

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

MATTATHIAS SCHWARTZ,

Plaintiff,

v.

DEPARTMENT OF DEFENSE,  
DEPARTMENT OF NAVY,  
NATIONAL SECURITY AGENCY,  
FEDERAL BUREAU OF INVESTIGATION,  
CENTRAL INTELLIGENCE AGENCY, and  
OFFICE OF THE DIRECTOR OF NATIONAL  
INTELLIGENCE,

Defendants.

No. 1:15-cv-07077

**ECF Case**

**COMPLAINT**

**Introduction**

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking the release of records that describe the Government’s rules for monitoring, interrupting, and censoring proceedings of the Military Commissions at Guantanamo Bay, and the means by which it implements these rules.

2. The public and press are only permitted to observe proceedings at the Guantanamo courtroom from an enclosed space behind soundproof glass. They are able to observe the proceedings in real time, but the audio feed into the public observation space is on a forty-second delay. To prevent the inadvertent disclosure of classified information, the audio feed can immediately be killed, and all sound from the courtroom cutoff to the press and public, when a button is pressed by the courtroom security officer, who sits next to the presiding judge. That action also triggers a red flashing warning light to alert participants in the courtroom that

the proceeding has been closed.

3. At first, it was understood that the audio feed could only be killed by the court security officer, with the permission of the presiding judge, by using the button physically located within the courtroom. On January 28, 2013, however, the audio feed was killed and the flashing red light activated without any action by the court security officer and without any permission from the presiding judge. The judge suspended proceedings to determine who outside the courtroom had the technical ability to censor the proceedings without his authority or approval.

4. To this day, the public remains in the dark about who closed the Guantanamo proceedings on January 28, 2013. The presiding judge has made clear that no one outside the courtroom is authorized to close the proceeding by cutting off the audio, but many questions remain. The public does not know what rules are in place for cutting off the audio feed, or the instructions given to the Office of Military Commissions, presiding officers, courtroom security personnel, or any other entities or individuals with the technical capability to terminate the audio feed. The public does not know the means by which any authority outside the physical courtroom can monitor or interrupt the audio transmissions to the public. And the public does not know the number of security officers assigned to the military commissions, their duties, their cost, or their training.

5. The public has a substantial interest in the fairness and transparency of the proceedings of the Guantanamo Military Commissions, which have been the subject of worldwide press attention since their inception. This FOIA request seeks disclosure of the rules that govern the electronic closure of the Commission's public proceedings and the identification of those who have the ability to close them. It does not seek information about what particular

information has been censored.

6. The records sought through this action are not properly exempt from disclosure under FOIA, and involve matters of ongoing public concern.

### **Jurisdiction and Venue**

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

8. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiff resides in this district.

### **Parties**

9. Plaintiff Mattathias Schwartz is a journalist and staff writer for *The New Yorker* magazine and resides in Brooklyn. He has published articles in *The New Yorker* and elsewhere that inform the public about the activities of U.S. government agencies and officials, and he intends to publish the information at issue in an article that will contribute to a public understanding of the military commission trials and to the United States' ongoing efforts to seek justice for the events of September 11, 2001.

10. Defendant Department of Defense ("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).

Defendant Department of Navy ("Navy") is a component of DoD.

11. Defendant National Security Agency ("NSA") is an intelligence agency established within the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

12. The Department of Justice 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). Defendant Federal

Bureau of Investigation (“FBI”) is a component of the Department of Justice.

13. Defendant Central Intelligence Agency (“CIA”) is an intelligence agency established within the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

14. Defendant Office of the Director of National Intelligence (“ODNI”) is an intelligence agency established within the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

### **Facts**

#### **The Requested Records**

15. By letter dated March 9, 2015, Plaintiff filed FOIA requests with the NSA, CIA, Navy, and DoD (“Requests”). By letter dated March 10, 2015, Plaintiff filed FOIA Requests with the FBI and ODNI. All these Requests were substantially similar. (True and correct copies of the Requests are collectively annexed hereto as Exhibit A).

16. Each of the Requests sought:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.



17. Plaintiff sought a public interest fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii), because disclosure to the Plaintiff is “likely to contribute significantly to the public understanding of the operations or activities of the U.S. Government and is not primarily in the commercial interest of the requester.” 32 C.F.R. § 1700.2(h)(4).

18. Plaintiff sought a limitation of fees as “a representative of the news media,” 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 1700.6(h)(i), who is “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” 32 C.F.R. § 1700.2(h)(4).

19. Plaintiff sought expedited processing pursuant to 5 U.S.C. § 552(6)(E), as Plaintiff is seeking these materials to report on a continuing news story of great public interest, and requested justification and explanation for all denials by reference to the specific exemptions of the Act, pursuant to 32 C.F.R. § 1700.8(c)(1).

### **Agency Responses**

#### **NSA**

20. In a letter dated March 23, 2015, the NSA informed Plaintiff that it had determined that the FOIA Request likely falls under DoD’s purview and indicated that since DoD is processing Plaintiff’s FOIA Request on the same topic, all communications should be directed to DoD. The NSA did not address Plaintiff’s requests for expedited processing or fee waivers. (A true and correct copy of the letter is annexed hereto as Exhibit B.)

21. The NSA has not produced or withheld any documents responsive to Plaintiff’s Request, nor has it indicated whether it has conducted a search for records. More than twenty (20) business days have passed since Plaintiff submitted his Request.

**FBI**

22. In a letter dated March 20, 2015, the FBI acknowledged receipt of Plaintiff's FOIA Request. In a letter dated March 24, 2015, the FBI denied Plaintiff's request for expedited processing. The FBI did not address Plaintiff's requests for fee waivers. (True and correct copies of these letters are collectively annexed hereto as Exhibit C.)

23. By letter dated April 22, 2015, Plaintiff submitted an administrative appeal to the FBI. Plaintiff appealed the FBI's denial of expedited processing and the FBI's constructive denial of Plaintiff's Request due to its failure to respond within the statutory time limit. (A true and correct copy of this administrative appeal is annexed hereto as Exhibit D.)

24. The FBI has not produced or withheld any documents responsive to Plaintiff's Request, nor has it indicated whether it has conducted a search for records. More than twenty (20) business days have passed since Plaintiff submitted his administrative appeal.

**CIA**

25. In a letter dated March 23, 2015, the CIA denied Plaintiff's request for expedited processing. The CIA did not address Plaintiff's requests for fee waivers. (A true and correct copy of the letter is annexed hereto as Exhibit E).

26. By letter dated April 22, 2015, Plaintiff submitted an administrative appeal to the CIA. Plaintiff appealed the CIA's denial of expedited processing and the CIA's constructive denial of Plaintiff's Request due to its failure to respond within the statutory time limit. (A true and correct copy of this administrative appeal is annexed hereto as Exhibit F.)

27. In a letter dated May 21, 2015, the CIA acknowledged receipt of the appeal and stated that it “accepted” Plaintiff’s appeal regarding Item 1 of the FOIA Request, but it did not address Items 2 or 3. The CIA again denied Plaintiff’s request for expedited processing and did not address Plaintiff’s requests for fee waivers. (A true and correct copy of the letter is annexed hereto as Exhibit G.)

28. The CIA has not produced or withheld any documents responsive to Plaintiff’s Request, nor has it indicated whether it has conducted a search for records. More than twenty (20) business days have passed since Plaintiff submitted his administrative appeal.

**ODNI**

29. Having received no response from ODNI regarding Plaintiff’s March 10, 2015 FOIA Request, Plaintiff appealed ODNI’s constructive denial by letter dated April 22, 2015. (A true and correct copy of the letter is annexed hereto as Exhibit H.)

30. In a letter dated May 14, 2015, ODNI stated that it had not received Plaintiff’s March 10, 2015 Request. ODNI indicated that it will be processing the appeal Request as an initial Request. ODNI also denied Plaintiff’s request for expedited process. ODNI did not address Plaintiff’s requests for fee waivers. By email dated July 15, 2015, ODNI indicated that it had initiated a search for responsive records. (True and correct copies of the correspondence from ODNI are collectively annexed hereto as Exhibit I.)

31. The ODNI has not produced or withheld any documents responsive to Plaintiff’s Request, nor has it indicated whether it has conducted a search for records. More than twenty (20) business days have passed since Plaintiff submitted his Request.

**NAVY**

32. In a letter dated March 11, 2015 the Navy indicated that it has determined that the information sought may be maintained by the Office of the Secretary of Defense and Joint Staff and had forwarded Plaintiff's Request to that office. The Navy did not address Plaintiff's requests for expedited processing or fee waivers. (A true and correct copy of the letter is annexed hereto as Exhibit J.)

33. The Navy has not produced or withheld any documents responsive to Plaintiff's Request, nor has it indicated whether it has conducted a search for records. More than twenty (20) business days have passed since Plaintiff submitted his Request.

**DoD**

34. In a letter dated March 12, 2015, DoD acknowledged receipt of the forwarded Request from the Navy. DoD acknowledged that Plaintiff was entitled to a limitation of fees as a media category requestor and thus deemed his request for a fee waiver moot. DoD denied Plaintiff's request for expedited processing and indicated that DoD would be unable to respond to Plaintiff's Request within FOIA's 20 day statutory time period as there are unusual circumstances impacting DoD's ability to quickly process the Request. (A true and correct copy of the letter is annexed hereto as Exhibit K.)

35. In a letter dated March 18, 2015, DoD explained that Plaintiff's March 9, 2015 FOIA Request to the DoD was a duplicate of the Request forwarded from the Navy, so DoD administratively closed Plaintiff's original DoD Request. (A true and correct copy of the letter is annexed hereto as Exhibit L.)

36. By letter dated April 22, 2015, Plaintiff submitted an administrative appeal to the DoD. Plaintiff appealed the constructive denial of request due to the DoD's failure to

respond within the statutory time limit and the denial of expedited processing. (A true and correct copy of this administrative appeal is annexed hereto as Exhibit M.)

37. In a letter dated May 4, 2015, DoD acknowledged receipt of the appeal and indicated that DoD would not be able to complete the appeal within the statutory time limit. In a letter dated June 15, 2015, DoD indicated that it had reviewed Plaintiff's appeal at the appellate level and determined that the request for expedited processing should be denied. (True and correct copies of letters are collectively annexed hereto as Exhibit N.)

38. On August 14, 2015, DoD issued a final response to Plaintiff's FOIA Request. DoD indicated that it had found ninety-eight (98) pages of documents to be responsive and disclosed the documents with redactions pursuant to Exemptions (b)(4), (b)(6), and (b)(7)(A). DoD indicated that it could not locate information for Item 2 of the FOIA Request. DoD determined that no assessable fees are associated with the response. DoD invited Plaintiff to appeal DoD's final response within 60 calendar days. (A true and correct copy of the letter is annexed hereto as Exhibit O.)

39. By letter dated October 13, 2015, Plaintiff appealed the DoD's final response. Plaintiff alleged that DoD failed to conduct an adequate search for records responsive to Plaintiff's Request. Plaintiff also appealed the DoD's redaction of information under exemptions (b)(4), (b)(6), and (b)(7)(A). (A true and correct copy of the administrative appeal letter is annexed hereto as Exhibit P.)

40. In a letter dated October 20, 2015, DoD acknowledged receipt of Plaintiff's appeal, but indicated that it would be unable to respond to Plaintiff's appeal within the twenty day statutory requirement. (A true and correct copy of the letter is annexed hereto as Exhibit Q.)

41. More than twenty (20) business days have passed since Plaintiff filed his second administrative appeal.

**Summary of Agency Responses**

42. None of the six Defendants—DOD, Navy, NSA, FBI, CIA, and ODNI—have granted expedited processing for Plaintiff's FOIA Requests.

43. None of the six Defendants granted a public interest fee waiver, and only DoD granted a limitation of fees.

44. Of the six Defendants, only DoD has produced documents in response to Plaintiff's Requests. Those partially redacted documents fail to provide Plaintiff with the information he requires.

