

NOT YET SCHEDULED FOR ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5165
(C.A. No. 14-01589)

ROGER ARONOFF, Appellant,)
)
 v.)
)
 CENTRAL INTELLIGENCE AGENCY, *et al.*, Appellees.)
)
 _____)

DEFERRED JOINT APPENDIX

VOLUME 1 OF 2

On Appeal from the United States District Court for the
District of Columbia, Hon. Loren L. Alikhan, District Judge

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 344-0776
john@johnhclarkelaw.com
Attorney for Appellant

TABLE OF CONTENTS

Volume 1 of 2

<u>Date</u>	<u>Docket No.</u>		<u>Page</u>
		Docket entries from District Court.	1
2/22/2015	15-8	Exhibit Affidavit re LexisNexis search.	16
3/05/2015	19-1	U.S. Senate Select Committee on Intelligence <i>Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012</i> [excerpts]	18
6/24/2015	31	Amended Complaint.	24
3/2/2018	65	Joint Motion for Briefing Schedule to be Amended.	87
05/10/2018	68-1	Declaration of Rear Admiral James J. Malloy.	94
05/10/18	68-4	Declaration of Mark H. Harrington.	109
05/10/18	68-5	Declaration of Antoinette Shiner.	164
05/10/18	68-6	Declaration of Eric Stein.	241
05/10/18	68-8	Declaration of David Hardy Department of State Consultation	324
05/10/18	68-9	Declaration of Alesia Y. Williams.	334
05/14/18	69-1	Declaration of Rear Admiral James J. Malloy.	351
06/25/18	71-1	Declaration of John H. Clarke.	366

Volume 2 of 2

06/25/18	71-2	Affidavit of Admiral James A. Lyons, Jr., USN, (Ret)	484
07/27/18	77-1	Supplemental Declaration of Mark H. Harrington.	487
07/27/18	77-2	Supplemental Declaration of Antoinette Shiner. .	492
3/21/19	81	Joint Status Report.	498
08/27/20	83	Report and Recommendation, Magistrate Judge. .	501
09/10/20	86	Defendants" Notice re Report and Recommendation.	534
11/28/22	92	Memorandum Opinion.	536
1/20/23	94	Joint Status Report.	565
6/29/23	97-2	Declaration of Michael Seidel.	568
6/29/23	97-3	Seidel Declaration Exhibits.	600
6/29/23	97-4	Seidel Declaration Exhibits.	875
6/29/23	97-5	Declaration of Timothy J. Kootz.	881
6/29/23	97-6	Declaration of Vanna Blaine.	897
08/09/23	98-1	Affidavit of John Tiegan.	908
04/26/24	103	Memorandum Opinion.	909
04/26/24	104	Order.	919
06/22/24	105	Notice of Appeal.	920

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:14-cv-01589-LLA

ACCURACY IN MEDIA, INC. et al v. DEPARTMENT OF DEFENSE et al
Assigned to: Judge Loren L. AliKhan
Case in other court: USCA, 24-05165
Cause: 05:552 Freedom of Information Act

Date Filed: 09/19/2014
Date Terminated: 04/30/2024
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
09/19/2014	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 400 receipt number 0090-3844221) filed by CLARE M LOPEZ, LARRY W. BAILEY, JAMES A. LYONS, JR, ROGER L ARONOFF, KEVIN MICHAEL SHIPP, ACCURACY IN MEDIA, INC., KENNETH BENWAY, RICHARD F BRAUER, JR.(Clarke, John) (Entered: 09/19/2014)
09/19/2014	<u>2</u>	CIVIL COVER SHEET by ACCURACY IN MEDIA, INC. re <u>1</u> Complaint, filed by ACCURACY IN MEDIA, INC.. Related document: <u>1</u> Complaint, filed by CLARE M LOPEZ, ROGER L ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, JAMES A. LYONS, JR., ACCURACY IN MEDIA, INC., RICHARD F BRAUER, JR, KEVIN MICHAEL SHIPP.(Clarke, John) (Entered: 09/19/2014)
09/19/2014	<u>3</u>	REQUEST FOR SUMMONS TO ISSUE by ACCURACY IN MEDIA, INC. re <u>1</u> Complaint, filed by ACCURACY IN MEDIA, INC.. Related document: <u>1</u> Complaint, filed by CLARE M LOPEZ, ROGER L ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, JAMES A. LYONS, JR., ACCURACY IN MEDIA, INC., RICHARD F BRAUER, JR, KEVIN MICHAEL SHIPP. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons, # <u>6</u> Summons)(Clarke, John) (Entered: 09/19/2014)
09/19/2014		Case Assigned to Judge Emmet G. Sullivan. (kb) (Entered: 09/19/2014)
09/20/2014	<u>4</u>	REQUEST FOR SUMMONS TO ISSUE <i>Summons</i> by ACCURACY IN MEDIA, INC. filed by ACCURACY IN MEDIA, INC.. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons)(Clarke, John) (Entered: 09/20/2014)
09/22/2014	<u>5</u>	SUMMONS (2) Issued Electronically as to U.S. Attorney and U.S. Attorney General (td,) (Entered: 09/22/2014)
09/22/2014	<u>6</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by ACCURACY IN MEDIA, INC. (Attachments: # <u>1</u> CERTIFICATE RULE LCvR 7.1)(Clarke, John) (Entered: 09/22/2014)
09/23/2014	<u>7</u>	SUMMONS (4) Issued Electronically as to CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Attachments: # <u>1</u> Consent Form, # <u>2</u> Notice of Consent)(kb) (Entered: 09/23/2014)
12/22/2014	<u>8</u>	NOTICE of Appearance by Megan Anne Crowley on behalf of All Defendants (Crowley, Megan) (Entered: 12/22/2014)
12/22/2014	<u>9</u>	ANSWER to Complaint by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Attachments: # <u>1</u> Exhibit Attachment 1, # <u>2</u> Exhibit Attachment 2, # <u>3</u> Exhibit Attachment 3, # <u>4</u> Exhibit Attachment 4, # <u>5</u> Exhibit Attachment 5, # <u>6</u> Exhibit Attachment 6, # <u>7</u> Exhibit Attachment 7, # <u>8</u> Exhibit Attachment 8, # <u>9</u> Exhibit Attachment 9, # <u>10</u> Exhibit Attachment 10, # <u>11</u> Exhibit Attachment 11, # <u>12</u> Exhibit Attachment 12, # <u>13</u> Exhibit Attachment 13, # <u>14</u> Exhibit Attachment 14, # <u>15</u> Exhibit Attachment 15, # <u>16</u> Exhibit Attachment 16, # <u>17</u> Exhibit Attachment 17, # <u>18</u> Exhibit Attachment 18, # <u>19</u> Exhibit Attachment 19, # <u>20</u> Exhibit Attachment 20)(Crowley, Megan) (Entered: 12/22/2014)

01/06/2015	<u>10</u>	ORDER FOR MEET AND CONFER REPORT. Attorney Meet and Confer Conference by 1/28/2015. Meet & Confer Statement due by 2/11/2015. Signed by Judge Emmet G. Sullivan on 01/06/15. (mac) (Entered: 01/06/2015)
01/07/2015	<u>11</u>	Unopposed MOTION for Leave to File <i>Supplemental Complaint</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Supplement Supplemental Complaint)(Clarke, John) (Entered: 01/07/2015)
01/12/2015		MINUTE ORDER granting <u>11</u> plaintiffs' unopposed motion for leave to file supplemental complaint. The government shall answer or otherwise respond to <u>11</u> plaintiffs' supplemental complaint by no later than January 23, 2015. Signed by Judge Emmet G. Sullivan on January 12, 2015. (lcegs4) (Entered: 01/12/2015)
01/12/2015		Set/Reset Deadlines: Government Answer due by 1/23/2015. (mac) (Entered: 01/12/2015)
01/12/2015	<u>12</u>	SUPPLEMENTAL COMPLAINT against CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE filed by CLARE M. LOPEZ, LARRY W. BAILEY, JAMES A. LYONS, JR, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, ACCURACY IN MEDIA, INC., KENNETH BENWAY, RICHARD F. BRAUER, JR.(jf,) (Entered: 01/13/2015)
01/23/2015	<u>13</u>	ANSWER to <u>12</u> Complaint, by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Crowley, Megan) (Entered: 01/23/2015)
01/26/2015	<u>14</u>	AMENDED ORDER FOR MEET AND CONFER REPORT. Attorney Meet and Confer Conference by 2/17/2015. Meet & Confer Statement due by 3/3/2015. Signed by Judge Emmet G. Sullivan on 01/26/2015. (mac) (Entered: 01/26/2015)
02/22/2015	<u>15</u>	MOTION to Expedite , MOTION to Stay <i>CASE AGAINST CIA</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit DOD/DIA Ad–Appeal Letter, # <u>2</u> Exhibit DOD/DIA Ad–Appeal+Rpt–Q's–Timeline, # <u>3</u> Exhibit DOD/DIA Ad–Appeal Exhibits, # <u>4</u> Exhibit State Dept Ad Appeal, # <u>5</u> Exhibit CIA Ad Appeal, # <u>6</u> Exhibit Admiral Kubic Transcript, # <u>7</u> Exhibit Intel Committee Rpt Excerpt, # <u>8</u> Exhibit LexisNexis search, # <u>9</u> Exhibit List Congressional record)(Clarke, John) (Entered: 02/22/2015)
02/26/2015	<u>16</u>	NOTICE OF WITHDRAWAL OF MOTION by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP re <u>15</u> MOTION to Expedite MOTION to Stay <i>CASE AGAINST CIA</i> (Clarke, John) (Entered: 02/26/2015)
02/26/2015		MINUTE ORDER. The plaintiffs styled one filing as a motion to expedite and motion to stay case against the CIA. The plaintiffs' filing consists of over 300 pages of materials. On February 26, 2015, the plaintiffs filed a <u>16</u> notice of withdrawal of <u>15</u> motion for expedited processing. To avoid any confusion in the record, and in the interests of judicial economy, the plaintiffs are directed to refile only the motion to stay case against the CIA by no later than March 6, 2015. Accordingly, <u>15</u> plaintiffs' motion to expedite and motion to stay case against the CIA is DENIED without prejudice. Signed by Judge Emmet G. Sullivan on February 26, 2015. (lcegs4) (Entered: 02/26/2015)
02/27/2015		Set/Reset Deadlines: Plaintiffs Refiling of Motion To Stay Case Against the CIA due by 3/6/2015. (mac) (Entered: 02/27/2015)
03/03/2015	<u>17</u>	MEET AND CONFER STATEMENT. (Clarke, John) (Entered: 03/03/2015)
03/03/2015	<u>18</u>	Unopposed MOTION for Order <i>Preserving Certain Allegations</i> by DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Declaration Hardy Decl., # <u>2</u> Text of Proposed Order)(Crowley, Megan) (Entered: 03/03/2015)

03/05/2015	<u>19</u>	MOTION to Stay <i>PARTIAL STAY AGAINST CIA</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit Intel Comittee Rpt Excerpt 1-15-14, # <u>2</u> Exhibit List Congressional Record, # <u>3</u> Exhibit Ad Charles Kubic, USN, (Ret.) transcript Press Roundtable)(Clarke, John) (Entered: 03/05/2015)
03/20/2015		MINUTE ORDER. The CIA is directed to file its response to <u>19</u> plaintiffs' motion to stay by no later than March 27, 2015. Signed by Judge Emmet G. Sullivan on March 20, 2015. (lcegs4) (Entered: 03/20/2015)
03/20/2015		Set/Reset Deadlines: CIA Response due by 3/27/2015. (mac) (Entered: 03/20/2015)
03/23/2015	<u>20</u>	NOTICE OF FILING OF PROPOSED SCHEDULING ORDER by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR re <u>17</u> Meet and Confer Statement (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) (Entered: 03/23/2015)
03/27/2015	<u>21</u>	RESPONSE TO ORDER OF THE COURT re Order filed by CENTRAL INTELLIGENCE AGENCY. (Crowley, Megan) (Entered: 03/27/2015)
04/03/2015	<u>22</u>	REPLY to opposition to motion re <u>19</u> MOTION to Stay <i>PARTIAL STAY AGAINST CIA</i> filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 04/03/2015)
04/03/2015	<u>23</u>	MOTION for Partial Summary Judgment <i>AGAINST DEFENDANT STATE DEPARTMENT ON ISSUE OF PRODUCTION IN ELECTRONIC FORMAT</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit State Dept FOIA requests, # <u>2</u> Exhibit State Dept email to plaintiffs, # <u>3</u> Text of Proposed Order)(Clarke, John) Modified event title on 4/6/2015 (znmw,). (Entered: 04/03/2015)
04/16/2015	<u>24</u>	STIPULATION re <u>23</u> MOTION for Partial Summary Judgment by DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 04/16/2015)
05/13/2015	<u>25</u>	MOTION for Partial Summary Judgment <i>against Defendant DOJ for Disclosure of Three FBI 302 Reports</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit Ex 1 13 Hours excerpts, # <u>2</u> Exhibit Ex 2 Katallah indictment, # <u>3</u> Exhibit Ex 3 Katallah docket, # <u>4</u> Text of Proposed Order)(Clarke, John). (Entered: 05/13/2015)
05/14/2015	<u>26</u>	MOTION for Extension of Time to File Response/Reply as to <u>25</u> MOTION for Summary Judgment <i>against Defendant DOJ for Disclosure of Three FBI 302 Reports</i> by DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 05/14/2015)
05/26/2015	<u>27</u>	MOTION to Amend/Correct <i>COMPLAINT</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit Amended Complaint, # <u>2</u> Text of Proposed Order)(Clarke, John) (Entered: 05/26/2015)
05/27/2015		MINUTE ORDER granting <u>26</u> defendants' unopposed motion for extension of time. Defendants shall respond to <u>25</u> plaintiff's motion for summary judgment by no later than June 8, 2015. Signed by Judge Emmet G. Sullivan on May 27, 2015. (lcegs2) (Entered: 05/27/2015)
05/27/2015		Set/Reset Deadlines: Defendant Response to Motion for Summary Judgment due by 6/8/2015. (mac) (Entered: 05/27/2015)
05/27/2015		Set/Reset Deadlines: IRS Summary Judgment motion and Vaughn Index due by 6/15/2015. Plaintiff Opposition to Defendant's Motion, Combined With Any Cross Motion For Summary Judgment due by 7/15/2015. Defendant Reply In Further Support Of Its Motion, Combined With Its Opposition To The Plaintiff's Cross Motion

		due by 8/17/2015. Plaintiff Reply In Further Support Of Its Motion due by 8/31/2015. (zmac) (Entered: 05/27/2015)
06/03/2015	<u>28</u>	STATUS REPORT by DEPARTMENT OF DEFENSE, DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 06/03/2015)
06/08/2015	<u>29</u>	Memorandum in opposition to re <u>25</u> MOTION for Summary Judgment <i>against Defendant DOJ for Disclosure of Three FBI 302 Reports</i> filed by DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit)(Crowley, Megan) (Entered: 06/08/2015)
06/15/2015	<u>30</u>	Unopposed MOTION for Extension of Time to File Response/Reply to DOJ <i>Opposition to Motion for Partial Summary Judgment</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) (Entered: 06/15/2015)
06/17/2015		MINUTE ORDER granting <u>30</u> plaintiffs' unopposed motion for extension of time. Plaintiffs shall file their reply in further support of <u>25</u> their motion for summary judgment by no later than June 26, 2015. Signed by Judge Emmet G. Sullivan on June 17, 2015. (lcegs2) (Entered: 06/17/2015)
06/17/2015		Set/Reset Deadlines: Plaintiff Reply In Further Support of Motion for Summary Judgment due by 6/26/2015. (mac) (Entered: 06/17/2015)
06/23/2015		MINUTE ORDER granting <u>18</u> unopposed motion for a preservation order, granting <u>19</u> plaintiff's motion to stay certain claims against the CIA, denying <u>23</u> plaintiff's first motion for partial summary judgment, denying without prejudice <u>25</u> plaintiff's second motion for partial summary judgment. The plaintiff in this case has filed a series of motions that are, in the Court's view premature and unnecessarily piecemeal. The parties submitted <u>20</u> a proposed schedule for the production of documents in this case, but the plaintiff proceeded almost immediately to file motions for partial summary judgment on narrow issues. The plaintiff, however, chose to file this case as one civil action and it will proceed as such. First, the Court GRANTS <u>18</u> the Department of Justice's unopposed motion for an Order permitting it to move for summary judgment based on the applicability of Exemption 7(A) to certain records without waiving any allegation that those records are exempt from release for other reasons. Second, the Court grants <u>19</u> plaintiff's motion to stay the portions of its claim against the Central Intelligence Agency that, in plaintiff's view, will become ripe only upon issuance of a Report by the House Select Committee. The Court finds that judicial economy would not be served by excluding these claims entirely from this case, only to reopen them at some later date. Third, in accordance with <u>24</u> the parties' stipulation, plaintiff's <u>23</u> first motion for partial summary judgment was WITHDRAWN and is therefore DENIED. Fourth, plaintiff's <u>27</u> unopposed motion for leave to file a Second Amended Complaint is hereby GRANTED. Plaintiff's Second Amended Complaint, Exhibit 1 to <u>27</u> its motion for leave, shall be filed on the docket as a separate docket entry. Defendants shall respond to the Second Amended Complaint in accordance with the Federal Rules of Civil Procedure. In view of the filing of a Second Amended Complaint and the fact that the plaintiff has sought repeatedly to file piecemeal motions for partial summary judgment, the Court DENIES WITHOUT PREJUDICE <u>25</u> plaintiff's second motion for partial summary judgment. The plaintiff chose to file this case against a number of defendants and including a number of potential legal and factual issues, and to file it in a single case. The Court intends to treat the case as such, with the exception of the claims against the CIA that have been stayed by this Order. Accordingly, neither party shall move for summary judgment on a piecemeal basis without obtaining leave of this Court and demonstrating good cause for proceeding in that manner. The parties are directed to confer and file a joint status report setting forth the following information: (1) the current status of the House Select Committee's Report and any indication of when that Report may be issued, and therefore when plaintiff's stayed claims may be reopened; (2) the parties' competing proposals for a schedule for the completion of any production of any further records by each of the defendant agencies; and (3) the parties' suggestions for an appropriate schedule—to commence after every defendant has completed its production schedule—for the briefing of a single round of cross motions for summary judgment. If the parties cannot agree on any of these issues, they shall include their individual perspectives in a joint status report. The joint status

		report shall be filed by no later than July 3, 2015. Signed by Judge Emmet G. Sullivan on June 23, 2015. (lcegs2) (Entered: 06/23/2015)
06/24/2015	<u>31</u>	SECOND AMENDED COMPLAINT against CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE filed by CLARE M. LOPEZ, LARRY W. BAILEY, JAMES A. LYONS, JR, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, ACCURACY IN MEDIA, INC., KENNETH BENWAY, RICHARD F. BRAUER, JR.(jf) (Entered: 06/24/2015)
06/24/2015		Set/Reset Deadlines: Joint Status Report due by 7/3/2015. (mac) (Entered: 06/24/2015)
07/03/2015	<u>32</u>	STATUS REPORT <i>JOINT</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 07/03/2015)
07/13/2015	<u>33</u>	ANSWER to <u>31</u> Amended Complaint, by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, DEPARTMENT OF STATE. Related document: <u>31</u> Amended Complaint, filed by RICHARD F. BRAUER, JR, KENNETH BENWAY, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, CLARE M. LOPEZ, LARRY W. BAILEY, ACCURACY IN MEDIA, INC., JAMES A. LYONS, JR..(Crowley, Megan) (Entered: 07/13/2015)
09/03/2015	<u>34</u>	NOTICE <i>Regarding Motion</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Exhibit A)(Crowley, Megan) (Entered: 09/03/2015)
09/03/2015	<u>35</u>	MOTION to Stay by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 09/03/2015)
09/04/2015	<u>36</u>	NOTICE <i>of Court Order</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Exhibit)(Crowley, Megan) (Entered: 09/04/2015)
10/16/2015	<u>37</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 10/16/2015)
10/23/2015		MINUTE ORDER granting <u>37</u> Defendant's Unopposed Motion for Extension of Time. Defendant shall make its final production no later than December 4, 2015. Signed by Judge Emmet G. Sullivan on October 23, 2015. (lcegs4) (Entered: 10/23/2015)
10/23/2015		MINUTE ORDER denying Defendant's motion to stay as moot. Signed by Judge Emmet G. Sullivan on October 23, 2015. (lcegs4) (Entered: 10/23/2015)
12/03/2015	<u>38</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 12/03/2015)
12/06/2015		MINUTE ORDER granting <u>38</u> Defendant's Unopposed Motion for Extension of Time. It is hereby ordered that Defendant Department of State shall make its final production of documents on or before December 21, 2015. Signed by Judge Emmet G. Sullivan on December 6, 2015. (lcegs4) (Entered: 12/06/2015)
12/07/2015		Set/Reset Deadlines: Defendant Department of State Final Production Of Documents due by 12/21/2015. (mac) (Entered: 12/07/2015)
12/21/2015	<u>39</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 12/21/2015)
12/23/2015		MINUTE ORDER granting <u>39</u> Unopposed Motion for Extension of Time. Defendant Department of State shall file a status report no later than January 22, 2016 indicating the status of its search and production of any responsive, non-exempt documents. Signed by Judge Emmet G. Sullivan on December 23, 2015. (lcegs4) (Entered: 12/23/2015)
12/23/2015		Set/Reset Deadlines: Status Report due by 1/22/2016. (mac) (Entered: 12/23/2015)

01/22/2016	<u>40</u>	STATUS REPORT by U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 01/22/2016)
02/01/2016		MINUTE ORDER directing the Defendants to complete its additional searches and file a status report no later than February 5, 2016. Signed by Judge Emmet G. Sullivan on February 1, 2016. (lcegs4) (Entered: 02/01/2016)
02/01/2016		Set/Reset Deadlines: Status Report due by 2/5/2016. (mac) (Entered: 02/01/2016)
02/05/2016	<u>41</u>	STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 02/05/2016)
03/25/2016	<u>42</u>	STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 03/25/2016)
05/05/2016	<u>43</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 05/05/2016)
05/18/2016		MINUTE ORDER granting <u>43</u> Motion for Extension of Time, nunc pro tunc. Signed by Judge Emmet G. Sullivan on May 18, 2016. (lcegs4) (Entered: 05/18/2016)
05/18/2016		Set/Reset Deadlines: Status Report due by 5/19/2016. (mac) (Entered: 05/18/2016)
05/19/2016	<u>44</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 05/19/2016)
05/26/2016	<u>45</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 05/26/2016)
05/27/2016	<u>46</u>	Unopposed MOTION for Extension of Time to <i>Make Final Production</i> by DEPARTMENT OF DEFENSE (Attachments: # <u>1</u> Text of Proposed Order)(Crowley, Megan) (Entered: 05/27/2016)
06/02/2016	<u>47</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 06/02/2016)
06/09/2016	<u>48</u>	Joint STATUS REPORT by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 06/09/2016)
06/13/2016	<u>49</u>	Joint STATUS REPORT by U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 06/13/2016)
06/22/2016	<u>50</u>	Joint MOTION for Extension of Time to <i>TO SUBMIT PROPOSED BRIEFING SCHEDULE</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Clarke, John) (Entered: 06/22/2016)
06/23/2016		MINUTE ORDER granting <u>46</u> Motion for Extension of Time to; granting <u>50</u> Motion for Extension of Time. Signed by Judge Emmet G. Sullivan on June 23, 2016. (lcegs4) (Entered: 06/23/2016)
06/23/2016		Set/Reset Deadlines: Briefing Schedule due by 6/24/2016 (mac) (Entered: 06/23/2016)
06/24/2016	<u>51</u>	Joint STATUS REPORT <i>and Proposed Briefing Schedule</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 06/24/2016)
06/24/2016	<u>52</u>	MEMORANDUM re <u>51</u> Status Report filed by DEPARTMENT OF JUSTICE, DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF STATE, CENTRAL INTELLIGENCE AGENCY by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 06/24/2016)

07/01/2016	<u>53</u>	MEMORANDUM re <u>51</u> Status Report filed by DEPARTMENT OF JUSTICE, DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF STATE, CENTRAL INTELLIGENCE AGENCY by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Crowley, Megan) (Entered: 07/01/2016)
07/01/2016	<u>54</u>	NOTICE of Exhibit A to Memorandum by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE re <u>53</u> Memorandum, (Crowley, Megan) (Entered: 07/01/2016)
07/22/2016	<u>55</u>	Unopposed MOTION to Lift Stay re Order on Motion for Partial Summary Judgment, Order on Motion to Amend/Correct, Order on Motion for Order, Order on Motion to Stay,,, by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) (Entered: 07/22/2016)
07/25/2016		MINUTE ORDER granting <u>55</u> Motion to Lift Stay. Signed by Judge Emmet G. Sullivan on July 25, 2016. (lcegs4) (Entered: 07/25/2016)
09/22/2016		MINUTE ORDER directing the parties to file a Joint Status Report setting forth recommendations for further proceedings no later than September 30, 2016. Signed by Judge Emmet G. Sullivan on September 22, 2016. (lcegs4) (Entered: 09/22/2016)
09/22/2016		Set/Reset Deadlines: Status Report due by 9/30/2016 (mac) (Entered: 09/22/2016)
09/27/2016	<u>56</u>	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Moore, Tamra) (Entered: 09/27/2016)
09/28/2016		MINUTE ORDER. In view of <u>56</u> joint status report, the parties are directed to file a joint status report by no later than November 18, 2016, proposing a production schedule and a briefing schedule regarding any remaining issues. Signed by Judge Emmet G. Sullivan on 9/28/2016. (lcegs4) (Entered: 09/28/2016)
09/29/2016		Set/Reset Deadlines: Status Report due by 11/18/2016 (mac) (Entered: 09/29/2016)
11/18/2016	<u>57</u>	Joint MOTION for Extension of Time to <i>Submit Joint Status Report</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 11/18/2016)
11/21/2016		MINUTE ORDER granting <u>57</u> joint motion for extension of time to submit parties' joint status report. The parties shall file a joint status report by no later than December 1, 2016. Signed by Judge Emmet G. Sullivan on 11/21/2016. (lcegs4) (Entered: 11/21/2016)
11/22/2016		Set/Reset Deadlines: Joint Status Report due by 12/1/2016. (mac) (Entered: 11/22/2016)
12/01/2016	<u>58</u>	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 12/01/2016)
12/14/2016		MINUTE ORDER. Upon consideration of <u>58</u> the parties joint status report, the parties are directed to comply with the following schedule: The CIA shall produce any remaining responsive, non-exempt records no later than February 28, 2017. Defendants shall file their summary judgment motion no later than March 31, 2017. Plaintiffs shall file their cross-motion for summary judgment and opposition to Defendants' motion no later than May 1, 2017. Defendants shall file their reply in support of their summary judgment motion and in opposition to Plaintiffs' cross-motion no later than May 15, 2017. Plaintiffs shall file their reply in support of their cross-motion no later than May 30, 2017. Signed by Judge Emmet G. Sullivan on 12/14/2016. (lcegs4) (Entered: 12/14/2016)

12/15/2016		Set/Reset Deadlines: Defendants Summary Judgment Motion due by 3/31/2017. Plaintiff Cross-Motion for Summary Judgment And Opposition To Defendants' Motion due by 5/1/2017. Defendants Reply In Support Of Their Summary Judgment Motion And In Opposition To Plaintiffs' Cross-Motion due by 5/15/2017. Plaintiff Reply In Support Of Their Cross-Motion due by 5/30/2017. (mac) (Entered: 12/15/2016)
03/19/2017	<u>59</u>	Joint MOTION for Briefing Schedule <i>to be Amended</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 03/19/2017)
03/22/2017		MINUTE ORDER granting <u>59</u> joint motion to amend briefing schedule. The parties shall file a joint status report identifying what, if any, issues remain for the Court to resolve on or before May 12, 2017. In the event that the parties are unable to resolve this matter outside of litigation, the parties shall file their respective dispositive motions according to the following briefing schedule: Defendants shall file their motion for summary judgment by no later than June 2, 2017. Plaintiffs shall file their cross-motion for summary judgment by no later than June 30, 2017. Defendants shall file their reply in support of their motion, combined with their opposition to plaintiffs' cross-motion for summary judgment by no later than July 14, 2017. Plaintiffs shall file their reply in support of their cross-motion for summary judgment by no later than July 28, 2017. Signed by Judge Emmet G. Sullivan on 3/22/2017. (lcegs4) (Entered: 03/22/2017)
03/23/2017		Set/Reset Deadlines: Joint Status Report due by 5/12/2017. Defendants Motion For Summary Judgment due by 6/2/2017. Plaintiffs Cross-Motion For Summary Judgment due by 6/30/201. Defendant Reply In Support Of Their Motion, Combined With Their Opposition To Plaintiffs' Cross Motion For Summary Judgment due by 7/14/2017. Plaintiffs Reply In Support Of Their Cross-Motion For Summary Judgment due 7/28/2017. (mac) (Entered: 03/23/2017)
05/12/2017	<u>60</u>	Joint MOTION for Briefing Schedule <i>and Joint Status Report</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 05/12/2017)
05/12/2017		MINUTE ORDER. Upon consideration of the parties' joint status report, the Court grants <u>60</u> the parties' joint motion to amend the briefing schedule. The deadlines for dispositive motions will be continued as follows: defendants' motion for summary judgment shall be filed no later September 15, 2017; plaintiffs' opposition, which shall be combined with plaintiffs' cross-motion for summary judgment, shall be filed no later than October 13, 2017; defendants' reply, combined with defendants' opposition to plaintiffs' cross-motion, shall be filed no later than November 3, 2017; and plaintiffs' reply shall be filed by no later than December 17, 2017. Signed by Judge Emmet G. Sullivan on 5/12/2017. (lcegs2) (Entered: 05/12/2017)
05/12/2017		Set/Reset Deadlines: Defendants' Motion For Summary Judgment due by 9/15/2017. Plaintiff Opposition, Which Shall Be Combined With Plaintiffs' Cross-Motion For Summary Judgment due by 10/13/2017. Defendants' Reply Combined With Defendants' Opposition To Plaintiffs' Cross-Motion due by 11/3/2017. Plaintiffs' Reply due 12/17/2017 (mac) (Entered: 05/12/2017)
05/12/2017	61	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (See Docket Entry <u>60</u> to view document). (znmw) (Entered: 05/15/2017)
07/31/2017	<u>62</u>	STANDING ORDER: The parties are directed to read the attached Standing Order Governing Civil Cases Before Judge Emmet G. Sullivan in its entirety upon receipt. The parties are hereby ORDERED to comply with the directives in the attached Standing Order. Signed by Judge Emmet G. Sullivan on 7/31/2017. (Attachments: # <u>1</u> Exhibit) (lcegs1) (Entered: 07/31/2017)
09/05/2017	<u>63</u>	Joint MOTION for Briefing Schedule <i>to be Amended</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore,

		Tamra) (Entered: 09/05/2017)
09/06/2017		MINUTE ORDER granting <u>63</u> the parties' joint motion to amend the briefing schedule. The deadlines for dispositive motions will be amended as follows: defendants' motion for summary judgment shall be filed by no later than December 15, 2017; plaintiffs' opposition, which shall be combined with plaintiffs' cross-motion for summary judgment, shall be filed by no later than January 19, 2018; defendants' reply, combined with defendants' opposition to plaintiffs' cross-motion, shall be filed by no later than February 9, 2018; and plaintiffs' reply shall be filed by no later than March 2, 2018. Signed by Judge Emmet G. Sullivan on September 6, 2017. (lcegs2) (Entered: 09/06/2017)
09/07/2017		Set/Reset Deadlines: Defendants' Motion For Summary Judgment due by 12/15/2017. Plaintiffs' Opposition, Which Shall Be Combined With Plaintiffs' Cross-Motion For Summary Judgment by 1/19/2018. Defendants' Reply, Combined With Defendants' Opposition To Plaintiffs' Cross-Motion due by 2/9/2018. Plaintiffs' Reply due by 3/2/2018. (mac) (Entered: 09/07/2017)
11/29/2017	<u>64</u>	Joint MOTION for Briefing Schedule <i>to be Amended</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 11/29/2017)
12/01/2017		MINUTE ORDER granting <u>64</u> the parties' joint motion to amend the briefing schedule. The deadlines for dispositive motions will be amended as follows: defendants' motion for summary judgment shall be filed by no later than March 9, 2018; plaintiffs' opposition, which shall be combined with plaintiffs' cross-motion for summary judgment, shall be filed by no later than April 6, 2018; defendants' reply, combined with defendants' opposition to plaintiffs' cross-motion, shall be filed by no later than April 27, 2018; and plaintiffs' reply shall be filed by no later than May 18, 2018. Signed by Judge Emmet G. Sullivan on December 1, 2017. (lcegs2) (Entered: 12/01/2017)
12/01/2017		Set/Reset Deadlines: Defendant Motion For Summary Judgment due by 3/9/2018. Plaintiff Opposition, Which Shall Be Combined With Plaintiffs' Cross-Motion For Summary Judgment due by 4/6/2018. Defendants' Reply, Combined With Defendants' Opposition To Plaintiffs' Cross-Motion due by 4/27/2018. Plaintiffs' Reply due by 5/18/2018. (mac) (Entered: 12/01/2017)
03/02/2018	<u>65</u>	Joint MOTION for Briefing Schedule <i>to be Amended</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 03/02/2018)
03/07/2018		MINUTE ORDER granting <u>65</u> joint motion for briefing schedule to be amended for good cause shown. The briefing schedule set forth in the Court's December 1, 2017 Minute Order is therefore VACATED and the deadlines for dispositive motions will be amended as follows: defendants' motion for summary judgment shall be filed by April 20, 2018; plaintiffs' opposition to defendants' motion for summary judgment and any cross-motion for summary judgment shall be filed by May 18, 2018; defendants' reply in support of their motion and opposition to the plaintiffs' cross-motion shall be filed by June 15, 2018; plaintiffs' reply in support of their cross-motion shall be filed by July 13, 2018. Signed by Judge Emmet G. Sullivan on 3/7/2018. (lcegs3) (Entered: 03/07/2018)
04/13/2018	<u>66</u>	Consent MOTION for Extension of Time to <i>file Defendants' Summary Judgment and to Amend Briefing Schedule</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 04/13/2018)
04/15/2018		MINUTE ORDER granting <u>66</u> consent motion for briefing schedule to be amended for good cause shown. The briefing schedule set forth in the Court's March 7, 2018 Minute Order is therefore VACATED and the deadlines for dispositive motions will be amended as follows: defendants' motion for summary judgment shall be filed by May 4, 2018; plaintiffs' combined opposition to defendants' motion for summary judgment and cross-motion for summary judgment shall be filed by June 8, 2018;

		defendants' combined reply in support of their motion and opposition to plaintiffs' cross-motion shall be filed by July 13, 2018; and plaintiffs' reply in support of their cross-motion shall be filed by August 10, 2018. Signed by Judge Emmet G. Sullivan on April 15, 2018. (lcegs2) (Entered: 04/15/2018)
05/03/2018	<u>67</u>	Consent MOTION for Extension of Time to <i>file Defendants' Summary Judgment and to Amend Briefing Schedule</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 05/03/2018)
05/03/2018		MINUTE ORDER granting <u>67</u> defendants' consent motion for an extension of time. The parties are directed to comply with the following briefing schedule: defendants' motion for summary judgment shall be filed by May 10, 2018; plaintiffs' combined opposition to defendants' motion for summary judgment and cross-motion for summary judgment shall be filed by June 15, 2018; defendants' combined reply in support of their motion and opposition to plaintiffs' cross-motion shall be filed by July 13, 2018; and plaintiffs' reply in support of their cross-motion shall be filed by August 10, 2018. Signed by Judge Emmet G. Sullivan on May 3, 2018. (lcegs2) (Entered: 05/03/2018)
05/04/2018		Set/Reset Deadlines: Defendants' Motion For Summary Judgment due by 5/10/2018. Plaintiffs' Combined Opposition To Defendants' Motion For Summary Judgment And Cross-Motion For Summary Judgment due by 6/15/2018. Defendants' Combined Reply In Support Of Their Motion And Opposition To Plaintiffs' Cross-Motion due by 7/13/2018. Plaintiffs' Reply In Support Of Their Cross-Motion due by 8/10/2018. (mac) (Entered: 05/04/2018)
05/10/2018	<u>68</u>	MOTION for Summary Judgment by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Memorandum in Support, # <u>3</u> Defendants' Index of Declarations and Accompanying Exhibits, # <u>4</u> Herrington (DOD) Declaration, # <u>5</u> Shiner (CIA) Declaration, # <u>6</u> Stein (State) Declaration, # <u>7</u> Third Hardy (FBI) Declaration, # <u>8</u> Hardy (FBI-State Consult) Declaration, # <u>9</u> Williams (DIA) Declaration, # <u>10</u> Text of Proposed Order)(Moore, Tamra) (Attachment 7 replaced on 5/11/2018) (td). (Attachment 8 replaced on 5/11/2018) (td). Modified to replace blank documents on 5/11/2018 (td). (Attachment 8 replaced on 5/11/2018) (ztd). (Entered: 05/10/2018)
05/14/2018	<u>69</u>	ERRATA by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE <u>68</u> MOTION for Summary Judgment filed by DEPARTMENT OF JUSTICE, DEPARTMENT OF DEFENSE, CENTRAL INTELLIGENCE AGENCY, U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Declaration of Rear Admiral (upper half) James J. Malloy and exhibits)(Moore, Tamra) (Entered: 05/14/2018)
06/12/2018	<u>70</u>	Consent MOTION to Amend/Correct Set/Reset Deadlines, by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) Modified event on 6/15/2018 (znmw). (Entered: 06/12/2018)
06/15/2018		MINUTE ORDER granting plaintiffs' consent motion to amend the briefing schedule. The parties are directed to comply with the following briefing schedule: plaintiffs' combined cross-motion for summary judgment and opposition to defendants' motion shall be filed by no later than June 25, 2018; defendants' combined reply and opposition to plaintiffs' motion shall be filed by no later than July 23, 2018; and plaintiffs' reply in support of their cross-motion shall be filed by no later than August 20, 2018. Signed by Judge Emmet G. Sullivan on June 15, 2018. (lcegs2) (Entered: 06/15/2018)
06/15/2018		Set/Reset Deadlines: Plaintiffs' Combined Cross-Motion For Summary Judgment And Opposition To Defendants' Motion due by 6/25/2018. Defendants Combined Reply And Opposition To Plaintiffs Motion due by 7/23/2018. Plaintiffs' Reply In Support Of Their Cross-Motion due by 8/20/2018. (mac) (Entered: 06/15/2018)

