

 centerforconstitutionalrights  
on the front lines for social justice

December 13, 2010

Associate General Counsel (General Law)  
U.S. Department of Homeland Security  
Washington D.C. 20528

By First Class Mail

Re: **FREEDOM OF INFORMATION ACT APPEAL: DHS/OS/PLCY & PRIV  
10-0824**

Dear Associate General Counsel,

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

In a letter dated July 15, 2010, from Vania T. Lockett, Associate Director, Disclosure and FOIA Operations, DHS stated that our initial request was too “limited” and asked for the request to be resubmitted with additional detail. See Ex. B. The FOIA request was given the number DHS/OS/PRIV 10-0824. We resubmitted our request, with additional detail, in a letter dated and mailed August 13, 2010. (See Ex. C, “Resubmission”) In our Resubmission, we stated that DHS was likely to have responsive records because of, *inter alia*, the existence of an agreement between Israel and the United States<sup>1</sup> that, provides for the exchange of technologies, personnel and information, collaboration to develop technologies to counter “terrorist actions,” facilitate “prompt exchange of information” and facilitate the dissemination of information “consistent with applicable national laws, regulations, policies and directives.”<sup>1</sup>

In a letter dated September 24, 2010, Vania Lockett informed us that she was “referring one document under the purview” of the DHS Office of Policy (“Policy”) to Traci Ballard, the FOIA officer for Policy. See Ex. D

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<sup>1</sup> The Agreement between the United States of America And Israel on Cooperation in Science and Technology for Homeland Security Matters, dated 29 May 2008, available at: [http://www.dhs.gov/xlibrary/assets/agreement\\_us\\_israel\\_sciencetech\\_cooperation\\_2008-05-29.pdf](http://www.dhs.gov/xlibrary/assets/agreement_us_israel_sciencetech_cooperation_2008-05-29.pdf).

In a letter dated October 14, 2010, and received via facsimile on November 8, 2010, Policy stated that our Request was received in that office on September 24, 2010, and that the “documents forwarded for [their] review and release determination were nonresponsive.” Additionally, Policy’s subcomponent entity, the Office of International Affairs, “conducted an exhaustive search for records” and no responsive records were found. The letter termed this a “final response” claiming that it had conducted “an adequate search.” See Ex. E. (“Policy Response”).

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), CCR hereby appeals the DHS Policy’s determination that Policy does not have any responsive records to its Request/Resubmission.

### **Policy Has Failed to Demonstrate the Adequacy of its Search**

FOIA requires Policy to conduct a search that is “reasonably calculated to uncover all relevant documents.” *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Policy has a duty to demonstrate that it exercised all reasonable efforts to ensure that it included what was requested in the search conducted. See *Amnesty Int’l USA v. CIA*, No. 07 Civ. 5435, 2010 U.S. Dist. LEXIS 78659, \*36-37 (S.D.N.Y. Aug. 2, 2010) (citing authorities). Additionally, Policy must “construe a FOIA request liberally,” *Nation Magazine v. U. S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995)(citing authorities).

Beyond the bald assertion that an “exhaustive search” was conducted, the final response contains no information about the search it purports to have conducted. The Policy Response wholly fails to demonstrate that “all files likely to contain responsive materials . . . were searched.” *Oglesby v. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The Policy Response contains no detail about the search terms used. Indeed, the information that Policy has provided about the search process contains neither meaningful detail that would allow CCR to discern whether an adequate search has been conducted nor enough information to enable CCR to challenge the procedures that were used. *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d at 892 (holding that the agency had not provided sufficient information “to allow [] review of the adequacy of [its] search); *Weisberg v. Dep’t of Justice*, 627 F.2d 365, 371 (D.C. Cir. 1980) (requiring a reflection of a systematic approach to document location, and providing specific enough information to enable the requester to challenge the procedures used). Contrary to these requirements, Policy provided no information about where the office searched, what search terms were used, whether the search was conducted electronically or by hand, and why the office chose to conduct the search in the manner it did.

