



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

JUL 19 2010

Ref: 10-F-1042

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

Dear Ms. Gallagher:

This is an interim response to your Freedom of Information Act (FOIA) request dated June 30, 2010, submitted by the Center for Constitutional Rights ("CCR") ("Requester"). You have requested "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 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". You have requested a waiver of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 32 C.F.R. § 286.28(d); a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 32 C.F.R. § 286.28(e)(7); and expedited processing pursuant to 32 C.F.R. § 286.4(d)(3)(ii) and 28 C.F.R. § 16.5(d)(iii). I also understand that you have directly submitted this request to the U.S. European Command, the U.S. Central Command and the Department of the Navy. As this office is the FOIA office for the Office of the Secretary of Defense (OSD) and the Joint Staff (JS), we will only conduct a search for responsive records held by those organizations. We received your request on July 9, 2010, and assigned it case number 10-F-1242.

You have also requested records concerning the preservation and safeguarding of evidence or materials seized by or in the possession of Israel; records since June 1, 2007, relating 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; records concerning advance knowledge of any vessels or a flotilla of boats destined for Gaza; records concerning communications with inter-governmental organizations relating to possible, planned, or executed actions by the U.S. government in the Mediterranean Sea in response to Israel's military operations at sea; communications concerning the U.S. - registered Challenger I or any other vessel which formed a part of the flotilla of ships; communications by the Chairman of the Joint Chiefs of Staff; records concerning the

actions that occurred on board each of the six boats of the flotilla including the Challenger I; and records concerning whereabouts, condition and status of Challenger I, including the property on board each vessel. I note that you have used a date range "prior to, on, or after May 31, 2010" in parts of your request and it is unclear what you mean by that description. Please clarify, or we will interpret this date range as meaning seven days prior to and seven days following May 31, 2010.

You state 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." That "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" and "CCR is a member of human rights networks nationally and internationally, and provides legal support to human rights defenders and movements." You additionally explain that one of your 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 and that CCR regularly issues press releases, issues action alerts that notify supporters and the general public and that CCR staff members often serve as sources for journalist and media outlets.

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. As you have stated, CCR is involved in litigation, advocacy related to human rights, support to human rights defenders and movements and dissemination of information to the public and the press. Although you have demonstrated the ability to disseminate information, the primary activity of CCR is not publishing or disseminating information. Therefore, I do not find that CCR qualifies as a "representative of the news media". Moreover, CCR also does not qualify for a limitation of processing fees on this basis. Accordingly, I have determined that you should be placed in the "other" category for fee purposes.

Regarding your request for a waiver of fees, which I have interpreted as a request for a waiver of all costs, 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)(A)(iii). 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). You base your request on furthering the public’s understanding of the government’s role in, and response, to an international incident which involved U.S. citizens and U.S. property; their 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 and what steps the U.S. took to ensure civilians of all nationalities engaged in humanitarian missions are protected from attack; and the U.S. policy in relation to the blockade of Gaza in relation to the list of prohibited goods and the delivery of humanitarian assistance to the civilian population of Gaza. Although the subject of the requested records may concern the operations or activities of the Federal government, these records would not primarily be expected to be held by OSD or the Joint Staff and would not therefore inform the public of operations of the Federal government. Therefore, a waiver of fees is denied.

As an “other” fee category requester, you are afforded 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. I note that you have not agreed to pay fees to support this request. If you wish the search to extend beyond two hours, I ask that you make a fee commitment, otherwise, the search will be limited to two hours.

You have requested expedited processing “because there is a “compelling need” for the information” described in your request and an “urgency to inform the public concerning actual or alleged Federal government activity” by a requester who is primarily engaged in disseminating information. 32 C.F.R. § 286.4(d)(3). You have also requested expedited processing on the basis of an “an imminent loss of substantial due process rights and humanitarian need”. 32 C.F.R. § 286.4(d)(3)(iv).

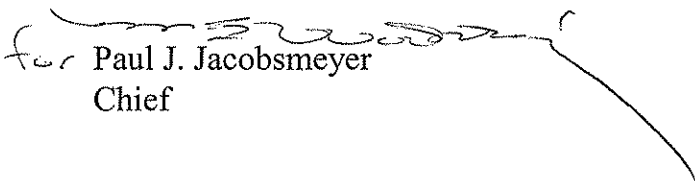
In support of your request for expedited processing you state that there is an urgent need because “U.S. citizens or U.S.-registered vessels must know the support, protection, reactions and any action or inactions they can expect from the United States government in the event that they are subject to attack, detention or deportation.” Additionally, that “in light of pending international investigations” and “in light of the U.S. position, involvement or assistance in relation to such an investigation” “there is an urgent need to inform the public of the policies, procedures, requests, demands or any other responses, actions or inaction, 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...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, this matter is urgent.”

I do not find that you have met the criteria for expedited processing on the basis of humanitarian need; imminent loss of substantial due process rights; or compelling need where 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. Although CCR does disseminate information, it is not a primary function of CCR. In addition, I do not find that you have demonstrated what due process right is in imminent threat of substantial loss or how records you seek will promote the welfare and interest of mankind. The records you seek to support these concerns would not primarily fall under the authority of the OSD or Joint Staff and are more appropriate to other Federal government agencies. For these reasons, your request for expedited processing is denied.

This Office processes requests on a first-in, first-out basis. At this time, we are unable to make a release determination on your request within the 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. These unusual circumstances are: (a) the need to search for and collect records from a offices geographically separated from this Office; (b) the need to consult with one or more agencies or DoD components having a substantial interest in either the determination or the subject matter of the records and (c) the complexity of your request. For these reasons, your request has been placed in our complex processing queue and it will be worked in the order the request was received. As a matter of information, our current administrative workload is approximately 1,730 open requests.

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-1242, and should be clearly marked "Freedom of Information Act Appeal.

Sincerely,


for Paul J. Jacobsmeyer
Chief