DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
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WASHINGTON, DC 20301-1600

DEC 30 2010

Jonathan Manes
National Security Project
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

Dear Mr. Manes,

The ACLU's original FOIA request in the case of *ACLU v. DOJ*, et al., No. 1:10-cv-00436-RMC (D.D.C.), sought the release of "records relating to the use of unmanned aerial vehicles—commonly known as 'drones'—for the purpose of targeting and killing individuals since September 11, 2001." Paragraph 5 of that request seeks all records pertaining to the assessment or evaluation of individual drone strikes after the fact. In July 2010, the Department of Defense (DoD) informed the ACLU that all records related to this section of the request are classified and not maintained in a format that allows searching without significant cost. However, in light of ACLU's insistence that civilian casualty information was of particular interest, DoD agreed to conduct 40 hours of searching for (1) estimates of civilian casualties related to drone strikes and (2) policies or protocols that govern assessment of civilian casualties caused by such strikes, after which the parties would discuss whether additional searching would be undertaken.

DoD's search confirmed that DoD does not create or maintain documents to compile estimates of civilian casualties related to drone strikes separately from estimates related to other weapons systems. DoD does possess documents that estimate civilian casualties resulting from operations involving all types of military aircraft. But, as DoD has informed you, generally speaking, weapons fired by drones are treated identically to weapons fired by other aircraft, and these estimates therefore do not differentiate between weapons platforms. The only documents that address estimates of civilian casualties related to drone strikes are individual battle damage assessments evaluating each military aircraft mission, which the ACLU and DoD have agreed are outside the scope of the documents to be processed in this litigation.

DoD conducts operations employing measures to avoid or limit civilian casualties as much as possible. On October 1, 2010, the Joint Staff produced a slide presentation describing the Joint Targeting Cycle including no-strike and collateral damage estimation methodology. DoD continues to search for and process unclassified material from OSD

and Joint Staff publications that govern DoD's targeting practices. Finally, DoD has agreed to process three battle damage assessments, although such documents fall outside of the scope of the July 2010 search and processing agreement between the ALCU and DoD. The processing described in this paragraph will constitute DoD's entire response to paragraph 5 of your request.

Sincerely,

Mark H. Herrington
Associate Deputy General Counsel
Office of Litigation Counsel