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September 14, 2010

Defense Freedom of Information Policy Office
ATTN: Mr. James Hogan
1155 Defense Pentagon
Washington, DC 20101-1155

Re: **FREEDOM OF INFORMATION ACT APPEAL – Reference No. 10-F-058**

Dear Agency Release Panel Members,

On June 30, 2010, the Center for Constitutional Rights (“CCR”) filed a request with the United States European Command (“USEUCOM”) for information under the Freedom of Information Act (“FOIA”) inter alia “seeking all records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, that reflect, relate or refer to... the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-boat flotilla headed to Gaza with humanitarian supplies, including the U.S.-registered ‘*Challenger I*’ and the Comoros-registered ‘*Mavi Marmara*,’ which was forcefully intercepted by the Israeli Defense Forces, resulting in the death of 9 passengers on board the *Mavi Marmara* including one U.S. citizen and the injury of many more.” See Exhibit A. (“Request”).

In a letter from Naomi Ludan dated July 16, 2010 and postmarked July 21, 2010, USEUCOM issued an interim response, denying our request for a fee waiver as a representative of the news media and our request for expedited processing. See Exhibit B. (“USEUCOM Response”).

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), CCR hereby appeals the DOD’s denials of our requests for a fee waiver as a representative of the news media,¹ and expedited processing.²

¹ USEUCOM indicated in its interim response that it will make a decision on the waiver of fees under the “public interest” exception after a search for responsive records is conducted and the volume and nature of the records is determined. The FOIA officer, Naomi Ludan, has contacted CCR by e-mail on August 24, 2010 (after efforts to reach us by telephone) and indicated that she has received over 100 pages of information to date; CCR has contacted Ms. Ludan via phone message and fax in an effort to determine whether it has received a fee waiver under the public interest provision. As CCR has not learned the outcome of that determination to date, it is proceeding with its appeal regarding denial of fee waiver for searches as a representative of the news media. To date, CCR has not received any records in response to its Request.

² The 60-day deadline for this appeal would be September 14, 2010; while dated July 16, 2010, the letter was not mailed to CCR until July 21, 2010, as it demonstrated by the post-mark on the envelope attached as Exhibit C. We

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Fee Waiver

CCR qualifies for a fee waiver on the grounds that the information it seeks “is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s],” 5 U.S.C. § 552(a)(4)(A)(iii) as well as because CCR is a representative of the news media, as it engaged in the dissemination of information to the public as one of its primary activities. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II). As demonstrated herein, it was erroneous to conclude that CCR does not qualify for the waiver of search fees as a representative of the news media. We note that the determination has not yet been made of whether we qualify for a fee waiver because disclosure of the requested records is in the public interest and “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s],” but based on the Request and the information provided below, we have established that we qualify under this provision as well.

1. CCR is entitled to a fee waiver as an organization engaged in the dissemination of information to the public.

CCR is entitled to a fee waiver as an organization engaged in the dissemination of information to the public as it is a “representative of the news media.” 5 U.S.C. §552(a)(4)(A)(ii)(II). A “representative of the news media” either means any person or entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience,” 5 U.S.C. §552(a)(4)(A)(ii) or “refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” 32 CFR 286.28 (e)(7)(i). 5 U.S.C. §552(a)(4)(A)(ii) explicitly recognizes “electronic dissemination” as a method of delivery of news. In defining and describing a representative of the news media, there is no explicit statutory or regulatory requirement that an organization “must demonstrate that [its] primary activity involves publishing or otherwise disseminating information to the public” to qualify as a representative of the news media. *C.f.*, USEUCOM Response.

A public interest organization engaged in litigation and advocacy can qualify as a “representative of the news media.” In *Electronic Privacy Info. Center v. DOD*, 241 F Supp. 2d 5, 11 (D.D.C. 2003), the court determined that the Electronic Privacy Information Center (EPIC), a public interest research organization, was a representative of the news media for the purposes of a fee waiver. In making this determination, the critical question was whether the entity in question “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.” *EPIC*, 241 F. Supp. 2d at 11.

are responding to this appeal within the former deadline, but note that the deadline should run from the date that USEUCOM mailed the letter (i.e., September 19, 2010).