45. Plaintiff has exhausted all administrative remedies.

**FIRST CLAIM**

(Violation of FOIA for failing to expedite Plaintiff's Requests)

46. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

47. Defendants' refusal to expedite Plaintiff's Requests violates the FOIA, 5 U.S.C. § 552(6)(E).

**SECOND CLAIM**

(Violation of FOIA for failing to respond to Plaintiff's Requests)

48. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

49. Defendants' failure to timely respond to the Requests violates FOIA, 5 U.S.C. § 552(a)(6)(A), and Defendants' corresponding regulations.

**THIRD CLAIM**

(Violation of FOIA for failing to make records available)

50. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

51. Defendants' failure to make a reasonable effort to search for records responsive to the Requests violates the FOIA, 5 U.S.C. § 552(a)(3)(C), and Defendants' regulations.

52. Defendants' failure to make available the records sought by the Requests violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

53. Defendants' withholdings of specific responsive records, or portions thereof, violates the FOIA, 5 U.S.C. § 552(a)(3)(A), (6)(A), and Defendants' corresponding regulations.

**FOURTH CLAIM**

(Violation of FOIA for failing to grant fee waivers)

54. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

55. Defendants' failure to grant Plaintiff's request for a public interest fee waiver violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and Defendants' corresponding regulations.

56. The failure of NSA, FBI, CIA, ODNI, and Navy to grant Plaintiff a limitation of fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), and Defendants' regulations.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests this Court to:

1. Declare that the records sought by Plaintiff in his FOIA Requests are public records under 5 U.S.C. § 552 and must be disclosed;
2. Order Defendants to conduct a thorough search for all records responsive to Plaintiff's Requests;
3. Order Defendants to immediately process and release all records responsive to Plaintiff's Requests;

4. Order Defendants to disclose all improperly withheld or redacted information;
5. Enjoin Defendants from charging Plaintiff for the search, review, or duplication fees for processing his Requests;
6. Award Plaintiff the costs and reasonable attorney's fees incurred in this action; and
7. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

MEDIA FREEDOM AND INFORMATION  
ACCESS CLINIC, YALE LAW SCHOOL

David A. Schulz (DS-3180)  
Media Freedom and Information Access Clinic  
321 West 44th Street, Suite 1000  
New York, NY 10036  
Tel: (212) 850-6100  
Fax: (212) 850-6299  
[DSchulz@lskslaw.com](mailto:DSchulz@lskslaw.com)

/s/ Jonathan Manes  
Jonathan M. Manes (JM-3238)  
Media Freedom and Information Access Clinic  
Yale Law School  
P.O. Box 208215  
New Haven, CT 06520-8215  
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Fax: (203) 432-3034  
[Jonathan.Manes@yale.edu](mailto:Jonathan.Manes@yale.edu)

Dated: December 11, 2015  
New Haven, CT



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, \_\_\_\_\_, counsel for \_\_\_\_\_, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: \_\_\_\_\_
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? \_\_\_\_\_
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? \_\_\_\_\_

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? \_\_\_\_\_

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: \_\_\_\_\_

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Mattathias Schwartz

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Plaintiff(s)

v.

Civil Action No.

Department of Defense; Department of Navy; National Security Agency; Federal Bureau of Investigation; Central Intelligence Agency; and Office of the Director of National Intelligence

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Department of Defense 1400 Defense Pentagon Washington, DC 20301-1400

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jonathan Manes
Media Freedom and Information Access Clinic
Yale Law School
P.O. Box 208215
New Haven, CT 06520-8215

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

12/11/2015

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Mattathias Schwartz

Plaintiff(s)

v.

Department of Defense; Department of Navy; National Security Agency; Federal Bureau of Investigation; Central Intelligence Agency; and Office of the Director of National Intelligence

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Department of Navy
1000 Navy Pentagon
Washington, DC 20350-1200

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jonathan Manes
Media Freedom and Information Access Clinic
Yale Law School
P.O. Box 208215
New Haven, CT 06520-8215

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 12/11/2015

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

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designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Mattathias Schwartz

Plaintiff(s)

v.

Department of Defense; Department of Navy; National Security Agency; Federal Bureau of Investigation; Central Intelligence Agency; and Office of the Director of National Intelligence

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

National Security Agency
NSA/CSS
Fort Meade, MD 20755-6248

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jonathan Manes
Media Freedom and Information Access Clinic
Yale Law School
P.O. Box 208215
New Haven, CT 06520-8215

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 12/11/2015

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

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I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Mattathias Schwartz

Plaintiff(s)

v.

Department of Defense; Department of Navy; National Security Agency; Federal Bureau of Investigation; Central Intelligence Agency; and Office of the Director of National Intelligence

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jonathan Manes
Media Freedom and Information Access Clinic
Yale Law School
P.O. Box 208215
New Haven, CT 06520-8215

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 12/11/2015

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Mattathias Schwartz

Plaintiff(s)

v.

Department of Defense; Department of Navy; National Security Agency; Federal Bureau of Investigation; Central Intelligence Agency; and Office of the Director of National Intelligence

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Central Intelligence Agency
Office of Public Affairs
Washington, DC 20505

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jonathan Manes
Media Freedom and Information Access Clinic
Yale Law School
P.O. Box 208215
New Haven, CT 06520-8215

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 12/11/2015

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Mattathias Schwartz

Plaintiff(s)

v.

Department of Defense; Department of Navy; National Security Agency; Federal Bureau of Investigation; Central Intelligence Agency; and Office of the Director of National Intelligence

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Office of the Director of National Intelligence
Washington, DC 20511

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jonathan Manes
Media Freedom and Information Access Clinic
Yale Law School
P.O. Box 208215
New Haven, CT 06520-8215

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 12/11/2015

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# EXHIBIT A

March 9, 2015

**BY ELECTRONIC SUBMISSION**

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

**Re: Request for Information under the Freedom of Information Act**

This an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I am seeking to obtain the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

My use of the term “records” in these requests includes but is not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, cables, briefing slides, briefing documents, Sametime Communications, and all other electronic or written communications.

By “guidance,” I mean any definitions, explanations, illustrations, examples, or other descriptions of the specific information that may not be disclosed in the public proceedings related to the prosecution of detainees at Guantanamo Bay, together with the reasons or justifications for non-disclosure and the methods for effecting non-disclosure. Responsive records would, for example, describe the kinds of information that may not be said aloud or included in written submissions, explain the basis for censoring such information from public comments or written records, or specify the procedure that should be employed to effectuate the censorship. Lists of specific terms as well as general descriptive guidance of prohibited categories would be responsive to this request.



### **Request for a Public Interest Fee Waiver**

I request a waiver of all fees for this request. The request is being filed in the context of my work as a journalist. The article I plan to write will contribute significantly to a public understanding of the military commissions trials and to our country's ongoing efforts to seek justice after the events of September 11, 2001. A fee waiver is appropriate because the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure to me is "likely to contribute significantly to the public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester." 32 C.F.R. § 286.28(d)(1).

Given the nature of the great public interest in the Guantanamo Bay Naval Base in general, the disclosure of information surrounding policies and proceedings at the military commissions trials will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. Furthermore, since the history of this particular facility is a current subject of wide public interest, and this information is not already known to the general public, disclosure will be unique in contributing previously unknown facts, thereby enhancing public knowledge.

Therefore, based on the above reasons, I respectfully request that all fees related to the search, review, and duplication of the requested records be waived. However, in the event that duplication fees are not waived, I am willing to review the requested records in a reading room. See 32 C.F.R. § 286.7(a). If the search and review fees will not be waived, I ask that you contact me at the email address below should the estimated fees resulting from this request exceed \$100.

### **Request for Limitation of Fees**

I am also entitled to a limitation of fees because I am "a representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 286.28(e)(7). I am a "person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." 32 C.F.R. § 286.28(e)(7)(i). My articles have appeared in publications including *The New Yorker*, *The London Review of Books*, and *The New York Times Magazine*, among others. The records requested are not sought for commercial use. As such, fees may only be assessed for "reasonable standard charges for document duplication (excluding charges for the first 100 pages)[.]" 32 C.F.R. § 286.28(e)(7).

### **Request for Expedited Processing**

I am seeking these materials to report on a continuing news story of great public interest, and therefore request that you expedite your response pursuant to 5 U.S.C. § 552(6)(E). The records requested are urgently needed in order to disseminate to the public information about government activity. See 32 C.F.R. § 286.4(d)(2). Because this information is of timely news value, if you have any questions about this request, please contact me by telephone or e-mail, rather than relying upon regular mail. You may reach me by telephone at (267) 288-7444 or by e-mail at mattathias.schwartz@gmail.com.

### Request for an Explanation of Withholdings and Redactions

If this FOIA request is denied in whole or in part, please justify and explain the reasons for all denials by reference to the specific exemptions of the Act, pursuant to 32 C.F.R. § 286.23(e)(3). In addition, please release all reasonably segregable portions of otherwise exempt material, pursuant to 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so I may begin the process of requesting a Mandatory Declassification Review (“MDR”) under the terms of EO 13526.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, by e-mail at mattathias.schwartz@gmail.com. Pursuant to the applicable FOIA provision and departmental regulations, I expect a response regarding this request within the twenty (20) working day statutory time limit. *See* 5 U.S.C. § 552(a)(6)(A)(i); 32 C.F.R. § 286.23(e)(1).

I certify that the information provided in this request is true and correct to the best of my knowledge.

Sincerely,



Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: mattathias.schwartz@gmail.com

March 9, 2015

**BY POST**

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505  
F: (703) 613-3007

**Re: Request for Information under the Freedom of Information Act**

This is an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I am seeking to obtain the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

My use of the term “records” in these requests includes but is not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, cables, briefing slides, briefing documents, Sametime Communications, and all other electronic or written communications.

By “guidance,” I mean any definitions, explanations, illustrations, examples, or other descriptions of the specific information that may not be disclosed in the public proceedings related to the prosecution of detainees at Guantanamo Bay, together with the reasons or justifications for non-disclosure and the methods for effecting non-disclosure. Responsive records would, for example, describe the kinds of information that may not be said aloud or included in written submissions, explain the basis for censoring such information from public comments or written records, or specify the procedure that should be employed to effectuate the censorship. Lists of specific terms as well as general descriptive guidance of prohibited categories would be responsive to this request.

### **Request for a Public Interest Fee Waiver**

I request a waiver of all fees for this request. The request is being filed in the context of my work as a journalist. The article I plan to write will contribute significantly to a public understanding of the military commissions trials and to our country's ongoing efforts to seek justice after the events of September 11, 2001. A fee waiver is appropriate because the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure to me is "likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester." 32 C.F.R. § 1900.13(b)(2).

Given the nature of the great public interest in the Guantanamo Bay Naval Base in general, the disclosure of information surrounding policies and proceedings at the military commissions trials will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. Furthermore, since the history of this particular facility is a current subject of wide public interest, and this information is not already known to the general public, disclosure will be unique in contributing previously unknown facts, thereby enhancing public knowledge.

Therefore, based on the above reasons, I respectfully request that all fees related to the search, review, and duplication of the requested records be waived. However, in the event that duplication fees are not waived, I am willing to review the requested records in a CIA "reading room." See 32 C.F.R. § 1900.23(c). If the search and review fees will not be waived, I ask that you contact me at the below email address should the estimated fees resulting from this request exceed \$100. See 32 C.F.R. § 1900.13(e) ("the Agency will request specific commitment when it estimates that fees will exceed \$100.00").

### **Request for Limitation of Fees**

I am also entitled to a limitation of fees because I am "a representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 1900.13(i)(2). I am a "person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." 32 C.F.R. § 1900.02(h)(3). My articles have appeared in publications including *The New Yorker*, *The London Review of Books*, and *The New York Times Magazine*, among others. The records requested are not sought for commercial use. As such, fees may only be assessed "for reproduction beyond the first 100 pages[.]" 32 C.F.R. § 1900.13(i)(2).