Based on the information provided in the Resubmission regarding the mandate of DHS, the relationship between Israel and the United States in exchanging information related to *inter alia* home-land security, and the particular duties of Policy, we find it unlikely that a comprehensive, liberally construed search of Policy records would not produce a single responsive documents to CCR’s Request/Resubmission. Moreover,



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according to the DHS' website, the Office of Policy, through its Office of International Affairs, has responsibility for "management of the international affairs and foreign policies that impact the Department" and "[a]dvises, informs, and assists the Secretary and Deputy Secretary of Homeland Security on strategies, foreign policy matters, and the Department programs and operations that impact U.S. international relations." Surely, Policy's Office of International Affairs, which has the responsibility to *inter alia*, interact with foreign officials, would have had some communications with the Secretary of Homeland Security regarding such a well publicized "foreign policy matter" as the flotilla.

Policy has the duty to demonstrate that it exercised all reasonable efforts to ensure that it included what was requested in the search conducted. *See Amnesty Int'l USA v. CIA*, No. 07 Civ. 5435, 2008 U.S. Dist. LEXIS 47882 at \*37 (S.D.N.Y. June 19, 2008) (citing authorities). CCR "reasonably described" the information we sought in the Request and Resubmission, and Policy did not seek further clarification about the nature or scope of the Request and Resubmission. Agencies may not "read the request so strictly that the requester is denied information the agency well knows exists in its files, albeit in a different form from that anticipated by the requester." *Id.* (quoting *Hemenway v. Hughes*, 601 F. Supp. 1002, 1005 (D.D.C. 1985)). Lacking any information about the search terms used or the manner in which the search was conducted, we are not in a position to fully assess whether our Request/Resubmission was narrowly construed or whether the search was properly performed, although the results – none – strongly suggest that the search was inadequate.

While an agency's search for records must be reasonable, we recognize that it does not have to be perfect. *Amnesty Int'l USA v. C.I.A.*, No. 07 Civ. 5435, 2008 U.S. Dist. LEXIS 47882, at \*27 (quoting *Garcia v. Dep't of Justice*, 181 F. Supp. 2d 356, 368 (S.D.N.Y. 2002)). What is important is whether "the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant . . ." *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 489 (2d Cir. 1999). Reasonableness is looked at within the context of each particular request. *See Davis v. U.S. Dep't of Justice*, 460 F.3d 92, 103 (D.C. Cir. 2006); *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The agency must set forth in an affidavit why a search of other some record systems, but not others, would lead to the discovery of responsive documents. *See Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). *Amnesty International et al. v. CIA et al.*, 2010 U.S. Dist. LEXIS 78659 at 11, August 2, 2010. Ms. Ballard's response, on behalf of Policy, fails to provide any of the required information to demonstrate the adequacy of the search.

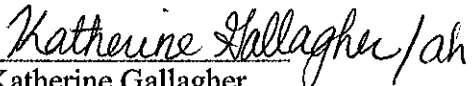
In closing, CCR requests that you make an adequate and reasonable search for the records we requested. Requesters note that many government officials involved in classification determinations have been increasingly concerned over the past few years about the over-classification of information that results in less public accountability for

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government conduct.<sup>2</sup> Accordingly, we demand that your office engage in an adequate and diligent effort to properly designate information, to disclose all responsive documents not properly subject to a FOIA exemption, and to comply with your obligations to provide segregable information when necessary.

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

Sincerely,

  
Katherine Gallagher  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012  
Phone: (212) 614-6455

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<sup>2</sup> The over-classification of documents was an issue cited by the 9/11 Commission in its final report as one factor impairing the efficient and effective sharing of information with the American public. *See* The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks Upon the United States, 417 (“Current security requirements nurture overclassification and excessive compartmentation of information among agencies”); *see also* Memorandum from Lawrence J. Halloran to Members of the Subcommittee on National Security, Emerging Threats, and International Relations, *Briefing Memorandum for the hearing, Emerging Threats: Overclassification and Pseudo-classification, scheduled for Wednesday, March 2, 1:00 p.m., 2154 Rayburn House Office Building, Feb. 24, 2005* (noting that the Information and Security Oversight Office’s 2003 Report to the President found that “many senior officials will candidly acknowledge that the government classifies too much information, although oftentimes the observation is made with respect to the activities of agencies other than their own”).