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CCR regularly gathers information of potential interest to a segment of the public and publishes in-depth reports on critical issues that affect our litigation and has authored reports on subjects such as Guantánamo, extraordinary rendition, and resettlement issues and concerns of ex-detainees, among others.³ In addition to publishing detailed reports, we inform the news media, issue press releases, publicize our concerns in leaflets, pamphlets, posters, advertisements, newsletters, know-your-rights handbooks and websites including through a “Facebook” page and a Twitter account, raise awareness by mounting public action campaigns, and host and participate in events to inform the public of civil and international human rights issues. CCR also disseminates information through its heavily subscribed website, www.ccrjustice.org, and operates a listserv of over 50,000 members that issues “action alerts” that notify supporters and the general public about developments and operations pertaining to CCR’s work. The website addresses civil and human rights issues in depth, and serves as an invaluable resource to disseminate information to the public. In relation to the subject-matter of this request, CCR has issued various press releases and open letters on its web-site,⁴ its President published an op-ed,⁵ and we immediately set up a web-page on the Gaza Flotilla Freedom of Information Act requests, including the Request at issue.⁶ CCR is preparing an in-depth case page dedicated to the Gaza flotilla, including a legal report, and will include all responses and follow-up letters between the agencies and CCR, assembling the information gathered in such a manner as to render it user-friendly and informative. Such a site has been set up in regard to other FOIA requests we have filed.⁷

Even if a fee waiver required that one of CCR’s primary activities is dissemination of information to the public, CCR meets this requirement as well. CCR’s mission fundamentally depends on disseminating information to the public.⁸ As a not-for-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, one of CCR’s primary activities is informing the public about civil and international human rights through the numerous mechanisms and forms described above.

Courts have determined that entities similar to CCR are primarily engaged in dissemination of information. *See, e.g., EPIC*, 241 F. Supp. 2d at 11 (plaintiff, a non-profit educational institution, who published seven books and issued a bi-weekly electronic newsletter

³ Available at www.ccrjustice.org/reports.

⁴ See <http://www.ccrjustice.org/newsroom/press-releases/ccr-demands-return-property-and-evidence-seized-israel-flotilla>; <http://www.ccrjustice.org/newsroom/press-releases/ngos-gathered-kampala-call-end-impunity-crisis-following-israeli-attack-aid->; and <http://www.ccrjustice.org/newsroom/press-releases/ccr-condemns-israel%2526%2523039%3Bs-killing-freedom-flotilla-participants>.

⁵ “U.S. should not condone Israeli attack,” Michael Ratner, June 15, 2010, available at: <http://progressivemediaproject.org/story/us-should-not-condone-israeli-attack>.

⁶ See <http://www.ccrjustice.org/newsroom/press-releases/rights-group-files-foia-requests-regarding-israel-attack-flotilla-delivering-aid-gaza>.

⁷ See, e.g., www.ccrjustice.org/GhostFOIA (FOIA requests related to ghost detention and extraordinary rendition); www.ccrjustice.org/securecommunities (FOIA requests related to the “Secure Communities” ICE program).

⁸ Available at www.ccrjustice.org/missionhistory and www.ccrjustice.org/movement-support.

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for eight years and nothing else, qualified as a representative of the news media). *See also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n. 5 (D.D.C. 2004). A fee waiver because CCR is a representative of the news media would also satisfy case law and Congressional intent. (See Senator Leahy's remarks: "any person or organization which regularly publishes or disseminates information to the public. . . should qualify for waivers as a 'representative of the news media.'" *National Sec. Archive v. DOD*, 880 F.2d 1381, 1386 (D.C. Cir. 1989); 132 Cong.Rec. S14298 (daily ed. Sept. 30, 1986).

Given the context of CCR's wide range of activities engaged in disseminating and publishing information through the methods and mechanisms described above, the organization qualifies as a representative of the news media and is "primarily engaged in disseminating information."

2. CCR qualifies for a fee waiver on the grounds that disclosure is in the public interest and will contribute to the public understanding of government activities.

