



June 22, 2006

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RICHARD ZACKS
TREASURER

Via Electronic Submission, Fax, and U.S. Mail

Re: Request Submitted Under the Freedom of Information Act

Dear Freedom of Information Officer:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and DoD 5400 7-R. The Request is submitted on behalf of the American Civil Liberties Union.

Requested Records

Recent news reports allege that Marines attached to the 1st Squad, 3rd Platoon, Kilo Company intentionally killed civilians in Haditha, Iraq, in violation of both domestic and international law. News reports also allege that senior officers attempted to suppress information about these killings.

We understand that the Defense Department is investigating the Haditha killings and the alleged cover up. We believe that the American public should have access to the investigative reports and to the documents on which the reports are based so that it can evaluate the credibility of the Defense Department's findings. The public also has a right to know whether the Haditha incident was aberrational or, as some news reports have suggested, part of a broader pattern.

For these reasons, we request that you release all records relating to the killing of civilians by U.S. forces in Iraq and Afghanistan since January 1, 2005, including but not limited to incident reports, death certificates, autopsy reports, post-mortem reports, investigative files, documents related to criminal proceedings, documents related to administrative proceedings, witness interviews, statistical documents, policy documents (including "rules of engagement"), paperwork for compensatory payments to relatives of victims, photographs, and videos. We do not seek the release of records that the government has already publicly disclosed.

Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and corresponding regulations. There is a "compelling need" for expedited processing as the records at issue are "urgently needed by an organization primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity," and relate to "a breaking news story of general public interest." 5 U.S.C. § 552(a)(6)(E)(v); DoD 5400. 7-R C1.5.4.3.

The ACLU is "primarily engaged in disseminating information" to the public within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v); DoD 5400. 7-R C1.5.4.3.2. The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee through its public education department. The ACLU also disseminates information through its heavily subscribed website, www.aclu.org. The website addresses civil liberties issues in depth, provides features on civil liberties issues in the news, and contains hundreds of documents that relate to the issues addressed by the

ACLU. The website includes features on information obtained through the FOIA. See, e.g., www.aclu.org/patriotfoia, www.aclu.org/torturefoia.¹

The records sought relate to “a breaking news story of general public interest”.² Accordingly, the records are “urgently needed” within the meaning

¹ In addition to the national ACLU offices in New York and Washington, D.C., there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material through a variety of means including their own websites, publications, and newsletters. In addition, the ACLU makes archived material available at the American Civil Liberties Union Archives at Princeton University.

² See Jeffrey Kluger, *How Haditha Came to Light*; TIME (New York), June 12, 2006, at 28; *Our View: Massacre All Too Predictable*, N.Z. HERALD, June 6, 2006, at A12 (questioning the guilt of the government for sending the young, accused soldiers into Iraq); *Casualties in Afghanistan & Iraq*; UNKNOWNNEWS.NET, June 5, 2006 (indicating that there have been thousands of civilian deaths in Afghanistan); Michael Duffy, *The Shame of Kilo Company*, TIME (New York), June 5, 2006, at 30; Thomas E. Ricks, *Iraqi Civilian Deaths Stunned Brass: Marine Corps' Official Story Is Unaltered after 6 Months*, MERCURYNEWS.COM, June 4, 2006 (referring to the unrevised official military statement on Nov. 20, 2005 attributing the deaths in Haditha to a bomb blast); Rupert Cornwell, *Rot from Top to Bottom Pervades US Occupation*, SUNDAY INDEP. (London), June 4, 2006, at 43; Michael Gawenda, *US Wines as Haditha Echoes My Lai*, THEAGE.COM.AU, June 3, 2006 (suggesting that there has been a cover-up going up to the highest levels of the military); Eric Schmitt and David Cloud, *Military Inquiry Said to Oppose Account of Raid*, N.Y. TIMES, May 31, 2006, at A1; Thomas Watkins, *Lawyer: Officers Not Targeted in Iraq Probe. Investigation of Iraqis' Killings Focuses on Marines*, CHI. SUN-TIMES, May 31, 2006, at 32; David Williams, *Bush Rocked by Probe, Points the Finger at Marines for Killing Iraqis*, DAILY MAIL (UK), May 31, 2006, at 10; *News Report Shocks Bush*, EVENING MAIL (Birmingham, UK), May 31, 2006, at 4; *Press 1st to Tell Bush of Iraq Civilian Deaths*, CHI. TRIB., May 31, 2006, at 12; *Rep. John Murtha: Pentagon Tried to Hide Haditha*, NPR.COM, May 30, 2006; Richard A. Oppel Jr. and Mona Mahmoud, *The Struggle for Iraq: Iraqis' Accounts Link Marines to the Mass Killing of Civilians*, N.Y. TIMES, May 29, 2006, at A1 (containing interviews with additional witnesses of the Haditha killings); Aparisim Ghosh, *On Scene: Picking Up the Pieces in Haditha*, TIME.COM, May 29, 2006; Andrew Buncombe, *Marines Went on Killing Spree after Death of Comrade*, SUNDAY INDEP. (London), May 28, 2006, at 4; *Marines Probed in Iraq Death Held at Base*, WTOP.COM, May 28, 2006; Tony Perry and Julian Barnes, *Marines Execute Iraqis, Photos Indicate*, SEATTLE TIMES, May 27, 2006 at A1; Otto Kreisher, *Reported Slayings of Civilians Bringing Top Marine to Iraq*, SAN DIEGO UNION-TRIB., May 26, 2006, at A25 (including quotes from legislators indicating "this was not an accident. This was direct fire by Marines at civilians. This was not an immediate response to an attack. This would be an atrocity."); Tony Perry, *Probe Finds Marines Killed Unarmed Iraqi Civilians*, L.A.

