

# GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

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May 25, 2004

## VIA FACSIMILE AND OVERNIGHT DELIVERY

H.J. McIntyre  
Director  
Directorate for Freedom of Information and  
Security Review  
Department of Defense  
Room 2C757  
Washington, D.C. 20301-1155

### **Re: Freedom of Information Act Request**

Dear Director McIntyre:

This letter constitutes a request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and corresponding regulations. The request is submitted on behalf of the following organizations (collectively, "Requesters"): American Civil Liberties Union ("ACLU"), Center for Constitutional Rights ("CCR"), Physicians for Human Rights ("PHR"), Veterans for Commons Sense ("VCS") and Veterans for Peace ("VFP").

#### **1. Records Sought**

Requesters seek records 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"). Over the past months, it has become clear that many Detainees have been subjected to illegal interrogation, physical abuse, and even torture at the hands of United States personnel. In order to shed light on the policies and practices of the United States government with respect to Detainees, Requesters seek the following records:

- a) Records concerning the treatment of Detainees in United States custody;
- b) Records concerning the deaths of Detainees in United States custody; and

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- c) Records related to the rendition of Detainees and other individuals to foreign powers known to employ torture or illegal interrogation techniques.

To assist you in your search for records, Requesters have attached an appendix listing some of the records that fall within the scope of this request. *See* Appendix A. The list is meant only to provide guidance and is not exhaustive.

As you know, Requesters previously sought records from the Department of Defense (“Department”) relating to the treatment of Detainees through a FOIA request filed on October 7, 2003 (“First Request”).<sup>1</sup> The instant request seeks, in addition to all of the records sought by the First Request, records that may have been generated or obtained since October 7, 2003.

## **2. Requesters Are Entitled To Expedited Processing.**

Expedited processing is warranted where there is a “compelling need” by organizations “primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.” 32 C.F.R. § 286.4(d)(3)(ii). Each of the Requesters is “primarily engaged in disseminating information,” *see* Appendix C (description of Requesters’ media and publication activities), and the records in question involve the Department’s actual and alleged treatment of Detainees. A requester may also demonstrate compelling need by a showing that the information sought is “urgently needed,” 32 C.F.R. § 286.4(d)(3)(ii), and involves a “breaking news story of general public interest.” *Id.* The instant request clearly meets these standards. *See, e.g.,* Douglas Jehl and Eric Schmitt, *CIA Bid to Keep Some Detainees Off Abu Ghraib Roll Worries Officials*, NYTimes.Com, May 25, 2004; John Barry *et al.*, *The Roots of Torture: The Road to Abu Ghraib Began After 9/11, When Washington Wrote New Rules to Fight a New Kind of War*, Newsweek.com, May 24, 2004 (tracing news coverage uncovering abuse of Detainees in Iraq and Afghanistan); Douglas Jehl and Eric Shmitt, *Dogs and Other Harsh Tactics Linked to Military Intelligence*, NYTimes.com, May 22, 2004; Scott Higham, *et al.*, *Prison Visits By General Reported in Hearing*, WashingtonPost.com, May 23, 2004; Bradley Graham, *Number of Army Probes of Detainee Deaths Rises to 33*, WashingtonPost.com, May 22, 2004; Douglas Jehl and Eric Schmitt, *Afghan Policies On Questioning Taken to Iraq: Harsher Interrogation Practices are Cited*, NYTimes.com, May 21, 2004; David Rose and Gaby Hinsliff, *U.S. Guards ‘Filmed Beatings’ at Terror Camp*, Observer.Guardian.uk.com, May 16, 2004 (British military interrogator posted to Abu Ghraib “made an official complaint to U.S. authorities” regarding the maltreatment of Detainees “as long ago as last March”); R. Jeffrey Smith, *Knowledge of Abusive Tactics May Go Higher*, WashingtonPost.com, May 16, 2004; Charlie Savage, *As Threats to U.S. Changed, So Did Prison Tactics*, BostonGlobe.com, May 16, 2004 (military whistleblower turned in photographs of abuse of prisoners to officials in Abu

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<sup>1</sup> The previous request was filed by the Department of Defense under Request No. 04-F-0064.

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Ghraib in January, 2004); Douglas Jehl, *Earlier Jail Seen as Incubator for Abuses in Iraq*, NYTimes.com, May 15, 2004 (International Committee for the Red Cross report citing abuse of prisoners submitted to government in February, 2004); Mitch Frank, *A Pattern of Abuse?*, Time.com, May 9, 2004 (“For two years reports have piled up about ‘stress and duress’ techniques military and CIA officers are using on al-Qaeda and Iraqi captives”); Dana Priest and Joe Stephens, *Pentagon Approved Tougher Interrogations*, WashingtonPost.com, May 9, 2004. *See also* Appendix A-B (further listing of news articles).

Expedited processing is also warranted because of the “imminent loss of substantial due process rights and humanitarian need.” 32 C.F.R. § 286.4(d)(3)(iv). In light of the international interest in the practices and policies in question, disclosure of the information requested “will promote the welfare and interests of mankind,” *id.*, by ensuring that Detainees in U.S. custody or rendered to foreign authorities known for employing illegal interrogation tactics are not subject to further torture and abuse. Failure to disclose this information on a timely basis would “reasonably be expected to pose an imminent threat to the life of physical safety” of Detainees, 32 C.F.R. § 286.4(d)(3)(i), and expedited processing is therefore appropriate in this case.

### 3. Requesters Are Entitled To A Fee Waiver.

Requesters are entitled to a fee waiver because disclosure of the requested records is in the public interest and “likely to contribute significantly to the public understanding of the activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii). As indicated above and in the attached Appendices, innumerable media reports reflect the extraordinary public interest in the records sought. All of the Requesters are not-for-profit organizations and this request is not “primarily in the commercial interest” of any Requester; *id.*; *see also* Appendix B (description of individual organizations).

Requesters are entitled to a statutory limitation on fees because the records are not sought for commercial use and, as described in the attached appendices, each of the requesters is a “representative of the news media” within the meaning of the statute and relevant regulations. *See* Appendix C (description of Requesters’ media and publication activities). Requesters seek records for purposes of publication and to further non-commercial interests that will significantly contribute to the public understanding of government conduct.

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If the request is denied in whole or part, Requesters ask that the Department justify all deletions by reference to specific exemptions of FOIA. Requesters expect the Department to release all segregable portions of otherwise exempt material, and reserve the right to appeal a

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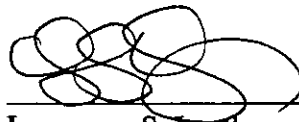
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decision to withhold any information or to deny the within applications for expedited processing and waiver of fees.

Thank you for your consideration of this request. Kindly direct all future responses to Jennifer Ching, Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., One Riverfront Plaza, Newark, New Jersey, telephone (973) 596-4721.

Under penalty of perjury, I hereby affirm that the foregoing and attached Appendices are true and correct to the best of my knowledge and belief.

Signed by:



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cc: Leonard S. Rubenstein  
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Wilson Powell  
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Charles Sheehan Miles  
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