

2014-00860

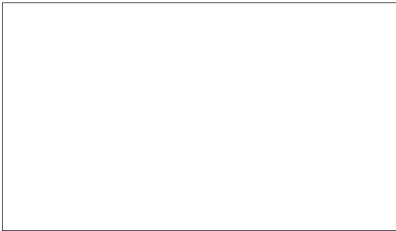
**FOIA Request ID: 2629**

**FOIA Request submitted by:**

**Mr. Jason Leopold**

**Submitted on: February 18, 2014 : 13:43 - America/New\_York**

**Investigative Journalist**



(b)(6)

**United States**

**Request:**

**FOIA Request**

**This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.**

**Further, please note that this request seeks expedited processing pursuant to 32 C.F.R. 1900.34(c)(2) because there is a "compelling need" for the records.**

**I am seeking the Central Intelligence Agency's copy of the 300 page executive summary of the Senate Select Committee on Intelligence's (SSCI) report on the agency's detention and interrogation program.**

**Background on the Report**

**SSCI voted 9-6 to approve the report on December 13, 2012. According to the Library of Congress the report is described as follows:**

**"On December 13, 2012, the Committee approved its report on the CIA's Detention and Interrogation Program, by a vote of 9 to 6. The Committee Study is a highly detailed report that exceeds 6,000 pages and includes approximately 35,000 footnotes. It is divided into three volumes.**

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Since the Senate committee's vote, there have been numerous public statements by SSCI members and administration officials calling for the declassification of their report. Indeed, in a news report published in the New York Times July 19, 2013, Sen. Dianne Feinstein, chairwoman of the Senate Intelligence Committee, said she is planning a push to declassify the executive summary. In the same New York Times report, White House spokeswoman Caitlin Hayden said, "some version of the findings of the report should be made public." In a statement issued after SSCI voted to approve the report, Sen. John McCain said he hopes the government "will take whatever steps necessary to finalize and declassify this report, so that all Americans can see the record for themselves, which I believe will finally close this painful chapter for our country."

#### **Request for Expedited Processing**

Under 28 C.F.R. 16.5(d)(1)(iv), a request is to be given expedited processing when it involves "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." I am seeking expedited treatment for this request.

1. The request involves a matter of widespread and exceptional media interest. In addition to the New York Times and Roll Call articles cited above, numerous other publications have shown an interest in both the SSCI report itself and the CIA's detention and interrogation program which is the subject of the report. Articles on the SSCI report have appeared in Daily Kos, The Hill, Time magazine, The New Yorker, Salon, Huffington Post, Mother Jones, and many other major publications. A Google search for "CIA senate report torture" brings up 4.6 million hits on the search engine with many articles published as recently as late July 2013.

Further, the subject matter of the report – the CIA's detention and interrogation program – is itself a matter of widespread and exceptional media interest. Articles on this topic have appeared in virtually every major national media outlet of general interest, as well as countless local and specialized publications. Some examples include Rolling Stone, ABC News, The New Yorker, Slate, PBS's Frontline, and The Christina Science Monitor, to name just a few.

2. The subject matter of the request involves possible questions about the government's integrity which affect public confidence.

A statement by Vice President Joe Biden illustrates how questions about the CIA's detention and interrogation program involve questions of integrity which affect public confidence. Speaking about the program, he said: "I

think the only way you excise the demons is you acknowledge, you acknowledge exactly what happened straightforward." He explained his position that issues related to torture must be laid out before a country can move beyond them, citing the war crimes committed in the Balkans and other acts of torture overseas. "The single best thing that ever happened to Germany were (sic) the war crimes tribunals, because it forced Germany to come to its milk about what in fact has happened . . . That's why they've become the great democracy they've become." Id.

The issue of whether the CIA's interrogation and detention program resulted in valuable intelligence, or has merely undermined public confidence and resulted in false confessions continues to be a subject of fierce debate.

The ACLU launched a campaign asking the public to sign an online form urging the Senate to declassify their report in order to move forward:

"It is essential that we have all the facts if we are to ensure that our nation never takes the wrong path again. Ask the

3. Expedited processing is also appropriate because of the existence of a compelling need to inform the public

Although expedited processing is clearly warranted under 28 C.F.R.

16.5(d)(1)(iv), it is alternatively proper under under 28 C.F.R.

16.5(d)(1)(ii) which provides for expedited processing when there exists

"[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."

I am a full-time member of the news media and as a contributor to Al Jazeera America, an Editor at Large for the online publication, The Public Record, and a widely published independent investigative reporter who has had his journalism published in dozens of domestic and international publications, I am a person primarily engaged in disseminating information.

In addition to the reasons described in the articles in the previous section, there are two additional reasons why there is an urgent need to inform the public. First, Sen. Mark Udall indicated he may place a hold on Caroline Krass to be the next general counsel of the CIA. Udall took this action because he wants Krass to answer questions about the Senate's report and assurances from Krass that documents from the CIA pertaining to the interrogation program will be forthcoming. .

Additionally, the urgency of this request is underscored by the fact that military commissions are currently taking place at Guantanamo involving five 9/11 suspects, including Khalid Sheikh Mohammed ("KSM"), the alleged mastermind of the 9/11 attacks, and Abd al Rahim al Nashiri, the alleged mastermind of the USS Cole bombing. Nashiri and KSM were held in secret prisons operated by the CIA and were subjected to enhanced interrogation techniques described in the Senate's report. Any mention of their treatment

while in custody of the CIA has been ruled to be off-limits by a military judge presiding over the tribunals, thereby depriving the public from knowing whether their admissions to alleged crimes were tainted by torture. The release of the executive summary of the Senate Intelligence Committee's report will help resolve that issue.

4. Certification pursuant to 28 C.F.R. 16.5(d)(3)

I certify the foregoing to be true and correct to the best of my knowledge and belief.

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Jason Leopold

**Fee Category and Request for a Fee Waiver**

I hereby request a fee waiver and incorporate by reference the explanation in the previous section which demonstrates why the requested information is in the public interest and the facts relating to my ability to disseminate information. Further, the records sought are not for a commercial purpose, but simply to inform the public about the operations of the government. Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes. According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), the term "a representative of the news media" means 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.

As the legislative history of FOIA reveals, "It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) "A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision." 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

**Other matters relating to this request**

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please "black out" rather than "white out" or

**“cut out.” In addition, I draw your attention to President Obama’s 21 January 2009 Memorandum for the Heads of Executive Departments and Agencies, directing federal agencies to adopt a presumption in favor of disclosure and stating that government information should not be kept confidential “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”**

**Please provide any records produced in response to this request in electronic (soft-copy) form to**

(b)(6)

Kind regards,

Jason Leopold

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