April 12, 2011

Office of Information Programs and Services
A/GIS/IPS/RL
U.S. Department of State
Washington, D.C. 20522-8100

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., the Department of
State implementing regulations, 22 C.F.R. § 171.1 et seq., the President’s
Memorandum of January 21, 2009, 74 Fed. Reg. 4683 (Jan. 26, 2009), and
49,892 (Sep. 29, 2009). The Request is submitted by the American Civil
Liberties Union Foundation and the American Civil Liberties Union
(collectively, the “ACLU”).¹

This Request seeks a small number of specifically identified
Department of State embassy cables pertaining to the United States’
diplomatic response to foreign investigations of United States abduction,
interrogation, detention, and rendition practices; the federal government’s
efforts with respect to the prosecution and release of Guantanamo detainees;
the federal government’s use of unmanned aerial vehicles; and the
diplomatic response to President Obama’s decision to oppose the release of
photographs depicting U.S. interrogations of persons suspected of terrorism.

I. Requested Records

The ACLU requests the following embassy cables:

¹ The American Civil Liberties Union is a national organization that works to
   protect civil rights and civil liberties. Among other things, the ACLU advocates for
   national security policies that are consistent with the Constitution, the rule of law, and
   fundamental human rights. The ACLU also educates the public about U.S. national
   security policies and practices including, among others, those pertaining to the detention,
   treatment, and process afforded suspected terrorists; domestic surveillance programs; racial
   and religious discrimination and profiling; and the human cost of the wars in Iraq and
   Afghanistan and other counterterrorism operations.
A. The embassy cable bearing the ID “07MADRID1805,” originating in the Madrid Embassy on September 18, 2007, with the subject “SPAIN STILL INTERESTED IN GUANTANAMO DETAINEEs, BUT NOT OPTIMISTIC ABOUT CONVICTION”;

B. The embassy cable bearing the ID “09MADRID347,” originating in the Madrid Embassy on April 1, 2009, with the subject “SPAIN: PROSECUTOR WEIGHS GTMO CRIMINAL CASE VS. FORMER USG OFFICIALS”;

C. The embassy cable bearing the ID “09MADRID392,” originating in the Madrid Embassy on April 17, 2009 with the subject “SPAIN: ATTORNEY GENERAL RECOMMENDS COURT NOT PURSUE GTMO CRIMINAL CASE VS. FORMER USG OFFICIALS”;

D. The embassy cable bearing the ID “09MADRID440,” originating in the Madrid Embassy on May 5, 2009 with the subject “GARZON OPENS SECOND INVESTIGATION INTO ALLEGED U.S. TORTURE OF TERRORISM DETAINEEs”;

E. The embassy cable bearing the ID “09TUNIS415,” originating in the Tunis Embassy on June 23, 2009 with the subject “GOT ASKS EUROPEANS NOT TO TAKE TUNISIAN GUANTANAMO DETAINEEs”;

F. The embassy cable bearing the ID “07TRIPOLI943,” originating in the Tripoli Embassy on November 11, 2007 with the subject “REQUEST FOR EXPLANATION OF RETURNED DETAINEE ARM DISABILITY”;

G. The embassy cable bearing the ID “08OTTAWA918,” originating in the Ottawa Embassy on July 9, 2008 with the subject “COUNSELOR, CSIS DIRECTOR DISCUSS CT THREATS, PAKISTAN, AFGHANISTAN, IRAN”;

H. The embassy cable bearing the ID “10LUXEMBOURG5,” originating in the Luxembourg Embassy on January 15, 2010 with the subject “TO HELL AND BACK: GITMO EX-DETAINEE STUMPS IN LUXEMBOURG”;

I. The embassy cable bearing the ID “05PARIS3118,” originating in the Paris Embassy on May 9, 2005 with the subject “FRENCH JUDGE SAYS C/T FOCUS IS ON ‘JIHADISTS TO IRAQ’”;

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J. The embassy cable bearing the ID “05PARIS1699,” originating in the Paris Embassy on March 14, 2005 with the subject “TWO EX-GTMO DETAINES CHARGED WITH TERRORIST CONSPIRACY BUT ONE ORDERED RELEASED ON BAIL”;

K. The embassy cable bearing the ID “08LONDON1412,” originating in the London Embassy on May 20, 2008 with the subject “DOD INTEL FLIGHTS: FCO CLARIFIES”;

L. The embassy cable bearing the ID “06DUBLIN1020,” originating in the Dublin Embassy on September 9, 2005 with the subject “EMERGING CONSTRAINTS ON U.S. MILITARY TRANSITS AT SHANNON”;