Although EUCOM has not yet ruled on our request for fee waiver pursuant to the public interest provision found in 5 U.S.C. § 552(a)(4)(A)(iii), we reiterate that CCR qualifies for a fee waiver under this provision for all the reasons stated herein and stated in the Request. Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's 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 omitted).

As the numerous media stories and diplomatic activities demonstrate, the public has a significant interest in knowing about the governments activities in relation to the Gaza-bound flotilla, which a response to the Request from USEUCOM would contribute to because of *inter alia* its mission and its Area of Responsibility, including but not limited to the information related to the government's protection of U.S. passengers in international waters, particularly passengers travelling on U.S.-registered vessels; the U.S. governments interactions with other governments and entities in relation to investigations into the death of U.S. citizen Furkhan Doğan, the attack on the flotilla, the injury of passengers, the taking of personal property and the preservation of evidence related to the attack; U.S. policy towards the blockade of Gaza and humanitarian missions to Gaza; and generally, the manner in which the federal government prepared for, and responded to, information regarding a flotilla destined for Gaza in May 2010, including a possible response to, rerouting of, or attack on that flotilla.

3. Alternatively, CCR is entitled to a limitation of processing fees.

Alternatively, if USEUCOM does not reverse its denial of CCR's fee waiver request on the basis of its status as a representative of the news media or pursuant to the public interest provision, CCR is entitled to a limitation of processing fees pursuant to 5 U.S.C. §

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552(a)(4)(A)(ii)(II) (“[f]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by...a representative of the news media”) and 32 C.F.R. § 286.28(e)(7) (“search and review fees shall be limited to duplication fees for the first 100 pages for “representatives of the news media”). CCR is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). For all the reasons set forth herein, CCR fits within this statutory and regulatory mandate, and fees associated with the processing of this Request should be limited accordingly.

Expedited Processing

CCR is also entitled to expedited processing of the Request. As set forth in the Request, there is a compelling and urgent need to inform the public of the policies, procedures, guidelines, action, responses or instructions given by the federal government to agencies, departments or divisions, about preparation, participation or reaction to attacks on U.S.- registered boats in international waters, to vessels with U.S. citizens onboard, or to vessels with civilians, including but not limited to civilians transporting humanitarian supplies. This Request is urgent in light of on-going inquiries and discussions regarding the attack, the death of U.S. citizen Furkhan Doğan, and the detention, injury and taking of the possessions of US passengers which still have not been returned.⁹ This request is urgent in that U.S. citizens or U.S.-registered vessels must know the support, protection, reactions and any actions or inactions they can expect from the United States government in the event that they are subject to attack, detention or deportation. In light of reports that U.S. citizens are considering travelling by ship on similar missions to that of May 2010, which came under attack by the IDF,¹⁰ such information is urgent, and there is a compelling need to receive responsive information from USEUCOM.¹¹

⁹ See, e.g., “Israeli Government Refuses to Secure Criminal Evidence,” Ann Wright, Aug. 22, 2010, available at: <http://www.commondreams.org/view/2010/08/22-5>. There exists deep concern and a lack of information about what steps the US had taken to ensure the protection of US citizens, and has taken to ensure that the death of a US citizen is being properly, impartially and thoroughly investigated in a timely manner; and lack of return of property by US passengers and concern about the status of that property including the electronic equipment that we believe likely contains information about the flotilla and the attack relevant to any investigations, and need to determine whether such evidence has been preserved, tampered with or destroyed, which, in addition to being in the public interest to know, could also impact the due process rights of those US passengers on board the boats and others, including to bring actions to remedy the damage they have suffered.

¹⁰ See, e.g., “Americans organizing ship to Gaza,” July 21, 2010, JTA, available at: http://www.jta.org/news/article/2010/07/21/2740136/amreicans-organize-ship-to-join-flotilla-to-gaza?utm_source=twitterfeed&utm_medium=twitter; Robert Mackey, “American Activists Plan Gaza Flotilla Ship Named for Obama Book,” New York Times, July 20, 2010, available at: <http://thelede.blogs.nytimes.com/2010/07/20/american-activists-plan-gaza-flotilla-ship-named-for-obama-book/>. See also www.ustogaza.org

¹¹ In particular, due to its Area of Responsibility and mission, and indeed as already confirmed by FOIA officer Naomi Ludan, it is government agency that has information related to the Gaza-bound flotilla.