06/25/2018	<u>71</u>	Cross MOTION for Summary Judgment by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Declaration John H Clarke, # <u>2</u> Affidavit Admiral James A. Lyons, Jr., USN, (Ret), # <u>3</u> Affidavit Rear Admiral Charles R. Kubic, CEC, USN (Ret), # <u>4</u> Statement of Facts, # <u>5</u> Exhibit Counter–Statement of Facts, # <u>6</u> Exhibit Index of Declarations, # <u>7</u> Text of Proposed Order)(Clarke, John) . (Entered: 06/25/2018)
06/25/2018	72	Memorandum in opposition to re <u>68</u> MOTION for Summary Judgment filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (See Docket Entry <u>71</u> to view document) (jf) (Entered: 06/27/2018)
06/25/2018	73	MOTION for Leave to Propound Interrogatory to DOD by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (See Docket Entry <u>71</u> to view document) (jf) (Entered: 06/27/2018)
06/27/2018		NOTICE OF ERROR re <u>71</u> Motion for Summary Judgment; emailed to johnhclarke@earthlink.net, cc'd 2 associated attorneys -- The PDF file you docketed contained errors: 1. Two–part docket entry, 2. DO NOT REFILE–Counsel is reminded to docket all parts of their pleading (zjf,) (Entered: 06/27/2018)
07/09/2018	<u>74</u>	RESPONSE re 73 MOTION for Leave to Propound Interrogatory to DOD filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Moore, Tamra) (Entered: 07/09/2018)
07/16/2018	<u>75</u>	REPLY to opposition to motion re 73 MOTION for Leave to Propound Interrogatory to DOD filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Attachments: # <u>1</u> Exhibit FAST Commander Testimony)(Clarke, John) (Entered: 07/16/2018)
07/18/2018	<u>76</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>71</u> MOTION for Summary Judgment , <u>68</u> MOTION for Summary Judgment by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Moore, Tamra) (Entered: 07/18/2018)
07/20/2018		MINUTE ORDER granting <u>76</u> Motion for Extension of Time to File Response/Reply. Defendants shall file their reply in support of defendant's motion for summary judgment and opposition to plaintiffs' cross motion for summary judgment by no later than July 27, 2018.Signed by Judge Emmet G. Sullivan on 7/20/2018. (lcegs1) (Entered: 07/20/2018)
07/23/2018		Set/Reset Deadlines: Defendants Reply In Support Of Defendant's Motion For Summary Judgment And Opposition To Plaintiffs' Cross Motion For Summary Judgment due by 7/27/2018. (mac) (Entered: 07/23/2018)
07/27/2018	<u>77</u>	REPLY to opposition to motion re <u>68</u> MOTION for Summary Judgment filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Supplemental Declaration of Mark H. Herrington, # <u>2</u> Supplemental Declaration of Antoinette B. Shiner)(Moore, Tamra) (Entered: 07/27/2018)
07/27/2018	<u>78</u>	RESPONSE re <u>71</u> MOTION for Summary Judgment filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Attachments: # <u>1</u> Supplemental Declaration of Mark H. Herrington, # <u>2</u> Supplemental Declaration of Antoinette B. Shiner, # <u>3</u> Defendants' Response to Plaintiffs' Statement of Material Facts Not In Dispute)(Moore, Tamra) (Entered: 07/27/2018)
08/20/2018	<u>79</u>	MOTION for Extension of Time to File Response/Reply by All Plaintiffs (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) Modified on 8/21/2018 to

		correct docket event/text (jf). (Entered: 08/20/2018)
08/21/2018		MINUTE ORDER granting <u>79</u> plaintiffs' consent motion for an extension of time to file response/reply. Plaintiffs shall file a reply by no later than August 27, 2018. Signed by Judge Emmet G. Sullivan on 8/21/2018.(lcegs2) (Entered: 08/21/2018)
08/22/2018		Set/Reset Deadlines: Plaintiff Reply due by 8/27/2018. (mac) (Entered: 08/22/2018)
08/27/2018	<u>80</u>	REPLY to opposition to motion re <u>71</u> MOTION for Summary Judgment filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 08/27/2018)
01/07/2019		MINUTE ORDER REFERRING CASE to a Magistrate Judge for full case management, up to but excluding trial pursuant to Local Civil Rule 72.2. This includes, with respect to pending potentially dispositive motions, the preparation of a report and recommendation pursuant to Local Civil Rule 72.3. The parties are reminded, that pursuant to Local Civil Rule 73.1, the parties may consent to the assignment of this action to a magistrate judge for all purposes, including trial. Consent of the district court judge is not necessary. Signed by Judge Emmet G. Sullivan on 1/7/2019. (lcegs1) (Entered: 01/07/2019)
01/07/2019		MINUTE ORDER STAYING CASE. In view of the referral of this case to a Magistrate Judge for full case management, proceedings before Judge Emmet G. Sullivan are hereby STAYED. Signed by Judge Emmet G. Sullivan on 1/7/2019. (lcegs1) (Entered: 01/07/2019)
01/07/2019		CASE RANDOMLY REFERRED to Magistrate Judge Deborah A. Robinson for full case management, up to but excluding trial. (zad) (Entered: 01/08/2019)
02/22/2019		MINUTE ORDER: Status Conference set for 3/12/2019 at 02:00 PM in Courtroom 4 before Magistrate Judge Deborah A. Robinson. So Ordered by Magistrate Judge Deborah A. Robinson on 2/22/2019. (lcdar1) (Entered: 02/22/2019)
02/22/2019		Status Conference previously set for 3/12/2019 rescheduled to 3/14/2019 at 02:00 PM before Magistrate Judge Deborah A. Robinson. The court apologizes for any confusion. So Ordered by Magistrate Judge Deborah A. Robinson on 2/22/2019. (lcdar1) (Entered: 02/22/2019)
03/14/2019		Minute Entry for proceedings held before Magistrate Judge Deborah A. Robinson: Status Conference held on 3/14/2019. No later than 3/21/2019, the parties shall jointly submit a Status Report. The report shall include all changes in status from the time briefing commenced in this matter. (Court Reporter: FTR Gold)(FTR Time Frame: 2:04 – 2:41) (zcdw) (Entered: 03/14/2019)
03/21/2019	<u>81</u>	Joint STATUS REPORT by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 03/21/2019)
08/11/2020	<u>82</u>	TRANSCRIPT OF PROCEEDINGS before Magistrate Judge Deborah A. Robinson held on March 14, 2019; Page Numbers: 1–25. Date of Issuance:August 11, 2020. Court Reporter/Transcriber Lorraine Herman, Telephone number 202–354–3196, Transcripts may be ordered by submitting the <u>Transcript Order Form</u> For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi–page, condensed, CD or ASCII) may be purchased from the court reporter. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty–one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.

		Redaction Request due 9/1/2020. Redacted Transcript Deadline set for 9/11/2020. Release of Transcript Restriction set for 11/9/2020.(Herman, Lorraine) (Main Document 82 replaced on 8/19/2020) (zjf). (Entered: 08/11/2020)
08/27/2020	<u>83</u>	REPORT AND RECOMMENDATION re <u>71</u> MOTION for Summary Judgment filed by RICHARD F. BRAUER, JR, KENNETH BENWAY, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, CLARE M. LOPEZ, LARRY W. BAILEY, ACCURACY IN MEDIA, INC., JAMES A. LYONS, JR., <u>73</u> MOTION for Leave to Propound Interrogatory to DOD filed by RICHARD F. BRAUER, JR, KENNETH BENWAY, ROGER L. ARONOFF, KEVIN MICHAEL SHIPP, CLARE M. LOPEZ, LARRY W. BAILEY, JAMES A. LYONS, JR., ACCURACY IN MEDIA, INC., <u>68</u> MOTION for Summary Judgment filed by DEPARTMENT OF JUSTICE, DEPARTMENT OF DEFENSE, CENTRAL INTELLIGENCE AGENCY, U.S. DEPARTMENT OF STATE. Signed by Magistrate Judge Deborah A. Robinson on 8/27/2020. (lcdar3) (Entered: 08/27/2020)
08/28/2020	<u>84</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Joshua Charles Abbuhl on behalf of All Defendants Substituting for attorney Tamra Moore, Megan Crowley (Abbuhl, Joshua) (Entered: 08/28/2020)
09/09/2020	<u>85</u>	Unopposed MOTION for Extension of Time to <i>Submit Objections to Magistrate Judge's Report and Recommendation</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Text of Proposed Order)(Clarke, John) (Entered: 09/09/2020)
09/09/2020		MINUTE ORDER granting <u>85</u> Unopposed MOTION for Extension of Time to Submit Objections to Magistrate Judge's Report and Recommendation, though Plaintiffs' counsel is admonished for failing to comply with this Court's "Motions for Extension of Time" requirements as indicated in the Court's Standing Order, ECF No. <u>62</u> at 7 ("Absent extenuating circumstances, motions for... scheduling change[s] must be filed THREE business days prior to the scheduled... deadline...."). Plaintiffs shall filed their objections to the Report and Recommendation by no later than September 24, 2020 at NOON. Future requests for extension will be viewed with disfavor. Signed by Judge Emmet G. Sullivan on 9/9/2020. (lcegs2) (Entered: 09/09/2020)
09/10/2020		Set/Reset Deadlines: Plaintiffs Objections To The Report and Recommendation due no later than 12:00PM on 09/24/2020. (mac) (Entered: 09/10/2020)
09/10/2020	<u>86</u>	NOTICE re <u>83</u> <i>Report and Recommendation</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Abbuhl, Joshua) Modified to add link on 9/11/2020 (znmw). (Entered: 09/10/2020)
09/23/2020	<u>87</u>	NOTICE <i>Objection to Magistrate Judge's Report and Recommendation</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP (Attachments: # <u>1</u> Exhibit DOD timeline, # <u>2</u> Exhibit EXORD)(Clarke, John) (Entered: 09/23/2020)
09/23/2020	88	OBJECTION to <u>83</u> Report and Recommendations filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP. (See Docket Entry <u>87</u> to view document) (zjf) (Entered: 09/24/2020)
10/02/2020	<u>89</u>	Unopposed MOTION for Extension of Time to File Response/Reply to <i>Plaintiffs' Objections to R&R</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Abbuhl, Joshua) (Entered: 10/02/2020)
10/05/2020		MINUTE ORDER granting <u>89</u> Unopposed MOTION for Extension of Time. The Defendant shall file its Response/Reply to Plaintiffs' Objections by no later than November 9, 2020. Signed by Judge Emmet G. Sullivan on 10/5/2020. (lcegs2) (Entered: 10/05/2020)
10/05/2020		Set/Reset Deadlines: Defendant Response/Reply To Plaintiffs Objections due by 11/9/2020. (mac) (Entered: 10/05/2020)

10/30/2020	<u>90</u>	Unopposed MOTION for Extension of Time to File Response/Reply to <i>Plaintiffs' Objections to Report & Recommendation</i> by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE (Attachments: # <u>1</u> Text of Proposed Order)(Abbuhl, Joshua) (Entered: 10/30/2020)
11/02/2020		MINUTE ORDER granting <u>90</u> Unopposed MOTION for Extension of Time to File Response/Reply. The Defendant shall file its Response/Reply to Plaintiffs' Objections by no later than November 23, 2020. Signed by Judge Emmet G. Sullivan on 11/2/2020. (lcegs2) (Entered: 11/02/2020)
11/03/2020		Set/Reset Deadlines: Defendant Response/Reply To Plaintiffs' Objections due by 11/23/2020 (mac) (Entered: 11/03/2020)
11/23/2020	<u>91</u>	RESPONSE to <i>Plaintiffs' 88 Objections to Magistrate's Report & Recommendation</i> filed by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, DEPARTMENT OF JUSTICE, U.S. DEPARTMENT OF STATE. (Abbuhl, Joshua) (Entered: 11/23/2020)
11/28/2022	<u>92</u>	MEMORANDUM OPINION. Signed by Judge Emmet G. Sullivan on 11/28/2022. (lcegs2) (Entered: 11/28/2022)
11/28/2022	<u>93</u>	ORDER granting in part and denying in part <u>68</u> Motion for Summary Judgment; granting in part and denying in part <u>71</u> Motion for Summary Judgment; denying <u>73</u> Motion. Signed by Judge Emmet G. Sullivan on 11/28/2022. (lcegs2) (Entered: 11/28/2022)
11/28/2022		Set/Reset Deadlines: Joint Status Report due by 1/20/2023 (mac) (Entered: 11/28/2022)
01/20/2023	<u>94</u>	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF STATE, US DEPT OF JUSTICE. (Abbuhl, Joshua) (Entered: 01/20/2023)
01/23/2023		MINUTE ORDER. In view of <u>94</u> joint status report, the parties shall file a joint status report with proposed briefing schedule by no later than February 16, 2023. Signed by Judge Emmet G. Sullivan on 1/23/2023. (lcegs1) (Entered: 01/23/2023)
01/23/2023		Set/Reset Deadlines: Parties Joint Status Report With Proposed Briefing Schedule due by 2/16/2023. (mac) (Entered: 01/23/2023)
02/16/2023	<u>95</u>	Joint STATUS REPORT by CENTRAL INTELLIGENCE AGENCY, DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF STATE, US DEPT OF JUSTICE. (Abbuhl, Joshua) (Entered: 02/16/2023)
02/22/2023		MINUTE ORDER. In view of <u>95</u> Joint Status Report, the following deadlines shall govern this case: (1) Defendants shall file their motion for summary judgment by no later than June 29, 2023; (2) Plaintiffs shall file a combined motion for summary judgment and response to Defendants' motion by no later than August 10, 2023; (3) Defendants shall file a combined response to Plaintiffs' motion and reply in support of Defendants' motion for summary judgment by no later than September 14, 2023; (4) Plaintiffs shall file a reply in support of Plaintiffs' motion for summary judgment by no later than October 13, 2023. Signed by Judge Emmet G. Sullivan on 2/22/2023. (lcegs1) (Entered: 02/22/2023)
02/22/2023		Set/Reset Deadlines: Defendants Motion For Summary Judgment due by 06/29/2023. Plaintiffs Combined motion For Summary Judgment And Response To Defendants' Motion due by 08/10/2023. Defendants Combined Response to Plaintiffs' Motion And Reply In Support Of Defendants' Motion For Summary Judgment due by 09/14/2023. Plaintiffs Reply In Support of Plaintiffs' Motion For Summary Judgment due by 10/13/2023. (mac) (Entered: 02/22/2023)
04/06/2023		Case Unstayed (mac) (Entered: 04/06/2023)
06/29/2023	<u>96</u>	NOTICE of Appearance by Kristina Ann Wolfe on behalf of All Defendants (Wolfe, Kristina) (Entered: 06/29/2023)
06/29/2023	<u>97</u>	MOTION for Summary Judgment (<i>Renewed</i>) by US DEPT OF JUSTICE. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration of Michael G. Seidel, # <u>3</u>

		Declaration Exhibit A (First Declaration of David M. Hardy), # <u>4</u> Declaration Exhibit B (February 2021 Letter), # <u>5</u> Declaration Exhibit C (Declaration of Timothy J. Kootz), # <u>6</u> Declaration Exhibit D (Declaration of Vanna Blaine), # <u>7</u> Statement of Facts, # <u>8</u> Text of Proposed Order)(Wolfe, Kristina) (Entered: 06/29/2023)
08/10/2023	<u>98</u>	Cross MOTION for Summary Judgment <i>and OPPOSITION to Defendant FBI MOTION for Summary Judgment</i> by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP. (Attachments: # <u>1</u> Affidavit AFFIDAVIT OF JOHN TIEGAN, # <u>2</u> Exhibit INDEX OF EXHIBITS, # <u>3</u> Exhibit STATEMENT OF MATERIAL FACTS NOT IN DISPUTE, # <u>4</u> Exhibit RESPONSE TO DEFENDANT STATEMENT OF MATERIAL FACTS, # <u>5</u> Text of Proposed Order)(Clarke, John) (Entered: 08/10/2023)
08/10/2023	<u>99</u>	Memorandum in opposition to re <u>97</u> Motion for Summary Judgment, filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 08/10/2023)
09/14/2023	<u>100</u>	Memorandum in opposition to re <u>98</u> Motion for Summary Judgment, filed by US DEPT OF JUSTICE. (Attachments: # <u>1</u> Statement of Facts (Response), # <u>2</u> Text of Proposed Order)(Wolfe, Kristina) (Entered: 09/14/2023)
09/14/2023	<u>101</u>	REPLY to opposition to motion re <u>97</u> MOTION for Summary Judgment (<i>Renewed</i>) filed by US DEPT OF JUSTICE. (Wolfe, Kristina) (Entered: 09/14/2023)
10/13/2023	<u>102</u>	REPLY to opposition to motion re <u>98</u> Cross MOTION for Summary Judgment <i>and OPPOSITION to Defendant FBI MOTION for Summary Judgment</i> filed by ACCURACY IN MEDIA, INC., ROGER L. ARONOFF, LARRY W. BAILEY, KENNETH BENWAY, RICHARD F. BRAUER, JR, CLARE M. LOPEZ, JAMES A. LYONS, JR, KEVIN MICHAEL SHIPP. (Clarke, John) (Entered: 10/13/2023)
01/04/2024		Case directly reassigned to Judge Loren L. AliKhan. Judge Emmet G. Sullivan is no longer assigned to the case. (ztnr) (Entered: 01/04/2024)
04/26/2024	<u>103</u>	MEMORANDUM OPINION: For the reasons stated in the attached document, Defendant Federal Bureau of Investigation's Renewed Motion for Summary Judgment <u>97</u> , will be granted and Plaintiffs' Cross-Motion for Summary Judgment <u>98</u> will be denied. A separate order will issue. See document for details. Signed by Judge Loren L. AliKhan on 04/26/2024. (lc1la3) (Entered: 04/26/2024)
04/26/2024	<u>104</u>	ORDER: For the reasons stated in the court's Memorandum Opinion <u>103</u> , it is hereby ORDERED that Defendant Federal Bureau of Investigation's Renewed Motion for Summary Judgment <u>97</u> is GRANTED and Plaintiffs' Cross-Motion for Summary Judgment <u>98</u> is DENIED. The Clerk of Court is directed to close this case. See document for details. Signed by Judge Loren L. AliKhan on 04/26/2024. (lc1la3) (Entered: 04/26/2024)
06/22/2024	<u>105</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT by ROGER L. ARONOFF. Filing fee \$ 605, receipt number ADCDC-10977918. Fee Status: Fee Paid. Parties have been notified. (Clarke, John) (Entered: 06/22/2024)
06/24/2024	<u>106</u>	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid re <u>105</u> Notice of Appeal to DC Circuit Court. (znmw) (Entered: 06/24/2024)
06/24/2024		USCA Case Number 24-5165 for <u>105</u> Notice of Appeal to DC Circuit Court filed by ROGER L. ARONOFF. (znmw) (Entered: 06/24/2024)

DECLARATION OF RICHARD J. TAPPAN

I, Richard J. Tappan, declare and say as follows:

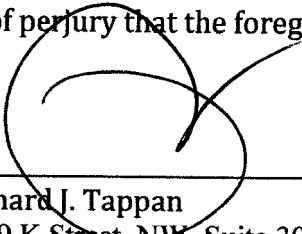
1. I am a lawyer practicing in Washington, DC.
2. On February 8, 2015, I searched online at LexisNexis Advance research service, using the "News" filter, for the term "Benghazi," for the periods of (A) September 11, 2012, through February 8, 2015, (B) September 11, 2012, through December 31, 2012, (C) the calendar year 2013, (D) the calendar year 2014, and (E) January 1, 2015, through February 8, 2015. The results:

A.	September 11, 2012, through February 8, 2015:	
(a)	Newspapers	52,404
(b)	Newswires & Press Releases	32,185
(c)	News Transcripts	14,698
(d)	Web-based Publications	10,053
(e)	Blogs	33,359
B.	September 11, 2012, through December 31, 2012:	
(a)	Newspapers	16,015
(b)	Newswires & Press Releases	10,026
(c)	News Transcripts	4,778
(d)	Web-based Publications	3,152
(e)	Blogs	3,729
C.	Calendar year 2013:	
(a)	Newspapers	19,744
(b)	Newswires & Press Releases	11,594
(c)	News Transcripts	5,170
(d)	News	4,419
D.	Calendar year 2014:	
(a)	Newspapers	15,957
(b)	Newswires & Press Releases	10,018
(c)	News Transcripts	4,565
(d)	News	3,551
(e)	Blogs	12,467

Exhibit 8

- E. January 1, 2015, through February 8, 2015:
- | | | |
|-----|----------------------------|-----|
| (a) | Newspapers | 688 |
| (b) | Newswires & Press Releases | 547 |
| (c) | News Transcripts | 188 |
| (d) | News | 47 |
| (e) | Blogs | 458 |
| (d) | Web-based Publications | 147 |

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th of February, 2015.



Richard J. Tappan
1629 K Street, NW, Suite 300
Washington, DC 20006



REVIEW
of the
TERRORIST ATTACKS ON U.S. FACILITIES
IN BENGHAZI, LIBYA, SEPTEMBER 11-12, 2012
together with
ADDITIONAL VIEWS

January 15, 2014

SENATE SELECT COMMITTEE ON INTELLIGENCE

United States Senate

113th Congress

Exhibit 1

***SSCI Review of the Terrorist Attacks on U.S. Facilities in Benghazi,
Libya, September 11-12, 2012***

I. PURPOSE OF THIS REPORT

The purpose of this report is to review the September 11-12, 2012, terrorist attacks against two U.S. facilities in Benghazi, Libya. This review by the Senate Select Committee on Intelligence (hereinafter “SSCI” or “the Committee”) focuses primarily on the analysis by and actions of the Intelligence Community (IC) leading up to, during, and immediately following the attacks. The report also addresses, as appropriate, other issues about the attacks as they relate to the Department of Defense (DoD) and Department of State (State or State Department).

It is important to acknowledge at the outset that diplomacy and intelligence collection are inherently risky, and that all risk cannot be eliminated. Diplomatic and intelligence personnel work in high-risk locations all over the world to collect information necessary to prevent future attacks against the United States and our allies. Between 1998 (the year of the terrorist attacks against the U.S. Embassies in Kenya and Tanzania) and 2012, 273 significant attacks were carried out against U.S. diplomatic facilities and personnel.¹ The need to place personnel in high-risk locations carries significant vulnerabilities for the United States. The Committee intends for this report to help increase security and reduce the risks to our personnel serving overseas and to better explain what happened before, during, and after the attacks.

II. THE COMMITTEE’S REVIEW²

Hearings, Briefings, and Meetings: The Committee began its initial review of the September 11, 2012, terrorist attacks against the U.S facilities in Benghazi, Libya, on September 13, 2012, which transitioned into a formal review a few

¹ U.S. Department of State, Bureau of Diplomatic Security, *Significant Attacks Against U.S. Diplomatic Facilities and Personnel, 1998-2012*, revised July 2013. This report also states on page i: “This information is not an all-inclusive compilation; rather, it is a reasonably comprehensive listing of significant attacks.”

² The Committee notes that the IC, State, and DoD provided the Committee with hundreds of key documents throughout this review, although sometimes with a significant amount of resistance, especially from State. This lack of cooperation unnecessarily hampered the Committee’s review.

weeks later. This report and our findings and recommendations are based upon the extensive work conducted by Committee Members and staff during this review, including the following hearings, briefings, and meetings (which included interviews of U.S. personnel on the ground during the attacks):

- Three Committee oversight hearings with witnesses from the Office of the Director of National Intelligence (ODNI), National Counterterrorism Center (NCTC), Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), State, and DoD;
- Two Committee briefings with David Petraeus—one while he was CIA Director and one after his resignation;
- Three Committee briefings with Robert Litt, ODNI General Counsel, regarding the issue of the CIA Talking Points;
- Four on-the record Member and staff meetings with:
 1. Gregory Hicks, Deputy Chief of Mission (DCM) in Tripoli during the attacks;³
 2. Mark Thompson, Acting Deputy Assistant Secretary for Counterterrorism at the State Department;
 3. Eric Nordstrom, former Regional Security Officer (RSO) in Libya; and
 4. the former CIA Chief of Base in Benghazi who was at the Annex on the night of the attacks; and
- At least 17 other staff briefings and meetings, including interviews of U.S. Government security personnel on the ground in Benghazi the night of the attacks.

³ Mr. Hicks met with Committee staff, without Senators, in a follow-up session. See SSCI Transcript, *Staff Interview of Gregory Hicks*, June 19, 2003.

[REDACTED]

Documents and Video Reviewed: The Committee reviewed: (1) thousands of intelligence reports and internal documents (including e-mails, cables, etc.) which were provided by the IC, the State Department, and DoD; (2) written responses to Committee questions for the record; (3) numerous open-source materials; and (4) surveillance videos related to the attacks.

III. DESCRIPTION OF THE SEPTEMBER 11-12, 2012, ATTACKS

The sequence of events in Benghazi on the night of September 11, 2012, and the morning of September 12, 2012, have been widely described in media and other reports. There were effectively at least three different attacks against U.S. facilities in fewer than eight hours. Understanding the evolution and the sequence of attacks is important to provide the context in which Americans in Benghazi and Tripoli and U.S. officials in Washington, D.C., evaluated events as they unfolded and formulated operational and policy responses. Below are the key details about the three attacks.

1. Attack on the U.S. Temporary Mission Facility at Approximately 9:40 p.m.

At approximately 9:40 p.m. Benghazi time, on September 11, 2012, dozens of attackers easily gained access to the U.S. Temporary Mission Facility (hereinafter “the TMF,” “the Mission facility,” or “the Mission compound”) by scaling and then opening the front vehicle gate.⁴ Over the course of the entire attack on the TMF, at least 60 different attackers entered the U.S. compound and can be seen on the surveillance video recovered from the Mission facility.⁵ The attackers moved unimpeded throughout the compound, entering and exiting buildings at will.

After entering the Mission facility, the attackers used diesel fuel to set fire to the barracks/guard house of the Libyan 17th February Brigade militia, which served as a security force provided by the host nation for the Mission compound, and then proceeded towards the main buildings of the compound.⁶ A Diplomatic Security (DS) agent working in the Tactical Operations Center (TOC) of the Mission

⁴ SSCI Transcript, *Hearing on the Attacks in Benghazi*, November 15, 2012, p. 24.

⁵ James R. Clapper, Director of National Intelligence, *Joint Statement for the Record, SSCI Hearing on the Attacks in Benghazi*, November 15, 2012, p. 3.

⁶ *Ibid.*

facility immediately activated the Imminent Danger Notification System.⁷ He also alerted the CIA personnel stationed at the nearby CIA Annex (hereinafter “the Annex”), the Libyan 17th February Brigade, the U.S. Embassy in Tripoli, and the Diplomatic Security Command Center (DSCC) in Washington, D.C.⁸

There were five DS agents at the Mission compound that night. Two had traveled from Tripoli with U.S. Ambassador to Libya Christopher Stevens (who was staying at the Mission compound in Benghazi), and three others were assigned to the Mission facility. In addition to the five DS agents on duty, there were three armed members of the Libyan 17th February Brigade militia, three Libyan National Police officers, and five unarmed members of a local security team contracted through a British company, Blue Mountain Group, who were guarding the Mission facility that night. In addition, six armed CIA security personnel (plus an interpreter) operating out of the nearby Annex were able to respond quickly after receiving word of the attack.

After the DS agent in the Tactical Operations Center at the Temporary Mission Facility alerted the Annex security team that the TMF was under attack at approximately 9:40 p.m., the Chief of Base called the [REDACTED], “who advised that he would immediately deploy a [REDACTED] force to provide assistance,” according to a September 19, 2012, cable that provided the joint CIA Station/Base report on the events surrounding the September 11-12 attacks.⁹

Two armored vehicles were prepared so the security team could respond from the Annex. Approximately 20-25 minutes after the first call came into the Annex that the Temporary Mission Facility was under attack, a security team left the Annex for the Mission compound. In footage taken from the Annex’s security cameras, the security team can be observed departing the CIA Annex at 10:03 p.m. Benghazi time. During the period between approximately 9:40 p.m. and 10:03 p.m. Benghazi time, the Chief of Base and security team members attempted to secure assistance and heavy weapons (such as .50 caliber truck-mounted machine guns) from the 17th February Brigade and other militias that had been assisting the United States.¹⁰ Then, the team drove to the Mission facility and made their way

⁷ NCTC and FBI, *The 11-12 September Attacks on US Facilities in Benghazi*, November 13, 2012, p. 3.

⁸ Ibid.

⁹ E-mail from [REDACTED] to [REDACTED], “Fw: Subject: Eyes Only – Tripoli Station and Benghazi Base Report on Events of 11-12 September,” containing CIA TRIPOLI 27900, September 19, 2012, p. 2.

¹⁰ Classified Report of the Department of State Accountability Review Board (ARB), December 18, 2012, p. 27.

onto the Mission compound in the face of enemy fire, arriving in the vicinity of the compound at approximately 10:10 p.m. Benghazi time.¹¹ The Committee explored claims that there was a “stand down” order given to the security team at the Annex. Although some members of the security team expressed frustration that they were unable to respond more quickly to the Mission compound,¹² the Committee found no evidence of intentional delay or obstruction by the Chief of Base or any other party.¹³

Meanwhile, a DS agent secured Ambassador Stevens and State Department Information Management Officer Sean Smith in the “safe area” of the main building of the Mission facility (Building C). The attackers used diesel fuel to set the main building ablaze and thick smoke rapidly filled the entire structure. According to testimony of the Director of the NCTC, the DS agent began leading the Ambassador and Mr. Smith toward the emergency escape window to escape the smoke.¹⁴ Nearing unconsciousness himself, the agent opened the emergency escape window and crawled out. He then realized he had become separated from the Ambassador and Sean Smith in the smoke, so he reentered and searched the building multiple times.¹⁵ The DS agent, suffering from severe smoke inhalation, climbed a ladder to the roof where he radioed the other DS agents for assistance and attempted unsuccessfully to ventilate the building by breaking a skylight.¹⁶

Other DS agents went to retrieve their M-4 carbine assault rifles from Building B when the attack began. When they attempted to return to the main building (Building C) to help protect the Ambassador, they encountered armed attackers and decided to return to Building B to take cover rather than open fire. They eventually regrouped, made their way to a nearby armored vehicle, and then drove over to assist the agent on the roof of Building C searching for the

¹¹ NCTC and FBI, *The 11-12 September Attacks on US Facilities in Benghazi*, November 13, 2012, p. 4; E-mail from CIA Office of Congressional Affairs (OCA) staff to Staff Director, House Permanent Select Committee on Intelligence (HPSCI), et al., “Background Points used on 1 Nov,” November 2, 2012, p. 1.

¹² SSCI Memorandum for the Record, “Staff Briefing and Secure Video Teleconference (SVTC) with CIA Benghazi Survivors,” June 27, 2013.

¹³ According to informal notes obtained from the CIA, the security team left for the Annex without the formal approval of the Chief of Base, see attachments to e-mail from CIA staff [REDACTED] to CIA staff [REDACTED], September 23, 2012. However, a Memorandum for the Record prepared by the Deputy Chief of Base specifically states that the Chief “authorized the move” and the Chief told the Committee: “We launched our QRF [Quick Reaction Force] as soon as possible down to the State [Department] compound.” [REDACTED], Memorandum for the Record, “Events of 11-12 SEP 2012 at Benghazi Base, Libya,” September 19, 2012, p. 1; and SSCI Transcript, *Member and Staff Interview of former Chief of Base*, December 20, 2012, p. 3.

¹⁴ SSCI Transcript, *Hearing on the Attacks in Benghazi*, November 15, 2012, pp. 27-29.

¹⁵ NCTC and FBI, *The 11-12 September Attacks on US Facilities in Benghazi*, November 13, 2012, p. 4.

¹⁶ Unclassified Report of the ARB, December 18, 2012, p. 22.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	
	)	Case No. 14-1589 (EGS)
DEPARTMENT OF DEFENSE, et al.,)	
)	
Defendants.)	
_____)	

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act, 5 U.S.C. § 552, as amended)

PRELIMINARY STATEMENT

In March of 2011, Christopher Stevens became the United States Special Representative to the anti-Gaddafi rebels' political organization, the Libyan Transitional National Council, based in Benghazi. Among Stevens' activities was to create a program to collect surface-to-air missiles, or SAMs, fired via man-portable air-defense systems, or MANPADS.

On Tuesday, September 11, 2012, Ambassador Stevens' final scheduled meeting in Benghazi was with the Turkish consul general, Ali Akin. That evening, at 9:32 p.m., or earlier, dozens of attackers, armed with assault rifles and anti-tank rocket-propelled-grenades, swarmed the gate at the State Department's Benghazi Special Mission Compound, which, at the time, housed seven Americans. Moving with military tactics, the invaders lobbed a grenade into the Mission's command post, and then fired AK-47's into its main doorway. Eventually, their numbers swelled to more than 60.

Within minutes, Ambassador Stevens called his second in command, in Tripoli, Deputy Chief of Mission Greg Hicks. "Greg, we're under attack." Hicks immediately called the CIA Chief in Tripoli, the operations Center at the State Department in Washington, and the CIA's Benghazi facility, the "CIA Annex," the Agency's secret headquarters in Benghazi. Days earlier, a sheet of paper had been posted at the CIA Annex stating, "Be advised, we have reports from locals that a Western facility or US Embassy/Consulate/Government target will be attacked in the next week."

One purpose for maintaining the CIA Annex was to buy back, through Qatari cut-outs, as many MANPADS as possible, for \$12,000 or more each. Thousands had been looted from Qaddafi's stockpiles. Many of those recovered were loaded onto

covered trucks and sent to the Libyan ports in Benghazi and Tripoli for onward shipping to Turkey and ultimate delivery overland to Syrian rebels.

Locked inside the Mission's Technical Operation Center, Alec Henderson alerted the CIA Annex, Embassy Tripoli, and the State Department Operations Center in Washington about the attack. Henderson stayed in contact, as did Hicks, while the Tripoli Defense Attaché kept African Command and the Joint Chiefs of Staff informed. Word quickly reached Defense Secretary Leon Panetta and chairman of the Joint Chiefs of Staff General Martin Dempsey.

Global conference calls included European Command, Central Command, Special Operations Command, Transportation Command, and the Army, Navy, Air Force, and Marines. Thirty-three minutes into the attack, at 4:05 p.m. Washington time, State's Operations Center issued an alert to the White House Situation Room, the FBI, and the Office of the Director of National Intelligence, among other key government and intelligence offices. An "OPREP-3 Pinnacle Report" alerted the Pentagon's National Military Command Center. By the time that Africa Command's reconnaissance drone arrived overhead, ninety minutes into the siege, the attackers had set multiple fires.

Within five minutes of Henderson's first call to the CIA Annex, five of the Agency's Quick Reaction Force there had "jockeyed up" and assembled in two armored cars, ready to go. But the CIA Chief of Base, who was in charge, forbade the rescuer's departure while he spoke by phone with officials. After being ordered to stay in place at least three times, when they heard Henderson plead, "If you guys do not get here, we're going to die," the rescuers disobeyed orders, and "moved to the sound of the guns" a half mile away, which they could hear in the distance. Later, most, if not all, of these rescuers would opine that Ambassador Christopher Stevens and Sean Smith would have lived but for the delay.

US officials were informed when Tyrone Woods and six others, most of whom were heavily armed, left the CIA's facility, and when they arrived at the Mission. Soon after these rescuers discovered that Sean Smith had died from smoke inhalation, but that Ambassador Stevens could not be found. Washington was told this. Updates included that the group of 14 Americans at the Mission had made a break for the CIA Annex, in two armored SUV's, barely successfully. They had been targeted by multiple machinegun attacks as they fled.

