



LANDMARK
LEGAL FOUNDATION
THE RONALD REAGAN LEGAL CENTER

April 27, 2009

VIA FACSIMILE and US MAIL

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

RE: CIA congressional briefings on “Enhanced Interrogation” Techniques

Dear Sir or Madam:

This is a Freedom of Information Act (“FOIA”) Request pursuant to 5 U.S.C. 552 seeking records related to Central Intelligence Agency (“CIA”) briefings of congressional leaders on “enhanced interrogation” techniques used on certain terrorism detainees. Landmark Legal Foundation (“Landmark”) respectfully requests expedited processing and a waiver of fees associated with this request as set forth below and in an accompanying memorandum.

I. Background

On April 23, 2009, the *Washington Post* reported that House Speaker Nancy Pelosi and other congressional Democrats have called for the creation of a “truth commission” to investigate alleged abuses in the terrorist suspect interrogation program. “Those calls grew louder after last week’s release of the legal memos that the Bush administration used, from the Justice Department’s Office of Legal Counsel, to explain what was allowed and what would break international anti-torture laws.” (Exhibit 1, “Pelosi Denies Knowing Interrogation Techniques Were Used,” *Washington Post*, April 23, 2009 (attached).) The *Post* reported that Pelosi said that “congressional leaders were never briefed about the use of an enhanced interrogation practice, rejecting GOP claims that leadership was aware of the controversial tactics by late 2002.” “Flat out, they never briefed us that this was happening We were not – I repeat – were not told that waterboarding or any of these other enhanced interrogation methods were used. What they did tell us is that they had . . . the Office of Legal Counsel opinions [and] that they could be used, but not that they would.” (Id.)

On December 9, 2007, however, the *Post* reported that a group of four members of Congress, including Pelosi:

was given a virtual tour of the CIA's overseas detention sites and the harsh techniques interrogators had devised to try to make their prisoners talk.

Among the techniques described, said two officials present, was waterboarding, a practice that years later would be condemned as torture by Democrats and some Republicans on Capitol Hill. But on that day, no objections were raised. Instead, at least two lawmakers in the room asked the CIA to push harder, two U.S. officials said . . .

Yet long before "waterboarding" entered the public discourse, the CIA gave key legislative overseers about 30 private briefings, some of which included descriptions of that technique and other harsh interrogation methods, according to interviews with multiple U.S. officials with firsthand knowledge . . .

CIA briefers gave the four intelligence committee members limited information about Abu Zubaida's detention in spring 2002, but offered a more detailed account of its interrogation practices in September of that year, said officials with direct knowledge of the briefings.

The CIA provided another briefing the following month, and then about 28 additional briefings over five years, said three U.S. officials with firsthand knowledge of the meetings. During these sessions, the agency provided information about the techniques it was using as well as the information it collected. (Exhibit 2, "Hill Briefed on Waterboarding in 2002," *Washington Post*, December 9, 2007.)

II. Requested Records

The term "records" includes the original or any copy of any documentary or recorded material and is in any form including a card, computerized record, correspondence, drawing, film, microfilm, photograph, recording or tape. Records also include all information maintained electronically including digital media, computer databases, email, presentations (i.e. PowerPoint), and any other material as provided in 5 U.S.C. 552.

Landmark requests release of the following records from January 1, 2002 to January 22, 2009:

1. Records reflecting the names of members of Congress, congressional staff, or any other private or public official present and dates, times and locations for each and every CIA "enhanced interrogation technique" briefings referenced herein. "Enhanced interrogation technique" shall include, but not be limited to, "waterboarding." "Members of Congress" shall include, but not be limited to:
 - a. Rep. Nancy Pelosi;

- b. Rep. Jane Harman;
 - c. Rep. Porter J. Goss;
 - d. Sen. Bob Graham;
 - e. Sen. John D. Rockefeller IV; and/or
 - f. Sen. Pat Roberts.
2. Materials, agenda, handouts, memoranda, displays, reports, photos, video, audio or any other media used during each and every CIA “enhanced interrogation technique” briefing referenced herein. “Enhanced interrogation technique” shall include, but not be limited to, “waterboarding.”
 3. All minutes, notes, video or audio recordings, transcripts or any other record prepared during or after and summarizing or detailing the contents of each and every CIA “enhanced interrogation technique” briefing referenced herein. “Enhanced interrogation technique” shall include, but not be limited to, “waterboarding.”

President Obama’s January 21, 2009 “Memorandum for the Heads of Executive Departments and Agencies,” declares that

[t]he government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors or failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. ...

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

Given the extreme public interest in the enhanced interrogation program, it is imperative that the CIA incorporate this disclosure presumption and release the requested records. Moreover, given President Obama’s decision to declassify four Office of Legal Counsel memoranda that provided detailed guidance for the CIA’s conduct of its enhanced interrogation program, the CIA is legally estopped from justifying the withholding of the requested records based on the state secrets privilege or any other exemption or exception claims. 5 U.S.C. Section 552(b)(1) and (3). The president himself, through the release of the relevant legal memoranda, has extinguished any claims that release of these records will compromise or degrade the effectiveness of the United States’ intelligence gathering activities. Neither the CIA as an agency nor any of its employees can countermand the president’s authority and decision-making. Moreover, the program described in the relevant congressional briefings was ended

through a January 22, 2009 Executive Order and cannot be compromised by release of the requested records.