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Further, in light of pending international investigations, whether criminal, civil or disciplinary in nature, and in light of the U.S. position, involvement or assistance in relation to such an investigation,¹² there is an urgent need to inform the public of the policies, procedures, requests, demands or any other responses, actions or inactions, the United States has made to the government of Israel to safeguard evidence gathered in relation to the May 31, 2010 attack on the flotilla, including but not limited to the preservation of property in its original form seized by the government of Israel including but not limited to computers, cameras, cell phones, personal devices that have memory chips, hard drives or other such devices, and to ensure that evidence has not been destroyed, tampered with, altered or otherwise rendered suspect or unusable in subsequent investigatory proceedings. In light of the announced Israeli investigation and the commencement of work by that investigation commission,¹³ this matter is urgent.

The request clearly relates to a current news story of general public interest and a subject of ongoing media attention. From the time of the attack on May 31, 2010 and continuing through the present, nearly every major print, broadcast and web-based media outlet has covered the attack on the flotilla. Yet, significant questions remain unanswered about the U.S. knowledge of, role in, and response to the attack. This FOIA Request will help satisfy the urgent need to have some of those questions answered.

As stated above, one of CCR's primary activities is disseminating information, and therefore, CCR qualifies for expedited processing under 5 U.S.C. § 552(a)(6)(E)(v)(II). Courts have consistently recognized that ongoing media attention to an issue is an indicator of urgency. *See Al-Fayed v. CIA*, 254 F.3d 300, 308 (D.C. Cir. 2001) (recognizing the fact that whether an issue "is the subject of current news coverage" is an important factor in deciding whether compelling need exists); *ACLU of Northern California v. DOD*, 2006 WL 1469418, at 7 (N.D. Cal. 2006) ("If anything, extensive media interest usually is a fact *supporting* not *negating* urgency in the processing of FOIA request") (emphasis in original); *ACLU v. Department of Justice*, 321 F. Supp. 2d 24, 29-31 (D.D.C. 2004) (newspaper articles reflecting public concern a factor supporting finding of urgency).

However, even if you find that dissemination of information is not one of CCR's primary activities, CCR still is entitled to expedited processing because of humanitarian need. "Humanitarian need means that disclosing the information will promote the welfare and interest of mankind." 32 C.R.F. § 286.4(d)(3)(iv). U.S. citizens or U.S.-registered vessels must know the support, protection, reactions and any actions or inactions they can expect from the United States

¹² Statement by the President of the Security Council, S/PRST/2010/9, June 1, 2009, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/382/79/PDF/N1038279.pdf?OpenElement> (calling for "a prompt, impartial, credible and transparent investigation conforming to international standards").

¹³ See, "Statement by the Press Secretary on Israel's investigation into the flotilla incident," The White House, Office of the Press Secretary, June 13, 2010 available at: <http://www.whitehouse.gov/the-press-office/2010/06/13/statement-press-secretary-israels-investigation-flotilla-incident>; I. Lemberg, "Israel opens official probe into deadly flotilla raid," CNN, June 28, 2010 available at: <http://www.cnn.com/2010/WORLD/meast/06/28/israel.raid.commission/index.html>

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government in the event that they are subject to attack, detention or deportation. This is especially true since more cargo ships are planning voyages to Gaza, including in U.S.-registered vessels, with U.S. passengers on board.

* * *

In closing, CCR requests that you reverse your denial of our request for a fee waiver based on a finding that CCR does not qualify as a representative of the news media and denial of expedited processing and that you begin the search of the requested records with urgency, as statutorily mandated. Requesters note that many government officials involved in classification determinations have been increasingly concerned over the past few years about the over-classification of information that results in less public accountability for government conduct. Accordingly, Requesters demand that USEUCOM engage in an adequate and diligent effort to properly designate information, to disclose all responsive documents not properly subject to a FOIA exemption, and to comply with your obligations to provide segregable information when necessary.

