

September 25, 2014

United States Central Command
ATTN: CCJ6-RDF (FOIA)
7115 South Boundary Boulevard
MacDill Air Force Base, FL 33621-5101

Re: Freedom of Information Act Request

Dear FOIA Officer:

The Center for Constitutional Rights (CCR) and Iraq Veterans Against the War (IVAW) (“Requesters”) make this request (“Request”) for information regarding the U.S. military’s use of depleted uranium (DU) during and following the 1991 Gulf War and the 2003 invasion of Iraq, namely the quantities of DU fired, targeting coordinates, dates on which DU was fired, and efforts undertaken to clean-up, store, and transport DU munitions and DU contaminated vehicles and soil,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. We are applying for expedited processing pursuant to 5 U.S.C. § 552(a)(4)(E).

Records Requested

CCR and IVAW seek all records, including communications, 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 GPS coordinates of firing data, target data, quantities and type of DU ammunition fired in Iraq, Kuwait, and Saudi Arabia, as well as the dates the DU was fired in those countries, including but not limited to target coordinates for weapons systems that deploy DU, including but not limited to the A-10 Warthog (30 mm rounds), the AVF-8 Harrier (20 mm rounds), the M60A3 (105 mm rounds), the M1 and M1A1 Abrams tank (120 mm rounds), and the Bradley Fighting Vehicle (25 mm rounds), as well as GPS coordinates of military scrap metal storage sites;
- (2) Any and all efforts planned or undertaken, including any action determined not to be taken, by the U.S., Coalition Forces, any foreign governments, inter-governmental agencies, any private contractor to whom the U.S. or another government outsourced these efforts or determination of efforts, and/or non-governmental organizations using

¹ According to the United Nations and the World Bank, as early as March 26, 2003, the U.S. Central Command confirmed that DU was used by Coalition Forces in Iraq. *See* United Nations/World Bank, *Joint Iraq Needs Assessment: Mine Action* at 4 (Oct. 2003) available at <http://iraq.undg.org/uploads/doc/MINE%20ACTION%20final%20sector%20report%2016%20October.pdf>.

funding from the U.S. government, to clean up DU penetrators, DU-contaminated military scrap metal, and DU-contaminated vehicles and remediate DU-contaminated soil and groundwater in Iraq, including but not limited to the U.S. Army's scrap metal clean-up operation in Basrah, Iraq in 2010 and any efforts undertaken by the U.S. Army Contaminated Equipment Retrograde Team (ACERT);

(3) Any and all efforts planned or undertaken, including any action determined not to be taken, by the U.S., Coalition Forces, any foreign governments, inter-governmental agencies, any private contractor to whom the U.S. or another government outsourced these efforts or determination of efforts, and/or non-governmental organizations using funding from the U.S. government, to remove, transport, and store DU penetrators and DU-contaminated military scrap metal, vehicles, and soil in or from Iraq;

(4) Any and all efforts planned or undertaken, including any action determined not to be taken, by the U.S., Coalition Forces, any foreign governments, inter-governmental agencies, any private contractor to whom the U.S. or another government outsourced these efforts or determination of efforts, and/or non-governmental organizations using funding from the U.S. government, to sample and monitor the soil, water, and air in populated areas in Iraq where DU contamination was detected or may have occurred;

(5) Any and all efforts planned or undertaken, including any action determined not to be taken, by the U.S., Coalition Forces, any foreign governments, inter-governmental agencies, any private contractor to whom the U.S. or another government outsourced these efforts or determination of efforts, and/or non-governmental organizations using funding from the U.S. government, in response to health concerns, including illnesses, chronic conditions, and birth defects, in areas in Iraq potentially exposed to DU;

(6) Any assessments to be conducted, at least in part, by the United Nations Environment Programme of the extent of DU contamination in Iraq, including but not limited to funding requested from the U.S. government or the United Nations to support such an assessment;

(7) Any investigations to be conducted, at least in part, by the World Health Organization into the health impact of DU in Iraq, including but not limited to funding requested from the U.S. government or the United Nations to support such an investigation;

(8) Any assessments to be conducted, at least in part, by the International Atomic Energy Agency to determine the radiological consequences of the 1991 Gulf War or the 2003 invasion of Iraq, including but not limited to funding requested from the U.S. government or the United Nations to support such an assessment;

(9) The U.S.'s provision of technical and financial support and/or sales of equipment to the Government of Iraq to address DU contamination;

(10) Any and all efforts planned or undertaken, including any action determined not to be taken, in response to GPS coordinates of DU sites in Iraq specifically made known to the

