



HEADQUARTERS  
UNITED STATES EUROPEAN COMMAND  
UNIT 30400  
APO AE 09131

16 July 2010

Ms Katherine Gallagher  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012

Dear Ms Gallagher,

This is an interim response to your letter dated June 30, 2010, submitted "on behalf of the Center for Constitutional Rights ("CCR") ("Requester"), I have interpreted that letter as a Freedom of Information Act (FOIA) request for records relating to" 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 nine passengers on board the *Mavi Marmara*, including one U.S. citizen, and the injury of many more". You have additionally identified the records that you seek by providing detailed descriptions of nine categories of records inclusive to this search. You have requested a waiver of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii); a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II); and expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i)(I), 32 C.F.R. § 286.4(d)(3) and 32 C.F.R. § 286.4(d)(3)(iv). We have assigned this request case number 10-F-058.

You have requested a waiver of fees on the grounds that disclosure of the requested records is in the public interest 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 CCR. Additionally, you have requested that processing fees be limited pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) because CCR is a "representative of the media". You state that CCR qualifies as a "representative of the news media" and that the requested records are not sought for commercial use. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

You have stated in your request that 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. These activities do not demonstrate that the primary activity of CCR is publishing or disseminating information. Accordingly, I have determined that CCR does not qualify as a representative of the news media. Moreover, CCR also does not qualify for a limitation of processing fees on this basis.

In light of the above, I have determined that you should be placed in the "other" category

for fee purposes, which affords you two hours of search time and 100 pages of duplication free of charge. Subsequent processing will be assessed at the established Department of Defense (DoD) fee rates of: clerical search time--\$20 per hour; professional search time--\$44 per hour; executive search time--\$75 per hour; and document reproduction at \$0.15 per page.

Regarding your request for a waiver of fees, which we have interpreted as a request for a waiver of all costs, decisions to waive or reduce fees are made on a case-by-case basis. A fee waiver is appropriate when "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester," 5 U.S.C. § 552(a)(4)(iii). I will make a decision on your request for a fee waiver after a search for responsive documents is conducted and the volume and nature of the records is determined.

We anticipate that a search for responsive records will exceed the two free hours to which you are entitled in the "other" fee category, and we ask that you make a fee commitment in the event that your fee waiver is not granted. Otherwise, the search will be limited to two hours and I will make a decision on your request for a fee waiver on the basis of any material that is located within this timeframe. If you would like the search to be expanded beyond the two hours that you receive free, please advise this office in writing, stating the amount of fees that you are willing to pay. You may also wish to narrow the scope of your request and identify those records that are of primary interest.

In requesting expedited processing, you are asking that this request be placed ahead of all requests that were received before your request. You have requested expedited processing on two bases: (1) an urgent need to secure the records pursuant to 32 C.F.R. § 286.4(d)(3) by an organization primarily engaged in disseminating information in order to inform the public about an actual or alleged Federal Government activity and (2) 32 C.F.R. §§ 286.4(d)(3)(iv), which provides for expedited processing after a requester demonstrates a compelling need for the information and/or demonstrates an *imminent* loss of substantial due process rights and humanitarian need.

A compelling need is defined under DoD regulations as information that is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. Urgently means that the information has a particular value that will be lost if not disseminated quickly. You have failed to demonstrate how the value of this information will be lost if it is not disseminated quickly. In addition, I have determined that your request for expedited processing does not meet the criteria of 32 C.F.R. § 286.4(d)(3)(iv). For these reasons, your request for expedited processing is denied.

If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense. To submit your appeal, you should write directly to the Defense Freedom of Information Policy Office, ATTN: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20101-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 10-F-058, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

  
Naomi Ludan

EUCOM FOIA/Privacy Act Disclosure Specialist