We request a response to this appeal with twenty (20) working days.

Sincerely,


Katherine Gallagher
Senior Staff Attorney
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Phone: (212) 614-6455

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EXHIBIT A

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June 30, 2010

By Email: foiarequest@eucom.mil

HQ USEUCOM
FOIA Requestor Service Center
Attn: ECJ1-AR (FOIA)
Unit 30400
APO AE 09131

Re: Freedom of Information Act Request

Dear FOIA Request Officer:

The Center for Constitution Rights (CCR) ("Requester") makes this request for information regarding the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-boat flotilla headed to Gaza with humanitarian supplies, including the U.S.-registered "*Challenger I*" and the Comoros-registered "*Mavi Marmara*," which was forcefully intercepted by the Israel Defense Forces, resulting in the death of 9 passengers on board the *Mavi Marmara*, including one U.S. citizen, and the injury of many more,¹ pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552 *et seq.*, and U.S. Department of Defense FOIA Regulations, 32 C.F.R. Part 286.

Specifically, CCR seeks all records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, that reflect, relate or refer to:

- (1) Any and all records since January 1, 2010 that relate to and reflect any and all plans, reports, documents, discussions, meetings, or other communications, whether in person, by phone, mail, instant message, email, or any other method, that mention, refer or relate to any vessels or a flotilla of boats destined for Gaza in May 2010, including the U.S.-flagged *Challenger I*. This request includes, but is not limited to records reflecting communications with inter-governmental organizations, such as the North Atlantic Treaty Organization (NATO), foreign governments, including the

¹ For more information on the attack on the May 31, 2010 attack on the flotilla, see, e.g., "Deaths as Israeli forces storm Gaza aid ship," BBC News, May 31, 2010, available at: http://news.bbc.co.uk/2/hi/middle_east/10195838.stm; J. Zacharia, "Israeli troops raid aid flotilla headed for Gaza, killing nine" Washington Post, June 1, 2010, available at: "Security Council Condemns Acts Resulting in Civilian Deaths During Israeli Operation," Security Council, SC/9940, May 31, 2010, available at: <http://www.un.org/News/Press/docs/2010/sc9940.doc.htm>.

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Government of Israel, and any communications with other agencies, departments or divisions of the United States, including but not limited to any communications which relate to possible, planned, or executed actions by the U.S. government in the Mediterranean Sea in response to Israel's military operations at sea;

This request also includes but is not limited to:

- (2) Any and all records reflecting communications, in any format, with any member-state of NATO, including but not limited to Turkey, prior to, on, or after May 31, 2010 in relation to the U.S.-registered *Challenger I* or any other vessel which formed part of the flotilla of ships headed towards Gaza in May 2010, including communications regarding any requests, notices or indications from the Israeli government, including by and through the IDF, of its intentions to block, board or otherwise redirect the U.S.-registered vessel to a destination other than its intended destination of Gaza, and any responses to such requests, notices or indications of actions by the Israeli government, and subsequent responses, notices or exchanges between NATO members and/or NATO headquarters in relation to Israel's actions towards the flotilla;
- (3) Any and all records reflecting communications, in any format, with the Israel Defense Forces, or any other division, department or representative of the Government of Israel, prior to, on, or after May 31, 2010 in relation to the U.S.-registered *Challenger I*, including any requests, notices or indications from the Israeli government, including by and through the IDF, of its intentions to block, board or otherwise redirect the U.S.-registered vessel to a destination other than its intended destination of Gaza, and any responses to such requests, notices or indications of actions by the Israeli government;
- (4) Any and all records reflecting communications, in any format, with the Israel Defense Forces, or any other division, department or representative of the Government of Israel, prior to, on, or after May 31, 2010 in relation to vessels included in the flotilla of boats destined to Gaza in May 2010, other than the U.S.-registered *Challenger I*, including any requests, notices or indications from the Israeli government, including by and through the IDF, of its intentions to block, board or otherwise redirect any vessel to a destination other than its intended destination of Gaza, and any responses to such requests, notices or indications of actions by the Israeli government;
- (5) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010, in relation to the actions that occurred on board each of the six boats of the flotilla, including the U.S.-registered "*Challenger I*" and the "*Mavi Marmara*," including but not limited to information regarding the status of U.S. and non-U.S. passengers, including the injured and the dead, while on board the