### **Request for Expedited Processing**

I am seeking these materials to report on a continuing news story of great public interest, and therefore request that you expedite your response pursuant to 5 U.S.C. § 552(6)(E). Because this information is of timely news value, if you have any questions about this request, please contact me by telephone or e-mail, rather than relying upon regular mail. You may reach me by telephone at (267) 288-7444 or by e-mail at [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com).

### **Request for an Explanation of Withholdings and Redactions**

If this FOIA request is denied in whole or in part, please justify and explain the reasons for all denials by reference to the specific exemptions of the Act, pursuant to 32 C.F.R. § 1900.23(b). In addition, please release all reasonably segregable portions of otherwise exempt material, pursuant to 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so I may begin the process of requesting a Mandatory Declassification Review (“MDR”) under the terms of EO 13526.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, by e-mail at [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com). Pursuant to the applicable FOIA provision and departmental regulations, I expect a response regarding this request within the twenty (20) working day statutory time limit. *See* 5 U.S.C. § 552(a)(6)(A)(i); 32 C.F.R. § 1900.21(d).

I certify that the information provided in this request is true and correct to the best of my knowledge.

Sincerely,



Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com)

March 9, 2015

**BY E-MAIL**

Federal Bureau of Investigation  
Record/Information Dissemination Section  
Attn: FOIPA Request  
170 Marcel Drive  
Winchester, VA 22602-4843  
E: foiparequest@ic.fbi.gov

**Re: Request for Information under the Freedom of Information Act**

This an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I am seeking to obtain the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

My use of the term “records” in these requests includes but is not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, cables, briefing slides, briefing documents, Sametime Communications, and all other electronic or written communications.

By “guidance,” I mean any definitions, explanations, illustrations, examples, or other descriptions of the specific information that may not be disclosed in the public proceedings related to the prosecution of detainees at Guantanamo Bay, together with the reasons or justifications for non-disclosure and the methods for effecting non-disclosure. Responsive records would, for example, describe the kinds of information that may not be said aloud or included in written submissions, explain the basis for censoring such information from public comments or written records, or specify the procedure that should be employed to effectuate the

censorship. Lists of specific terms as well as general descriptive guidance of prohibited categories would be responsive to this request.

### **Request for a Public Interest Fee Waiver**

I request a waiver of all fees for this request. The request is being filed in the context of my work as a journalist. The article I plan to write will contribute significantly to a public understanding of the military commissions trials and to our country's ongoing efforts to seek justice after the events of September 11, 2001. A fee waiver is appropriate because the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure to me is "likely to contribute significantly to the public understanding of the operations or activities of the government" and is not primarily in the commercial interest of the requester. 32 C.F.R. § 16.11(k)(1)(i).

Given the nature of the great public interest in the Guantanamo Bay Naval Base in general, the disclosure of information surrounding policies and proceedings at the military commissions trials will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. Furthermore, since the history of this particular facility is a current subject of wide public interest, and this information is not already known to the general public, disclosure will be unique in contributing previously unknown facts, thereby enhancing public knowledge.

Therefore, based on the above reasons, I respectfully request that all fees related to the search, review, and duplication of the requested records be waived. However, in the event that duplication fees are not waived, I am willing to review the requested records in an FBI reading room. *See* 28 C.F.R. § 16.2(a). If the search and review fees will not be waived, I ask that you contact me at the below email address should the estimated fees resulting from this request exceed \$100.

### **Request for Limitation of Fees**

I am also entitled to a limitation of fees because I am "a representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 16.11(d)(1). I am a "person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." 32 C.F.R. § 16.11(b)(6). My articles have appeared in publications including *The New Yorker*, *The London Review of Books*, and *The New York Times Magazine*, among others. The records requested are not sought for commercial use. As such, fees may only be assessed for reproduction beyond the first 100 pages" 32 C.F.R. § 16.11(d)(3)(i).

### **Request for Expedited Processing**

I am seeking these materials to report on a continuing news story of great public interest, and therefore request that you expedite your response pursuant to 5 U.S.C. § 552(6)(E) and 28 C.F.R. § 16.5(d)(1)(ii). Because this information is of timely news value, if you have any questions about this request, please contact me by telephone or e-mail, rather than relying upon regular mail. You may reach me by telephone at (267) 288-7444 or by e-mail at

mattathias.schwartz@gmail.com. I expect a response within ten calendar days. *See* 28 C.F.R. 16.5(d)(4).

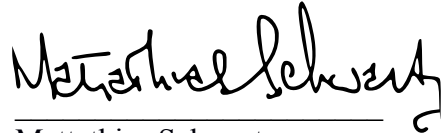
### **Request for an Explanation of Withholdings and Redactions**

If this FOIA request is denied in whole or in part, please justify and explain the reasons for all denials by reference to the specific exemptions of the Act, pursuant to 32 C.F.R. § 16.6(c). In addition, please release all reasonably segregable portions of otherwise exempt material, pursuant to 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so I may begin the process of requesting a Mandatory Declassification Review (“MDR”) under the terms of EO 13526.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, by e-mail at mattathias.schwartz@gmail.com. Pursuant to the applicable FOIA provision and departmental regulations, I expect a response regarding this request within the twenty (20) working day statutory time limit. *See* 5 U.S.C. § 552(a)(6)(A)(i).

I certify that the information provided in this request is true and correct to the best of my knowledge.

Sincerely,



Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: mattathias.schwartz@gmail.com



March 9, 2015

**BY ELECTRONIC SUBMISSION**

Chief of Naval Operations (DNS-36)  
2000 Navy Pentagon  
Washington, DC 20350-2000

**Re: Request for Information under the Freedom of Information Act**

This an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I am seeking to obtain the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

My use of the term “records” in these requests includes but is not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, cables, briefing slides, briefing documents, Sametime Communications, and all other electronic or written communications.

By “guidance,” I mean any definitions, explanations, illustrations, examples, or other descriptions of the specific information that may not be disclosed in the public proceedings related to the prosecution of detainees at Guantanamo Bay, together with the reasons or justifications for non-disclosure and the methods for effecting non-disclosure. Responsive records would, for example, describe the kinds of information that may not be said aloud or included in written submissions, explain the basis for censoring such information from public comments or written records, or specify the procedure that should be employed to effectuate the censorship. Lists of specific terms as well as general descriptive guidance of prohibited categories would be responsive to this request.

### **Request for a Public Interest Fee Waiver**

I request a waiver of all fees for this request. The request is being filed in the context of my work as a journalist. The article I plan to write will contribute significantly to a public understanding of the military commissions trials and to our country's ongoing efforts to seek justice after the events of September 11, 2001. A fee waiver is appropriate because the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure to me is likely to contribute significantly to the public understanding of the operations or activities of the United States government and is not primarily in my commercial interest. *See* 32 C.F.R. 701.34.

Given the nature of the great public interest in the Guantanamo Bay Naval Base in general, the disclosure of information surrounding policies and proceedings at the military commissions trials "will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons." 32 C.F.R. § 701.48(d). Furthermore, since the history of this particular facility is a "current subject of wide public interest," and this information is not already known to the general public, disclosure will "be unique in contributing previously unknown facts, thereby enhancing public knowledge." 32 C.F.R. § 701.48(e).

Therefore, based on the above reasons, I respectfully request that all fees related to the search, review, and duplication of the requested records be waived. However, in the event that duplication fees are not waived, I am willing to review the requested records in a reading room. *See* 32 C.F.R. 701.6. If the search and review fees will not be waived, I ask that you contact me at the email address below should the estimated fees resulting from this request exceed \$100.

### **Request for Limitation of Fees**

I am also entitled to a limitation of fees because I am a "representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 701.42(d). I am a "person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." *Id.* My articles have appeared in publications including *The New Yorker*, *The London Review of Books*, and *The New York Times Magazine*, among others. The records requested are not sought for commercial use. As such, fees may only be assessed for reasonable standard charges for document duplication (excluding charges for the first 100 pages). 32 C.F.R. § 701.42(d)(4).

### **Request for Expedited Processing**

I am seeking these materials to report on a continuing news story of great public interest, and therefore request that you expedite your response pursuant to 5 U.S.C. § 552(6)(E). The records requested are urgently needed in order to disseminate to the public information about government activity. *See* 32 C.F.R. § 701.8(f)(5)(ii). Because this information is of timely news value, if you have any questions about this request, please contact me by telephone or e-mail, rather than relying upon regular mail. You may reach me by telephone at (267) 288-7444 or by e-mail at mattathias.schwartz@gmail.com.

### Request for an Explanation of Withholdings and Redactions

If this FOIA request is denied in whole or in part, please justify and explain the reasons for all denials by reference to the specific exemptions of the Act, pursuant to 32 C.F.R. § 701.8(k)(3). In addition, please release all reasonably segregable portions of otherwise exempt material, pursuant to 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so I may begin the process of requesting a Mandatory Declassification Review (“MDR”) under the terms of EO 13526.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, by e-mail at [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com). Pursuant to the applicable FOIA provision and departmental regulations, I expect a response regarding this request within the twenty (20) working day statutory time limit. *See* 5 U.S.C. § 552(a)(6)(A)(i); 32 C.F.R. § 701.8(g).

I certify that the information provided in this request is true and correct to the best of my knowledge.

Sincerely,



Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com)

March 9, 2015

**BY POST**

National Security Agency  
Attn: FOIA Office (DJ4)  
9800 Savage Road STE 6248  
Ft. George G. Meade, MD 20755-6248

**Re: Request for Information under the Freedom of Information Act**

This an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I am seeking to obtain the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

My use of the term “records” in these requests includes but is not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, cables, briefing slides, briefing documents, Sametime Communications, and all other electronic or written communications.

By “guidance,” I mean any definitions, explanations, illustrations, examples, or other descriptions of the specific information that may not be disclosed in the public proceedings related to the prosecution of detainees at Guantanamo Bay, together with the reasons or justifications for non-disclosure and the methods for effecting non-disclosure. Responsive records would, for example, describe the kinds of information that may not be said aloud or included in written submissions, explain the basis for censoring such information from public comments or written records, or specify the procedure that should be employed to effectuate the censorship. Lists of specific terms as well as general descriptive guidance of prohibited categories would be responsive to this request.

### **Request for a Public Interest Fee Waiver**

I request a waiver of all fees for this request. The request is being filed in the context of my work as a journalist. The article I plan to write will contribute significantly to a public understanding of the military commissions trials and to our country's ongoing efforts to seek justice after the events of September 11, 2001. A fee waiver is appropriate because the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure to me is likely to contribute significantly to the public understanding of the operations or activities of the United States government and is not primarily in the commercial interest of the requester. *See* 32 C.F.R. § 286.28(d)(1).

Given the nature of the great public interest in the Guantanamo Bay Naval Base in general, the disclosure of information surrounding policies and proceedings at the military commissions trials will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. Furthermore, since the history of this particular facility is a current subject of wide public interest, and this information is not already known to the general public, disclosure will be unique in contributing previously unknown facts, thereby enhancing public knowledge.

Therefore, based on the above reasons, I respectfully request that all fees related to the search, review, and duplication of the requested records be waived. However, in the event that duplication fees are not waived, I am willing to review the requested records in a reading room. *See* 32 C.F.R. § 286.7(a). If the search and review fees will not be waived, I ask that you contact me at the email address below should the estimated fees resulting from this request exceed \$100.

### **Request for Limitation of Fees**

I am also entitled to a limitation of fees because I am “a representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 286.28(e)(7). I am a “person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” 32 C.F.R. § 286.28(e)(7)(i). My articles have appeared in publications including *The New Yorker*, *The London Review of Books*, and *The New York Times Magazine*, among others. The records requested are not sought for commercial use. As such, fees may only be assessed for “reasonable standard charges for document duplication (excluding charges for the first 100 pages)[.]” 32 C.F.R. § 286.28(e)(7).

