



April 25, 2011

Information and Privacy Coordinator
 Central Intelligence Agency
 Washington, DC 20505

Office of the Inspector General
 Central Intelligence Agency
 Washington, DC 20505

**Re: REQUEST UNDER FREEDOM OF INFORMATION ACT /
 Expedited Processing Requested**

Attention:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Central Intelligence Agency implementing regulations, 32 C.F.R. § 1900.1. The Request is submitted by the American Civil Liberties Union Foundation and the American Civil Liberties Union (collectively, the “ACLU”).¹

Records Requested

Requesters seek the release of (1) all reports or conclusions of an internal inquiry or investigation into the CIA’s Inspector General or Office of the Inspector General (“OIG”), *see* Mark Mazzetti & Scott Shane, *Watchdog of C.I.A. Is Subject of C.I.A. Inquiry*, N.Y. Times, Oct. 11, 2007, available at <http://nyti.ms/f03Qvh>; and (2) all reports produced by the CIA OIG relating to the detention, interrogation, or treatment of individuals apprehended after September 11, 2001, and held at detention facilities outside the United States, including but not limited to²:

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

² To the extent any records responsive to the Request have already been produced to the ACLU, released to the public, or identified in an index or declaration as part of FOIA litigation, Requesters welcome the opportunity to discuss with the government whether those records should be reprocessed here.

**AMERICAN CIVIL LIBERTIES
 UNION FOUNDATION**

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- A. A CIA OIG report dated October 29, 2003, relating to unauthorized interrogation techniques, including the use of a handgun and power drill during interrogation. The report is mentioned on page 42 of the OIG's report of May 7, 2004. *See Special Review, Counterterrorism Detention and Interrogation Activities (September 2001 – October 2003)* at 42 n.46, May 7, 2004, *available at* <http://bit.ly/hEvzu8>.
- B. A CIA OIG report dated November 3, 2005, entitled "Death of Manadal Al-Jamaidi." *See* Letter from John Helgerson, CIA Inspector General, to Peter Howkstra, Chairman, Permanent Select Committee on Intelligence, Feb. 16, 2006, *available at* <http://bit.ly/eDjRTe> at 46-48.
- C. A CIA OIG report regarding the "nonregistration" of detainees or "ghosts." *See* Letter from John Helgerson, CIA Inspector General, to Inspector General, Office of the Director of National Intelligence, Jan. 23, 2006, *available at* <http://bit.ly/eDjRTe> at 57.
- D. A CIA OIG report entitled "Death of 'Abid Hamad Mahawish Al-Mahalawi," relating to allegations of mistreatment of detainees near Al Qa'im in November 2003. *See* Email from the CIA OIG, Mar. 20, 2006, 5:49 pm, *available at* <http://bit.ly/eQBSvF> at 10; CIA OIG Memo, *Investigations Regarding the Treatment Detainees in Iraq*, May 5, 2004, *available at* <http://bit.ly/gQgPzJ> at 15-16.
- E. A CIA OIG report relating to the death Gul Rahman and/or a special review of the interrogation activities at the detention facility called the "Salt Pit." *See* Adam Goldman & Kathy Gannon, *Death Shed Light on CIA 'Salt Pit' Near Kabul: Handling of Terror Suspect Led to Inquiry by Agency's Inspector General*, Associated Press, Mar. 28, 2010, *available at* <http://on.msnbc.com/fmPFBB>.
- F. A CIA OIG report relating to the rendition and detention of Khalid El-Masri. *See* Adam Goldman & Matt Apuzzo, *AP IMPACT: At CIA, Grave Mistakes, Then Promotions*, Associated Press, Feb. 9, 2011, *available at* <http://abcn.ws/dFVrGo>.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, we request that the

records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, bates-stamped files.

Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); 32 C.F.R. § 1900.34(c). 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); 32 C.F.R. § 1900.34(c)(2).

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); 32 C.F.R. § 1900.34(c)(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)).

Although the ACLU is perhaps most 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 is a key component 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. Its material is available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee. Since 2007, ACLU national projects have published and disseminated over 30 reports, many of which include description and analysis of government documents obtained through FOIA.⁴

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—*

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, *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/national-security/fbi-improperly-using-patriot-act-surveillance-powers-aclu-charges>.

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 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; *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.

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 More Time to Review IG's Findings on Detainee Treatment*, Wash. Post, June 20, 2009 (quoting ACLU staff attorney Amrit Singh); Peter Finn & Julie Tate, *CIA Mistaken on 'High-Value' Detainee, Document Shows*, Wash. Post, June 16, 2009 (quoting ACLU staff attorney Ben Wizner); Scott Shane, *Lawsuits Force Disclosures by C.I.A.*, N.Y. Times, June 10, 2009 (quoting ACLU deputy legal director Jameel Jaffer); Joby Warrick, *Like FBI CIA Has Used Secret 'Letters'*, Wash. Post, Jan. 25, 2008 (quoting former ACLU staff attorney Melissa Goodman).

