



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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

December 15, 2009

BY HAND

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

DoD has completed its searches and the enclosed documents represent a partial response to the Request. Specifically, DoD has processed over 1,000 pages of documents found in the Office of the Secretary of Defense. The processed documents are bates numbered ACLU (DP) 1 - ACLU (DP) 1072 and ACLU (DP) 1455. The enclosed four documents – bates numbered ACLU (DP) 255 - 265¹, ACLU (DP) 178-199, ACLU (DP) 385-388, and ACLU (DP) 1455 – have been determined to be partially releasable, and the rest of the processed documents are being withheld in full pursuant to 5 U.S.C. § 552(b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(A), and (b)(7)(C).² 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

¹ Page 257 of this document is still in the process of being reviewed and will be released in redacted form as soon as that review is complete.

² DoD used a broad set of search terms when tasking this request to its components. To expedite the referral process, DoD sent the potentially responsive pages to components before it made a final determination as to responsiveness. Accordingly, there are gaps in the bates numbers as a result of removing pages that DoD ultimately determined were not responsive to the Request.

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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 has referred approximately 2000 pages of potentially responsive information to other agencies for consultations and is still waiting for responses. Due to the number of agencies involved in the referral process, DoD cannot provide an estimate at this time as to when the processing of those documents will be complete. In addition, several components of DoD are still completing their review of potentially responsive documents. DoD expects to complete its review of those documents by January 15, 2010.

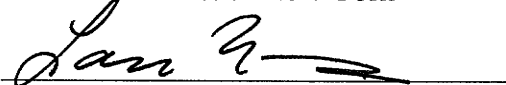
OLC has completed its search and processing of non-email documents, with the exception of two documents that still need to undergo agency consultation. Enclosed are nine documents released in their entirety; one document released in its entirety but for the cover letter that still needs to undergo agency consultation; six documents released in their entirety but for the classification markings, and 16 documents containing redactions pursuant to 5 U.S.C. 552(b)(1), (b)(3) and, or (b)(5).³ In addition, nine classified documents and 21 unclassified documents are being held in full pursuant to either 5 U.S.C. 552(b)(1), (b)(3), (b)(5), or a combination thereof. One classified document is still undergoing agency consultation.

We thank you for your continued cooperation in this matter.

Very truly yours,

PREET BHARARA
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By:


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³ Four of the partially released documents consist only of routing sheets – the substantive portion of those documents have been withheld in their entirety.