



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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

February 1, 2010

**BY E-MAIL**

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"), the United States Department of Justice Office of Legal Counsel ("OLC"), and the Central Intelligence Agency ("CIA"), 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.

Since January 15, 2010, DoD has processed approximately 1859 pages of documents found in the Office of the Secretary of Defense. The enclosed documents – Bates numbered ACLU (DP) 1259 - ACLU (DP) 1263, ACLU (DP) 2087 - ACLU (DP) 2089, and ESD 3106 - ESD 3109 – have been determined to be 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). 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 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 additional responses from other agencies regarding documents referred to those agencies for

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consultations. DoD will continue to process those documents as it receives responses from those agencies.

OLC has completed its search for classified emails and has located and processed five responsive documents. Those documents are being withheld in full pursuant to 5 U.S.C. § 552(b)(1) and (b)(5).


CIA previously referred 92 documents (approximately 900 pages) to the Executive Branch for review. Of those documents, one document was determined to be non-responsive, 89 documents are being withheld in full pursuant to either 5 U.S.C. § 552(b)(1), (b)(2), (b)(3), (b)(5) and (b)(6), or a combination thereof, and two documents require further consultations. The withheld documents are also currently undergoing a declassification review by the National Security Council. In addition, the CIA has referred approximately 47 additional responsive documents (approximately 500 pages) to the Executive Branch for review. The CIA expects to be able to complete the processing of all of the documents that have been referred to the Executive Branch to date, as well as to complete its search for all non-email documents by March 15, 2010. Finally, CIA's position with respect to email searches, similar to the position of other Executive Branch agencies, is that agency-wide email searches would clearly be unduly burdensome under the FOIA statute. However, similar to the approach that you have taken with other agencies, the Government is willing to consider a proposal from you that suggests a list a positions (e.g., Director of the CIA, General Counsel) for which you would like CIA to search its email repository for records responsive to your Request.

We thank you for your continued cooperation in this matter.

Very truly yours,

PREET BHARARA  
United States Attorney  
Southern District of New York

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