Officials worldwide were informed when the seven-man Tripoli Task Force rescue team arrived at the CIA Annex, and that Glen Doherty had joined Tyrone Woods on the roof of the CIA headquarters building, and began defending the 28 Americans on site. Washington was apprised in real time when the CIA Annex was hit with rocket-propelled grenades, bombs, and intense firefights. And Washington knew when the attackers fired, in rapid succession, five seven-pound 82-mm mortar rounds at the Americans. The third and fourth rounds hit the roof of the CIA headquarters building, killing Tyrone Woods and Glen Doherty instantly, and

seriously wounding two others. The Americans had averted a tragedy on a larger scale during the eight-hour siege only by performing extraordinary acts of courage and heroism.

At the time, a 130-man Marine Force Reconnaissance force, along with an AC-130 Spectre gunship, was stationed in Sigonella, Sicily—about an hour's flight from the Mission. US aircraft at Aviano Air Base, in northeastern Italy, were about two hours away. US F-16 Aircraft were located at Souda Bay, Greece. Two Marine Corps Fleet Antiterrorism Security Teams were stationed three-and-a-half to four hours away, in Rota, Spain. Also about three-and-a-half hours away, in Croatia, a forty-man Special Operations Commander's-in-Extremis Force was conducting a counterterrorism exercise. In the United States, Special Operations Forces were eight hours flying time from bases in Sicily and Spain, from where they could have inserted into Libya. The Benghazi survivors were finally safe when they lifted off from Benghazi's airport, bound for Tripoli, thirteen hours after the siege began.

Shortly after the attacks, administration officials engaged in a cover-up of the facts surrounding the event, including deletion from the government databases relevant materials and reports, as set forth in a November 1, 2012 authoritative memorandum that has been submitted to several in Congress.

Contents

	<u>Paragraphs</u>
Plaintiffs.	2-12
Defendants.	13-16
Department of Defense	
FOIA Requests.	17-36
Initial reports.	18-20
Help from allies.	21
Sigonella.	22-24
Aviano.	25
Rota.	26
Croatia.	27
Djibouti.	28
United States.	29
Maps.	30
Readiness status.	31
Contingency plans.	32
Aircraft radio transmission.	34
Gaddafi offer of abdication.	35
October 2011 pre-positioned assets.	36
Administrative Record	
Army.	37-41
Navy.	42-49

Administrative appeals.	47
Air Force.	50-58
Marines.	59-66
European Command.	67-74
Central Command.	75-79
African Command.	80-89
Special Operations Command.	90-94
Office of Secretary of Defense and Joint Staff.	95-104
Defense Intelligence Agency.	105-115
State Department.	116-125
FBI.	126-135
CIA.	136-147

Jurisdiction

1. Plaintiffs bring this action under the Freedom of Information Act ("the FOIA"), 5 U.S.C. § 552, as amended. The FOIA provides this Court jurisdiction over this matter. Venue is proper under § 552 (a)(4)(B) of the FOIA.

Parties

2. Plaintiff Accuracy in Media, Inc. ("AIM") is a District of Columbia non-profit 501(c)(3) corporation, organized and operated to publish and disseminate news to the American public, which it has steadily been doing done for over 35 years. AIM's principle place of business is 4350 East West Highway, Suite 555, Bethesda, Maryland.

3. Plaintiff Roger L. Aronoff is an individual residing at 5500 Friendship Boulevard, No. 1408, Chevy Chase, Maryland. Mr. Aronoff serves as AIM's Editor and Executive Secretary. He has worked as a journalist, TV producer, writer, and director of award-winning documentaries, and has appeared as a guest commentator on NPR, Air America, CNN, Fox News, CNBC, Court TV, Russia Today,

and Canadian TV. Mr. Aronoff is a prolific writer. He has authored over a dozen articles on Benghazi.

4. Mr. Aronoff is the founder of an informal association, the Citizens' Commission on Benghazi, or "CCB," a group of fifteen distinguished former military and Central Intelligence Agency personnel, all of whom are ardent students of the Benghazi tragedy, and all of whom are extremely troubled by it. The CCB is investigating the matter. It functions like a grand jury, including issuing reports. Collectively, CCB members have published over 40 articles on Benghazi. *See, e.g.,* <http://www.aim.org/benghazi/>. Seven of the CCB's 15 members are plaintiffs in this action.

5. Plaintiff Captain Larry W. Bailey, USN, (Ret.) is an individual residing at 103 Pamlico Place, Chocowinity, North Carolina. He is a 27-year US Navy SEAL veteran. In Vietnam, he led the first East Coast SEAL platoon into combat. Captain Bailey has also served in the Dominican Republic, Philippines, Panama, Bolivia, and Scotland. Captain Bailey commanded the Naval Special Warfare Center for three years, where all SEALs are trained. Since 2007, he has been involved in national policy issues, including having chaired Gathering of Eagles. He too is published on the Benghazi matter.

6. Along with plaintiffs Lieutenant Colonel Benway and Colonel Brauer, Captain Bailey is co-founder of *Special Operations Speaks*, or SOS, a pro-military PAC focused primarily on the welfare of military personnel. SOS views the Benghazi tragedy as a symptom of a greater threat to United States power, and, so, regularly

includes Benghazi news among the matters it publicizes. *See*

<http://specialoperationspeaks.com/>.

7. Plaintiff Lieutenant Colonel Kenneth Benway, USA, (Ret.) is an individual residing at 8 Martin Way, Whispering Pines, North Carolina. Colonel Benway enlisted in the Army as a parachute infantryman in 1966. After Special Forces training, he deployed to Vietnam. In 1970, he was commissioned as Second Lieutenant of Infantry, serving in leadership assignments in both Germany and Italy. Over the course of 27 years in uniform, Colonel Benway served with the three Special Forces Groups, Special Operations Command in Europe, as an exchange program officer with the Italian Susa Alpine Infantry Battalion in northwest Italy, and with the Army JFK Special Warfare Center and School. On retiring in 1993, he served as senior special operations analyst, program manager and corporate director in a variety of contracted support arrangements with the Army Special Operations community. Lieutenant Colonel Benway is co-founder of *Special Operations Speaks*.

8. Plaintiff Colonel Richard F. Brauer Jr., USAF, (Ret) is an individual residing at 24 Country Club Road, Shalimar, Florida. Colonel Brauer has amassed 5,200 hours of worldwide flying, attaining the aeronautical rating of Master Navigator. His tours of flying duty and deployments include Vietnam, Europe, Central and South America, and Australia, where he served as an Air Force Exchange Officer and flying instructor for the Royal Australian Air Force. Following his Pentagon tour, he was selected to be the 12th Commandant of the United States Air Force Special Operations School, where he served until his retirement in 1991,

having completed 26 years of active duty military service. In 2010, Colonel Brauer was inducted into the Air Commando Hall of Fame. He too is co-founder of *Special Operations Speaks*.

9. Plaintiff Clare M. Lopez is an individual who resides in Woodbridge, Virginia. She is Vice President for Research & Analysis at the Center for Security Policy, 1901 Pennsylvania Avenue, NW, Suite 201, Washington, DC. Ms. Lopez was formerly was a career operations officer with the Central Intelligence Agency. Ms. Lopez is also a skilled writer, having authored numerous articles on Benghazi, as well as being the principal author of the CCB's April 20, 2014 Interim Report on Benghazi.

10. Plaintiff Admiral James A. Lyons, Jr., USN, (Ret) is an individual whose residence is 9481 Piney Mountain Road, Warrenton, Virginia. Admiral Lyons is a former four-star admiral, Commander-in-Chief of the U.S. Pacific Fleet, Father of the Navy Seal Red Cell Program, Senior US Military Representative to the UN, and Deputy Chief of Naval Operations where he was the principal advisor to the Joint Chiefs of Staff. His commands include the US Second Fleet, NATO Striking Fleet, Seventh Fleet Logistic Force, and several ship commands. He has appeared on Fox Business News several times, and is a regular contributor to the Op Ed Section of the Washington Times, where eight of his pieces concerning Benghazi have been published.

11. Plaintiff Kevin Michael Shipp is an individual residing at 636 9th Avenue North, Jacksonville Beach, Florida. Mr. Shipp is a former Central Intelligence Agency officer and antiterrorism expert, having held several high level positions in

the CIA. He was assigned to be a protective agent for the Director of Central Intelligence, a counterintelligence investigator, a Counterterrorism Center officer, a team leader protecting sensitive CIA assets from assassination, a manager of high-risk protective operations, a lead instructor for members of allied governments, an internal staff security investigator, and a polygraph examiner. He was tasked with protecting the CIA from foreign agent penetration and the chief of training for the CIA federal police force. Mr. Shipp functioned as program manager for the Department of State, Diplomatic Security, and Anti Terrorism Assistance global police-training program. He is the recipient of two CIA Meritorious Unit Citations, three Exceptional Performance Awards, and a Medallion for overseas covert operations. He is the author of the book, *From the Company of Shadows—CIA Operations and the War on Terrorism*, Ascent Pub., 2012.

12. These seven members of the Citizens Committee on Benghazi, along with Accuracy in Media, Inc., are collectively referred to as "plaintiffs."

Defendants

13. Defendant United States Department of Defense, or "DOD" or "defendant" is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1). Plaintiffs made FOIA requests to ten component offices of the Department of Defense:

- (1) Department of the Army, or "Army"
- (2) Navy Department, or "Navy"
- (3) Department of the Air Force, or "Air Force"
- (4) Marine Corps
- (5) European Command
- (6) Central Command
- (7) Africa Command
- (8) Special Operations Command

- (9) Office of Secretary of Defense and Joint Staff
- (10) Defense Intelligence Agency

14. Defendant United States Department of State ("State Department") is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1).

15. Defendant United States Department of Justice is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1). The Federal Bureau of Investigation is the investigative component of the Department of Justice. The Department of Justice is responsible for the FBI's compliance with the FOIA. This defendant is hereinafter referred to as simply "FBI."

16. Defendant Central Intelligence Agency ("CIA") is a Department of the Executive Branch of the United States, and is an agency within the meaning of 5 U.S.C. § 552 (f)(1).

DEPARTMENT OF DEFENSE

FOIA REQUESTS

17. Plaintiffs made 19 FOIA requests to defendant DOD.

Initial reports

18. Copies of radio communications from the compound, requested from Africa Command [and State Department]:

Audio. All records of **radio communications** emanating from the **Compound's Tactical Operations Center (TOC)**, on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.

19. Records of contemporaneous notifications to DOD, sought from Defense Intelligence Agency:

Op Rep 3's. The OPEREP-3 PINNACLE **reports used** to provide any Department of Defense division (or office or entity) with notification of, or **information about**, the September 11th and 12th, 2012 **attacks** on U.S. facilities in Benghazi, Libya

20. Communications to and from AFRICOM Joint Operations Center, made to Africa Command:

AFRICOM communications. All records of **AFRICOM Joint Operations Center (JOC)** Chief's communications subsequent to that Officer's receipt of messages emanating from the Compound's TOC. This request is to be read to include all communications **to all US personnel, whether armed forces or civilians**, and includes communications to General Carter Ham, the Unified Combatant Command, the Pentagon, CIA, Department of State, and White House including the Situation Room.

Help from allies

21. Appeals for help from allies in country made to (1) Africa Command, and (2) Office of the Secretary of Defense and the Joint Staff [and State Department]:

Appeals for help. Records of **requests for help** for personnel at the Special Mission Compound and the CIA Annex, to:

- (a) The **Turkish Consulate** in Benghazi;
- (b) The **Italian Consulate** in Benghazi; and
- (c) The **U.K. Security Team**.

Sigonella

22. Request for records of 130-man Marine Force team at Naval Air Station Sigonella, Sicily made to (1) Navy, (2) Air Force, (3) Marines, and (4) European Command:

Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS Sigonella, including:

- (a) All **communications with, and orders to, NAS Sigonella personnel** to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
- (b) All **communications from NAS Sigonella personnel notifying command that assets were ready** to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, **if applicable, orders to abort or turn back.**

23. Records of US aircraft in Sigonella, Sicily made to (1) Navy, (2) Air Force, and (3) European Command:

Sigonella. Records **identifying**, and concerning, all **US aircraft** at NATO Base Sigonella, Naval Air Station Sigonella in Sicily, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:

- Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
- C-5, C-9, C-17, C-40 and C-130 transport;
- C-2 cargo; C-26 passenger/cargo;
- KC-10 and KC-135 refueling; and
- P-3 surveillance.

24. Request for records of DOD seeking help by use of Italian aircraft in Sigonella Sicily made to (1) Marines, and (2) European Command:

Any records of the Department of Defense **seeking help by use of Italian aircraft** at NAS Sigonella.

Aviano

25. Request for records of US aircraft at Aviano, Italy, made to Air Force:

[D]isclosure of records **identifying all US aircraft at Aviano** Air Base in northeastern Italy on September 11th and 12th, 2012, including all U.S. Air Force 31st Fighter Wing assets, whether transport, cargo, refueling, fighter, attack, or surveillance.

Rota

26. Request for records of two Marine Corps Fleet Antiterrorism Security Teams in Rota, Spain made to (1) Navy, (2) Marines, (3) European Command, and (4) Special Operations Command:

Rota. Records revealing the status of **two Marine Corps "Fleet Antiterrorism Security Teams" ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:

- (a) All **communications** with, and **orders** to, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
- (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back

Croatia

27. Records of orders to Special Operations Commanders-In-Extremis Force in Croatia made to (1) Army, (2) European Command, and (3) Special Operations Command:

Records regarding the readiness status of, and **orders** given to, **airborne** special operations unit, "**Commanders-In-extremis Force**" ("CIF"), assigned to the European Command, and **in Croatia**, including:

- (a) **Orders** for the CIF to deploy to NAS Sigonella; and
- (b) All **communications** from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

Djibouti

28. Records of US aircraft in Djibouti made to Africa Command:

Records **identifying**, and concerning, all **US aircraft in Djibouti** on September 11, 2012, whether at Camp Lemonnier, Ambouli International Airport, and whether detailed or

assigned to the Combined Joint Task Force-Horn of Africa (CJTF-HOA). Records should include those that disclose the readiness status of all AC-130 gunships.

United States

29. Orders to Special Operations in the United States made to Special Operations Command:

United States. Records disclosing the readiness status of, and **orders given to, Special Operations Forces** ("Special Ops" or "SOF") **in the United States**, including:

- (a) Orders for Special Ops to deploy to Libya; and
- (b) Communications from SOF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for Libya, and, if applicable, orders to abort or turn back.

Maps

30. Request for maps depicting assets made to (1) European Command, (2) Africa Command, (3) Central Command, (4) Office of the Secretary of Defense and Joint Staff, and (5) Defense Intelligence Agency:

Maps. **Maps depicting all assets** that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

Readiness status

31. Records of readiness status of all armed forces requested from Defense Intelligence Agency:

Orders regarding readiness status. For the period of July 1, 2012, through September 30, 2012, records of all **directives, orders and other communications regarding the readiness status** of United States armed forces on the anniversary of the September 11th, 2001, attacks on the World Trade center, to or from:

EUCOM (European Command);
CENTCOM (United States Central Command);
AFRICOM (U.S. Africa Command);
USSOCOM (Special Operations Command);
OSD/JS (Office of Secretary of Defense and Joint Staff);
Naval Air Station Sigonella, Sicily;
Spanish naval base Naval Station Rota, Spain;
Aviano Air Base in northeastern Italy; and
Special Operations Forces in the United States

Contingency plans

32. Records of relevant military contingency action plans made to Office of Secretary of Defense and Joint Staff:

Records concerning **joint military contingency plans**:

- (a) **Plan Identification (PID) Number and title of the operation plan or plans** prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, for use by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
- (b) **Operation plan or plans for use by the supported combatant commander** to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
- (c) List of commands, organizations and agencies comprising the **joint planning and execution community (JPEC)**, found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
- (d) Supported **combatant commander's Joint Intelligence Preparation** of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
- (e) List of commands, organizations, agencies and offices comprising the **supported combatant commander's joint interagency coordinating group (JIACG)**, established to support the plans referenced under (a) above.

- (f) Copies of any **combatant command commercial contracts** established to **support** military, diplomatic and interagency activities at **Tripoli and at Benghazi** prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.

33. [Paragraph 33 deleted.]

Aircraft radio transmission

34. Request for "Feet dry over Libya" radio transmission made to (1) Air force, (2) Africa Command, and (3) Special Operations Command:

"Feet dry over Libya" radio transmission. Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.

Gaddafi offer of abdication

35. Request for records of Gaddafi's March 2011 interest in truce and abdication made to Africa Command:

Records of all **communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication** and exile out of Libya, by or to:

- (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
- (b) Rear Admiral (ret.) Chuck Kubic;
- (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
- (d) The CIA.

October 2011 assets pre-positioned

36. Records of assets pre-positioned off the coast of Tripoli on October 18, 2011, made to (1) Navy, (2) Africa Command, (3) Office of the Secretary of Defense

and the Joint Staff, and (4) Defense Intelligence Agency [as well as State Department]:

Military assets pre-positioned in October 2011. In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, **when Secretary Clinton visited Libya.**

ADMINISTRATIVE RECORD

Army
March 31, 2014 FOIA Request

37. On March 31, 2014, plaintiffs submitted their FOIA request, by certified mail, to the Army. Plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012."

Specifically, plaintiffs sought production of:

Records regarding the readiness status of, and **orders** given to, **airborne special operations unit, "Commanders-In-extremis Force"** ("CIF"), assigned to the European Command, and **in Croatia**, including:

- (a) Orders for the CIF to deploy to NAS Sigonella; and
- (b) All communications from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

38. Seeking a waiver of any fees associated with the search and review of responsive records, the FOIA request sought agency recognition as "representatives of the news media." Plaintiffs' are entitled to news media status because disclosure is in the public interest: It will be "likely to contribute significantly the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Plaintiffs also sought a public interest waiver of duplication fees, under 5 U.S.C. § 552(a)(4)(A)(iii).

39. Plaintiffs FOIA request also prays for expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II), citing DOD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program." Plaintiffs posit that the regulations support expedition because "the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity," and that the requesters have demonstrated a "compelling need for the information."

40. By letter dated June 19, the Army wrote that it had "responded to your request on April 03, 2014, informing you that we referred the request to the Department of State. On June 19, 2014, we received a letter from the Department of State informing us that you will have to send your request directly to them." On June 20, plaintiffs replied:

There appears to be a misunderstanding. Contrary to your June 19 letter, the Army did not notified (sic) me of any referral. This is the first I have heard from the Army since I submitted the Request on March 31. Kindly email me a copy of the referenced notification. Moreover, it would appear to be an error to refer the request to the State Department.... In an effort to alleviate the necessity of the Army to refer the matter, I made the same FOIA request to two other DoD components, and so informed the Army, writing, "[k]indly note that we are simultaneously making this request, verbatim, to (1) HQ USEUCOM (U.S. European Command), and (2) HQ USSOCOM (Special Operations Command)." Even if the orders to deploy, or not deploy, assets, had come from the State Department, we still seek the DoD records. These same requesters already submitted extensive FOIA requests to the State Department, first on February 21, 2014, and second on April 7, 2014.

Constructive Exhaustion
of Administrative Remedies

41. Beyond its April 3 notification that it had referred plaintiffs' FOIA request to the State Department, the Army has not responded. As of the date of this complaint, defendant has failed to produce any responsive records or to demonstrate that they are exempt from disclosure. Because the twentieth day since plaintiffs made their March 31 FOIA request was in April, plaintiffs have constructively exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

Navy
March 31, 2014 FOIA Request

42. On March 31, 2014, plaintiffs wrote to the Secretary of the Navy Chief of Naval Operations FOIA Office, seeking "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Plaintiffs sought disclosure of:

1. **Sigonella.** Records **identifying**, and concerning, all **US aircraft** at NATO Base Sigonella, Naval Air Station Sigonella in Sicily, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:
 - Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS Sigonella, including:

- (a) All **communications with, and orders to**, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
3. **Rota.** Records revealing the status of **two Marine Corps "Fleet Antiterrorism Security Teams ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
- (a) All **communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, when Secretary Clinton visited Libya.
43. Plaintiffs' FOIA request prayed for:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

44. In an effort to avoid the necessity of Navy having to refer the requests to other components of defendant DOD, plaintiffs wrote:

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Department of the Air Force, and (b) the HQ USEUCOM (U.S. European

Command). Request No. 2, for records concerning the readiness status of the 130-man Marine Force, is also being made to (a) the Department of the Air Force, (b) HQ USEUCOM (U.S. European Command), and (c) Commandant of the Marine Corps. Request No. 4, for records of military assets pre-positioned in October 2011 off the coast of Tripoli, is also made to (a) HQ U.S. AFRICOM (U.S. Africa Command), as well as (b) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

45. By April 16 email, the Navy acknowledged receipt of plaintiffs' FOIA request. A week later, on April 23, 2014, the Navy wrote:

We have determined that the information you are seeking may be maintained by the Commander, Naval Forces Europe and Africa/US Sixth Fleet... Therefore, we have forwarded your request to that office for action and direct response to you. Please be advised... will address your request for an expedited processing and fee waiver.

46. By letter dated May 7, 2014, the office of the Commander, Naval Forces Europe and Africa/US Sixth Fleet, denied plaintiffs' request for expedited processing, as well as plaintiffs' request for statutory fee waivers.

47. On June 16, 2014, plaintiffs administratively appealed. Plaintiffs administratively appealed all DOD denials of expedited processing and statutory fee waiver determinations in the 40-page appeal, plus 38 attached exhibits. Plaintiffs' appeal proves:

- (a) For the first ten days following the attacks, the Administration repeatedly represented that the attack was spontaneous. This was false, and known to be false. Since then, the Administration has advanced several different versions of the facts.
- (b) The Administration baldly claims that it reacted with all due dispatch, even while the publicly-available record would appear to contradict that claim, in several respects. Disclosure of the just the DOD records sought will settle the matter.

- (c) Moreover, even if any one of the Administration's narratives were true, it would not solve the mystery of why the government failed to try to rescue its personnel. Congressional probes and reports demonstrate the Administration's negligence, but are silent on the issue of motive for the absence of an immediate response by the DOD.
- (d) The Administration facilitated delivery of weapons to militias known to be affiliates of jihadists, first to bring down Qaddafi, and subsequently to try and oust Assad. Did decision-makers fear that a rescue operation might expose this operation, exposing them to accusations of violating The Arms Export Control Act, or even materially supporting terrorists?
- (e) The circumstances mandate expedited processing. If processed in the regular course, full disclosure will occur only after the November 2016 elections, and the American people would lose the opportunity to meaningfully participate in this debate. The particular value of the information would be lost. This is particularly evident given the high probability that litigation at the appellate level will be necessary.
- (f) On the issue of when and how the State Department responded, disclosure will also reveal whether Secretary Clinton was truthful when she claimed to have sought help from American allies.
- (g) "Here, the public interest in disclosure is enormous... The public has a right to disclosure of records that would answer the many questions posed by the facts of the Benghazi attacks—*before* the next presidential election."

48. By June 20 letter, the Defense Freedom of Information Policy Office acknowledged that it had received plaintiffs' appeal on June 18. On June 20, the Defense Freedom of Information Policy Office wrote to plaintiffs that it was "unable to complete your appeal within the statutory time requirement."

Exhaustion of
Administrative Remedies

49. By letter of August 20, 2014, the Navy ruled on plaintiffs' appeal, granting it in part, and denying in part. The Navy agreed to treat plaintiffs as a

"member of the news media," and agreed to grant them a public interest waiver of duplication fees, but denied plaintiffs' request for expedited processing. Plaintiffs have exhausted their administrative remedies.

Air Force
First FOIA Request—March 31, 2014

50. On March 31, 2014, by certified mail to the Air Force, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought production of:

1. **Signonella.** Records identifying, and concerning, all **US aircraft** at NATO Base Signonella, **Naval Air Station Signonella in Sicily, Italy** ("NAS Signonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:
 - Any F-16 and F-18 fighters (a/k/a F/A-18 - Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team at NAS Signonella**, including:
 - (a) All **communications with, and orders** to, NAS Signonella personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAS Signonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
3. **"Feet dry over Libya" radio transmission.** Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.

51. Plaintiffs' FOIA request prayed for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

52. In an effort to avoid the necessity of Department of the Air Force to refer the requests to other components of defendant DOD, plaintiffs wrote:

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), as well as (b) the HQ USEUCOM (U.S. European Command). Request No. 2, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Commandant of the Marine Corps, (b) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (c) HQ USEUCOM (U.S. European Command). Request No. 3, for records of a radio transmission, "Feet dry over Libya" or the like, is also being made to (a) HQ U.S. AFRICOM (U.S. Africa Command), and (b) HQ USSOCOM (Special Operations Command).

53. Upon information and belief, plaintiffs did not receive the Air Force's July 1 letter responding to their March 31 FOIA request, until the government filed its Answer.

Constructive Exhaustion
of Administrative Remedies

54. Defendant DOD averred that the Air Force responded to plaintiffs' March 31, 2014 FOIA request in a letter dated July 1, 2014, wherein the Air Force informed plaintiffs that "[t]he Operations, Plans and Requirements conducted an appropriate search for responsive records and indicated they have no equity in the

request" and that a "no records" determination was made. That letter also apprised plaintiffs of their rights to appeal the "no records" determination.

55. Plaintiffs believe that they did not receive the Air Force's July 1 response. In any event, on December 31, 2014, plaintiffs submitted a FOIA Request to the Air Force seeking disclosure of the exact same records requested in their March 31, 2014, FOIA Request to the Air Force. By letter dated February 9, 2015, the Air Force granted plaintiffs' request for a "news media" fee waiver, and denied their request for expedited processing.

Air Force
Second FOIA Request—April 7, 2014

56. On April 7, 2014, by certified mail to defendant Department of the Air Force, plaintiffs sought:

[D]isclosure of records **identifying all US aircraft at Aviano Air Base in northeastern Italy** on September 11th and 12th, 2012, including all U.S. Air Force 31st Fighter Wing assets, whether transport, cargo, refueling, fighter, attack, or surveillance.

57. Here too plaintiffs' FOIA request sought:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

Constructive Exhaustion
of Administrative Remedies

58. The twenty day period since plaintiffs submitted this FOIA request expired in May, without a response from the Air Force, and plaintiffs have constructively exhausted their administrative under 5 U.S.C. § 552 (b)(6)(A)(i).

Marine Corps
March 31, 2014 FOIA Request

59. On March 31, 2014, plaintiffs sent, via certified mail return receipt requested, to Commandant of the Marine Corps, a FOIA request for "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought disclosure of:

1. **Sigonella.** Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS Sigonella, including:
 - (a) All **communications with, and orders to**, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
2. Any records of the Department of Defense **seeking help by use of Italian aircraft** at NAS Sigonella.
3. **Rota.** Records revealing the status of **two Marine Corps "Fleet Antiterrorism Security Teams ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) **All communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, and, if applicable, orders to abort or turn back.

60. Here too plaintiffs' FOIA request included prayers for:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

61. In an effort to avoid the necessity of Marine Corps having to refer the requests to other components of defendant DOD, plaintiffs wrote:

Kindly note that Request No. 1, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) HQ USEUCOM (U.S. European Command). Request No. 2, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to HQ USEUCOM (U.S. European Command). Request No. 3, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being made to (a) Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) HQ USEUCOM (U.S. European Command), and (c) HQ USSOCOM (Special Operations Command).

62. By email dated April 8, 2014, the Marine Corps acknowledged receipt of plaintiffs' FOIA request. Two weeks later, on April 23, 2014, the Marine Corps wrote:

In an effort to assist you we have referred **item one** of your request to the Commander, US Marine Forces Europe, Attn: G-1 FOIA, Unit 30401, APO-AE9107, for direct response to you. If you would like to inquire about the status of your request, please contact Major Roger Mattioli via email at roger.mattioli@usmc or by fax to 011-49-703-112-392.

We note that **item two** refers to records under the cognizance of the Department of Defense (DoD). Since you also sent your

request to DoD, we will not refer this to them and will consider that as inapplicable to the U.S. Marine Corps.

Per our previous correspondence, we have referred **item three** of your request to the Marine Corps Security Force Regiment, 4th St. Bldg 624, Williamsburg, VA 23185, for direct response to you. If you would like to inquire about the status of your request, please call Captain Siva Ambikapath at (757) 877-7126 or send an email to siva.ambikapath@usmc.mil.

63. Defendant DOD averred that the Marine Corps responded in a letter dated April 21, 2014, stating that it was denying News Media status and expedited processing, and that it had referred item 3 of your request to the Marine Corps Security Force Regiment . . . for direct response to you." The letter placed plaintiffs' request in the "other" fee category, providing plaintiffs two hours of search time and 100 pages of duplication free of charge. The letter also apprised plaintiffs of their appeal rights.

64. Upon information and belief, plaintiff did not receive the Marine Corps' April 21 response. In any event, on December 31, 2014, plaintiffs submitted a FOIA Request to the Marine Corps seeking disclosure of the exact same records requested in their April 8, 2014, FOIA Request to the Marine Corps. Plaintiffs will seek leave to amend their Complaint, should it be necessary.

65. As of the date of the filing of the Complaint, the Marine Corps has failed to produce any responsive records, or demonstrate that such records are exempt from production.

Constructive Exhaustion
of Administrative Remedies

66. As of the date of the filing of the Complaint, the Marine Corps has failed to produce any responsive records, or demonstrate that such records are exempt from production.

European Command
March 31, 2014 FOIA Request

67. On March 31, 2014, by certified mail to defendant European Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought disclosure of:

1. **Sigonella.** Records **identifying**, and concerning, all **US aircraft** at NATO Base Sigonella, Naval Air Station **Sigonella in Sicily**, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:
 - Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the **130-man Marine Force Reconnaissance Team** at NAS **Sigonella**, including:
 - (a) All **communications with, and orders to**, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
3. Any records of the Department of Defense seeking **help by use of Italian aircraft** at NAS Sigonella.

4. **Rota.** Records revealing the status of **two Marine Corps Fleet Antiterrorism Security Teams ("FAST"), at the Spanish naval base Naval Station Rota ("NAVSTA Rota")**, including:
 - (a) All **communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, and, if applicable, orders to abort or turn back.
5. **Croatia.** Records regarding the readiness status of, and **orders given to**, airborne special operations unit, **"Commanders In-extremis Force" ("CIF")**, assigned to the European Command, and **in Croatia**, including:
 - (a) **Orders** for the CIF to deploy to NAS Sigonella; and
 - (b) All **communications** from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.
6. **Maps.** Maps **depicting all assets** that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

68. In an effort to avoid the necessity of European Command to refer the requests to other components of defendant DOD, plaintiffs' FOIA request states:

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) the Department of the Air Force. Request No. 2, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) Commandant of the Marine Corps. Request No. 3, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to the Commandant of the Marine Corps. Request No. 4, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being

made to (a) the Commandant of the Marine Corps, and (b) HQ USSOCOM (Special Operations Command).

69. Again, plaintiffs' FOIA request sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

70. By letter dated May 22, 2014, European Command denied plaintiffs' request for expedited processing, as well as their request to be placed in the "news media" fee category. That letter placed plaintiffs' request in the "other" fee category, providing plaintiffs two hours of search time and 100 pages of duplication free of charge.

71. On June 30, 2014, plaintiffs administratively appealed. The particulars of that appeal, as well as all DOD appeals, are set forth above.

72. By letter dated July 3, 2014, European Command wrote to plaintiffs, "[w]e understand the standard time frame for FOIA request is 20 working days from the day it was received, however due to the complexity of your request; your case has been assigned to the complex tracking queue."

Exhaustion of
Administrative Remedies

73. European Command received plaintiffs' administrative appeal on July 1. Taking into account the ten working day extension as memorialized by defendant in its July 3 letter, the time for defendant to rule on plaintiff's appeal had exceeded

twenty working days, and plaintiffs had exhausted their administrative remedies when they filed their initial Complaint, on September 19, 2014.

74. By letter dated December 4, 2014, European Command "respond[ed] to Accuracy in Media's June 30, 2014, Freedom of Information Act (FOIA) appeal... [of] the U.S. European Command's (USEUCOM) decision to deny their request for news media status and expedited processing for the FOIA." Defendant denied plaintiffs' request for expedited processing, and "grant[ed] Accuracy in Media's request to be placed in the 'news media' category."

Central Command
March 31, 2014 FOIA Request

75. On March 31, 2014, by certified mail to defendant Central Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs sought production of:

Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

76. In an effort to avoid the necessity of Central Command to refer the requests to other components of defendant Department of Defense, plaintiffs wrote, "[k]indly note that this Request is simultaneously being made to (a) HQ USEUCOM (U.S. European Command), (b) HQ U.S. AFRICOM (U.S. Africa Command), and (c) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

77. Plaintiffs' FOIA request sought (a) news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), (b) a public interest waiver of duplication fees under 5

U.S.C. § 552(a)(4)(A)(iii), and (c) expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

78. By letter dated April 9, 2014, Central Command informed plaintiffs that the requested information "falls under United States Africa Command's (AFRICOM) purview. Since you simultaneously submitted your FOIA request to AFRICOM, USCENTCOM is administratively closing your FOIA request." Defendant's April 9 letter did not apprise plaintiffs of their right to administratively appeal. Defendant's April 9 letter was not an adverse determination.

**Constructive Exhaustion
of Administrative Remedies**

79. The twenty day period since plaintiff's ' March 31 FOIA request was in April. Central Command has not substantively responded. Plaintiffs have constructively exhausted their administrative remedies by virtue of the DOD's failure to respond within twenty working days under 5 U.S.C. § 552 (b)(6)(A)(i).

**Africa Command
First FOIA Request—March 31, 2014**

80. On March 21, 2014, by certified mail to defendant Africa Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Plaintiffs sought disclosure of:

1. **AFRICOM communications.** All records of **AFRICOM Joint Operations Center (JOC)** Chief's communications subsequent to that Officer's receipt of messages emanating from the Compound's TOC. This request is to be read to include all communications **to all US personnel, whether armed forces or civilians**, and includes communications to General Carter Ham, the Unified Combatant Command, the Pentagon, CIA, Department of State, and White House including the Situation Room.

2. **Appeals for help.** Records of **requests for help** for personnel at the Special Mission Compound and the CIA Annex, to:
 - (a) The **Turkish Consulate** in Benghazi;
 - (b) The **Italian Consulate** in Benghazi; and
 - (c) The **U.K. Security Team**.
3. **Maps.** Maps **depicting all assets** that could have been dispatched to Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.
4. **Audio.** All records of **radio communications** emanating from the **Compound's Tactical Operations Center (TOC)**, on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. **"Feet dry over Libya" radio transmission.** Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.
6. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned **off the coast of Tripoli** on October 18, 2011, when Secretary Clinton visited Libya.

81. In an effort to avoid the necessity of Africa Command to refer the requests to other components of defendant Department of Defense, plaintiffs' FOIA request notes:

[R]ecords sought in Request No. 2, regarding any appeals for help for Special Mission Compound or CIA Annex personnel, made to the Turkish or Italian Consulates or the U.K. Security Team, is simultaneously being submitted to OSD/JS (Office of the Secretary of Defense and the Joint Staff). Request No. 3, for maps of depicting assets, is simultaneously being made to (a) the HQ USEUCOM (U.S. European Command), (b) the United States Central Command CCJ6-RDF (FOIA), and (c) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

82. Plaintiffs' FOIA request also sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

83. By correspondence dated April 14, 2014, defendant denied plaintiffs' request for expedited processing, and similarly denied plaintiff's requests for news media and public interest statutory fee waivers.

84. Plaintiffs' June 12, 2014 administrative appeal includes their points and authorities recounted above.

85. By letter dated June 18, 2014, DOD's Defense Freedom of Information Policy Office notified plaintiffs that it was "unable to complete your appeal within the [twenty working-day] statutory time requirement."

Exhaustion of
Administrative Remedies

86. By letter dated August 25, 2014, DOD's Office of the Deputy Chief Management Officer responded to plaintiffs' June 12 administrative appeal, granting plaintiffs' prayer to be recognized as members of the news media under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), and granting them a public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii), but denying their request for expedited processing.

Africa Command
Second FOIA Request—October 1, 2014

87. On October 1, 2014, by certified mail to defendant Africa Command, plaintiffs requested disclosure of:

1. Records **identifying**, and concerning, all **US aircraft in Djibouti** on September 11, 2012, whether at Camp Lemonnier, Ambouli International Airport, and whether detailed or assigned to the Combined Joint Task Force-Horn of Africa (CJTF-HOA). Records should include those that disclose the readiness status of all AC-130 gunships.
2. Records of all **communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication** and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

88. Plaintiffs' FOIA request prayed for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

Constructive Exhaustion
of Administrative Remedies

89. Africa Command has not responded, nor produced any responsive records or demonstrated that they are exempt from disclosure. Over twenty working days has passed since defendant received plaintiffs' October 1 FOIA

request. Plaintiffs have constructively exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

Special Operations Command
March 31, 2014 FOIA Request

90. On March 31, 2014, by certified mail to defendant Special Operations Command, plaintiffs requested "disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, plaintiffs seek disclosure of:

1. **Rota.** Records revealing the status of **two Marine Corps Fleet Antiterrorism Security Teams ("FAST")**, at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) All **communications with, and orders to**, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.

