



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:

**AMERICAN CIVIL LIBERTIES
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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 the Attorney General’s Memorandum of March 19, 2009, 74 Fed. Reg. 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’”;

- J. The embassy cable bearing the ID “05PARIS1699,” originating in the Paris Embassy on March 14, 2005 with the subject “TWO EX-GTMO DETAINEES 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 HOLBROOKE’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 - SCENESETTER 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”.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

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.² 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.³

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.⁴ Many ACLU reports include description and analysis of governmental documents obtained through FOIA.⁵

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).

⁴ See, e.g., *Mental Illness and the Death Penalty* (May 2009), available at http://www.aclu.org/pdfs/capital/mental_illness_may2009.pdf; *Human Rights Begin at Home* (Apr. 2009), available at http://www.udhr60.org/human_rights_full.pdf; *Missing the Mark: Alternative Schools in the State of Mississippi* (Feb. 2009), available at http://www.aclu.org/pdfs/racialjustice/missingthemark_report.pdf; *A Looming Crisis* (Dec. 2008), available at http://www.aclum.org/lockingupkids/pdf/looming_crisis_web.pdf; *De Facto Disenfranchisement* (Oct. 2008), available at http://www.aclu.org/pdfs/racialjustice/defactodisenfranchisement_report.pdf; *A Violent Education: Corporal Punishment of Children in U.S. Public Schools* (Aug. 2008), available at http://www.aclu.org/pdfs/humanrights/aviolenteducation_report.pdf; *Fusion Center Update* (July 2008), available at http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf; *Enacting a Reasonable Federal Shield Law* (July 2008), available at http://www.aclu.org/images/asset_upload_file113_35870.pdf; *Locking Up Our Children* (May 2008), available at http://www.aclu.org/pdfs/racialjustice/locking_up_our_children_web_ma.pdf; *Pandemic Preparedness: The Need for a Public Health—Not a Law Enforcement/National Security—Approach* (Jan. 2008), available at http://www.aclu.org/images/asset_upload_file399_33642.pdf; *Race & Ethnicity in America: Turning a Blind Eye to Injustice* (Dec. 2007), available at http://www.aclu.org/pdfs/humanrights/cerd_full_report.pdf; *What's Wrong With Fusion Centers?* (Dec. 2007), available at http://www.aclu.org/pdfs/privacy/fusioncenter_20071212.pdf; *Reclaiming Our Rights: Declaration of First Amendment Rights and Grievances* (Sept. 2007), available at http://www.aclu.org/images/asset_upload_file955_36822.pdf; *Even Bigger, Even Weaker: The Emerging Surveillance Society: Where Are We Now?* (Sept. 2007), available at http://www.aclu.org/pdfs/privacy/bigger_weaker.pdf; *Working in the Shadows: Ending Employment Discrimination for LGBT Americans* (Sept. 2007), available at

The ACLU also regularly issues press releases to call attention to documents released through FOIA and other breaking news. *See, e.g.,* Press Release, American Civil Liberties Union, *New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison, Says ACLU*, June 24, 2009, available at <http://aclu.org/safefree/detention!40021prs20090624.html>; Press Release, American Civil Liberties Union, *Justice Department Releases Bush Administration Torture Memos*, Apr. 16, 2009, available at <http://www.aclu.org/safefree/torture/39393prs20090416.html>; Press Release, American Civil Liberties Union, *Documents Obtained by ACLU Provide Further Evidence That Abuse Of Iraqi Prisoners Was Systemic*, Nov. 19, 2008, available at <http://www.aclu.org/safefree/torture/37818prs20081119.html>; Press Release, American Civil Liberties Union, *FBI Improperly Using Patriot Act Surveillance Powers, ACLU Charges*, Nov. 29, 2007, available at <http://www.aclu.org/safefree/nationalsecurityletters/32904prs20071129.html>

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*

http://www.aclu.org/pdfs/lgbt/enda_20070917.pdf; *Broken Promises: Two Years After Katrina* (Aug. 2007), available at http://www.aclu.org/pdfs/prison/brokenpromises_20070820.pdf; *The Persistent Problem of Racial Disparities in the Federal Death Penalty* (June 2007), available at http://www.aclu.org/pdfs/capital/racial_disparities_federal_deathpen.pdf; *Conditions of Confinement in Immigration Detention Facilities* (June 2007), available at http://www.aclu.org/pdfs/prison/unsr_briefing_materials.pdf; *Disavowed: The Government's Unchecked Retaliation Against National Security Whistleblowers* (May 2007), available at http://www.aclu.org/pdfs/safefree/disavowed_report.pdf; *A Blueprint for Meeting the Needs of Girls in TYC Custody* (May 2007), available at http://www.aclu.org/images/asset_upload_file373_29875.pdf; *Religious Refusals and Reproductive Rights: Accessing Birth Control at the Pharmacy* (Apr. 2007), available at http://www.aclu.org/images/asset_upload_file576_29402.pdf; *Criminalizing the Classroom* (March 2007), available at http://www.nyclu.org/files/criminalizing_the_classroom_report.pdf; *Publish and Perish: The Need for a Federal Reporters' Shield Law* (Mar. 2007), available at http://www.aclu.org/pdfs/freespeech/publishperish_20070314.pdf.

⁵ *See, e.g., Reclaiming Patriotism*, (Mar. 2009), available at http://www.aclu.org/pdfs/safefree/patriot_report_20090310.pdf; *The Excluded: Ideological Exclusion and the War on Ideas* (Oct. 2007), available at http://www.aclu.org/pdfs/safefree/the_excluded_report.pdf; *History Repeated: The Dangers of Domestic Spying by Federal Law Enforcement* (May 2007), available at http://www.aclu.org/images/asset_upload_file893_29902.pdf; *No Real Threat: The Pentagon's Secret Database on Peaceful Protest* (Jan. 2007), available at http://www.aclu.org/pdfs/safefree/spyfiles_norealthreat_20070117.pdf; *Unpatriotic Acts: The FBI's Power to Rifle Through Your Records and Personal Belongings Without Telling You* (July 2003), available at http://www.aclu.org/FilesPDFs/spies_report.pdf.

