



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street, 3rd Floor
New York, New York 10007*

January 15, 2010

BY HAND

Alexander Abdo, Esq.
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, N.Y. 10004

Re: ACLU v. Central Intelligence Agency, et al., No. 09 Civ. 5413 (AKH)

Dear Mr. Abdo:

On behalf of the United States Department of Defense (“DoD”) and the United States Department of Justice Office of Legal Counsel (“OLC”), I enclose documents responsive to the Freedom of Information Act (“FOIA”) request dated December 9, 2008 (the “Request”), that is the subject of the above-referenced case.

To date, DoD has processed approximately 1200 pages of documents found in the Office of the Secretary of Defense. The enclosed documents – bates numbered ACLU (DP) 1303 - ACLU (DP) 1307, ACLU (DP) 1309 - ACLU (DP) 1310, ACLU (DP) 1314 - ACLU (DP) 1323, ACLU (DP) 1448 - ACLU (DP) 1450, ACLU (DP) 1497 - ACLU (DP) 1501, ACLU (DP) 1781 - ACLU (DP) 1784, ACLU (DP) 1801, ACLU (DP) 1849 - ACLU (DP) 1854, ACLU (DP) 1855a - ACLU (DP) 1855b, and ACLU (DP) 1856 - ACLU (DP) 1857 – have been determined to be partially releasable, and the rest of the processed documents are being withheld in full pursuant to some or all of the following exemptions: 5 U.S.C. § 552(b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(A), and (b)(7)(C).¹ Specifically, the information being withheld either in full or in part is currently and properly classified pursuant to Executive Order 12958, as amended, section 1.4(c) concerning intelligence activities of the United States, and section 1.4(d) concerning foreign relations or foreign activities of the United States, including confidential sources. The information is also exempt by a statute establishing particular criteria for withholding; specifically 10 U.S.C. § 130(c), which permits the withholding of sensitive information

¹ DoD used a broad set of search terms when tasking this request to its components. To expedite the referral process, DoD sent the potentially responsive pages to components before it made a final determination as to responsiveness. Accordingly, there are gaps in the bates numbers as a result of removing pages that DoD ultimately determined were not responsive to the Request.

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concerning foreign governments and international organizations. In addition, some of the withheld information is exempt from release because it pertains to certain inter- and intra- agency communications protected by the deliberative process privilege and attorney work-product doctrine. Other information is being withheld because its release would constitute a clearly unwarranted invasion of the personal privacy of individuals. Finally, information has been withheld concerning detainees because the information is part of an ongoing investigation and prosecution of the detainees.

With respect to the remainder of the response to the Request, DoD is still waiting for responses from other agencies regarding documents referred to those agencies for consultations. DoD expects to receive responses and to process many, if not all, of those referred documents by February 1, 2010.

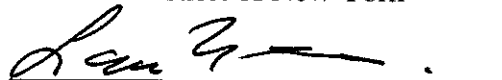
OLC has completed its search and processing of non-classified email documents. Enclosed are 8 documents released in their entirety and 8 documents containing redactions pursuant to 5 U.S.C. § 552(b)(2), (b)(5) and, or (b)(6). In addition, 118 documents are being held in full pursuant to either 5 U.S.C. § 552(b)(2), (b)(5), (b)(6), or a combination thereof. OLC is continuing its search for classified emails and hopes to complete the search and processing of such emails by the agreed-upon deadline of February 1, 2010.

We thank you for your continued cooperation in this matter.

Very truly yours,

PREET BHARARA
United States Attorney
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By:



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