

centerforconstitutionalrights

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March 4, 2010

VIA FEDERAL EXPRESS

Jim Hogan
Department of Defense
Freedom of Information Policy Office
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: REQUEST UNDER FREEDOM OF INFORMATION ACT

Dear Mr. Hogan:

This letter constitutes a request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et. seq.*, and the Department of Defense's implementing regulations, 32 C.F.R. § 286.1 *et seq.* This request is submitted on behalf of the Center for Constitutional Rights ("Requester"). As described in greater detail below, the Requester seeks videotapes, photographs and other visual or audio recordings of Mohammed al-Qahtani (Internment Serial Number 063) ("Mr. al Qahtani") while in U.S. custody in Guantánamo Bay Naval Base, Cuba ("Guantánamo"). Mr. al Qahtani is currently detained at Guantánamo.

During 2002 through 2004, Mr. al-Qahtani was the victim of some of the United States' most extreme coercive interrogation techniques and torture that have occurred at Guantánamo. His treatment is documented in lengthy and detailed leaked military notes from his interrogations and other written government records disclosed through FOIA litigation. He remains the only individual at Guantánamo whom a U.S. official has admitted was tortured.

Mr. al Qahtani was held in conditions of severe isolation and interrogated by Federal Bureau of Investigation (FBI) agents and military personnel at Guantánamo from August 1, 2002 though November 22, 2002.¹ As a result of this treatment, an FBI Deputy Director reported that in November 2002 he observed a man in detention, later identified as Mr. al Qahtani, exhibiting symptoms of "extreme psychological trauma."² Mr. al Qahtani was then subject to the "First Special Interrogation Plan," a regime of "enhanced interrogation techniques" approved by military and White House officials, designed by military and CIA personnel, and implemented by military intelligence and consultants at Guantánamo.³ Military Commission Convening Authority Susan Crawford admitted in

¹ U.S. Dep't of Justice, Office of Inspector General, A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan and Iraq, May 2008, at 80-85, *available at* <http://www.justice.gov/oig/special/s0910.pdf>.

² See Letter re: Suspected Mistreatment of Detainees, from T.J. Harrington, Deputy Assistant Director, Counterterrorism Division, FBI, to Major General Donald R. Ryder, Criminal Investigation Command, Department of the Army, July 14, 2006, *available at* <http://www.ccrjustice.org/files/TJ%20Harrington%20Ltr%20Redacted%207%2014%2004.pdf>.

³ Senate Armed Services Comm., *Inquiry into the Treatment of Detainees in US Custody*, S. Comm.



January 2009 that the United States tortured Mr. al Qahtani.⁴

Requester now seeks the visual and audio recordings which further document Mr. al Qahtani's treatment and will provide the public with invaluable information about the nature and impact of U.S. torture practices.

I. Records Sought

Requester seeks videotapes, photographs and other visual or audio recordings made from February 13, 2002 through November 30, 2005 of Mr. Mohammed al Qahtani while in U.S. custody in Guantánamo.

Accordingly Requester seeks the following records:

1. Videotapes of Mohammed al Qahtani made between February 13, 2002 to August 12, 2002;
2. Videotapes of Mohammed al Qahtani made between August 13, 2002 to November 14, 2002;
3. Videotapes of Mohammed al Qahtani made between November 15, 2002 to November 22, 2002;
4. Videotapes of Mohammed al Qahtani made between November 23, 2002 to November 30, 2005;
5. Any photographs of Mohammed al Qahtani made between February 13, 2002 to November 30, 2005;
6. Any other audio or visual recordings of Mohammed al Qahtani made between February 13, 2002 to November 30, 2005.

