December 19, 2013

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505
Fax: 703.613.3007

Sent by Fax

Re: Request Under Freedom of Information Act / Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., and the Central Intelligence Agency’s implementing regulations, see 32 C.F.R. § 1900. The Request is submitted by the American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU" or the "Requesters").

Requesters seek the disclosure of a report commissioned by former Central Intelligence Agency ("CIA") Director Leon Panetta on the Agency’s detention and interrogation programs (the "Panetta Report"), which was referred to by Senator Mark Udall on December 17, 2013, during the confirmation hearing for CIA General Counsel nominee Caroline Diane Krass.

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1 The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators.

According to Senator Udall, the Panetta Report “is consistent with” the findings of an investigative report on the CIA’s rendition, detention and interrogation program by the Senate Select Committee on Intelligence ("SSCI CIA Report"). Udall Press Release. However, Senator Udall stated that the Panetta Report “amazingly ... conflicts with the official CIA response” to the SSCI CIA Report.  

The Panetta Report is of clear and enormous public importance. A fair public debate about the CIA’s rendition, detention and interrogation program must be informed by it, as well as the SSCI CIA Report and the CIA response to the SSCI CIA Report. See, e.g., Daniel Klaidman, Senate Democrats Accuse the CIA of Stonewalling on Torture Policies, Daily Beast, Dec. 18, 2013, http://thebea.st/19Aw8QM (quoting Senator Mark Heinrich, “I am outraged that the CIA continues to make misleading statements about the committee’s study.”); Daniel Klaidman, The Senate has Torture on its Agenda when it Interviews CIA’s Legal Counsel Nominee, Daily Beast, Dec. 17, 2013, http://thebea.st/19RS85W; Mazzetti supra.

Release of the Panetta Report is critical to ensure meaningful public access to and debate about the CIA’s own assessment of its interrogation and detention practices after 9/11. This significant information will contribute to the record on the United States’ intelligence practices and current and future public discussion about the CIA’s rendition, detention and interrogation programs.

I. Record Requested

Requesters seek disclosure of the Panetta Report.

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2 Both the SSCI CIA Report and the CIA’s 122-page response to that report are the subjects of separate ACLU FOIA requests.
With respect to the form of production, see 5 U.S.C. § 552(a)(3)(B), we request that the Panetta Report be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession.

II. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c). There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v); see also 32 C.F.R. § 1900.34(c)(2). In addition, the records sought relate to a “breaking news story of general public interest.” 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when “the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity”).

A. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and relevant regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 32 C.F.R. § 1900.34(c)(2); see also ACLU v. Dep’t of Justice, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information” (internal citation omitted)) ; see also Leadership Conference on Civil Rights v. Gonzales, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is “to serve as the site of record for relevant and up-to-the-minute civil rights news and information” and to “disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws”—to be “primarily engaged in the dissemination of information”).

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. The ACLU’s regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets;
a widely read blog; heavily visited websites, including an accountability microsite, http://www.aclu.org/accountability; and a video series.


\footnote{http://www.torturedatabase.org.
ACLU also maintains a "Torture FOIA" webpage containing commentary about the ACLU's FOIA request, press releases, and analysis of the FOIA documents.\(^7\) (That webpage also notes that the ACLU, in collaboration with Columbia University Press, has published a book about the documents obtained through FOIA. See Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007)). Similarly, the ACLU's webpage about the Office of Legal Counsel ("OLC") torture memos obtained through FOIA contains commentary and analysis of the memos; an original, comprehensive chart summarizing the memos; links to web features created by ProPublica (an independent, non-profit, investigative-journalism organization) based on the ACLU's information gathering, research, and analysis; and ACLU videos about the memos.\(^8\) In addition to websites, the ACLU has produced an in-depth television series on civil liberties, which has included analysis and explanation of information the ACLU has obtained through FOIA.