2. **Croatia.** Records regarding the readiness status of, and orders given to, **airborne special operations unit, Commanders In-extremis Force ("CIF")**, assigned to the European Command, and **in Croatia**, including:
 - (a) **Orders** for the CIF to deploy to NAS Sigonella; **and**
 - (b) All **communications** from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

3. **United States.** Records disclosing the readiness status of, and orders given to, **Special Operations Forces ("Special Ops" or "SOF") in the United States**, including:
 - (a) **Orders** for Special Ops to deploy to Libya; and
 - (b) **Communications** from SOF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for Libya, and, if applicable, orders to abort or turn back.

4. **"Feet dry over Libya" radio transmission.** Any record of transmission from any aircraft during the crisis that stated, "Feet dry over Libya," or words to that effect, informing that aircraft was transitioning from above the Mediterranean Sea to above the Libyan landmass.

91. And plaintiffs' FOIA request sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

92. In an effort to avoid the necessity of Special Operations Command to refer the requests to other components of the DOD, plaintiffs' FOIA request included:

Kindly note that Request No. 1, regarding orders given to the two Marine Corps Fleet Antiterrorism Security Teams at Naval Station Rota, is being simultaneously submitted to (a) the Commandant of the Marine Corps, and (2) HQ USEUCOM (U.S. European Command). Request No. 2, seeking orders given to the Commanders In-extremis Force in Croatia, is also being made to (a) the Department of the Army, and (b) HQ USEUCOM (U.S. European Command). Request No. 4, for the radio transmission recording, "Feet dry over Libya" or the like, is also submitted to (a) the Air Force, and (b) HQ U.S. AFRICOM (U.S. Africa Command).

93. By letter dated August 29, Special Operations acknowledged receipt of plaintiffs' March 31 FOIA Request. That letter placed plaintiffs in the "News Media" category for fee purposes, denied its request for a public interest fee waiver, but, otherwise, contained no substantive response. It did not apprise plaintiffs of any right to administratively appeal. Defendant Special Operations' August 29 correspondence was not an adverse determination.

Constructive Exhaustion
of Administrative Remedies

94. The twenty day period since March 31 was in April. Special Operations has not responded, and, so, plaintiffs have constructively exhausted their administrative remedies by virtue of the DOD's failure to respond within twenty working days under 5 U.S.C. § 552 (b)(6)(A)(i).

Office of Secretary of Defense and Joint Staff
March 31, 2014 FOIA Request

95. On March 31, 2014, by certified mail to defendant Office of Secretary of Defense and Joint Staff, plaintiffs wrote, "FOIA request Nos. 1, 2 and 3 are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012." Specifically, the CCB sought production of:

1. Maps. Maps **depicting all assets** that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.
2. **Appeals for help.** Records of requests for help for the Special Mission Compound and the CIA Annex, to:
 - (a) The **Turkish Consulate** in Benghazi;
 - (b) The **Italian Consulate** in Benghazi; and
 - (c) The **U.K. Security Team**.
3. Records concerning **joint military contingency plans**:
 - (a) **Plan Identification (PID) Number and title of the operation plan or plans** prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, for use by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.

- (b) Operation **plan** or plans **for use by the supported combatant commander** to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (c) List of commands, organizations and agencies comprising the **joint planning and execution community** (JPEC), found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
 - (d) Supported **combatant commander's Joint Intelligence Preparation** of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
 - (e) List of commands, organizations, agencies and offices comprising the **supported combatant commander's joint interagency coordinating group** (JIACG), established to support the plans referenced under (a) above.
 - (f) Copies of any **combatant command commercial contracts** established to **support** military, diplomatic and interagency activities at **Tripoli and at Benghazi** prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.
4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned **off the coast of Tripoli** on October 18, 2011, when Secretary Clinton visited Libya.
96. Plaintiffs' FOIA request also sought:
- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
 - (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

97. In an effort to avoid the necessity of defendant Office of Secretary of Defense and Joint Staff to refer the requests to other components of the DOD, plaintiffs' FOIA request states:

Kindly note that Request No. 1, seeking maps of assets, is also being simultaneously made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command CCJ6-RDF (FOIA), and (c) HQ U.S. AFRICOM (U.S. Africa Command). Request No. 2, for records of requests for assistance from the Turkish or Italian Consulates or the U.K. Security Team, as well as Request No. 4, regarding records of military assets pre-positioned in October 2011 off Tripoli on October 18, 2011, is also being submitted to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) HQ U.S. AFRICOM (U.S. Africa Command).

98. By correspondence on April 10, 2014, Office of Secretary of Defense and Joint Staff denied plaintiffs' request for expedited processing, and failed to grant plaintiff's prayers for news media and public interest statutory fee waivers.

99. On June 6, 2014, plaintiffs administratively appealed the denial of expedited processing, and include additional points and authorities in support of their prayers for statutory fee waivers and expedited processing.

100. By letter dated June 11, 2014, DOD's Defense Freedom of Information Policy Office notified plaintiffs that it was "unable to complete your appeal within the [twenty working-day] statutory time requirement."

Exhaustion of
Administrative Remedies

101. By July 2, 2014 letter, the Office of the Secretary of Defense denied plaintiffs' appeal for expedited processing and granted plaintiffs' request for news media status.

102. By letter dated September 19, 2014, DOD's Office of Freedom of Information denied twelve pages of records responsive to plaintiffs' request. On that same day, September 19, plaintiffs filed their Complaint.

103. Plaintiffs submitted their administrative appeal on September 29, 2014. By letter dated October 8, 2014, DOD's Freedom of Information Division acknowledged receipt of plaintiffs' appeal and wrote that "[d]ue to an extremely heavy FOIA workload, we are unable to complete your appeal within the statutory time requirement."

104. Whether defendant's September 19 response was made before, or after, plaintiffs filed their initial Complaint, the time for Office of the Secretary of Defense to timely rule on plaintiff's September 29 appeal has expired, and plaintiffs have exhausted their administrative remedies.

Defense Intelligence Agency
First FOIA Request—April 7, 2014

105. On April 7, 2014, by certified mail to the Defense Intelligence Agency, plaintiffs requested disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, plaintiffs sought disclosure of:

1. **Maps.** Maps depicting **all assets** within fifteen hundred miles of Benghazi, Libya, on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.
2. **Military assets pre-positioned in October 2011.** Records of all Defense Department assets that were pre-positioned **off the coast of Tripoli on October 18, 2011**, when Secretary Clinton visited Libya.

* * *

[Item 3 withdrawn]

106. In an effort to avoid the necessity of defendant Defense Intelligence Agency to refer the requests to other components of defendant Department of Defense, plaintiffs' FOIA request recites:

Kindly note that on March 31st, Request No. 1, seeking maps of assets, was also made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command CCF6-RDF (FOIA), (c) HQ U.S. AFRICOM (U.S. Africa Command), and (d) OSD/JS (Office of the Secretary of Defense and the Joint Staff). Request No. 2, regarding records of military assets pre-positioned off Tripoli on October 18, 2011, was also submitted on March 31st to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) HQ U.S. AFRICOM (U.S. Africa Command), and (c) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

107. Plaintiffs' FOIA request sought:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and
- (c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

108. Defendant Defense Intelligence Agency has failed to acknowledge receipt of plaintiffs' FOIA requests or otherwise respond to plaintiffs' April 7, 2014 FOIA request.

Constructive Exhaustion
of Administrative Remedies

109. The twenty day period since DOD's receipt of plaintiffs' April 7 FOIA request expired in May. The Defense Intelligence Agency has not to date responded, and plaintiffs have constructively exhausted their administrative remedies by the DOD's failure to respond within twenty working days. 5 U.S.C. § 552 (b)(6)(A)(i).

Defense Intelligence Agency
Second FOIA Request—May 28, 2014

110. On May 28, 2014, by certified mail to defendant Defense Intelligence Agency, plaintiffs requested disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, plaintiffs sought disclosure of:

1. **Op Rep 3's.** The OPEREP-3 PINNACLE **reports used** to provide any Department of Defense division (or office or entity) with notification of, or **information about**, the September 11th and 12th, 2012 **attacks** on U.S. facilities in Benghazi, Libya.
2. **Orders regarding readiness status.** For the period of July 1, 2012, through September 30, 2012, records of all **directives, orders and other communications regarding the readiness status** of United States armed forces on the anniversary of the September 11th, 2001, attacks on the World Trade center, to or from:

EUCOM (European Command);
CENTCOM (United States Central Command);
AFRICOM (U.S. Africa Command);
USSOCOM (Special Operations Command);
OSD/JS (Office of Secretary of Defense and Joint Staff);
Naval Air Station Sigonella, Sicily;
Spanish naval base Naval Station Rota, Spain;
Aviano Air Base iii northeastern Italy; and
Special Operations Forces in the United States

111. Plaintiffs' FOIA request sought (a) news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), (b) a public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii), and (c) expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

112. By correspondence on June 30, defendant denied plaintiffs' request for expedited processing, and failed to grant plaintiff's requests for statutory fee waivers.

113. On July 7, 2014, plaintiffs administratively appealed. That appeal begins:

This letter is an appeal of the Defense Intelligence Agency's June 30, 2014 denial of expedited processing for the captioned May 28 FOIA request. As I have received no response to the April 7, FOIA request (a copy of which I enclose), if possible, kindly include this submission in the record of the appeal of the April 7, 2014 FOIA request.

114. Plaintiffs' appeal includes the additional points and authorities in support of their prayers for expedited processing and fee waivers, as described above.

Exhaustion of
Administrative Remedies

115. The Defense Intelligence Agency received plaintiffs' July 7 appeal in mid-July. The applicable twenty-day period expired in mid-August. The DOD has not ruled on plaintiffs' administrative appeal, and, thus, plaintiffs have exhausted their administrative remedies by this failure to respond within twenty working days, under 5 U.S.C. § 552 (b)(6)(A)(i).

DEPARTMENT OF STATE
First FOIA Request—February 21, 2014

116. On February 21, 2014, by certified mail to defendant State Department, plaintiffs made the following FOIA requests for records activities in Libya:

[Item 1 withdrawn]

2. Any and all **videos** depicting the United States Consulate in Benghazi, Libya (including the Special Mission Compound and the Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.
3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the **survivors' accounts** of the attack.
4. All records of radio **communications** emanating from the Compound's **Tactical Operations Center (TOC)**, on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.

* * *

[Item 5 withdrawn]

6. All records of Secretary **Clinton's actions and communications** for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack. Responsive records include:
 - (1) All records generated by Secretary Clinton, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of her telephone calls placed or received

* * *

[Item 6(3) withdrawn]

* * *

[Item 7 through 10 withdrawn]

11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher **Stevens or any other Tripoli Embassy official, and one or more of the following** individuals:
 - Ahmed Abu Khattala, a **commander** of the Libyan **Ansar al-Shariah** militia group

- Mustafa Abdul Jalil, **Chairman of the Libyan National Transitional Council** from 5 March 2011-8 August 2012
- Mahmoud Jibril, **Interim Prime Minister of Libya** and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
- Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the **head of al-Qa'eda in Libya**
- Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, **commander** of the AQ franchise militia, **Libyan Islamic Fighting Group (LIFG)** (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
- Ismael al-Sallabi (brother of Ali), **commander** of the Al-Qa'eda-linked **al-Sahati Brigade** during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
- Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, **led effort** with Seif al-Qaddafi and US Embassy Tripoli **to gain release of jihadi detainees from Libyan jails**
- Mohammad al-Sallabi, father of Ali and Ismael, among the **founders of the Libyan Muslim Brotherhood** in the 1960s
- Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and [said to have] **led Benghazi Mission attack** in Sep 2012.

* * *

[Items 12 through 15 withdrawn]

117. By letter dated May 5, 2014, plaintiffs narrowed this February 21

State Department FOIA request, writing:

Request number one as currently written begins:

All records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi consulate and CIA Annex. Responsive records include those that disclose...

Please note that we hereby narrow this item to exclude any records "regarding (1) the Benghazi consulate," leaving only records in State's custody regarding (2), the CIA annex. Thus, full disclosure under this item will still reveal the relationship between State and CIA activities at the annex, but will eliminate the necessity to produce numerous other records.

118. By letter dated August 5, 2014, plaintiffs further narrowed this FOIA request to the State Department:

Please note that we further narrow the requests, and withdraw Request Nos. 1(10), 5, 7, 8, 10, 12, 13, and 14. Request 1(10) sought CIA situation reports. Request 5 sought "records of Secretary Panetta's actions and communications..." Request 7 asked for disclosure of records of "the President's first notification that the Benghazi Consulate was under attack..." Request 8 sought disclosure of records reflecting Ambassador Stevens' schedule on September 11, 2012. Request 10 sought disclosure Ambassador Stevens correspondence on September 10th and 11th, 2012. Request 12 sought "DOD and CIA... records shared with members of Congress regarding... collection, storage, transportation of arms and equipment in Libya." Request 13 asked that "DOD and CIA... records of Congressional approval for CIA transport of arms to Syrian rebel forces" be disclosed. Request 14 sought "records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi."

119. By letter dated March 21, the State Department granted plaintiffs' request to be placed in the news media status and as well their request for a waiver

of duplication costs, and denied their request for expedited processing, writing that they "ha[d] not provided adequate justification for expedition."

120. On April 18, 2014, plaintiffs administratively appealed the denial of expedited processing.

Exhaustion of
Administrative Remedies

121. On May 8, 2014, defendant State Department denied plaintiffs' appeal of its request for expedited processing. Plaintiffs have exhausted their administrative remedies, under 5 U.S.C. § 552 (b)(6)(A)(i).

State Department
Second FOIA Request—April 7, 2014

122. On April 7, 2014, by certified mail to defendant State Department, plaintiffs made five more FOIA requests. Also seeking news media fee waivers, and expedited processing, plaintiffs requested:

1. Records generated from August 2009, through October of 2011, regarding Secretary of State **Clinton's recommendations** regarding U.S. support to those seeking **to oust** forces loyal to Colonel Muammar **Gaddafi** and his government.
2. Records generated from March of 2011 through September of 2012, regarding Secretary of State **Clinton's recommendations to support those seeking to oust** forces loyal to the government of Bashar al-**Assad**.

[Requests 3, 4, and 5 withdrawn]

123. By letter dated April 21, the State Department granted plaintiffs news media status, but denied their request for expedited processing.

124. Because plaintiffs neglected to timely appeal the State Department's denial of expedited processing, on July 1, 2014, plaintiffs wrote:

Kindly consider accepting this letter as an appeal of the State Department's April 21 denial of expedited processing of the captioned April 7, 2014, FOIA request. Alternatively, this letter is a part of the accompanying July 1 FOIA request, submitted in support of prayers for fee waivers and expedited processing. The April 7, 2014, FOIA request, and the July 1 FOIA request, are identical.

Plaintiffs' July 1 submission includes its additional points and authorities in support of its request for expedited processing under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Exhaustion of
Administrative Remedies

125. On August 25, 2014, the State Department responded that it was treating plaintiffs' July 1 submission as a late-filed "appeal of the denial of expeditious processing in your April 7 request," but "uph[eld] the decision to deny expeditious processing." Thus, plaintiffs have exhausted their administrative remedies.

FEDERAL BUREAU OF INVESTIGATION
February 21, 2014 FOIA Request

126. On February 21, 2014, by certified mail to defendant FBI, plaintiffs requested disclosure of "the following records of activities in Libya... regardless of the source" of the records:

* * *

[Items 1, 2, 3, and 4 withdrawn]

5. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the **survivors' accounts** of the attack.

[Items 6 and 7 withdrawn]

8. September **15th or 16th FBI 302 Interview Reports**, and corresponding handwritten notes, of interviews conducted in Germany of United States personnel who had been in the Benghazi mission and the Benghazi CIA annex during the September 11th and 12th attacks on those facilities.
9. Records of the **video teleconference** on the afternoon of [] September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. For your reference, the following is an excerpt from the December 30, 2012, Senate Committee On Homeland Security And Governmental Affairs, "Flashing Red: A Special Report On The Terrorist Attack At Benghazi:"

On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been on the compound in Benghazi during the attack. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

[Item 10 withdrawn]

127. Plaintiffs' FOIA request sought:
 - (a) News media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II); and
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii).

128. On March 14, 2014, the FBI denied the requests in their entirety, reasoning that, because plaintiffs "have requested information about a third party," they should provide an "authorization and consent from the individual(s)," or "proof of death," or "justification that the public interest in disclosure outweighs personal privacy." "In the absence of such information," the response continued, the FBI "can

neither confirm nor deny the existence of any records responsive to your request, which, if they were to exist, would be exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C)."

129. On March 31, 2014, plaintiffs administratively appealed, writing that "withholdings under FOIA Exemptions (b)(6) and (b)(7)(C) cannot justify the FBI's blanket denial" because release of most of the information sought would implicate no privacy concerns, and that redactions and segregation could vitiate any privacy concerns. "In sum," plaintiffs reasoned, disclosure of half of the information sought would implicate no privacy interest. As to the other half, plaintiff observed:

[T]here are no personal privacy interests in the records sought that could not be protected by proper redaction and segregation, and the absence of any third-party releases does not justify the FBI's blanket withholding. Moreover, the public interest in disclosure outweighs any cognizable personal privacy interests that may otherwise justify non-disclosure. The Benghazi tragedy and its aftermath is subject of numerous congressional probes and widespread, ongoing, publicity. The information sought is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and its inner workings. Disclosure will show the degree to which the Executive Branch has complied in good faith with relevant law, and whether it accurately informed Congress and the public about the Benghazi tragedy.

130. This March 31, Administrative appeal also narrowed the FBI FOIA requests, regarding the autopsy reports. Plaintiffs wrote:

Insofar as the request for complete autopsy reports of the victims of the September 11th and 12th, 2012 Benghazi attacks, the subject of Request 10, we agree that personal privacy interests justifies their non-disclosure, at least in the absence of a release by the primary next-of-kin. However, these FOIA requests seek to reveal, among other things, whether the FBI is conducting a thorough investigation. Thus, whether this murder probe includes any review of the autopsy

reports should be disclosed, and almost any response, even one withholding the reports, would suffice.

131. By letter dated August 5, 2014, plaintiffs further narrowed their FOIA request to the FBI, writing:

Please note that we further narrow the requests to withdraw Request Nos. 2(4), 3, 4, and 6. Request No. 2(4) sought records of "any probe into the meetings from January 2007 through September 2012 between Tripoli Embassy officials, including Christopher Stevens, and the individuals identified in the following Request 3 below." Additionally, plaintiffs withdraw Request No. 3, which sought records "regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following [nine] individuals..." Request No. 4 sought disclosure of "records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex for the time period of January 1st, 2011, through September 30th, 2012..." Lastly, Request No. 6 sought copies of "[a]ll calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11..."

132. On July 8, 2014, DOJ'S Office of Information Policy reversed its initial determination, and "remand[ed] your clients' request for a search for responsive records." Although the FBI's reversal did not seek a commitment from plaintiffs to pay search or review fees, it did not grant plaintiffs' request to be treated as a member of the news media under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Exhaustion of
Administrative Remedies

133. On July 10, 2014, plaintiffs sent, by overnight "express mail," a letter "submitted in [further] support of prayers for fee waivers, and expedited processing, for the captioned request." In this submission, plaintiffs explained that "the letter was submitted on July 7 for inclusion in the record on appeal, but, on July 9, I received a letter by email that the case had been remanded on July 8."

134. Twenty working days since plaintiffs' February 21 FOIA request has long since passed. The FBI has not yet responded to plaintiffs' request for news media fee waiver under 5 U.S.C. § 552 (a)(4)(A)(ii)(II), or their request for a public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii). Nor has it produced any records, or demonstrated that records are exempt from disclosure. Plaintiffs have exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

135. By August 19 letter, the DOJ's Office of Information Policy wrote to plaintiff that the administrative appeal from the action of the FBI had been received on August 14, 2014. The parties dispute whether July 11 or August 14 is the correct date of the FBI's receipt of the materials, but, in either event, on September 19, 2014, when plaintiffs filed their Complaint, over twenty working days had elapsed since plaintiffs submitted their appeal, and, thus, plaintiffs had exhausted their administrative remedies.

CENTRAL INTELLIGENCE AGENCY
First FOIA Request—February 24, 2014

136. On February 24, 2014, by certified mail to defendant CIA, plaintiffs requested disclosure of "the following records of activities" in Libya:

1. All records of whatsoever nature regarding (1) the Benghazi Special Mission Compound or "Ambassador's compound" or "**Benghazi Mission**" and (2) the **CIA Annex**, *for the time period of January 1st, 2011, through September 30th, 2012*. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi Mission and the CIA Annex. Responsive records include those that disclose:

- (1) The **comings and goings of all persons**, whether civilian, military, American or foreign, including any non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi Mission;
 - (2) The descriptions and inventories of **all weapons** brought into the **Annex**, including small arms, ammunition, and man-portable air defense systems, or **Manpads**, and missiles;
 - (3) The **sources** of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex,
 - (5) The intended **destinations and recipients** of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of **arms out of Libya**, bound for Syria, thorough Turkey, Qatar, Saudi Arabia, Qatar, or Jordan;
 - (6) All **communication and cryptographic equipment** at the CIA Annex and Benghazi Mission;
 - (7) The **weaponry**, communication, cryptographic equipment, and electronic or paper files, **left in the Annex and Benghazi Mission** when US personnel abandoned these facilities on September 11th and 12th, 2012;
 - (8) Information about the **weapons recovered from fallen attackers** at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the **identities and affiliations of any of those fallen fighters** as well as the disposition of their bodies, alive or dead; and
 - (10) CIA **situation reports**, or "sitreps," sent, including on September 11th, 12th, and 13th.
2. Any and all **videos** depicting the United States Mission in Benghazi, Libya (including the Special Mission Compound and the CIA Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the **survivors' accounts** of the attack.
4. All records of **radio communications** emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. All records of CIA Director David **Petraeus' actions** and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack.
Responsive records include:
 - (1) All records generated by Director Petraeus, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Director's actions and communications.
6. All records of Deputy CIA Director Michael **Morell actions** and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack.
Responsive records include:
 - (1) All records generated by Deputy CIA Director Morell, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Deputy Director's actions and communications.

* * *

[Items 7 and 8 withdrawn]

9. All records of the purpose of Ambassador **Stevens' meetings** on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.

* * *

[Item 10 withdrawn]

11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher **Stevens or any other Tripoli Embassy official, and one or more of the following** individuals:

- Ahmed Abu Khattala, a **commander** of the Libyan **Ansar al-Shariah** militia group
 - Mustafa Abdul Jalil, **Chairman of the Libyan National Transitional Council** from 5 March 2011-8 August 2012
 - Mahmoud Jibril, **Interim Prime Minister of Libya** and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
 - Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the **head of al-Qa'eda in Libya**
 - Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, **commander** of the AQ franchise militia, **Libyan Islamic Fighting Group (LIFG)** (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - Ismael al-Sallabi (brother of Ali), **commander** of the Al-Qa'eda-linked **al-Sahati Brigade** during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, **led effort** with Seif al-Qaddafi and US Embassy Tripoli **to gain release of jihadi detainees from Libyan jails**
 - Mohammad al-Sallabi, father of Ali and Ismael, among the **founders of the Libyan Muslim Brotherhood** in the 1960s
 - Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and [said to have] **led Benghazi Mission attack** in Sep 2012.
12. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records, shared **with members of Congress, regarding collection, storage, transportation of arms** and equipment in Libya.

13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of **Congressional approval for CIA transport of arms** to Syrian rebel forces.

* * *

[Item 14 withdrawn]

15. Records of the **video teleconference** on the afternoon of the **September 16th, 2012**, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. For your reference, the following is an excerpt from the December 30, 2012, Senate Committee On Homeland Security And Governmental Affairs, "Flashing Red: A Special Report On The Terrorist Attack At Benghazi:"

On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been on the compound in Benghazi during the attack. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

16. **Non-Disclosure Agreements** signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD.
137. Plaintiffs' FOIA request also sought:
 - (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II); and
 - (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii).
138. By letter dated August 5, 2014, plaintiffs narrowed the request,

writing:

Please note that the FOIA requesters hereby withdraw three of their requests, numbered seven, eight, and ten. Request 7 sought disclosure of "the President's first notification that the Benghazi Mission was under attack..." Request 8 sought disclosure of "records reflecting Ambassador Stevens' schedule on September 11, 2012," and Request 10 sought "correspondence to or from Ambassador Stevens on September 10th and 11th, 2012."

139. By letter dated April 14, 2014, the CIA acknowledged receipt of plaintiffs' request, writing only that its "officers will review your request and will advise you should they encounter any problems or if they cannot begin the search without additional information."

140. On July 1, 2014, plaintiffs submitted additional points and authorities in support of their requests for statutory fee waivers, and, additionally, sought expedited processing under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

141. By letter dated July 17, 2014, the CIA acknowledged receipt of plaintiffs' July 1 submission, and denied plaintiffs' request for expedited processing.

142. Despite the defendant's failure to apprise plaintiffs of their right to administratively appeal the CIA's position, on July 25, 2014, plaintiffs did appeal.

They wrote:

This is an appeal of the captioned denial of expedited processing. Additionally, the CIA did not respond to the requesters' prayers for news media and public interest fee waivers. Nor has the CIA produced any records. Kindly also accept this as an appeal of these matters.

Exhaustion of
Administrative Remedies

143. By letter dated July 31, defendant CIA responded to plaintiffs' July 25 administrative appeal. Defendant granted plaintiffs' request for a news media fee waiver, writing that it had "reviewed your request for a fee waiver and determined

that it meets the standard... we will charge no fees associated with the processing of your request." The CIA also granted plaintiffs' request for a public interest fee waiver of duplication costs. It denied plaintiffs' request for expedited processing, advising that CIA "regulations do not provide for appeals of denials of expedited processing requests."

CIA
Second FOIA Request—October 1, 2014

144. On October 1, 2014, by certified mail to defendant CIA, plaintiffs requested disclosure of:

1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding **allegations that Executive Branch personnel deleted**, destroyed, erased, obliterated, or obscured, **records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks** in Benghazi, Libya, including but not limited to records in possession of the CIA Office of Inspector General.
2. Records of all **communications generated in March of 2011** regarding Colonel Muammar **Gaddafi's expressed interest in a truce and possible abdication** and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

145. Plaintiffs' FOIA request prayed for:

- (a) Recognition as a member of the news media fee waivers under 5 U.S.C. § 552 (a)(4)(A)(ii)(II);
- (b) A public interest waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii); and

(c) Expedited processing under U.S.C. § 552 (a)(4)(A)(ii)(II).

146. By letter dated November 3, 2014, the CIA acknowledged receipt of plaintiffs' request.

**Constructive Exhaustion
of Administrative Remedies**

147. Beyond its November 3 acknowledgment of having received plaintiffs' October 1 FOIA request, the CIA has not responded. As of the date of this Amended Complaint, over twenty working days has passed since defendant received plaintiffs' October 1 FOIA request, and defendant has not produced the records nor demonstrated that they are exempt. Thus, plaintiffs have constructively exhausted their administrative remedies under 5 U.S.C. § 552 (b)(6)(A)(i).

**Count I
Prompt Disclosure
(All Defendants)**

148. Plaintiffs restate paragraphs 1-147 as if fully repeated here.

149. As of the date of this complaint, defendants have failed to produce any responsive records. Nor have they demonstrated that such records are exempt from disclosure, with the possible exception of the Office of Secretary of Defense and Joint Staff in its September 19, 2014 correspondence, denying 12 pages of records responsive to plaintiffs' requests for maps depicting available assets.

150. Plaintiffs have a statutory right to the records they seek, and there is no legal basis for defendants' refusal to disclose them.

**Count II
Expedited Processing
(All Defendants)**

151. Plaintiffs restate paragraphs 1-150 as if fully repeated here.

152. All FOIA requests, and corresponding administrative appeals, seek expedited processing. Defendants' failure to expedite the processing of the information sought violates 5 U.S.C. § 552(a)(4)(A)(ii)(II). Additionally, plaintiffs meet the requisite requirements as set forth in the respective agency regulations to be entitled to expedited processing of their FOIA requests, and plaintiffs have a legal right under the respective regulations of the agency defendants to be granted expedited processing.

Count III
News Media Status
(Defendants FBI and four of ten DOD components—
(1) Army,(2) Marine Corps, (3) Central Command, and (4) DIA)

153. Plaintiffs restate paragraphs 1-152 as if fully repeated here.

154. Plaintiffs are entitled to recognition as members of the news media under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

155. Plaintiffs were not afforded News Media Status by defendants FBI, and four DOD components:

- (1) Army
- (2) Marine Corps
- (3) Central Command
- (4) DIA

156. Plaintiffs were afforded News Media status by defendants CIA, State Department, and six components of the DOD:

- (1) Navy
- (2) Air Force
- (3) Africa Command
- (4) European Command
- (5) Special Operations Command
- (6) Office of the Secretary of Defense and Joint Staff

Count IV
Public Interest Fee Waiver
(Defendants FBI and six DOD components (1) Army (2) Air Force
(3) Marine Corps (4) Central Command (5) European Command (6) DIA)

157. Plaintiffs restate paragraphs 1-156 as if fully repeated here.

158. Plaintiffs are entitled to a partial or complete waiver of costs associated with reproduction of the requested records, in the public interest, under 5 U.S.C. § 552(a)(4)(A)(iii).

159. Plaintiffs' requests for public interest waiver of reproduction costs were denied by defendants FBI and four components of the defendant DOD:

- (1) Army
- (2) Air Force
- (3) Central Command
- (4) DIA

160. Two components of the DOD denied plaintiffs' requests for a public interest fee waiver, and placed the requests in the "other" fee category, affording plaintiffs two hours of search time and 100 pages of duplication free of charge:

- (1) European Command
- (2) Marine Corps

161. Defendants State Department and CIA granted plaintiffs' requests for public interest waiver of reproduction costs, as did four components of defendant DOD:

- (1) Navy
- (2) Africa Command
- (3) Special Operations Command
- (4) Office of the Secretary of Defense and Joint Staff

WHEREFORE, plaintiffs respectfully pray that this Court:

- I. Grant plaintiffs' requests for:
 - A. Expedited processing under 5 U.S.C. § 552(a)(4)(A)(ii)(II);
 - B. Status as representatives of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II); and
 - C. A waiver of duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii).

- II. Order defendants to:
 - A. Conduct a thorough search for all responsive records;
 - B. Promptly coordinate or refer requested records or portions thereof to other government agencies, as appropriate;
 - C. Provide a *Vaughn* index inventorying all responsive records and itemizing and justifying all withholdings; and
 - D. Promptly disclose the requested information, as it is processed, on a rolling basis, in electronic form.

- III. Award plaintiffs their costs and reasonable attorneys' fees, under 5 U.S.C. § 552 (a)(4)(E) and 28 U.S.C. § 2412(d).

DATE: May 26, 2015.

Respectfully submitted,

_____/ s/
John H. Clarke Bar No. 388599
Attorney for plaintiffs
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 344-0776
johnhclarke@earthlink.net

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No. 14-1589 (EGS)
)	
UNITED STATES DEPARTMENT OF)	
DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
)	

JOINT MOTION TO AMEND BRIEFING SCHEDULE

As this Court is aware, the parties to this Freedom of Information Act (“FOIA”) suit¹ have been actively engaged in discussions aimed at determining whether the issues in this action could be narrowed and in what manner. As the parties’ prior Joint Status Reports have explained, “[t]hose discussions have been productive and have greatly assisted the parties in narrowing the issues that are being challenged in this FOIA action, which seeks records related to the September 11, 2012 attack on the [State Department diplomatic and CIA facilities] in Benghazi, Libya from four [] different Defendant agencies and several of their respective components.” *See, e.g.*, Joint Status Report at 1, ECF No. 60 (May 12, 2017); *see also* Joint Status Report, ECF No. 63 (Sept. 5, 2017).

For example, as part of those discussions, Defendants agreed to provide, and in fact provided, draft *Vaughn* indices to Plaintiffs in an effort to explain the bases for the

¹ Plaintiffs brought this FOIA action against Defendants, the Central Intelligence Agency (“CIA”), the United States Department of Defense and several of its component departments, the Department of State, and the United States Department of Justice and its component, the Federal Bureau of Investigation (collectively, “Defendants”). *See generally* Compl., ECF No. 1 (Sept. 19, 2014).

agencies' decisions related to the withholding of many of the records. And after reviewing the draft *Vaughn* indices, Plaintiffs agreed to narrow further the issues that are being challenged in this FOIA litigation. The State Department also agreed to conduct a supplemental search that yielded documents responsive to one or more of Plaintiffs' FOIA requests.

In the parties' November 2017 Joint Motion to Amend, the parties explained that as a result of the parties' discussions and diligence, they had substantially narrowed the issues that remain to be litigated in this case to certain discrete issues, which primarily focus on the agencies' searches and decisions to withhold in full or part certain records responsive to Plaintiffs' FOIA requests. *See* Joint Mot. to Amend Briefing Schedule at 2-3, ECF No. 64 (Nov. 29, 2017). The parties then requested that the Court set a briefing schedule for the parties to file cross-motions for summary judgment the outstanding issues. The Court granted that joint motion in its December 1, 2017 Minute Order (Dec. 1, 2017).

Since the Court issued its December 1, 2017 Minute Order, Defendants and their agency counsel have been working diligently to respond to the specific issues set forth in the parties' November 2017 filing. However, during discussions between counsels for the parties that occurred this week, the parties discovered that they were not entirely in agreement on the issues to be litigated. Specifically, during these discussions, Plaintiffs, through their counsel, stated that they intend to challenge the searches conducted in response to three additional FOIA requests. Prior to these discussions, Defendants had been unaware that Plaintiffs disputed these particular searches.

Rather than litigate what was or was not within the scope of issues that the parties had previously agreed were to be litigated and in the interest of expeditiously resolving Plaintiffs' claims, Defendants have agreed to address the additional search issues in their summary judgment briefing. In order to allow Defendants sufficient time to address the three disputed searches about which Defendants became aware this week, the parties respectfully request that the Court enter the following extended briefing schedule:

- April 20, 2018: Defendants file their motion for summary judgment;
- May 18, 2018: Plaintiffs file their opposition to Defendants' motion for summary judgment and cross-motion for summary judgment;
- June 15, 2018: Defendants file their reply in support of their motion for summary judgment and in opposition to Plaintiffs' cross-motion for summary judgment; and
- July 13, 2018: Plaintiffs file their reply in support of their cross-motion for summary judgment.

Finally, the parties submit that the following issues are the *only* issues that remain for this Court to resolve upon the parties' cross-motions for summary judgment:

The United States Department of Defense

1. Whether DOD's search for documents responsive to Plaintiffs' request for initial reports and orders and communications referenced in Plaintiffs' FOIA directed at DOD as referenced in ¶¶ 18-29, among other paragraphs referencing initial reports, orders and communications, of the Second Amended Complaint, was reasonable;
2. Whether DoD's search for records of Gaddafi's March 2011 interest in truce and abdication made to Africa Command in response to

Plaintiffs' FOIA request as referenced in ¶ 35 of the Second Amended Complaint was reasonable; and

3. Whether DOD properly withheld in full documents reflecting DoD's maps depicting assets in response to Plaintiffs' FOIA request as referenced in ¶ 30 of the Second Amended Complaint. The parties believe that the Court's decision on whether DOD properly withheld the maps depicting assets will be dispositive on the issue of DoD's decision to withhold records regarding personnel and other available assets, which are the subject of Plaintiffs' other FOIA requests directed at DOD.

The State Department

1. Whether the search conducted by the State Department for records responsive to the portion of Plaintiffs' FOIA request referenced in ¶ 116(6) of the Second Amended Complaint; and
2. Whether the State Department properly withheld in full or part C05935290 (call log), C06052236 (ARB interview summary), C06052239 (ARB interview summary), C06052240 (ARB interview summary), and video footage bates labeled C05467904, C05467908, C05467912, C05467920, C05467921, C05467910, C05467913, C05467914, C05467915, C05467916, C05467917, and C05467919.

The Central Intelligence Agency

1. Whether the CIA's *Glomar* assertion in response to Plaintiffs' request for records of "all communications generated in March 2011 regarding

Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya" as referenced in ¶ 144(2) of the Second Amended Complaint is proper;

2. Whether the CIA's search for records in response to Plaintiffs' request for "[a]ll records of CIA Director David Patreaus's actions and communications for the 24-hour period beginning when first notified of the attack" and "[a]ll records of Deputy CIA Director Michael Morell[']s *sic* actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack" as referenced in ¶¶ 136(5)-(6) of the Second Amended Complaint was reasonable; and
3. Whether the agency properly withheld redacted information in the document bates labeled document C06354620 produced in response to Plaintiffs' request for records reflecting "allegations that the Executive Branch personnel deleted . . . records of CIA activities in Libya in the aftermath of the . . . attacks . . . including but not limited to records in possession of the CIA Office of the Inspector General" as referenced in ¶ 144(1) of the Second Amended Complaint.

The Federal Bureau of Investigation

1. Whether the FBI's *Glomar* assertion in response to Plaintiffs' request for records reflecting survivors' accounts, including September 15 or 16 FBI 302 interview reports as referenced in ¶ 126(8) of the Second Amended Complaint is proper.

The Defense Intelligence Agency

1. Whether the agency properly withheld in full records V-11 (an intelligence report dated September 12, 2012), V-19 (a situation report dated September 12, 2012), V-45 (an intelligence report dated September 12, 2012), and V-48 (an intelligence report dated September 12, 2012).

