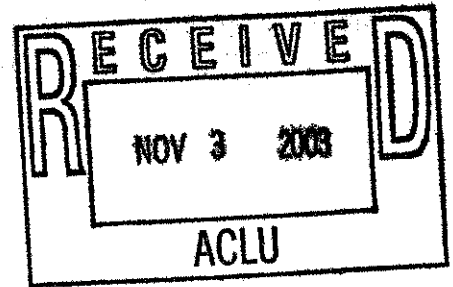




DEPARTMENT OF DEFENSE  
DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

30 OCT 2003  
Ref: 04-F-0064



Ms. Amrit Singh  
Staff Attorney  
American Civil Liberties Union Foundation  
125 Broad Street  
18<sup>th</sup> Floor  
New York, NY 10004

Dear Ms. Singh:

This is in further response to your October 7, 2003 Freedom of Information Act (FOIA) request.

Your requests to the various components of the Department of Defense will be centrally processed through this Directorate. Therefore, this response covers your requests submitted to those components as well as this Directorate.

You asked for expedited processing of your request. According to the FOIA and DoD Regulation 5400.7-R, in order for you to qualify for expedited processing, you must demonstrate a "**compelling need**" for the information. "Compelling need" means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

Under DoD Regulation 5400-7.R, information that is urgently needed is defined as having "a particular value that will be lost if it is not disseminated quickly." Ordinarily, the requested information should be a **breaking news** story of general public interest. I have determined that the subject matter of your request is not "breaking news". The documents you requested do not have a particular value that will be lost if the information is not disseminated quickly.

To qualify for expedited processing a requester must be primarily engaged in disseminating information. DoD 5400.7-R further defines an individual primarily engaged in disseminating information as "a person whose primary activity involves publishing or otherwise disseminating information to the public." Even though you mention in your request that the ACLU has the capability to disseminate information, you did not demonstrate that ACLU's primary activity is disseminating information.

Accordingly, your request for expedited processing does not meet the requirements for compelling need under the FOIA, and therefore placing your request ahead of all the other pending requests currently being processed within this Department is not appropriate.



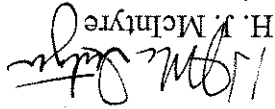
Your request will take many months to process and be very costly because many DoD components are involved and you provided no time frame for a document search. We estimate that, potentially, thousands of pages are responsive. The fees just for copying this material will total several hundred dollars. We are still evaluating your assumption that you are news media and your request for a fee waiver. Once those decisions are made, we will inform you.

For your information, DoD Regulation 5400.7-R stipulates that for a FOIA requester to qualify for a fee waiver, the responsive information should likely contribute significantly to the public understanding of the operations or activities of the Government. Decisions on fee waivers are made on a case-by-case basis, consistent with the following criteria. First, the disclosure of the information must be in the public interest, significantly contributing to public understanding of the operations or activities of the Government. Second, the disclosure of the information must not be primarily in the commercial interest of the requester. With respect to these criteria, a key element in determining the applicability of the fee waiver is the dissemination ability of the requester. A requester attempting to qualify for a fee waiver must demonstrate the capability and intention to disseminate the information in a manner that will be informative to the general public.

Please contact our office concerning limiting the scope of your request. Your point of contact is David Maier, (703) 697-1160.

You may appeal the above denial by offering specific information as justification to support expedited processing. Any such appeal should be postmarked within 60 days of this letter and sent to this office.

Sincerely,

  
H. J. McIntyre  
Director