# EXHIBIT A

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June 30, 2010

FOIA/PA  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Drive SW  
STOP-0655  
Washington, D.C. 20528-0655

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

The Center for Constitution Rights (CCR) ("Requester") makes this request for information regarding the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-boat flotilla headed to Gaza with humanitarian supplies, including the U.S.-registered "*Challenger I*" and the Comoros-registered "*Mavi Marmara*," which was forcefully intercepted by the Israel Defense Forces, resulting in the death of 9 passengers on board the *Mavi Marmara*, including one U.S. citizen, and the injury of many more,<sup>1</sup> pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552 *et seq.*, and U.S. Department of Homeland Security FOIA Regulations, 6 C.F.R. Part 5.

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

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

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

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

This request also includes but is not limited to:

- (2) Any and all records reflecting communications, in any format, with the Israel Defense Forces, or any other division, department or representative of the Government of Israel, prior to, on, or after May 31, 2010 in relation to the U.S.-registered *Challenger I*, including any requests, notices or indications from the Israeli government, including by and through the IDF, of its intentions to block, board or otherwise redirect the U.S.-registered vessel to a destination other than its intended destination of Gaza, and any responses to such requests, notices or indications of actions by the Israeli government;
- (3) Any and all records reflecting communications, in any format, with the Israel Defense Forces, or any other division, department or representative of the Government of Israel, prior to, on, or after May 31, 2010 in relation to vessels included in the flotilla of boats destined to Gaza in May 2010, other than the U.S.-registered *Challenger I*, including any requests, notices or indications from the Israeli government, including by and through the IDF, of its intentions to block, board or otherwise redirect any vessel to a destination other than its intended destination of Gaza, and any responses to such requests, notices or indications of actions by the Israeli government;
- (4) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010, in relation to the actions that occurred on board each of the six boats of the flotilla, including the U.S.-registered "*Challenger I*" and the "*Mavi Marmara*," including but not limited to information regarding the status of U.S. and non-U.S. passengers, including the injured and the dead, while on board the vessels or in Israel, including in detention or medical facilities or other facilities, following the interception of the flotilla by Israel;
- (5) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to whereabouts, condition and status of the *Challenger I*, including the property on board that vessel and/or belonging to the passengers on board that vessel, and its return;
- (6) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of

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Israel, on or after May 31, 2010 in relation to whereabouts, condition and status of vessels included in the flotilla of boats destined to Gaza in May 2010, other than the U.S.-registered *Challenger I*, including the property on board each vessel and/or belonging to the passengers on board that vessel, and its return;

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

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records, audiotapes, videotapes, photographs, including satellite imagery where available, and back-up tapes. Our request includes any telephone messages, voice mail messages, daily agenda and calendars, information about scheduled meetings and/or discussions, whether in-person or over the telephone or via video-conference, agendas for those meetings and/or discussions, participants included in those meetings and/or discussions, minutes of any such meetings and/or discussions, the topics discussed at those meetings and/or discussions, email regarding meetings and/or discussions, email, facsimiles, cables or other communications sent as a result of those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions to the extent they relate to the aforementioned requested information.

## The Requester

The Center for Constitutional Rights ("CCR") is a not-for-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production

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of publications in the fields of civil and international human rights. CCR's diverse dockets include litigation and advocacy related to human rights in times of armed conflict or occupation, as well as the protection of human rights defenders. CCR is a member of human rights networks nationally and internationally, and provides legal support to human rights defenders and movements. One of CCR's primary activities is the publication of newsletters, know-your-rights handbooks, legal analysis of current international law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Education & Outreach Departments. CCR operates a website, [www.ccrjustice.org](http://www.ccrjustice.org), which addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and operates a listserv of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on international human rights.

## Fee Waiver

CCR qualifies as a "representative[] of the news media" and the requested records are not sought for commercial use. Accordingly, we request a waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure "is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

The Requesters have a proven track-record of compiling and disseminating information to the public about government functions and activities, including the government's record and position on international human rights and policy matters, and plans to disseminate any information disclosed as a result of this FOIA request through the channels described above. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of the U.S. government's role in, and response, to an international incident which involved U.S. citizens, U.S. property, including a vessel registered in accordance with international regulations and entitled to certain protections under domestic and international law, and has involved the United States in formulating an international response to both the May 31, 2010 attack on the flotilla and the blockade of Gaza. As such, the subject of this request concerns the operations of the federal government and expenditures, and the disclosures will likely contribute to a better understanding of relevant government procedures by CCR and the general public in a significant way.

