



April 17, 2012

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U.S. Department of State
Washington, D.C. 20522-8100

Re: REQUEST UNDER FREEDOM OF INFORMATION ACT/ Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request (“ Request”) pursuant to the Freedom of Information Act (“ FOIA”), 5 U.S.C. § 552, the Department of Defense (“ DOD”) implementing regulations, 32 C.F.R. § 286.1eq., the Department of State (“ DOS”) implementing regulations, 22 C.F.R. § 171.1eq., the Office of the Director of National Intelligence implementing regulations, 32 C.F.R § 1700.1eq., the President’s Memorandum of January 21, 2009, 74 Fed. Reg. 4683 (Jan. 26, 2009), and the Attorney General’s Memorandum of March 19, 2009, 74 Fed. Reg. 49,892 (Sept. 29, 2009). The Request is submitted by the American Civil Liberties Union Foundation and the American Civil Liberties Union (together, the “ ACLU” and the Center for Constitutional Rights (“ CCR” collectively, “ Requesters”).

This Request seeks records relating to a U.S. military strike on a community located in the al-Majalah region³ of the Abyan province of Yemen on December 17, 2009. According to news reports, U.S. cruise missiles loaded with cluster bombs struck the remote mountain community, targeting alleged “ militants,” but killing at least 21 children and 14 women. See Press Release, Amnesty International, Yemen: Images of Missile and Cluster Munitions Point to US Role in Fatal Attack (June 7, 2010), <http://bit.ly/ySbSkt>. Since the attack, unnamed U.S. government officials, media reports, and human rights organizations have revealed that the United States launched the missiles that struck al-Majalah. See e.g., Brian Ross et al., *Obama Ordered U.S. Military Strike on Yemen Terrorists*, ABC News, Dec. 18, 2009, <http://abcn.ws/waUUnH>; Michael Isikoff, *Yemen Cable Gives al-Qaida New ‘Recruiting’ Tool*, MSNBC News, Nov. 30, 2010, <http://on.msnbc.com/wcToea>. A leaked U.S. diplomatic cable, described a meeting on January 2, 2010, between General David Petraeus, then Commander of the U.S. Central Command, and Ali Abdullah Saleh, then president of Yemen, in which Saleh “ lamented” the use of cruise missiles as “ not very accurate,” but Yemeni officials agree

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that 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.

² The Center for Constitutional Rights is a non-profit, public interest, legal and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights.

³ Al-Majalah is a transliteration from Arabic, and has been represented with different English spellings, including “ al-Majala” and “ al-Ma’ jalah.” This Request seeks records using any spelling or transliteration of the region’s name.

to falsely claim responsibility for the al-Majalah attack. See Cable from U.S. Embassy Yemen, General Petraeus' Meeting with Saleh on Security Assistance, AQAP Strikes, Jan. 4, 2010 (originally published by WikiLeaks Nov. 30, 2010), available at <http://wikileaks.org/cable/2010/01/10SANAA4.html#>.

We seek information about the U.S. government's legal basis in domestic, foreign, and international law for the U.S. military strike on the al-Majalah community, information about the U.S. government's decision-making process and factual basis for ordering that strike, and information concerning any investigations or assessments of the strike by or at the behest of the U.S. government. We specifically seek records concerning the U.S. government's knowledge that civilians, including women and children, were present in the al-Majalah community, the measures taken to fulfill the United States' legal obligation to limit civilian casualties, and any measures taken by or at the behest of the United States to compensate victims' surviving family members for the loss of civilian life and property caused by the strike. Finally, we request information concerning U.S. government efforts to conceal its responsibility for the al-Majalah strike.

The Yemeni government initially claimed responsibility for the attack on the al-Majalah community. See Robert F. Worth, *Yemen Says Strikes Against Qaeda Bases Killed 34*, N.Y. Times, Dec. 17, 2009, <http://nyti.ms/z3dB5v>; Brian Ross et al., *Obama Ordered U.S. Military Strike on Yemen Terrorists*, ABC News, Dec. 18, 2009, <http://abcn.ws/waUUnH> (“A Yemeni official at the country's embassy in Washington insisted to ABC News Friday that the Thursday attacks were “planned and executed” by the Yemen government and police.”); Press Release, Embassy of the Republic of Yemen Office of Media & Public Affairs, Press Statement (Dec. 24, 2009), <http://bit.ly/ArypcH>; Cable from U.S. Embassy Yemen, ROYG Looks Ahead Following CT Operations, But Perhaps Not Far Enough, Dec. 21, 2009 (originally published by WikiLeaks Dec. 4, 2010), available at <http://wikileaks.org/cable/2009/12/09SANAA2251.html> (“ROYG officials continue to publicly maintain that the operation was conducted entirely by its forces, acknowledging U.S. support strictly in terms of intelligence sharing.”).

