

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

American Civil Liberties Union and the American
Civil Liberties Union Foundation,

Plaintiffs,

v.

Department of Defense; Department of Justice,
including its components the Office of Legal Counsel
and Office of Information Policy; Department of State;
and Central Intelligence Agency,

Defendants.

Civil Action No. _____

COMPLAINT

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is a lawsuit seeking the release of records pertaining to the CIA's now-discontinued program of rendition, detention, and torture ("RDI program").

2. In the years after September 11, 2001, under a program developed and authorized by officials at the highest levels of government, the CIA tortured suspected terrorists, including in a network of secret overseas prisons known as "black sites." The program was halted by President George W. Bush in 2008, and in 2009 President Barack Obama ordered the black sites closed.

3. Because of the continuing and extraordinary public interest in and controversy surrounding the CIA's RDI program, the Senate Select Committee on Intelligence ("SSCI") conducted a comprehensive review of the CIA's post-9/11 conduct—examining millions of pages of government documents in the process. The SSCI completed a 6,000-page investigative report, *Study of the CIA's Detention and Interrogation Program* ("SSCI Report"), documenting its findings and conclusions.

4. On December 9, 2014, following Executive Branch declassification review, the SSCI released the SSCI Report summary to the public. The summary describes widespread abuses that took place in the RDI program, as well as details concerning the CIA's evasions and misrepresentations about its activities to Congress, the White House, the courts, the media, and the American public. The SSCI Report immediately became the subject of widespread public controversy and debate, as well as media attention.

5. In the months since the SSCI Report's release, the debate about the CIA's RDI program has intensified. The legality and wisdom of the CIA's practices—as well as the resulting harm to individuals' human rights, our nation's values, and our national security—are currently debated in Congress and in the context of the 2016 Presidential campaign.

6. In response to the public release of the SSCI Report summary, the CIA declassified and released its June 2013 response to the SSCI's Study. CIA Director Brennan also released a public statement on December 9, 2014, acknowledging that the “the detention and interrogation program had shortcomings,” “that the Agency made mistakes,” and that it “did not always live up to the high standards that we set for ourselves and that the American people expect of us.”

7. On January 28, 2015, the CIA issued new guidance that declassified numerous aspects of the RDI program in response to the SSCI Report.

8. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking injunctive and other appropriate relief, including the immediate processing and release of records sought by Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (collectively “ACLU”) from Defendants Department of Justice (“DOJ”), Department of Defense (“DOD”), Department of State (“DOS”), and CIA

(collectively “Defendants”) through a FOIA request (“Request”) made by the ACLU. The Request sought records and categories of records either identified in the SSCI Report or whose classification status is implicated by the Report’s public release, the CIA’s public response, and the accompanying change in classification guidance.

9. Plaintiffs submitted the Request to the DOD, DOS, and CIA, as well as to specific components of the DOJ, including the Office of Legal Counsel (“OLC”) and Office of Information Policy (“OIP”). Plaintiffs sought expedited processing and a waiver of fees.

10. To date, no agency has released any record in response to the Request.

Jurisdiction and Venue

11. This Court has subject-matter and personal jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii), 28 U.S.C. § 1331, and 5 U.S.C. §§ 701-706.

12. Venue is premised on the place of business of the ACLU and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

13. Plaintiff American Civil Liberties Union is a nationwide, non-profit, nonpartisan organization with more than 500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that the U.S. government acts in compliance with the Constitution and laws, including international legal obligations. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. Obtaining information about governmental activity, analyzing that information, and widely publishing and disseminating it to the press and the

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.

14. Plaintiff American Civil Liberties Union Foundation is a separate § 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties.

15. Defendant DOJ is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). The OLC and OIP, from which the ACLU has also requested records, are components of DOJ.

16. Defendant DOD is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

17. Defendant DOS is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

18. Defendant CIA is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

The ACLU's Request

19. On August 14, 2015, the ACLU submitted the Request for sixty-nine records and categories of records identified in the SSCI Report or whose classification status is implicated by its public release, by the CIA response, and by the accompanying change in classification guidance. The requested records include (1) emails, cables, memoranda, letters, and reports identified and excerpted in the SSCI Report; (2) records of Combatant Status Review Tribunals; and (3) reports previously released in redacted form before the public disclosure of the SSCI Report. A copy of the request is attached to this complaint as Exhibit A.

