs and Border Protection (“CBP”), a division of the Department of Homeland Security (“DHS”). RCFP seeks information regarding demands from CBP and/or DHS that Twitter, Inc. (“Twitter”) release information to identify the one or more persons using the Twitter account @ALT_uscis.

Since the inauguration of President Donald J. Trump, a number of so-called “alternative agency” accounts have arisen on Twitter’s online platform.² These accounts, controlled by speakers who purport to be current or former employees of federal agencies or other individuals familiar with the agencies, provide commentary in opposition to the official actions and policies of the Trump Administration.³ These accounts have challenged views of the Administration and its policies and, since their origin, have

¹ 6 C.F.R. § 5 is the regulation pertaining to the processing of the agency’s records.

² Kayla Epstein and Darryl Fears, *Rogue Twitter accounts spring up to fight Donald Trump on climate change*, THE WASHINGTON POST, Jan. 25, 2017, <https://www.washingtonpost.com/news/energy-environment/wp/2017/01/25/rogue-pro-science-protest-sites-are-sticking-up-for-federal-research/>.

³ *Id.*

amassed audiences of Twitter users (“followers”) numbering in the tens of thousands or more.⁴

Like many social media platforms, Twitter allows users to choose whether to identify themselves publicly; users who wish to remain anonymous select a user name using a pseudonym that does not disclose the speaker’s true identity. Pseudonymity of the speaker(s) is a hallmark of these “alternative agency” accounts; these users are motivated to preserve their anonymity to ensure that they may speak freely without fear of the negative consequences that could follow if identified as the source of critical commentary concerning the Administration and/or specific agencies.⁵ Such motivation is likely to be especially significant for users who are currently employed by the very agency targeted by the “alternative” commentary, as these users could face retaliation, harassment, and even the loss of their employment if their identities are revealed.⁶

One of these “alternative agency” accounts, @ALT_uscis, has amassed more than 194,000 followers and drafted more than 9,000 tweets since its creation in January 2017.⁷ The commentary published by @ALT_uscis has criticized immigration policies with which the user(s) disagree, including President Trump’s immigration Executive Order and his proposal to build a wall along the U.S.-Mexico border.⁸ In addition, the @ALT_uscis account has highlighted what the user(s) view as a history of mismanagement at the agency, and has regularly leveled criticism at CBP’s practices.⁹

On March 17, 2017, an agent within CBP transmitted to Twitter by fax a summons (“CBP Summons,” attached as Exhibit A) ordering it to produce certain records pertaining to the @ALT_uscis account, including “[u]ser names, account login, phone numbers, mailing addresses, and I.P. addresses.”¹⁰ The CBP Summons invoked as authority 19 U.S.C. § 1509, an administrative provision of the Tariff Act of 1930 which authorizes the agency to compel production of a narrow class of records related to the importation of merchandise.¹¹

⁴ See, e.g. @RogueNASA, TWITTER (Apr. 13, 2017, 2:37 PM), <https://twitter.com/roguenasa> (903K followers as of Apr. 13, 2017); @AltNatParkSer, TWITTER (Apr. 13, 2017, 2:38 PM), <https://twitter.com/altnatparkser> (89K followers as of Apr. 13, 2017); @Alt_NIH, TWITTER (Apr. 13, 2017, 2:40 PM), https://twitter.com/alt_nih (224K followers as of Apr. 13, 2017).

⁵ Alleen Brown, *Rogue Twitter Accounts Fight To Preserve The Voice Of Government Science*, THE INTERCEPT, Mar. 11, 2017, <https://theintercept.com/2017/03/11/rogue-twitter-accounts-fight-to-preserve-the-voice-of-government-science/> (noting that several “alternative agency” accounts are administered by current agency employees who wish to preserve their anonymity “out of fear of workplace retaliation and pressure to shut down their accounts”).

⁶ *Id.*

⁷ See @ALT_uscis, TWITTER (Apr. 13, 2017, 3:10 PM), https://twitter.com/alt_uscis (194K followers as of Apr. 13, 2017).