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

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

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

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

## Expedited Processing

Expedited processing of this request is required because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(ii).

There is an urgent need to inform the public of the policies, procedures, guidelines, action, responses or instructions given by the federal government to agencies, departments or divisions, about preparation, participation or reaction to attacks on U.S.- registered boats in

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international waters, to vessels with U.S. citizens onboard, or to vessels with civilians, including but not limited to civilians transporting humanitarian supplies. This request is urgent in that U.S. citizens or U.S.-registered vessels must know the support, protection, reactions and any actions or inactions they can expect from the United States government in the event that they are subject to attack, detention or deportation.

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

The Requester certifies that the above information is true and correct to the best of the Requesters' knowledge. See 6 C.F.R. § 5.5(d)(3).

## Conclusion

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

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


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

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

Thank you for your prompt attention to this matter.

Sincerely,



Katherine Gallagher  
Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012  
Phone: (212)614-6455

# EXHIBIT B

U.S. Department of Homeland Security  
Washington, DC 20528



# Homeland Security

Privacy Office, Mail Stop 0653

July 15, 2010

**SENT VIA FACSIMILE TO: 212-614-6499**

Ms. Katherine Gallagher  
Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012

Re: **DHS/OS/PRIV 10-0284**

Dear Ms. Gallagher:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated June 30, 2010 and received in this office July 8, 2010. You requested eight broad categories of records pertaining to a May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-boat flotilla headed to Gaza with humanitarian supplies, including the U.S.-registered "Challenger I" and the Comoros-registered "Mavi Marmara," which was forcefully intercepted by the Israel Defense Forces, resulting in the death of 9 passengers on board the Mavi Marmara, including one U.S. citizen, and the injury of many more.

Based on the limited information provided in your request, I am unable to determine where to direct your request within this department. The information provided in your request seems to suggest that this may be a matter under the purview of the Department of State.

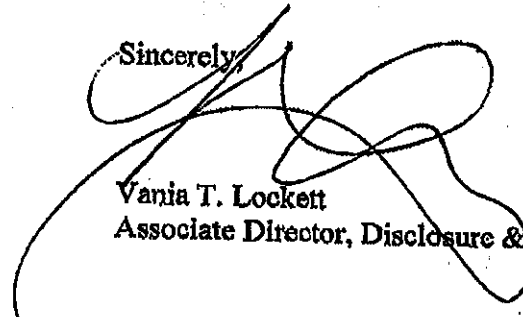
Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, §5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record. The FOIA does not require an agency to create new records, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records.

Please resubmit your request containing a reasonable description of the records you are seeking. Upon receipt of a perfected request, you will be advised as to the status of your request.

If we do not hear from you within 30 days from the date of this letter, we will assume you are no longer interested in this FOIA request, and the case will be administratively closed. Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

Your request has been assigned reference number **DHS/OS/PRIV 10-0824**. Please refer to this identifier in any future correspondence. You may contact this office at 866-431-0486 or at 703-235-0790.

Sincerely,



Vania T. Lockett  
Associate Director, Disclosure & FOIA Operations

# EXHIBIT C

centerforconstitutionalrights  
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August 13, 2010

FOIA/PA  
c/o Vania T. Lockett  
Associate Director, Disclosure & FOIA Operations  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Drive, SW  
STOP-0655  
Washington, D.C. 20528-0655

Re: FREEDOM OF INFORMATION ACT RESUBMISSION  
Reference No. DHS/OS/PRIV 10-0824

Dear Ms. Lockett:

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

In a letter dated July 15, 2010 and received in our office via facsimile on that date, the Department of Homeland Security ("DHS") issued a response, stating that our request was too "limited," suggesting that this was a matter under the purview of the Department of State, and requesting a resubmission of our request "containing a reasonable description of the records" we seek. See Exhibit B. (On June 30, 2010, CCR submitted requests to both the State Department and the Coast Guard for information related to the 31 May 2010 Israeli military operation against the Gaza flotilla. To date, no response has been received from the Department of State, and the Coast Guard responded in a letter dated July 19, 2010 in a final response, stating that no responsive records were located (FOIA-10-2771). We will be appealing the Coast Guard's final response.)