The ACLU regularly publishes a newsletter at least twice a year that reports on and analyzes civil-liberties-related current events. The 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.*, 241 F. Supp. 2d at 13–14 (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); 32 C.F.R. § 286.28(e)(7)(i) (“The term ‘representative of the news media’ refers to 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*, 880 F.2d at 1386 (finding National Security Archive to be a news-media requester because it intended to publish “document sets” on “topic[s] of current interest”).⁵

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).⁶ 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.⁷ These materials are specifically designed to be educational and widely

⁵ In addition to the national ACLU offices, there are 53 ACLU affiliate and national-chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived material available at the American Civil Liberties Union Archives at Princeton University Library.

⁶ A search of Amazon.com conducted on April 7, 2011 produced over 60 books published by the ACLU.

⁷ 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.

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”).

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.

AMERICAN CIVIL LIBERTIES
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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)).⁸

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

The requesters are making this request to further the public's understanding of the CIA's interrogation program. The records requested here are urgently needed to inform the national debate about U.S. policy with respect to the treatment of suspected terrorists and individuals designated as enemy combatants. Information relating to the interrogation

⁸ Notably, other agencies routinely grant the ACLU's requests for expedited processing of FOIA requests, therefore recognizing that the ACLU is primarily engaged in disseminating information. 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).

and detention of detainees who were held and interrogated under CIA custody has been the subject of widespread public and media attention ever since allegations that detainees had been abused in CIA custody first surfaced in December 2002. See Dana Priest & Barton Gellman, *U.S. Decries Abuse But Defends Interrogations*, Wash. Post, Dec. 26, 2002, available at <http://wapo.st/fTaxrG> (describing the CIA's interrogation techniques, including the use of "awkward, painful positions," sleep deprivation, "24-hour bombardment of lights," and rendition "to other countries so they can kick the [expletive] out of them"). In the years since these disclosures, the public's interest in the CIA's role in detainee abuse has not waned. See, e.g., Raymond Bonner, Don Van Natta Jr. & Amy Waldman, *Threats and Responses: Interrogations; Questioning Terror Suspects in a Dark and Surreal World*, N.Y. Times, Mar. 9, 2003, available at <http://bit.ly/huP5af>; Peter Slevin, *U.S. Pledges to Avoid Torture*, Wash. Post, June 27, 2003, available at <http://wapo.st/gpDFyu>; Dana Priest & Joe Stephens, *Secret World of U.S. Interrogation*, Wash. Post, May 11, 2004, available at <http://wapo.st/gJvVHp>; James Risen, David Johnston & Neil A. Lewis, *The Struggle For Iraq: Detainees; Harsh C.I.A. Methods Cited in Top Qaeda Interrogations*, N.Y. Times, May 13, 2004, available at <http://bit.ly/gEcyf2>.

On June 8, 2004, the Washington Post disclosed the details of a Justice Department memo written in August 2002 in response to the CIA's proposed use of "enhanced interrogation techniques." This disclosure prompted significant media attention. See, e.g., Dana Priest & R. Jeffrey Smith, *Memo Offered Justification for Use of Torture: Justice Dept. Gave Advice in 2002*, Wash. Post, June 8, 2004, available at <http://wapo.st/aC77bP> (discussing the memo's conclusions that "torturing al Qaeda terrorists in captivity abroad 'may be justified,' and that international laws against torture 'may be unconstitutional if applied to interrogations'"); Neil A. Lewis, *Bush Didn't Order Any Breach of Torture Laws, Ashcroft Says*, N.Y. Times, June 8, 2004, available at <http://nyti.ms/ePmnKb> (discussing Attorney General John Ashcroft's Senate testimony regarding the interrogation memos); Neil A. Lewis & Eric Schmitt, *The Reach of War: Legal Opinions; Lawyers Decided Bans on Torture Didn't Bind Bush*, N.Y. Times, June 8, 2004, available at <http://bit.ly/gq35gV>; Mike Allen & Dana Priest, *Memo on Torture Draws Focus to Bush: Aide Says President Set Guidelines for Interrogations, Not Specific Techniques*, Wash. Post, June 9, 2004, available at <http://wapo.st/dFKgRD>.

President Bush's acknowledgement of the CIA's interrogation program in his presidential address on September 6, 2006, see George W. Bush, Remarks by the President on the Global War on Terror (Sept. 6, 2006), available at <http://1.usa.gov/ehRrls>, further focused public interest on the interrogation of detainees held outside of the United States by the CIA. See e.g., Dana Priest, *Officials Relieved Secret Is Shared*, Wash. Post, Sept.