More Time to Review IG's Findings on Detainee Treatment, Wash. Post, June 20, 2009 (quoting ACLU attorney Amrit Singh); Peter Finn & Julie Tate, *CIA Mistaken on 'High-Value' Detainee, Document Shows*, Wash. Post, June 16, 2009 (quoting ACLU attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosures by C.I.A.*, N.Y. Times, June 10, 2009 (quoting ACLU attorney Jameel Jaffer).

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 also regularly publishes books, “know your rights” publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. Some of the more recent books published by the ACLU include: Lenora M. Lapidus, Emily J. Martin & Namita Luthra, *The Rights of Women: The Authoritative ACLU Guide to Women’s Rights* (NYU Press 2009); Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007) (a book based on documents obtained through FOIA). Some of the more recent “know your rights” publications include: *Know Your Housing Rights: For Survivors of Domestic Violence* (Feb. 2008), available at <http://www.aclu.org/womensrights/violence/33978pub20080206.html>; *Know Your Rights!—Students Wallet Card* (June 2007), available at <http://www.aclu.org/lgbt/youth/30427pub20070615.html>. Some of the more recent ACLU fact sheets include: *The Truth About Torture* (Apr. 2009), available at http://www.aclu.org/images/torture/asset_upload_file501_33165.pdf; *Guantánamo Fact Sheet* (Nov. 2008), available at http://www.aclu.org/pdfs/safefree/closegitmo/gitmo_factsheet.pdf; *Torture & Secrecy* (Dec. 2008), available at http://www.aclu.org/images/torture/asset_upload_file585_38059.pdf; *America’s Surveillance Society* (Nov. 2009), available at http://www.aclu.org/images/asset_upload_file381_37802.pdf.⁶ These materials are specifically designed to be educational and widely disseminated to the public. See *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding EPIC to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties); *Nat’l Sec. Archive*, 880 F.2d at 1386 (finding the National Security Archive to be a news-media requester where it had previously published only one book); see also *Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260 (finding Leadership Conference on Civil Rights to be “primarily engaged in the dissemination of information” because it “disseminate[d] information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement by the Department of Justice”).

⁶ For many more ACLU fact sheets on various civil liberties topics see: http://www.aclu.org/safefree/relatedinformation_fact_sheets.html, http://www.aclu.org/lgbt/relatedinformation_fact_sheets.html, http://www.aclu.org/privacy/relatedinformation_fact_sheets.html, http://www.aclu.org/womensrights/relatedinformation_fact_sheets.html, http://www.aclu.org/reproductiverights/relatedinformation_fact_sheets.html, and http://www.aclu.org/intlhumanrights/relatedinformation_fact_sheets.html.

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/natsec/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

<http://nyti.ms/go4HPQ>; Mark Mazzetti, *U.S. Expands Role of Diplomats in Spying*, N.Y. Times, Nov. 28, 2010, available at <http://nyti.ms/hPqQBD>; Matthew Lee, *Leaked US Cables Reveal Sensitive Diplomacy*, Associated Press, Nov. 28, 2010, available at <http://bo.st/hbcUYu>; David Leigh, *How 250,000 US Embassy Cables Were Leaked*, Guardian, Nov. 28, 2010, available at <http://bit.ly/iczU87>; Dina Temple-Raston, *WikiLeaks Release Reveals Messier Side Of Diplomacy*, National Public Radio, Nov. 28, 2010, available at <http://n.pr/hraH2o>; David Leigh, *US Embassy Cables Leak Sparks Global Diplomatic Crisis*, Guardian, Nov. 28, 2010, available at <http://bit.ly/egv7ky>; *Leaked Cables Reveal True US Worldview*, Der Spiegel, Nov. 28, 2010, available at <http://bit.ly/hbXqIw>; *A Superpower's View of the World*, Der Spiegel, Nov. 28, 2010, available at <http://bit.ly/gmx10J>; Mark Landler & J. David Goodman, *Clinton Says U.S. Diplomacy Will Survive 'Attack'*, N.Y. Times, Nov. 29, 2010, available at <http://nyti.ms/ezs031>; Korva Coleman, *WikiLeaks' Latest Dump Reveals Embarrassing Side of Diplomacy*, National Public Radio, Nov. 29, 2010, available at <http://n.pr/f94FxF>; Jay Solomon, Adam Entous & Julian E. Barnes, *Vast Leak Discloses Diplomatic Secrets*, Wall St. J., Nov. 29, 2010, available at <http://on.wsj.com/i9ydBR>; Paul Farhi, *WikiLeaks Spurned New York Times, But Guardian Leaked State Department Cables*, Wash Post, Nov. 29, 2010, available at <http://wapo.st/i114Zo>; Russell Adams & Jessica E. Vascellaro, *To Publish Leaks Or Not To Publish?*, Wall St. J., Nov. 29, 2010, available at <http://on.wsj.com/hOfvud>; Marc A. Thiessen, *Obama Administration is Weak in the Face of WikiLeaks*, Wash. Post, Nov. 29, 2010, available at <http://wapo.st/gXzt2P>; Robert Booth & Ewen MacAskill, *US Embassy Cables: UN Seeks Answers From Washington*, Guardian, Nov. 29, 2010, available at <http://bit.ly/icw3Fn>; Russell Adams, *A Leak Gets New York Times the WikiLeaks Cables*, Wall St. J., Nov. 29, 2010, available at <http://on.wsj.com/h3o9Yi>; Evan Perez & Jeanne Whalen, *'Crimes Were Committed' in Document Leak, U.S. Says*, Wall St. J., Nov. 29, 2010, available at <http://on.wsj.com/eYpleW>; Jennifer Valentino-DeVries, *WikiLeaks Using Amazon Servers After Attack*, Wall St. J., Nov. 29, 2010, available at <http://on.wsj.com/eXNaqb>; Cokie Roberts & Steve Inskeep, *Leaked Cables Are Embarrassing For U.S. Diplomats*, National Public Radio, Nov. 29, 2010, available at <http://n.pr/hgs4x9>; *The World Reacts to Massive Diplomatic Leak*, Der Spiegel, Nov. 29, 2010, available at <http://bit.ly/e8UQ4D>; *How America Views the World*, Der Spiegel, Nov. 29, 2010, available at <http://bit.ly/hqmVH7>; Ellen Nakashima & Jerry Markon, *WikiLeaks Founder Could Be Charged Under Espionage Act*, Wash. Post, Nov. 30, 2010, available at <http://wapo.st/hzSLEE>; Edward Cody, *Foreign Governments Say WikiLeaks Revelations Undercut Relations With U.S.*, Wash. Post, Nov. 30, 2010, available at <http://wapo.st/gfAddW>; Julian E. Barnes, *Gates: WikiLeaks Isn't 'Game Changer'*, Wall St. J., Nov. 30, 2010, available at <http://on.wsj.com/eX87E8>; Mark Memmott, *WikiLeaks' Impact On Foreign Policy 'Fairly Modest,' Gates Says*, National Public Radio News Blog, Nov. 30, 2010, available at <http://n.pr/dEDNXt>; Alan