M. The embassy cable bearing the ID “06LISBON2365,” originating in the Lisbon Embassy on October 20, 2006 with the subject “PORTUGUESE FM OFFERS TO RESIGN IF CIA FLIGHT ALLEGATIONS PROVE TRUE”;

N. The embassy cable bearing the ID “10SANAA4,” originating in the Sanaa Embassy on January 4, 2010 with the subject “GENERAL PETRAEUS’ MEETING WITH SALEH ON SECURITY ASSISTANCE, AQAP STRIKES”;

O. The embassy cable bearing the ID “08ISLAMABAD3586,” originating in the Islamabad Embassy on November 13, 2008 with the subject “GILANI TO CODEL SNOWE: HELP US HIT TARGETS”;

P. The embassy cable bearing the ID “08LONDON2651,” originating in the London Embassy on October 21, 2008 with the subject “USDP EDELMAN’S OCTOBER 15 MEETINGS IN LONDON”;

Q. The embassy cable bearing the ID “09RIYADH670,” originating in the Riyadh Embassy on May 17, 2009 with the subject “SPECIAL ADVISOR HOLBROOK’S MEETING WITH SAUDI ASSISTANT INTERIOR MINISTER PRINCE MOHAMMED BIN NAYEF”;

R. The embassy cable bearing the ID “06BERN141,” originating in the Bern Embassy on January 20, 2006 with the subject “SWISS COUNTERTERRORISM OVERVIEW - SCENESETER FOR FBI DIRECTOR MUELLER”;

S. The embassy cable bearing the ID “06BERN1804,” originating in the Bern Embassy on September 22, 2006 with the subject “GOS
‘HEADS UP’: SWISS FEDERAL PROSECUTOR TO ANNOUNCE FINDINGS ON OVERFLIGHT INVESTIGATION;

T. The embassy cable bearing the ID “10ROME174”, originating in the Rome Embassy on February 12, 2010 with the subject “SECDEF MEETING WITH ITALIAN PRIME MINISTER SILVIO BERLUSCONI, FEBRUARY 6, 201...”;

U. The embassy cable bearing the ID “05THEHAGUE1876”, originating in the Hague Embassy on July 1, 2005 with the subject “NETHERLANDS: TOUR D’HORIZON WITH FOREIGN MINISTER BOT”;

V. The embassy cable bearing the ID “06THEHAGUE2282”, originating in the Hague Embassy on October 20, 2006 with the subject “NETHERLANDS/SCENESETTER: FOREIGN MINISTER BOT’S 10/23 WASHINGTON VISIT”;

W. The embassy cable bearing the ID “07BERLIN242”, originating in the Berlin Embassy on February 6, 2007 with the subject “AL-MASRI CASE -- CHANCELLERY AWARE OF USG CONCERNS”.

Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); 22 C.F.R. § 171.12(b). Expedited processing is warranted 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 federal government activity. 5 U.S.C. § 552(a)(6)(E)(v)(II); 22 C.F.R. § 171.12(b)(2). The Department of State has regularly granted expedited processing to the ACLU for similar requests, demonstrating the Department’s recognition that the ACLU qualifies as such an organization. Furthermore, the records sought relate to a “breaking news story of general public interest.” 22 C.F.R. § 171.12(b)(2)(i).

2 See, e.g., Apr. 22, 2010 Letter from Wilma M. Manning Regarding Case Number 201000373 (granting request for expedited processing of records concerning unmanned aerial vehicles). Other agencies also routinely grant the ACLU’s requests for expedited processing of FOIA requests; these grants rest in part on the determination that the ACLU is “primarily engaged in disseminating information in order to inform the public about actual or alleged federal government activity.” In the past five years, the ACLU has been granted expedited processing by the National Security Division of the Department of Justice (May 2009), the Department of Justice (December 2008), the National Security Agency (October 2008), the Department of the Army (July 2006), the Defense Intelligence Agency (March 2006), the Civil Division of the Department of Justice (March 2006), and the Department of Justice’s Office of Information and Privacy (January 2006).
A. The ACLU is primarily engaged in the dissemination of information

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 22 C.F.R. § 171.12(b)(2). Obtaining information about government activity, analyzing that information, and publishing and widely disseminating that information to the press and public (in both its raw and analyzed form) is a critical and substantial component of the ACLU's work and one of its primary activities. See 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 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" to be "primarily engaged in disseminating information" (internal citation omitted)); Am. Civil Liberties Union of Washington v. U.S. Dept. of Justice, No. C09-0642-RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (recognizing that the ACLU of Washington 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").