A proposed order is attached to this motion.

Dated: March 2, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Branch Director

/s/ Tamra T. Moore
TAMRA T. MOORE
District of Columbia Bar No. 488392
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, Room 5375
Washington, DC 20001
Tel: (202) 305-8628
Fax: (202) 305-8517
E-mail: tamra.moore@usdoj.gov
Attorneys for Defendants

/s/ John H. Clarke
JOHN H. CLARKE
District of Columbia Bar No. 388599
1629 K Street NW
Suite 300
Washington, D.C. 20006
Tel: (202) 344-0776
E-mail: johnhclark@earthlink.net
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No. 14-1589 (EGS)
)	
UNITED STATES DEPARTMENT OF)	
DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
)	

[PROPOSED] ORDER

Upon consideration of the parties' Joint Motion, it is hereby

ORDERED that the parties shall file their respective dispositive motions as follows:

- April 20, 2018: Defendants file their motion for summary judgment;
- May 18, 2018: Plaintiffs file their opposition to Defendants' motion for summary judgment and cross-motion for summary judgment;
- June 15, 2018: Defendants file their reply in support of their motion for summary judgment and in opposition to Plaintiffs' cross-motion for summary judgment; and
- July 13, 2018: Plaintiffs file their reply in support of their cross-motion for summary judgment.

Dated: _____, 2018.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., <i>et al.</i>)	
)	
Plaintiffs,	)	Civil Action No.
	)	14-cv-1589 (EGS)
v.)	
)	
DEPARTMENT OF DEFENSE, <i>et al.</i>)	
)	
Defendants.)	

DECLARATION OF REAR ADMIRAL JAMES J. MALLOY

Pursuant to 28 U.S.C. § 1746, I, James J. Malloy, Rear Admiral (upper half), United States Navy, hereby declare under penalty of perjury that the following is true and correct:

1. I am the Vice Director of Operations for the Joint Staff at the Pentagon and have served in this capacity since July 2017. In my capacity as the Vice Director of Operations, I assist in the execution of all Department of Defense (“DoD”) operational matters outside of the continental United States. As such, I coordinate and communicate frequently with the staffs of the Unified Combatant Commands, to include U.S. Africa Command, U.S. Central Command, U.S. European Command, U.S. Pacific Command, U.S. Southern Command, U.S. Strategic Command, U.S. Transportation Command and U.S. Special Operations Command, as well as with the Intelligence Community, to ensure on behalf of the Chairman of the Joint Chiefs of Staff that the President of the United States’ and Secretary of Defense’s direction and guidance are conveyed and executed, and that combatant command concerns are addressed by the Joint Staff. I evaluate and synthesize such concerns and advise and make recommendations to the Chairman of the Joint Chiefs of Staff regarding our worldwide military operations.

2. I make the following statements based upon my years of service and experience in the United States military, personal knowledge, and information made available to me in my official capacity. I have served in the United States Armed Forces for over thirty years at various levels of command and staff. In recent years, I have served as deputy director of operations, U.S. Central Command (J3), and commander, Carrier Strike Group 10. As the Vice Director of Operations, I receive and review daily operational plans and briefings, reports, and intelligence analyses from the Combatant Commands, the Joint Staff, and the Intelligence Community. I assist with the supervision of the National Military Command Center, which is responsible for monitoring worldwide events affecting national security and U.S. interests twenty-four hours a day, seven days a week. I have traveled in an official capacity to a number of countries where U.S. forces are conducting ongoing operations against al Qa'ida and associated terrorist groups, engaging with senior military and government officials. As a result of my experiences, I have extensive knowledge of our military forces and their capabilities, current operations, and the conventional and unconventional forces and capabilities of the enemies arrayed against us.

3. I am familiar with the FOIA request, dated March 31, 2014, submitted by Plaintiffs seeking categories of documents relating to the attack on US facilities in Benghazi, Libya, on September 11 and 12, 2012. The portion of the request relevant to this declaration sought “[m]aps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of [sic] such maps were created before or after September 11, 2012.” A true and correct copy of the March 31, 2014, letter is attached as Exhibit A.

Responsive Records

4. The Joint Staff located 12 pages responsive to section 1 of Plaintiffs' request and provided a response on September 19, 2014, which stated that those records were withheld in full pursuant to Exemption 1, as they are currently and properly classified. A copy of that response is attached as Exhibit B. The purpose of this declaration is to detail the basis of that withholding. I understand through counsel that this withholding is the only redaction in DoD's production being challenged by Plaintiffs.

FOIA Exemption (b)(1)

5. FOIA exemption (b)(1) provides that FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1).

6. In Section 1.3(a)(2) of Executive Order ("E.O.") 13526, the President authorized agency heads to designate officials that may classify information originally as TOP SECRET. In turn, and pursuant to Section 1.3(c) of E.O. 13526, the Deputy Secretary of Defense, acting pursuant to a delegation from the Secretary of Defense, has authorized me to exercise TOP SECRET and SECRET original classification authority.

7. Section 1.1(a) of E.O. 13526 provides that information may be originally classified under the terms of this order only if all of the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government, which these documents are; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the

unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage.

8. As relevant here, section 1.4(a) permits classification of information pertaining to military plans, weapons systems, or operations; 1.4(d) permits classification of information pertaining to, “foreign relations or foreign activities of the United States;” and 1.4(g) permits classification of vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security.

9. The 12 pages withheld by Joint Staff contain the force posture of the Department of Defense for the European Command, Central Command, and Africa Command areas of responsibility as well as the force posture of Special Operation forces worldwide during the relevant timeframe in September 2012. These documents contain the numbers and locations of ships, submarines, response forces, and aircraft surrounding Benghazi, Libya. They further contain the numbers of military personnel located in particular countries during that time. Finally, they contain the transit time required for each available asset to reach Benghazi.

10. This information fits squarely within sections 1.4(a), 1.4(d), and 1.4(g) of E.O. 13526, as it details military operations conducted overseas, describes foreign activities of the United States, and provides transit times and a list of assets that demonstrate the capabilities of DoD’s plans and infrastructure.

11. This information is sensitive and classified at the Secret level, because the release of this information reasonably could be expected to cause serious damage to the national security. Even with the passage of time, how DoD’s forces are positioned at a particular time could provide potentially damaging and/or threatening insight to adversaries regarding DoD’s interests, intent,

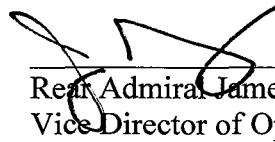
and potential operations in these volatile regions of the world. Tensions with hostile foreign governments could rise depending on the disclosure of such positioning. Terrorist organizations, violent extremist organizations, or hostile foreign governments could use transit time capability information to plan attacks within windows of perceived vulnerability. It is for this reason that this information is currently and properly classified and must not be released.

Review for Reasonably Segregable Information

12. Joint Staff has conducted a page-by-page and line-by-line review of the 12 pages at issue in this declaration. I can confirm that there is no reasonably segregable information contained in any of the records.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of May 2018, in Arlington, VA.



Rear Admiral James J. Malloy, USN
Vice Director of Operations, J-3, Joint Staff

Exhibit A

14-F-0683

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

March 31, 2014

By Certified Mail — Return Receipt Requested
Article Number 7013 2630 0000 5201 4415

FOIA REQUEST

OSD/JS (Office of the Secretary of Defense and the Joint Staff)
FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: **FOIA Requests**

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Requests. FOIA request Nos. 1, 2 and 3 are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Maps.** Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

2. **Appeals for help.** Records of requests for help for the Special Mission Compound and the CIA Annex, to:
 - (a) The Turkish Consulate in Benghazi;
 - (b) The Italian Consulate in Benghazi; and
 - (c) The U.K. Security Team.

3. **Records concerning joint military contingency plans:**
 - (a) Plan Identification (PID) Number and title of the operation plan or plans prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, **for use** by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (b) Operation plan or plans for use by the supported combatant commander to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (c) List of commands, organizations and agencies comprising the joint planning and execution community (JPEC), found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
 - (d) Supported combatant commander's Joint Intelligence Preparation of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
 - (e) List of commands, organizations, agencies and offices comprising the supported combatant commander's joint interagency coordinating group (JIACG), established to support the plans referenced under (a) above.
 - (f) Copies of any combatant command commercial contracts established to support military, diplomatic and interagency activities at Tripoli and at Benghazi prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.

4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, when Secretary Clinton visited Libya.

Kindly note that Request No. 1, seeking maps of assets, is also being simultaneously made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command CCJ6-RDF (FOIA), and (c) HQ U.S. AFRICOM (U.S. Africa Command). Request No. 2, for records of requests for assistance from the Turkish or Italian Consulates or the U.K. Security Team, as well as Request No. 4, regarding records of military assets pre-positioned in October 2011 off Tripoli on October 18, 2011, is also being submitted to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) HQ U.S. AFRICOM (U.S. Africa Command).

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). *See generally* DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 45 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or 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." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested is beyond question. Accuracy in Media articles on the subject include, "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghazigate," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... 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."

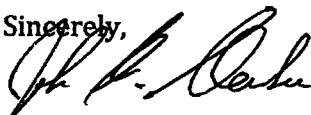
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit B



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

19 SEP 2014

Ref: 14-F-0683

Mr. John Clarke
John H. Clarke Law Office
1629 K Street, NW, Suite 300
Washington, DC 20006

Dear Mr. Clarke:

This is the final response to your Freedom of Information Act (FOIA) request dated March 31, 2014, which was received in this office on April 7, 2014. Twelve pages of records were located as responsive to section 1 of your request.

Mr. Mark S. Patrick, Chief, Information Management Division, Joint Staff (JS) has determined that the records responsive to your request, totaling 12 pages, are being denied in their entirety. The records denied in their entirety do not contain meaningful portions that are reasonably segregable. The information is currently and properly classified in accordance with Executive Order 13526, Section 1.4 (a) concerning military plans, weapons, or operations; Section 1.4 (d), concerning foreign relations or foreign activities of the United States, including confidential sources; and Section 1.4 (g) concerning vulnerabilities or capability of systems, installations, infrastructures, projects, plans or protection services relating to the national security. Accordingly, this information is denied pursuant to 5 USC § 552 (b)(1). The pages denied in their entirety do not contain meaningful portions that are reasonably segregable.

Mr. Mark S. Patrick, Chief, Information Management Division, Joint Staff (JS) a FOIA Initial Denial Authority (IDA), advised that based on the information provided in sections 2, 3, and 4 of your request and thorough searches of the paper and electronic records and files of the JS, no documents of the kind you described could be located. We believe that these search methods were appropriate and could reasonably be expected to produce the requested records if they existed. Mr. Patrick further certified that after making a good faith effort and conducting a thorough search of records using methods, detailed above, that could reasonably be expected to produce the information requested, there are no records, and that to the best of their knowledge, no such documents exist within the records of the JS.

There are no assessable fees associated with this response. 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, by writing directly to the Defense Freedom of Information Policy Office, Attn: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter,

should cite to case number 14-F-0683, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

for Charles P. Marge

Paul J. Jacobsmeyer
Chief

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ACCURACY IN MEDIA, INC., <i>et al.</i>)	
	)	Civil Action No.
Plaintiffs,	)	14-cv-1589 (EGS)
)	
v.)	
)	
DEPARTMENT OF DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
_____)	

DECLARATION OF MARK H. HERRINGTON

Pursuant to 28 U.S.C. § 1746, I, Mark H. Herrington, hereby declare under penalty of perjury that the following is true and correct:

1. I am an Associate Deputy General Counsel in the Office of General Counsel (“OGC”) of the United States Department of Defense (“DoD”). OGC provides legal advice to the Secretary of Defense and other leaders within the DoD. I am responsible for, among other things, overseeing Freedom of Information Act (“FOIA”) litigation involving DoD. I have held my current position since March 2007. My duties include coordinating searches across DoD to ensure thoroughness, reasonableness, and consistency, and also coordinating productions of responsive documents, including the appropriate redaction of some of those documents.

2. The statements in this declaration are based upon my personal knowledge and upon my review of information available to me in my official capacity. Specifically, I am the OGC counsel currently assigned to this case.

3. I am familiar with the FOIA requests submitted by Plaintiffs to nine DoD components seeking categories of documents related to the attack on United States’ facilities in Benghazi,

Libya, on September 11, 2012, and September 12, 2012.¹ I also understand that with respect to DoD, Plaintiffs intend to challenge only three aspects of DoD's response to Plaintiffs' FOIA request: (a) the search that DoD conducted in response to Plaintiffs' FOIA request seeking initial reports and orders and communications as detailed below; (b) the search that DoD component, Africa Command ("AFRICOM"), conducted for records responsive to Plaintiffs' request for records of Gaddafi's alleged March 2011 interest in truce and abdication; and (c) whether DoD properly withheld in full records reflecting DoD's assets, including maps, personnel, and aircraft. *See* Joint Mot. to Amend Briefing Schedule at 3-4, ECF No. 65.

4. This declaration addresses only the sufficiency of the searches conducted in response to Plaintiffs' request for records reflecting (1) initial orders and communications, and (2) Gaddafi's alleged interest in a truce and abdication.² As explained in detail below, with respect to Plaintiffs' request for records reflecting initial reports and orders, the relevant DoD components conducted a thorough search for records responsive to Plaintiffs' requests seeking initial orders and communications and produced the non-exempt portions of the same. Plaintiffs' claim that DoD failed to conduct a reasonably adequate search for records responsive to those particular

¹ In response to all of the FOIA requests directed at DoD (including nine component agencies), DoD processed over 1,200 pages of records, which were either released in full, released in part, or denied in full. As previously mentioned, from the vast collection of DoD responsive records released to Plaintiffs, Plaintiffs challenge only a small set of documents withheld by the Joint Staff on September 19, 2014, which contain the force posture of the Department of Defense for the EUCOM, Central Command ("CENTCOM"), and AFRICOM areas of responsibility as well as the force posture of Special Operation forces worldwide during the relevant timeframe in September 2012, and a few documents located by DIA. Those withholdings are addressed in separate declarations by Rear Admiral Andrew L. Lewis, United States Navy, of the Joint Staff, and Alesia Williams of DIA.

² While the challenged searches fit into two general categories, initial orders and reports and Gaddafi's alleged March 2011 interest in a truce, those requests appear in letters to five DoD components and detailed in paragraph 6 of this declaration.

request is based solely on Plaintiffs' unsubstantiated speculation that other responsive records exist. They do not.

5. The same is true with respect to Plaintiffs' request for records concerning Gaddafi's alleged March 2011 interest in a truce and abdication. DoD component, AFRICOM, to whom Plaintiffs directed this request, conducted a thorough search for responsive records.

The Scope of the Two Challenged FOIA Requests Directed At DoD

6. Plaintiffs' FOIA requests sought records concerning orders in response to the attack on the United States mission in Benghazi, including "orders to, NAVSTA Rota personnel to get ready to deploy, and if applicable, to deploy" (*See* March 31, 2014 requests to Navy, Marine Corps, and European Command ("EUCOM") attached as Exhibits 1, 2, and 3), "orders [to an airborne special operations unit in Croatia] to deploy to NAS Sigonella" (*See* March 31, 2014 request to EUCOM attached as Exhibit 3), and "orders to, NAS Sigonella personnel to get ready to deploy, and if applicable, to deploy" (*See* March 31, 2014 request to Navy, Marine Corps, and EUCOM attached as Exhibits 1, 2 and 3). In addition, in a May 28, 2014 letter to the Defense Intelligence Agency ("DIA"), Plaintiff requested the "OPREP-3 PINNACLE report(s) used to provide any Department of Defense division (or office or entity) with notification of, or information about, the September 11th and 12th 2012 attacks on U.S. facilities in Benghazi, Libya." (*See* request attached as Exhibit 4).

7. Finally, in an October 1, 2014 letter to AFRICOM, Plaintiff sought "records of all communications generated in March of 2011, regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya." (*See* request attached as Exhibit 5).

I. DoD Components' Searches for Records Responsive to Plaintiffs' Requests for Records of Initial Orders and Communications were Sufficient.

A. DIA's Search for Records of Initial Orders and Communications.

8. Plaintiffs directed two letters containing requests to DIA dated April 7 and May 28, 2014.

As relevant here, in the May 28th request, Plaintiff sought records of "OPREP-3 PINNACLE report(s) used to provide any Department of Defense division (or office or entity) with notification of, or information about, the September 11th and 12th 2012 attacks on U.S. facilities in Benghazi, Libya." *See* Exhibit 4. As explained again later in this declaration, DIA would not be the unit responsible for such a report, but rather the combatant command with the area of responsibility for the location of the incident would be responsible for the report. An OPREP 3 is a report of a specific incident, and a PINNACLE OPREP 3 describes an event of such importance that it needs to be brought to the immediate attention of the National Command Authority, Joint Chiefs of Staff/National Military Command Center, and other national-level leadership.

9. Regardless of this misdirected request, in response to this specific request by Plaintiffs' DIA conducted two searches of its Record Message Traffic ("RMT") database, a proprietary DIA repository for electronic message traffic, which currently holds in excess of 70 million such messages addressed to or originated by DIA, from January 1, 1987, to the present. DIA personnel used boolean logic and key words such as "msgid," "oprep," "pinnacle," and "Benghazi," which would be likely to capture responsive documents. One RMT search covered a three-year date range of January 1, 2012, to May 13, 2015.

B. EUCOM's Search for Records of Initial Orders and Communications.

10. In order to locate records responsive to Plaintiffs' request for records reflecting "personnel to get ready to deploy, and if applicable, to deploy," EUCOM conducted a search of the following directorates: the J2 - Directorate of Intelligence; the J33- EUCOM Plans and Operations Center, Operations Division; and the J5/8 - Directorate of Strategy. The J2executes agile, all-source, multi-disciplined intelligence operations that are fully synchronized and integrated with Theater Component, National and Partner Organizations; the J33 enables US EUCOM planning and execution, and enhances Senior leader decision-making superiority across the entire spectrum of military operations; and the J5/8 is responsible to Commander US EUCOM for formulation and staff direction of the execution of basic military/political policy and planning for command activities involving relations with other U.S. Unified Commands, allied military and international military organizations, and subordinate commands. EUCOM reasonably determined that these three directorates were likely to have records responsive to Plaintiffs' request for initial orders and communications related to the September 11, 2012 attack on the United States mission in Benghazi, Libya.

11. Personnel in these directorates conducted searches of their paper and electronic media, including searches conducted of safes, which store classified materials, E-mail accounts, and network share drives. In addition, to ensure that the search for records reasonably captured all responsive records, EUCOM's search of its paper and electronic records, included a search at all levels of classification, for which any reasonable records would likely reside. To conduct their electronic search, personnel in the three directorates used search terms such as "Libya," "Benghazi," "FAST," "Marine Force Reconnaissance Team," "Marine Corps Fleet Antiterrorism Security Team," "Naval Station Rota," "NAVSTA Rota," "NASSIG," and "NAS Sigonella."

Personnel in the directorates determined that these terms were sufficiently broad to ensure that they reasonably captured the universe of potentially responsive records.

C. Navy's Search for Records of Initial Orders and Communications.

12. In response to Plaintiffs' request for records reflecting various "personnel to get ready to deploy, and if applicable, to deploy," Navy directed the U.S. Naval Forces Europe-Africa / U.S. 6th Fleet ("CNE-CNA-C6F") to conduct a search for records responsive to this request. Navy selected CNE-CAN-C64 because it is the Navy command with geographic responsibility for, among other countries, Libya. In turn, personnel within CNE-CAN-C64 directed the following offices to conduct a search for responsive records: N21 (collections/ISR-Intelligence Surveillance Reconnaissance), N33 (Current OPS), N35 (Future OPS), Combined Task Force ("CTF") 65, CTF 67, and CTF 68. CNE-CNA-C6F's decision to search these particular divisions and subordinate commands was based on CNE-CNA-C6F's assessment that these particular offices' duties and tasking responsibilities could potentially yield documents responsive to Plaintiffs' request for records reflecting various "personnel to get ready to deploy, and if applicable, to deploy."

13. These particular offices within CNE-CNA-C6F conducted searches of both electronic and paper databases at all levels of classification. CNE-CNA-C6F is a command with high security awareness; therefore, most of the records are stored electronically on shared drives on systems appropriate to the classification of the information. Paper files are kept in secured safes.

D. Marine Corps' Search for Records of Initial Orders and Communications

14. The Marine Corps directed that personnel in the Marine Corps Forces Europe / Africa ("MARFOREUR/AF"), the Marine Corps component within the command of both the EUCOM and AFRICOM Combatant Commands, conduct a search for records reflecting various

“personnel to get ready to deploy, and if applicable, to deploy.” MARFOREUR/AF has geographic responsibility for the region in and around Libya, among other regions, and thus the Marine Corps reasonably concluded that MARFOREUR/AF could potentially have records responsive to this particular request. MARFOREUR/AF searched their combined shared drives and shared portal on both unclassified and unclassified systems.

15. In addition to conducting a search of their electronic and paper files, MARFOREUR/AF personnel also identified and interviewed key personnel who were present at the command in 2012, and tasked those individuals with searching their archived emails and paper files for responsive records. MARFOREUR/AF personnel did not locate any responsive records, likely attributable to the fact that Special-Purpose Marine Air-Ground Task Force Crisis Response-Africa was created in response to the attacks on the 2012 embassy in Benghazi. At the time of the attack, MARFOREUR/AF did not have an embassy support mission, and were not contacted during the attack.

II. DoD’s Release of Records Responsive to Plaintiffs’ Request for Initial Written Orders and OPREP Report(s).

16. As explained in detail above, DoD components DIA, EUCOM, Navy, and Marine Corps each conducted electronic and paper file searches for records responsive to Plaintiffs’ request for initial written orders and communications. In response to this particular request, EUCOM produced a redacted copy of the Execution Order (“EXORD”) dated 0700 Zulu (Greenwich mean time) September 12, 2012. The EXORD is the initial written order directing EUCOM to execute an action in response to the September 11, 2012 attack on the United States mission in Benghazi, Libya. A copy of the EXORD, as produced to Plaintiff, is attached as Exhibit 6.

17. In addition, EUCOM released Fragmentary Orders, which are written orders issued *after* the initial EXORD that delineate changes in the initial EXORD. *See, e.g.*, Exhibit 7 (an example of a FRAGORD released to Plaintiffs).

18. This EXORD that EUCOM produced to Plaintiffs is the first written order. Despite relaying this information, Plaintiffs insist that there must have been earlier written orders. In an effort to assuage Plaintiffs' concern that the DoD production failed to include these alleged earlier written orders, I provided Plaintiffs with a two-page timeline of DoD actions on September 11-12, 2012, which was prepared and provided to Congress for the multiple inquiries into the Benghazi attack. A copy of that timeline is attached as Exhibit 8.

19. As set forth in the timeline, during the timeframe of 6:00 – 8:00 P.M. Eastern Daylight Time (2200 – 2400 Zulu) on September 11, 2012, “Secretary Pennetta directs (provides verbal authorization) the following actions.” After listing three units that prepared to deploy based on Secretary Panetta’s *verbal* orders, the timeline specifically states that “[d]uring this period, actions are *verbally conveyed* from the Pentagon to the affected Combatant Commands in order to expedite movement of forces upon receipt of formal authorization.” (emphasis added)

20. In other words, the timeline provided to Plaintiffs demonstrates that the initial orders in response to the September 11, 2012 attack on the United States mission in Benghazi, Libya, were conveyed *verbally*. This timeline of events is further supported by the fact that the EXORD (Exhibit 6), lists a phone conversation at 2228 Zulu on September 11, 2012, as reference A. The subsequent FRAGORD lists the phone conversation as reference A and the EXORD as reference B. *See* Exhibit 7.

21. The fact that the initial orders were conveyed verbally is also supported by a timeline of events that the Navy produced to Plaintiff, attached as Exhibit 9, which specifically references an

initial phone call at 0008 local time in Rota Spain on September 12, 2012 (2208 Zulu Time September 11, 2012), and the EUCOM Exord, issued at 0900 local time (0700 Zulu on September 12, 2012).

22. The EXORD mentioned above and attached is the first *written* order – there are no others.

23. With respect to Plaintiffs' request for OPREP 3 reports, AFRICOM released this report to Plaintiffs. *See* Exhibit 10. As detailed above, Plaintiffs directed their request for "OPREP-3 PINNACLE report(s) used to provide any Department of Defense division (or office or entity) with notification of, or information about, the September 11th and 12th 2012 attacks on U.S. facilities in Benghazi, Libya," to DoD component, DIA. *See supra* ¶¶ 8-9. I have delineated the search that DIA conducted in response to this request.

24. As mentioned above, An OPREP 3 is a report of a specific incident, and a PINNACLE OPREP 3 describes an event of such importance that it needs to be brought to the immediate attention of the National Command Authority, Joint Chiefs of Staff/National Military Command Center, and other national-level leadership. While a request for a PINNACLE OPREP 3 was not sent to AFRICOM by Plaintiff, they did locate and produce Exhibit 10 as part of their response. Given that AFRICOM is the combatant command responsible for the area encompassing Libya, it is logical that the OPREP 3 report would come from it.

III. The Search that AFRICOM conducted for Records Regarding Gaddafi's Alleged Abdication Was Reasonable and Adequate.

25. With regard to Plaintiffs' request to AFRICOM for "records of all communications generated in March of 2011, regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya," the following offices conducted a thorough search for records in AFRICOM's possession: AFRICOM's J5 Directorate (Strategy,

Engagement, and Programs), The Combined Joint Task Force - Horn of Africa Component, Records Management, the J6 Directorate (Command, Control, Communications and Computer Systems), which searched the AFRICOM portal, and the Office of the Commander. AFRICOM personnel determined that these offices were reasonably likely to have documents responsive to this particular request. In addition, AFRICOM personnel directed COL Brian Linvill to conduct a search of his electronic and paper files because Plaintiffs specifically mentioned him in the request.

26. In order to locate any electronic records responsive to Plaintiffs' request, COL Brian Linvill and personnel in the specific AFRICOM offices tasked with conducting this search, used broad search terms such as "Gaddafi," "Qaddafi," "Dibri," "Kubic," "Ham," and "Linvill," covering the March 2011 time period. The search effort extended to all known spelling variants of the individuals named in this request. These terms were sufficiently broad to encompass the universe of potentially responsive records.

Conclusion

27. Thus, DoD has not only conducted searches sufficient to locate all information responsive to Plaintiffs requests, but has produced the very documents Plaintiffs claim are lacking. Finally, DoD has provided explanations, backed by documented evidence, as to why earlier orders were not in written format, but conveyed verbally.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of May, 2018, in Arlington, VA.

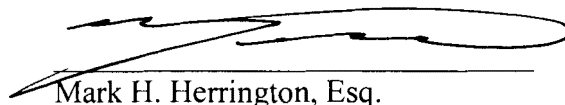

Mark H. Herrington, Esq.

Exhibit 1

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

March 31, 2014

Dept Of the Navy (OPNAV) PA/FOIA Policy Office
Freedom Of Information/Privacy Act Request
Date Received: 4/9/14 Statutory due date: 5/14/14
DON PA/FOIA/consult Tracking Number: 2014 004935
Acknowledgement date: _____

By Certified Mail -- Return Receipt Requested
Article Number 7013 2630 0000 5201 4392

FOIA REQUEST

Secretary of the Navy Chief of Naval Operations (SECNAV/CNO)
FOIA Office
Chief of Naval Operations (DNS-36)
2000 Navy Pentagon
Washington, DC 20350-2000

Re: FOIA Requests

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Requests. These FOIA requests are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Signonella.** Records identifying, and concerning, all US aircraft at NATO Base Signonella, Naval Air Station Signonella in Sicily, Italy ("NAS Signonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:

- Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the 130-man Marine Force Reconnaissance Team at NAS Sigonella, including:
 - (a) All communications with, and orders to, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
 3. **Rota.** Records revealing the status of two Marine Corps "Fleet Antiterrorism Security Teams ("FAST"), at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) All communications with, and orders to, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
 4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, when Secretary Clinton visited Libya.

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Department of the Air Force, and (b) the HQ USEUCOM (U.S. European Command). Request No. 2, for records concerning the readiness status of the 130-man Marine Force, is also being made to (a) the Department of the Air Force, (b) HQ USEUCOM (U.S. European Command), and (c) Commandant of the Marine Corps. Request No. 4, for records of military assets pre-positioned in October 2011 off the coast of Tripoli, is also made to (a) HQ U.S. AFRICOM (U.S. Africa Command), as well as (b) OSD/JS (Office of the Secretary of Defense and the Joint Staff).

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). *See generally* DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 45 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or 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." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested is beyond question. Accuracy in Media articles on the subject include, "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghazi," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... 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."


Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 2

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

March 31, 2014

By Certified Mail -- Return Receipt Requested
Article Number 7013 2630 0000 5201 4378

RECEIVED
CMC (ARSF)

APR 7 2014

HQMC FOIA FILE NO.
()

FOIA REQUEST

Commandant of the Marine Corps
Headquarters US Marine Corps (ARSF)
3000 Marine Corps Pentagon Room 2B289
Washington DC 20350-3000

Re: FOIA Requests

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Requests. These FOIA requests are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Sigonella.** Records disclosing the readiness status of the 130-man Marine Force Reconnaissance Team at NAS Sigonella, including:
 - (a) All communications with, and orders to, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and

- (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
2. Any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella.
 3. **Rota.** Records revealing the status of two Marine Corps "Fleet Antiterrorism Security Teams ("FAST"), at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) All communications with, and orders to, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, and, if applicable, orders to abort or turn back.

Kindly note that Request No. 1, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) HQ USEUCOM (U.S. European Command). Request No. 2, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to HQ USEUCOM (U.S. European Command). Request No. 3, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being made to (a) Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) HQ USEUCOM (U.S. European Command), and (c) HQ USSOCOM (Special Operations Command).

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). *See generally* DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 45 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or 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." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested is beyond question. Accuracy in Media articles on the subject include, "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About

Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghazi," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... 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."

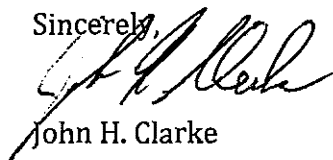
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 3

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

(202) 332-3030

JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

March 31, 2014

By Certified Mail -- Return Receipt Requested

FOIA REQUEST

HQ USEUCOM (U.S. European Command)
FOIA Requestor Service Center
Unit 30400
APO AE (Army Post Office Army in Europe) 09131

Re: FOIA Requests

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Requests. These FOIA requests are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Sigonella.** Records identifying, and concerning, all US aircraft at NATO Base Sigonella, Naval Air Station Sigonella in Sicily, Italy ("NAS Sigonella"), whether transport, cargo, refueling, fighter, attack, or surveillance. Records should include those that disclose the readiness status of:

- Any F-16 and F-18 fighters (a/k/a F/A-18 – Fighter/Attack);
 - C-5, C-9, C-17, C-40 and C-130 transport;
 - C-2 cargo; C-26 passenger/cargo;
 - KC-10 and KC-135 refueling; and
 - P-3 surveillance.
2. Records disclosing the readiness status of the 130-man Marine Force Reconnaissance Team at NAS Sigonella, including:
 - (a) All communications with, and orders to, NAS Sigonella personnel to get ready to deploy, and, if applicable, to deploy, to Benghazi; and
 - (b) All communications from NAS Sigonella personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, bound for Benghazi, and, if applicable, orders to abort or turn back.
 3. Any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella.
 4. **Rota.** Records revealing the status of two Marine Corps Fleet Antiterrorism Security Teams ("FAST"), at the Spanish naval base Naval Station Rota ("NAVSTA Rota"), including:
 - (a) All communications with, and orders to, NAVSTA Rota personnel to get ready to deploy, and, if applicable, to deploy; and
 - (b) All communications from NAVSTA Rota personnel notifying command that assets were ready to deploy, and, if applicable, that aircraft was airborne, and, if applicable, orders to abort or turn back.
 5. **Croatia.** Records regarding the readiness status of, and orders given to, airborne special operations unit, "Commanders In-extremis Force" ("CIF"), assigned to the European Command, and in Croatia, including:
 - (a) Orders for the CIF to deploy to NAS Sigonella; and
 - (b) All communications from the CIF notifying command that it was ready to deploy, and, if applicable, that aircraft was airborne, bound for NAS Sigonella, and, if applicable, orders to abort or turn back.

6. **Maps.** Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

Kindly note that Request No. 1, seeking disclosure of records of aircraft at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) the Department of the Air Force. Request No. 2, for records concerning the readiness status of the 130-man Marine Force at Sigonella, is also being made to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), (b) the Department of the Air Force, and (c) Commandant of the Marine Corps. Request No. 3, for any records of the Department of Defense seeking help by use of Italian aircraft at NAS Sigonella, is also being made to the Commandant of the Marine Corps. Request No. 4, for records of the status of the two Marine Corps "FAST" teams at Spanish naval base Naval Station Rota, is also being made to (a) the Commandant of the Marine Corps, and (b) HQ USSOCOM (Special Operations Command).

Request No. 5, for records of the readiness status and orders given to airborne "Commanders In-extremis Force," is also being made to (a) the Department of the Army, and (b) HQ USSOCOM (Special Operations Command). Request No. 6, for maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility, is also being made to (a) United States Central Command CCJ6-RDF (FOIA), (2) HQ U.S. AFRICOM (U.S. Africa Command), and (c) the OSD/JS (Office of the Secretary of Defense and the Joint Staff).

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). *See generally* DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 45 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or 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." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested is beyond question. Accuracy in Media articles on the subject include, "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghaziigate," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... 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."

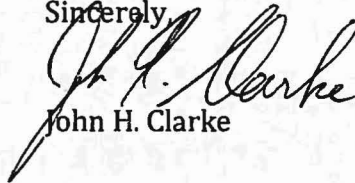
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 4

FOIA

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

JUN 04 2014

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

May 28, 2014

By Certified Mail -- Return Receipt Requested
Article Number 7010 3090 0000 0316 6482

FOIA REQUEST

Defense Intelligence Agency
ATTN: DAN-1A (FOIA)
200 MacDill Blvd
Washington, DC 20340-5100

Re: FOIA Request

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Request. This FOIA request is for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

The requesters seek disclosure of:

1. **Op Rep 3's.** The OPREP-3 PINNACLE report(s) used to provide any Department of Defense division (or office or entity) with notification of, or information about, the September 11th and 12th 2012 attacks on U.S. facilities in Benghazi, Libya.

2. **Orders re readiness status.** For the period of July 1, 2012, through September 30, 2012, records of all directives, orders, and other communications regarding the readiness status of United States armed forces on the anniversary of the September 11th, 2001, attacks on the World Trade center, to or from:

USEUCOM (U.S. European Command);

CENTCOM (United States Central Command);

AFRICOM (U.S. Africa Command);

USSOCOM (Special Operations Command);

OSD/JS (Office of the Secretary of Defense and the Joint Staff);

Naval Air Station Sigonella, Sicily;

Spanish naval base Naval Station Rota, Spain;

Aviano Air Base in northeastern Italy; and

Special Operations Forces in the United States.

Kindly note that I have not submitted these FOIA requests to any other division of the Department of Defense.

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). *See generally* DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 45 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or 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." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested is beyond question. Accuracy in Media articles on the subject include:

"MSNBC Seeks to Discredit Benghazi Investigation," *Accuracy in Media*, May 25, 2014, R. Aronoff.

"Infiltration of the U.S. Government, Part One," *Accuracy in Media*, May 5, 2014, C. Kincaid.

"Media Hits and Misses Covering Benghazi Press Conference," *Accuracy in Media*, April 28, 2014, R. Aronoff.

"Citizens' Commission on Benghazi Releases Interim Report," *Accuracy in Media*, April 24, 2014.

"Material Support to Terrorism: The Case of Libya," *Accuracy in Media*, April 22, 2014, C. Lopez.

"Protecting Hillary Trumps Benghazi Investigation," *Accuracy in Media*, March 31, 2014, B. Stotts.

"Does Navy Map Alter the Benghazi Narrative?" *Accuracy in Media*, Feb 16, 2014, R. Aronoff.

"Obama and His Media Loyalists Still Spinning Benghazi," *Accuracy in Media*, Feb 6, 2014, R. Aronoff.

"Blaming the Victim in Benghaziigate," *Accuracy in Media*, Jan 22, 2014, R. Aronoff.

"Further Proof That Obama Knew the Truth About Benghazi," *Accuracy in Media*, Jan 14, 2014, R. Aronoff and B. Stotts.

"Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," *Accuracy in Media*, Jan 7, 2014, R. Aronoff.

"New York Times Attempts to Blur Benghazi Scandal," *Accuracy in Media*, December 31, 2013, R. Aronoff and B. Stotts.

"McClatchy Reporter Changes Tune on Benghazi," *Accuracy in Media*, December 18, 2013, B. Stotts.

"CBS in Damage Control Over Error-Filled Benghazi Report," *Accuracy in Media*, November 8, 2013, R. Aronoff.

"'60 Minutes' Reveals Little New in Benghazi Exposé," *Accuracy in Media*, Oct 31, 2013, R. Aronoff.

"The Left's Continued Assault on the Truth About Benghazi," *Accuracy in Media*, October 28, 2013, R. Aronoff.