Greenblatt, *Amid Fears, WikiLeaks Presents Some Upside To U.S.*, National Public Radio, Nov. 30, 2010, available at <http://n.pr/hvgr0f>; Michele Kelemen, *Learning What Officials Really Think, Via WikiLeaks*, National Public Radio, Nov. 30, 2010, available at <http://n.pr/gX0Gfu>; John F. Burns & Alan Cowell, *Interpol Called For Arrest of WikiLeaks Founder*, N.Y. Times, Dec. 1, 2010, available at <http://nyti.ms/gM7bLm>; Alisair MacDonald, *U.K. Officials Brace For New WikiLeaks Revelations*, Wall St. J., Dec. 1, 2010, available at <http://on.wsj.com/gMuB9x>. WikiLeaks' subsequent disclosures and the international responses as a result of those disclosures continue to fuel the public's interest. See, e.g., David Leigh & James Ball, *Latest WikiLeaks Cables Reveal Israel's Fears and Alliances*, The Guardian, Apr. 7, 2011, available at <http://bit.ly/f6LQr2>; Julian Assange Given Extradition Appeal Hearing Date, The Guardian, Apr. 6, 2011, available at <http://bit.ly/g67KXf>; Karla Adam, *Britain to Reassert Worries About WikiLeaks Suspect Bradley Manning's Treatment*, Wash. Post, Apr. 5, 2011, available at <http://wapo.st/fNE1ZJ>; Simon Romero, *Ecuador Expels U.S. Ambassador Over WikiLeaks Cable*, N.Y. Times, Apr. 5, 2011, available at <http://nyti.ms/hcuVBp>.

United States embassy cables concerning foreign investigations of U.S. rendition, abduction, and interrogation practices — including cables requested here — have recently reignited the public debate⁷ regarding the

⁷ The United States' practice of extraordinary rendition is a matter of deep concern and has long captured both the nation's and the world's attention. See, e.g., Dana Priest, *Jet Is an Open Secret in Terror War*, Wash. Post, Dec. 27, 2004, available at <http://wapo.st/eKilwh>; Jane Mayer, *Outsourcing Torture*, The New Yorker, Feb. 14, 2005, available at <http://nyr.kr/i1T1c0>; Mark Hosenball, John Barry & Michael Hirsh, *Aboard Air CIA*, Newsweek, Feb. 28, 2005, available at <http://bit.ly/frCv40>; Rebecca Leung, *CIA Flying Suspects To Torture?*, 60 Minutes, Mar. 6, 2005, available at <http://bit.ly/ec3xe8>; Scott Shane, Stephen Grey & Margot Williams, *C.I.A. Expanding Terror Battle Under Guise of Charter Flights*, N.Y. Times, May 31, 2005, available at <http://nyti.ms/f22Tor>; Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, Wash. Post, Dec. 4, 2005, available at <http://wapo.st/eaM1RS>; Jerry Markon, *Lawsuit Against CIA Is Dismissed*, Wash. Post, May 19, 2006, available at <http://wapo.st/gDIhyT>; Jane Mayer, *Outsourcing: The C.I.A.'s Travel Agent*, The New Yorker, Oct. 30, 2006, available at <http://nyr.kr/haFDgC>; Michele Norris & Ari Shapiro, *All Things Considered: German Plaintiff Appeals Court Ruling in Torture Case*, National Public Radio, Nov. 28, 2006, available at <http://n.pr/eNU0wW>; Dana Priest, *The Wronged Man: Unjustly Imprisoned and Mistreated, Khaled al-Masri Wants Answers the U.S. Government Doesn't Want to Give*, Wash. Post, Nov. 29, 2006, available at <http://wapo.st/gjraMm>; Neil A. Lewis, *Man Mistakenly Abducted by C.I.A. Seeks Redress*, N.Y. Times, Nov. 29, 2006, available at <http://nyti.ms/hzV3sN>; Alan Feuer, *Federal Judge Calls Rendition Process 'Outsourcing'*, N.Y. Times, Nov. 10, 2007, available at <http://nyti.ms/dRVz9a>; Alan Feuer, *Court Dismisses Rendition Suit*, N.Y. Times, July 1, 2008, available at <http://bit.ly/ehbp8K>; John Schwartz, *Claims of Torture Abroad Face Test Monday in Court*, N.Y. Times, Feb. 5, 2009, available at <http://nyti.ms/hVMHqx>; John Schwartz, *Obama Backs Off a Reversal on Secrets*, N.Y. Times, Feb. 9, 2009, available at <http://nyti.ms/fbUmiF>; Charlie Savage, *Obama's War on Terror May Resemble Bush's in Some Areas*, N.Y. Times, Feb. 17, 2009, available at <http://nyti.ms/gVwT1P>; Charlie Savage, *Court Allows Civil Torture Case to Proceed*, N.Y. Times, Apr. 28, 2009, available at <http://nyti.ms/h1gEbn>; Eric Schmitt &