Although the ACLU is well known for its litigation activities, it is far more than a large public-interest law firm. The ACLU's principal mission is not to litigate important civil rights and civil liberties cases, but to preserve and defend the guarantees of the Bill of Rights and civil rights laws, using litigation as just one of many tactics. Every aspect of the ACLU's work in furtherance of this mission—including litigation—can fairly be described as information dissemination. Indeed, public education and dissemination of information are key components of the ACLU's litigation efforts; litigation is a highly effective vehicle for educating the press and public about civil liberties problems.

Most ACLU cases have dedicated webpages through which the ACLU publishes and disseminates information about the cases themselves (i.e., case developments, analyses of case developments, a comprehensive archive of court filings, and judicial opinions); these efforts, even standing alone, are a significant endeavor in publication and dissemination of news. Case webpages, however, do not just disseminate information about case developments; these webpages also have educational material about the particular civil liberties issue or problem, recent news about the particular issue, analyses of congressional or executive-branch action on the particular issue, governmental documents obtained through FOIA about the particular issue, and more in-depth analytic and educational multimedia features on the issue. For example, the ACLU's website about its national security letter ("NSL") cases, http://www.aclu.org/nsl, includes, among other things, an explanation of what NSLs are; information about and document repositories
for the ACLU’s NSL cases; links to documents obtained through FOIA about various agencies’ use of NSLs; NSL news in the courts, Congress, and executive agencies; links to original blog posts commenting on and analyzing NSL-related news; educational web features about the NSL gag-order power; public education reports about NSLs and the Patriot Act; news about and analysis of the Department of Justice Inspector General’s reviews of the FBI’s use of NSLs; the ACLU’s policy analysis and recommendations for reform of the NSL power; charts with analyzed data about the government’s use of NSLs; “myths and facts” documents; and links to information and analysis of related issues.

The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. The ACLU makes its material available to the public for no cost or for a nominal fee. Since 2007, ACLU national projects have published and disseminated over 30 reports. Many ACLU reports include description and analysis of governmental documents obtained through FOIA.

3 For a sampling of other similar case pages with case information, reporting of news on the issue, blogs, and original analytic and educational content, see: http://www.aclu.org/lgbt/relationships/californiamarriage.html (same-sex-marriage case page); http://www.aclu.org/safefree/rendition/index.html (extraordinary- rendition case page); http://www.aclu.org/immigrants/detention/hutto.html (immigration- detention- conditions case page).


ACLU attorneys are frequently interviewed for news stories about documents released through ACLU FOIA requests. See, e.g., Carrie Johnson, Delay in Releasing CIA Report Is Sought, Justice Dept. Wants


The ACLU regularly publishes a print newsletter that reports on and analyzes civil liberties-related current events. The print newsletter is distributed to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members) by e-mail. The electronic newsletter is distributed to approximately 300,000 people. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. Cf. Elec. Privacy Info. Ctr. v. Dep’t of Def., 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding EPIC to be a representative of the news media under Department of Defense regulations because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements”); Ctr. for Pub. Integrity v. Dep’t of Health & Human Servs., No. 06-1818 (JDB), 2007 WL 2248071, at *5 (D.D.C. Aug. 3, 2007) (finding CPI to be a news-media requester because its journalist members “write and post an online newsletter” and post information obtained through FOIA in that newsletter); 22 C.F.R. § 171.11(o) (“Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public . . . . [including] publishers of periodicals . . . .”).

The ACLU regularly publishes reports about governmental activity and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA. This material is broadly circulated to the public and available to everyone—including individuals, tax-exempt organizations, not-for-profit groups, and law students and faculty—for no cost or for a nominal fee. See Elec. Privacy Info. Ctr., 241 F. Supp. 2d at 11 (finding EPIC a news-media requester because it “researches issues on privacy and civil liberties, reports on this information, analyzes relevant data, evaluates the newsworthiness of material and puts the facts and issues into context, publishing and distributing this ‘news’ through the sale of its books to the public”); see also Nat’l Sec. Archive v. Dep’t of Def., 880 F.2d 1381, 1386 (D.C. Cir. 1989) (finding National Security Archive to be a news-media
requester because it intended to publish “document sets” on “topic[s] of current interest.


The ACLU operates a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See http://blog.aclu.org/. The ACLU also creates and disseminates original editorial and educational content on civil rights and civil liberties news through multimedia projects, including videos, podcasts, and interactive features. See http://www.aclu.org/multimedia/index.html.

The ACLU also disseminates information through its 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 on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, the ACLU also provides the public with educational material about the particular civil liberties issue or problem; recent news about the issue; analyses of Congressional or executive branch action on the issue; government documents obtained through FOIA about the issue; and more in-depth analytic and educational multi-media features on the issue.