7, 2006, available at <http://wapo.st/fUema2>; Kevin Sullivan, *Detainee Decision Greeted Skeptically*, Wash. Post, Sept. 7, 2006, available at <http://wapo.st/h7Ji14>; Sheryl Gay Stolberg, *President Moves 14 Held in Secret to Guantanamo*, N.Y. Times, Sept. 7, 2006, available at <http://nyti.ms/f6vBxp>; John Ward Anderson, *Confirmation of CIA Prisons Leaves Europeans Mistrustful*, Wash. Post, Sept. 8, 2006, available at <http://wapo.st/fkUy22>.

On April 16, 2009, a FOIA lawsuit by the ACLU led to the release of four Office of Legal Counsel memos written in 2002 and 2003 authorizing the use of particular interrogation techniques by the CIA. Release of the memos—which provided the most detailed descriptions of the CIA’s interrogation techniques available to the public at the time—reignited the public debate regarding the legality and morality of harsh interrogation techniques. See e.g., Mark Mazzetti & Scott Shane, *Interrogation Memos Detail Harsh Tactics by the C.I.A.*, Apr. 16, 2009, available at <http://nyti.ms/10Qtzu>; Mark Mazzetti, *C.I.A. Memos Could Bring More Disclosures*, N.Y. Times, Apr. 17, 2009, available at <http://nyti.ms/Dc5P5>; Carrie Johnson & Julie Tate, *New Interrogation Details Emerge: As It Releases Justice Dept. Memos, Administration Reassures CIA Questioners*, Wash. Post, Apr. 17, 2009, available at <http://wapo.st/l1ved>; *CIA Employees Won’t Be Tried for Waterboarding: Former CIA Director Says Torture Memo Release Endangers the Country*, Associated Press, Apr. 17, 2009, available at <http://on.msnbc.com/yovG6>; Scott Shane, *Torture Versus War*, N.Y. Times, Apr. 18, 2009, available at <http://nyti.ms/fqSX18>.

On August 24, 2009, in response to the same FOIA lawsuit, the government released a CIA OIG report on the CIA’s use of the interrogation techniques approved by the OLC memos, as well as several “unauthorized” techniques, such as the use of a handgun and power drill during an interrogation. At the same time, the Attorney General launched an investigation into certain detainee abuses. The disclosure and the announcement of the investigation continued to fuel the public’s interest in the CIA’s detention and interrogation activities. See, e.g., Mark Mazzetti, *Report Provides New Details on C.I.A. Prisoner Abuse*, N.Y. Times, Aug. 22, 2009, available at <http://nyti.ms/dVw1Kk>; Joby Warrick & R. Jeffrey Smith, *CIA Used Gun, Drill in Interrogation: IG Report Describes Tactics Against Alleged Cole Mastermind*, Wash. Post, Aug. 22, 2009, available at <http://wapo.st/6h1PuR>; Joby Warrick & R. Jeffrey Smith, *CIA Officer Disciplined for Alleged Gun Use in Interrogation: Bush Officials Filed No Charges Over Tactics in Terror Case*, Wash. Post, Aug. 23, 2009, available at <http://wapo.st/4qZWII>; David Johnston, *Justice Dept. Report Advises Pursuing C.I.A. Abuse Cases*, N.Y. Times, Aug. 24, 2009, available at <http://nyti.ms/ekruTA>; Siobhan Gorman, *CIA Faulted for Conduct at Prisons*, Wall St. J., Aug. 24, 2009, available at <http://on.wsj.com/ica0Li>.

On February 19, 2010, the DOJ's Office of Professional Responsibility ("OPR") released a report examining whether three DOJ attorneys—Steven Bradbury, John Yoo and Jay Bybee—violated their ethical obligations in drafting the legal memos authorizing the abusive interrogation of detainees in U.S. custody, again attracting significant public interest and media attention. *See, e.g.*, Eric Lichtblau & Scott Shane, *Report Faults 2 Authors of Bush Terror Memos*, N.Y. Times, Feb. 19, 2010, available at <http://nyti.ms/e6rAgr>; Carrie Johnson & Julie Tate, *Authors of Waterboarding Memos Won't Be Disciplined*, Feb. 20, 2010, available at <http://wapo.st/gYxYOg>; Jess Bravin, *Lawyers Cleared Over 9/11 Memos*, Wall St. J., Feb. 20, 2010, available at <http://on.wsj.com/htE8ax>; Eric Lichtblau, *Justice Dept. Reveals More Missing E-Mail Files*, Feb. 26, 2010, available at <http://nyti.ms/dI9z1P>.

