U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street, 5th Floor
New York, New York 10007

June 29, 2006

By Facsimile
Lawrence S. Lustberg, Esq.
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Amrit Singh
Staff Counsel
American Civil Liberties Union
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, N.Y. 10004

Re: ACLU, et al., v. Department of Defense, et al.,
No. 04 Civ. 4151 (AKH)

Dear Mr. Lustberg and Ms. Singh:

Pursuant to the Court's order of June 16, 2006, I am writing to confirm that the Department of Defense ("DOD") has completed its processing of plaintiffs' Freedom of Information Act ("FOIA") requests in the above-captioned case. Enclosed please find a final processing report from DOD.

I also am writing to respond to several outstanding issues raised by Ms. Singh's letter of June 21, 2006 relating to further litigation in this case. The letter requests that the Government identify any images withheld in full by DOD in this case under FOIA Exemption 6, 7(C) or 7(F) beyond the 29 Army Photos that already have been the subject of litigation in this case. DOD has informed me that it is withholding approximately 23 other images of detainees pursuant to FOIA Exemptions 6, 7(C) and/or 7(F). The Government recognizes that, pursuant to the Court's order of April 10, 2006, the releasability of these 23 other photos will be governed by any final order as to the releasability of the Army Photos.

As for your request to identify documents withheld in full by the Department of the Army ("Army"), the Government identified such documents by letter dated May 8, 2006. Attached for your convenience is a copy of the May 8, 2006 letter. We recognize that the May 8, 2006 letter did not identify the specific Army investigations withheld from release as open investigations under FOIA exemption 7(A) as of January 3, 2006 pursuant to Court's Order

of January 10, 2006. Accordingly, enclosed please find a list identifying the specific Army investigations withheld in this case under Exemption 7(A).

Your letter also requested that the remainder of DOD, other than the Army, provide a list of documents withheld in full by July 28, 2006. The Government is willing to provide such a list by July 28, 2006. Moreover, in the spirit of cooperation, the Government will provide a partial list identifying some of the documents withheld in full by DOD by July 14, 2006.

Your letter proposed a schedule for the expedited briefing of any appeal of Judge Hellerstein's decision on the Army Photos. As we discussed, the Government does not oppose expedited briefing of any appeal on the Army Photos. While I am currently not able to discuss specific dates for such expedited briefing, I anticipate being able to respond to your specific proposal next week as we understand plaintiffs wish to file a motion to expedite briefing of any appeal.

Finally, as we recently discussed, the Government requests that plaintiffs dismiss from this lawsuit defendants that responded to plaintiffs' FOIA requests in 2004 and that have not been the subject of any further litigation since that time. These defendants include the following agencies or components: Department of Justice Civil Rights Division; Department of Justice Criminal Division; Department of Justice Office of Information and Privacy; Department of Justice Office of Intelligence, Policy and Review; Department of Homeland Security; and Department of State. I will provide you under separate cover a proposed stipulation providing for the dismissal of these defendants.

Very truly yours,

MICHAEL J. GARCIA
United States Attorney

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Enclosures

ACLU, et al., v. Department of Defense, et al.,
No. 04 Civ. 4151 (AKH)

Pursuant to the District Court's Order of January 10, 2006, the following 21 Army Criminal Investigation Command (CID) reports of investigation (ROI), previously identified as responsive to plaintiff's FOIA request, were in an "open" status as of January 3, 2006 and, therefore, were withheld under FOIA Exemption (b)(7)(A).

1. 0027-03-CID679-64999 5H
2. 0284-04-CID056-76201 5C
3. 0094-03-CID369-49180 5H
4. 0134-02-CID369-23533 5H
5. 0137-02-CID369-23534 5H
6. 0265-04-CID259-80296 5C
7. 0237-03-CID259-61219 5H
8. 0174-04-CID259-80268 5H
9. 0252-04-CID259-80286 5C
10. 0263-04-CID259-80295 5C
11. 0031-03-CID899-63493 5H
12. 0243-04-CID259-80277 5C
13. 0003-04-CID149-83130 6C
14. 0129-04-CID259-80195 5C
15. 0148-04-CID259-80211 7G
16. 0244-04-CID259-80278 5C
17. 0248-04-CID259-80282 5C
18. 0066-04-CID342-64142 5Y
19. 0062-04-CID369-69278 5H
20. 0165-04-CID919-82192 5X
21. 0239-04-CID259-80275 5H

As identified by appropriate marker pages, the following three items were also previously withheld under FOIA Exemption (b)(7)(A).

1. Transcript of Proceedings under Article 32, UCMJ; Lyndie England (Bates 3711-5918)
2. Executive Summary related to investigation of MG Mowhoush death (Bates 8085)
3. Administrative disciplinary records related to death of MG Mowhoush (Bates 8279-8285)

LTC M. Seidel
Army Litigation Division