### **Request for Expedited Processing**

I am seeking these materials to report on a continuing news story of great public interest, and therefore request that you expedite your response pursuant to 5 U.S.C. § 552(6)(E). The records requested are urgently needed in order to disseminate to the public information about government activity. *See* 32 C.F.R. § 299.5(f). Because this information is of timely news value, if you have any questions about this request, please contact me by telephone or e-mail, rather than relying upon regular mail. You may reach me by telephone at (267) 288-7444 or by e-mail at mattathias.schwartz@gmail.com.

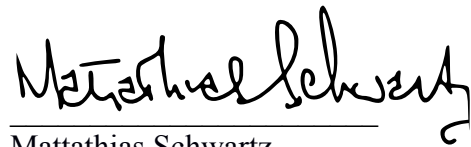
### **Request for an Explanation of Withholdings and Redactions**

If this FOIA request is denied in whole or in part, please justify and explain the reasons for all denials by reference to the specific exemptions of the Act, pursuant to 32 C.F.R. § 299.5(j)(3)(i). In addition, please release all reasonably segregable portions of otherwise exempt material, pursuant to 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so I may begin the process of requesting a Mandatory Declassification Review (“MDR”) under the terms of EO 13526.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, by e-mail at [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com). Pursuant to the applicable FOIA provision and departmental regulations, I expect a response regarding this request within the twenty (20) working day statutory time limit. *See* 5 U.S.C. § 552(a)(6)(A)(i); 32 C.F.R. § 299.5(b).

I certify that the information provided in this request is true and correct to the best of my knowledge.

Sincerely,



Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com)

March 10, 2015

**BY POST**

Office of the Director of National Intelligence (ODNI)  
Washington , D.C. 20511

**Re: Request for Information under the Freedom of Information Act**

This an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I am seeking to obtain the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

My use of the term “records” in these requests includes but is not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, cables, briefing slides, briefing documents, Sametime Communications, and all other electronic or written communications.

By “guidance,” I mean any definitions, explanations, illustrations, examples, or other descriptions of the specific information that may not be disclosed in the public proceedings related to the prosecution of detainees at Guantanamo Bay, together with the reasons or justifications for non-disclosure and the methods for effecting non-disclosure. Responsive records would, for example, describe the kinds of information that may not be said aloud or included in written submissions, explain the basis for censoring such information from public comments or written records, or specify the procedure that should be employed to effectuate the censorship. Lists of specific terms as well as general descriptive guidance of prohibited categories would be responsive to this request.



### **Request for a Public Interest Fee Waiver**

I request a waiver of all fees for this request. The request is being filed in the context of my work as a journalist. The article I plan to write will contribute significantly to a public understanding of the military commissions trials and to our country's ongoing efforts to seek justice after the events of September 11, 2001. A fee waiver is appropriate because the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure to me is "likely to contribute significantly to the public understanding of the operations or activities of the U.S. Government and is not primarily in the commercial interest of the requester." 32 C.F.R. § 1700.2(h)(4).

Given the nature of the great public interest in the Guantanamo Bay Naval Base in general, the disclosure of information surrounding policies and proceedings at the military commissions trials will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. Furthermore, since the history of this particular facility is a current subject of wide public interest, and this information is not already known to the general public, disclosure will be unique in contributing previously unknown facts, thereby enhancing public knowledge.

Therefore, based on the above reasons, I respectfully request that all fees related to the search, review, and duplication of the requested records be waived. However, in the event that duplication fees are not waived, I am willing to review the requested records in a reading room. If the search and review fees will not be waived, I ask that you contact me at the email address below should the estimated fees resulting from this request exceed \$100.

### **Request for Limitation of Fees**

I am also entitled to a limitation of fees because I am "a representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 1700.6(h)(i). I am a "person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." 32 C.F.R. § 1700.2(h)(4). My articles have appeared in publications including *The New Yorker*, *The London Review of Books*, and *The New York Times Magazine*, among others. The records requested are not sought for commercial use. As such, fees may only be assessed for reasonable standard charges for document duplication (excluding charges for the first 100 pages). See 32 C.F.R. § 1700.6(i)(2).

### **Request for Expedited Processing**

I am seeking these materials to report on a continuing news story of great public interest, and therefore request that you expedite your response pursuant to 5 U.S.C. § 552(6)(E). The records requested are urgently needed in order to disseminate to the public information about government activity. See 32 C.F.R. § 1700.12(c)(2). Because this information is of timely news value, if you have any questions about this request, please contact me by telephone or e-mail, rather than relying upon regular mail. You may reach me by telephone at (267) 288-7444 or by e-mail at mattathias.schwartz@gmail.com.



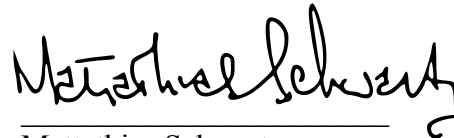
### **Request for an Explanation of Withholdings and Redactions**

If this FOIA request is denied in whole or in part, please justify and explain the reasons for all denials by reference to the specific exemptions of the Act, pursuant to 32 C.F.R. § 1700.8(c)(1). In addition, please release all reasonably segregable portions of otherwise exempt material, pursuant to 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so I may begin the process of requesting a Mandatory Declassification Review (“MDR”) under the terms of EO 13526.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, by e-mail at [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com). Pursuant to the applicable FOIA provision and departmental regulations, I expect a response regarding this request within the twenty (20) working day statutory time limit. *See* 5 U.S.C. § 552(a)(6)(A)(i).

I certify that the information provided in this request is true and correct to the best of my knowledge.

Sincerely,



\_\_\_\_\_  
Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com)

# EXHIBIT B



NATIONAL SECURITY AGENCY  
CENTRAL SECURITY SERVICE  
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 80727  
23 March 2015

MATTATHIAS SCHWARTZ  
C/O THE NEW YORKER  
1 WORLD TRADE CENTER  
NEW YORK NY 10007-2915

Dear Mr. Schwartz:

This responds to your Freedom of Information Act (FOIA) request of 9 March 2015, which was received by this office on 18 March 2015, for records related to the Office of Military Commissions/Guantanamo Bay Naval Station, as further described in your request (attached as reference). Your letter has been assigned Case Number 80727.

In reviewing your request, we have determined that the topic of your request likely falls under the purview of the Department of Defense (DoD). We have consulted with the DoD FOIA Office, and were informed that DoD is currently processing a request directly from you on this topic in DoD FOIA Case 15-F-0872. Therefore, we advise that you direct inquiries related to your request to the following:

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington DC 20301-1155  
Fax: (571) 372-0500

We consider our action on this request complete; therefore we have not addressed your request for expedited processing.

Sincerely,

*Paul J. Blaskowski for*

PAUL J. BLASKOWSKI  
Chief  
FOIA/PA Office

Encl:  
a/s

rec'd  
3/18/2015

March 9, 2015

**BY POST**

National Security Agency  
Attn: FOIA Office (DJ4)  
9800 Savage Road STE 6248  
Ft. George G. Meade, MD 20755-6248

**Re: Request for Information under the Freedom of Information Act**

This an expedited request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. I am seeking to obtain the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

My use of the term "records" in these requests includes but is not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, cables, briefing slides, briefing documents, Sametime Communications, and all other electronic or written communications.

By "guidance," I mean any definitions, explanations, illustrations, examples, or other descriptions of the specific information that may not be disclosed in the public proceedings related to the prosecution of detainees at Guantanamo Bay, together with the reasons or justifications for non-disclosure and the methods for effecting non-disclosure. Responsive records would, for example, describe the kinds of information that may not be said aloud or included in written submissions, explain the basis for censoring such information from public comments or written records, or specify the procedure that should be employed to effectuate the censorship. Lists of specific terms as well as general descriptive guidance of prohibited categories would be responsive to this request.

### **Request for a Public Interest Fee Waiver**

I request a waiver of all fees for this request. The request is being filed in the context of my work as a journalist. The article I plan to write will contribute significantly to a public understanding of the military commissions trials and to our country's ongoing efforts to seek justice after the events of September 11, 2001. A fee waiver is appropriate because the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure to me is likely to contribute significantly to the public understanding of the operations or activities of the United States government and is not primarily in the commercial interest of the requester. *See* 32 C.F.R. § 286.28(d)(1).

Given the nature of the great public interest in the Guantanamo Bay Naval Base in general, the disclosure of information surrounding policies and proceedings at the military commissions trials will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. Furthermore, since the history of this particular facility is a current subject of wide public interest, and this information is not already known to the general public, disclosure will be unique in contributing previously unknown facts, thereby enhancing public knowledge.

Therefore, based on the above reasons, I respectfully request that all fees related to the search, review, and duplication of the requested records be waived. However, in the event that duplication fees are not waived, I am willing to review the requested records in a reading room. *See* 32 C.F.R. § 286.7(a). If the search and review fees will not be waived, I ask that you contact me at the email address below should the estimated fees resulting from this request exceed \$100.

### **Request for Limitation of Fees**

I am also entitled to a limitation of fees because I am "a representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 286.28(e)(7). I am a "person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." 32 C.F.R. § 286.28(e)(7)(i). My articles have appeared in publications including *The New Yorker*, *The London Review of Books*, and *The New York Times Magazine*, among others. The records requested are not sought for commercial use. As such, fees may only be assessed for "reasonable standard charges for document duplication (excluding charges for the first 100 pages)[.]" 32 C.F.R. § 286.28(e)(7).

### **Request for Expedited Processing**

I am seeking these materials to report on a continuing news story of great public interest, and therefore request that you expedite your response pursuant to 5 U.S.C. § 552(6)(E). The records requested are urgently needed in order to disseminate to the public information about government activity. *See* 32 C.F.R. § 299.5(f). Because this information is of timely news value, if you have any questions about this request, please contact me by telephone or e-mail, rather than relying upon regular mail. You may reach me by telephone at (267) 288-7444 or by e-mail at mattathias.schwartz@gmail.com.

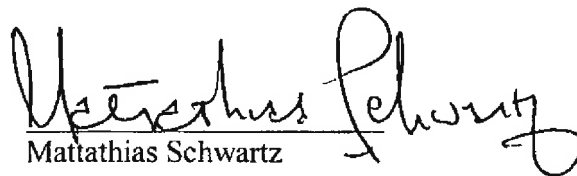
**Request for an Explanation of Withholdings and Redactions**

If this FOIA request is denied in whole or in part, please justify and explain the reasons for all denials by reference to the specific exemptions of the Act, pursuant to 32 C.F.R. § 299.5(j)(3)(i). In addition, please release all reasonably segregable portions of otherwise exempt material, pursuant to 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so I may begin the process of requesting a Mandatory Declassification Review ("MDR") under the terms of EO 13526.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, by e-mail at mattathias.schwartz@gmail.com. Pursuant to the applicable FOIA provision and departmental regulations, I expect a response regarding this request within the twenty (20) working day statutory time limit. *See* 5 U.S.C. § 552(a)(6)(A)(i); 32 C.F.R. § 299.5(b).

I certify that the information provided in this request is true and correct to the best of my knowledge.

Sincerely,

  
Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: mattathias.schwartz@gmail.com

# EXHIBIT C

U.S. Department of Justice



Federal Bureau of Investigation  
Washington, D.C. 20535

March 20, 2015

MR. MATTATHIAS SCHWARTZ  
THE NEW YORKER  
1 WORLD TRADE CENTER  
NEW YORK, NEW YORK 10007-2915

FOIPA Request No.: 1324446-000  
Subject: OFFICE OF MILITARY  
COMMISSIONS (DOCUMENTS A  
GUIDANCE)

Dear Mr. Schwartz:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the [ \_\_\_\_\_ Resident Agency / \_\_\_\_\_ Field Office] and forwarded to FBI Headquarters for processing.
- We are searching the indices to our Central Records System for the information responsive to this request. We will inform you of the results in future correspondence.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- The subject of your request is currently being processed for public release. Documents will be released to you upon completion.
- Please check for the status of your FOIPA request at [www.fbi.gov/foia](http://www.fbi.gov/foia) by clicking on Check the Status of Your FOIPA Request under Records Available Now located on the right side of the page. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division



U.S. Department of Justice



Federal Bureau of Investigation  
Washington, D.C. 20535

March 24, 2015

MR. MATTATHIAS SCHWARTZ  
THE NEW YORKER  
1 WORLD TRADE CENTER  
NEW YORK, NEW YORK 10007-2915

FOIPA Request No.: 1324446-000  
Subject: OFFICE OF MILITARY  
COMMISSIONS

Dear Mr. Schwartz:

This is in reference to your letter to the FBI, in which you requested expedited processing for the above-referenced Freedom of Information Act (FOIA) request. Under Department of Justice (DOJ) standards, expedited processing can only be granted in the following situations.