20. The ACLU sought expedited processing, contending that the records were urgently needed to inform the public about actual or alleged government activity and that the ACLU was primarily engaged in disseminating information. *See* 5 U.S.C. § 552(a)(6)(E)(v); *see also* 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1900.34(c)(2). The ACLU also sought expedited processing on the grounds that the records related to a “breaking news story of general public interest.” 32 C.F.R. § 286.4(d)(3)(ii)(A); *see also* 28 C.F.R. § 16.5(d)(1)(iv).

21. The ACLU sought a waiver of search, review, and duplication fees on the basis that disclosure of the requested records was in the public interest because it was “likely to contribute significantly to public understanding of the operations or activities of the government and [was] not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.11(k)(1); 32 C.F.R. § 286.28(d); 32 C.F.R. § 1900.13(b)(2). The ACLU also sought the waiver on the basis that the ACLU constituted a “representative of the news media” and that the records were not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 32 C.F.R. § 286.28(e)(7); 32 C.F.R. § 1900.13(i)(2); 28 C.F.R. § 16.11(d).

The Government’s Response to the Request

22. None of the defendant agencies has released any record in response to the Request. The agencies have responded inconsistently to the ACLU’s request for expedited processing and waiver of fees.

DOJ Office of Legal Counsel

23. On August 28, 2015, OLC denied the ACLU’s request for expedited processing under 28 C.F.R. § 16.5(d)(1)(ii) (“An urgency to inform the public about an actual or alleged

federal government activity, if made by a person primarily engaged in disseminating information.”), but referred the request to the Director of the Office of Public Affairs to determine whether to grant expedited processing under 28 C.F.R. 16.5(d)(1)(iv) (“A matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.”). The OLC deferred its decision on the request for a fee waiver. It has not rendered any decision since that time, or provided any records.

24. On September 16, 2015, OLC was informed that the Office of Public Affairs granted the ACLU’s request for expedited processing under 28 C.F.R. 16.5(d)(1)(iv). By letter dated September 17, 2015, OLC informed the ACLU that its request had been granted expedited processing. However, no documents have been provided or, to the ACLU’s knowledge, processed. Indeed, the ACLU has received no further response or correspondence from OLC.

DOJ Office of Information Policy

25. On August 28, 2015, OIP denied the ACLU’s request for expedited processing under 28 C.F.R. § 16.5(d)(1)(ii) (“An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.”), but referred the request to the Director of the Office of Public Affairs to determine whether to grant expedited processing under 28 C.F.R. 16.5(d)(1)(iv) (“A matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.”). By letter dated September 16, 2015, OIP informed the ACLU that its request had been granted expedited processing under this section. In the same letter, OIP advised the ACLU that “unusual circumstances” would impact

the time required to process the Request, and that no decision had been made on the ACLU's fee waiver request. The ACLU has received no further response or correspondence from OIP.

Department of Defense

26. On September 15, 2015, DOD denied the ACLU's request for expedited processing and advised the ACLU that "unusual circumstances" would impact the time required to process the Request. The response did not address ACLU's request for a fee waiver. The ACLU has received no further response or correspondence from DOD.

Department of State

27. On August 21, 2015, DOS's Office of Information Programs & Services denied the ACLU's request for expedited processing, stating that the ACLU had failed to demonstrate a "compelling need" for the requested records. DOS granted the request for a fee waiver. The ACLU has received no further response or correspondence from DOS.

Central Intelligence Agency

28. On August 26, 2015, the CIA denied the ACLU's request for expedited processing. The ACLU has received no further response or correspondence from the CIA.

Causes of Action

29. Defendants' failure to make a reasonable effort to search for records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3), and Defendants' corresponding regulations.

30. Defendants' failure to promptly make available the records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

31. The failure of Defendants DOD, DOS, and CIA to grant the ACLU's request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E) and the Defendants' corresponding regulations.

32. The failure of Defendants OLC, OIP, DOD and CIA to grant the ACLU's request for a limitation of fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II) and the Defendants' corresponding regulations.

33. The failure of Defendants OLC, OIP, DOD and CIA to grant the ACLU's request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 52(a)(4)(A)(iii), and the Defendants' corresponding regulations.

Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order Defendants immediately to produce all records responsive to the Request;
- B. Enjoin Defendants from charging Plaintiffs search, review, or duplication fees for the processing of the Request;
- C. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

November 25, 2015

Respectfully submitted,

/s/ Dror Ladin

Dror Ladin

Jameel Jaffer

AMERICAN CIVIL LIBERTIES

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