Based on publically available information about the scope of DHS's mandate, we have reason to believe that the information requested falls within DHS's ambit, whose five main responsibilities include, but are not limited to, guarding against "terrorism" and protecting the United States and Americans citizens. In particular and without limiting the areas that could fall within the scope of the Request, the information sought could be found within the DHS' Office of Intelligence and Analysis as well as pursuant to The Agreement between the United States of

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America And Israel on Cooperation in Science and Technology for Homeland Security Matters (hereinafter "The Agreement"). The Agreement's objective stated in Article 2 demonstrates the likelihood that the information we request falls under DHS's or control: 2 "to establish a framework to initiate, encourage, develop and facilitate bilateral Cooperative Activities in homeland security-related science and technology, or with respect to other homeland security matters that contributes to the homeland security capabilities of both Parties in (c) the planning for an emergency, crises response, recovery and consequence management and mitigation for his-consequence events; [...] (i) exchange of information regarding emergency planning, response, recovery and mitigation; [...] and (k) other homeland security-related activities as determined by the Parties." The Israeli Embassy has also remarked on the close relationship between the DHS and Israel and noted on its website that "American and Israeli law enforcement officers and Homeland Security officials regularly meet in both countries to study counter-terrorism techniques and new ideas regarding intelligence gathering and threat prevention."<sup>1</sup>

Particularly in light of The Agreement's objective and Article 3, which states that Israel and the United States will exchange technologies, personnel and information, collaborate to develop technologies to counter "terrorist actions," facilitate "prompt exchange of information" and facilitate the dissemination of information "consistent with applicable national laws, regulations, policies and directives," and taking into account that the mandate of the Office of Intelligence and Analysis includes ensuring that "information related to homeland security threats is collected, analyzed, and disseminated," CCR seeks in this resubmission of our FOIA request all records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, that reflect, relate or refer to:

- (1) Any and all records since January 1, 2010 that relate to and reflect any and all plans, reports, documents, discussions, meetings, or other communications, whether in person, by phone, mail, instant message, email, or any other method, that mention, refer or relate to any vessels or a flotilla of boats destined for Gaza in May 2010, including the U.S.-flagged *Challenger I*. Our request includes, but is not limited to records reflecting communications with inter-governmental organizations, such as the North Atlantic Treaty Organization (NATO), foreign governments, including the Government of Israel, and any communications with other agencies, departments or divisions of the United States, including but not limited to any communications which relate to possible, planned, or executed actions by the U.S. government in the Mediterranean Sea in response to Israel's military operations at sea;

This request also includes but is not limited to:

- (2) Any and all records reflecting communications, in any format, with the Israel Defense Forces, or any other division, department or representative of the Government of Israel, either due to the requirements under The Agreement, specifically Article

<sup>1</sup> See, <http://www.israelemb.org/US-Israel-Relations/strategic-co-op.html>.

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- 6(1)(c), or otherwise, prior to, on, or after May 31, 2010 in relation to the U.S.-registered *Challenger I*, including any requests, notices or indications from the Israeli government, including by and through the IDF, of its intentions to block, board or otherwise redirect the U.S.-registered vessel to a destination other than its intended destination of Gaza, and any responses to such requests, notices or indications of actions by the Israeli government;
- (3) Any and all records reflecting communications, in any format, with the Israel Defense Forces, or any other division, department or representative of the Government of Israel, either due to the requirements under The Agreement, specifically Article 6(1)(c), or otherwise, prior to, on, or after May 31, 2010 in relation to vessels included in the flotilla of boats destined to Gaza in May 2010, other than the U.S.-registered *Challenger I*, including any requests, notices or indications from the Israeli government, including by and through the IDF, of its intentions to block, board or otherwise redirect any vessel to a destination other than its intended destination of Gaza, and any responses to such requests, notices or indications of actions by the Israeli government;
- (4) Any and all records reflecting communications in any format with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, including but not limited to those communications pursuant to The Agreement, on or after May 31, 2010, in relation to the actions that occurred on board each of the six boats of the flotilla, including the U.S.-registered "*Challenger I*" and the "*Mavi Marmara*," including but not limited to information regarding the status of U.S. and non-U.S. passengers, including the injured and the dead, while on board the vessels or in Israel, including in detention or medical facilities or other facilities, following the interception of the flotilla by Israel;
- (5) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to whereabouts, condition and status of the *Challenger I*, including the property on board that vessel and/or belonging to the passengers on board that vessel, and its return, including but not limited to information gathered or received pursuant to The Agreement and also in light of the Office of Intelligence and Analysis' role to monitor foreign government initiatives that affect U.S. border security, threats of weapons of mass destruction, and threats of particular groups entering or reentering the United States;
- (6) Any and all records reflecting communications in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to whereabouts, condition and status of vessels included in the flotilla of boats destined to Gaza in May 2010, other than the U.S.-registered *Challenger I*, including the property on board each vessel and/or