You have requested expedited processing according to:

- 28 C.F.R. §16.5 (d)(1)(i): "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- 28 C.F.R. §16.5 (d)(1)(ii): "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- 28 C.F.R. §16.5 (d)(1)(iii): "The loss of substantial due process of rights."
- 28 C.F.R. §16.5 (d)(1)(iv): "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You **have not** provided enough information concerning the statutory requirements for expedition; therefore, your request is denied. Specifically, you **have not** provided enough information to justify that this information is of urgent need to the public.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

Sincerely,

David M. Hardy  
Section Chief  
Record/Information  
Dissemination Section  
Records Management Division

# EXHIBIT D

April 22, 2015

**BY POST**

Director, Office of Information Policy (OIP)  
U.S. Department of Justice  
1425 New York Ave., NW, Suite 11050  
Washington, D.C. 20530-0001

**Re: Freedom of Information Act Appeal – FOIPA Request No. 1324446-000**

Dear FOIA Officer,

I write to administratively appeal the constructive denial of my Freedom of Information Act (“FOIA”) request due to the failure of the Federal Bureau of Investigation (“FBI”) to respond within the statutory time limit. I also write to appeal the FBI’s denial of my request for expedited processing.

**I. The Request**

On March 9, 2015, I submitted a request under the FOIA (the “Request”), in which I sought the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

A full and correct copy of that request is attached as Exhibit A.

On March 10, 2015, the FBI acknowledged receipt of the Request. A full and correct copy of the FBI’s response is attached as Exhibit B. On March 23, 2015, the FBI issued an interim response denying my request for expedited processing. A full and correct copy is attached as Exhibit C.

## **II. FBI's Failure to Respond and Constructive Denial**

The FOIA requires an agency to respond to a request for records within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(i). Therefore, FBI's response was due by April 17, 2015. FBI's failure to respond to my Request within the time period required by the FOIA serves as a constructive denial of the Request, and I am deemed to have exhausted my administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

## **III. FBI's Improper Denial of My Request for Expedition**

Additionally, I would like to appeal the denial of my request for expedited processing. As a journalist, I must report news in a timely fashion. The activities at Guantanamo Bay Naval Base are a matter of lively current debate and exceptional media interest. Indeed, there has been particular public attention to the matter recently in the wake of the report by the Senate Select Committee on Intelligence of the C.I.A. Detention and Interrogation Program (the "Senate torture report"), published in December 2014. Recent media discourse has made reference to the audio muting device, operated by an outside censor in January 2013, in the context of due process violations. *See, e.g.,* Jason D. Wright, *The Sin of Torture & Guantánamo Bay*, Amnesty International, <https://www.amnesty.org/en/articles/blogs/2015/01/the-sin-of-torture-guantánamo-bay/>.

The information I am requesting about the trial proceedings at Guantanamo Bay is needed in conjunction with the trials that are scheduled to take place in the coming months. The public has a right to disclosure of records regarding the conduct of trials at Guantanamo before the next trials take place.

Recently the trial of Abd al-Rahim al-Nashiri has been put on hold pending the resolution of a charge that retired Maj. Gen. Vaughn Ary, the senior Pentagon official responsible for ordering military commissions, unlawfully influenced the proceedings. Three high-ranked military legal officers testified on that issue on March 27, 2015. Once that charge is resolved, the trial will move forward, with up to four additional witnesses the defense has requested. Al-Nashiri is one of five high-level detainees named in the recent Senate torture report as having been subjected to torture and interrogation methods, and his trial is therefore a matter of tremendous media interest and public attention.

The particular value of the information I have requested will be diminished if I cannot publish information before the upcoming trials. Without knowledge of the precise court procedures at Guantanamo, the American people will be deprived of the opportunity to meaningfully participate in a debate on this question of enormous public interest and concern. As a member of the news media, I have a "compelling need" to gain access to the records requested in order to inform the public-at-large about actual or alleged Federal Government activity. The requested records serve an "urgent purpose" and the circumstances mandate expedited processing.

The information above is true and correct to the best of my knowledge and belief.

#### IV. Conclusion

I respectfully request that the FBI respond to this appeal within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(ii). If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, to me by e-mail at [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com).

Sincerely,

A handwritten signature in black ink that reads "Mattathias Schwartz". The signature is written in a cursive style with a horizontal line underneath the name.

Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com)

# EXHIBIT E

Central Intelligence Agency



Washington, D.C. 20505

23 March 2015

Mr. Mattathias Schwartz  
The New Yorker  
1 World Trade Center  
New York, NY 10007-2915

Reference: F-2015-01264

Dear Mr. Schwartz:

On 17 March 2015, the office of the Information and Privacy Coordinator received your 9 March 2015 Freedom of Information Act (FOIA) request, submitted on behalf of the The New Yorker. Specifically, [you] request the following:

1. **Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;**
2. **Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and**
3. **Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.**

Our officers will review your request and will advise you should they encounter any problems or if they cannot begin the search without additional information. We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

You have requested expedited processing. We handle all requests in the order we receive them; that is, "first-in, first-out." We make exceptions to this rule only when a requester establishes a compelling need in accordance with the FOIA, 5 U.S.C. § 552, as amended. Your request does not demonstrate a "compelling need" and, therefore, we deny your request for expedited processing.

Sincerely,

A handwritten signature in cursive script that reads "Michael Lavergne".

Michael Lavergne  
Information and Privacy Coordinator

# EXHIBIT F



April 22, 2015

**BY POST**

Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505  
F: (703) 613-3007

**Re: Freedom of Information Act Appeal – F-2015-01264**

Dear FOIA Officer,

I write to administratively appeal the constructive denial of my Freedom of Information Act (“FOIA”) request due to the failure of the Central Intelligence Agency (“CIA”) to respond within the statutory time limit. I also write to appeal the CIA’s denial of my request for expedited processing.

**I. The Request**

On March 9, 2015, I submitted a request under the FOIA (the “Request”), in which I sought the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

A full and correct copy of that request is attached as Exhibit A.

On March 17, 2015, the CIA received my request. A full and correct copy of the CIA’s response is attached as Exhibit B.

## **II. CIA's Failure to Respond and Constructive Denial**

The FOIA requires an agency to respond to a request for records within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(i). Therefore, CIA's response was due by April 14, 2015. CIA's failure to respond to my Request within the time period required by the FOIA serves as a constructive denial of the Request, and I am deemed to have exhausted my administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

## **III. CIA's Improper Denial of My Request for Expedition**

Additionally, I would like to appeal the denial of my request for expedited processing. As a journalist, I must report news in a timely fashion. The activities at Guantanamo Bay Naval Base are a matter of lively current debate and exceptional media interest. Indeed, there has been particular public attention to the matter recently in the wake of the report by the Senate Select Committee on Intelligence of the C.I.A. Detention and Interrogation Program (the "Senate torture report"), published in December 2014. Recent media discourse has made reference to the audio muting device, operated by an outside censor in January 2013, in the context of due process violations. *See, e.g.,* Jason D. Wright, *The Sin of Torture & Guantánamo Bay*, Amnesty International, <https://www.amnesty.org/en/articles/blogs/2015/01/the-sin-of-torture-guantánamo-bay/>.

The information I am requesting about the trial proceedings at Guantanamo Bay is needed in conjunction with the trials that are scheduled to take place in the coming months. The public has a right to disclosure of records regarding the conduct of trials at Guantanamo before the next trials take place.

Recently the trial of Abd al-Rahim al-Nashiri has been put on hold pending the resolution of a charge that retired Maj. Gen. Vaughn Ary, the senior Pentagon official responsible for ordering military commissions, unlawfully influenced the proceedings. Three high-ranked military legal officers testified on that issue on March 27, 2015. Once that charge is resolved, the trial will move forward, with up to four additional witnesses the defense has requested. Al-Nashiri is one of five high-level detainees named in the recent Senate torture report as having been subjected to torture and interrogation methods, and his trial is therefore a matter of tremendous media interest and public attention.

The particular value of the information I have requested will be diminished if I cannot publish information before the upcoming trials. Without knowledge of the precise court procedures at Guantanamo, the American people will be deprived of the opportunity to meaningfully participate in a debate on this question of enormous public interest and concern. As a member of the news media, I have a "compelling need" to gain access to the records requested in order to inform the public-at-large about actual or alleged Federal Government activity. The requested records serve an "urgent purpose" and the circumstances mandate expedited processing.

The information above is true and correct to the best of my knowledge and belief.

#### IV. Conclusion

I respectfully request that the CIA respond to this appeal within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(ii). If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, to me by e-mail at [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com).

Sincerely,



Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com)

# EXHIBIT G



Washington, D.C. 20505

21 May 2015

Mr. Mattathias Schwartz  
The New Yorker  
1 World Trade Center  
New York, NY 10007-2915

Reference: F-2015-01264

Dear Mr. Schwartz:

We received your 22 April 2015 letter, submitted on behalf of The New Yorker, appealing our full denial, based on the unlikelihood of receiving a response within 20 working days, to your 9 March 2015 Freedom of Information Act (FOIA) request, and our denial of [your] request for expedited processing. Specifically, your request was for the following:

- 1. Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;**
- 2. Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and**
- 3. Records sufficient to disclose the number of security officers assigned to the military commissions, including the security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.**

Your appeal regarding Item 1 of your request has been accepted, and appropriate arrangements will be made for its consideration. You will be advised of the determinations made.

In order to afford requesters the most equitable treatment possible, we have adopted the policy of handling appeals on a first-received, first-out basis. Every reasonable effort will be made to respond as soon as possible.

We reconsidered your petition for expedited processing and determined it fails to meet the compelling need criteria, per the rules outlined in the FOIA, 5 U.S.C. § 552, as amended. We therefore reaffirm our prior denial of your petition for expedited processing.

Sincerely,

A handwritten signature in cursive script that reads "Michael Lavergne".

Michael Lavergne  
Information and Privacy Coordinator

# EXHIBIT H

April 22, 2015

**BY POST**

Office of the Director of National Intelligence (ODNI)  
Washington, D.C. 20511  
F: (703) 275-1299  
E: dni-foia@ugov.gov

**Re: Freedom of Information Act Appeal**

Dear FOIA Officer,

I write to administratively appeal the constructive denial of my Freedom of Information Act (“FOIA”) request due to the failure of the Office of the Director of National Intelligence (“ODNI”) to respond within the statutory time limit. I also write to appeal ODNI’s denial of my request for expedited processing.

**I. The Request**

On March 9, 2015, I submitted a request under the FOIA (the “Request”), in which I sought the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

A full and correct copy of that Request is attached as Exhibit A.

As of this date, April 22, 2015, ODNI has issued no response to my request.

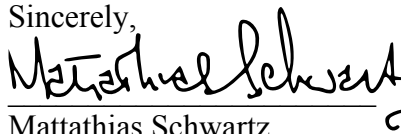
## II. ODNI's Failure to Respond and Constructive Denial

The FOIA requires an agency to respond to a request for records within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(i). I submitted my Request on March 10, 2015. Allowing a generous ten working days for the Request to have arrived and been correctly processed, ODNI's response was due at the latest by April 21, 2015. ODNI's failure to respond to my Request within the time period required by the FOIA serves as a constructive denial of the Request, and I am deemed to have exhausted my administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

## III. Conclusion

I respectfully request that ODNI respond to this appeal within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(ii). If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, to me by e-mail at [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com).