"Media Coverage of Benghazi Leans Toward Political Theater," *Accuracy in Media*, October 4, 2013, B. Stotts.

"Media Embrace Obama's Controversial Picks for National Security Team," *Accuracy in Media*, June 6, 2013. R. Aronoff.

"The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," *Accuracy in Media*, May 10, 2013, R. Radosh.

"Shameful Media Coverage of Benghazi Scandal and Cover-up," *Accuracy in Media*, November 6, 2012, R. Aronoff.

Additionally, several of the individual requesters have published a number of articles about the matter.

"A call to Courage over Benghazi," *Wash Times*, May 1, 2013, J. Lyons.

"Navy SEAL: 'There's guilt in this administration,'" *WND*, April 8, 2013, L. Bailey.

"A hard slog to get Benghazi answers," *Wash Times*, Jan 30, 2013, J. Lyons.

"Benghazi demands a select committee in Congress," *Wash Times*, Jan 16, 2014, J. Lyons.

"The Key Benghazi Questions Still Unanswered," *Wash Times*, Jan 11, 2013, J. Lyons.

"Benghazi lies unravel as Obama, Clinton & Rice still deceive America," *Wash Times*, Dec 30, 2103, A. West.

"Did Turkey Play a Role in Benghazi Attack?" *Clarion Project*, Oct 31, 2012, C. Lopez.

"Benghazi: The Set-Up and the Cover-Up," *Pundicity.com*, Oct 30, 2012, C. Lopez.

"Obama needs to come clean on what happened in Benghazi," *Wash Times*, Oct 28, 2012, J. Lyons.

"Obama's Chain of Command Unravels Over Benghazi Murders," *Wash Times*, Oct 18, 2012, J. Lyons.

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... 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."

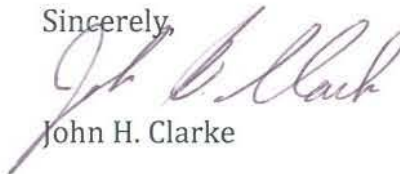
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. This FOIA Request also concerns what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM and several of the individual requesters have concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. *See* e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." *See* FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
 Roger Aronoff
 Larry Bailey
 Kenneth Benway
 Dick Brauer
 Clare Lopez
 James A. Lyons, Jr.
 Kevin Shipp
 Wayne Simmons

Exhibit 5

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

October 1, 2014

By Certified Mail—Return Receipt Requested
Article Number 7013 3020 0000 7279 3723

FOIA REQUEST

HQ U.S. AFRICOM (U.S. Africa Command)
FOIA Requester Service Center
Unit 29951
APO AE (Army Post Office Army in Europe) 09751

Re: FOIA Requests

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following seven individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., and (7) Kevin Shipp. The requesters seek production of:

1. **Records identifying, and concerning, all US aircraft in Djibouti on September 11, 2012, whether at Camp Lemonnier, Ambouli International Airport, and whether detailed or assigned to the Combined Joint Task Force-Horn of Africa (CJTF-HOA). Records should include those that disclose the readiness status of all AC-130 gunships.**

2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). *See generally* DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

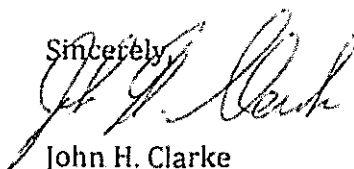
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp

Exhibit 6

Subject: USEUCOM EXORD FOR COMMANDERS IN-EXTREMIS FORCE (CIF) DEPLOYMENT

Originator: EUCOM J3 DIRECTORATE(MC)

DTG: 120700Z Sep 12 Precedence: ROUTINE

To: SOCEUR(mc), COMUSNAVEUR NAPLES IT(sc), SOCEUR(mc),
USAFECOMMANTCENTER(mc), USAREUR CG(mc), COMMARFOREUR(mc)

cc: SOCEUR J3 OPERATIONS DIRECTORATE(MC), EUCOM J1 DIRECTORATE(MC), EUCOM J37
Joint Readiness Training and Exercise Div(mc), EUCOM EPOC Antiterrorism
Division(mc), EUCOM J4-Eddoc Eucom Deployment-Distribution Ops Ctr(mc), EUCOM
J5-P Plans Div(mc), EUCOM J4-JLOC(mc), USCENTCOM COMMAND CENTER(mc), USAREUR
G3(mc), EUCOM J2 DIRECTORATE(MC), EUCOM EPOC Operations Div(mc), EUCOM J4
DIRECTORATE(MC), EUCOM J5-J8 Directorate(mc), EUCOM J6 DIRECTORATE(MC), EUCOM
J7 DIRECTORATE(mc), EUCOM J9 DIRECTORATE(mc), EUCOM PA Public Affairs(mc),
EUCOM JA Judge Advocate Directorate(mc)

MSGID/ORDER/CDRUSEUCOM//
REF/A/PHONECON/CDRUSEUCOM/112228ZSEP12//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

ORDTYP/EXORD/CDRUSEUCOM//
TIMEZONE/Z//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

GENTEXT/SITUATION/

1. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/MISSION/

2. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/EXECUTION/

3. +(S)

(b)(1) EO 13526 § 1.4(a)

3.B. (U) TASKS.

3.B.1. (U) CDR, SOCEUR (CDRSOCEUR).

(b)(1) EO 13526 § 1.4(a)

3.B.1.B. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.2. (U) COMMANDER, NAVAL FORCES EUROPE (CDRNAVEUR).

(b)(1) EO 13526 § 1.4(a)

3.B.4. (U) CDR, US ARMY EUROPE (CDRUSAREUR).

3.B.4.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.5. (U) CDR, US MARINE FORCES EUROPE (CDRUSMARFOREUR).

3.B.5.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

GENTEXT/ADMIN AND LOG/

(b)(1) EO 13526 § 1.4(a)

GENTEXT/COMMAND AND SIGNAL/

5. (U) COMMAND AND SIGNAL//

5.A. (U) COMMAND RELATIONSHIPS. CDRUSAFRICOM IS THE SUPPORTED COMBATANT COMMANDER FOR THIS MISSION. CDRUSEUCOM IS THE SUPPORTING COMBATANT COMMANDER. ALL OTHER COMPONENT COMMANDERS ARE SUPPORTING.

5.B. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

5.E (U) POINTS OF CONTACT.

(b)(3) 10USC 130b (b)(6)

Derived From: MULTIPLE SOURCES

Declassify On: 120700Z Sep 22

Date of Source: 010001Z Aug 08

Exhibit 7

Subject: FRAGORD 001 TO USEUCOM EXORD FOR COMMANDERS IN-EXTREMIS FORCE (CIF) DEPLOYMENT

Originator: EUCOM J3 DIRECTORATE (MC)

DTG: 131935Z Sep 12

To: COMSOCEUR(mc), COMUSNAVEUR NAPLES IT(mc); COMUSAFE(sc); COMUSAREUR(mc); COMUSMARFOREUR(mc)

Cc: SOCEUR J3 OPERATIONS DIRECTORATE(mc); EUCOM J1 Directorate(mc), EUCOM J37 JOINT READINESS TRAINING AND EXERCISE DIV(MC), EUCOM EPOC ANTITERRORISM DIVISION(MC), EUCOM J4-EDDOC EUCOM DEPLOYMENT-DISTRIBUTION OPS CTR(MC), EUCOM J5-P PLANS DIV(MC), EUCOM J4-JLOC(mc), USCENTCOM COMMAND CENTER(mc), USAREUR G3(mc), EUCOM J2 Directorate(mc), EUCOM EPOC Operations Div(mc), EUCOM J4 Directorate(mc), EUCOM J5-J8 Directorate(mc), EUCOM J6 Directorate(mc), EUCOM J7 DIRECTORATE(mc), EUCOM J9 DIRECTORATE(mc), EUCOM PA PUBLIC AFFAIRS(mc), EUCOM JA JUDGE ADVOCATE DIRECTORATE(mc)

~~SECRET//NONE~~

MSGID/ORDER/CDRUSEUCOM//
REF/A/PHONECON/CDRUSEUCOM/112228ZSEP12//
REF/B/ORDER/CDRUSEUCOM/120700ZSEP12//
REF/C/VOCO/CDRUSEUCOM/131135ZSEP12//
REF/D/CJCS/DEPORD/120541ZSEP12//

NARR/~~(S)~~ REF A

(b)(1) EO 13526 § 1.4(a)

ORDTYP/EXORD/CDRUSEUCOM//
TIMEZONE/Z//

NARR/~~(S)~~
(b)(1) EO 13526 § 1.4(a)

GENTEXT/SITUATION/

1. ~~(S)~~ **(b)(1) EO 13526 § 1.4(a)**

EO 13526 § 1.4a

GENTEXT/MISSION/

2. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

GENTEXT/EXECUTION/

3. (U) EXECUTION.

3.A. (U) CONCEPT OF OPERATION.

3.A.1. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

3.B. (U) TASKS.

3.B.1. (U) SPECIAL OPERATIONS COMMAND EUROPE (SOCEUR).

3.B.1.A. ~~(S)~~ ~~(b)(1) EO 13526 § 1.4(a)~~

3.B.2. (U) UNITED STATES NAVAL FORCES EUROPE (USNAVEUR).

3.B.2.A. (U) NO CHANGE.

3.B.2.B. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

3.B.4. (U) UNITED STATES ARMY IN EUROPE (USAREUR).

3.B.4.A. ~~(S)~~ ~~(b)(1) EO 13526 § 1.4(a)~~

3.B.5. (U) MARINE FORCES EUROPE (MARFOREUR).

3.B.5.A. ~~(S)~~ ~~(b)(1) EO 13526 § 1.4(a)~~

GENTEXT/ADMIN AND LOG/

4. (U) ADMIN AND LOG. NO CHANGE.//

GENTEXT/COMMAND AND SIGNAL/

5. (U) COMMAND AND SIGNAL.

5.A. (U) - 5.D. ~~(S)~~ NO CHANGE.

5.E. (U) POINTS OF CONTACT.

(b)(3) 10USC 130b (b)(6)

DERIVED FROM: MULTIPLE SOURCES

DECLASSIFY ON: 131935Z SEP 22

DATE OF SOURCE: 010001Z AUG 08

Exhibit 8

Timeline of Department of Defense Actions on September 11-12, 2012

All times are Eastern Daylight Time (EDT, Washington, DC)
and Eastern European Time (EET, Benghazi)

Tuesday, September 11, 2012

EDT // EET

- ~3:42 pm // 9:42 pm The incident starts at the facility in Benghazi.
- 3:59 pm // 9:59 pm An unarmed, unmanned, surveillance aircraft is directed to reposition overhead the Benghazi facility.
- 4:32 pm // 10:32pm The National Military Command Center at the Pentagon, after receiving initial reports of the incident from the State Department, notifies the Office of the Secretary of Defense and the Joint Staff. The information is quickly passed to Secretary Panetta and General Dempsey.
- 5:00 pm // 11:00pm Secretary Panetta and General Dempsey attend a previously scheduled meeting with the President at the White House. The leaders discuss potential responses to the emerging situation.
- 5:10 pm // 11:10 pm The diverted surveillance aircraft arrives on station over the Benghazi facility.
- ~5:30 pm // 11:30 pm All surviving American personnel have departed the facility.
- 6:00-8:00 pm //
12:00-2:00 am Secretary Panetta convenes a series of meetings in the Pentagon with senior officials including General Dempsey and General Ham. They discuss additional response options for Benghazi and for the potential outbreak of further violence throughout the region, particularly in Tunis, Tripoli, Cairo, and Sana'a. During these meetings, Secretary Panetta directs (provides verbal authorization) the following actions:
- 1) A Fleet Antiterrorism Security Team (FAST) platoon, stationed in Rota, Spain, to prepare to deploy to Benghazi, and a second FAST platoon, also stationed in Rota, Spain, to prepare to deploy to the Embassy in Tripoli.
 - 2) A EUCOM special operations force, which is training in Central Europe, to prepare to deploy to an intermediate staging base in southern Europe.
 - 3) A special operations force based in the United States to prepare to deploy to an intermediate staging base in southern Europe.
- During this period, actions are verbally conveyed from the Pentagon to the affected Combatant Commands in order to expedite movement of forces upon receipt of formal authorization.
- ~6:30 pm // 12:30 am A six-man security team from U.S. Embassy Tripoli, including two DoD personnel, departs for Benghazi.

- ~7:30 pm // 1:30 am The American security team from Tripoli lands in Benghazi.
- ~8:30pm // 2:30 am The National Military Command Center conducts a Benghazi Conference Call with representatives from AFRICOM, EUCOM, CENTCOM, TRANSCOM, SOCOM, and the four services.
- 8:39pm // 2:39 am As ordered by Secretary Panetta, the National Military Command Center transmits formal authorization for the two FAST platoons, and associated equipment, to prepare to deploy and for the EUCOM special operations force, and associated equipment, to move to an intermediate staging base in southern Europe.
- 8:53pm // 2:53 am As ordered by Secretary Panetta, the National Military Command Center transmits formal authorization to deploy a special operations force, and associated equipment, from the United States to an intermediate staging base in southern Europe.
- ~11:00 pm // 5:00 am A second, unmanned, unarmed surveillance aircraft is directed to relieve the initial asset still over Benghazi.
- ~11:15 pm // 5:15 am The second facility in Benghazi comes under mortar and rocket propelled grenade fire.

Wednesday, September 12, 2012

- 12:05 am // 6:05am AFRICOM orders a C-17 aircraft in Germany to prepare to deploy to Libya to evacuate Americans.
- ~1:40 am // 7:40 am The first wave of American personnel depart Benghazi for Tripoli via airplane.
- ~4:00 am // 10:00 am The second wave of Americans, including the fallen, depart Benghazi for Tripoli via airplane.
- 8:15 am // 2:15 pm The C-17 departs Germany en route Tripoli to evacuate Americans.
- 1:17 pm // 7:17 pm The C-17 departs Tripoli en route Ramstein, Germany with the American personnel and the remains of Ambassador Stevens, Sean Smith, Tyrone Woods, and Glen Doherty.
- 1:57 pm // 7:57 pm The EUCOM special operations force, and associated equipment, arrives at an intermediate staging base in southern Europe.
- 2:56 pm // 8:56 pm The FAST platoon, and associated equipment, arrives in Tripoli.
- 3:28 pm // 9:28 pm The special operations force deployed from the United States, and associated equipment, arrives at an intermediate staging base in southern Europe.
- 4:19 pm // 10:19 pm The C-17 arrives in Ramstein, Germany.

Exhibit 9

12 September 2012

0008- Received initial phonecall from SDO

0234- From BWC: EUCOM JOC Team chief passed a VOCO order for the EUCOM FAST PLT to be prepared to deploy to the US Embassy in Libya will possible follow on to the US Consulate in Benghazi.

0236- FAST alerted

0546- Commodore Martin provided info to C6F: FAST will initially provide a platoon of Marine infantry + command element (65 personnel) trained specifically for fixed site defense for up to ten days without resupply. They have crew-served weapons, personal weapons, and non-lethal capability. They have C2 capability and can communicate back, although the principal paths will be unclassified. They do NOT have ground mobility and will have to have it provided. CTF 68 can provide such a package from other units but it will require more airlift than currently provided. The ROE unless otherwise specified would be JCS ROE. They will exercise the inherent right of self defense and will protect US citizens and property. However, they are trained in escalation of force. If the embassy has other desires with respect to ROE, we will need to work that out in the next several hours.

0600- Info: 1x C-130 will arrive at 0945Z and 1xC-130 will arrive at 1000Z to transport your FAST team to Tripoli.

0811- C-130 (Herky-656) Departed Ramstein

0900- EUCOM EXORD released

0942- C-130 (Herky-655) Departed Ramstein

1043- Supplemental ROE received

1204- C-130 (Herky-656) Arrived at Rota

1351- C-130 (Herky-655) Arrived Rota

1332- BWC sends: "DoS, DoD, HN have approved and provided all authorities for this mission" - Leidig

1438- Received from BWC: Final word from VADM Leidig is below. UNIFORMS ARE AUTHORIZED for FAST.

1542- Received from BWC: Per AFRICOM direction, civilian attire for the FAST Team.

1555- C-130 (Herky-656) Wheels up

1617- Lack of status protections received from JAG

1700- Wheels up for C-130 (Herky-655)

1845- BWC notified that 2nd Platoon is set on 6 hour PTDO

(Flight time to Tripoli is 3:50)

2028- Notified BWC, 1st A/C on deck (from Capt Drexler)

2100- Notified BWC, 2nd A/C on deck

2202- Commodore sent to wide distro: Just spoke with Major Cobb, CO FASTEUR. Both sticks are on the ground and linked. FAST has established a solid connection with the embassy and is working through the details of the next 24 hours. We were not a secure line and did not discuss details. However, one detachment is moving to a secure compound now. Another detachment will stay with the aircraft and unload the material, then move to this compound. We will report when unloading and movements are complete. CO is satisfied with provided FP and support.

2225- Received NAVAF Libya TASKORD

13 September 2012

0943- Commodore sent fol to RDML Roegge: "To amplify FASTEUR's status, FASTEUR A6 and HQ element are on a 6-hr PTDO, consisting of 55 pax (includes 2 EOD from EODMU8) and 8x 463L pallets. This is the ready platoon's normal status and it can be maintained indefinitely. Personnel on PTDO don't get liberty and that is really the only major limitation. There is no ground mobility associated with this, so, as with Tripoli, this will have to be provided. If organic mobility options are desired, we can provide this from other CTF 68 units. However, this will take more lift than two C-130s.

As of 13Sept12 1000Z, embarkation and ammunition preparation will be complete for a 3-hr ready to move timeline. Factors that could cause actual delay in departure are mission planning and potential delays uploading aircraft at the flight line. FAST will be looking at possible reinforcement sites and develop mission plans for each to help mitigate the first issue. We will work with the air crews and Rota base operations to minimize aircraft loading delays. Having the aircraft at Rota will help significantly. We are also providing load-planner personnel from other units in CTF 68.

FAST can sustain a 3-hour PTDO for an extended period. The only limitations are the requirement to keep personnel on a very short tether - minimal chow, PT, personal errand breaks. We offer two weeks at 3-hours continuously, then mitigated by a week of 6-hour PTDO to reset. This is adjustable, and there's no doctrinal requirement for any break. We can align the down-times with aircrew rest to allow more predictability."

0955- VOCO received to send FAST Plt to Souda Bay ASAP. EUCOM J4 tasked to ensure availability for beddown/logistical support.

1022- VOCO received to hold FAST in Rota.

1325- VOCO received to send FAST Plt to Souda.

1800 1st A/C Departs for Souda Bay

1830 2nd A/C Departs for Souda Bay

Exhibit 10

Subject: JUKEBOX LOTUS
Originator: AFRICOM OPS LOG(MC)
DTG: 212247Z Jan 12 **Precedence:** IMMEDIATE**DAC:**
To: NMCC WASHINGTON DC, CJCS WASHINGTON DC, CDR USCENTCOM(MC), EUCOM CDR(MC), JOINT STAFF J31(MC), COMBATANT CDR USNORTHCOM(SC), CDR USPACOM HONOLULU HI(SC), CDR USSOCOM(MC), CDR USSTRATCOM(SC), CDR USTRANSCOM(SC), DIRNSA FT GEORGE G MEADE MD, JWAC DAHLGREN VA
Cc: WHITE HOUSE SITUATION ROOM WASHINGTON DC, SECSTATE WASHINGTON DC, CSAF WASHINGTON DC, CSA(SC), CNO WASHINGTON DC(SC), CMC WASHINGTON DC(SC), DISA WASHINGTON DC(SC), NGA HQ BETHESDA MD, DIA WASHINGTON DC, HQ DLA FORT BELVOIR VA(SC), NCTC WASHINGTON DC, USCYBERCOM FT GEORGE G MEADE MD, DEPT OF JUSTICE COMMAND CENTER WASHINGTON DC, DEA HQS WASHINGTON DC(MC), COMSC WASHINGTON DC(SC), COMDT COGARD WASHINGTON DC, HQ USASETAF(MC), COMUSNAVEUR COMUSNAF NAPLES IT(SC), COMMARFORAF(MC), 17AF COS(MC), SOCAFROA ROD JOC(MC), CJTF HOA COMMANDER(MC), JAC MOLESWORTH RAF MOLESWORTH UK, COMJSOC FT BRAGG NC, CDR ZTW WASHINGTON DC, AMEMBASSY NAIROBI, JCSE MACDILL AFB FL(SC)

~~SECRET//NOFORN~~

MSGID/OPREP-3/CDRUSAFRICOM/002//

REF/A/DESC: INITIAL VOICE OPREP-3 REPORT/AFRICOM JOC EA CELL/12HHHHZSEP12/-//

REF/B/DESC: INITIAL OPREP-3 REPORT/AFRICOM JOC TO JS VIA JABBER/12HHHHZSEP12/-//

REF/C/DESC: PROTOCOL FOR USEUCOM CIF ISO USAFRICOM CRISIS RESPONSE FY12 /251500ZMAY12/-//

1. ~~(S//NF)~~ AFRICOM OPREP-3/ ATTACK AGAINST US CONSULATE IN BENGHAZI.

2. ~~(U)~~ CURRENT SITUATION: REF B/

2.A ~~(S//NF)~~ CDRUSAFRICOM RECEIVED AN INITIAL REPORT OF AN ATTACK AGAINST THE US CONSULATE IN BENGHAZI, LIBY (b)(1)1.4a

(b)(1)1.4a

2.B ~~(S)~~ (b)(1)1.4a

(b)(1)1.4a

2.B.1. ~~(U)~~ (b)(3)/(b)(6)

(b)(3)/(b)(6)

2.B.2. ~~(U)~~ (b)(3)/(b)(6)

(b)(3)/(b)(6)

2.B.3. ~~(U)~~ (b)(3)/(b)(6)

(b)(3)/(b)(6)

2.B.4. ~~(U)~~ INFORMATION MANAGEMENT.

2.B.4.A. ~~(S//NF)~~ (b)(1)1.4a

(b)(1)1.4a

(b)(1)1.4a

2.B.4.B. ~~(S)~~ (b)(1)1.4a

(b)(1)1.4a

HTTPS://PORTAL.AFRICOM.SMIL.MIL (b)(6)

2.B.4.C. ~~(U)~~ PRIMARY COORDINATION WILL BE CONDUCTED VIA JWICS VTC.

2.B.4.D. ~~(U)~~

2.B.4.E. ~~(U)~~

2.B.4.F. ~~(U)~~

2.B.4.G. ~~(U)~~

2.B.4.H. ~~(U)~~

2.B.4.I. ~~(U)~~

2.B.4.J. ~~(U)~~

(b)(3)/(b)(6)

2.B.5. ~~(S//NF)~~ (b)(1)1.4a

(b)(1)1.4a

2.B.5.1. ~~(S//NF)~~ (b)(1)1.4a

(b)(1)1.4a

2.B.5.2. ~~(S//NF)~~ (b)(1)1.4a

(b)(1)1.4a

3. ~~(S)~~ (b)(1)1.4a(b)(3)/(b)(6)

(b)(1)1.4a

CLASSIFIED BY: (b)(3)/(b)(6) J3, USAFRICOM

REASON: 1.4A

DECLASSIFY ON: 12 **HHHH**ZSEP12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et
al.,

Defendants.

Case No. 1:14-CV-01589 (EGS)

DECLARATION OF ANTOINETTE B. SHINER,
INFORMATION REVIEW OFFICER FOR THE
LITIGATION INFORMATION REVIEW OFFICE
CENTRAL INTELLIGENCE AGENCY

I, ANTOINETTE B. SHINER, hereby declare and state:

I. INTRODUCTION

1. I am the Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO") at the Central Intelligence Agency ("CIA" or "Agency"). I have worked in the information review and release field since 2000.

A. Professional Background

2. Prior to becoming the IRO for LIRO, I served as the IRO for the Directorate of Support ("DS") for over sixteen months. In that capacity, I was responsible for making classification and release determinations for information originating within the DS. Prior to that, I was the Deputy IRO for the Director's Area of the CIA ("DIR Area") for over three

years. In that role, I was responsible for making classification and release determinations for information originating within the DIR Area. Before assuming that role, I was a reviewer in the DS for seven months, where I performed research and provided input and recommendations on classification and release decisions. Prior to that position, I worked in the Public Information Program Division ("PIPD") within the Information Management Services ("IMS") Group for over ten years engaged in all aspects of FOIA case management.

3. I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010). This means that I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of Executive Order 13526 and applicable regulations.

4. Among other things, I am responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a.

B. Purpose

5. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA requests. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. I am submitting this declaration in support of the Motion for Summary Judgment to be filed by the United States Department of Justice in this proceeding.

6. The purpose of this Declaration is to explain and justify, to the greatest extent possible on the public record, the CIA's actions in responding to Plaintiffs' FOIA requests in this action. Part II of this Declaration chronicles Plaintiffs' FOIA requests and the CIA's responses in this case; Part III identifies the three issues Plaintiffs take with CIA's actions and responses in this case; and Parts IV-VI address in turn each purported issue.

II. BACKGROUND

7. This matter concerns two different, yet related, FOIA requests from Plaintiffs to CIA. The first FOIA request is dated 24 February 2014 ("February FOIA Request") and the second request is dated 1 October 2014 ("October FOIA Request").

A. February FOIA Request

8. Plaintiffs' February FOIA Request sought several categories of records pertaining to the September 2012 terrorist

attack in Benghazi, Libya and the CIA's response to that attack. A true and correct copy of the February FOIA Request is attached as Exhibit "A".

9. By letter dated 14 April 2014, the CIA acknowledged receipt of Plaintiffs' February FOIA request and assigned it the reference number F-2014-00953. A true and correct copy of this letter is attached as Exhibit "B".

10. By letter dated 5 August 2014, Plaintiffs withdrew three of their requests--specifically, item numbers 7, 8, and 10 of the February FOIA Request. A true and correct copy of this letter is attached as Exhibit "C".

11. By letter dated 18 September 2014, the CIA sent Plaintiffs an update regarding their February FOIA Request. In this letter, the CIA declined to process certain portions of Plaintiffs' February FOIA Request, which fell under the auspices of another federal agency. A true and correct copy of this letter is attached as Exhibit "D".

12. On 19 September 2014, Plaintiffs filed a complaint in this Court naming CIA as a defendant. Plaintiffs subsequently amended their complaint on 12 January 2015 and 25 June 2015. Defendants responded to Plaintiffs' Second Amended Complaint on 13 July 2015.

13. By letter dated 29 September 2014, Plaintiffs appealed certain of the CIA's denials regarding the February FOIA

Request. A true and correct copy of this letter is attached as Exhibit "E".

14. By motion filed on 22 July 2016, Plaintiffs limited the February FOIA Request to items 3, 5, 6, and 16 only and narrowed the scope of items 3, 5, and 6. See Plaintiffs' Unopposed Motion to Lift Partial Stay Against CIA, ECF No. 55.

15. By letter dated 28 February 2017, the CIA provided Plaintiffs with an update regarding the February FOIA Request and made a partial production of documents. A true and correct copy of this letter is attached as Exhibit "F".

16. By letter dated 3 March 2017, the CIA made a final production responsive to the remaining items in the February FOIA Request. A true and correct copy of this letter is attached as Exhibit "G".

B. October FOIA Request

17. In addition to the February FOIA Request described above, Plaintiffs submitted a different, yet related, FOIA request dated 1 October 2014. The October FOIA Request contains two items.

18. First, it requests "[a]ny and all reports, memoranda, correspondence, maps, diagrams, charts, printouts . . . regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12,

2012 attacks in Benghazi, Libya, including but not limited to records in possession of the CIA Office of Inspector General.”

19. Second, the October FOIA request seeks records generated in March of 2011 pertaining to Colonel Muammar Gaddafi’s “expressed interest in a truce and possible abdication and exile out of Libya, by or to: (a) Head of Qaddafi’s personal security General Abdulqader Yusef Dibri; (b) Rear Admiral (ret.) Chuck Kubic; (c) AFRICOM personnel . . . [and] (d) The CIA.” A true and correct copy of the October FOIA Request is attached as Exhibit “H”.

20. By letter dated 3 November 2014, the CIA acknowledged receipt of the October FOIA Request and assigned it a reference number of F-2015-00060. A true and correct copy of this letter is attached as Exhibit “I”.

21. By letter dated 30 September 2015, the CIA stated that it completed a thorough search for documents responsive to Item 1, which yielded a search result of twenty documents. The CIA stated that it would produce eight documents in redacted form but that the remaining twelve documents must be denied in their entirety on the basis of FOIA exemptions (b) (1), (b) (3), (b) (5), (b) (6), and (b) (7).

22. With respect to Items 2(a) and (d) of the October FOIA Request, the CIA’s letter states that “in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither

confirm nor deny the existence or nonexistence of records responsive to your request." The letter further explains that the fact of the existence or nonexistence of the requested records is currently and properly classified and relates to intelligence sources and methods information that is protected from disclosure by section 6 of the CIA Act of 1949 and section 102(A)(i)(1) of the National Security Act of 1947. The letter also notes that Plaintiffs should consider this portion of the response a denial of their request pursuant to FOIA exemptions (b)(1) and (b)(3). Lastly, the letter states that Items 2(b) and (c) of the October FOIA Request fall under the auspices of the Department of Defense. A true and correct copy of the 30 September 2015 letter is attached as Exhibit "J".

III. PLAINTIFFS' REMAINING CHALLENGES

23. Plaintiffs challenge three aspects of CIA's actions and/or responses to items from both the February and October FOIA Requests. See Joint Motion to Amend Briefing Schedule, ECF No. 65.

1. Plaintiffs' Challenge Regarding the Adequacy of CIA's Search for Records Responsive to Items 5 and 6 of the February FOIA Request.

24. Plaintiffs intend to challenge the adequacy of CIA's search for records in response to Plaintiffs' request for "[a]ll records of CIA Director David Petraeus' [and Deputy CIA Director Michael Morell's] actions and communications for the 24-hour

period beginning when first notified that the Benghazi Mission was under attack.” ECF No. 55 at 2; see *id.* at 2-3 (narrowing Plaintiffs’ original request to “omit ‘telephone logs or bills’ and ‘records generated by anyone about’ the actions and communications,” leaving the scope of the search to comprise “[a]ll records *generated by*” the two individuals within the specified time period) (quoting Ex. A at 3) (emphasis added).

2. Plaintiffs’ Challenge to CIA’s Reliance on Certain FOIA Exemptions Withholdings in CIA’s Response to the October FOIA Request.

25. Plaintiffs intend to challenge the CIA’s redactions of certain Office of Inspector General (“OIG”) documents (“IG Documents”)¹ responsive to item 1 of Plaintiffs’ October FOIA Request. Specifically, Plaintiffs take issue with certain redactions made prior to release of a response letter to the U.S. Senate from the CIA Inspector General, with attachments that include comments regarding the Benghazi attacks.

3. Plaintiffs’ Challenge to CIA’s *Glomar* Assertion in its Response to the October FOIA Request.

26. Finally, Plaintiffs intend to challenge the CIA’s *Glomar* response with respect to Items 2(a) and (d) of the October FOIA Request, which called for communications purportedly generated in March 2011 regarding Colonel Muammar Gaddafi.

¹ The IG Documents at issue are identified as document number C06354620.

27. The remaining sections of this declaration address the details surrounding these three issues raised by Plaintiffs.

IV. CIA'S SEARCH FOR DIRECTOR PETRAEUS' AND DEPUTY DIRECTOR MORELL'S RECORDS WAS REASONABLE AND ADEQUATE.

28. In searching for documents responsive to this request, as narrowed, CIA conducted an exhaustive electronic and hard copy search for responsive records. Indeed, CIA went beyond the parameters of Plaintiffs' request for these records: although Plaintiffs sought records for a 24-hour period, in order to ensure an adequate search, CIA determined a 30-hour period of time would be more appropriate in order to avoid missing records likely to be responsive to Plaintiffs' underlying request. CIA personnel conducted a document-by-document review of the search results to determine responsiveness and proceeded to process such documents for appropriate release. Note that Plaintiffs are challenging only the reasonableness of this search and not the disposition of responsive documents. As noted in Section III, *supra*, the narrowed request sought records – to include email, memoranda, and notes – generated by Director Petraeus and Deputy Director Morell during the requested time period.

29. CIA completed a search for records responsive to items 5 and 6 of the February FOIA Request, as narrowed, in the locations reasonably expected to contain them. Information management professionals within IMS directed searches of the

electronic mailboxes – both classified and unclassified – of Director Petraeus and Deputy Director Morell for the relevant time period. In addition, IMS conducted searches of multiple databases within the Director's Area in which other records generated by Director Petraeus and Deputy Director Morell would be found, including databases containing hand-written notes and memoranda intended for either internal or external audiences. IMS also directed a search of the Office of Congressional Affairs. In the course of these searches, CIA personnel included all relevant office databases and archival records deemed likely to contain responsive records.

30. In light of the narrow time period applicable to items 5 and 6 of the February FOIA request, CIA personnel searched *all* email sent by Director Petraeus and *all* email sent by Deputy Director Morell between 3:40pm Eastern Time on September 11, 2012 (the day of the Benghazi attack) and 9:40pm Eastern Time on September 12, 2012.² CIA personnel utilized keyword searches for the database searches, including broad search terms such as relevant titles (e.g., Director), names (e.g., Petraeus), locations (e.g., Benghazi), facilities (e.g., annex), and actions (e.g., attack).

² A 30-hour window of time, rather than the requested 24-hour window, was employed due to the uncertainty as to when exactly Director Petraeus and Deputy Director Morell were first notified of the Benghazi attack. The 30-hour window begins at the time the attack began.

31. In sum, CIA personnel conducted a very thorough search that was reasonably calculated to uncover all documents relevant to items 5 and 6 of the February FOIA Request, as narrowed.

V. CIA PROPERLY REDACTED PORTIONS OF THE IG DOCUMENTS PURSUANT TO MULTIPLE FOIA EXEMPTIONS.

32. In evaluating the IG Documents, the CIA conducted a page-by-page and line-by-line review, and released all reasonably segregable, non-exempt information. After reviewing the records at issue, I have determined that no additional information may be released without jeopardizing classified, statutorily protected, or privileged information that falls within the scope of one or more FOIA exemptions.

A. Exemption (b) (1)

33. Exemption (b) (1) provides that the FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b) (1). The IG Documents include specific and detailed information concerning the IG investigation and include sensitive and classified information regarding Agency personnel and activities.³ Thus, as explained below, the exemption (b) (1) withholdings in the IG Documents at

³ See, e.g., IG Documents (C06354620) at pages 5, 8, and 11.

issue satisfy the procedural and the substantive requirements of Executive Order 13526, which governs classification. See E.O. 13526 § 1.1(a), § 1.4(c).

34. Section 1.1(a) of Executive Order 13526 provides that information may be originally classified under the terms of this order if the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage. The Executive Order also mandates that records be properly marked and requires that records not be classified for an improper purpose.

(a) Original classification authority. Pursuant to a written delegation of authority in accordance with Executive Order 13526, I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification decisions. I have determined that

certain information in the IG Documents is currently and properly classified.

- (b) U.S. Government information. The information at issue is owned by the U.S. Government, was produced by or for the U.S. Government, and is under the control of the U.S. Government.
- (c) Classification categories in Section 1.4 of the Executive Order. Exemption (b)(1) is asserted in this case to protect information that concerns "intelligence activities (including covert action), [or] intelligence sources or methods" pursuant to section 1.4(c) of Executive Order 13526.
- (d) Damage to the national security. I have determined that the CIA information contained in the records at issue is classified SECRET, because it constitutes information the unauthorized disclosure of which could reasonably be expected to result in serious damage to the national security.
- (e) Proper purpose. With respect to the information for which exemption (b)(1) is asserted in this case, I have determined that this information has not been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or

delay the release of information that does not require protection in the interests of national security.

(f) Marking. The documents are properly marked in accordance with section 1.6 of the Executive Order.

35. In sum, I have determined that information withheld pursuant to exemption (b)(1) has been properly withheld because its disclosure could identify CIA sources, methods, and activities. The redacted information includes code words, locations, names of covert personnel, as well as references to classified Agency programs, functions, assets, and activities unrelated to the September 2012 attacks.

36. *Code Words*. As mentioned, some of the redacted information consists of code words. The use of code words is an intelligence method whereby words and letter codes are substituted for actual names, identities, or programs in order to protect intelligence sources and methods. Specifically, the CIA and other federal agencies use code words in cables and other correspondence to disguise the true name of a person or entity of operational intelligence interest, such as a source, a field installation, or a covert program.

37. When obtained and matched to other information, code words possess a great deal of meaning for someone able to fit them into the proper framework. For example, the reader of a message is better able to assess the value of its contents if

the reader can identify a source or an intelligence activity by the code word. By using these code words, the CIA and other federal agencies add an extra measure of security, minimizing the damage that would flow from an unauthorized disclosure of intelligence information. The disclosure of code words – especially in context or in the aggregate – can permit foreign intelligence services and other groups to fit disparate pieces of information together to discern or deduce the identity of the source or nature of the project or location for which the code word stands, thereby compromising intelligence operations and impairing the national security of the United States.

