

NATIONAL SECURITY PROJECT



F-2013-02617

June 28, 2013

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505
Fax: 703.613.3007

Sent by Fax

Re: Request Under Freedom of Information Act / Expedited Processing Requested

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
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To Whom It May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the Central Intelligence Agency's implementing regulations, *see* 32 C.F.R. § 1900. The Request is submitted by the American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU" or the "Requesters").¹

JUL - 1 2013

Requesters seek the disclosure of the Central Intelligence Agency's report (the "CIA Report") responding to the Senate Select Committee on Intelligence's report on the CIA's post-9/11 program of rendition, detention, and interrogation (the "SSCI Report").

The Senate Select Committee on Intelligence ("SSCI") voted on Thursday, December 13, 2012, to approve a report detailing the findings of its three-year investigation of the CIA's rendition, detention, and interrogation program in the years after September 11, 2001. According to the SSCI chairperson, the SSCI Report—which totals nearly 6,000

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union's members to lobby their legislators.

pages—is “the most definitive review” to be conducted of the CIA’s program, including the Agency’s use of so-called “enhanced interrogation techniques.” See, e.g., Scott Shane, *Senate Panel Approves Findings Critical of Detainee Interrogations*, N.Y. Times, Dec. 13, 2012, <http://nyti.ms/VwdORk>; Carrie Johnson, *Report On CIA Interrogation Tactics Revives Torture Debate*, NPR, Dec. 13, 2012, <http://n.pr/VDKWm0>; Mark Hosenball, *Senators to Vote on Probe of CIA Interrogation Program*, Reuters, Dec. 6, 2012, <http://reut.rs/RbuL3T>; Benjamin Wittes, *Senate Intelligence Committee Interrogation Report Approved—But Not Released*, Lawfare, Dec. 14, 2012, <http://bit.ly/Vw1twf>; Natasha Lennard, *Senate-Approved CIA Torture Report Kept Under Wraps*, Salon, Dec. 14, 2012, <http://bit.ly/SWfHsgh>;

In the course of its investigation, which began in 2009, the SSCI reviewed millions of pages of records documenting the day-to-day operations of the CIA’s interrogation program. The Commission’s intent was to produce “a detailed, factual description of how interrogation techniques were used, the conditions under which detainees were held, and the intelligence that was—or wasn’t—gained from the program.” Joint Statement from Senator Dianne Feinstein, Chairman, Senate Intelligence Committee, and Senator Carl Levin, Chairman, Senate Armed Services Committee, Apr. 27, 2012, <http://1.usa.gov/IKjkq0>. After voting to approve the SSCI Report, Senator Diane Feinstein stated, “The report uncovers startling details about the CIA detention and interrogation program and raises critical questions about intelligence operations and oversight... The creation of long-term, clandestine ‘black sites’ and the use of so-called ‘enhanced interrogation techniques’ were terrible mistakes.” Feinstein Statement on CIA Detention, Interrogation Report, Senator Feinstein Press Release, Dec. 13, 2012, <http://1.usa.gov/SXEWHH>.

On June 26, 2013, media reports indicated that the CIA completed a report calling into question the SSCI’s investigative methods and widely reported findings. News accounts also state that John Brennan, Director of the CIA, will deliver the agency’s report to the SSCI on June 27, 2013. The CIA Report has been described as the agency’s most thorough and critical defense of its post-9/11 interrogation and detention programs to date. See also Jordy Yager, *CIA Rebuffs Congress on ‘Torture’ Findings*, The Hill, June 27, 2013, <http://bit.ly/14ZPGe8>; Greg Miller and Julie Tate, *CIA Report Refutes Senate Panel’s Criticism of Agency’s Harsh Interrogation Methods*, Wash. Post, June 27, 2013, <http://wapo.st/17Dtquw>. It apparently “disputes [the SSCI’s] central conclusion that harsh methods used against al-Qaeda detainees failed to produce significant results.” Greg Miller and Julie Tate, *CIA Report Refutes Senate Panel’s Criticism of Agency’s Harsh Interrogation Methods*, Wash. Post, June 27, 2013, <http://wapo.st/17Dtquw>.