United States' use and defense of extraordinary rendition. For example, a cable describing the United States' negotiations with German officials regarding the rendition of German citizen Khaled El-Masri has received significant media attention. *See, e.g.*, Michael Slackman, *Officials Pressed Germans on Kidnapping by C.I.A.*, N.Y. Times, Dec. 8, 2010, available at <http://nyti.ms/e8mrvh>; Jeff Stein, *Leaked Cable: U.S. Warned Germany Against Arrests in Masri Case*, Wash. Post, Nov. 29, 2010, available at <http://wapo.st/gNVYzs>; Nick Baumann, *Wikileaks, Rendition, and the CIA's Italian Job*, Mother Jones, Dec. 13, 2010, available at <http://bit.ly/he5P3R>; Bob Egelko, *WikiLeaks Cables Recount How U.S. Pressured Allies*, San Francisco Chronicle, March 6, 2011, available at <http://bit.ly/gG3yDm>; Letta Tayler, *Time To Clean House On Torture: As WikiLeaks Reveals How the US Has Covered the CIA's Dirty Tracks, the Obama Administration Must Hold Officials To Account*, Guardian, Dec. 3, 2010, available at <http://bit.ly/h52Ynd>; Elliott Abrams, *Dictators, Democracies and WikiLeaks*, Wall Street J., Dec. 1, 2010, available at <http://on.wsj.com/eJtLd0>.⁸

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/gNVYzs>; Nick Baumann, *Wikileaks, Rendition, and the CIA's*

Mark Mazzetti, *U.S. Relies More on Aid of Allies in Terror Cases*, N.Y. Times, May 23, 2009, available at <http://nyti.ms/hdIE3C>; David Johnston, *Rendition to Continue, But With Better Oversight, U.S. Says*, N.Y. Times, Aug. 25, 2009, available at <http://bit.ly/fgd828>; John Schwartz, *In a Federal Case Over 'State Secrets,' a question of Whether Evidence Is Too Secret*, N.Y. Times, Dec. 15, 2009, available at <http://nyti.ms/gaI8jl>; Nicholas Kulish & Scott Shane, *Flight Data Show Rendition Planes Landed in Poland*, N.Y. Times, Feb. 22, 2010, available at <http://nyti.ms/e2iKM3>; Peter Finn, *Suit Dismissed Against Firm in CIA Rendition Case*, Wash. Post, Sept. 9, 2010, available at <http://wapo.st/fZquSq>; Charlie Savage, *Court Dismisses a Case Asserting Torture by C.I.A.*, N.Y. Times, Sept. 8, 2010, available at <http://nyti.ms/ek6VsM>.

⁸ Even prior to the release of the embassy cables, the rendition of Khaled El-Masri had concentrated public attention and spurred public debate on the legality and morality of the CIA's extraordinary rendition program. *See, e.g.*, Adam Liptak, *Appeals court Upholds Dismissal of Abuse Suit*, N.Y. Times, Mar. 3, 2007, available at <http://nyti.ms/i9eriY>; Mark Landler, *German Court Challenges C.I.A. Over Abduction*, N.Y. Times, Feb. 1, 2007, available at <http://nyti.ms/h0jSe3>; Neil A. Lewis, *Man Mistakenly Abducted by C.I.A. Seeks Redress*, N.Y. Times, Nov. 29, 2006, available at <http://nyti.ms/gKpxSk>; Don Van Natta Jr., *Germany Weighs if It Played Role in Seizure by U.S.*, N.Y. Times, Feb. 21, 2006, available at <http://nyti.ms/heVMuI>; Richard Bernstein, *Germany Says It Pressed the U.S. Over the Detention of Its Citizen*, N.Y. Times, Dec. 15, 2005, available at <http://nyti.ms/eDXgvp>; Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake*, Wash. Post, Dec. 4, 2005, available at <http://wapo.st/eaM1RS>; Don Van Natta Jr. & Souad Mekhennet, *German's Claim of Kidnapping Brings Investigation of U.S. Link*, N.Y. Times, Jan. 9, 2005, available at <http://nyti.ms/gG3mPQ>.

Italian Job, Mother Jones, Dec. 13, 2010, available at <http://bit.ly/he5P3R>; John Goetz & Matthias Gebauer, *US Pressured Italy to Influence Judiciary*, Der Spiegel, Dec. 17, 2010, available at <http://bit.ly/g5IULo>. The CIA's rendition of Abu Omar and the subsequent Italian inquiry and actual or alleged U.S. response has received wide coverage and continues to be a matter of urgent public debate. See Craig Whitlock, *CIA Ruse Is Said to Have Damaged Probe in Milan*, Wash. Post, Dec. 6, 2005, available at <http://wapo.st/g8YV4I>; Tracy Wilkinson & Bob Drogin, *Missing Imam's Trail Said to Lead From Italy to CIA*, L.A. Times, Mar. 3, 2005, available at <http://lat.ms/hJUJE>; Stephen Grey & Elisabetta Povoledo, *Inquiry in 2003 Abduction Rivets Italy*, N.Y. Times, July 8, 2006, available at <http://nyti.ms/evwQCR>; Elisabetta Povoledo, *Egyptian Says He Was Tortured After Being Kidnapped in Milan*, N.Y. Times, Nov. 11, 2006, available at <http://nyti.ms/gdOlJO>; *Testimony Is Said to Implicate C.I.A. in Seizure of Suspect in Italy*, Reuters, Feb. 16, 2007, available at <http://nyti.ms/gPCR7Z>; Ian Fisher, *Italy Indicts C.I.A. Operatives in '03 Abduction*, N.Y. Times, Feb. 17, 2007, available at <http://nyti.ms/e5ZtMq>; Ian Fisher, *Italy Prosecutes C.I.A. Agents in Kidnapping*, N.Y. Times, June 9, 2007, available at <http://nyti.ms/fbCUHZ>; Elisabetta Povoledo, *Kidnapping Trial of C.I.A. Agents Is Suspended by Judge in Italy*, N.Y. Times, June 19, 2007, available at <http://nyti.ms/gCBbTw>; Elisabeth Rosenthal, *Italian Trial of C.I.A. Operatives Begins With Torture Testimony*, N.Y. Times, May 15, 2008, available at <http://nyti.ms/dMUuuq>; Elisabetta Povoledo, *Italian Investigator Says U.S. Agents Left Obvious Clues in Abduction Case*, N.Y. Times, May 29, 2008, available at <http://nyti.ms/g4ZQLN>; Rachel Donadio, *Italian Court Upends Trial Involving C.I.A. Links*, N.Y. Times, Mar. 11, 2009, available at <http://nyti.ms/gudJvR>; Scott Shane, *Woman in Rendition Case Sues for Immunity*, N.Y. Times, May 13, 2009, available at <http://nyti.ms/eFwGpq>; Elisabetta Povoledo, *Milan Judge Says C.I.A. Trial to Continue, With Restrictions*, N.Y. Times, May 20, 2009, available at <http://nyti.ms/feHCus>; *Italy: Prosecution Rests In C.I.A. Rendition Case*, Associated Press, Oct. 1, 2009, available at <http://bit.ly/eUaCN7>; *Cleric Seeks Damages*, Reuters, Oct. 8, 2009, available at <http://bit.ly/fGGTAF>; Rachel Donadio, *Italy Convicts 23 Americans for C.I.A. Renditions*, N.Y. Times, Nov. 4, 2009, available at <http://nyti.ms/goXMzt>; Britta Sandberg, *Italian Court Delivers Damning Verdict on CIA Renditions*, Der Spiegel, Nov. 5, 2009, available at <http://bit.ly/dLrk6r>; Rachel Donadio, *Judge Ties Italy Secret Service to Cleric's Abduction*, N.Y. Times, Feb. 1, 2010, available at <http://nyti.ms/fybC1l>; Richard Norton-Taylor, *EU Criticised For 'Complicity' in CIA Rendition Programmes*, Guardian, Nov. 15, 2010, available at <http://bit.ly/f2950R>.