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- vessels or in Israel, including in detention or medical facilities or other facilities, following the interception of the flotilla by Israel;
- (6) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to whereabouts, condition and status of the *Challenger I*, including the property on board that vessel and/or belonging to the passengers on board that vessel, and its return;
- (7) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to whereabouts, condition and status of vessels included in the flotilla of boats destined to Gaza in May 2010, other than the U.S.-registered *Challenger I*, including the property on board each vessel and/or belonging to the passengers on board that vessel, and its return;
- (8) Any and all records reflecting communications, including but not limited to the transmission or exchange of instructions, guidelines, policy statements or standard operation procedures, in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to the preservation and safeguarding of any and all possible evidence or materials seized by or in the possession of Israel from, related to or relevant to the incident, including but not limited to computers, cameras, cell phones, SIM cards, personal devices, computer disks or memory chips, hard drives or other such devices, so as to ensure that evidence has not been destroyed, tampered with, altered or otherwise rendered suspect or unusable in any and all subsequent investigatory proceedings, including but not limited to criminal, civil or administrative proceedings; and
- (9) Any and all records, including but not limited to plans, reports, communications, instructions and documents since at least June 1, 2007 that relate to U.S. actions, policies, procedures or guidelines in relation to interception, inspection, safe-passage or any other action or response to vessels in the Mediterranean Sea that have as their destination Gaza, including but not limited to vessels undertaking humanitarian missions in response to the Israeli blockade of Gaza.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seeks records of any kind, including electronic records, audiotapes, videotapes, photographs, including satellite imagery where available, and back-up tapes. Our request includes any telephone messages, voice mail messages, daily agenda and calendars, information about scheduled meetings and/or discussions, whether in-person or over the telephone or via video-conference, agendas for those meetings and/or discussions, participants included in those

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meetings and/or discussions, minutes of any such meetings and/or discussions, the topics discussed at those meetings and/or discussions, email regarding meetings and/or discussions, email, facsimiles, cables or other communications sent as a result of those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions to the extent they relate to the aforementioned requested information.

The Requester

The Center for Constitutional Rights ("CCR") is a not-for-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. CCR's diverse dockets include litigation and advocacy related to human rights in times of armed conflict or occupation, as well as the protection of human rights defenders. CCR is a member of human rights networks nationally and internationally, and provides legal support to human rights defenders and movements. One of CCR's primary activities is the publication of newsletters, know-your-rights handbooks, legal analysis of current international law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Education & Outreach Departments. CCR operates a website, www.ccrjustice.org, which addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and operates a listserv of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on international human rights.

Fee Waiver

CCR qualifies as a "representative[] of the news media" and the requested records are not sought for commercial use. Accordingly, we request a waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure "is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 32 C.F.R. 286.28(d) records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

The Requesters have a proven track-record of compiling and disseminating information to the public about government functions and activities, including the government's record and position on international human rights and policy matters, and plans to disseminate any information disclosed as a result of this FOIA request through the channels described above. The Requesters have undertaken this work in the public interest and not for any private commercial

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interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of the U.S. government's role in, and response, to an international incident which involved U.S. citizens, U.S. property, including a vessel registered in accordance with international regulations and entitled to certain protections under domestic and international law, and has involved the United States in formulating an international response to both the May 31, 2010 attack on the flotilla and the blockade of Gaza. As such, the subject of this request concerns the operations of the federal government and expenditures, and the disclosures will likely contribute to a better understanding of relevant government procedures by CCR and the general public in a significant way.

The public has an interest in knowing about the manner in which the federal government prepared for, and responded to, information regarding a possible attack on the flotilla destined for Gaza in May 2010. The public further has an interest in knowing what steps the United States took, and continues to take, in securing the rights and protections of U.S. citizens, and their property vis-à-vis a foreign military, and what steps the United States took to ensure that civilians of all nationalities engaged in stated humanitarian missions are protected from attack, in accordance with domestic policies and laws, and international humanitarian law.

