



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street, 5th Floor
New York, New York 10007

November 30, 2004

By Federal Express

Lawrence S. Lustberg, Esq.
Gibbons, Del Deo, Dolan,
Griffinger & Vecchione, P.C.
One Riverfront Plaza
Newark, N.J. 07102

Re: ACLU, et al., v. Department of Defense, et al.,
No. 04 Civ. 4151 (AKH)

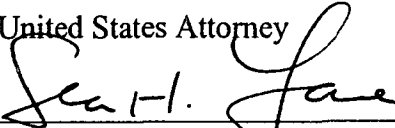
Dear Mr. Lustberg:

Enclosed please find approximately 300 pages of documents responsive to plaintiffs' Freedom of Information Act requests in the above-captioned case. These documents consist of closed investigative reports from the Department of the Navy Criminal Investigative Service ("NCIS"). Also enclosed is a cover letter from NCIS explaining its response.

Very truly yours,

DAVID N. KELLEY
United States Attorney

By:


SEAN H. LANE (SL-4898)
PETER M. SKINNER (PS-9745)
Assistant United States Attorneys
Telephone: (212) 637-2737

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
716 SICARD STREET SE SUITE 2000
WASHINGTON NAVY YARD DC 20388-5380

5720 F04-1069
SEROOLJF/4U0559

NOV 23 2001

Jennifer Ching, Esq.
Gibbons, Del Deo, Dolan,
Griffinger & Vecchione
One Riverfront Plaza
Newark, NJ 07102

Dear Ms. Ching:

This is in response to your Freedom of Information Act (FOIA) request, on behalf of the American Civil Liberties Union Foundation, for information concerning the treatment of individuals apprehended after September 11, 2001, and held in United States custody in military bases or detention facilities outside the United States ("Detainees").

Initially, a search for records originated/maintained by this Service located a total of fourteen reports of investigation and various agency records, i.e. electronic mail transmissions responsive to your request. Additional efforts produced one more closed investigative file not previously identified, making a total of fifteen investigative files. Of those investigations, nine remain in a pending status and are being denied in their entirety under the provisions of the FOIA, 5 U.S.C. § 552(b)(7)(A). The release of these records or information could reasonably be expected to interfere with ongoing enforcement proceedings.

Four investigative files that have been completed were located in our Records Department at Headquarters. Those files, including agent's notes and/or electronic mail transmissions, if any, pertaining to each investigation have been processed for release. All releasable information is provided at enclosures (1), (2), (3) and (4), along with an explanation of exemptions taken under 5 U.S.C. § 552(b)(2), (b)(6), (b)(7)(A), (b)(7)(C) and (b)(7)(E).

The remaining two investigative files have recently been completed by our field office in Bahrain and are being forwarded to Headquarters for final retention by the Records Department. Upon receipt of those files, we will process and make a supplemental release to you in the near future.

Some of the information contained in our report indexed as enclosure (1) was provided to us by the Office of the Secretary of Defense (OSD). Because we do not have the authority to release

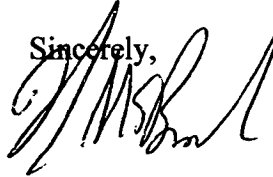
information other than our own, we are referring portions of our report to the OSD for a release determination and direct response to you.

Various electronic mail transmissions responsive to your request have been processed and are included in this release as enclosure (5).

As the official responsible for the partial denial of your request, I am advising you of your right to appeal this determination. Your appeal must be postmarked within 60 calendar days from the date of this letter. An appeal should be addressed to the Secretary of the Navy's designee: Office of the Judge Advocate General, (Code 14), 1322 Patterson Avenue, S.E., Suite 300, Washington Navy Yard, D.C. 20374-5066. The envelope and letter should bear the annotation "FOIA Appeal".

Falling below the automatic fee-waiver threshold, fees in this case have been waived.

Sincerely,



N. M. BROCK
LCDR, JAGC, USN
10 USC 936
10 USC 1044a

Encl:

- (1) CCN: 06OCT03-NWWH-0193-7HNA/C
- (2) CCN: 13JUN03-SDPE-0125-7XMA/C
- (3) CCN: 09JUL03-MWPE-0149-7XMA/C
- (4) CCN: 31MAR03-MEJB-0087-7XMA/C
- (5) NCIS Electronic Mail Transmissions

EXPLANATION OF EXEMPTIONS

FREEDOM OF INFORMATION ACT (5 U.S.C. §552):

(b)(1) protects from disclosure national security information concerning the national defense or foreign policy;

(b)(2) related solely to internal personnel rules and practices, the release of which would allow circumvention of a statute or rule;

(b)(3) specifically exempt from disclosure by statute;

(b)(4) trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source;

(b)(5) pre-decisional opinions and recommendations, inter-agency or intra-agency memoranda or letters that show foreseeable harm if released. Also, attorney-client privilege and attorney-work product are covered;

(b)(6) personnel and medical information, the release of which would result in a clearly unwarranted invasion of personal privacy;

(b)(7) investigatory records or information compiled for law enforcement purposes, which (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose investigative techniques, and/or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT (5 U.S.C. §552a):

(b) applies to information concerning other individuals which may not be released without their written consent;

(j)(2) (A) applies to information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data, (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual, or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws;

(k)(1) applies to information and material properly classified pursuant to an Executive Order in the interest of national defense or foreign policy;

(k)(5) applies to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, or access to classified information, release of which would disclose a confidential source; and

(k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service, the release of which would compromise the testing or examination process.

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