



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

OCT 31 2011

Ref: 12-F-0113

Mr. Nathan Freed Wessler
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

Dear Mr. Wessler:

This is an interim response to your October 19, 2011, twelve page Freedom of Information Act (FOIA) request submitted on behalf of the American Civil Liberties Union Foundation and the American Civil Liberties Union (collectively, the "ACLU"). Your request seeks, "...records pertaining to the legal authority and factual basis for the targeted killing of Anwar al Walkai ("al-Awlaki") and two other U.S. citizens by the United States Government." We note that you have also submitted this request to HQ USSOCOM and the Department of Justice. We received your request on October 26, 2011, and assigned it FOIA case number 12-F-0113.

You have also requested: (a) "Representative of the news media" fee status, 5 U.S.C. § 552(a)(4)(A)(ii), 32 C.F.R. § 286.28(e)(7); (b) a waiver or limitation of search, review and duplication fees, 5 U.S.C. § 552(a)(4)(A)(iii), 32 C.F.R. § 286.28(d); and (c) expedited processing on the basis of "compelling need" and urgent need, 5 U.S.C. § 552(a)(6)(E), 32 C.F.R. § 286.4(d)(3)(ii).

Concerning your request for representative of the news media status, in your request you explain that the ACLU is a membership organization that educates the public about civil liberties implications of pending and proposed legislation, lobbies legislators and mobilizes its members to lobby their legislators. That the ACLU 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. Additionally, you state that 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."

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." Although the ACLU may have the means to disseminate information to the public, your website does not support that the ACLU's function is publishing or broadcasting news to the public.

After carefully considering your letter in the context of the governing Departmental regulation found at 32 C.F.R. § 286 and reviewing information available concerning the American Civil Liberties Union and the ACLU Foundation on your website, I do not find that the ACLU would qualify as a representative of the news media.

Accordingly, I have determined that you should be placed in the "other" category for fee purposes. The "other" fee category affords you two hours of search time and 100 pages of duplication free of charge. Subsequent processing will be assessed at the established Department of Defense (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

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. Due to the scope of your request, I anticipate that a complete search for responsive records would exceed the two free hours that you are entitled to as an "other" category requester. I ask that you make a fee commitment to support a complete search. If you do not commit to pay fees, the search will be limited to two hours and will only be conducted within the Office of the Secretary of Defense and the Joint Staff. Please respond in writing, stating the amount of fees you are willing to pay to process this request beyond two hours.

You have requested expedited processing on the basis of "compelling need" and urgent need by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged Federal government activity. You argue that the records requested will help determine what the government's asserted legal basis for the targeted killing of al-Awlaki and others is, whether it complies with domestic and international law, whether the government seeks to avoid collateral killing of U.S. citizens not specifically targeted, and other matters that are essential in order for the public to make an informed judgment about the advisability of this tactic and the lawfulness of the government's conduct". However, as to qualifying as "breaking news," the information relates to continuing news stories, as you have illustrated on pages eight and nine of your request. In addition, I do not find that the information would lose its value if not processed on an expedited basis. Therefore, your request for expedited processing is denied.

We will be unable to respond to your request within the FOIA's statutory time period as there are unusual circumstances which impact our ability to quickly process your request. Those circumstances are: the need to search for and collect records from several organizations which are geographically separated from this Office and the need for consultation with one or more other 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. We will additionally not be able to respond to your request with an additional 10 days. Therefore, if you would like to receive an earlier response, you may wish to narrow the scope of your request. As a matter of information, our current administrative workload is approximately 1,700 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, DC 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 12-F-0113, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Paul J. Jacobsmeyer
Chief