The public further has an interest in knowing what the United States policy was, and is, in relation to the blockade of Gaza, including in relation to the list of prohibited goods including but not limited to spices, toys and candy that do not have a military purpose, and the delivery of humanitarian assistance to the civilian population of Gaza.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

Alternatively, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media."). CCR is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Publishing and disseminating information are some of our primary activities. As a "representative of the news media," we fit within this statutory and regulatory mandate. Therefore, fees associated with the processing of this Request should be limited accordingly.

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Expedited Processing

Expedited processing of this request is required because there is a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need” is established when there exists an “urgency to inform the public concerning actual or alleged Federal Government activity,” when the requester is a “person primarily engaged in disseminating information,” 32 C.F.R. § 286.4(d)(3). A requester can also demonstrate compelling need by a showing that the information sought is “urgently needed” and involves “an imminent loss of substantial due process rights and humanitarian need.” 32 C.F.R. § 286.4(d)(3)(iv) (“Humanitarian need means that disclosing the information will promote the welfare and interest of mankind.”).

There is an urgent need to inform the public of the policies, procedures, guidelines, action, responses or instructions given by the federal government to agencies, departments or divisions, about preparation, participation or reaction to attacks on U.S.- registered boats in international waters, to vessels with U.S. citizens onboard, or to vessels with civilians, including but not limited to civilians transporting humanitarian supplies. This request is urgent in that U.S. citizens or U.S.-registered vessels must know the support, protection, reactions and any actions or inactions they can expect from the United States government in the event that they are subject to attack, detention or deportation.

Further, in light of pending international investigations, whether criminal, civil or disciplinary in nature, and in light of the U.S. position, involvement or assistance in relation to such an investigation,² there is an urgent need to inform the public of the policies, procedures, requests, demands or any other responses, actions or inactions, the United States has made to the government of Israel to safeguard evidence gathered in relation to the May 31, 2010 attack on the flotilla, including but not limited to the preservation of property in its original form seized by the government of Israel including but not limited to computers, cameras, cell phones, personal devices that have memory chips, hard drives or other such devices, and to ensure that evidence has not been destroyed, tampered with, altered or otherwise rendered suspect or unusable in subsequent investigatory proceedings. In light of the announced Israeli investigation and the commencement of work by that investigation commission,³ this matter is urgent.

The Requester certifies that the above information is true and correct to the best of the Requesters’ knowledge. See 32 C.F.R. § 286.4(d)(3)(iii).

² Statement by the President of the Security Council, S/PRST/2010/9, June 1, 2009, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/382/79/PDF/N1038279.pdf?OpenElement> (calling for “a prompt, impartial, credible and transparent investigation conforming to international standards”).

³ See, “*Statement by the Press Secretary on Israel’s investigation into the flotilla incident*,” The White House, Office of the Press Secretary, June 13, 2010 available at: <http://www.whitehouse.gov/the-press-office/2010/06/13/statement-press-secretary-israels-investigation-flotilla-incident>; I. Lemberg, “*Israel opens official probe into deadly flotilla raid*,” CNN, June 28, 2010 available at: <http://www.cnn.com/2010/WORLD/meast/06/28/israel.raid.commission/index.html>

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Conclusion

If this Request is denied in whole or in part, CCR ask that the U.S. European Command justify all deletions by reference to specific exemptions of FOIA. The Requester expects U.S. EUCOM to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for expedited processing and waiver of fees.

If you have any questions regarding the processing of this request, please contact me at (212) 614-6455. Also, if CCR's request for a fee waiver is not granted in full, please contact me immediately upon making such determination. Please furnish all applicable Records to: Katherine Gallagher, Staff Attorney, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, N.Y. 10012.

Thank you for your prompt attention to this matter.

