

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

AMERICAN CIVIL LIBERTIES UNION
125 Broad Street

Plaintiffs,

v.

DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001,

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the immediate processing and release of agency records requested by Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (collectively “ACLU”) from

Defendants U.S. Department of Justice (“DOJ”), U.S. Department of Defense (“DOD”), U.S. Department of State (“DOS”), and the Central Intelligence Agency (“CIA”).

2. Plaintiffs submitted a FOIA request (“the Request”) to the DOD, CIA, DOS, DOJ, and one specific component of the DOJ—the Office of Legal Counsel (“OLC”)—requesting the release of records relating to the use of unmanned aerial vehicles—commonly known as “drones”—for the purpose of targeting and killing individuals since September 11, 2001. The Request was submitted to all agencies on January 13, 2010.

3. Although more than four months have elapsed since the Request was filed, none of the defendant agencies has released any record in response to the Request. Nor has any defendant provided Plaintiffs with a processing schedule. The defendants have provided inconsistent responses to Plaintiffs’ application for expedited processing, for a fee limitation on the basis of Plaintiffs’ status as representatives of the news media, and for a fee waiver on the basis that disclosure is in the public interest.

4. Plaintiffs now ask this Court to order the Defendants immediately to process all records responsive to the Request and to enjoin the Defendants from charging the Plaintiffs fees for processing the Request.

Jurisdiction and Venue

5. This Court has both subject matter jurisdiction of the FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

6. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

7. Plaintiff American Civil Liberties Union is a nationwide, non-profit, nonpartisan organization with more than 500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that the American government acts in compliance with the Constitution and laws, including its international legal obligations. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights.

8. Plaintiff American Civil Liberties Union Foundation is a separate § 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties.

9. Defendant DOD is a Department of the Executive Branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

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Factual Background.

13. Since at least 2002, the United States government has used unmanned aerial vehicles to conduct “targeted killings” overseas. Many of the drone strikes have taken place on battlefields—for example, in Afghanistan. In 2002, however, the U.S. conducted a drone strike in Yemen that killed several individuals including a U.S. citizen. According to news reports, the frequency of drone strikes has increased significantly over the last few years, and in particular in the last year. Unofficial estimates of the number and rate of civilian casualties in drone strikes vary significantly, from a rate of less than 10% to a rate of more than 90%.

FOIA Request

14. On January 13, 2010, the ACLU submitted a FOIA Request for records relating to the use of unmanned aerial vehicles by the CIA and the Armed Forces for the purpose of killing targeted individuals. The Request was submitted to the designated FOIA offices of the DOD, CIA, DOS, DOJ, and OLC.

15. The Request seeks a variety of records relating to the use of unmanned aerial vehicles to conduct targeted killings, including the legal basis for the strikes and any legal limits on who may be targeted; where targeted drone strikes can occur; civilian casualties; which agencies or other non-governmental entities may be involved in conducting targeted killings; how the results of individual drone strikes are assessed after the fact; who may operate and direct targeted killing strikes; and how those involved in operating the program are supervised, overseen or disciplined.

16.

urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged Federal Government activity. 5

U.S.C. § 552(a)(6)(E)(v)(II); 22 C.F.R. § 171.12(b)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1900.34(c)(2). Plaintiffs also sought expedited processing on the grounds that the records sought relate to a “breaking news story of general public interest.” 22 C.F.R. § 171.12(b)(2)(i); 32 C.F.R. § 286.4(d)(3)(ii)(A); 28 C.F.R. § 16.5(d)(1)(iv) (providing for expedited processing in relation to a “matter of widespread and exceptional media interest in which there exist possible questions a (re) 0.2((s) - -0.2 (.R. §)] TJET Q 0.122)(E) 0.2 ()(c8ET[d-0.2 ((i) 0.2 (s)

The Government's Response to the Request

19. Although the Request has been pending for more than four months, no records have been produced. The DOD, DOJ, and DOJ have not provided any basis for withholding responsive records. The CIA has responded only by refusing to confirm or deny whether any responsive records exist.

20. By letter dated January 29, 2010 the DOD acknowledged receipt of the Request, but denied Plaintiffs' application for expedited processing and also denied Plaintiffs' application for waiver of search and review fees on the basis of "news media" requester status.

21. In the same letter the DOD deferred its decision on Plaintiffs' application for a "public interest" fee waiver, stating that it would decide the issue only after "a search for responsive records has been conducted and the volume and nature of responsive records have been determined" and that it would base its decision on the results of that search, rather than on the face of the Request. DOD indicated that it would only conduct a two-hour search for records for this purpose, unless Plaintiff agreed in advance to pay for additional search time.

22. On March 11, 2010, Plaintiffs notified the DOD that it objected to the proposed manner of determining Plaintiffs' entitlement to a public interest fee waiver. Plaintiffs nevertheless indicated that in the event the DOD refused to determine the fee waiver on the face of the Request, Plaintiffs were willing to commit \$200 to cover search fees, in order to permit the DOD to base its public interest fee waiver decision on the basis of more than two hours of searching. Plaintiffs reserved the right, however, to

suggest that at least three U.S. citizens are on a list of individuals who can be targeted and killed, using drones or other means.

Causes of Action

34. Defendants' failure to make a reasonable effort to search for records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(3), and Defendants' corresponding regulations.

35. Defendants' failure to promptly make available the records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

36. The failure of Defendants DOD and CIA to grant Plaintiffs' request for expedited processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order Defendants immediately to process all records responsive to the Request;
- B. Enjoin Defendants from charging Plaintiffs search, review, or duplication fees for the processing of the Request;
- C. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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