⁸ *Id.*

⁹ See *id.* (Feb. 3, 2017 tweet alleging that CBP agents were “walking public area of [airport] terminals approaching brown people mentioning they look like a suspect”).

¹⁰ See Exhibit A at 3.

¹¹ See 19 U.S.C. § 1509.

Twitter filed suit against CBP and DHS on April 6, 2017, arguing that the First Amendment barred the CBP Summons.¹² The next day, CBP withdrew its summons, and Twitter voluntarily dismissed its claims without prejudice.¹³

I. Requested Records

Pursuant to the FOIA, I, on behalf of RCFP, request copies of the following:

- 1) All records, including but not limited to opinions, memoranda, directives, guidelines, checklists, or criteria, from January 1, 2017, that mention one or more of the following terms:
 - a. @ALT_uscis;
 - b. @ALT_USCIS
 - c. "ALT Immigration"; or
 - d. "ALT_uscis";

- 2) All e-mail communications to or from Special Agent Adam Hoffman from January 1, 2017, including communications on which Mr. Hoffman was carbon copied ("CC'd") or blind carbon copied ("BCC'd"), that mention one or more of the following terms:
 - a. @ALT_uscis;
 - b. @ALT_USCIS;
 - c. "ALT Immigration"; or
 - d. "ALT_uscis"; or
 - e. "Twitter account"

- 3) All e-mail communications to or from Special Agent in Charge Stephen P. Caruso from January 1, 2017, including communications on which Mr. Caruso was CC'd or BCC'd, that mention one or more of the following terms:
 - a. @ALT_uscis;
 - b. @ALT_USCIS;
 - c. "ALT Immigration";
 - d. "ALT_uscis"; or
 - e. "Twitter account"

- 4) All records, including but not limited to opinions, memoranda, directives, guidelines, checklists, or criteria, discussing applicable authority (including but not limited to 19 U.S.C. § 1509), from January 1, 2016, used by CBP to

¹² Complaint, *Twitter, Inc. v. U.S. Dep't of Homeland Security, et al.*, No. 3:17-cv-01916 (N.D. Cal. Apr. 6, 2017).

¹³ Mike Isaac, *U.S. Blinks in Clash With Twitter; Drops Order to Unmask Anti-Trump Account*, N.Y. TIMES, Apr. 7, 2017, <https://www.nytimes.com/2017/04/07/technology/us-blinks-in-clash-with-twitter-drops-order-to-unmask-anti-trump-account.html>.

compel the production of records to unmask the identity of persons using databases, social media programs, and other software.

- 5) All records, including but not limited to opinions, memoranda, directives, guidelines, checklists, or criteria, from January 1, 2016, discussing applicable authority for a recipient of a summons notice issued by CBP pursuant to 19 U.S.C. § 1509 to object to compliance with such summons.

I would like to receive the information in electronic form, preferably PDFs. If possible, please also provide PDFs that have been subjected to optical character recognition (“OCR”) or are otherwise electronically searchable, in order to facilitate public access to the content of the information.

II. Fee Benefit and Fee Waiver Requested

As a representative of the news media, RCFP requests a fee benefit which would require it to pay only for the direct cost of duplication after the first 100 pages of responsive records. 5 U.S.C. § 552(a)(4)(A)(ii)(II). In the event that records responsive to this request exceed 100 pages, I am willing to pay up to \$50.00 in duplication fees. Please inform me if fees will exceed that amount before proceeding.

RCFP also seeks a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure 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.” *Id.*; see also 6 C.F.R. § 5.11 (k)(i)-(ii) (stating fees will be waived where disclosure is in the public interest and not primarily in the commercial interest of the requester).

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii), disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government” within the meaning of the statute because the Reporters Committee is a nonprofit association of news reporters and editors that publishes information to educate the public about the state of the press. In addition to regularly obtaining information about government activities that touch and concern members of the press and the First Amendment, RCFP also engages in analyzing and publishing that information.¹⁴ For instance, RCFP routinely posts articles on its website¹⁵ and on its social media accounts,¹⁶ emails out newsletters, and publishes a quarterly magazine, *The News Media*

¹⁴ *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 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”) (citation omitted).