Sincerely,

A handwritten signature in black ink that reads "Mattathias Schwartz". The signature is written in a cursive style with a horizontal line underneath the name.

Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com)



# EXHIBIT I

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE  
WASHINGTON, DC 20511

Mattathias Schwartz  
c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915

**MAY 14 2015**

Reference: ODNI Case DF-2015-00200

Dear Mr. Schwartz:

This acknowledges receipt of your request dated 22 April 2015 (Enclosure), received in the Information Management Division of the Office of the Director of National Intelligence on 30 April 2015. Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, you requested the following:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

Please note that we did not receive nor deny your initial request dated 10 March 2015 (Exhibit A of your 22 April 2015 request). Therefore, we will be processing your appeal request as an initial request. The ODNI FOIA office receives requests by either postal mail or e-mail. Requests sent via postal mail should be addressed to Jennifer Hudson, Director, Information Management Division, Washington, DC 20511. Requests sent via e-mail should be sent to [dni-foia@dni.gov](mailto:dni-foia@dni.gov).

With respect to your request for expedited processing, please be advised that ODNI handles all requests in the order we receive them on a "first-in, first-out" basis. We make exceptions to this rule only when a requester establishes a compelling need under the standards in our regulations. A "compelling need" exists: 1) when the matter involves an imminent threat to the life or physical safety of an individual, or 2) when a person primarily engaged in disseminating information makes the request and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity. Your request does not demonstrate a "compelling need" under these criteria and, therefore, we deny your request for expedited processing.

Mr. Mattathias Schwartz

Since we may be unable to provide a response within the 20 working days stipulated by the FOIA, you have the right to consider this acknowledgment response as a denial and may appeal to the ODNI, Information Management Office, Washington, DC 20511 within 45 days of the date of this letter. It would seem more reasonable, however, to allow us sufficient time to continue processing your request and respond as soon as we can. You will have the right to appeal any denial of records at that time.

If you have any questions, please email our Requester Service Center at [DNI-FOIA@dni.gov](mailto:DNI-FOIA@dni.gov) or call us at (703) 874-8500.

Sincerely,



Jennifer Hudson  
Director, Information Management Division

Enclosure

**From:** Udelsman, Andrew agu2@connect.yale.edu  
**Subject:** Re: FOIA Case DF-2015-00200  
**Date:** December 11, 2015 at 12:45 PM  
**To:** Manes, Jonathan jonathan.manes@yale.edu  
**Cc:** Udelsman, Andrew andrew.udelsman@clinics.yale.edu, Samarth, Avinash avinash.samarth@clinics.yale.edu, Roy, Rumela rumela.roy@clinics.yale.edu, David Schulz DSchulz@lskslaw.com

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On Wed, Jul 15, 2015 at 10:59 AM, DNI-FOIA <DNI-FOIA@dni.gov> wrote:

Mr. Schwartz,

As indicated in our 14 May 2015 response to you, the first request received in our office from you was dated 22 April 2015, and was not received in our office until 30 April 2015.

We did not receive the 10 March 2015 letter that you included as Exhibit A.

Although we were not able to provide a Final response in our 14 May letter, we acknowledged receipt of your request, explained our reasons for denying your request for expedited processing, and informed you that although you have a right to appeal our inability to meet the 20 day time limit, it would seem more reasonable to allow us sufficient time to continue processing your request and respond as soon as we can.

At this point we have initiated a search for responsive records and are waiting on the results of our search to be able to provide an estimate of when we will complete our action on your request.

We strive to process all requests in a fair manner, utilizing a multitrack system. Requests are worked first in, first out, based on the complexity level of the search and volume of responsive records. There are currently more than 200 cases ahead of yours in the processing queue.

From: Schwartz, Mattathias [mailto:Mattathias\_Schwartz@newyorker.com]  
Sent: Tuesday, July 14, 2015 4:54 PM  
To: DNI-FOIA  
Cc: DSchulz@lskslaw.com; alexandra.perloff-giles@clinics.yale.edu; alexander.resar@clinics.yale.edu; ben.graham@clinics.yale.edu; jonathan.manes@yale.edu  
Subject: FOIA Case DF-2015-00200

Dear Ms. Hudson,

I write in regards to my FOIA request, ODNI Case DF-2015-00200. Your correspondence dated May 14, 2015, was apparently delayed. I did not receive it until mid-June. Your May 14 letter suggests that ODNI might not be able to provide a response to my request within the twenty-working-day period required by statute and, indeed, well over twenty days have now elapsed since I filed both my original FOIA request (dated March 10, 2015), and my administrative appeal of that request (dated April 22, 2015), which your May 14 letter states was processed as if it were an initial request

My letter states was processed as if it were an initial request.

Please advise when ODNI will provide a response to my request that includes the agency's determination of whether to comply with the request and, if it does not fully comply, the reasons for its decision. Pursuant to 5 U.S.C. 552(a)(7)(B)(ii) I am entitled to an estimate of when the agency will complete action on the request.

While I would prefer to receive the records without need for resort to litigation, if the records are not forthcoming I may have no option but to treat ODNI's failure to provide a timely response as a constructive denial of my request and to file suit, as permitted by 5 USC 552(a)(6)(C)(i). I have copied my associates at the Yale Media Freedom and Information Access Clinic, who are assisting me with seeing this matter through.

I look forward to your prompt response.

Sincerely,

Mattathias Schwartz

Staff Writer

The New Yorker

267-288-7444

<Office of the Deputy.pdf>

# EXHIBIT J



**DEPARTMENT OF THE NAVY**

OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
2000 NAVY PENTAGON  
WASHINGTON, DC 20350-2000

5720

Ser DNS-36MW/15U105444

March 11, 2015

Sent via email to: [Mattathias.schwartz@gmail.com](mailto:Mattathias.schwartz@gmail.com)

Mr. Mattathias Schwartz  
The New Yorker  
1 World Trade Center  
New York, NY 10007-2915

Dear Mr. Schwartz:


SUBJECT: YOUR FREEDOM OF INFORMATION ACT (FOIA) REQUEST;  
FOIA TRACKING NUMBER DON-NAVY-2015-004272

This is in reference to your Freedom of Information Act (FOIA) request dated March 9, 2015. Your request was received in our office on the same day and assigned FOIA tracking number DON-NAVY-2015-004272.

We have determined that the information you are seeking may be maintained by the Office of the Secretary of Defense and Joint Staff (OSD/JS) located at 1155 Defense Pentagon, Washington, DC 20301-1155. Therefore, we have forwarded your request to that office for action and direct response to you. We note that you requested a fee waiver and expedited processing on your request, please be advised, that OSD/JS will address both the fee waiver and expedited processing.

Questions regarding the action this office has taken during the initial processing of your request may be directed to our FOIA service center at (202) 685-0412. For questions regarding the current status of your request, please contact a FOIA Coordinator at OSD/JS directly at (571) 372-0498.

Sincerely,

  
Robin Patterson  
Head, DON FOIA/PA Program Office

# EXHIBIT K





**DEPARTMENT OF DEFENSE  
OFFICE OF FREEDOM OF INFORMATION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

**12 MAR 2015**

Ref: 15-F-0891  
Navy# 2015-004272

Mr. Mattathias Schwartz  
The New Yorker  
c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915

Dear Mr. Schwartz:

This is an interim response to your Freedom of Information Act (FOIA) request to the Department of the Navy dated March 9, 2015, which was received in this office on March 12, 2015. Your request has been assigned case number 15-F-0891 and we ask that you use that number when referring to your request. A copy of your request is enclosed. As a news media category requestor, your request for a fee waiver is deemed moot.

Expedited processing may be granted when the requester demonstrates a compelling need for the information and shows that the information has a particular value that would be lost if not processed on an expedited basis. A key word here is "demonstrates." It is, therefore, incumbent upon you to demonstrate that the requested records will serve an urgency purpose, and that they also will be meaningful in the sense that they will provide for a greater understanding of actual or alleged federal government activity on the part of the public-at-large than that which existed before such information was disseminated. Consequently, it must be clearly demonstrated that such information has a particular value that will be lost if not disseminated quickly. After careful consideration of your request, this office finds that you have not clearly demonstrated how the information will lose its value if not processed on an expedited basis. For these reasons, your request for expedited processing is denied.

We will be unable to respond to your request within the FOIA's 20 day statutory time period as there are unusual circumstances which impact on our ability to quickly process your request. These unusual circumstances are: (a) the need to search for and collect records from a facility geographically separated from this Office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. For these reasons, your request has been placed in our complex processing queue and will be worked in the order the request was received. Our current administrative workload is 1554 open requests.

The action officer assigned to your request is Charles Marye at (571) 372-0407. The toll free number for this Office is 866-574-4970. You may not be aware that we maintain a website and electronic reading room at: <http://www.dod.mil/pubs/foi/>.

If you are not satisfied with this action, you may petition the Appellate Authority, the Director of Administration, Office of the Secretary of Defense, by writing directly to the OSD/Joint Staff Freedom of Information, ATTN: Appeals Office, 1155 Defense Pentagon, Washington, D.C. 20301-1155; you may also submit your appeal electronically at the following link: <http://pal.whs.mil/palMain.aspx>. Your appeal should be postmarked within 60 calendar days of the date of this mail, should cite case number 15-F-0891, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink that reads "for Charles C. Marye". The signature is written in a cursive style and is positioned above the typed name of the signatory.

M. L. Wahling  
Acting Chief

Enclosure:  
As stated

# EXHIBIT L



**DEPARTMENT OF DEFENSE  
OFFICE OF FREEDOM OF INFORMATION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

18 MAR 2015

Ref: 15-F-0872  
15-F-0891  
Navy# 2015-004272

Mr. Mattathias Schwartz  
The New Yorker  
c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915

Dear Mr. Schwartz:

This is the final response to your Freedom of Information Act (FOIA) request to the dated March 9, 2015, which was received in this office on March 10, 2015. Your request has been assigned case number 15-F-0872 and we ask that you use that number when referring to your request. A copy of your request is enclosed.

Please be aware that this FOIA office only processes requests for the Office of the Secretary of Defense (OSD) and the Joint Chiefs of Staff (JS). There is not a central FOIA processing point for the entire Department of Defense (DoD) records management, but is, instead, delegated to those officials of the military services and various DoD components that generate and/or maintain the records being sought.

We have determined that your FOIA case 15-F-0872 is a duplicate of your FOIA case 15-F-0891, Navy FOIA number 2015-004272, which we are already processing. We will respond to your request for information concerning the Office of Military Commissions, for which we are the FOIA office, on case number 15-F-0891. Your case 15-F-0872 has been administratively closed. There are no assessable fees associated with this response.

Sincerely,

*for Charles E. Marge*

M. L. Wahling  
Acting Chief

Enclosure:  
As stated

# EXHIBIT M

April 22, 2015

**BY POST**

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
Department of Defense  
1155 Defense Pentagon  
Washington, D.C. 20301-1155

**Re: Freedom of Information Act Appeal – 15-F-0891**

Dear FOIA Officer,

I write to administratively appeal the constructive denial of my Freedom of Information Act (“FOIA”) request due to the failure of the Department of Defense (“DoD”) to respond within the statutory time limit. I also write to appeal DoD’s denial of my request for expedited processing.

**I. The Request**

On March 9, 2015, I submitted a request under the FOIA (the “Request”) to DoD (Ref. No. 15-F-0872), in which I sought the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

A full and correct copy of that Request is attached as Exhibit A. DoD received my Request on March 10, 2015.

Copies of the Request were also submitted to the Department of the Navy (Ref. No. 15-F-0891) and to the National Security Agency (Ref. No. 80727). In final responses dated March 18,

2015, and March 23, 2015, all three requests were consolidated before your office under case number 15-F-0891. Copies of these letters are attached as Exhibits B and C, respectively.

On March 12, 2015, DoD issued an interim response to my Request, in which DoD denied my request for expedited processing and invoked the “unusual circumstances” extension under 5 U.S.C. § 552(a)(6)(B)(i). A copy of this letter is attached as Exhibit D.

