

F-2016-02028 F-08-01330

Allard K. Lowenstein International  
Human Rights Clinic –  
National Litigation Project  
Yale Law School  
127 Wall St  
New Haven CT 06511-8918

Jonathan M. Freiman

**BY FAX AND CERTIFIED MAIL**

December 20, 2007

Agency Release Panel (ARP)  
C/O Information and Privacy Coordinator  
Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505

**APPEAL from Denial of FOIA Request Submitted on October 23, 2007.<sup>1</sup>**

Ref. No. F-2008-00192

Dear Coordinator:

This letter constitutes an appeal (“Appeal”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6) (FOIA), of your November 5, 2007, denial of the Request submitted by the Allard K. Lowenstein International Human Rights Clinic at Yale Law School on October 23, 2007, to which you assigned reference number F-2008-00192.

The October 23 Request sought the release of any and all agency records concerning the detention and/or interrogation of individuals denominated “enemy combatants” and *detained at civilian or military facilities within the United States*. For your convenience, the October 23 Request is attached hereto.

In your response, you stated that “[t]he records you are seeking would most likely be under the auspices of the Department of Defense.”

Your response indicates that you made no effort to locate responsive records, on the basis of a determination that any records would “most likely” be located within the Department of Defense. However, the October 23 Request clearly sought the release of documents that may be in CIA custody, including:

Copies of any memoranda, directives, reports, or other documents issued by the Department of Defense . . . or by other government agencies . . . relating to or arising out of authorized or unauthorized detention and/or interrogation practices

<sup>1</sup> Please note that this appeal is unrelated to the request filed by the Lowenstein Clinic on December 20, 2007.

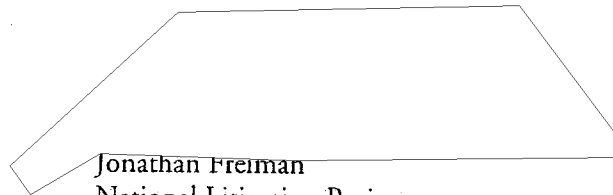
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Requester hopes to avoid the need for litigation over this matter and invites you to call Jonathan Freiman at the number below to discuss the Request and Appeal. Requester looks forward to your response within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i).

Thank you for your prompt attention to this matter.

Signed by:



(b)(6)

Jonathan Freiman  
National Litigation Project  
of the Allard K. Lowenstein International  
Human Rights Clinic at Yale Law School  
127 Wall St.  
New Haven, CT 06511

(b)(6)



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applied to individuals designated as enemy combatants at military or civilian facilities within the United States.

...  
Any and all documents relating to or arising out of any agreement or instructions, whether formal or informal, between government agencies, including but not limited to the Departments of Justice, Defense, Homeland Security or State or their components, regarding the detention and/or interrogation within the United States of individuals designated as enemy combatants.

October 23 Request at 3-4, ¶¶ 5, 7.

The Freedom of Information Act requires that the CIA make a thorough search for responsive records, not issue a denial on the basis of speculation about the records it is "likely" to have. There is a fair probability that CIA does in fact have records responsive to the Request: In view of CIA experience with the development and application of counter-resistance techniques for use against suspected enemy combatants held outside of the United States, Requester believes that it is likely that CIA would have been consulted in the process of developing techniques for use within the United States. Accordingly, Requester demands that CIA make a thorough search for responsive records, in accordance with its obligations under the Freedom of Information Act.

Your letter also stated that "The CIA is not authorized to release records originated by other government agencies even if we were to locate any." Your letter did not cite, and Requester is unaware of, any authority for such a refusal to release responsive records. Requester reiterates its demand that any denial be justified "by reference to specific exemptions of the FOIA." October 23 Request at 4.

For the reasons stated above, Requester appeals your refusal to conduct a search for, or release any, responsive documents in CIA custody, and declares its intention to pursue judicial remedies if the records requested are not promptly made available or their withholding adequately justified. As you are no doubt aware, the recent scandal over the disappearance of key recordings of interrogations of suspected "enemy combatants" at home and abroad has intensified congressional and public interest in the treatment of such individuals. The Lowenstein Clinic's interest in gathering the requested records and disseminating them to the public is clearly heightened by these recent developments, and it is now more important than ever that the FOIA process be, and be seen to be, effective in providing the public with information on the activities undertaken in its name.

In the event that this appeal is denied, Requester asks that you provide the following information: (1) a complete list of documents covered by the Request; (2) specific indications of what material is being withheld; and (3) the statutory exemptions or other authority relied on to justify the withholding.

Central Intelligence Agency



Washington, D.C. 20505

NOV 05 2007

Mr. Jonathan Freiman  
Allard K. Lowenstein International  
Human Rights Clinic-  
National Litigation Project  
Yale Law School  
127 Wall St.  
New Haven, CT 06511-8918

Reference: F-2008-00192

Dear Mr. Freiman:

This is a final response to your 23 October 2007 Freedom of Information Act (FOIA) request, which was received on 23 October 2007, for

***“any and all agency records concerning the detention and/or interrogation of individuals denominated ‘enemy combatants’ and detained at civilian or military facilities within the United States including but not limited to the classes of documents enumerated below.” (List of documents omitted)***

The records you are seeking would most likely be under the auspices of the Department of Defense. The CIA is not authorized to release records originated by other government agencies even if we were to locate any. Therefore, you will be better served by submitting your request to the Department of Defense at the following address:

Ms. Karen M. Finnegan  
Office of Freedom of Information  
Department of Defense  
1155 Defense Pentagon  
Washington, D.C. 20301-1155  
703-696-4495  
Fax number 703-696-4506

We regret that we could not be of assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Scott Koch".

Scott Koch  
Information and Privacy Coordinator