

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN CIVIL LIBERTIES UNION, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:10-cv-00436-RMC
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	

**STATEMENT OF MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE**

As required by Local Civil Rule 7(h)(1), and in support of the Motion for Summary Judgment, Defendant hereby makes the following statement of material facts as to which there is no genuine issue.

1. On January 13, 2010, Plaintiffs submitted requests under the Freedom of Information Act (“FOIA”) to the Central Intelligence Agency (“CIA”), Department of Defense (“DOD”), Department of State (“State”), and the Department of Justice (“DOJ”). See Declaration of Mary Ellen Cole (“Cole Decl.”), ECF No. 15, ¶ 7 & Exhibit A. Plaintiffs alleged that the CIA and the Armed Forces operated drones for the purpose of killing targeted individuals, Cole Decl. ¶ 7, requesting ten categories of information concerning “drone strikes”:

- a. The “legal basis in domestic, foreign and international law” for such drone strikes, including who may be targeted with this weapon system, where and why; Cole Decl., Exhibit A at 5-6.
- b. “[T]he selection of human targets for drone strikes and any limits on who may be targeted by a drone strike;” *id.* at 6
- c. “[C]ivilian casualties in drone strikes;” *id.* at 6–7

- d. The “assessment or evaluation of individual drone strikes after the fact;” *id.* at 7.
 - e. “[G]eographical or territorial limits on the use of UAVs to kill targeted individuals;” *id.*
 - f. The “number of drone strikes the have been executed for the purpose of killing human targets, the location of each such strike, and the agency of the government or branch of the military that undertook each such strike;” *id.*
 - g. The “number, identity, status, and affiliation of individuals killed in drone strikes;” *id.* at 7–8
 - h. “[W]ho may pilot UAVs, who may cause weapons to be fired from UAVs, or who may otherwise be involved in the operation of UAVs for the purpose of executing targeted killings;” *id.* at 8, and
 - i. The “training, supervision, oversight, or discipline of UAV operators and others involved in the decision to execute a targeted killing using a drone.” *Id.*
2. By letter dated March 9, 2010, the CIA issued a response to Plaintiffs’ request, stating that “[t]he fact of the existence or nonexistence of requested records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by section 6 of the CIA Act of 1949, as amended.” Cole Decl. ¶ 8 & Exhibit B.
 3. Plaintiffs administratively appealed the March 9 determination, *see* Cole Decl. ¶ 9 & Exhibit C, and while the appeal was pending, filed an Amended Complaint on June 1, 2010, adding the CIA as a co-defendant to their previously-filed lawsuit against DOD, State, and DOJ. *See* Amended Compl., ECF No. 11.
 4. The CIA and the ACLU filed cross-motions for partial summary judgment, and on September 9, 2011, this Court granted the CIA’s motion and denied the motion submitted by the ACLU. *See ACLU v. DOJ*, 808 F. Supp. 2d 280, 286–93, 298–301 (D.D.C. 2011).
 5. On October 26, 2011, the parties stipulated to dismiss the case as it pertained to Defendants DOD, DOJ, and State. *See* Stipulation of Dismissal, ECF No. 38.

6. The ACLU filed a notice of appeal on November 9, 2011. *See* Notice of Appeal, ECF No. 39.

7. While the ACLU's appeal was pending in this matter, the Executive Branch declassified and disclosed certain additional information about U.S. counterterrorism operations, including targeted lethal operations with drones. *See* First Declaration of Martha Lutz, ECF No. 49, ¶ 11.

8. The CIA moved the D.C. Circuit Court of Appeals to remand this case, which the Court denied on July 11, 2012. *See* Order, ECF No. 41.

9. On March 5, 2013, the D.C. Circuit reversed the decision of the District Court, holding that, given the recently disclosed information, the CIA's response to the ACLU's requests was no longer appropriate. *See ACLU v. CIA*, 710 F.3d 422 (D.C. Cir. 2013).

10. On remand, the CIA answered the ACLU's requests with a "no number no list" response and filed a second motion for summary judgment on August 9, 2013. *See* Def.'s Mot., ECF No. 49.

11. The CIA subsequently withdrew its second motion for summary judgment and "no number no list" response on July 18, 2014. *See* Status Report, ECF No. 62.

12. The parties negotiated the scope of a narrowed request, and the ACLU agreed to limit its demands to:

(1) "Any and all final legal memoranda (as well as the latest version of draft legal memoranda which were never finalized) concerning the U.S. Government's use of armed drones to carry out 'premeditated killings'"; and

(2) "Four types of records containing charts or compilations about U.S. Government strikes sufficient to show the identity of the intended targets, assessed number of people killed, dates, status of those killed, agencies involved, the location of each strike, and the identities of those killed, if known."

See Def's Mot., Second Declaration of Martha M. Lutz ("Second Lutz Decl.") ¶ 6. Plaintiffs agreed that the narrowed search excluded any OLC legal memoranda that are the subject of the New York litigation. *Id.* at ¶ 6 n.2

13. The CIA's search uncovered responsive legal memoranda and intelligence products. *See* Second Lutz Decl. ¶ 8–9. The CIA determined that one responsive document could be released in redacted form, which has already been provided to Plaintiffs in the New York case. *Id.* at ¶¶ 7, 22. The remaining documents are being withheld in full under FOIA Exemptions 1, 3, and 5. *Id.* at ¶ 7.

Dated: November 25, 2014

Respectfully submitted,

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