II. 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 has published numerous reports on various aspects of U.S. detention and torture in the "war on terror," at Guantánamo and elsewhere. More specifically, since at least 2004, CCR has been engaged in an advocacy campaign to hold current and former U.S. officials accountable for their involvement in U.S. torture practices, including for the authorization, design and implementation of the "First Special Interrogation Plan" against Mr. Mohammed al Qahtani. *See, e.g.,* Universal Jurisdiction: The Case Against Rumsfeld and Accountability for U.S. Torture, *available at* <http://www.ccrjustice.org/case-against-rumsfeld>; 100

Print, (2008), *available at* <http://graphics8.nytimes.com/packages/images/nytint/docs/report-by-the-senate-armed-services-committee-on-detainee-treatment/original.pdf>.

⁴ Bob Woodward, *Detainee Tortured, Says U.S. Official Trial Overseer Cites 'Abusive' Methods Against 9/11 Suspect*, Wash. Post, Jan. 14, 2009 ("We tortured [Mohammed al-] Qahtani. . . . His treatment met the legal definition of torture.").

Days to Restore the Constitution: Prosecutions and Accountability, *available at* <http://www.ccrjustice.org/prosecutions-and-accountability-bush-administration-officials>. Additional fact sheets and materials are available through CCR's Development and Education & Outreach Departments. CCR operates a website, www.ccrjustice.org, that 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 to hold U.S. officials accountable for torture practices. All of this material is freely available to the public. In addition, CCR issues press releases and operates a listserv of over 60,000 members that issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work.

III. 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." 5 U.S.C. § 552(a)(4)(A)(iii). 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)).

The public has an interest in being informed about the scope and nature of U.S. torture practices at Guantánamo as well as the past conditions and treatment of detainees in U.S. custody at Guantánamo, to ensure its representative government is not acting in ways contrary to domestic and international law and public demands. In particular, Mr. al Qahtani's interrogation tactics and conditions of detention have been the subject of multiple congressional and Executive agency investigations because of his well-documented and officially-authorized torture. The public is entitled to access to the requested records to more fully comprehend the impact and nature of U.S. torture practices. As such, the information requested will benefit the public understanding of the operations or activities of the government.

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") 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). 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.

IV. Expedited Processing

We request expedited processing of this matter. Expedited processing is warranted when an

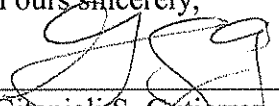
organization “primarily engaged in disseminating information in order to inform the public about an actual or alleged Federal Government activity” has an “urgent need” to secure the records. 32 C.R.F. § 286.4(d)(3)(ii). CCR is an organization “primarily engaged in disseminating information” about government misconduct through the work of its staff, Board, volunteer, cooperating, and co-counsel attorneys. As described above, CCR engages in litigation, public advocacy, and educational programming to defend constitutional and human rights law as well as to hold U.S. officials accountable for torture practices. Dissemination of information to the public is a crucial component of CCR’s mission and work. Specifically, CCR publishes reports and newsletters, maintains a public website, issues press releases, and offers educational materials, and programming to the public within the United States and internationally. Additionally, CCR’s staff, board, and volunteer, co-counsel, and cooperating attorneys further disseminate CCR’s information to their local and national communities through a variety of means, including their own press releases, interviews, reports, and educational programming.

These records are also urgently needed to inform the current public debate concerning accountability for current and former U.S. officials who authorized and implemented various interrogation practices against Mr. al Qahtani. The public and government are currently debating the question of the legality of Mr. al Qahtani’s treatment and the appropriate consequences for those who authorized, designed and implemented his treatment. Most recently, numerous news articles have addressed the release of the Department of Justice Office of Professional Responsibility’s report summarizing the results of their investigation into the legal and ethical conduct of Office of Legal Counsel attorneys involved in authorizing Mr. al Qahtani’s interrogations. The requested records provide invaluable data to inform this debate.

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If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. Finally, please forward this request to the appropriate office at Guantanamo-Joint Task Force and the Defense Criminal Investigation Task Force working in Guantánamo.

Thank you for your prompt attention to this matter.

Yours sincerely,

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