The CIA Report is of clear and enormous public importance. The American public has a right to know the full truth about the torture and other abusive treatment of detainees authorized by officials at the highest levels of our government. A fair public debate of these issues must be informed by both the Senate's comprehensive report (which the ACLU has separately requested through FOIA) and the CIA's response to that investigation. As Senator Mark Udall has said, "I am confident the American people will agree once they have the opportunity to read the [SSCI Report], as well as the CIA's official response, that this program was a failure and a tragic moment in America's history." Udall Decries Leak Concerning CIA's Response to the Senate Intelligence Committee's Study on Detention, Interrogation Program, Senator Udall Statement, June 27, 2013, <http://1.usa.gov/10nS4cX>. Release of the CIA Report is therefore critical to ensure timely public access to the intelligence agency's assessment of its interrogation and detention practices after 9/11. This significant information will contribute to both the historical record on the United States' intelligence practices and current and future public discussion about CIA rendition, detention and interrogation programs.

I. Record Requested

Requesters seek disclosure of the CIA's recently adopted report in response to the SSCI Report on the CIA's rendition, detention, and interrogation program in the years following 9/11.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that the CIA Report be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession.

II. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c). There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 32 C.F.R. § 1900.34(c)(2). In addition, the records sought relate to a "breaking news story of general public interest." 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when "the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity").

- A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2); *see also* *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” (internal citation omitted)); *see also* *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is “to serve as the site of record for relevant and up-to-the-minute civil rights news and information” and to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”).

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU’s regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.² ACLU attorneys are interviewed frequently for news stories about

² *See, e.g.*, Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement*, Sept. 14, 2012, <http://www.aclu.org/node/36742>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Using “Mosque Outreach” for Intelligence Gathering*, Mar. 27, 2012, <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of “Community Outreach,”* Dec. 1, 2011, <http://www.aclu.org/national-security/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community>; Press Release, American Civil Liberties Union, *FOIA Documents from FBI Show Unconstitutional Racial Profiling*, Oct. 20, 2011, <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, *Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem*, Oct. 19, 2011, <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights-documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, *New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison*, Says ACLU, June 24, 2009, <http://www.aclu.org/national->

documents released through ACLU FOIA requests.³

The ACLU website specifically includes features on information about actual or alleged government activity obtained through FOIA.⁴ For example, the ACLU maintains an online "Torture Database," a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.⁵ The ACLU also maintains a "Torture FOIA" webpage containing commentary about the ACLU's FOIA request, press releases, and analysis of the FOIA documents.⁶ (That webpage also notes that the ACLU, in collaboration with Columbia University Press, has published a book about the documents obtained through FOIA. See Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007)). Similarly, the ACLU's webpage about the Office of Legal Counsel ("OLC") torture memos obtained through FOIA contains commentary and analysis of the memos; an original, comprehensive chart summarizing the memos; links to web features created by ProPublica (an independent, non-profit, investigative-journalism organization) based on the ACLU's information gathering, research, and analysis; and ACLU videos about the memos.⁷ In addition to websites, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through FOIA.

security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu.

³ See, e.g., Carrie Johnson, *Delay in Releasing CIA Report Is Sought; Justice Dep't Wants More Time to Review IG's Findings on Detainee Treatment*, Wash. Post, June 20, 2009 (quoting ACLU staff attorney Amrit Singh); Peter Finn & Julie Tate, *CIA Mistaken on 'High-Value' Detainee, Document Shows*, Wash. Post, June 16, 2009 (quoting ACLU staff attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosures by C.I.A.*, N.Y. Times, June 10, 2009 (quoting ACLU National Security Project director Jameel Jaffer); Joby Warrick, *Like FBI, CIA Has Used Secret 'Letters.'* Wash. Post, Jan. 25, 2008 (quoting ACLU staff attorney Melissa Goodman).

