

American Civil Liberties Union and the American

COMPLAINT

v.



Plaintiffs,

vs. [REDACTED] the release of records related to the U.S. government's

U.S. Department of Justice, including its component
the Office of Legal Counsel, U.S. Department of
Defense, including its component U.S. Special
Operations Command, and Central Intelligence
Agency

Defendants

COMPLAINT FOR INJUNCTIVE RELIEF

1.

, citizens overseas.

Media

Defense, have discussed publicly the use of drones and the targeted killing of U.S. citizens.

4. For example, in a recent interview, President Barack Obama, referring to the use of drones by the United States to carry out targeted killings, said that "this is a [redacted] list of active terrorists . . ."

[redacted] the decision was made to order the

Former Central Intelligence Agency Director and current Secretary of Defense

obviously reviews these cases and reviews the legal justification and in the end

targeted killing of a U.S. citizen, said that "the President of the United States"

The Request sought records related to the factual and legal bases for the targeted killing of U.S. citizens.

7.

.S.

and the

The Defendants have responded inconsistently to the ACLU's request

Venue

§ 552(a)(4)(B), (a)(6)(E)(iii),

11. Venue is premised on the place of business of the ACLU and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

12. 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

seeks to ensure that the

13.

One subcomponent

U.S. government acts in compliance with the Constitution and laws, including international legal obligations. The ACLU is also committed to principles of transparency and accountability in government, and

American public is informed about the conduct of its government in matters that

15. Defendant DOD is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). One subcomponent of DOD is USSOCOM from which the ACTI has also requested records

Defendant CIA is a dep

Factual Background

ent has carried out targeted killings overseas

. In the fall of 2011, the media reported on the existence of a legal

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and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

17. Since at least 2002, the U.S. governm

of the individuals subjected to targeted

22.

and indicated that al-Awlaki was the intended target of the September 30 attack.

The President described the killing of al-Awlaki as a "success" that is a "tribute to

23.

24.

Colorado, was killed in a JSOC drone attack in southeastern Yemen.

and Abdulrahman al-Awlaki were killed "collaterally" or were targeted
Abdulrahman was sixteen years old.

Statements by President Barack Obama confirmed the death of Anwar al-Awlaki

25.

our intelligence community." On October 25, 2011, the President, describing the

Abdulrahman al-Awlaki said "we were able to remove him from the field"

attorney general who headed the OLC—have urged that the OLC memo or the legal reasoning it contains be released to the public.

26. The former legal adviser to the U.S. Department of State in the Bush Administration, John B. Bellinger III, said that it is “important to domestic audiences and international audiences for the administration to explain how the targeting and killing of an American complies with applicable constitutional standards.”
27. Peter Hoekstra, former U.S. representative and former chair of the House Select Committee on Intelligence, has said that “the targeting of Americans—it is a very sensitive issue, but again there’s been more information in the public domain than what has been shared with this committee. There is no clarity. Where is the legal framework?”
28. Senator Carl Levin, chair of the Senate Armed Services Committee has said, “I would urge them to release the memo. I don’t see any reason why they shouldn’t.”

29. Senator Dianne Feinstein, chair of the Senate Select Committee on Intelligence

authorities” because “for transparency and to maintain public support of secret

The ACLU's FOIA Request

30. On October 19, 2011, the ACLU submitted a FOIA request for records related to the "legal authority and factual basis for the targeted killing" of al-Awlaki, Abdulrahman, and Khan. The Request was submitted to the designated FOIA offices of the DOJ, DOD, CIA, USSOCOM, and OLC.

31. ~~21. The Requester seeks the records because the information is urgently needed by an organization~~

these records because the information is urgently needed by an organization primarily engaged in disseminating information in order to inform the public

a "breaking news

story of general public interest." 32 C.F.R.

C.F.R.

that disclosure of the requested records is in the public interest because it is

The Government's Response to the FOIA Request

33. On October 27, 2011, the DOJ Office of Information Policy granted the ACLU's

No further response or correspondence has been received from the DOJ. No

On October 31,

extended the time limit to respond to the Request. The DOD also denied the ACLU's request for a limitation of fees based on its status as a representative of the news media and failed to address the request for a public-interest fee waiver.

36. By letter dated December 16, 2011, the ACLU timely filed an administrative appeal of the DOD's determinations. The ACLU urged the appellate authority to expedite processing and grant the requested fee waivers.

On December 27, 2011, the DOD indicated that it was unable to process the administrative appeal within the statutory timeframe. No further response or records responsive to the Request have been received from the DOD. No records responsive to the Request within "unusual circumstances" and informed the ACLU that it would not be able to respond to the Request within the statutory deadline. The DOJ deferred determination of whether the ACLU qualified for a fee waiver.

34.

records responsive to the Request have been released by the DOJ.

38. By letter dated November 17, 2011, the CIA stated that the Request “is denied pursuant to FOIA exemptions (b)(1) and (b)(3).” The CIA stated that the “fact of the existence or nonexistence of requested records is currently and properly classified” and protected from disclosure.

39. By letter dated December 6, 2011, the ACLU timely filed an administrative appeal of the CIA’s determination. The ACLU urged the appellate authority to reconsider its denial of the Request on the basis that the denial was overbroad and impermissible under FOIA.

40. By letter dated January 18, 2012, the CIA indicated that it would be unable to

On November 7, 2011, USSOCOM denied the ACLU’s request for expedited

Request fell within “unusual circumstances,” and

extended the time limit to respond to the Request.

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43.

processing FOIA appeals for DOD component agencies, including USSOCOM,

...and that it will be unable to process the administrative appeal within the
statutory timeframe. No records responsive to the Request have been released by

44.

FOIA exemptions (b)(1),

ISSOCOM,

By letter dated November 11, 2011, the OLC denied the Request pursuant to

(b)(3), and (b)(5). The OLC stated that it “neither

By letter dated December 6, 2011, the ACLU timely filed an administrative

appeal of the OLC’s

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

50. The DOD's failure to grant the ACLU's request for a limitation of fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II) and the DOD's corresponding regulations.

~~The failure of the DOD to grant the ACLU's request for expedited processing, review, and duplication fees violates the FOIA~~

Prayer for Relief

D. Grant such other relief as the Court may deem just and proper.

Dated: February 1, 2012

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