The ACLU website specifically includes features on information obtained through FOIA, including: http://www.aclu.org/torturefoia; http://www.aclu.org/olcmemos/; http://www.aclu.org/safefree/torture/csrtfoia.html; http://www.aclu.org/ntsec/foia/search.html; http://www.aclu.org/safefree/nsaspying/30022res20060207.html; http://www.aclu.org/patriotfoia; www.aclu.org/spyfiles; http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html ; http://www.aclu.org/exclusion. For example, the ACLU’s “Torture FOIA” webpage, http://www.aclu.org/torturefoia, contains commentary about the ACLU’s FOIA request for documents related to the treatment of detainees, press releases, analysis of the FOIA documents disclosed, an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA, and advises that the ACLU in collaboration with Columbia University Press has published a book about the documents obtained through the FOIA. Similarly, the ACLU’s webpage about the Office of Legal Counsel (“OLC”) torture memos it obtained through FOIA, http://www.aclu.org/safefree/general/olc_memos.html, contains commentary and analysis of the memos, an original comprehensive chart about OLC memos (see below); links to web features created by ProPublica—an independent, non-profit, investigative-journalism organization—based on information gathering, research, and analysis conducted by the ACLU; and ACLU videos created about the memos. See Nat’l Sec. Archive, 880 F.2d at 1386 (finding the National Security Archive to be a news-media requester because it intended to publish “document sets” whereby its staff would “cull
those of particular interest . . . supplement the chosen documents with ‘detailed cross-referenced indices, other finding aids, and a sophisticated computerized retrieval system’ in order to make it more accessible to potential users’); Judicial Watch, Inc., 133 F. Supp. 2d at 53–54 (finding Judicial Watch to be a news media requester because it posted documents obtained through FOIA on its website).

The ACLU has also published a number of charts that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA—the ACLU has created an original chart that provides the public and news media with a comprehensive index of Bush-era OLC memos relating to interrogation, detention, rendition, and surveillance. The chart describes what is publicly known about the memos and their conclusions, who authored them and for whom, and whether the memos remain secret or have been released to the public in whole or in part. It is available at http://www.aclu.org/safefree/general/olcmemos_chart.pdf. Similarly, the ACLU produced a chart of original statistics about the Defense Department’s use of NSLs based on its own analysis of records obtained through FOIA. That chart is available at http://www.aclu.org/safefree/nationalsecurityletters/released/nsl_stats.pdf. See Nat’l Sec. Archive, 880 F.2d at 1387 (explaining that the National Security Archive is a news-media requester because it obtained “documents for its own purpose, which is to assemble them, along with documents from other sources, into an encyclopedic work that it will then offer to the public”); id. (explaining that the National Security Archive is a news-media requester because it “gather[ed] information from a variety of sources; exercise[d] a significant degree of editorial discretion in deciding what documents to use and how to organize them; devise[d] indices and finding aids; and distribute[d] the resulting work to the public”).

The ACLU has also produced an in-depth television series on civil liberties called “The Freedom Files.” See http://aclu.tv/. The Freedom Files is a series of half-hour documentaries that features true stories about real people to highlight vital civil liberties issues, and includes commentary and analysis from experts on particular civil liberties problems; some portions also include explanation and analysis of information the ACLU has obtained through FOIA. See http://aclu.tv/episodes. In addition to distribution through the ACLU’s website, The Freedom Files series aired on Court TV, Link TV, and PBS stations nationwide. With each episode, the ACLU distributed issue fact sheets, reports, and FAQs. See http://aclu.tv/educate. The second season of The Freedom Files came with a teacher’s guide as well. See http://aclu.tv/teachersguide.
In sum, the ACLU actively gathers news and information, analyzes it, creates distinct works, publishes that information, and disseminates it widely to the public. The ACLU plainly qualifies as an organization primarily engaged in the dissemination of information for FOIA’s expedited processing purposes.

Courts have found organizations with missions similar to the ACLU’s and that engage in information-dissemination activities similar to the ACLU’s to be “primarily engaged in disseminating information.” See, e.g., Leadership Conference on Civil Rights, 404 F. Supp. 2d at 260 (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”); Am. Civil Liberties Union v. Dep’t of Justice, 321 F. Supp. 2d at 29 n.5 (finding 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” to be “primarily engaged in disseminating information” (internal citation omitted)). These organizations have been found to be “primarily engaged in disseminating information” even though they engage in other activities—such as lobbying and litigation—in addition to their publication and information-dissemination activities. Dissemination of information need not be the organization’s sole activity.