38. *Covert Personnel.* Some of the redacted information contains the names of covert CIA personnel.⁴ The CIA considers the identities of its undercover employees and their activities to constitute intelligence sources and methods. In order to carry out its mission of gathering and disseminating intelligence, the CIA places certain employees undercover to protect the fact, nature, and details of the Agency's interest in foreign activities as well as the intelligence sources and methods employed to assist in those activities. Disclosing the identity of a covert employee could expose the intelligence activities with which the employee has been involved and the

⁴ See, e.g., IG Documents (C06354620) at page 11.

sources with whom the employee has had contact. Additionally, disclosing the identity of a covert employee could jeopardize the safety of the employee, his or her family, his or her sources, and even other persons with whom he or she has had contact.

39. As such, disclosure of this information could reasonably be expected to result in serious damage to national security.

B. Exemption (b) (3)

40. Exemption (b) (3) protects information that is specifically exempted from disclosure by statute. To justify withholding under exemption (b) (3), a statute must either (i) require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establish particular criteria for withholding or refer to particular types of matters to be withheld. 5 U.S.C. § 552(b) (3).

41. Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 (the "CIA Act"), provides that the CIA shall be exempted from the provisions of "any other law" (in this case, FOIA) which requires the publication or disclosure of, the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. Accordingly, under Section 6, the CIA is exempt from disclosing information relating to employees' names and personal

identifiers. The CIA Act therefore constitutes a federal statute that "establish[es] particular criteria for withholding or refer[s] to particular types of matters to be withheld" and is well-established as a qualifying withholding statute under exemption (b) (3). 5 U.S.C. § 552(b) (3). The documents at issue contain information concerning the organization, names, or official titles of personnel employed by the CIA, the disclosure of which the CIA Act expressly prohibits.

42. Although the CIA Act's exemptions from disclosure of certain information do not expressly require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure, the withheld information that is covered by the CIA Act similarly relates to intelligence activities, sources, and methods covered by the Executive Order for classified information. Therefore, the damage to national security that reasonably could be expected to result from the unauthorized disclosure of information relating to the identities and functions of CIA personnel is co-extensive with the damage that reasonably could be expected to result from the unauthorized disclosure of classified information.

43. Additionally, Section 102A(i) (1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024 (the "National Security Act"), which provides that the Director of

National Intelligence ("DNI") "shall protect intelligence sources and methods from unauthorized disclosure," applies to certain responsive records. As an initial matter, the National Security Act is likewise a well-recognized exemption (b) (3) withholding statute that both refers to particular types of matters to be withheld, and "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." 5 U.S.C. § 552(b) (3). Under the direction of the DNI pursuant to section 102A of the National Security Act, as amended, and in accordance with section 6 of the CIA Act of 1949, as amended, and sections 1.6(b) and 1.6(d) of Executive Order 12333,⁵ the Director of the CIA is responsible for protecting CIA intelligence sources and methods from unauthorized disclosure. Accordingly, the CIA relies on the National Security Act as well as the CIA Act to withhold information that would reveal intelligence sources and methods and their application by Agency personnel.

44. The National Security Act's statutory requirement to protect intelligence sources and methods does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized

⁵ Section 1.6(d) of Executive Order 12333, as amended by Executive Order 13470 (July 30, 2008) requires the Director of the Central Intelligence Agency to "[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure"

disclosure. Nonetheless, in this case, the protections of the National Security Act apply to the same information for which exemption (b)(1) was asserted to protect code words and names of covert personnel. As indicated above, although no harm rationale is required, the release of this information is reasonably likely to significantly impair the CIA's ability to carry out its core missions of gathering and analyzing intelligence.

C. Exemption (b)(6)

45. I have also determined that certain information must be withheld pursuant to FOIA exemption (b)(6). 5 U.S.C.

§ 552(b)(6) exempts from disclosure:

personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

46. Therefore, in addition to withholding the names of CIA officers pursuant to the CIA Act, the CIA has also asserted exemption (b)(6) to withhold CIA officers' and contractors' names. The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy and has been properly withheld under exemption (b)(6).

47. When withholding information pursuant to exemption (b)(6) the Agency must balance the privacy interests of the individuals mentioned in these records against any public

interest in disclosure. In asserting these exemptions, each item of information was examined to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. In each instance where information was withheld, it was determined that individual privacy rights outweighed the public interest.

48. The publicity associated with the release of a CIA employee's identity in connection with a particular investigation could trigger hostility towards that particular individual and potentially jeopardize ongoing and future investigations by the IG. As a result, they maintain substantial privacy interest in not having their identities disclosed.⁶ In contrast, there is no public interest to be served by disclosing the identities of the CIA personnel to the public because their identities would not significantly increase the public's understanding of the CIA's operations and activities. Thus, disclosure of this information would constitute a clearly unwarranted invasion of these employees' personal privacy.

⁶ Indeed, the Agency took steps to redact personal identifying information both in an internal communication from the IG to Director Petraeus and in the IG's response to the U.S. Senate Select Committee on Intelligence. See IG Documents (C06354620) at 1 ("I have redacted any identifying information regarding the officer"), 7 ("I have redacted the officer's identity").

49. The CIA concluded that the information should be withheld under exemption (b) (6) and determined that the individual's privacy interests were not outweighed by any public interest in disclosure. As noted above, CIA conducted a page-by-page and line-by-line review to identify all non-exempt information, and every effort has been made to release all segregable information contained in these records without invading the privacy interests of these individuals.

D. Exemption (b) (7)

50. Certain records and information generated by CIA's OIG were "compiled for law enforcement purposes" within the meaning of Exemption 7.

51. Exemption 7 protects:

Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy [or] (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institute which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

52. With respect to exemption (b) (7) (C), much of the analysis is duplicative of exemption (b) (6), which is discussed above. Although the balancing test for exemption (b) (6) uses a

"would constitute a clearly unwarranted invasion of personal privacy" standard, and the test for (b) (7) (C) uses the lower standard of "could reasonably be expected to constitute an unwarranted invasion of personal privacy," the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public's interest in disclosure under the analysis of both exemptions. Therefore, for additional analysis of exemption (b) (7) (C), please refer to Part V-C above.

53. With respect to exemption (b) (7) (D), the CIA has asserted this exemption to protect information provided by confidential sources to the OIG in the course of its investigation.

54. The OIG is charged with providing objective and independent oversight into the programs and operations of the CIA. Here, the OIG opened an investigation pertaining to the September 2012 attacks in Benghazi, Libya. As a matter of Agency policy, the OIG does not disclose the identities of persons it interviews⁷ or the substance of their statements unless such disclosure is determined to be necessary for the full reporting of a matter or the fulfillment of other OIG or

⁷Moreover, where interviewees are CIA employees, as was the case here, the CIA Act precludes disclosure of the identities of the interviewed employee as well as referenced names and titles of other Agency employees. See *supra*, ¶ 41.

Agency responsibilities. Pursuant to Agency policy, all interviewees were under an express or implied promise of confidentiality. The OIG shared this information to the extent necessary for law enforcement purposes. These documents contain details that would tend to identify the parties by virtue of their position in the Agency or their role in, or knowledge of, the underlying events.

55. Exemption (b) (7) (D) requires no showing of harm, or balancing of privacy and public interests. However, the performance of the OIG's mission to conduct independent investigations is heavily reliant upon its access to unfiltered information provided by confidential sources. Disclosure of the sources and the information provided would severely compromise the OIG's ability to perform those duties. Accordingly, CIA has asserted exemption (b) (7) (D) to protect OIG investigators' interview notes and memoranda.

56. Therefore, for the reasons set forth above, the IG Documents are withheld in part pursuant to exemptions (b) (1) and (b) (3), and, to the extent that they are personally-identifying, exemptions (b) (6) and (b) (7) (C). These documents are further withheld pursuant to exemption (b) (7) (D).

VI. CIA'S GLOMAR DETERMINATION IS PROPER.

57. Section 3.6(a) of Executive Order 13526 provides the authority for the CIA to issue a response neither confirming nor

denying the existence or nonexistence of requested records, also known as a "Glomar" response, in response to requests for information submitted pursuant to the FOIA. Specifically, Section 3.6(a) provides that: "An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors."

58. Plaintiffs' FOIA requests present just such a circumstance, wherein the mere confirmation or denial of the existence or nonexistence of responsive records would itself reveal a classified fact - namely, whether CIA has or had an intelligence interest in Colonel Muammar Gaddafi's possible abdication, exile, or truce, as well as any intelligence interest in General Abdulqader Yusef Dibri as it pertains to Gaddafi's possible abdication, exile, or truce. Therefore, with respect to Items 2(a) and (d) of Plaintiffs' October FOIA Request, CIA properly issued a Glomar response.

59. The CIA is charged with carrying out a number of important functions on behalf of the United States, which include, among other activities, collecting and analyzing foreign intelligence and counterintelligence. A defining characteristic of the CIA's intelligence activities is that they are typically carried out through clandestine means, and therefore, they must remain secret in order to be effective. In

the context of FOIA, this means that the CIA must carefully evaluate whether its response to a particular FOIA request could jeopardize the clandestine nature of its intelligence activities or otherwise reveal previously undisclosed intelligence information, including but not limited to, its sources, capabilities, authorities, interests, strengths, weaknesses, and resources.

60. In a typical scenario, a FOIA requester submits a request to the CIA for information on a particular subject and the CIA conducts a search of records subject to the FOIA reasonably calculated to uncover responsive records, and advises whether responsive records were located. If records are located, the CIA provides the non-exempt records or reasonably segregable non-exempt portions of records. In this typical circumstance, the CIA's response - either to provide or not provide the records sought - actually confirms the existence or nonexistence of CIA records on the subject of the request. Typically, this confirmation neither threatens the national security nor reveals intelligence sources and methods because the mere fact that the CIA possesses or does not possess records is not itself a classified fact.

61. In other cases, the confirmation or denial of the existence or nonexistence of other responsive records would itself reveal a classified fact: namely, whether the CIA has an

intelligence interest in, or clandestine connection to, a particular individual or activity. In those cases, the CIA asserts a Glomar response because the existence or nonexistence of CIA records responsive to the request is a currently and properly classified fact, the disclosure of which reasonably could be expected to cause damage to the national security.

62. Thus, acknowledging the existence or nonexistence of such records necessarily would disclose at minimum the CIA's association with or intelligence interest, or lack thereof, in the expressed interest in a truce or possible abdication and exile out of Libya of Muammar Gaddafi. Disclosure of whether CIA was involved or not in these alleged specific intelligence activities and interests would reveal information concerning the reach, locations, and capabilities or limitations of CIA's clandestine intelligence activities and operations.

63. The release of such information would provide CIA's adversaries with insight on how the CIA might or might not choose to focus its intelligence activities, including, for example, whether the CIA has or had any affiliation with Muammar Gaddafi or Abdulqader Yusef Dibri.

64. Additionally, if the CIA were to provide responses either confirming or denying that it possesses records concerning any particular individual, in this case Muammar Gaddafi or Abdulqader Yusef Dibri, these admissions, in addition

to revealing information about the CIA's specific intelligence interests or activities, would endanger human intelligence sources. Such responses, therefore, reasonably could be expected to cause serious damage to U.S. national security.

65. To be credible and effective, the CIA must assert a Glomar response consistently in all cases where the existence or nonexistence of responsive records is itself a classified fact, including in those cases in which the CIA does not possess records responsive to a particular request. If the CIA were to invoke a Glomar response only when it actually possessed responsive records, the Glomar response would be interpreted as an admission that responsive records exist. This practice would reveal the very information that the CIA must protect in the interest of national security.

66. Therefore, the CIA asserted Glomar responses to Item Numbers 2(a) and (d) of Plaintiffs' October FOIA Request because the existence or nonexistence of CIA records responsive to these requests is a currently and properly classified fact, the disclosure of which reasonably could be expected to cause damage to the national security. The fact of the existence or nonexistence of records responsive to Plaintiffs' FOIA request is currently and properly exempt from release under FOIA exemptions (b) (1) and (b) (3).

67. With respect to exemption (b) (1) and consistent with sections 1.1(a) and 3.6(a) of Executive Order 13526, I have determined that the existence or nonexistence of the requested records is a currently and properly classified fact that concerns "intelligence activities" and "intelligence sources and methods" under section 1.4(c) of the Executive Order; the requested records are owned by and under the control of the U.S. Government; and the unauthorized disclosure of the existence or nonexistence of requested records reasonably could be expected to result in serious damage to national security.

68. My determination that the existence or nonexistence of the requested records is classified has not been made to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

69. With respect to exemption (b) (3), confirming or denying the existence or nonexistence of records responsive to Item Numbers 2(a) and (d) of Plaintiffs' October FOIA Request would reveal information concerning intelligence activities and interests that the National Security Act and CIA Act require CIA to protect.

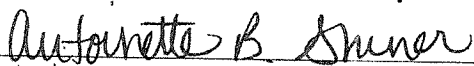
70. Accordingly, the fact of the existence or nonexistence of records that would reflect a classified connection to the CIA is exempt from disclosure under FOIA exemption (b)(3) pursuant to both the National Security Act and the CIA Act. Although these statutes do not require the CIA to identify and describe the damage to the national security that reasonably could be expected to result should the CIA confirm or deny the existence or nonexistence of records reflecting a classified connection between the CIA and the subject of the FOIA request, I nonetheless refer the Court to the paragraphs above for a description of the damage to the national security should anything other than a Glomar response be required of the CIA in this instance.

71. In sum, for CIA to officially confirm or deny the existence or nonexistence of the requested records would reveal classified national security information that concerns intelligence activities, and intelligence sources and methods. I have determined that such a revelation could be expected to cause serious damage to U.S. national security. Accordingly, I have determined that the fact of the existence or nonexistence of records responsive to Items 2(a) and (d) of Plaintiffs' October FOIA Request is currently and properly classified and exempt from release under FOIA exemptions (b)(1) and (b)(3).

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of May 2018.



Antoinette B. Shiner
Information Review Officer
Litigation Information Review Office
Central Intelligence Agency

EXHIBIT A

F-2014-00953

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20008
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

February 24, 2014

By Certified Mail — Return Receipt Requested
Article Number 7010 3090 0000 0316 6512

FOIA REQUEST

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

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA."

FOIA Requesters. I write on behalf of my clients, Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

FOIA Requests. These requests are for the following records of activities in Libya, in the care, custody or control of the Central Intelligence Agency, regardless of the source of the records:

1. All records of whatsoever nature regarding (1) the Benghazi Special Mission Compound or "Ambassador's compound" or "Benghazi Mission" and (2) the CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi Mission and the CIA Annex. Responsive records include those that disclose:

MAR 04 2014

- (1) The comings and goings of all persons, whether civilian, military, American or foreign, including any non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi Mission;
 - (2) The descriptions and inventories of all weapons brought into the Annex, including small arms, ammunition, and man-portable air defense systems, or Manpads, and missiles;
 - (3) The sources of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex,
 - (5) The intended destinations and recipients of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of arms out of Libya, bound for Syria, through Turkey, Qatar, Saudi Arabia, Qatar, or Jordan;
 - (6) All communication and cryptographic equipment at the CIA Annex and Benghazi Mission;
 - (7) The weaponry, communication, cryptographic equipment, and electronic or paper files, left in the Annex and Benghazi Mission when US personnel abandoned these facilities on September 11th and 12th, 2012;
 - (8) Information about the weapons recovered from fallen attackers at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the identities and affiliations of any of those fallen fighters as well as the disposition of their bodies, alive or dead; and
 - (10) CIA situation reports, or "sitreps," sent, including on September 11th, 12th, and 13th.
2. Any and all videos depicting the United States Mission in Benghazi, Libya (including the Special Mission Compound and the CIA Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.
4. All records of radio communications emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. All records of CIA Director David Petraeus' actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Director Petraeus, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Director's actions and communications.
6. All records of Deputy CIA Director Michael Morell actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Deputy CIA Director Morell, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Deputy Director's actions and communications.
7. Any records reflecting the time, and substance, of the President's first notification that the Benghazi Mission was under attack, and his actions, and communications, for the next 24 hours.
8. All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General.

9. All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.
10. All correspondence to or from Ambassador Stevens on September 10th and 11th, 2012.
11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:
 - **Ahmed Abu Khattala**, a commander of the Libyan Ansar al-Shariah militia group
 - **Mustafa Abdul Jalil**, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
 - **Mahmoud Jibril**, Interim Prime Minister of Libya and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
 - **Wissam bin Hamid**, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
 - **Abdelhakim Belhadj** (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - **Ismael al-Sallabi** (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - **Ali al-Sallabi** (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
 - **Mohammad al-Sallabi**, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s
 - **Abu Sufian bin Qumu**, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.

12. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records, shared with members of Congress, regarding collection, storage, transportation of arms and equipment in Libya.
13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces.
14. All records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi.
15. Records of the video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack. For your reference, the following is an excerpt from the December 30, 2012, Senate Committee On Homeland Security And Governmental Affairs, "Flashing Red: A Special Report On The Terrorist Attack At Benghazi:"

On September 15th and 16th, officials from the FBI conducted face-to-face interviews in Germany of the U.S. personnel who had been on the compound in Benghazi during the attack. The U.S. personnel who were interviewed saw no indications that there had been a protest prior to the attack. Information from those interviews was shared on a secure video teleconference on the afternoon of the 16th with FBI and other IC officials in Washington; it is unclear whether the question of whether a protest took place was discussed during this video conference.

16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See generally FOIA Update Vol. XVII, No. 4, 1996.

Request for Waiver of Search and Review Fees. As a representative of the news media, Accuracy in Media, Inc. ("AIM"), submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). In July of 2007, the CIA adopted new regulations. 32 C.F.R. § 1900.02, *Definitions*, states, in part:

- (3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 40 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or 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." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

To meet FOIA's "member of the news media" status, a requestor must "use[] its editorial skills to turn the raw materials into a distinct work." *Nat'l Sec. Archive*, 880 F.2d at 1387. To be considered a representative of the news media for fee purposes, "a requestor must establish that it has a firm intent to disseminate, rather than merely make available, the requested information." *Judicial Watch*, 185 F. Supp. 2d at 60 (citation and internal quotation marks omitted).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested, is beyond question. Accuracy in Media Articles on the subject include "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghaziigate," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. See, for examples, "Navy SEAL: There's guilt in this administration," by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi" (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Neither AIM nor the individuals identified above have any "commercial interest" that would be furthered by the disclosure of the requested information, as that term has been interpreted by the courts under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... 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."

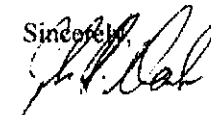
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, in accordance with AIM's news dissemination function. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Release of the information will contribute to an understanding of government operations or activities regarding the Benghazi issue, as compared with awareness prior to the disclosure. Thus, the requesters provide an adequate showing of their concrete plans to disseminate the requested information, and adequately demonstrate how disclosure of the requested documents meets the requirements for a public interest fee waiver.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Accuracy in Media, Inc.
4350 East West Highway
Suite 555
Bethesda, MD 20814-4582



7010 3070 0000 0316 6512



FOIA REQUEST

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

INSPECTED
FEB 28 2018
INSPECTED

RETURN RECEIPT
REQUESTED

20505

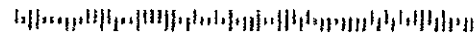


EXHIBIT B

Central Intelligence Agency



Washington, D.C. 20505

14 April 2014

John H. Clarke, Esq.
1629 K Street, NW
Suite 300
Washington, DC 20006

Reference: F-2014-00953

Dear Mr. Clarke:

On 4 March 2014, the office of the Information and Privacy Coordinator received your 24 February 2014 Freedom of Information Act (FOIA) request, submitted on behalf of Accuracy in Media, Inc., "Citizens Commission on Benghazi," for:

- "1. All records of whatsoever nature regarding (1) the Benghazi Special Mission Compound or 'Ambassador's compound' or 'Benghazi Mission' and (2) the CIA Annex for the time period of January 1st 2011, through September 30, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi Mission and the CIA Annex. Responsive records include those that disclose:
 - (1) The comings and goings of all persons, whether civilian, military, American or foreign, including any non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi Mission;
 - (2) The descriptions and inventories of all weapons brought into the Annex, including small arms, ammunition, and man-portable air defense systems, or Manpads and missiles;
 - (3) The sources of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex.
 - (5) The intended destinations and recipients of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of arms out of Libya, bound for Syria, through Turkey, Qatar, Saudi Arabia, Qatar, or Jordan;
 - (6) All communication and cryptographic equipment at the CIA Annex and Benghazi Mission;

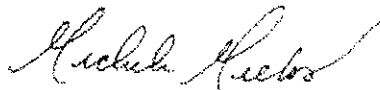
- (7) The weaponry, communication, cryptographic equipment, and electronic or paper files, left in the Annex and Benghazi Mission when US personnel abandoned these facilities on September 11th and 12th, 2012;
 - (8) Information about the weapons recovered from fallen attackers at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the identities and affiliations of any of those fallen fighters as well as the disposition of their bodies, alive or dead; and
 - (10) CIA situation reports, or 'sitreps,' sent, including on September 11th, 12th, and 13th.
2. Any and all videos depicting the United States Mission in Benghazi, Libya (including the Special Mission Compound and the CIA Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.
 3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.
 4. All records of radio communications emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
 5. All records of CIA Director David Petraeus' actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Director Petraeus, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Director's actions and communications.
 6. All records of Deputy CIA Director Michael Morell actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Deputy CIA Director Morell, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Deputy Director's actions and communications.

7. Any records reflecting the time, and substance, of the President's first notification that the Benghazi Mission was under attack, and his actions, and communications, for the next 24 hours.
8. All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General.
9. All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.
10. All correspondence to or from Ambassador Stevens on September 10th and 11th, 2012.
11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:
 - Ahmed Abu Khattala, a commander of the Libyan Ansar al-Shariah militia group
 - Mustafa Abdul Jalil, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
 - Mahmoud Jibril, Interim Prime Minister of Libya and Chair of the Executive Board of the Transnational Council from 5 March-23 October 2011
 - Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
 - Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - Ismael al-Sallabi (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
 - Mohammed al-Sallabi, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s

- Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.
12. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records, shared with members of Congress, regarding collection, storage, transportation of arms and equipment in Libya.
 13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces.
 14. All records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi.
 15. Records of the video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack...
 16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD."

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

Sincerely,



Michele Meeks
Information and Privacy Coordinator

EXHIBIT C

C06229257

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

August 5, 2014

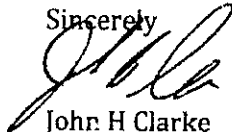
Ms. Michele Meeks
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

Re: February 24, 2014 FOIA Request
CIA Reference No. F-2014-00953
Acknowledgement of receipt: April 14, 2014
CIA denial of Expedited Processing: July 17, 2014
Administrative Appeal: July 25, 2014

Dear Ms Meeks:

Please note that the FOIA requesters hereby withdraw three of their requests, numbered seven, eight, and ten. Request 7 sought disclosure of "the President's first notification that the Benghazi Mission was under attack..." Request 8 sought disclosure of "records reflecting Ambassador Stevens' schedule on September 11, 2012," and Request 10 sought "correspondence to or from Ambassador Stevens on September 10th and 11th, 2012."

Thank you.

Sincerely

John H Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

AUG 12 2014

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

CAPITOL DISTRICT 2000/2008

05 AUG 2014 PM 2 L



Ms. Michele Meeks
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

SPECIAL
AUG 11 2014

20505

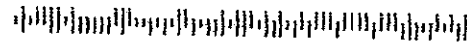


EXHIBIT D

Central Intelligence Agency



Washington, D.C. 20505

18 September 2014

John H. Clarke, Esquire
1629 K Street, NW
Suite 300
Washington, DC 20006

Reference: F-2014-00953

Dear Mr. Clarke:

This is further to our 17 July 2014 letter concerning your 24 February 2014 Freedom of Information Act (FOIA) request, submitted on behalf of Accuracy in Media, Inc. "Citizens Commission on Benghazi," for:

- "1. All records of whatsoever nature regarding (1) the Benghazi Special Mission Compound or 'Ambassador's compound' or 'Benghazi Mission' and (2) the CIA Annex for the time period of January 1st 2011, through September 30, 2012. This request is inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding the uses of the Benghazi Mission and the CIA Annex. Responsive records include those that disclose:
 - (1) The comings and goings of all persons, whether civilian, military, American or foreign, including any-non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi Mission;
 - (2) The descriptions and inventories of all weapons brought into the Annex, including small arms, ammunition, and man-portable air defense systems, or Manpads and missiles;
 - (3) The sources of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex,
 - (5) The intended destinations and recipients of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of arms out of Libya, bound for Syria, through Turkey, Qatar, Saudi Arabia, Qatar, or Jordan;
 - (6) All communication and cryptographic equipment at the CIA Annex and Benghazi Mission;
 - (7) The weaponry, communication, cryptographic equipment, and electronic or paper files, left in the Annex and Benghazi Mission when US personnel abandoned these facilities on September 11th and 12th, 2012;

- (8) Information about the weapons recovered from fallen attackers at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the identities and affiliations of any of those fallen fighters as well as the disposition of their bodies, alive or dead; and
 - (10) CIA situation reports, or 'sitreps,' sent, including on September 11th, 12th, and 13th.
2. Any and all videos depicting the United States Mission in Benghazi, Libya (including the Special Mission Compound and the CIA Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.
3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.
4. All records of radio communications emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. All records of CIA Director David Petraeus' actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Director Petraeus, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Director's actions and communications.
6. All records of Deputy CIA Director Michael Morell actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:
 - (1) All records generated by Deputy CIA Director Morell, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the CIA Deputy Director's actions and communications.
7. Any records reflecting the time, and substance, of the President's first notification that the Benghazi Mission was under attack, and his actions, and communications, for the next 24 hours.

8. All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General.
9. All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.
10. All correspondence to or from Ambassador Stevens on September 10th and 11th, 2012.
11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:
 - Ahmed Abu Khattala, a commander of the Libyan Ansar al-Shariah militia group
 - Mustafa Abdul Jalil, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
 - Mahmoud Jabril, Interim Prime Minister of Libya and Chair of the Executive Board of the Transnational Council from 5 March-23 October 2011
 - Wissam bin Hamid, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party and veteran jihad fighter of Iraq and Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
 - Abdelhakim Belhadj (aka Abdallah al Sadeq), veteran jihad fighter of Iraq and Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - Ismael al-Sallabi (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - Ali al-Sallabi (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
 - Mohammed al-Sallibi, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s
 - Abu Sufian bin Qumu, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.

12. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records, shared with members of Congress, regarding collection, storage, transportation of arms and equipment in Libya.
13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces.
14. All records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi.
15. Records of the video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack...
16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD."

Per your earlier 5 August 2014 letter, we will not conduct a search for Items 7, 8, and 10 of your request.

With regard to Part 1 of Item 2 of your request, we are currently processing a request for the same records from another requester. Once our research and review of that request are completed, we will forward to you the same CIA-originated records, if released. We have a substantial backlog, which we are working diligently to reduce, so we are unable to estimate when we will complete our review. However, we will notify you once the processing of the original request is complete.

With regard to those portions of Item 1 and Part 2 of Item 2 of your request pertaining to the "Benghazi Special Mission Compound," or "Ambassador's compound," or "Benghazi Mission," and Items 4, 9, and 11 of your request, the information you seek would fall under the auspices of the Department of State. With regard to those portions of Items 12, 13, and 16 of your request pertaining to the Department of Defense "or other intelligence community records," the information you seek would fall under the auspices of the Department of Defense or those specific agencies within the intelligence community you are interested in. With regard to Item 14 of your request, the information you seek would fall under the auspices of the Department of Homeland Security. With regard to the portion of Item 15 of your request pertaining to the "FBI and other IC officials in Washington," the information you seek would fall under the auspices of the FBI or those specific agencies within the intelligence community you are interested in. Please be aware that the CIA is not authorized to release records held by other government agencies.

With regard to those portions of your request pertaining to the CIA annex and the remaining items of your request, the CIA Information Act, 50 U.S.C. § 431, as amended, exempts CIA operational files from the search, review, publication, and disclosure requirements of the FOIA. To the extent your request seeks information that is subject to the FOIA, we accept your request, and we will process it in accordance with the FOIA, 5 U.S.C. § 552, as amended. Unless you object, we will limit our search to CIA records up to and including the date the Agency starts its search. We have reviewed your request for a fee waiver and determined that it meets the standard. Therefore, we will charge no fees associated with processing your request.

The large number of FOIA requests CIA receives has created unavoidable delays making it unlikely that we can respond within the 20 working days the FOIA requires. You have the right to consider our honest appraisal as a denial of your request and you may appeal to the Agency Release Panel. A more practical approach would permit us to continue processing your request and respond to you as soon as we can. You will retain your appeal rights and, once you receive the results of our search, can appeal at that time if you wish. We will proceed on that basis unless you object.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks
Information and Privacy Coordinator

EXHIBIT E

C06248232

UNCLASSIFIED

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

September 29, 2014

FOIA APPEAL

Ms. Michele Meeks
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

Re: February 24, 2014 FOIA Request
September 18, 2014 Denial of FOIA Requests
Reference No. F-2014-00953

Dear Ms. Meeks:

This is an appeal of the captioned denial. Kindly note that on the morning of September 19, 2014, I filed a lawsuit seeking disclosure of the requested records. Your letter, dated September 18, was postmarked on the afternoon of September 19. Thus, unless CIA counsel asserts that plaintiffs failed to exhaust their administrative remedies, and the court holds that the lawsuit was filed only after you responded, this Administrative Appeal may be moot.

You wrote that, "[w]ith regard to those portions of Item 1 and Part 2 of Item 2 of your request pertaining to the 'Benghazi Special Mission Compound,' or 'Ambassador's compound,' or 'Benghazi Mission,' and Items 4, 9, and 11 of your request, the information you seek would fall under the auspices of the Department of State." Part 1 of Request 1 seeks various records of concerning the Special Mission Compound ("SMC"). Request 4 seeks production of radio communications emanating from the Compound's Tactical Operations Center of the SMC on September 11th and 12th, 2012. Request 9 seeks records concerning Ambassador Stevens' meetings on September 11, 2012. Request 11 seeks disclosure of records generated between January of 2007 and September 11, 2012, regarding meetings between Tripoli Embassy officials and one or nine named individuals.

OCT 06 2014

UNCLASSIFIED

Although much of this information sought does, in fact, fall under the auspices of the Department of State, the CIA is the proper Agency from which to seek disclosure. Because we believe that the SMC was established and maintained primarily to provide an excuse for CIA presence in Benghazi, we believe that the CIA is in possession of records sought in Request 1. We also believe that Ambassador Stevens' meetings on September 11 concerned CIA operations, and, so, the CIA would be the correct Agency from which to seek disclosure of records sought by Request 9. Similarly, because the meetings referenced in Request 11 were undertaken in furtherance of CIA operations to support Libyan rebels, the CIA, we believe, is in possession of records responsive to this Request.

Regarding Request 12, seeking disclosure of records shared with members of Congress regarding arms in Libya, Request 13 seeking intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces, and Request 16 for Non-Disclosure Agreements signed by survivors of the Benghazi attacks, you responded that these records "would fall under the auspices of the Department of Defense or those specific agencies within the intelligence community." We do not believe that this is so. We agree that "the CIA is not authorized to release records held by other government agencies." However, to the extent that the CIA is in possession of these records, they are properly the subject of a FOIA request, and CIA is required to coordinate with, or refer to, other agencies prior to disclosure.

In response to Request 14, seeking "John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi," you wrote that "the information you seek would fall under the auspices of the Department of Homeland Security." Although we do not agree, we hereby withdraw Request 14.

Regarding Request 15, seeking records of the "video teleconference on the afternoon of the September 16th, 2012, between the FBI and other IC officials in Washington, regarding FBI interviews with U.S. personnel who had been on the compounds in Benghazi during the attack," you wrote that "the information you seek would fall under the auspices of the FBI or those specific agencies within the intelligence community you are interested in," and that "the CIA is not authorized to release records held by other government agencies." Please be advised that the CIA is the "specific agenc[y] within the intelligence community... [that we] are interested in." And, again, to the extent that the CIA is in possession of these records, they are properly the subject of a FOIA request, and CIA is required to coordinate with, or refer to, other agencies prior to CIA disclosure.

UNCLASSIFIED

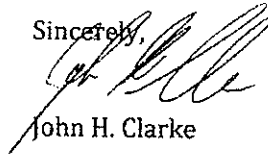
3

Lastly, you wrote that "[w]ith regard to those portions of your request pertaining to the CIA annex and the remaining items of your request, the CIA Information Act, 50 U.S.C. § 431, as amended, exempts CIA operational files from the search, review, publication, and disclosure requirements of the FOIA." While this statement is accurate, that statute, "Operational files of the Central Intelligence Agency," also contains exceptions. *See, e.g.*, 50 U.S.C. § 431(c)(3):

[E]xempted operational files shall continue to be subject to search and review for information concerning *** the specific subject matter of an investigation by the congressional intelligence committees, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of National Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

We believe that much of the information requested falls within one or more exceptions under 50 U.S.C. § 431.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

CAPITAL DISTRICT 200/208

29 SEP 2014 PM 11



FOIA APPEAL

Ms. Michele Meeks
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

INSPECTED
OCT 03 2014

20505

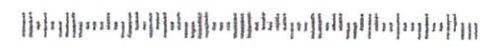


EXHIBIT F

Central Intelligence Agency



Washington, D.C. 20505

28 February 2017

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

Re: F-2014-00953; 14-cv-01589

Dear Mr. Clarke:

This letter is in response to the 24 February 2014 Freedom of Information Act (FOIA) request that you submitted on behalf of your client, Accuracy in Media, Inc., that was most recently narrowed in the Motion filed on 22 July 2016 to the following items:

“• Survivor’s accounts. Complaint ¶ 136:

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.

This request is narrowed to specify identify only Memorandum for the Record, prepared by the Deputy Chief of Base "Events of 11-12 SEP 2012 at Benghazi Base, Libya," September 19, 2012. That record is cited on page 5, footnote 13, of the January 15, 2014. U.S. Senate Select Committee on Intelligence Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012:

According to informal notes obtained from the CIA, the security team left for the Annex [sic] without the formal approval of the Chief of Base, see attachments to e-mail from CIA staff [redacted] to CIA staff [redacted] September 23, 2012. However, a Memorandum for the Record prepared by the Deputy Chief of Base specifically states that the Chief "authorized the move" and the Chief told the Committee: "We launched QRF [Quick Reaction Force] as soon as possible down to the State [Department] compound." Memorandum for the Record, "Events of 11 - 12 SEP 2012 at Benghazi Base, Libya," September 19, 2012, p. 1

- Contemporaneous records generated by CIA Director and Deputy Director. Complaint ¶ 136:

5, 6. All records of CIA Director David Petraeus" [and Deputy CIA Director Michael Morell's actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:

- (1) All records generated by Director Petraeus, [and Deputy Director Morell] including all emails, memoranda, or notes;
- (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
- (3) All records generated by anyone about the CIA Director's [and Deputy Director's] actions and communications.

These two items are narrowed to omit "telephone logs or bills" and "records generated by anyone about" the actions and communications.

Fourth item at issue

- Non-Disclosure Agreements. Complaint ¶ 136:

16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD."

We processed the request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the National Security Act, 50 U.S.C. § 3141, as amended.

We completed a thorough search for records responsive to the request and located sixty nine (69) responsive documents. At this time, we have determined that forty four (44) documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), and (b)(6). We have also determined that twenty three (23) documents must be denied in their entirety on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), and (b)(6). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, noted as exemption "(b)(3)CIAAct" on the enclosed documents, and/or Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1), noted as exemption "(b)(3)NatSecAct" on the enclosed documents. We are still coordinating the review of two (2) documents and will release those to you once all equity holders have responded.

Sincerely,



Allison Fong
Acting Information and Privacy Coordinator

Enclosures

EXHIBIT G

Central Intelligence Agency



Washington, D.C. 20505

3 March 2017

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

Re: F-2014-00953; 14-cv-01589

Dear Mr. Clarke:

This letter is a follow-up response to your 24 February 2014 Freedom of Information Act (FOIA) request that you submitted on behalf of your client, Accuracy in Media, Inc., that was most recently narrowed in the Motion filed on 22 July 2016 to the following items:

• Survivor's accounts. Complaint ¶ 136:

3. All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.

This request is narrowed to specify identify only Memorandum for the Record, prepared by the Deputy Chief of Base "Events of 11-12 SEP 2012 at Benghazi Base, Libya," September 19, 2012. That record is cited on page 5, footnote 13, of the January 15, 2014, U.S. Senate Select Committee on Intelligence Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012:

According to informal notes obtained from the CIA, the security team left for the Annex [sic] without the formal approval of the Chief of Base, see attachments to e-mail from CIA staff [redacted] to CIA staff [redacted] September 23, 2012. However, a Memorandum for the Record prepared by the Deputy Chief of Base specifically states that the Chief "authorized the move" and the Chief told the Committee: "We launched QRF [Quick Reaction Force] as soon as possible down to the State [Department] compound." Memorandum for the Record, "Events of 11 - 12 SEP 2012 at Benghazi Base, Libya," September 19, 2012, p. 1

- Contemporaneous records generated by CIA Director and Deputy Director.
Complaint ¶ 136:

5, 6. All records of CIA Director David Petraeus" [and Deputy CIA Director Michael Morell's actions and communications for the 24-hour period beginning when first notified that the Benghazi Mission was under attack. Responsive records include:

- (1) All records generated by Director Petraeus, [and Deputy Director Morell] including all emails, memoranda, or notes;
- (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
- (3) All records generated by anyone about the CIA Director's [and Deputy Director's] actions and communications.