III. Expedited Processing and Fee Waiver

1. Expedited Processing

Landmark respectfully requests expedited processing of this request. Expedited processing is provided for in “cases in which the person requesting the records demonstrates a compelling need.” 5 U.S.C. Section 552(a)(6)(E)(i). See ACLU v. Department of Justice, 321 F.Supp.2d 24, 27-28 (D.D.C. 2004).

There is a compelling need for the immediate release of the information requested. With respect to entities “primarily engaged in disseminating information,” a compelling need is demonstrated by an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. Section 552(a)(6)(E)(v)(II). Among the factors to be considered as to whether there is a compelling need are “whether the request concerns a matter of current exigency to the American public” and “whether the consequences of delaying a response would compromise a significant recognized federal government activity. See ACLU, 321 F.Supp. at 29. The requested records related directly to a matter of tremendous public interest and debate -- a “truth commission” called for by the most senior members alleging illegal conduct by the CIA and its agents both in the implementation of the enhanced interrogation techniques and in providing misleading or otherwise incomplete information to appropriate members of congress with oversight authority. It is critical that the public have a full understanding of what the CIA disclosed to members of Congress, when and how the information was disclosed, and whether the CIA complied with additional oversight inquiries before or after the approximately 30 reported congressional briefings.

A delayed response to this request would compromise a significant public interest because it would prevent the American public from being able to engage in timely, thoughtful debate regarding CIA activities conducted in the public’s name, the CIA’s fulfillment of its responsibilities to submit to appropriate congressional oversight, and potential detrimental effects on matters of public concern.

2. Fee Waiver

Landmark also requests a wavier of all costs pursuant to 5 U.S.C. 552(a)(4)(A)(iii), which provides that “documents shall be furnished without any charge or at a [reduced] charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA “to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” Judicial Watch v. Rossotti, 326 F.3d 1309, 1312 (D.C. Cir. 2003).

Landmark Legal Foundation is a tax-exempt 501(c)(3) non-profit public interest law firm whose mission includes educating the public on the operation of federal governmental agencies, including the CIA, Environmental Protection Agency, Internal Revenue Service, Department of Justice, and the Department of Defense. Landmark has thousands of supporters throughout the United States who are regularly informed through newsletters and other correspondence of the Foundation's activities. Landmark has knowledge or expertise as may be necessary to understand the information requested and has the ability to contribute significantly to public understanding of the related government activities. It is critical that the public is fully informed about the CIA's fulfillment of its oversight reporting responsibilities and Landmark has the ability to further the public's understanding of the CIA's conduct in this matter. Landmark is not a commercial entity and has no commercial interest in the disclosure of the requested records. Accordingly, Landmark meets the CIA's standards for a full fee waiver. See 32 C.F.R Part 1900.13(b)(2)(i)-(vi).

In addition, Landmark's work is regularly reported on in national print, broadcast and electronic media outlets, including the *Washington Post*, *Washington Times*, *The New York Times*, *Wall Street Journal*, and many other national publications. Landmark's work is often discussed on national radio talk shows including *The Rush Limbaugh Show*, and *The Sean Hannity Show*. Landmark's president is a nationally syndicated talk show host, and while not in any way affiliated with Landmark, the Foundation's activities are regularly shared with millions of Americans throughout the country. Accordingly, Landmark requests that all search, copying fees and expenses be waived. 5 U.S.C. § 552(a)(4)(a) (2009).

Please note, Landmark has previously been involved in extensive litigation arising from a governmental agency's failure to properly produce documents in accordance with its obligations under the FOIA. *Landmark Legal Foundation v. Environmental Protection Agency, Case No. 1:00CV2338 (RCL)*. In this case, the EPA destroyed documents in violation of a preliminary injunction and failed to properly circulate Landmark's Request to relevant departments within the Agency. Consequently, the Agency was found in civil contempt of court. Landmark fully expects the CIA to comply with the legal mandates set forth in the FOIA.

Furthermore, please provide assurances that the CIA is taking steps to prevent destruction of repositories of information that may hold records responsive to this Request. Additionally, be aware that any actions taken in contravention of the Agency's responsibilities will be raised if this Request becomes the subject of litigation.

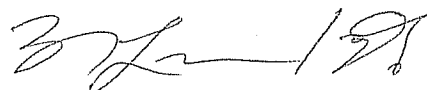
If you intend to deny this request in whole or in part, Landmark requests that you provide substantive justifications.

Please feel free to contact Michael J. O'Neill at (703) 554-6105 if you have any questions. Please send all materials to Mr. O'Neill's attention at the following address;

Landmark Legal Foundation
19415 Deerfield Ave.
Suite 312
Leesburg, VA 20176

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark R. Levin', with a stylized flourish at the end.

Mark R. Levin
President