B. The requested records are urgently needed to inform the public about federal-government activity

The records requested here relate to a breaking news story of general public interest, namely the publication of State Department diplomatic cables that were obtained by WikiLeaks. The requested records are urgently needed to inform the national debate about the State Department’s cables, and will specifically inform the debate surrounding the United States’ diplomatic response to foreign investigations of United States abduction, interrogation, detention, and rendition practices; efforts by the Federal government to prosecute or release former and current Guantanamo detainees; the United States’ use of unmanned aerial vehicles; and the diplomatic efforts surrounding President Obama’s decision to oppose the release of photographs depicting U.S. interrogations of persons suspected of terrorism.

The U.S. embassy cables that were disclosed to the public in late 2010 have been the subject of extraordinary media attention and nationwide public interest. See, e.g., Scott Shane & Andrew W. Lehren, Leaked Cables Offer Raw Look at U.S. Diplomacy, N.Y. Times, Nov. 28, 2010, available at

United States embassy cables concerning foreign investigations of U.S. rendition, abduction, and interrogation practices — including cables requested here — have recently reignited the public debate regarding the

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Similarly, the United States’ attempt to influence Italian judicial proceedings concerning the rendition of Hassan Mustafa Osama Nasr, also known as Abu Omar, was described in an embassy cable originating in Milan. See, e.g., Jeff Stein, Leaked Cable: U.S. Warned Germany Against Arrests in Masri Case, Wash. Post, Nov. 29, 2010, available at http://wapo.st/gNvYZzs; Nick Baumann, Wikileaks, Rendition, and the CIA’s


United States influence over the Spanish investigation of six Bush administration officials’ involvement in the rendition and torture of suspected terrorists has also become a matter of broad public interest in the


Other requested cables indicate the possibility of mistreatment of repatriated detainees. Over the past several years, there has been public concern regarding the possible transfer of detainees from Guantanamo Bay to countries that are reported to engage in the use of torture. See, e.g., Josh White, Judge Orders U.S. Not to Transfer Tunisian Detainee, Wash. Post. Oct. 10, 2007, available at http://wapo.st/hkKvRg; Jennifer Daskal, A Fate Worse Than Guantanamo, Wash. Post, Sept. 2, 2007, available at http://wapo.st/e9EKnS; Josh White, Detainee Transfers Concern Senators,


**Application for Waiver or Limitation of Fees**

A. A waiver of search, review, and reproduction fees is warranted under 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.17(a)

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 22 C.F.R. § 171.17(a).
Numerous news accounts reflect the considerable public interest in the records we seek. Given the ongoing and widespread media attention to this issue, the records sought in the instant Request will significantly contribute to public understanding of the operations and activities of the government. See 22 C.F.R. § 171.17(a)(1)(ii). Moreover, disclosure is not in the ACLU’s commercial interest. Any information disclosed by the ACLU as a result of this FOIA request will be available to the public at no cost. 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.’” (citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that “disclosure, not secrecy, is the dominant objective of the Act,” but that “in practice, the Freedom of Information Act has not always lived up to the ideals of that Act”).

B. A waiver of search and review fees is warranted under 5 U.S.C. § 552(a)(4)(A)(ii) and 22 C.F.R. § 171.15(c)

A waiver of search and review fees is warranted because the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); 22 C.F.R. § 171.15(c). The ACLU is a representative of the news media in that it is an organization “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public,” where “news” is defined as “information that is about current events or that would be of current interest to the public.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); 22 C.F.R. § 171.11(o).

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)(III); see also Nat’l Sec. Archive, 880 F.2d at 1387; cf. Am. Civil Liberties Union v. Dep’t of Justice, 321 F. Supp. 2d at 30 n.5 (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., 241 F. Supp. 2d at 10-15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA).\footnote{On account of these factors, the Department of State and other agencies regularly waive fees associated with responding to FOIA requests. For example, in January 2010, the State Department, Department of Defense, and Department of Justice all granted}

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Pursuant to applicable statute and regulations, we expect a determination regarding expedited processing within 10 calendar days. See 4 U.S.C. § 552(a)(6)(E)(ii)(I); 22 C.F.R. § 171.12(b).

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.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Ben Wizner
American Civil Liberties Union
125 Broad Street
New York, NY 10004

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

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a fee waiver to the ACLU with regard to a FOIA request submitted in April 2009 for information relating to the Bagram Theater Internment Facility in Afghanistan. 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 Department of State granted a fee waiver to the ACLU with respect to its request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request. In May 2005, the 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 respect 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. Also, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in August of 2004. In addition, the Office of Science and Technology Policy in the Executive Office of the President said it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003.
Sincerely,

[Signature]

BEN WIZNER
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