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belonging to the passengers on board that vessel, and its return, in particular but not limited to, those records gathered or received in accordance with The Agreement, specifically Article 3(1)(j), which requires facilitating a prompt exchange of information of Equipment and Material which may affect Cooperative Activity;

- (7) Any and all records reflecting communications, including but not limited to the transmission or exchange of instructions, guidelines, policy statements or standard operation procedures, in any format, with the Israel Defense Forces, or another other division, department or representative of the Government of Israel, on or after May 31, 2010 in relation to the preservation and safeguarding of any and all possible evidence or materials seized by or in the possession of Israel from, related to or relevant to the incident, including but not limited to computers, cameras, cell phones, SIM cards, personal devices, computer disks or memory chips, hard drives or other such devices, so as to ensure that evidence has not been destroyed, tampered with, altered or otherwise rendered suspect or unusable in any and all subsequent investigatory proceedings, including but not limited to criminal, civil or administrative proceedings, including but not limited to those gathered or received in accordance with The Agreement, specifically Article 3(1)(j), which requires facilitating a prompt exchange of information of Equipment and Material which may affect Cooperative Activity; and
- (8) Any and all records, including but not limited to those pursuant to The Agreement Article 6(1)(c), including but not limited to plans, reports, communications, instructions and documents since at least June 1, 2007 that relate to U.S. actions, policies, procedures or guidelines in relation to interception, inspection, safe-passage or any other action or response to vessels in the Mediterranean Sea that have as their destination Gaza, including but not limited to vessels undertaking humanitarian missions in response to the Israeli blockade of Gaza.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seeks records of any kind, including electronic records, audiotapes, videotapes, photographs, including satellite imagery where available, and back-up tapes. Our request includes any telephone messages, voice mail messages, daily agenda and calendars, information about scheduled meetings and/or discussions, whether in-person or over the telephone or via video-conference, agendas for those meetings and/or discussions, participants included in those meetings and/or discussions, minutes of any such meetings and/or discussions, the topics discussed at those meetings and/or discussions, email regarding meetings and/or discussions, email, facsimiles, cables or other communications sent as a result of those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions to the extent they relate to the aforementioned requested information.

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## The Requester

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

## Fee Waiver

CCR qualifies as a "representative[] of the news media" and the requested records are not sought for commercial use. Accordingly, we request a waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure "is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii); see also 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

The Requesters have a proven track-record of compiling and disseminating information to the public about government functions and activities, including the government's record and position on international human rights and policy matters, and plans to disseminate any information disclosed as a result of this FOIA request through the channels described above. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of the U.S. government's role in, and response, to an international incident which involved U.S. citizens, U.S. property, including a vessel registered in accordance with international regulations and entitled to certain protections under domestic and international law, and has involved the United States in formulating an international response to both the May 31, 2010 attack on the flotilla and the blockade of Gaza. Indeed, the Requesters have made the

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FOIA requests filed to date related to the May 2010 attack on the flotilla, including the initial request to DHS, public through their web-site and through a press release,<sup>2</sup> and additional news outlets have reported on the Requests.<sup>3</sup> As such, the subject of this request concerns the operations of the federal government and expenditures, and the disclosures will likely contribute to a better understanding of relevant government procedures by CCR and the general public in a significant way.

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

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

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

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

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<sup>2</sup> See, <http://www.ccrjustice.org/newsroom/press-releases/rights-group-files-foia-requests-regarding-israel-attack-flotilla-delivering-aid-gaza>.