U.S. by demining organizations and foreign governments or militaries, including but not limited to the British, Dutch, Danish, Italian and Japanese militaries;

(11) Discussions with any other U.S. government agencies, including but not limited to other components of the Department of Defense, the Department of State, the Agency for International Development, Department of Veterans Affairs, Department of the Interior, Department of Energy, and the Environmental Protection Agency, regarding the use or potential use of DU during and following the 1991 Gulf War and 2003 invasion of Iraq and contracts with private contractors concerning DU or weapons deploying DU;

(12) Any and all efforts planned or undertaken, including any action determined not to be taken, to notify U.S. servicemembers of potential exposure to DU and to train U.S. servicemembers on how to protect against exposure to DU, including but not limited to which military units or categories of military personnel were provided any such notification or training;

(13) Any and all efforts planned or undertaken, including any action determined not to be taken, to determine whether any illnesses or other health conditions suffered by U.S. servicemembers were the result in whole or in part of exposure to DU.

The terms “and,” “or,” and “and/or” used above have both conjunctive and disjunctive meanings.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including but not limited to paper and electronic records, audiotapes, videotapes, photographs, including satellite imagery where available, and back-up tapes. Our request includes but is not limited to any memoranda; e-mail communications; drafts; notes; 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 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.

Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM.

The Requesters

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. 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.

IVAW is a not-for-profit membership-based organization, whose members include recent veterans and active duty servicemen and women who have served since September 11, 2001 in any branch of U.S. Military Service, National Guard, or Reserve. IVAW members are in all 50 states, Washington, D.C., Canada, and on numerous bases overseas, including Iraq. IVAW has chapters around the country and abroad. IVAW members educate the public about the Iraq war by speaking in communities and to the media about their experiences. Members also speak with youth in classrooms about military service. IVAW also educates the public through its website, www.ivaw.org. Like CCR, all of IVAW's materials are freely available to the public, and IVAW members often serve as sources for journalist and media outlets.

Fee Waiver

CCR and IVAW each qualify as a "representative of the news media" and the requested records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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 public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 32 C.F.R. 286.28(d) (records furnished without charge when "in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requestor").

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 interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of the health risks faced by U.S. servicemembers exposed to DU; civilians living near DU-contaminated sites; demining organizations working in potentially DU-contaminated areas; workers on military scrap metal sites;² and civilians in other countries

² For example, 17 employees at the State Company for Iron and Steel (SCIS) Melting Factory near Al Zuybair in southern Iraq, where contaminated scrap metal is melted down, were diagnosed with cancer. Pax, *Laid to Waste: The legacy and concerns over contaminated military scrap metal with depleted uranium in Iraq* at 52-53 (June 2014), available at <http://www.paxforpeace.nl/media/files/pax-rapport-iraq-final-lowres-spread.pdf>. Commercial scrap metal sites, as opposed to government sites, lack any oversight for procedures to detect

where military scrap metal has been, continues to be, exported.³ The public has an interest in knowing about the likelihood of U.S. servicemember and any civilian exposure to DU. As a report commissioned by the Department of Defense has acknowledged, “[d]eveloping estimates of radiation doses from exposure to depleted uranium requires,” among other factors, “[a]n understanding of how and where depleted uranium munitions were used” and “[k]nowledge about the amounts and locations of depleted uranium contamination in affected areas.”⁴ The public further has an interest in knowing what steps the United States took, and continues to take, in identifying and remediating DU-contaminated sites and removing DU-contaminated scrap metal in Iraq following the 1991 Gulf War and the 2003 invasion and occupation of Iraq by the U.S. and Coalition Forces, and in determining whether DU is the cause or partial cause of any illnesses or other health conditions from which U.S. servicemembers and veterans and Iraqis are suffering.

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 and IVAW are each 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

contaminated scrap, *id.* at 54, as does the collection of military scrap metal by civilians for personal use, such as building materials for homes or to grind wheat, and the use of DU-contaminated military wreckage by children as playgrounds. *Id.* at 54, 57, 15.

³ Military scrap metal has been exported to surrounding countries. *See, e.g., Jordan denies entry to Iraqi trailers carrying contaminated scrap metal*, HAARETZ (May 28, 2004), available at <http://www.haaretz.com/news/jordan-denies-entry-to-iraqi-trailers-carrying-contaminated-scrap-metal-1.123669>; James Glanz, *The Struggle for Iraq: the new looting; In Jordan’s Scrapyards, Signs of a Looted Iraq*, N.Y. TIMES (May 28, 2004), available at <http://www.nytimes.com/2004/05/28/world/struggle-for-iraq-new-looting-jordan-s-scrapyards-signs-looted-iraq.html>; *Imported scrap: Old explosives of 2004 Iraq war kept as scrap adds to police work*, TIMES OF INDIA, (Feb. 20, 2014), available at <http://timesofindia.indiatimes.com/city/mumbai/Imported-scrap-Old-explosives-of-2004-Iraq-war-kept-as-scrap-adds-to-police-work/articleshow/30728926.cms>.