The CIA's destruction of ninety-two videotapes of interrogations, including the use of techniques described in the OLC memos, has also concentrated public and media interest on the CIA's interrogation program. *See, e.g.*, Dan Eggen & Joby Warrick, *CIA Destroyed Videos Showing Interrogations: Harsh Techniques Seen in 2002 Tapes*, Wash. Post, Dec. 7, 2007, available at <http://wapo.st/hyeX1g>; Mark Mazzetti & David Johnston, *Justice Dept. Sets Criminal Inquiry on C.I.A. Tapes*, N.Y. Times, Jan. 3, 2008, available at <http://nyti.ms/eAo299>; Carrie Johnson & Joby Warrick, *CIA Destroyed 92 Interrogation Tapes, Probe Says*, Wash. Post, Mar. 3, 2009, available at <http://wapo.st/hoYEt5>; Mark Mazzetti, *Grand Jury Inquiry on Destruction of C.I.A. Tapes*, N.Y. Times, July 2, 2009, available at <http://nyti.ms/dDXmIo>; Scott Shane, *Destroying C.I.A. Tapes Wasn't Opposed, Memos Say*, N.Y. Times, Feb. 23, 2010, available at <http://bit.ly/gqDFpR>; Mark Mazzetti, *C.I.A. Document Details Destruction of Tapes*, N.Y. Times, Apr. 16, 2010, available at <http://bit.ly/gdONND>; Evan Perez, *CIA Isn't Charged in Video Erasures*, Wall Street J., Nov. 10, 2010, available at <http://on.wsj.com/gt9JKj>; Larry Neumeister, *Judge Asks CIA to Show Tape-Delete Lesson Learned*, Associated Press, Jan. 14, 2011, available at <http://yhoo.it/eGz86n>.

The records requested are urgently needed to inform the public about federal government activity, particularly so because recent investigative reporting has disclosed the existence of additional CIA OIG reports regarding the detention and interrogation of terrorism suspects. *See, e.g.*, Adam Goldman & Matt Apuzzo, *AP IMPACT: At CIA, Grave Mistakes, Then Promotions*, Associated Press, Feb. 9, 2011, available at <http://abcn.ws/dFVrGo>. This has brought the topic of the CIA interrogation program to the forefront of the public debate once again. *See, e.g.*, Radio Interview by Robert Siegel with Matt Apuzzo, *All Things Considered: AP: Some CIA Officers Promoted After Huge Errors*, National Public Radio, Feb. 9, 2011, available at <http://n.pr/dIgBU6>; Mark Mazzetti, *Report: C.I.A.*

Agents Tied to Abuse Escape Punishment, N.Y. Times Blog, available at <http://nyti.ms/ig7wqm>; Massimo Calabresi, *AP Shames CIA*, Time, Feb. 9, 2011, available at <http://ti.me/hejvDO>; Patrick Appel, *Torturers: Failing Upwards*, The Atlantic, Feb. 9, 2011, available at <http://bit.ly/grrTGx>; Adam Serwer, *Qualified Impunity, Ctd.*, The American Prospect, Feb. 9, 2011, available at <http://bit.ly/flfd5I>. Public release of the reports now is critical as the DOJ determines whether to pursue criminal charges relating to the CIA's interrogation program. Peter Baker, *C.I.A. Chiefs Ask Obama to Stop Abuse Inquiry*, N.Y. Times, Sept. 18, 2009, available at <http://nyti.ms/eI7Onw>; Charlie Savage & Scott Shane, *Bush Aide Says Some C.I.A. Methods Unauthorized*, N.Y. Times, July 15, 2010, available at <http://nyti.ms/f8apjV>.

Application for Waiver or Limitation of Fees

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- A. *A waiver of search, review, and reproduction fees is warranted under 5 U.S.C. § 552(a)(4)(A)(iii) and 32 C.F.R. 1900.13(b)(2)*

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); *see also* 32 C.F.R. § 1900.13(b)(2).

Given the ongoing and widespread media attention to this issue, the records sought by the Request will significantly contribute to public understanding of the operations and activities of the government. *See* 32 C.F.R. § 1900.13(b)(2)(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 32 C.F.R. 1900.13(i)(2)*

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). 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); 32 C.F.R. § 1900.02(h)(3).

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 v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *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. V. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA).⁹ Indeed, the ACLU of Washington recently was held to be a “representative of the news media.” *Am. Civil Liberties Union of Wash. v. U.S. Dep’t of Justice*, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011).

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⁹ On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.” 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. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

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); 32 C.F.R. § 1900.21(d).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

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

Jameel Jaffer
Deputy Legal Director
American Civil Liberties Union
125 Broad Street
New York, NY 10004

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I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).



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