¹⁵ REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, <https://www.rcfp.org/> (last visited Apr. 13, 2017).

¹⁶ See @rcfp, TWITTER (Apr. 13, 2017, 12:14 PM), <https://twitter.com/rcfp> (7,712 followers as of Apr. 13, 2017); The Reporters Committee for Freedom of the Press, FACEBOOK (Apr. 13, 2017), <https://www.facebook.com/ReportersCommittee/> (6,393 “likes” as of Apr. 13, 2017).

& *The Law*.¹⁷ RCFP intends to analyze and disseminate information obtained through this Request to the general public via these publications.

Further, the records sought are “likely to contribute significantly to public understanding” of the “operations or activities of the government” because they will shed light on CBP’s operations and procedures vis-à-vis unmasking anonymous social media users and, in particular, CBP’s effort to unmask the anonymous user(s) behind the @ALT_uscis Twitter account, an incident that prompted Twitter to file a complaint against the agency.

Additionally, the records requested are not sought for commercial use. RCFP is a nonprofit public interest organization. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”) (citation omitted). This information is being sought on behalf of the Reporters Committee for free dissemination to the general public through its multiple publishing avenues.¹⁸

III. Conclusion

If this request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I expect you to release all segregable portions of otherwise exempt material.

If you have any questions regarding this request, please do not hesitate to email at jnelson@rcfp.org.

I look forward to your determination regarding my request for expedited processing within twenty (20) calendar days.

Thank you in advance for your assistance in this matter.

Sincerely,



Jennifer A. Nelson
Stanton Foundation Litigation Fellow
Reporters Committee for Freedom of the Press

cc: Katie Townsend
Litigation Director
Reporters Committee for Freedom of the Press

¹⁷ The News Media and The Law Archive, REPORTERS COMM. FOR FREEDOM OF THE PRESS, <http://www.rcfp.org/magazine-archive> (last visited Apr. 13, 2017).

¹⁸ See *supra* nn. 20-22.

Exhibit A



U.S. DEPARTMENT OF HOMELAND SECURITY
Bureau of Customs and Border Protection

FACSIMILE TRANSMITTAL

CD 2110-035

Date:

Control Number:

TO	Name:	<i>Trust & Safety - Legal Policy</i>
	Organization:	<i>Twitter Inc</i>
	Fax Number:	[REDACTED]
	Number of Pages (including cover):	<i>4</i>

FROM	Sender:	<i>SA Adam Hoffman</i>
	Originating Location:	<i>DHS Customs and Border Protection</i>
	Return FAX Number:	<i>1-202-344-1258</i>
	Voice Number:	<i>1-202-344-3194</i>

REMARKS	<i>Please complete the Acknowledgment of Receipt and return to Fax # 1-202-344-1258</i>
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Important: This document may contain confidential and sensitive U.S. Government information. Please deliver it immediately only to the intended recipient(s) listed above. The Bureau of Customs and Border Protection has not approved the documents review, retransmission, dissemination or use by anyone other than the intended recipient(s).

To (Name, Address, City, State, Zip Code) Twitter, Inc. c/o Trust & Safety - Legal Policy 1355 Market Street, Suite 900 San Francisco, CA 94103	DEPARTMENT OF HOMELAND SECURITY SUMMONS NOTICE to Appear and/or Produce Records 19 U.S.C. § 1509
<p>Attached is a copy of a summons served by U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP), both agencies within the Department of Homeland Security (DHS), to examine records or to request testimony relating to records of your business transactions or affairs which have been made or kept by the person named in Block 1 of the summons.</p> <p>If you object to the examination of these records, you may stay (prevent) examination of the records until a summons enforcement proceeding is commenced in court. Compliance with the summons will be stayed if, not later than the day before the date indicated in Block 2 of the summons, you advise the person summoned (the person named in Block 1), in writing, not to comply with the summons, and you send a copy of that notice by registered or certified mail to the CBP Officer or ICE Special Agent who issued the summons at the address shown in Block 6 of the summons.</p> <p>CBP or ICE may begin an action to enforce the summons in the appropriate United States District Court. In such cases, you will be notified and you will have the right to intervene and present your objections before the court. The court will decide whether the person summoned should be required to comply with the summons.</p> <p>If the court issues an order to comply with the summons and the person summoned fails to comply, the court may punish such failure as a contempt of court. Other sanctions may be provided by law.</p> <p>If you have any questions regarding this matter, please contact the CBP Officer or ICE Special Agent before whom the summoned person is required to appear. The CBP Officer's or ICE Special Agent's name and telephone number are given in Block 2 of the summons.</p>	