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

wake of the disclosure of U.S. embassy cables. *See, e.g.*, Carol Rosenberg, *From Florida to Spain, Intrigue To Stop a Judge*, Miami Herald, Dec. 24, 2010, available at <http://bit.ly/hBBAjB>; Carol Rosenberg, *WikiLeaks: How U.S. Tried to Stop Spain's Torture Probe*, Miami Herald, Dec. 28, 2010, available at <http://bit.ly/g6jdax>; Giles Tremlett, *Wikileaks: US Pressured Spain Over CIA Rendition and Guantanamo Torture*, Guardian, Dec. 1, 2010, available at <http://bit.ly/dHFVAP>; Javier Moreno, *WikiLeaks Cables Had a Huge Impact in Spain, Says El Pais Editor-In-Cief*, Guardian, Dec. 9, 2010, available at <http://bit.ly/hM5LiT>; Carlos Yarnoz, *US Embassy Conspired to Derail Cases in Spain's High Court*, El Pais, Nov. 30, 2011, available at <http://bit.ly/fri6eG>; Jesus Duva & Carlos E. Cue, *Worried Washington Had Eyes on Garzon*, El Pais, Dec. 15, 2010, available at <http://bit.ly/gJv32H>; Bob Egelko, *WikiLeaks Cables Recount How U.S. Pressured Allies*, San Francisco Chronicle, March 6, 2011, available at <http://bit.ly/gG3yDm>; Letta Tayler, *Time To Clean House On Torture: As WikiLeaks Reveals How the US Has Covered the CIA's Dirty Tracks, the Obama Administration Must Hold Officials To Account*, Guardian, Dec. 3, 2010, available at <http://bit.ly/h52Ynd>; Michael Ratner, *Bringing the 'Bush Six' to Justice*, Guardian, Jan. 7, 2011, available at <http://bit.ly/dE9BPB>; *WikiLeaks Cables Reveal U.S. Tried to Thwart Spanish Probes of Gitmo Torture and CIA Rendition* (DemocracyNow!, Dec. 1, 2010), available at <http://bit.ly/fJJaR7>.⁹ The cables requested here are urgently needed to inform the public about the federal government's response to foreign investigations of U.S. activities.

Other requested embassy cables describe the United States' diplomatic operations in response to investigations of CIA rendition programs in Ireland, Portugal, Switzerland, and the Netherlands. These cables as well as the progress of these investigations throughout Europe have been and continue to be matters of media attention and global interest about which the United States public must be informed. *See, e.g.*, *Rendition Flights 'Used Shannon'*, Irish Times, Dec. 17, 2010, available at <http://bit.ly/hBG0Rs>; Mary Fitzgerald, *Amnesty Claims Law on Rendition Ignored*, Irish Times, Jan. 17, 2011, available at <http://bit.ly/ffchau>; *CIA*

⁹ Indeed, the Spanish investigation has been a matter of significant national interest for the past several years. *See, e.g.*, Marlise Simons, *Spanish Court Weighs Inquiry on Torture for 6 Bush-Era Officials*, N.Y. Times, Mar. 28, 2009, available at <http://nyti.ms/h8oBFb>; David Roman, *Spanish Judge Sets Deadline For Bush-Era Guantanamo Camp Case*, Wall Street J., Jan. 28, 2011, available at <http://on.wsj.com/dNgXiJ>; *Spain May Open Torture Probe of Six Bush Officials*, Reuters, Mar. 28, 2009, available at <http://reut.rs/gv1O1h>; Marjorie Miller, *Torture Trials: Why and How a Spanish Court Might Prosecute Bush Administration Officials*, L.A. Times, May 6, 2009, available at <http://bit.ly/gRK0ZK>; Daniel Woolls, *Spanish Judge Asks US if it Will Probe Torture*, Guardian, May 5, 2009, available at <http://bit.ly/fdaNtD>; *Spain to Probe Guantanamo 'Abuses'*, Al Jazeera, Apr. 30, 2009, available at <http://bit.ly/gG7QHi>; Stephen Grey & Renwick McLean, *Spain Looks Into C.I.A.'s Handling of Detainees*, N.Y. Times, Nov. 14, 2005, available at <http://nyti.ms/g4RMZ4>.