⁴ See, e.g., <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <http://www.aclu.org/torturefoia>; <http://www.aclu.org/olcmemos>; <http://www.aclu.org/mappingthefbi>; <http://www.aclu.org/national-security/bagram-foia>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/natscc/foia/search.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <http://www.aclu.org/patriotfoia>; <http://www.aclu.org/spyfiles>; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>; and <http://www.aclu.org/exclusion>.

⁵ <http://www.torturedatabase.org>.

⁶ <http://www.aclu.org/torturefoia>.

⁷ http://www.aclu.org/safefree/general/olc_memos.html.

The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The record requested is not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.⁸

B. The record sought is urgently needed to inform the public about actual or alleged government activity.

The CIA Report is urgently needed to inform the public about actual or alleged government activity; moreover, this document relates to a breaking news story of general public interest, specifically, the CIA's rendition, detention and interrogation program and its authorization of abusive techniques between 2002 and 2009. See 32 C.F.R. § 1900.34(c)(2).

We make this Request to further the public's understanding of the CIA's program and the role of senior officials in conceiving of and authorizing the use of abusive interrogation techniques in the wake of September 11, 2001. The public has and continues to manifest an abiding interest in the conduct of the CIA and other executive agencies with respect to individuals seized, detained, and interrogated for counterterrorism purposes. While U.S. intelligence officials have acknowledged that the CIA used harsh and coercive interrogation techniques, Congress's SSCI Report investigation set forth the most comprehensive account to date of what happened and why. Thus, release of the CIA's Report in response to the SSCI's findings is imperative for establishing a full and accurate analysis of the intelligence agency's practices.

The contents of the CIA Report will inform urgent and ongoing debate about the agency's interrogation program. Release of the CIA's analysis of SSCI findings will enhance public discourse by providing the intelligence community's perspective on, "one of the most controversial programs in its history." Greg Miller and Julie Tate, *CIA Report Refutes Senate Panel's Criticism of Agency's Harsh Interrogation Methods*, Wash. Post, June 27, 2013, <http://wapo.st/17Dtquw>

Thus, the ACLU's request for expedited processing should be granted.

⁸ In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived materials available at the American Civil Liberties Union Archives at Princeton University Library.

III. Application for Waiver or Limitation of Fees

A. *Release of the record is in the public interest.*

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested record is in the public interest because it is likely to contribute significantly to the public understanding of the United States government's operations or activities and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2).

The CIA Report will significantly contribute to public understanding of the government's operations or activities. Moreover, disclosure is not in the ACLU's commercial interest. Any information obtained by the ACLU as a result of this FOIA request will be available to the public at no cost. See 32 C.F.R. § 1900.13(b)(2).

Thus, a fee waiver would fulfill Congress's legislative intent in amending FOIA. See *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." (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

B. *The ACLU qualifies as a representative of the news media.*

A waiver of search and review fees is warranted because the ACLU qualifies as a "representative of the news media" and the SSC1 Report is not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); see also 32 C.F.R. § 1900.02(h)(3). Accordingly, fees associated with the processing of this request should be "limited to reasonable standard charges for document duplication."

The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "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." 5 U.S.C. § 552(a)(4)(A)(ii)(II); see also *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); cf. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU is a

“representative of the news media” for the same reasons that it is “primarily engaged in the dissemination of information.” See *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes).⁹ Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at *3 (D. Conn. May 14, 2012). See also *Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

* * *

Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

⁹ On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish the applicable records to:

Alex Abdo
American Civil Liberties Union
125 Broad Street
18th Floor
New York, NY 10004

Thank you for your prompt attention to this matter.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

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DATE: JUNE 28, 2013

Total number of pages (including this cover page): 10

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