1. To (Name, Address, City, State, Zip Code) Twitter, Inc. c/o Trust & Safety - Legal Policy 1355 Market Street, Suite 900 San Francisco, CA 94103	DEPARTMENT OF HOMELAND SECURITY SUMMONS to Appear and/or Produce Records 19 U.S.C. § 1509
Summons Number 2017012	Case Number: 201704511

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A) **APPEAR** before the U.S. Customs and Border Protection (CBP) Officer or U.S. Immigration and Customs Enforcement (ICE) Special Agent named in Block 2 at the place, date, and time indicated to testify and give information.
- (B) **PRODUCE** the records (including statements, declarations, and other documents) indicated in Block 3 before the CBP Officer or ICE Special Agent named in Block 2 at the place, date, and time indicated.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry to ascertain the correctness of entries, to determine the liability for duties, taxes, fines, penalties, or forfeitures, and/or to ensure compliance with the laws or regulations administered by CBP and ICE.

Failure to comply with this summons will render you liable to proceedings in a U.S. District Court to enforce compliance with this summons as well as other sanctions.

2. (A) CBP Officer or ICE Special Agent before whom you are required to appear Name Adam Hoffman Title Special Agent Address 1300 Pennsylvania Ave. N.W. Room 8.3 Washington D.C. 20229 Telephone Number 1-202-344-3194	(B) Date 03/13/2017 (C) Time 11:45 <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
3. Records required to be produced for inspection All records regarding the twitter account @ALT_USCIS to include, User names, account login, phone numbers, mailing addresses, and I.P addresses.	

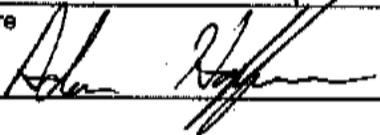
You are requested not to disclose the existence of this summons for an indefinite period of time. Any such disclosure will impede this investigation and thereby interfere with the enforcement of federal law.

Issued under authority of section 509, Tariff Act of 1930, as amended by Public law 95-410 (19 U.S.C. § 1509); 44 F.R. 2217; Homeland Security Act of 2002

4. Name of person authorized to serve this summons or any other CBP Officer or ICE Special Agent Special Agent Adam Hoffman	5. Date of issue 03/14/2017 By  (Signature)
	6. Name, title, address, and telephone number of person issuing this summons Name Stephen P. Caruso Title Special Agent in Charge Address 11606 City Hall Promenade Suite 400, Miramar, FL 33025 Telephone Number (954) 843-5068

If you have any questions regarding this summons, contact the CBP Officer or ICE Special Agent identified in Block 2.

CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT

A. CERTIFICATE OF SERVICE OF SUMMONS		
I certify that I served the summons on the front of this form as follows:		
<input type="checkbox"/> I delivered a copy of the summons to the person to whom it was directed, as follows:	Address or Location	Date
		Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
<input checked="" type="checkbox"/> (For corporations, partnerships, and unincorporated associations which may be sued under a common name) I delivered a copy of the summons to an officer, managing or general agent, or agent authorized to accept service of process as follows:	Address or Location Twitter, Inc. c/o Trust & Safety - Legal Policy 1355 Market Street, Suite 900 San Francisco, CA 94103	Date 03/13/2017
		Time 11:45 <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Name of person to whom the summons was delivered		
Faxing to [REDACTED] (attn: Trust & Safety - Legal Policy)		
Signature 		
Title Special Agent		Date 03/13/2017
B. ACKNOWLEDGMENT OF RECEIPT		
I acknowledge receipt of a copy of the summons on the front of this form.		
Signature		
Title	Date	Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.