Rendition Flights Did Land in Ireland: Ahern, Belfast Telegraph, Dec. 17, 2010, available at <http://bit.ly/e31f10>; Dara Kelly, *WikiLeaks Reveals Justice Minister's Dermot Ahern's Rendition Fears*, Irish Central, Dec. 18, 2010, available at <http://bit.ly/fIXz8P>; Stephen Grey, *US 'Torture Flights' Stopped at Shannon*, The Sunday Times, Nov. 14, 2004, available at <http://thetim.es/eDITse>; *EU To Censure Ahern Over Rendition Role*, Irish Times, Jan. 1, 2007, available at <http://bit.ly/euHk9m>; Mark Tran, *WikiLeaks Cables: Turkey Let US Use Airbase for Rendition Flights*, Guardian, Jan. 17, 2011, available at <http://bit.ly/f3aoGo>; Elaine Sciolino, *No Proof of C.I.A. Illegality, Portuguese Premier Says*, N.Y. Times, Feb. 13, 2007, available at <http://nyti.ms/hbQt7Y>; *UK Apology Over Rendition Flights*, BBC News, Feb. 21, 2008, available at <http://bbc.in/iayEHb>; Dan Bilefsky, *European Inquiry Says C.I.A. Flew 1,000 Flights in Secret*, N.Y. Times, Apr. 27, 2006, available at <http://nyti.ms/h9W1pl>; *Report Cites Europe's Role in C.I.A. Renditions*, N.Y. Times, June 7, 2006, available at <http://nyti.ms/enEsa2>; Brian Knowlton, *Report Rejects European Denial of C.I.A. Prisons*, N.Y. Times, Nov. 29, 2006, available at <http://bit.ly/dUfIP4>; Craig Whitlock, *Europeans Probe Secret CIA Flights*, Wash. Post, Nov. 17, 2005, available at <http://wapo.st/eCRoqA>; Richard Norton-Taylor, *EU Criticised For 'Complicity' in CIA Rendition Programmes*, The Guardian, Nov. 15, 2010, available at <http://bit.ly/f2950R>.

Many of the U.S. embassy cables that have received extraordinary media attention relate to diplomatic efforts to transfer, and either prosecute or release former and current Guantanamo detainees. See, e.g., Charlie Savage & Andrew W. Lehren, *Cables Depict U.S. Haggling to Clear Guantanamo*, N.Y. Times, Nov. 29, 2010, available at <http://nyti.ms/eWXqyt>; John Goetz & Frank Hornig, *Haggling With Allies Over New Homes for Detainees*, Der Spiegel, Nov. 29, 2010, available at <http://bit.ly/i0k5Xe>. One requested cable describes the United States' praise of former Guantanamo detainee Mozzam Begg's detainee relocation campaign across Europe. See, e.g., Raymond Bonner, *Moazzam Begg: The Ex-Gitmo Prisoner Now Doing the United States Work*, The Atlantic, Nov. 30, 2010, available at <http://bit.ly/he6SYp>; Raphael G. Satter, *Cable: U.S. Ambassador Praised Ex-Gitmo Inmate*, Associated Press, Nov. 30, 2010, available at <http://bit.ly/hwCbhT>; Mark Seibel, *U.S. Has Warm Words For Ex-Guantanamo Detainee*, Miami Herald, Nov. 29, 2010, available at <http://bit.ly/eITo2Z>; Charlie Savage & Andrew W. Lehren, *Cables Depict U.S. Haggling to Clear Guantanamo*, N.Y. Times, Nov. 29, 2010, available at <http://nyti.ms/eWXqyt>. Another requested cable relates to the interrogation of a Guantanamo detainee and Canadian citizen, Omar Khadr. See, e.g., Charlie Savage, *U.S. Diplomats Noted Canadian Mistrust*, N.Y. Times, Dec. 1, 2010, available at <http://nyti.ms/FTN1c2>; *Canada-U.S. Relations Strong Despite WikiLeaks: Cannon*, The Globe and Mail, Nov. 29, 2010, available at <http://bit.ly/hIt04f>; *WikiLeaks Dossier Could Lead to Expulsion of Diplomats from Friendly Countries, Warns U.S. – Washington*

Braced For New Round of Damaging Revelations, Daily Mail, Nov. 27, 2010, available at <http://bit.ly/fCdQDw>.¹⁰

Two requested cables illustrate the United States' diplomatic efforts involved in the French prosecution of suspected terrorists, an issue that has also been followed closely by the media. *See, e.g., Ex-Gitmo Inmates Cite WikiLeaks in French Trial*, Associated Press, Jan. 20, 2011, available at <http://fxn.ws/ftsfn>; Jamey Keaten, *Paris Court Acquits Former Guantanamo Detainees*, Associated Press, Feb. 24, 2009, available at <http://huff.to/fVmF6F>; *France Convicts Ex-Gitmo Inmates of Terrorism Ties*, Associated Press, Dec. 19, 2007, available at <http://on.msnbc.com/ehEbSq>; Pierre-Antoine Souchard, *France Convicts 5 Ex-Guantanamo Inmates*, USA Today, Dec. 19, 2007, available at <http://usat.ly/evuxX7>; David B. Rivkin Jr. & Lee A. Casey, *Europe's Runaway Prosecutions*, Wash. Post, Feb. 28, 2007, available at <http://wapo.st/gmGB2E>; Craig S. Smith, *Leak Disrupts French Terror Trial*, N.Y. Times, July 6, 2006, available at <http://bit.ly/fZRHJC>; Craig S. Smith, *Guantanamo Visit Roils French Terrorism Trial*, N.Y. Times, July 5, 2006, available at <http://nyti.ms/hO7AxA>; Craig S. Smith, *6 Former Guantanamo Detainees on Trial in Paris*, N.Y. Times, July 4, 2006, available at <http://bit.ly/hc665s>.

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*,

¹⁰ The detention, interrogation, and prosecution of Omar Khadr have been the subject of public attention over the past several years. *See, e.g., Jane Sutton, Guantanamo Canadian to Serve 8 More Years in Prison*, Reuters, Nov. 1, 2010, available at <http://reut.rs/fk4vmk>; Ben Fox, *Gitmo Former 'Child Soldier' Sentenced to 8 Years*, Associated Press, Oct. 31, 2010, available at <http://bo.st/h5BrZI>; *Defense Disputes Claim of Confession By Detainee*, Reuters, Aug. 12, 2010, available at <http://nyti.ms/hxgmb7>; Charlie Savage, *U.S. Wary of Example Set By Tribunal Case*, N.Y. Times, Aug. 27, 2010, available at <http://nyti.ms/gUFEuR>; Charlie Savage, *Deal Averts Trial in Disputed Guantanamo Case*, N.Y. Times, Oct. 25, 2010, available at <http://nyti.ms/ejJ4cH>; *Canada Premier Sued Over Guantanamo Inmate*, Reuters, Aug. 8, 2008, available at <http://nyti.ms/eGc54p>; Ian Austen, *Blurry Peek at Questioning of a Guantanamo Inmate*, N.Y. Times, July 16, 2008, available at <http://nyti.ms/fyKnfb>; Ian Austen, *Citing New Report, Lawyers For Canadian Detainee Denounce Abuse*, N.Y. Times, July 11, 2008, available at <http://nyti.ms/fPCgTS>; William Glaberson, *An Unlikely Antagonist in the Detainees' Corner*, N.Y. Times, June 19, 2008, available at <http://nyti.ms/ejRpHD>; Ian Austen, *Lawyer Urges Canada to Try a Citizen Held by U.S. Forces*, N.Y. Times, Apr. 30, 2008, available at <http://nyti.ms/hDTZks>; Neil A. Lewis, *Canadian Was Abused at Guantanamo, Lawyers Say*, N.Y. Times, Feb. 10, 2005, available at <http://bit.ly/f7ay62>.