⁴ Science Applications International Corporation, *Probabilistic Estimates of Dose from Depleted Uranium during Deployments—Routine Duty Scenarios*, Final Report at 4, prepared for the Force Health Protection and Readiness Directorate (Jan. 15, 2009).

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.

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 “information is urgently needed...to inform the public concerning actual or alleged Federal Government activity,” when the requester is “primarily engaged in disseminating information.” 32 C.F.R. § 286.4(d)(3)(ii). A requester can also demonstrate compelling need by showing “humanitarian need” for the information. 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 areas potentially contaminated by DU in order to determine if and where remediation is needed, as well as to conduct a health risk assessment for U.S. servicemembers’ and civilians’ exposure to DU. Prolonged exposure to DU, in particular, the inhalation or ingestion of DU dust, potentially has serious health consequences.⁵ Use of weapons deploying DU, proximity to sites where such weapons were fired, and contact with DU-contaminated metals pose health risks to U.S. servicemembers and veterans.⁶ DU

⁵ See, e.g., Ian Fairlie, United Nations Institute for Disarmament Research, *The Health Hazards of Depleted Uranium* at 4 (2008), available at <http://www.einiras.org/Services/Digital-Library/Publications/Detail/?lng=en&id=92541>; NGO Coordination Committee for Iraq, *Environmental Contaminants from War Remnants in Iraq* at 5-6 (Jun. 2011), available at <http://www.ncciraq.org/en/publications/studies/item/574-environmental-contaminants-from-war-remnants-in-iraq---ncci---june-2011-updated-march-2013>; IKV Pax Christi, *In a State of Uncertainty: Impact and implications of the use of depleted uranium in Iraq* at 9, 20, 26 (Jan. 2013), available at <http://www.ikvpaxchristi.nl/media/files/in-a-state-of-uncertainty.pdf>; The Royal Society, *The health hazards of depleted uranium munitions: Part II* (2002), available at http://royalsociety.org/uploadedFiles/Royal_Society_Content/policy/publications/2002/9954.pdf. See also International Coalition to Ban Uranium Weapons, *Malignant Effects: depleted uranium as a genotoxin and carcinogen* at 10-25 (Sept. 2014), available at <http://www.bandepleteduranium.org/malignant-effects> (concluding from a review of approximately 50 peer-reviewed studies that DU is a genotoxic agent, “known to be involved in the development of cancer and other diseases” and with “potential for genetic damage to be passed on to children, creating health problems for future generations”).

⁶ British veterans of the 1991 Gulf War were found to have between double to 14 times the average level of chromosome abnormalities in their genes. See Nic Fleming and Mark Townsens, *Gulf veteran babies ‘risk deformities’*, THE GUARDIAN, Aug. 10, 2001, available at <http://www.guardian.co.uk/politics/2002/aug/11/uk.politicalnews>. A 2001 study by the U.S. government of 21,000 veterans who had served in the first Gulf War found that their children were two to three times more likely to have birth defects. See H. Kang, C Magee, C. Mahan, K. Lee, F. Murphy, L. Jackson, G. Matanoski, *Pregnancy Outcomes Among U.S. Gulf War Veterans: A Population-based Survey of 30,000 Veterans*, ANN. EPIDEMIOL 2001, 11:504-511; see also *Study: Gulf War vets’ children have more birth defects*, Associated Press, Oct. 6, 2001,

penetrators found on the surface, contaminated military scrap metal, and DU-contaminated soil and groundwater all pose health threats to civilians in surrounding areas, workers collecting and repurposing scrap metal, sometimes for export, and humanitarian organizations and agencies, funded by U.S. taxpayers through the Department of State, working to clear explosive remnants of war such as landmines, cluster munitions, and other Unexploded Ordnance (UXOs).⁷ Knowledge of DU target coordinates would allow de-mining organizations in particular to instruct their personnel on proper precautions to take in carrying out their work to limit their exposure to DU, such as the warnings the U.S. military is instructed to give its troops on dealing with DU if encountered during or after combat operations.⁸