<sup>3</sup> See, "Rights group probes US agencies on foreknowledge of Israeli flotilla raid," Stephen C. Webster, July 1, 2010 available at: <http://rawstory.com/rs/2010/0701/rights-group-probes-agencies-foreknowledge-israeli-flotilla-raid/>; "Rights group seeks information on US knowledge of Israel flotilla raid," Hillary Stemple, July 2, 2010 available at: <http://urlist.org/paperchase/2010/07/rights-group-seeks-information-on-us-knowledge-of-israel-flotilla-raid.php>.

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## Expedited Processing

Expedited processing of this request is required because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(ii).

There is an urgent need to inform the public of the policies, procedures, guidelines, action, responses or instructions given by the federal government to agencies, departments or divisions, about preparation, participation or reaction to attacks on U.S.- registered boats in international waters, to vessels with U.S. citizens onboard, or to vessels with civilians, including but not limited to civilians transporting humanitarian supplies. This request is urgent in that U.S. citizens or U.S.-registered vessels must know the support, protection, reactions and any actions or inactions they can expect from the United States government in the event that they are subject to attack, detention or deportation. In light of reports that US citizens are preparing to travel by ship on similar missions to that of the May 2010 Gaza flotilla, which came under attack by the IDF, such information is urgent.<sup>4</sup>

Further, in light of pending international investigations, whether criminal, civil or disciplinary in nature, and in light of the U.S. position, involvement or assistance in relation to such an investigation,<sup>5</sup> there is an urgent need to inform the public of the policies, procedures, requests, demands or any other responses, actions or inactions, the United States has made to the government of Israel to safeguard evidence gathered in relation to the May 31, 2010 attack on the flotilla, including but not limited to the preservation of property in its original form seized by the government of Israel including but not limited to computers, cameras, cell phones, personal devices that have memory chips, hard drives or other such devices, and to ensure that evidence has not been destroyed, tampered with, altered or otherwise rendered suspect or unusable in subsequent investigatory proceedings. In light of the announced Israeli investigation and the commencement of work by that investigation commission,<sup>6</sup> this matter is urgent.

<sup>4</sup> See, e.g., "Americans organizing ship for Gaza flotilla," JTA, July 21, 2010, available at: <http://www.jta.org/news/article/2010/07/21/2740136/americans-organize-ship-to-join-flotilla-to-gaza>; R. Mackey, "American Activists Plan Gaza Flotilla Ship Named for Obama Book," New York Times, July 20, 2010, available at: <http://thelede.blogs.nytimes.com/2010/07/20/american-activists-plan-gaza-flotilla-ship-named-for-obama-book/>; and <http://ustogaza.org/>. See also, Y. Katz, "Future flotillas will be stopped," The Jerusalem Post, August 12, 2010, available at: <http://www.jpost.com/Israel/Article.aspx?id=184473>.

<sup>5</sup> See, Statement by the President of the Security Council, S/PRST/2010/9, June 1, 2009, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/382/79/PDF/N1038279.pdf?OpenElement> (calling for "a prompt, impartial, credible and transparent investigation conforming to international standards"); "United Nations Human Rights Council Panel to Investigate Israeli raid on Gaza flotilla established," available at: July 23, 2010 available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10230&LangID=E>; "UN chief announces panel of inquiry into Gaza flotilla incident," August 2, 2010, available at: <http://www.un.org/apps/news/story.asp?NewsID=35607&Cr=flotilla&Cr1=>.

<sup>6</sup> See, "Statement by the Press Secretary on Israel's investigation into the flotilla incident," The White House, Office of the Press Secretary, June 13, 2010 available at: <http://www.whitehouse.gov/the-press-office/statement-press->

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The Requester certifies that the above information is true and correct to the best of the Requesters' knowledge. See 6 C.F.R. § 5.5(d)(3).

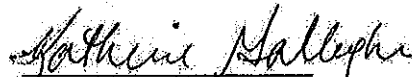
Conclusion

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

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

Thank you for your prompt attention to this matter.

Sincerely,

  
Katherine Gallagher  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012  
Phone: (212)614-6455

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secretary-israels-investigation-flotilla-incident; I. Lemberg, "Israel opens official probe into deadly flotilla raid," CNN, June 28, 2010, available at: <http://www.cnn.com/2010/WORLD/meast/06/28/israel.raid.commission/index.html>; I. Kershner, "Netanyahu Speaks in Flotilla Inquiry," New York Times, August 9, 2010, available at: <http://www.nytimes.com/2010/08/10/world/middleeast/10flotilla.html?scp=1&sq=israel%20flotilla%20inquiry&st=cse>.