Wash. Post, July 14, 2007, available at <http://wapo.st/gFRiYr>; Josh White, *6 Detainees Repatriated By Military*, Wash. Post, June 20, 2007, available at <http://wapo.st/fFikGh>; William Glaberson, *Judge Halts Transfer of Guantanamo Detainee*, N.Y. Times, Oct. 10, 2007, available at <http://nyti.ms/h8oSac>; William Glaberson, *Hurdles Frustrate Effort to Shrink Guantanamo*, N.Y. Times, Aug. 9, 2007, available at <http://bit.ly/gQMrj8>.

Several of the requested cables have received significant media attention in part because of their descriptions of United States' diplomatic actions regarding the use of unmanned aerial vehicles, commonly referred to as "drones", in Pakistan and Yemen. See, e.g., Susanne Koelbl, *Unstable Pakistan Has US on Edge*, Der Spiegel, Nov. 30, 2010, available at <http://bit.ly/gB7we1>; Karen DeYoung & Greg Miller, *U.S. Focuses on Pakistan's Military, Nuclear Material*, Wash. Post., Dec. 1, 2010, available at <http://wapo.st/fmGfyV>; Jeremy Scahill, *The (Not So) Secret (Anymore) US War in Pakistan*, The Nation, Dec. 1, 2010, available at <http://bit.ly/eqZ9F1>; Karin Brulliard, *U.S. Officials Try to Minimize Damage in Pakistan*, Wash. Post, Dec. 1, 2010, available at <http://wapo.st/gaFhfj>; Jackie Northam, *Cables Reveal U.S. Doubts About Pakistan*, National Public Radio, Dec. 1, 2010, available at <http://n.pr/fkzA6V>; *Fears Over Pakistan Nuclear Arms*, Al Jazeera, Dec. 1, 2010, available at <http://bit.ly/e9kpol>; Rob Crilly, *Wikileaks: Pakistan Privately Approved Drone Strikes*, Dec. 1, 2010, The Telegraph, available at <http://bit.ly/hIndE9>; David Leigh, *Nuclear Fears Over Pakistan Revealed*, Irish Times, Dec. 1, 2010, available at <http://bit.ly/gqINkT>; Tim Lister, *WikiLeaks: Pakistan Quietly Approved Drone Attacks, U.S. Special Units*, CNN, Dec. 2, 2010, available at <http://bit.ly/ibgiWD>; Jackie Northam, *Cables reveal U.S. Doubts About Pakistan*, National Public Radio, Dec. 1, 2010, available at <http://n.pr/fkzA6V>; Alissa J. Rubin & Carlotta Gall, *Top Leaders in Afghanistan and Pakistan Dismiss Cables*, N.Y. Times, Dec. 4, 2010, available at <http://nyti.ms/ftyfpW>; Deb Reichmann, *Afghan Minister Disputes US Diplomatic Cable*, Associated Press, Dec. 4, 2010, available at <http://bo.st/eo0F3s>; Karin Brulliard, *In Cables From Pakistan, U.S. Struggles for Leverage*, Wash. Post, Dec. 7, 2010, available at <http://wapo.st/hcRpgc>; Fatima Bhutto, *How Washington Runs Its War On Pakistan*, Salon, Dec. 9, 2010, available at <http://bit.ly/et0Kqm>; Jane Perlez, David E. Sanger & Eric Schmitt, *Nuclear Fuel Memos expose Wary Dance with Pakistan*, N.Y. Times, Dec. 30, 2010, available at <http://nyti.ms/g51oX8>; Nick Allen, *WikiLeaks: Yemen Covered Up US Drone Strikes*, The Telegraph, Nov. 28, 2010, available at <http://bit.ly/htZzo5>; Juliane von Mittelstaedt, *A US Hand in Yemen's Civil War*, Der Spiegel, Dec. 3, 2010, available at <http://bit.ly/g1uVLq>; Scott Shane, *Yemen Sets Terms of a War on Al Qaeda*, N.Y. Times, Dec. 3, 2010, available at <http://nyti.ms/fnp9GR>; Eric Schmitt, *U.S. Plays Down Tensions With Yemen*, N.Y. Times, Dec. 17, 2010, available at