The United Nations General Assembly has repeatedly called for “Member States that have used armaments and ammunitions containing depleted uranium in armed conflicts to provide the relevant authorities of affected States, upon request, with information, as detailed as possible, about the location of the areas of use and the amounts used, with the objective of facilitating the assessment of such areas.”⁹ This past March, the Iraqi government submitted a report to the U.N. Secretary General expressing “its deep concern over the harmful effects of the use in wars and armed struggles of armaments and ammunitions containing depleted uranium, which constitute a danger to human beings and the environment (the air and the soil),” and echoing the General Assembly, called on “States that have use armaments and ammunitions of this kind [to] provide assistance to the national authorities of the affected States and provide them with detailed information about the location of the areas of use and the amounts used, with the objective of facilitating the assessment of such situations and efforts to contain and address them.”¹⁰ While several Iraqi government ministries, including the Ministry of Environment and the Ministry of Planning, have prioritized efforts to assess harms caused by DU, lack of data as to the exact location of where DU was fired and the quantities of DU fired have stymied these efforts.¹¹

available at http://onlineathens.com/stories/100601/hea_1006010063.shtml. The same study also noted a higher rate of miscarriages in the studied population. *See id.*

⁷ *See, e.g.,* Department of State, *Iraq: Decade of U.S. Support for Conventional Weapons Destruction Saves Lives and Builds Capacity*, Press Release (Dec. 26, 2013), *available at* <http://www.state.gov/r/pa/prs/ps/2013/219116.htm>.

⁸ *See* Department of the Army, Army Regulation 700–48, Management of Equipment Contaminated with Depleted Uranium or Radioactive Commodities (Sept. 16, 2002). *See also Laid to Waste*, *supra* note 2 at 30-31 (describing a Norwegian demining project concerned with risks of cross-contamination from DU because they have “no ability to confirm or disprove the presence of DU on some of [their] planned future clearance tasks”).

⁹ *See, e.g.,* U.N. General Assembly, First Committee, *Effects of the use of armaments and ammunitions containing depleted uranium*, ¶ 6, A/C.1/67/L.16 (Oct. 18, 2012).

¹⁰ U.N. General Assembly, *Effects of the use of armaments and ammunitions containing depleted uranium*, Report of the Secretary General, A/69/151 (July 14, 2014).

¹¹ *See Laid to Waste*, *supra* note 2 at 26, 46-48.

The release of this data would not hurt U.S. security interests as (i) the U.S. has already disclosed similar targeting data to the United Nations on the use of cluster munitions in Iraq;¹² (ii) the United Kingdom's Ministry of Defense provided their DU target coordinates in Iraq to the United Nations Environment Programme in Iraq;¹³ (iii) upon a request by the Dutch Ministry of Defense, whose army was based in Al Muthanna Governorate as part of the Coalition Forces in Iraq and had a small group of trainers stationed in Basrah, the U.S. provided the Dutch government with a list of targets, GPS coordinates and quantities of 30 mm rounds fired by A-10 Warthog, 120 mm DU rounds fired by the Abrams M1A1 tank, and 25 mm rounds fired by the Bradley AFV;¹⁴ and (iv) information on the target coordinates of weapons systems that deployed DU and were used by the U.S. Air Force under NATO auspices in the Balkans was similarly disclosed.¹⁵ No known security issues resulted from any of the aforementioned disclosures.

The Requesters certify 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), (iv).

Conclusion

If this Request is denied in whole or in part, CCR and IVAW ask that the United States Central Command justify all deletions by reference to specific exemptions of FOIA. The Requesters expect the United States Central Command 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) 614-6430. Also, if CCR and IVAW'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: Maria LaHood, Senior Staff Attorney, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012.

¹² Department of State, *United States Clearance of Unexploded Cluster Munitions*, Fact Sheet (Feb. 23, 2007), available at <http://2001-2009.state.gov/r/pa/prs/ps/2007/february/81000.htm>.

¹³ United Nations Environment Programme, *Technical Report on Capacity-building for the Assessment of Depleted Uranium in Iraq* at 4 (Aug. 2007), available at http://postconflict.unep.ch/publications/Iraq_DU.pdf.

¹⁴ *Laid to Waste*, *supra* note 2 at 22; *In a State of Uncertainty*, *supra* note 5 at 22.

¹⁵ United Nations Environment Programme, *Depleted Uranium in Bosnia and Herzegovina: Post-Conflict Environmental Assessment*, Revised Edition at 13 (May 2003), available at http://postconflict.unep.ch/publications/BiH_DU_report.pdf.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Maria C. LaHood". The signature is written in a cursive, flowing style.

Maria C. LaHood
Jeena Shah
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