



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

06 MAY 2009

Ref: 09-F-0890

Ms. Melissa Goodman
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

Dear Ms. Goodman:

This is an interim response to your April 23, 2009, Freedom of Information Act (FOIA) request submitted on behalf of the American Civil Liberties Union ("ACLU") and the American Civil Liberties Foundation (collectively "ACLU"). I note that you have also submitted your request to the Department of Justice, the Department of State and the Central Intelligence Agency. You have requested "records pertaining to the detention and treatment of prisoners held at the Bagram Theater Internment Facility at Bagram Airfield in Afghanistan ("Bagram") including records concerning the process afforded these prisoners to challenge their detention and designation as "enemy combatants." You have also requested representative of the news media status; a limitation of fees; expedited processing; a waiver of all processing fees; and you have made no commitment to pay processing fees. This Office received your request on April 27, 2009, and assigned it FOIA case number 09-F-0890.

You state that the "ACLU is "primarily engaged in disseminating information within the meaning of statute and regulations" and that "Dissemination of information to the public is a critical and substantial component of the ACLU's mission and work." According to your website, the "ACLU is our nation's guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country." Additionally, your website states that ACLU staff attorneys and thousands of volunteer attorneys handle countless civil liberties causes every year and that your legislative advocates are a constant presence on Capitol Hill and in state legislatures working on civil liberties issues. After carefully considering your request and your website, I find that the "ACLU" is not publishing or disseminating information as its primary activity. Accordingly, the ACLU does not qualify as a representative of the news media. Your request that fees associated with the processing of the request should be "limited to reasonable standard charges for document duplication", 32 C.F.R. § 286.28(e)(7), on the grounds that the ACLU qualifies as a representative of the news media, is denied.

I have determined that you should be placed in the "other" fee category, which affords you two hours of search time and 100 pages of duplication free of charge. Subsequent processing will be assessed at the established DoD fee rates of: clerical search time--\$20 per hour; professional search time--\$44 per hour; executive search time--\$75 per hour and document reproduction at \$0.15 per page.

You have requested expedited processing pursuant to 32 C.F.R. § 286.4(d)(3) based on a "compelling need" for these records 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." 32 C.F.R. § 286.4(d)(3)(ii). You state that the records sought relate to a "breaking news story of general public interest", 32 CFR § 286.4(d)(3)(ii)(A); specifically, the records sought relate to the U.S. Government's detention and treatment of suspected terrorists and alleged enemy combatants at Bagram as well as their transfer or rendition to Bagram from other countries. You state that the ACLU is "primarily engaged in disseminating information" within the meaning of the statute and regulations. 5 USC § 552(a)(6)(E)(v)(II) and 32 CFR 286.4(d)(3)(ii). That "Dissemination of information to the public is a critical and substantial component of the ACLU's mission and work." In addition, you also state that the records requested "are not sought for commercial use and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost".

You argue that a recent court ruling that some prisoners at Bagram can challenge their detention in U.S. courts has sparked widespread media interest in and public concern about the U.S. government's practices at Bagram; that public interest has also recently intensified significantly due to speculation about what the Obama administration will do with the people imprisoned at Bagram; that the Bagram detention facility has been the focus of widespread and consistent media attention and public concern for many years; that questions regarding the legal process afforded to suspected terrorists and alleged "enemy combatants held in U.S. custody has been the subject of continuous and sustained public interest; that there has been continued public interest in the treatment of suspected terrorists detained in the United States since December 2002; that the release of documents concerning the treatment of suspected terrorist by the U.S. has generated significant public interest and media attention and that the rendition of suspected terrorists is the subject of extensive public and media attention.. You support your contention that there has been widespread media attention by providing extensive examples of media coverage (approximately seven pages of examples of news articles dating back to 2004).

I have interpreted your request for expedited processing as a request based on compelling need. 32 C.F.R. § 286.4(d)(3)(ii). By requesting expedited processing you are asking that this Office place your request ahead of all other requests that were

received before your request. Requests will be taken out of chronological order based on the date of receipt and given expedited treatment only when it is determined that they involve: (1) circumstances in which lack of such treatment could reasonably be expected to pose an imminent threat to the life or safety of an individual; (2) an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; (3) the loss of substantial due process rights; or (4) humanitarian need. Compelling need means 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. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

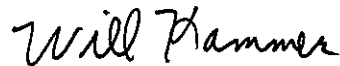
Requests for expedited processing are granted when the requester demonstrates a compelling and urgent need for the information and shows that the information has a particular value that would be lost if not processed on an expedited basis. See 32 C.F.R. § 286.4(d)(3)(ii)(A). After careful consideration of your request, I find that you have not demonstrated that the information will lose its value if not processed on an expedited basis. In addition, as you have demonstrated, the topics contained in your request have received broad and sustained media coverage, which belies your contention that the requested information relates to a breaking news story. For these reasons, your request for expedited processing is denied.

You have requested a waiver of document search, review, and duplication fees pursuant to 5 USC § 552(a)(4)(A)(iii) and 32 CFR § 286.28(d) on the grounds that disclosure of the requested records is in the public interest and because disclosure is "likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Decisions to waive or reduce fees are made on a case by case basis and cannot be made until a search for responsive records has been conducted; the volume and nature of any responsive records is determined and the contribution the records (those that are released) will add to the current level of public knowledge. Because you have not indicated a willingness to pay fees to support the processing of this request, we will only conduct a search for 2 hours (what you receive free) and your fee waiver decision will be based on the results of that search. If you wish a fee waiver determination to be made on the basis of all the records you have requested, please submit a written commitment as to the amount of fees you would be willing to pay in support of this request. Alternatively you may wish to narrow the focus of your request or prioritize the items of your request.

This Office processes requests on a first-in, first-out basis. At this time, we are unable to make a release determination on your request within the twenty-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. These unusual circumstances are: (a) the need to search for and collect records from a facility geographically separated from this Office and (b) the need to consult with one or more agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. For these reasons, your request has been placed in our complex processing queue and it will be worked in the order the request was received. As a matter of information, our current administrative workload is approximately 2,110 open requests.

If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense. To submit your appeal, you should write directly to the Defense Freedom of Information Policy Office, ATTN: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 09-F-0890, and should be clearly marked "Freedom of Information Act Appeal.

Sincerely,

A handwritten signature in black ink that reads "Will Kammer". The signature is written in a cursive, slightly slanted style.

Will Kammer
Chief