Beginning almost immediately after the strike, however, media reports quoted unnamed U.S. officials stating that the United States had launched the cruise missiles that struck al-Majalah. See, e.g., Brian Ross et al., *Obama Ordered U.S. Military Strike on Yemen Terrorists*, ABC News, Dec. 18, 2009, <http://abcn.ws/waUUnH> (“On orders from President Barack Obama, the U.S. military launched cruise missiles early Thursday against two suspected al-Qaeda sites in Yemen, administration officials told ABC News” U.S.); *Fired on al-Qaida Targets in Yemen*, NBC News, Dec. 18, 2009, <http://on.today.com/yDkGDd> (“U.S. Navy warships fired missiles at suspected al-Qaida training camps in Yemen, with that government's support, Pentagon sources tell NBC News.” U.S.); *Launched Missile Strikes on Al Qaeda in Yemen, Sources Say*, Fox News, Dec. 19, 2009, <http://fxn.ws/zlE8cJ> (“The U.S. has launched two missile strikes against Al Qaeda targets in Yemen, two U.S. officials told Fox News”); Bill Roggio, *Launches Cruise Missile Strikes Against al Qaeda in Yemen*, Long War J., Dec. 19, 2009, <http://bit.ly/5N0uQi> (“The US military carried out cruise missile attacks against two al Qaeda camps in Yemen, killing several terrorist commanders and fighters as well as

civilians.”). On November 30, 2010, Wikileaks released a State Department cable discussing a January 2010 meeting between General Petraeus and President Saleh, which confirmed that the United States was responsible for the strike on al-Majalah (this cable is discussed in further detail below).

continue saying the bombs are ours, not yours,” Saleh said, prompting Deputy Prime Minister Alimi to joke that he had just “lied” by telling Parliament that the bombs in Arhab, Abyan, and Shebwa were American-made but deployed by the ROYG.

Cable from U.S. Embassy Yemen, General Petraeus’

Meeting with Saleh on Security

www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused.

The ACLU website specifically includes features on information obtained through FOIA. See, for example: <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <http://www.aclu.org/torturefoia>; <http://www.aclu.org/olcmemos/>; <http://www.aclu.org/mappingthefbi/>; <http://www.aclu.org/national-security/bagram-foia>; <http://www.aclu.org/safefree/torture/csrtfoia.html>; <http://www.aclu.org/natsec/foia/search.html>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <http://www.aclu.org/patriotfoia>; www.aclu.org/spyfiles; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>; and <http://www.aclu.org/exclusion>. For example, the ACLU's "Torture FOIA" webpage, <http://www.aclu.org/torturefoia>, contains commentary about the ACLU's FOIA request for documents related to the treatment of detainees, press releases, analysis of the FOIA documents disclosed, and an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA, and advises that the ACLU in collaboration with Columbia University Press has published a book about the documents obtained through the FOIA. Similarly, the ACLU's webpage about the Office of Legal Counsel ("OLC") torture memos it obtained through FOIA, http://www.aclu.org/safefree/general/olc_memos.html, contains commentary and analysis of the memos; an original comprehensive chart about OLC memos (see below); links to web features created by ProPublica— an independent, non-profit, investigative-journalism organization— based on information gathering, research, and analysis conducted by the ACLU; and ACLU videos created about the memos. See *Nat'l Sec. Archive*, 880 F.2d at 1386 (finding the National Security Archive to be a news-media requester because it intended to publish "document sets" whereby its staff would "cull those of particular interest . . . supplement the chosen documents with 'detailed cross-referenced indices, other finding aids, and a sophisticated computerized retrieval system' in order to make it

Air Attacks on al-Qaida Fighters Risk Mobilising Hostile Tribes, Guardian, Jan. 2, 2010,
<http://bit.ly/xZInW3>; Lee Keath,

Nation, Dec. 9, 2010, <http://bit.ly/yBYvJO>; James Traub, *The Sunshine Policy*, Foreign Policy, Dec. 10, 2010, <http://bit.ly/hKL10K>; Eric Schmitt, *U.S. Plays Down Tensions With Yemen*, N.Y. Times, Dec. 17, 2010, <http://nyti.ms/eEHesd>.

The ability to engage in meaningful public discussion about the United States' targeting of individuals suspected of terrorism for lethal attack in Yemen is impeded by the lack of adequate information about the legal and factual underpinnings of U.S. actions, and the measures taken to minimize civilian casualties. Interest in the United States' escalated use of military and intelligence agencies to conduct killings in Yemen

Any information disclosed by the Requesters as a result of this FOIA request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress' legislative intent in amending FOIA. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation and internal quotations omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, § 2 (Dec. 31, 2007) (finding that "disclosure, not secrecy, is the dominant objective of the Act," but that "in practice, the Freedom of Information Act has not always lived up to the ideals of the Act," butS126 571 [(A)2.0(n)(G)2.0(a)