Sincerely,



Katherine Gallagher
Staff Attorney
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Phone: (212) 614-6455

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EXHIBIT B



HEADQUARTERS
UNITED STATES EUROPEAN COMMAND
UNIT 30400
APO AE 09131

16 July 2010

Ms Katherine Gallagher
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Dear Ms Gallagher,

This is an interim response to your letter dated June 30, 2010, submitted "on behalf of the Center for Constitutional Rights ("CCR") ("Requester"), I have interpreted that letter as a Freedom of Information Act (FOIA) request for records relating to" information regarding the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-boat flotilla headed to Gaza with humanitarian supplies, including the U.S.-registered "*Challenger I*" and the Comoros-registered "*Mavi Marmara*" which was forcefully intercepted by the Israel Defense Forces, resulting in the death of nine passengers on board the *Mavi Marmara*, including one U.S. citizen, and the injury of many more". You have additionally identified the records that you seek by providing detailed descriptions of nine categories of records inclusive to this search. You have requested a waiver of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii); a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II); and expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i)(I), 32 C.F.R. § 286.4(d)(3) and 32 C.F.R. § 286.4(d)(3)(iv). We have assigned this request case number 10-F-058.

You have requested a waiver of fees on the grounds that disclosure of the requested records is in the public interest because disclosure is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of CCR. Additionally, you have requested that processing fees be limited pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) because CCR is a "representative of the media". You state that CCR qualifies as a "representative of the news media" and that the requested records are not sought for commercial use. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

You have stated in your request that CCR is a not-for-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. These activities do not demonstrate that the primary activity of CCR is publishing or disseminating information. Accordingly, I have determined that CCR does not qualify as a representative of the news media. Moreover, CCR also does not qualify for a limitation of processing fees on this basis.

In light of the above, I have determined that you should be placed in the "other" category

for fee purposes, which affords you two hours of search time and 100 pages of duplication free of charge. Subsequent processing will be assessed at the established Department of Defense (DoD) fee rates of: clerical search time--\$20 per hour; professional search time--\$44 per hour; executive search time--\$75 per hour; and document reproduction at \$0.15 per page.

Regarding your request for a waiver of fees, which we have interpreted as a request for a waiver of all costs, decisions to waive or reduce fees are made on a case-by-case basis. A fee waiver is appropriate when "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester," 5 U.S.C. § 552(a)(4)(iii). I will make a decision on your request for a fee waiver after a search for responsive documents is conducted and the volume and nature of the records is determined.

We anticipate that a search for responsive records will exceed the two free hours to which you are entitled in the "other" fee category, and we ask that you make a fee commitment in the event that your fee waiver is not granted. Otherwise, the search will be limited to two hours and I will make a decision on your request for a fee waiver on the basis of any material that is located within this timeframe. If you would like the search to be expanded beyond the two hours that you receive free, please advise this office in writing, stating the amount of fees that you are willing to pay. You may also wish to narrow the scope of your request and identify those records that are of primary interest.

In requesting expedited processing, you are asking that this request be placed ahead of all requests that were received before your request. You have requested expedited processing on two bases: (1) an urgent need to secure the records pursuant to 32 C.F.R. § 286.4(d)(3) by an organization primarily engaged in disseminating information in order to inform the public about an actual or alleged Federal Government activity and (2) 32 C.F.R. §§ 286.4(d)(3)(iv), which provides for expedited processing after a requester demonstrates a compelling need for the information and/or demonstrates an *imminent* loss of substantial due process rights and humanitarian need.

A compelling need is defined under DoD regulations as information that is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. Urgently means that the information has a particular value that will be lost if not disseminated quickly. You have failed to demonstrate how the value of this information will be lost if it is not disseminated quickly. In addition, I have determined that your request for expedited processing does not meet the criteria of 32 C.F.R. § 286.4(d)(3)(iv). For these reasons, your request for expedited processing is denied.

If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense. To submit your appeal, you should write directly to the Defense Freedom of Information Policy Office, ATTN: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20101-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 10-F-058, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,


Naqini Ludan

EUCOM FOIA/Privacy Act Disclosure Specialist

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EXHIBIT C

HQ USEUCOM
FOIA REQUESTER SERVICE CENTER
UNIT 30400
APO AE 09131
OFFICIAL BUSINESS

Ms Katherine Gallagher
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

