

# Exhibit D



**U.S. Department of Justice**

Office of Legal Counsel

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*Washington, D.C. 20530*

December 15, 2017

Anna Diakun  
American Civil Liberties Union Foundation  
adiakun@aclu.org

**Re: FOIA Tracking No. FY17-159;  
ACLU, et al. v. Dep't of Defense, et al., No. 1:17-cv-3391 (S.D.N.Y.)**

Dear Ms. Diakun:

This letter serves as a final response to your March 15, 2017 Freedom of Information Act (“FOIA”) request to the Office of Legal Counsel (“OLC”) on behalf of the American Civil Liberties Union and American Civil Liberties Union Foundation (together, the “ACLU”), seeking five categories of “records pertaining to . . . the United States’ January 29, 2017 raid in al Ghayil, Yemen.” As you know, the request is also the subject of the above-captioned litigation, and the request has been narrowed in certain ways pursuant to agreement through counsel. You were provided an initial response on November 17, 2017, regarding one document.

We have identified four additional records responsive to your request. We are withholding the four records in full pursuant to FOIA Exemption Five, 5 U.S.C. § 552(b)(5), and in part pursuant to FOIA Exemptions One and Three, 5 U.S.C. § 552(b)(1), (b)(3). The material withheld pursuant to Exemption Five is protected by the deliberative process, attorney-client, and presidential communications privileges, and we have determined it is not appropriate for discretionary release. The material withheld pursuant to Exemptions One and Three is properly classified and protected from disclosure by 50 U.S.C. § 3024(i)(1).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact Assistant U.S. Attorney Rebecca Tinio, at (212) 637-2774, for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (“OGIS”) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Although your request is the subject of ongoing litigation, and administrative appeals are not ordinarily acted upon in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy (“OIP”), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

A handwritten signature in blue ink that reads "Paul P. Colborn". The signature is fluid and cursive, with a long, sweeping underline.

Paul P. Colborn  
Special Counsel

cc: Rebecca Tinio  
Assistant United States Attorney  
United States Attorney’s Office  
Southern District of New York