of applicable regulations and expedited processing is appropriate in this case. DoD 5400. 7-R C1.5.4.3.2.1.

Furthermore, in light of the news reports alleging the reckless or intentional killing of civilians, expedited processing is also appropriate because the Request relates to “humanitarian need,” and “the disclosing of the information [requested] will promote the welfare and interest of mankind.” DoD 5400. 7-R C1.5.4.3.4.

Application for Waiver of Fees

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We request a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); DoD 5400. 7-R C6.1.4.1. Numerous news articles reflect the significant public interest in the records we seek. *See* cited articles, *supra*, at FN1.

TIMES, May 26, 2006, at 1; Thom Shanker, Eric Schmitt and Richard A. Opperl Jr., *The Struggle for Iraq: The Investigation: Military Expected to Report Marines Killed Iraqi Civilians*, N.Y. TIMES, May 26, 2006, at A1; Richard Werly, *De Washington à Londres, les “Erreurs” Irakiennes*, LE TEMPS (France), May 26, 2006 (referring to the errors of the conflict in Iraq, including the Haditha deaths); *Officials Say Marine Confessed to Killing Innocent Civilian in Hamandiyah*, NBC.COM, May 25, 2006; Mauriac Laurent, *Evènement 2. Irak Le Cauchemar sans Fin de Bush Enlèvement en Irak et Impopularité du Président Cont de Pair*. LIBERATION (France), May 22, 2006, at 8 (reporting on the Haditha investigation and comments made by Congressman John Murtha); *100 Dead in Afghan Attacks, House Panel to Review Iraq Firefight Inquiry*, DESERET NEWS (Utah), May 22, 2006, at A02; Geoffrey York, *Grenade Attack Killed Soldier: Shrapnel from RPG Hit Female Officer Standing in Hatch of Armoured Vehicle, Military Sources Say*, GLOBE & MAIL (Toronto Can.), May 19, 2006, at A1 (reporting that at least three Afghani civilians were killed in Kandahar); Christian Lowe, *Murtha: Marines Killed Haditha Civilians in Cold Blood*, ARMY TIMES (Virginia), May 18, 2006; Tom Baldwin, *Inquiry into Civilian Deaths*, TIMESONLINE.CO.UK, Mar. 22, 2006 (reporting that numerous claims have been made that “civilians are being killed unnecessarily”); Tim McGirk, *Collateral Damage or Civilian Massacre in Haditha*, TIME.COM, Mar. 19, 2006 (calling for the military to fully investigate its claim that the Haditha deaths were “collateral damage”); Barry Bearak, *Uncertain Toll in the Fog of War: Civilian Deaths in Afghanistan*, N.Y. TIMES, Feb. 10, 2002, at A1.

We also request a waiver of document search and review fees on the grounds that the American Civil Liberties Union qualifies as a “representative of the news media” and the records are not sought for commercial use. Accordingly, fees associated with the processing of the Request should be “limited to reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); DoD 5400. 7-R C6.1.5.7.

The ACLU is a “representative of the news media” within the meaning of the statute and regulations because it is “an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.” *National Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Electronic Privacy Information Ctr. v. Dep’t of Defense*, 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”); *cf. ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group “primarily engaged in disseminating information”). As described above, the ACLU publishes news materials that are widely available to the public. The records requested are not sought for commercial use, and the requesters plan to disseminate the information disclosed as a result of this FOIA request to the public.

On account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.³

³ The following are recent examples of requests for which agencies did not charge the ACLU fees associated with responding to a FOIA request: (1) The Department of State did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in April 2005; (2) The National Institute of Standards and Technology did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in April 2005; (3) The Office of Science and Technology Policy in the Executive Office of the President did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2003; (4) The Federal Bureau of Investigation did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (5) The Office of Intelligence Policy and Review did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; and (6) 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.

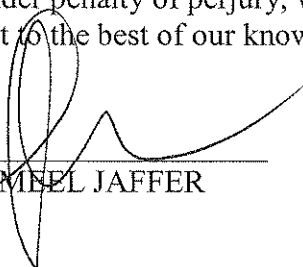
* * *

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees or expedited processing.

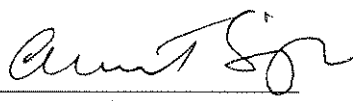
Thank you for your prompt attention to this matter.

Under penalty of perjury, we hereby affirm that the foregoing is true and correct to the best of our knowledge and belief.

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JAMEEL JAFFER



AMRIT SINGH