# EXHIBIT D



# Homeland Security

September 24, 2010

Ms. Katherine Gallagher  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012

Re: **DHS/OS/PRIV 10-0824**

Dear Ms. Gallagher:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated August 13, 2010. Your request was received in this office on August 18, 2010. You are seeking all records relating to the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-foot boat flotilla headed to Gaza with humanitarian supplies, including the U.S. registered "Challenger I" and Comoros-registered "Mavi Marmara," which was forcefully intercepted by Israeli Defense Forces, resulting in the death of 9 passengers on board the Mavi Marmara, including one U.S. Citizen and the injury of many more.

A search within the Executive Secretariat for documents responsive to your request produced a total of 4 pages. Of those pages, I have determined that 3 pages are releasable in their entirety and 1 page is partially releasable with certain information withheld pursuant to Title 5, U.S.C. § 552 (b)(2)high and (b)(6), FOIA Exemptions 2 and 6. The documents are enclosed with certain information withheld, as described below:

FOIA Exemption 2(high) protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, to the extent that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency's activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

You have a right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the

procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

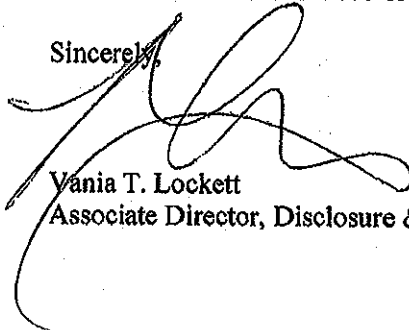
The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call 1-877-684-6448.

I am referring one document under the purview of the DHS Office of Policy (PLCY) to the FOIA Officer for PLCY, Traci Ballard, for processing and direct response to you. You may contact that office by writing to U.S. Department of Homeland Security, Office of Policy, Washington, D.C. 20528, via telephone at 202-447-4425, or via e-mail at [PLCYExecSec@dhs.gov](mailto:PLCYExecSec@dhs.gov).

Due to the subject matter of your request, I also transferred your request to the FOIA Officer for DHS Science and Technology Directorate (S&T), Miles Wiley, for processing and direct response to you. You may contact that office in writing at U.S. Department of Homeland Security, Science and Technology Directorate, Washington, D.C. 20528 or via telephone at 202-254-6819.

Your request has been assigned reference number **DHS/OS/PRIV 10-0824**. Please refer to this identifier in any future correspondence. You may contact this office at 1-866-431-0486 or 703-235-0790.

Sincerely,



Vania T. Lockett  
Associate Director, Disclosure & FOIA Operations

Enclosure: As stated, 4 pages

# EXHIBIT E

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

Office of Policy, Mail Stop 3123

October 14, 2010

Ms. Katherine Gallagher  
Senior Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012

**Re: DHS/OS/PLCY & PRIV 10-0824**

Dear Ms. Gallagher:

On behalf of the Office of Policy, this letter is the electronic final response to your August 13, 2010 Freedom of Information Act (FOIA) request addressed to the Department of Homeland Security (DHS). You requested all records relating to the May 31, 2010 Israeli military operation that occurred in international waters in the Mediterranean Sea involving a six-foot boat flotilla headed to Gaza with humanitarian supplies, including the U.S. registered "Challenger 1" and Comoros-registered "Mavi Marmara," which was forcefully intercepted by Israeli Defense Forces, resulting in the death of nine (9) passengers on board the Mavi Marmara, including one U.S. Citizen and the injury of many more. Your request was referred to us from the Privacy Office and was received in the Office of Policy on September 24, 2010.

The documents forwarded for our review and release determination were nonresponsive. However, as an additional courtesy, our subcomponent entity, the Office of International Affairs, conducted an exhaustive search for records in response to your FOIA request and found no records.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within the Office of Policy that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that

OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call 1-877-684-6448.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

If you need to contact my office concerning this request, please call 202-447-3497 or email [PolleyFOIA@hq.dhs.gov](mailto:PolleyFOIA@hq.dhs.gov) and refer to PLCY & PRIV 10-0824.

Sincerely,



Tracy Ballard, J.D., CIPP  
FOIA & Information Disclosure Officer  
Office of Policy