## **II. DoD’s Failure to Respond and Constructive Denial**

The FOIA requires an agency to respond to a request for records within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(i). An agency may, when facing certain unusual circumstances, may notice of the unusual circumstances and set a date that would not “result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.” DoD’s letter of March 12, 2015, alleged unusual circumstances within the scope of §552(a)(6)(A)(i) but did not set a specific date for a final response. Under the same statutory provision, any extension longer than ten days must be accompanied by “an opportunity to limit the scope of the request so that it may be processed within that time limit.” I did not receive an opportunity to narrow the request, so DoD is limited to a ten working day extension. *See* 5 U.S.C. § 552(a)(6)(B)(i).

Therefore, DoD’s response was due at the latest thirty (30) working days after initial receipt of the Request on March 10, 2015. Those thirty days expired on April 21, 2015. DoD’s failure to respond to my Request within the time period required by the FOIA serves as a constructive denial of the Request, and I am deemed to have exhausted my administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

## **III. DoD’s Improper Denial of My Request for Expedition**

Additionally, I would like to appeal the denial of my request for expedited processing. As a journalist, I must report news in a timely fashion. The activities at Guantanamo Bay Naval Base are a matter of lively current debate and exceptional media interest. Indeed, there has been particular public attention to the matter recently in the wake of the report by the Senate Select Committee on Intelligence of the C.I.A. Detention and Interrogation Program (the “Senate torture report”), published in December 2014. Recent media discourse has made reference to the audio muting device, operated by an outside censor in January 2013, in the context of due process violations. *See, e.g.,* Jason D. Wright, *The Sin of Torture & Guantánamo Bay*, Amnesty International, <https://www.amnesty.org/en/articles/blogs/2015/01/the-sin-of-torture-guantánamo-bay/>.

The information I am requesting about the trial proceedings at Guantanamo Bay is needed in conjunction with the trials that are scheduled to take place in the coming months. The public has a right to disclosure of records regarding the conduct of trials at Guantanamo before the next trials take place.

Recently the trial of Abd al-Rahim al-Nashiri has been put on hold pending the resolution of a charge that retired Maj. Gen. Vaughn Ary, the senior Pentagon official responsible for ordering military commissions, unlawfully influenced the proceedings. Three high-ranked military legal officers testified on that issue on March 27, 2015. Once that charge is resolved, the

trial will move forward, with up to four additional witnesses the defense has requested. Al-Nashiri is one of five high-level detainees named in the recent Senate torture report as having been subjected to torture and interrogation methods, and his trial is therefore a matter of tremendous media interest and public attention.

The particular value of the information I have requested will be diminished if I cannot publish information before the upcoming trials. Without knowledge of the precise court procedures at Guantanamo, the American people will be deprived of the opportunity to meaningfully participate in a debate on this question of enormous public interest and concern. As a member of the news media, I have a “compelling need” to gain access to the records requested in order to inform the public-at-large about actual or alleged Federal Government activity. The requested records serve an “urgent purpose” and the circumstances mandate expedited processing.

The information above is true and correct to the best of my knowledge and belief.

#### **IV. Conclusion**

I respectfully request that DoD respond to this appeal within twenty (20) working days. *See* 5 U.S.C. § 552(a)(6)(A)(ii). If you have any questions or concerns, please do not hesitate to telephone me at (267) 288-7444. Please direct any correspondence, including responsive records, to me by e-mail at [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com).

Sincerely,  
  
Mattathias Schwartz

c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915.  
P: (267) 288-7444  
E: [mattathias.schwartz@gmail.com](mailto:mattathias.schwartz@gmail.com)



# EXHIBIT N



**DEPARTMENT OF DEFENSE  
FREEDOM OF INFORMATION DIVISION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

MAY 04 2015

Ref: 15-A-0891  
15-F-0891

Mr. Mattathias Schwartz  
c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915

Dear Mr. Schwartz:

This is in response to your Freedom of Information Act (FOIA) appeal. We received your appeal in this office on May 4, 2015.

Due to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement. In fairness to the general public, we make every effort to treat all requesters equally. Accordingly, responses are made on a first-in, first-out, easy-hard basis, and controlled in response queues. When the appellate review of your case is complete, you will be notified by the appellate authority, the Deputy Director of Administration, Office of the Secretary of Defense, of the final decision. You may direct any questions concerning this appeal to Ms. Danaeka Spear at (571) 372-0423, or [danaeka.l.spear.civ@mail.mil](mailto:danaeka.l.spear.civ@mail.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "Danaeka Spear". The signature is written in a cursive style with a large, sweeping initial "D".

Danaeka Spear  
Chief, Appellate Office



ADMINISTRATION

OFFICE OF THE DEPUTY CHIEF MANAGEMENT OFFICER  
9010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-9010

Ref: 15-A-0891-A1  
15-F-0891  
JUN 15 2015

Mr. Mattathias Schwartz  
c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915

Dear Mr. Schwartz:

This responds to your April 22, 2015, Freedom of Information Act (FOIA) appeal. You are appealing the Office of Freedom of Information's (OFOI) failure to respond to your request in 20 working days and their decision to deny your request for expedited processing for your March 9, 2015 FOIA request.

I reviewed the appeal at the appellate level and determined that your request for expedited processing should be denied. You sought expedited processing on the basis of compelling need. Department of Defense (DoD) Regulation 5400.7-R § C1.5.4.3.2. states that compelling need means "the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity." The DoD generally uses a standard that urgently needed means "the information has a particular value that will be lost if not disseminated quickly. Ordinarily, this means a breaking news story of general public interest." Additionally, federal courts have declared a three-pronged test to determine "compelling need" based on whether or not the information is "urgently needed" (*Al-Fayed v. CIA*, 245 F.3d 300 (D.C. Cir. 2001)). The three prongs of the test are as follows:

1. Whether the request concerns a matter of current exigency to the American public;
2. Whether the consequences of delaying a response would compromise a significant recognized interest; or
3. Whether the request concerns actual or alleged federal government activity

I have determined that your initial request meets the third prong of the "urgently needed" test. However, it does not meet the first and second prongs of the test. The FOIA request to OFOI does not meet the standard of the first prong because information related to "U.S. Military Commissions at the Guantanamo Bay Naval Station" has been debated in numerous stories by members of the media and according to your appeal is the topic of "a matter of lively current debate and exceptional media interest." Thus, it is no longer a "breaking news story," nor is it a matter of current exigency to the American people.


Additionally, you do not meet the standard of the second prong because you have not proven that the consequences of delaying a response to the request would compromise a significant recognized interest. In particular, you admit that this topic is of ongoing interest,

therefore showing that the requested information will not lose its value. Therefore, I have determined that the information you seek will not lose its value if expedited processing is denied.

In response to your appeal concerning the failure of OFOI to respond to your March 9, 2015 FOIA request within 20 working days, I consulted with OFOI to determine the status of your request. The OFOI action officer advises that they are processing the case with all due diligence. The OFOI action officer has also advised this office that your request has been placed in their queue according to the date of receipt and will be contacting you to discuss your request. Because the actions necessary to complete your initial request are yet to be accomplished, I am remanding this request back to the OFOI for completion. Once OFOI issues their final response, you will receive appeal rights for any documents that may be withheld in part or in their entirety. This action will close your appeal and allow the necessary, remaining processes to take place in response to your initial request. We will, however, monitor the progress of this request.

You have the right to judicial review of this decision in a United States District Court, in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Rhodes", written in a cursive style.

Michael L. Rhodes,  
Director

cc:  
OFOI

# EXHIBIT O



**DEPARTMENT OF DEFENSE  
OFFICE OF FREEDOM OF INFORMATION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

14 AUG 2015

Ref: 15-F-0891  
Navy: DON-NAVY-2015-004272

Mr. Mattathias Schwartz  
The New Yorker  
c/o The New Yorker  
1 World Trade Center  
New York, NY 10007-2915

Dear Mr. Schwartz:

This is the final response to your enclosed Freedom of Information Act (FOIA) request to the Department of the Navy, dated March 9, 2015, which we received in this Office on March 12, 2015. Your request is for "(1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station; (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams, together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers." The Office of the Convening Authority conducted a search and located 98 pages responsive to your request. The 98 enclosed pages are provided as responsive to your request.

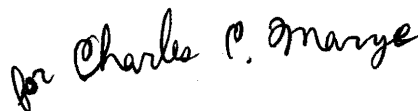
Ms. Jennie L. Blakeney, Deputy Director, Enterprise Management, Washington Headquarters Services has determined that the redacted information in the enclosed pages, as indicated by the redactions has been withheld pursuant to 5 U.S.C. § 552(b)(4), which applies to information such as trade secrets and commercial and financial information obtained from a person on a privileged or confidential basis that, if released, would result in competitive harm to the company; or would impair the government from obtaining like information in the future; or would affect overall program effectiveness. Some information has been withheld pursuant to 5 U.S.C. § 552(b)(6), which applies to information that, if released, which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Further, some information has been held pursuant to U.S.C. § 552 (b)(7)(A) which permits the Government to withhold information compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with law enforcement proceedings. Accordingly, this information is denied pursuant to 5 U.S.C. § 552 (b)(4), (b)(6) and (b)(7)(A).

Regarding item 2 of your request, concerning "the 40-second delay", the Office of the Convening Authority advised that based on the information provided in your request and thorough searches of the paper and electronic records and files of OCA no documents of the kind you described could be located. We believe that these search methods were appropriate and could reasonably be expected to produce the requested records if they existed. The Chief of the Freedom of Information Act Division further certified that after making a good faith effort and conducting a thorough search of records using methods, detailed above, that could reasonably be expected to produce the information requested, there are no records, and that to the best of his knowledge, no such documents exist within the records of the OCA.

The following further information is provided concerning the search conducted. The Office of the Convening Authority does not maintain records relating to the 40 second delay employed during the military commission proceedings. A delay server for the audio/video feeds out of the courtroom to various sites within the United States is used during the proceedings. This feed is recorded for 40 seconds on the delay server and then written over every 40 seconds. There is no audio/video recording other than the short 40 second recording, and that is only maintained long enough to provide the delay to the feeds outside the courtroom. This short delay is for security purposes only.

There are no assessable fees associated with this response. If you are not satisfied with this action, you may petition the Appellate Authority, the Director of Administration, Office of the Secretary of Defense, by writing directly to the Freedom of Information Division, ATTN: Appeals Office, 1155 Defense Pentagon, Washington, D.C. 20301-1155; you may also submit your appeal electronically at the following link: <http://pal.whs.mil/palMain.aspx>. Your appeal should be postmarked within 60 calendar days of the date of this mail, should cite case number 15-F-0891, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink that reads "for Charles P. Mays" in a cursive script.

Stephanie L. Carr  
Chief

Enclosures:  
As stated

# EXHIBIT P





# Yale Law School

MEDIA FREEDOM AND INFORMATION ACCESS CLINIC  
INFORMATION SOCIETY PROJECT

October 13, 2015

## **VIA FEDERAL EXPRESS**

Freedom of Information Division  
ATTN: Appeals Office  
1155 Defense Pentagon  
Washington, D.C. 20301-1155

### **Re: FREEDOM OF INFORMATION ACT APPEAL – Case No. 15-F-0891**

To the Appellate Authority:

This letter constitutes an administrative appeal from the final response of the Department of Defense (“DoD”) to FOIA request number 15-F-0891, which was submitted by Mattathias Schwartz. The Media Freedom and Information Access Clinic at Yale Law School represents Mr. Schwartz in this matter. We submit this appeal on Mr. Schwartz’s behalf within the 60-day deadline prescribed in DoD’s final response. (A true and correct copy of DoD’s final response letter, dated August 14, 2015, is attached as Exhibit A.)