The ACLU plans to analyze and disseminate to the public the information gathered through this Request. The record requested is not sought for commercial use, and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.\(^9\)

B. *The record sought is urgently needed to inform the public about actual or alleged government activity.*

The Panetta Report is urgently needed to inform the public about actual or alleged government activity; moreover, this document relates to a breaking news story of general public interest, specifically, the CIA’s rendition, detention and interrogation program and its authorization of abusive techniques between 2002 and 2009. See 32 C.F.R. § 1900.34(c)(2).

We make this Request to further the public’s understanding of the CIA’s program and the role of senior officials in conceiving of and authorizing the use of abusive interrogation techniques in the wake of September 11, 2001. The public has and continues to manifest an abiding interest in the conduct of the CIA and other executive agencies with

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\(^7\) https://www.aclu.org/national-security/aclu-v-department-defense.

\(^8\) https://www.aclu.org/accountability-torture-timeline.

\(^9\) In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived materials available at the American Civil Liberties Union Archives at Princeton University Library.
respect to individuals seized, detained, and interrogated for
counterterrorism purposes.

Especially given that the Panetta Report reportedly differs from the
CIA’s response to the SSCI CIA Report, the Panetta Report is a critical
part of the record and the subject of urgent and ongoing public debate.
Release of the Panetta Report will enhance public discourse by providing
the agency’s own perspective on, “one of the more controversial programs
in its history.” Greg Miller and Julie Tate, CIA Report Refutes Senate
Panel’s Criticism of Agency’s Harsh Interrogation Methods, Wash. Post,

Thus, the ACLU’s request for expedited processing should be
granted.

III. Application for Waiver or Limitation of Fees

A. Release of the record is in the public interest.

We request a waiver of search, review, and reproduction fees on
the grounds that disclosure of the requested record is in the public interest
because it is likely to contribute significantly to the public understanding
of the United States government’s operations or activities and is not
primarily in the commercial interest of the requester. 5 U.S.C.
§ 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2).

The Panetta Report will significantly contribute to public
understanding of the government’s operations or activities. Moreover,
disclosure is not in the ACLU’s commercial interest. Any information
obtained by the ACLU as a result of this FOIA request will be available to
the public at no cost. See 32 C.F.R. § 1900.13(b)(2).

Thus, a fee waiver would fulfill Congress’s legislative intent in
amending FOIA. See Judicial Watch Inc. v. Rossotti, 326 F.3d 1309, 1312
(D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally
construed in favor of waivers for noncommercial requesters.” (internal
quotation marks and citation omitted)); OPEN Government Act of 2007,
Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not
secrecy, is the dominant objective of the Act,” quoting Dep’t of Air Force
v. Rose, 425 U.S. 352, 361 (1992)).

B. The ACLU qualifies as a representative of the news media.

A waiver of search and review fees is warranted because the
ACLU qualifies as a “representative of the news media” and the Panetta
Report is not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); see
also 32 C.F.R. § 1900.02(h)(3). Accordingly, fees associated with the processing of this request should be “limited to reasonable standard charges for document duplication.”

The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); see also Nat’l Sec. Archive v. Dep’t of Def., 880 F.2d 1381, 1387 (D.C. Cir. 1989); cf. Am. Civil Liberties Union v. Dep’t of Justice, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is a “representative of the news media” for the same reasons that it is “primarily engaged in the dissemination of information.” See Elec. Privacy Info. Ctr. v. Dep’t of Def., 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” for FOIA purposes). 10 Indeed, the ACLU recently was held to be a “representative of the news media.” Serv. Women’s Action Network v. Dep’t of Defense, No. 3:11CV1534 (MRK), 2012 WL 3683399, at *3 (D. Conn. May 14, 2012). See also Am. Civil Liberties Union of Wash. v. Dep’t of Justice, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a

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10 On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and 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.

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Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1900.21(d).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you 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.

Please furnish the applicable records to:

Marcellene Hearn
American Civil Liberties Union
125 Broad Street
18th Floor
New York, NY 10004

Thank you for your prompt attention to this matter.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).

Marcellene Hearn
American Civil Liberties Union
Foundation
125 Broad Street
18th Floor
New York, NY 10004
Tel: 212.549.2622
Fax: 212.549.2654
Email: mhearn@aclu.org