<http://nyti.ms/eEHesd>; Karen DeYoung, *Cables Show Obstacles with Yemeni Leader*, Wash. Post, Dec. 3, 2010, available at <http://wapo.st/gTVo5y>; *Yemen Offered U.S. "Open Door" to Al Qaeda: WikiLeaks*, Reuters, Dec. 3, 2010, available at <http://reut.rs/ffY7GJ>; Robert Booth & Ian Black, *WikiLeaks Cables: Yemen Offered US 'Open Door' To Attack Al-Qaida on its Soil*, Guardian, Dec. 3, 2010, available at <http://bit.ly/eGvapA>; Robert Booth & Ian Black, *Yemeni President 'Bizarre and Petulant'*, *WikiLeaks Cables Claim*, Guardian, Dec. 3, 2010, available at <http://bit.ly/h7HonG>; Michael Isikoff, *Yemen Cable Gives Al-Qaida New 'Recruiting' Tool*, NBC News, Nov. 30, 2010, available at <http://on.msnbc.com/gn8t1O>; Ellen Knickmeyer, *Yemen's Double Game*, Foreign Policy, Dec. 7, 2010, available at <http://bit.ly/haz3J4>; Radio Interview by Tony Cox with Scott Shane and Ronald Neumann, *Talk of the Nation: WikiLeaks Cables Reveal Candid Communications*, National Public Radio, Nov. 29, 2010, available at <http://n.pr/gIW8mF>; Elliott Abrams, *Dictators, Democracies and WikiLeaks*, Wall Street J., Dec. 1, 2010, available at <http://on.wsj.com/eJtLd0>; James Traub, *The Sunshine Policy*, Foreign Policy, Dec. 10, 2010, available at <http://bit.ly/hKL10K>; Richard Norton-Taylor & David Leigh, *UK Overruled on Lebanon Spy Flights From Cyprus, WikiLeaks Cables Reveal*, Guardian, Dec. 2, 2010, available at <http://bit.ly/gPwRHm>; Dominic Evans, *U.S. Flew Spy Missions Over Lebanon: Leaked Cable*, Reuters, Dec. 3, 2010, available at <http://reut.rs/gufyYk>; James Traub, *The Sunshine Policy*, Foreign Policy, Dec. 10, 2010, available at <http://bit.ly/hKL10K>; Hedi Blake, *WikiLeaks Cables: Zardari is a Numbskull, British Told Americans*, The Telegraph, Feb. 5, 2011, available at <http://bit.ly/gEVUAL>; Jonathan Steele, *WikiLeaks Cables: Pakistan's Zardari is a 'Numbskull'*, Guardian, Nov. 30, 2010, available at <http://bit.ly/i2vzt6>.

The United States' use of drones outside of recognized war zones has been the subject of great and urgent public interest, both within the United States and globally. See, e.g., Pamela Constable, *Pakistanis Protest U.S. Airstrikes, Release of CIA Contractor Release*, Wash. Post, Mar. 18, 2011, available at <http://wapo.st/hadHXp>; Mark Mazzetti & Dexter Filkins, *U.S. Military Seeks to Expand Raids in Pakistan*, N.Y. Times, Dec. 20, 2010, available at <http://nyti.ms/ea5f7>; Mark Mazzetti & Eric Schmitt, *C.I.A. Steps Up Drone Attacks on Taliban in Pakistan*, N.Y. Times, Sept. 27, 2010, available at <http://nyti.ms/goXrrH>; Charlie Savage, *U.N. Report Highly Critical of U.S. Drone Attacks*, N.Y. Times, June 2, 2010, available at <http://nyti.ms/etT8ys>; Jane Perlez & Pir Zubair Shah, *Drones Batter Al Qaeda and Its Allies Within Pakistan*, N.Y. Times, Apr. 4, 2010, available at <http://nyti.ms/e1nu9e>; Mark Mazzetti & Jane Perlez, *C.I.A. and Pakistan Work Together, Warily*, N.Y. Times, Feb. 24, 2010, available at <http://nyti.ms/gXI1mJ>; Elisabeth Bumiller, *U.S. Offers Pakistan Drones to Urge Cooperation*, N.Y. Times, Jan. 21, 2010, available at <http://nyti.ms/dM4e5P>; Pir Zubir Shah & Salman Masood, *U.S. Drone*

Strike Said to Kill 60 in Pakistan, N.Y. Times, June 23, 2009, available at <http://nyti.ms/gKWj5j>; Eric Schmitt & Christopher Drew, *More Drone Attacks in Pakistan Planned*, N.Y. Times, Apr. 6, 2009, available at <http://nyti.ms/dKIBCQ>; Scott Shane, *C.I.A. Drone Use is Set To Expand Inside Pakistan*, N.Y. Times, Dec. 4, 2009, available at <http://nyti.ms/gO6Rvv>; Jane Mayer, *The Predator War*, The New Yorker, Oct. 26, 2009, available at <http://nyr.kr/fFv63e>; Eric Schmitt and Christopher Drew, *More Drone Attacks in Pakistan Planned*, N.Y. Times, Apr. 6, 2009, available at <http://nyti.ms/hmNb79>; Mark Mazetti, *C.I.A. Takes on Bigger and Riskier Role on the Front Lines*, N.Y. Times, Jan. 1, 2010, available at <http://nyti.ms/gsu0Lo>; David Johnston & David E. Sanger, *Fatal Strike in Yemen Was Based on Rules Set Out by Bush*, N.Y. Times, Nov. 6, 2002, available at <http://nyti.ms/htY8GD>; Jeremy Scahill, *The Secret War in Pakistan*, The Nation, Nov. 23, 2009, available at <http://bit.ly/egOxPw>; David Rhode, *Held by the Taliban: A Drone Strike and Dwindling Hope*, N. Y. Times, Oct. 21, 2009, available at <http://nyti.ms/i6BzDy>; Declan Walsh, *In Pakistan, US drone strike on Taliban kills 12*, Guardian, Apr. 2, 2009, available at <http://bit.ly/eqzH9E>.

Finally, the requested cable describing the diplomatic response to President Obama's decision to oppose the release of photographs depicting U.S. interrogations of persons suspected of terrorism has generated renewed public interest in a matter of urgent public concern. *See, e.g.*, Stephen Webster, *Cable: Abu Ghraib Torture Inspired Hundreds of Saudis to Jihad*, The Raw Story, Dec. 2, 2010, available at <http://www.rawstory.com/rs/2010/12/02/cable-shows-torture-photos-inspired-hundreds/>; Jeff Zeleny & Thom Shanker, *Obama Moves to Bar Release of Detainee Abuse Photos*, N.Y. Times, May 13, 2009, available at <http://nyti.ms/esvVKT>; Scott Shane, *Experts Say Obama May Need to Classify Photos*, N.Y. Times, May 14, 2009, available at <http://nyti.ms/fx9U2r>; Peter Wallsten & Janet Hook, *Obama Moves to Prevent Release of Detainee Photos*, L.A. Times, May 14, 2009, available at <http://lat.ms/ejNHlK>; Scott Wilson, *Obama Shifts on Abuse Photos*, Wash. Post, May 14, 2009, available at <http://wapo.st/ey2Zvu>.

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).¹¹ Indeed, the ACLU

¹¹ 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

of Washington was recently held to be a “representative of the news media.” *Am. Civil Liberties Union of Washington v. U.S. Dep’t of Justice*, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011).

* * *

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.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

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.

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,



BEN WIZNER

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AMERICAN CIVIL LIBERTIES
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