#### **I. The FOIA Request**

On March 9, 2015, Mr. Schwartz submitted a FOIA request (the “Request”) to the Department of the Navy (“Navy”), (FOIA Tracking Number DON-NAVY-2015-004727). The Request sought the following records:

- (1) Records sufficient to disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station;
- (2) Records sufficient to disclose the means by which any original classifying authority can monitor or interrupt the 40-second delayed audio-video transmission of military commission proceedings to prevent the public disclosure of classified information or other information of the kinds covered by Rule 506 of the Military Commission Rules of Evidence; and
- (3) Records sufficient to disclose the number of security officers assigned to the military commissions, including security officers detailed to the specific defense teams,

together with the duties and authorities of those security officers, the total annual cost of those security officers, and any instructions or training provided to those officers.

The FOIA request sought expedited processing, a fee limitation based on Mr. Schwartz's status as a representative of the news media, and a public interest fee waiver. A true and correct copy of the Request is attached as Exhibit B.

The Navy confirmed receipt of the Request on March 9, 2015. By letter dated March 11, 2015, the Navy informed Mr. Schwartz that the Request had been forwarded to the Office of the Secretary of Defense and Joint Staff for processing. (A true and correct copy of this letter is attached as Exhibit C.) By letter dated March 12, 2015, the Department of Defense Office of Freedom of Information notified Mr. Schwartz that it had received his FOIA request from the Navy, and that it had been assigned case number 15-F-0891, which is the case number on appeal here.

On the same day he filed his Request with the Navy, Mr. Schwartz submitted substantially identical FOIA requests to the Department of Defense ("DoD") (Ref. No. 15-F-0872) and to the National Security Agency ("NSA") (Ref. No. 80727). By letter dated March 18, 2015, DoD notified Mr. Schwartz that it was already processing the FOIA request that had been referred to it by the Navy (Ref. No. 15-F-0891) and would therefore administratively close the request submitted directly to DoD (Ref. No. 15-F-0872). (A true and correct copy of this Letter is attached as Exhibit D.) By letter dated March 23, 2015, NSA notified Mr. Schwartz that it had forwarded his request to DoD for processing. (A true and correct copy of this letter is attached as Exhibit E.) Thus, all three requests were consolidated before your office under case number 15-F-0891.

By letter dated August 14, 2015, Stephanie L. Carr, Chief of the FOIA Division, issued DoD's final response to the consolidated requests. *See* Exhibit A. Ms. Carr indicated that the Office of the Convening Authority conducted a search and located 98 pages responsive to the Request. *Id.* The 98 pages were enclosed, with redactions pursuant to 5 U.S.C. §§ 552 (b)(4), (b)(6) and (b)(7)(A). *Id.* Regarding item 2 of the Request, concerning "the 40-second delay," the letter stated that the Office of the Convening Authority had advised that no responsive documents could be located. The letter indicated that the Office of the Convening Authority does not maintain records relating to the 40-second delay employed during the military commission proceedings. *Id.* at 2. The letter stated that there were no fees associated with DoD's response. The letter did not explicitly address Mr. Schwartz's request for a fee waiver and limitation of fees. The letter stated that it was a final response to the Request, subject to administrative appeal within 60 days. *Id.* Mr. Schwartz timely files this appeal from DoD's final response.

## **II. DoD failed to conduct an adequate search for records responsive to each item of the Request.**

Under the FOIA, agencies are obligated to conduct a search for all records responsive to a request. 5 U.S.C. § 552(a)(3); *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) ("It is elementary that an agency responding to a FOIA request must "conduct[ ] a search reasonably calculated to uncover all relevant documents."); *see also Oglesby v. U.S. Dep't of the Army*, 920

F.2d 57, 68 (D.C. Cir. 1990) (“[T]he agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.”); *Natural Res. Def. Council, Inc. v. DOD*, 388 F. Supp. 2d 1086 (C.D. Cal. 2005) (ordering a new search because DoD’s limitation of its search to one office was inadequate). DoD has failed to conduct an adequate search: only the Office of the Convening Authority conducted a search in response to the Request, and that search was deficient with respect to all three categories of records requested.

The August 14, 2015, letter from DoD indicates that only the Office of the Convening Authority conducted a search in response to the Request. *See* Exhibit A. DoD has not indicated that any other DoD office or division conducted a search, even though it is highly unlikely that only the Office of the Convening Authority would have all records responsive to the Request. DoD has failed to explain why only the Office of the Convening Authority—only one division within DoD involved in the administration of military commissions—conducted a search for records in response to the Request. The Request, after all, sought information regarding various aspects of the military commissions and more. Moreover, the Request was filed not only with DoD, but also with the Navy and NSA. But neither the Navy nor NSA apparently searched for *any* records at all in its possession before forwarding the request to the DoD FOIA office. *See* Exhibits C & E. Limiting the search solely to the Office of the Convening Authority was therefore unreasonable and clearly inadequate.

Furthermore, the Office of the Convening Authority failed to conduct an adequate search for records with respect to Item 1 and Item 3. While DoD has produced 98 pages in response to the Request, those pages do not contain most of the key information requested. Specifically, the pages do not “disclose any and all guidance that has been given to the Office of Military Commissions, presiding officers, counsel, or any other person(s) in the courtroom about what may not be said in open public sessions or included in written submissions in prosecutions before the military commissions at the Guantanamo Bay Naval Station.” *See* Exhibit B at 1. The pages also are not sufficient to “disclose the number of security officers assigned to the military commissions.” *See* Exhibit B at 1. Nothing in DoD’s response suggests that it has searched for all the elements of the requested material.

The Office of the Convening Authority also failed to conduct an adequate search for records with respect to Item 2. The Office of the Convening Authority indicated that it has searched for but has not been able to locate any documents concerning “the 40-second delay.” *See* Exhibit A at 2. The Office of the Convening Authority also indicated that it does not maintain records relating to the 40-second delay employed during the military commission proceedings. However, DoD has provided no explanation for its conclusory assertion that the Office has conducted a thorough search but does not maintain such records.

DoD’s apparent failure to search for, let alone produce, information specifically requested in Items 1, 2, and 3 of the FOIA request constitutes a further violation of its obligations under FOIA. We ask that you search the files of the Navy and the NSA, conduct a more thorough search of the files of the Office of the Convening Authority, and search any other offices within the Department of Defense that may have records responsive to the Request.

### III. DoD withholdings and redactions pursuant to FOIA Exemptions 4, 6, and 7(A) are unjustified.

DoD has failed to provide sufficient and meaningful explanations for its withholding of material from the 98 pages that it has produced in response to the Request, and those withholdings are unjustified. In order to withhold or redact records responsive to a request, agencies must provide detailed and specific justifications for why any and all withheld information comes within an exemption. *See generally Vaughn v. Rosen*, 484 F.2d 820 (1973) (“[C]ourts will simply no longer accept conclusory and generalized allegations of exemptions.”); *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977) (“[T]he objective of the *Vaughn* requirements, to permit the requesting party to present its case effectively, is equally applicable to proceedings within the agency.”).

DoD has not provided detailed or specific justifications for its withholdings. To the contrary, DoD’s final response simply parrots the language of the claimed exemptions without providing any explanation whatsoever as to why those exemptions might apply to the material withheld. *See Exhibit A*.

Each of the grounds for withholding asserted—FOIA Exemptions 4, 6, and 7(A)—require the agency to demonstrate that the information redacted meets particular criteria. Thus, to withhold information under Exemption 4, DoD must explain how the redacted information constitutes “[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). To withhold information under Exemption 6, DoD must explain how the redacted information, if released, would constitute a clearly unwarranted invasion of the personal privacy of third parties. 5 U.S.C. § 552(b)(6). Similarly, to withhold information under Exemption 7(A), DoD must show that the information has been compiled for law enforcement purposes and that disclosure could reasonably be expected to interfere with law enforcement proceedings. 5 U.S.C. § 552(b)(7)(A). But DoD has not attempted to explain why any of the various requirements under each of the Exemptions are met with respect to any of the many redactions in the documents at issue. Instead, as noted already, DoD’s letter simply recites part of FOIA’s the statutory language. *See Exhibit A* at 1. This is plainly inadequate and does not suffice to overcome FOIA’s strong presumption in favor of disclosure.

In addition, even if part of an agency record is indisputably exempt from disclosure pursuant to one or more statutory exemptions, the FOIA requires the agency to disclose any non-exempt portions of that record. *See* 5 U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.”); *see also, e.g., Trans-Pacific Policing Agreement v. United States Customs Serv.*, 177 F.3d 1022, 1027 (D.C. Cir. 1999) (“It has long been a rule in this Circuit that nonexempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions.”). DoD has not provided any segregability analysis for any of its redactions under Exemptions 4, 6, and 7(A).

Because the DoD has failed to justify any of its redactions, we ask that the documents in question be released without any redactions. If you decline to release some or all of the redacted

information, we ask that you provide a detailed, specific, and complete justification for any remaining redactions.

#### IV. Request for Relief

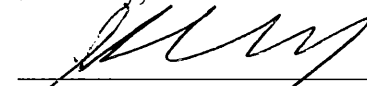
For the foregoing reasons, we respectfully submit that DoD has failed to meet its legal obligation to search for and disclose the information requested. DoD should conduct further searches for responsive records, including searching the files of the Navy, NSA, and other DoD components. DoD should also release the 98 pages produced to date with no redactions.

To the extent that you determine, in whole or in part, that the material redacted from the 98 pages disclosed to date fall within a FOIA exemption, we ask that you nevertheless exercise your discretion to disclose all such material. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 294 (“Congress did not limit an agency’s discretion to disclose information when it enacted FOIA.”) If you decline to exercise your discretion to disclose any material you regard as exempt, we ask that DoD provide us with an itemized list describing with specificity each document or portion thereof that has been withheld and explaining the grounds for the withholding. *See generally Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

We again advise you that Mr. Schwartz is a journalist, and the information sought here is in connection with his ongoing reporting on the classification of the Guantanamo Military Commission proceedings—an urgent news story of great public interest. Therefore, he respectfully requests expedited treatment of this appeal pursuant to 32 C.F.R. §§ 286.4(d)(3)(ii) and 286.4(d)(3)(v). Likewise, because disclosure of the requested information is in the public interest, Mr. Schwartz requests a public interest waiver of all fees. *See* 32 C.F.R. § 286.28(d)(i); Exhibit B. Mr. Schwartz is also entitled to a limitation of fees because he is a journalist actively gathering news for publication in a news periodical. *See* 32 C.F.R. § 286.28(e)(7); Exhibit B.

At minimum, we trust that we will receive your decision within 20 business days as required by 32 C.F.R. 286.24(c)(2) and 5 U.S.C § 552(a)(6)(A)(ii). Thank you for your prompt attention to this matter.

Sincerely,



Jonathan Manes, supervising attorney  
Rumela Roy, law student intern  
Avinash Samarth, law student intern  
Andrew Udelsman, law student intern  
Media Freedom and Information Access Clinic  
Yale Law School  
P.O. Box 208215  
New Haven, CT 06520-8215  
(203) 432-9387 (tel)  
jonathan.manes@yale.edu  
*Counsel for the Requester Mattathias Schwartz*

# EXHIBIT Q



**DEPARTMENT OF DEFENSE  
FREEDOM OF INFORMATION DIVISION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

OCT 20 2015

Ref: 15-A-0891-A2  
15-F-0891

Mr. Jonathan Manes  
Yale Law School  
P.O. Box 2082015  
New Haven, CT 06520-8215

Dear Mr. Manes:

This is in response to your Freedom of Information Act (FOIA) appeal. We received your appeal in this office on October 16, 2015.

Due to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement. In fairness to the general public, we make every effort to treat all requesters equally. Accordingly, responses are made on a first-in, first-out, easy-hard basis, and controlled in response queues. When the appellate review of your case is complete, you will be notified by the appellate authority, the Deputy Director of Administration, Office of the Secretary of Defense, of the final decision. You may direct any questions concerning this appeal to Ms. Danaeka Spear at (571) 372-0423, or [danaeka.l.spear.civ@mail.mil](mailto:danaeka.l.spear.civ@mail.mil).

Sincerely,

  
Danaeka Spear  
Chief, Appellate Office