These two items are narrowed to omit "telephone logs or bills" and "records generated by anyone about" the actions and communications.

Fourth item at issue

- Non-Disclosure Agreements. Complaint ¶ 136:

16. Non-Disclosure Agreements signed by survivors of the Benghazi attacks, including employees or contractors of the CIA or DOD."

We processed the request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the National Security Act, 50 U.S.C. § 3141, as amended.

We completed a thorough search for records responsive to the request and located sixty nine (69) responsive documents. On 28 February 2017, we produced forty four (44) documents in segregable form and denied twenty three (23) documents in their entirety. At this time, two (2) remaining documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(3), (b)(5), and (b)(6). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, noted as exemption "(b)(3)CIAAct" on the enclosed documents, and/or Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), noted as exemption "(b)(3)NatSecAct" on the enclosed documents.

This concludes our response to the above referenced request.

Sincerely,



Allison Fong
Acting Information and Privacy Coordinator

Enclosures

EXHIBIT H

F-2015 - 00060

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

October 1, 2014

By Certified Mail—Return Receipt Requested
Article Number 7013 3020 0000 7279 3730

FOIA REQUEST

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

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA."

FOIA Requesters. I write on behalf of my clients, Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following seven individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., and (7) Kevin Shipp.

FOIA Requests. These requests are for the following records of activities in Libya, in the care, custody or control of the Central Intelligence Agency, regardless of the source of the records:

1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks in Benghazi, Libya, including but not limited to records in possession of the CIA Office of Inspector General.

OCT 07 2014

2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See *generally* FOIA Update Vol. XVII, No. 4, 1996.

Request for Waiver of Search and Review Fees. As a representatives of the news media, Accuracy in Media, Inc. ("AIM"), submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). In July of 2007, the CIA adopted new regulations. 32 C.F.R. § 1900.02, *Definitions*, states, in part:

- (3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 40 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or 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." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

To meet FOIA's "member of the news media" status, a requestor must "use[] its editorial skills to turn the raw materials into a distinct work." *Nat'l Sec. Archive*, 880 F.2d at 1387. To be considered a representative of the news media for fee purposes, "a requester must establish that it has a firm intent to disseminate, rather than merely make available, the requested information." *Judicial Watch*, 185 F. Supp. 2d at 60 (citation and internal quotation marks omitted).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested, is beyond question. Accuracy in Media Articles on the subject include "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghazigate," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012)," "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Neither AIM nor the individuals identified above have any "commercial interest" that would be furthered by the disclosure of the requested information, as that term has been interpreted by the courts under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... 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."

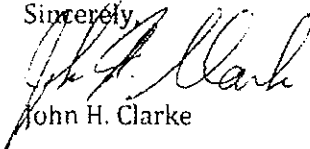
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, in accordance with AIM's news dissemination function. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Release of the information will contribute to an understanding of government operations or activities regarding the Benghazi issue, as compared with awareness prior to the disclosure. Thus, the requesters provide an adequate showing of their concrete plans to disseminate the requested information, and adequately demonstrate how disclosure of the requested documents meets the requirements for a public interest fee waiver.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,

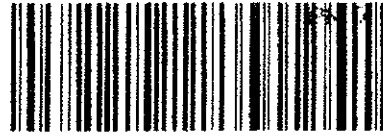


John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

PLACE STICKER AT TOP OF ENVELOPE TO THE POINT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL



7013 3020 0000 7279 3730

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

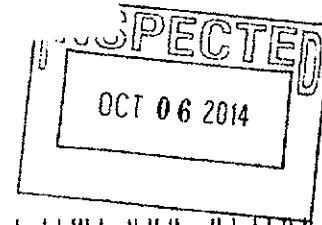


1000

20505

U.S. POSTAGE
PAID
WASHINGTON, DC
20036
OCT 06 2014
AMOUNT

\$6.70
00069095-12



20505



EXHIBIT I

Central Intelligence Agency



Washington, D.C. 20505

3 November 2014

John H. Clarke, Esq.
1629 K Street, NW
Suite 300
Washington, DC 20006

Reference: F-2015-00060

Dear Mr. Clarke:

On 7 October 2014, the office of the Information and Privacy Coordinator received your 1 October 2014 Freedom of Information Act (FOIA) request, submitted on behalf of your clients, Accuracy in Media, Inc., and seven individuals, all whom serve as members of the "Citizens Commission on Benghazi, for:

- "1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks in Benghazi, Libya, including but not limited to records in the possession of the CIA Office of Inspector General.
2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA."

We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

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

Sincerely,

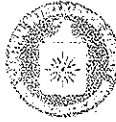
A handwritten signature in black ink, appearing to read "JG", with a long horizontal flourish extending to the right.

John Giuffrida

Acting Information and Privacy Coordinator

EXHIBIT J

Central Intelligence Agency



Washington, D.C. 20505

30 September 2015

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

Re: F-2015-00060; 14-cv-1589

Dear Mr. Clarke:

This letter is in response to your 1 October 2014 Freedom of Information Act (FOIA) request for:

- "1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks in Benghazi, Libya, including but not limited to records in the possession of the CIA Office of Inspector General.
2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi's expressed interest in a truce and possible abdication and exile out of Libya, by or to:
 - (a) Head of Qaddafi's personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA."

We processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the National Security Act, 50 U.S.C. § 3141, as amended.

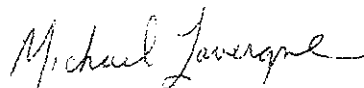
With regard to Item 1, we completed a thorough search for records responsive to your request and located twenty (20) documents. Eight (8) documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(c), (b)(7)(d), and (b)(7)(e). In addition, it has been determined that twelve (12) documents must be denied in their entirety on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(c), and (b)(7)(d). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, noted as exemption "(b)(3)CIAAct" on the enclosed documents, and/or Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), noted as exemption "(b)(3)NatSecAct" on the enclosed documents.

With regard to Items 2 (a) and (d), in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of such records is itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1). Therefore, this portion of your request is denied pursuant to FOIA exemptions (b)(1) and (b)(3).

With regard to Items 2 (b) and (c) of your request, as noted in the acceptance letter, the information you seek would fall under the auspices of the Department of Defense.

This concludes our response to the above referenced request.

Sincerely,

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

Michael Lavergne
Information and Privacy Coordinator

Enclosures

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ACCURACY IN MEDIA, INC., et al.)	
)	
Plaintiffs,)	
v.	)	No. 14-CV-1589 (EGS)
)	
DEPARTMENT OF DEFENSE, et al.)	
)	
Defendants.)	
_____)	

DECLARATION OF ERIC F. STEIN

Pursuant to 28 U.S.C. § 1746, I, Eric F. Stein, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services (“IPS”) of the United States Department of State (the “Department” or “State”) and have served in this capacity since January 22, 2017. Previously, I served as the Acting Director since October 16, 2016, and as the Acting Co-Director since March 21, 2016. I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (the “FOIA”), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other records access provisions. As the Director of IPS, I have original classification authority and am authorized to classify and declassify national security information. I make the following statements based upon my personal knowledge, which in turn is based upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to process the subject request, and I am in charge of coordinating the agency’s search and recovery efforts with respect to that request.

2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the Freedom of Information Act, the Privacy Act, and the mandatory declassification review requirements of Executive Order No. 13,526, governing classified national security information), by members of Congress, by other government agencies, and those made pursuant to judicial process, such as subpoenas, court orders and discovery requests; (2) records management; (3) privacy protection; (4) national security classification management and declassification review; (5) corporate records archives management; (6) research; (7) operation and management of the Department's library; and (8) technology applications that support these activities.

3. Pursuant to the stipulations in the Joint Motion to Amend Briefing Schedule, this Declaration addresses the Department's search for documents responsive to that portion of Plaintiffs' FOIA requests referenced in ¶ 116(6) of the Second Amended Complaint¹ and the FOIA exemptions applied in processing 16 records that the Plaintiffs have identified. A *Vaughn* index (Exhibit 1) provides a detailed description of the information withheld by the Department and challenged by Plaintiffs and the justifications for those withholdings.

¹ The relevant portion of the Second Amended Complaint ¶ 116(6) reads in full:

6. "All records of Secretary Clinton's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack. Responsive records include:

- (1) All records generated by Secretary Clinton, including all emails, memoranda, or notes;
- (2) Telephone logs or bills or other statements of all of her telephone calls placed or received"

...
[Item 6(3) withdrawn]

Item 6(3) previously read "All records generated by anyone about the Secretary's actions and communications."

I. PROCESSING OF PLAINTIFFS' FOIA REQUEST

4. By letter dated February 21, 2014 (Exhibit 2), Accuracy in Media, Inc., Roger L. Aronoff, Larry W. Bailey, Kenneth Benway, Richard F. Brauer, Jr., Clare Lopez, James A. Lyons, Jr., and Kevin Michael Shipp ("Plaintiffs"), along with Wayne Simmons, by and through Counsel, submitted a 15-part FOIA request to the Department seeking various records relating to activities at the U.S. Special Mission in Benghazi, Libya. By letter dated March 21, 2014 (Exhibit 3), IPS acknowledged receipt of Plaintiffs' FOIA request and assigned it Case Control Number F-2014-03625.

5. By letter dated May 5, 2014 (Exhibit 4), Plaintiffs withdrew portions of item 1 of their FOIA request.

6. By letter dated August 5, 2014 (Exhibit 5), Plaintiffs withdrew additional portions of their original FOIA request. *See* Am. Compl. ¶¶ 116-118, ECF No. 31 (June 24, 2015) (reiterating the withdrawal of certain portions of Plaintiffs' FOIA request).

7. The Department made ten (10) productions of responsive documents to Plaintiffs by letters dated March 16, 2015; May 11, 2015; July 6, 2015; August 31, 2015; October 26, 2015; December 4, 2015; December 21, 2015; March 21, 2016²; May 5, 2016; and July 8, 2016. (*See* Exhibits 6-15).

8. On October 20, 2017, and May 7, 2018, the Department made supplemental productions of records responsive to item 6 of the FOIA request. (*See* Exhibits 16-17).

II. THE SEARCH PROCESS

9. When the Department receives a FOIA request, IPS evaluates the request to determine which offices, overseas posts, or other records systems within the Department may

² Exhibit 13 was incorrectly date-stamped March 21, 2015. The actual send date was March 21, 2016.

reasonably be expected to contain the records requested. This determination is based on the description of the records requested and requires a familiarity with the holdings of the Department's records systems, applicable records disposition schedules, and the substantive and functional mandates of numerous Department offices and Foreign Service posts and missions.

10. Each office within the Department, as well as each Foreign Service post and mission, maintains files concerning foreign policy and other functional matters related to the daily operations of that office, post, or mission. These files consist generally of working copies of documents, information copies of documents maintained in the Central Foreign Policy Records collection, and other documents prepared by or furnished to the office in connection with the performance of its official duties, as well as electronic copies of documents and e-mail messages.

11. After reviewing that portion of Plaintiffs' FOIA request referenced in 116(6) of the Second Amended Complaint seeking "records of Secretary Clinton's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack," IPS determined that the following offices or records systems were reasonably likely to have responsive documents: the State Archiving System, the Executive Secretariat, and the Department's collection of emails sent and received by Secretary Clinton, which includes both materials provided to the Department by former Secretary Clinton and by the Federal Bureau of Investigation. IPS concluded that no other offices or records systems were reasonably likely to maintain documents responsive to Plaintiff's request. IPS then conducted a review of the retrieved material to determine responsiveness and identify non-exempt material for release to Plaintiff. Where material was found to be exempt from disclosure, IPS reviewed this material to ensure that no non-exempt, segregable information was withheld.

12. When conducting a search in response to a FOIA request, the Department relies on the knowledge and expertise of the employees of each bureau/office/post to determine the files and locations reasonably likely to house responsive records and the best means of locating such records, as these employees are in the best position to know how their files are organized. Likewise, those employees are also in the best position to determine which search terms would yield potentially responsive records, because they are most knowledgeable about the organization of the records systems in use. It should be noted that some of the searches described below were constructed to return records responsive to multiple portions of Plaintiff's original FOIA request, not solely item 6.

State Archiving System

13. The State Archiving System ("SAS") provides the capability to query over 40 million records through a single interface. These records include those documents that discuss or define foreign policy, set precedents, or require action or use by more than one office. More specifically, SAS provides search capability and access to: (a) the official record copies of almost all incoming and outgoing cables between the Department and Foreign Service posts; (b) diplomatic notes; (c) correspondence to and from the White House, members of Congress, and other federal agencies; (d) position papers and reports; (e) memoranda of conversations; and (f) interoffice memoranda. The records contained within SAS are commonly referred to as the "Central Foreign Policy Files" or "Central File." SAS generally allows the Department to conduct full-text searches of records. For all documents in the Central File that are not directly full-text searchable through SAS, including some older correspondence, SAS will search the text of a customized reference index that directs a searcher to a full copy of the document. An IPS analyst with knowledge of both the request and the records system conducted a search of SAS

using the terms “tripoli” to or from “secstate” and (“protest” or “demonstrations” or “attacks”).

The time frame for this search was September 10, 2012, to September 17, 2012.

14. This search retrieved one document responsive to item 6 of the FOIA request.

The Executive Secretariat

15. The Executive Secretariat Staff (“S/ES-S”) is responsible for coordinating the work of the Department internally, serving as the liaison between the Department’s bureaus and the offices of the Secretary, the Deputy Secretary, and the Under Secretaries. S/ES-S manages the preparation of briefing materials for these Department officials and the records generated by these officials. It is generally responsible for coordinating search responses for the Office of the Secretary of State (“S”), the Office of the Deputy Secretary of State (“D”), the Office of the Under Secretary for Political Affairs (“P”), and the Counselor of the Department (“C”).

16. An S/ES-S Management Analyst, who was knowledgeable of both the FOIA request at issue and the S/ES records systems, conducted searches of the electronic records systems that were reasonably likely to contain responsive records. These systems are the Secretariat Tracking and Retrieval System (“STARS”),³ the Secretariat Telegram Processing System (“STePS”),⁴ and Top Secret (“TS”) files. The search capabilities of the enumerated

³ STARS is an automated system used to track, control, and record documents containing substantive foreign policy information passing to, from, and through the offices of the Secretary of State, the Deputy Secretaries of State, the Under Secretaries of State, and the Counselor of the Department. Original documents are indexed, scanned, and stored as images in STARS. Information in STARS covers the period 1988 to 2014. For searches of STARS, the search terms are applied to a descriptive abstract attached to each document. Each abstract is created by a Technical Information Specialist when the document is added to the database; this abstract is designed to capture the subject matter of the related document. The abstracts are the only portion of STARS database with searchable text.

⁴ STePS is designed to distribute cables among the Department’s principals. The full text of the documents in StePS is searchable.

electronic systems are wildcard-based, meaning that common variations of the keywords being searched would be retrieved (*e.g.*, a search for “directive” would also produce hits on the term “directives”). S/ES-S searched STARS and STePS using each of the following search terms: “Secretary Hillary Clinton,” or “Benghazi,” or “Libya,” or “Huma Abedin,” or “Cheryl Mills,” or “Secy-app,” or “Memcon.” The searches were designed to retrieve records created between September 11, 2012 and September 12, 2012.

17. The use of “or” between the search terms indicates that this was a disjunctive search; for example, the terms listed would have retrieved any documents containing the word “Benghazi” in the full text for STePS records, or in the abstract for STARS records, even if the document or abstract contained none of the other search terms.

18. Similarly, during the TS search, the search terms were applied to an index of TS files. Each TS index entry, along with key words and a topic description, was added by a Management Analyst into the index. This index, rather than the full text of the TS files themselves, can be searched.

19. This search retrieved three documents responsive to item 6 of the FOIA request.

S/ES Retired Electronic Files

20. An IPS Analyst, with knowledge of both the request and the relevant records systems, conducted a search of the electronic records retired by the Executive Secretariat Staff, which consist of shared electronic office folders that were available to employees within the Office of the Secretary during former Secretary Clinton’s tenure, as well as individual electronic folders of files belonging to Cheryl Mills and Jacob Sullivan. The IPS Analyst searched the retired electronic files using the following combination of search terms: (“Benghazi” or “Libya”)

AND “September w/5 2012”⁵ AND (“Clinton” or Secretary”); (“Clinton” or “Secretary”) AND (“9/11/2012” OR “9/12/2012” OR “9/11/12” OR “9/12/12” OR “September 11, 2012” OR “September 12, 2012”).

21. An IPS Program Analyst also manually searched the unclassified electronic shared drive folders described above for the schedules and call logs of former Secretary Clinton. Specifically, the Analyst searched the following electronic file folders: “Schedule-Final Copy/September 2012,” “Mini Schedules/September 2012,” “Call Grids/September 2012,” “Daily Files/2012/9 September 2012/11 DC,” “Daily Files/2012/9 September 2012/12 DC,” and “Call Log”. From this collection, documents covering the dates September 11 and September 12, 2012, were identified as responsive to this request.

22. These searches retrieved seven documents responsive to item 6 of the FOIA request.

S/ES Retired Paper Files

23. Throughout former Secretary Clinton’s tenure, her staff maintained a daily calendar for the Secretary in Microsoft Outlook, containing her public and private appointments. After her tenure, S/ES-S archived a copy of the calendar and her official schedules. The archive process entailed printing the electronic files and organizing the paper copies chronologically in a box, recording the contents of the box in a manifest, and turning those documents over to State’s Records Service Center, which stored them in an off-site archival records storage space. In July 2015, in connection with a separate FOIA request seeking copies of Secretary Clinton’s daily calendar of appointments, phone calls, and meetings, S/ES-S provided the record location

⁵ When the text “w/5” is included in between two terms, the search will return any documents in which those two terms appear within five words of each other.

number to IPS. An IPS Analyst retrieved the retired paper calendars and manually searched them for any documents responsive to Plaintiff's FOIA request. This search was limited to documents covering the dates September 11 and September 12, 2012. This search retrieved four documents responsive to item 6 of the FOIA request.

Secretary Clinton Email Collection

24. IPS maintains a collection of emails sent to and from Secretary Clinton drawn from two sources: materials provided to the Department by Secretary Clinton in 2014, and materials provided by the Federal Bureau of Investigations ("FBI") in 2016.⁶ Although not all of these materials were in the Department's possession and control at the time this FOIA request was made, the Department voluntarily agreed to conduct searches of the information transferred from the FBI to the Department for records responsive to Plaintiff's FOIA request, in the interest of reducing any issues to be litigated. An IPS Program Analyst, who was knowledgeable of both the FOIA request and the relevant records systems and collections of materials, conducted a full-text search of both collections of emails sent and received by Secretary Clinton using the following terms: "September 11, 2012," "September 12, 2012," "9-11-12," "9-12-12," "9-11-2012," or "9-12-2012." This search retrieved 48 responsive documents.

II. FOIA EXEMPTIONS CLAIMED

FOIA Exemption 1 – Classified Information

⁶ On December 5, 2014, former Secretary Clinton provided the Department with a collection of emails in response to its request that, if former Secretaries or their representatives were "aware or [were to] become aware in the future of a federal record, such as an email sent or received on a personal email account while serving as Secretary of State, that a copy of this record be made available to State." In July and August of 2016, in response to a request from the Department that it provide any work-related emails of Secretary Clinton retrieved during the course of its investigation into the use of a private email server, the FBI provided a set of materials to the Department for its determination of whether it contained any Department records.

25. 5 U.S.C. § 552(b)(1) states that the FOIA does not apply to matters that are:

(A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order

26. Based upon my personal review of the documents and information furnished to me in the course of my official duties, I have determined that the information withheld under Exemption 1, 5 U.S.C. § 552(b)(1), in the Accountability Review Board (ARB) summaries, documents C06052236 and C06052339, and the video surveillance footage contained in record C05467917, continues to meet the classification criteria of E.O. 13526 and that the Department has not previously authorized or officially acknowledged public release of this information. This information includes information classified at the SECRET level. Section 1.2 of E.O. 13526 states:

“Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

27. Section 6.1(l) of Executive Order 13526 defines “damage to the national security” as follows:

“Damage to the national security” means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

28. Information withheld in this case under Exemption 1 is properly classified pursuant to Sections 1.4(c), 1.4(d), or 1.4(g) of E.O. 13526. Section 1.4 provides:

Information shall not be considered for classification unless . . . it pertains to one or more of the following: . . .(c) intelligence activities (including covert action), intelligence sources or methods, or cryptology; (d) foreign relations or foreign activities of

the United States, including confidential sources, . . .(g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security

29. For information to be properly classified and withheld from disclosure pursuant to Exemption 1, the information must meet all of the following requirements set forth in Section 1.1(a) of E.O. 13526:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories listed in section 1.4 of [E.O. 13526]; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

30. In my role as an original classification authority, I have determined that the information withheld pursuant to Exemption 1 is under the control of the U.S. Government, falls within one or more sections of E.O. 13526, and requires classification at the SECRET level because its unauthorized disclosure reasonably could be expected to cause serious damage to the national security.

Section 1.4(c) – Intelligence Activities and Intelligence Sources and Methods

31. The Department withheld certain information that relates directly to intelligence activities, sources, or methods on behalf of the Central Intelligence Agency (the “CIA”) in ARB interview summary C06052236 and video surveillance footage contained in C05467917. Disclosure of the intelligence information contained in ARB interview summary C06052236 could enable foreign governments or persons or entities opposed to U.S. foreign policy

objectives to identify U.S. intelligence activities, sources, or methods and to undertake countermeasures that could frustrate the ability of the U.S. Government to acquire information necessary to the formulation and implementation of U.S. foreign policy. The same is true with respect to the video surveillance footage contained in C05467917, which contains information related to U.S. intelligence activities and methods.

32. Intelligence methods include human assets, clandestine relationships, and the identity of CIA officers. Intelligence methods also include the physical security and force protection measures taken to protect CIA facilities and personnel, the CIA's security response strategies, and the tactics, techniques, and procedures used by CIA security personnel who react to threats. When a foreign intelligence service or adversary nation learns that the CIA uses certain methods to protect property and personnel, it will seek to glean from those methods what precautions the CIA took and why, how the CIA responded and why, and how the CIA could use those precautions to respond in different situations. To a hostile entity, the actions the CIA does not take in certain circumstances are just as valuable as actions the CIA takes. If foreign intelligence services or adversary nations were to discover the CIA's methods of protecting property or people, this information could be used against the CIA to thwart future intelligence operations, jeopardize ongoing human sources, and otherwise derail the CIA's intelligence activities.

33. Disclosure of the ARB interview summary and the video surveillance footage "reasonably could be expected to result in damage to the national security" and the information withheld in these documents is currently and properly classified pursuant to Section 1.4(c) of E.O. 13,526 is therefore exempt from release under Exemption 1, 5 U.S.C. § 552(b)(1).

Section 1.4(d) – Foreign Relations or Foreign Activities of the United States

34. In addition, information contained in the video surveillance footage in C05467917 is withheld in this case under Exemption 1 as properly classified under Section 1.4(d) of Executive Order 13526. Executive Order 13526 recognizes that certain information pertaining to U.S. foreign relations and foreign activities must be protected, because its disclosure has the potential to harm national security (which, in turn, is defined in the E.O. as the “national defense or foreign relations of the United States.”). The Department withheld the video surveillance footage contained in C05467917 under Section 1.4(d) on behalf of the CIA because this particular video surveillance footage contains information related to both confidential sources and sensitive aspects of U.S. foreign activities, including, in particular, activities relating to identifying potential threats to U.S. national security. Release of this classified information would expose intelligence activities and methods that took place on September 11, 2012, at the Department’s diplomatic facility, and could reasonably be expected to cause serious damage to national security. For these reasons, the Department withheld certain information in this case that is currently and properly classified at the SECRET level pursuant to Section 1.4(d) of E.O. 13526 and is therefore exempt from release under Exemption 1, 5 U.S.C. § 552(b)(1).

Section 1.4(g) – Capabilities or Vulnerabilities of Systems, Installations, Projects, or Plans Relating to the National Security

35. The Department withheld certain information in ARB interview summaries C06052236 and C06052339, which relates primarily to the security of U.S. diplomatic, consular, and other facilities abroad, the release of which could reasonably be expected to reveal vulnerabilities or capabilities of U.S. overseas missions. Disclosure of this information could reasonably be expected to cause damage to the U.S. national security by endangering the physical security of our missions and personnel overseas. As a result, the information contained

in ARB interview summaries C06052236 and C06052339, is properly classified at the SECRET level pursuant to E.O. 13526, section 1.4(g), and is therefore exempt from release under Exemption 1, 5 U.S.C. § 552(b)(1).

FOIA Exemption 3 – Exempt by Statute:

36. 5 U.S.C. § 552(b)(3) states that the FOIA does not apply to matters that are:

specifically exempted from disclosure by statute (other than section 552(b) of this title), if that statute—(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

37. The Department withheld certain information in the ARB interview summary C06052236 and the video surveillance footage bates labeled C05467917 on behalf of the CIA under Exemption 3, as required by the National Security Act of 1947, 50 U.S.C. § 3024(i)(1) (the “National Security Act”). The National Security Act provides that the Director of National Intelligence “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Accordingly, the National Security Act constitutes a federal statute which both refers to particular types of matters to be withheld, and “requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue.” 5 U.S.C. § 552(b)(3). Under the discretion of the DNI pursuant to section 102A of the National Security Act, and consistent with section 1.6(d) of Executive Order 12333, the CIA is authorized to protect information relating to CIA sources and methods from unauthorized disclosure. The CIA withheld certain information in the ARB interview summary C06052236 and the video surveillance footage C05467917, as required by the National Security Act because the information, if released, could reasonably be expected to lead to the unauthorized disclosure of

intelligence sources and methods. The withheld document and video footage contain currently and properly classified information pertaining to intelligence activities, sources and methods and foreign relations and foreign activities of the United States (*see supra*, ¶¶ 32 & 34), which is protected by statute.

38. The ARB interview summary C06052236 and September 11, 2012, video surveillance record numbered C05467917 are also withheld on behalf of the CIA under Exemption 3, as required by the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 3507 (the “CIA Act”), because the interview summary and video footage, if disclosed, would reveal or disclose the functions of the CIA and identities of personnel employed by the Agency. The CIA Act provides that the CIA shall be exempted from the provisions of “any other law” (which includes the FOIA) that requires “the publication or disclosure of the organization, functions, names, official titles, salaries, or number of personnel.” The CIA Act therefore constitutes a federal statute which “establishes particular criteria for withholding or refers to particular types of material to be withheld.” 5 U.S.C. § 552(b)(3). Pursuant to Section 6 of the CIA Act, the CIA withheld the identities of CIA employees and information disclosing their duties or functions, including functions related to the protection of intelligence methods. Although no harm rationale is required by exemption (b)(3), the disclosure of this information would provide sensitive information about how the organization operates, its function, and identities of the CIA workforce that would be valuable to a hostile nation, including terrorist organizations, attempting to target the CIA or learn more about its activities. The ARB interview summary C06052236 and the video surveillance record C05467917 must therefore be withheld.

FOIA Exemption 5 – Privileged Information

39. 5 U.S.C. § 552(b)(5) states that the FOIA does not apply to:

inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency....

40. Exemption 5, 5 U.S.C. § 552(b)(5), protects from disclosure information that is normally privileged in the civil discovery context, including information that is protected by the deliberative process privilege. The deliberative process privilege protects the confidentiality of candid views and advice of U.S. Government officials in their internal deliberations related to policy formulation and administrative direction. The Department withheld three draft ARB interview summaries, C06052236, C06052239, and C06052240, pursuant to the deliberative process privilege. The release of the withheld information in the three ARB interviews, which is pre-decisional and deliberative and contains a selection and analysis of facts reflecting the judgment of the author, could reasonably be expected to chill the open and frank expression of ideas, recommendations, and opinions that occur when Department officials are formulating a strategy for official action in response to an international security matter. Disclosure of this information would also impede the ability of responsible Department officials to formulate and carry out executive branch programs by inhibiting candid internal discussion and the expression of recommendations and judgments regarding a preferred course of action. The withheld information is, accordingly, exempt from release under Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege.

FOIA Exemption 6 – Personal Privacy

41. 5 U.S.C. § 552(b)(6) states that the FOIA does not apply to:

...personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy....

42. The courts have interpreted the language of FOIA Exemption 6 broadly to encompass all information that applies to an individual without regard to whether it was located in a particular type of file. As described in the *Vaughn* index, the Department has withheld the identities of Department personnel, other U.S. Government employees, contractors, and other third parties under Exemption 6.

43. Inasmuch as information withheld under FOIA Exemption 6 identifies a specific individual, a personal privacy interest exists in the information. I am required, therefore, to determine whether there exists any public interest in disclosure and, if a public interest is implicated, to weigh any such interest against the privacy interest to determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy.

44. In *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), the Supreme Court described two rules for determining public interest in disclosure of information involving a privacy interest: (1) whether disclosure would serve the “core purpose” for which Congress enacted the FOIA, i.e., to show “what the government is up to,” and (2) that public interest means the interest of the public in general, not particular interests of the person or group seeking the information. Accordingly, the identity of the requester as well as the purpose for which the information is sought is irrelevant in making the disclosure determination.

45. As for the information withheld pursuant to Exemption 6 in the call log (C05935290) the ARB interview summaries (C06042236, C06042239, C06042240), and a portion of the surveillance videos (C05467910, C05467913, C05467914, C05467915, C05467916, C05467917), I have concluded that (1) disclosure of the information withheld would result in a clearly unwarranted invasion of personal privacy; and (2) disclosure of the information

would not serve the “core purpose” of the FOIA, i.e., it would not disclose information about “what the government is up to.” Accordingly, I have determined that the privacy interests clearly outweigh any public interest in disclosure of such personal information. As a result, release of this information would constitute a clearly unwarranted invasion of personal privacy; it is therefore exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

FOIA Exemption 7 – Law Enforcement Information

Exemption 7 Threshold – Compiled for Law Enforcement Purposes

46. Exemption 7 protections are available to all “records or information compiled for law enforcement purposes” the disclosure of which could be expected to cause one of the six harms outlined in the Exemption’s subparts. *See* 5 U.S.C. § 552(b)(7). The law to be enforced for Exemption 7 purposes includes administrative, regulatory, civil, and criminal law. Records pertaining to routine agency activities can qualify for Exemption 7 protection when those activities involve a law enforcement purpose. Although the records must be created for a law enforcement purpose, there is no requirement that the matter culminate in actual administrative, regulatory, civil, or criminal enforcement proceedings.

47. Before an agency can invoke any of the harms enumerated in Exemption 7, it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. The Bureau of Diplomatic Security (“DS”) is the law enforcement arm of the Department and is responsible for providing a safe and secure environment for the conduct of U.S. foreign policy.⁷ Generally, DS’s statutory authorities are found in the Omnibus Diplomatic Security and Antiterrorism Act of 1986, 22 U.S.C. § 4801 et seq., as well as in Section 37 of the

⁷ A comprehensive list of the Bureau of Diplomatic Security’s investigative authorities can be found at <http://www.gpo.gov/fdsys/pkg/FR-2013-05-09/html/2013-11094.htm>.

State Department Basic Authorities Act of 1956, 22 U.S.C. § 2709, as amended. The Bureau of Diplomatic Security has a broad scope of global responsibilities, including the protection of people, information, and property as its top priorities. Every diplomatic mission in the world operates under a security program designed and maintained by the Bureau of Diplomatic Security, including the diplomatic mission that was attacked on September 11, 2012, in Benghazi, Libya. With respect to its overseas duties, the Bureau of Diplomatic Security develops and implements effective security programs to safeguard all personnel who work in every U.S. diplomatic mission around the world, including the mission in Benghazi, Libya, that is the focus of Plaintiff's FOIA request. As part of these responsibilities, in some cases DS maintains surveillance footage for security purposes, including the security footage described in the attached *Vaughn* Index. In the United States, DS protects the Secretary of State, the U.S. Ambassador to the United Nations, and foreign dignitaries below the head-of-state level who visit the United States. Additionally, DS develops and implements security programs to protect all domestic Department facilities as well as the residence of the Secretary of State.

48. In addition to protective responsibilities, DS has other law enforcement responsibilities, including investigating passport and visa fraud and conducting counterintelligence investigations. DS also trains foreign civilian law enforcement officers in disciplines designed to reduce the threat and repercussions of terrorism throughout the world. Finally, DS conducts investigations independent of and/or dependent on investigations run by other government agencies, including the Federal Bureau of Investigation ("FBI").

49. The surveillance videos (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, C05467921) withheld under Exemption 7 were created by the Department either for a protective

security purpose or for a law enforcement investigation by DS and FBI, or both. As discussed in more detail below, the harms that could reasonably be expected to result from disclosure of this information concern interference with pending or prospective law enforcement investigations related to the September 11, 2012, attack of the Department's diplomatic facility in Benghazi, Libya, the invasion of personal privacy of witnesses and/or Department personnel, revealing sensitive law enforcement techniques and procedures with respect to the Department's security of its diplomatic mission in Benghazi, Libya, or endangering the life or physical safety of an individual.

50. Following the attack on U.S. Government facilities in Benghazi, Libya, DS began an investigation pursuant to its law enforcement responsibilities. Three other of responsive records are withheld in full (C06052236, C06052239, and C06052240) because they were compiled for DS's investigation of the September 11, 2012, Benghazi attack DS's investigation remains ongoing and DS is also supporting the FBI's ongoing investigations of the attack.

51. The FBI currently has multiple active investigations into the Benghazi attack. The FBI's declaration sets forth under what authority the FBI is investigating the attack. *See* April 26, 2018, Declaration of David M. Hardy ("Hardy Decl."), at ¶¶ 7-9. The Department, in addition to conducting its own investigation, is collaborating with the FBI in its investigations. All twelve videos withheld in full (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C05467921) are also part of the FBI's investigations of the September 11, 2012, attack. *See* Hardy Decl. ¶5, n.1; ¶9.

52. All of the withheld video recordings were also created prior to and during the attack in connection with DS's protective security responsibilities at its mission in Benghazi, Libya.

FOIA Exemption 7(A) – Pending Law Enforcement Proceedings

53. 5 U.S.C. § 552(b)(7) states that the FOIA does not apply to:

records or information compiled for law enforcement purposes, but only to the extent that the production of such records or information ... (A) could reasonably be expected to interfere with enforcement proceedings ...

54. In this case, the Department has withheld twelve Department-originated surveillance videos (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C05467921) that, if released, could reasonably be expected to interfere with current law enforcement activities of DS and the FBI. The information withheld under FOIA Exemption 7(A) relates to ongoing investigations by the FBI and DS into the September 11, 2012, attack of the Department's diplomatic facility in Benghazi, Libya. The release of this information would interfere with DS's and the FBI's active investigations by revealing critical evidence and leads vital to ongoing investigative operations and continuing efforts to develop cases for criminal prosecution including revealing suspects, the scope of the investigation, and the evidence collected to date. Because the videos show activity at the compound before and during the attacks, including the identities and movements of specific individuals, disclosure could further interfere with successful investigation and prosecution by revealing the images of potential witnesses to the crimes committed, including foreign nationals, and enabling them to be identified and intimidated prior to offering needed testimony. In addition, the FBI requested that the Department withhold this information because its release would interfere with the FBI's

ongoing investigation into the attacks. *See* Hardy Decl. ¶¶ 10-13. There is no information that implicates DS law enforcement equities that does not also implicate FBI law enforcement equities.

FOIA Exemptions 7(C) - Personal Privacy

55. When withholding information pursuant to Exemption 7(C),⁸ the Department is required to balance the privacy interests of the individuals whose information appears in the records against any public interest in disclosure. In asserting this exemption, the Department examined each video to determine the degree and nature of the privacy interest of the individuals whose likenesses appear in them. The public interest in disclosure of this information is determined by the extent to which information in question would inform the general public about the Department's performance of its mission.

56. In six of the videos (C05467910, C05467913, C05467914, C05467915, C05467916, and C05467917), the Department withheld information that is protected under FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C). In these records the Department withheld the images and identities of DS agents, government contractors, and local forces assisting in the protection of the Benghazi facility. Release of the images and information regarding these individuals could reasonably be expected to subject them to harassment and/or intimidation, which would constitute an unwarranted invasion of privacy. DS agents and support personnel conduct protective security operations for the U.S. Government, and it is possible for them to be targeted by individuals hostile to their mission. Some of these individuals may currently be serving at

⁸ 5 U.S.C. § 552(b)(7)(C) states that the FOIA does not apply to records or information compiled for law enforcement purposes, "but only to the extent that the production of such records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy."

other missions abroad where their identification as U.S. Government law enforcement agents would put them at particular risk. In addition, non-Americans currently living abroad who are identified as having aided the United States during the attacks are especially vulnerable to being targeted and harmed. Finally, the association of these individuals with a sensitive, ongoing investigation, through such a disclosure could itself result in intimidation or unsolicited and unwanted attention. As a result, these individuals maintain a substantial privacy interest in not having their images disclosed. After establishing this substantial privacy interest, I considered the public interest in disclosure and determined that because this identifying information would not shed light on the operations and activities of the Department and that the privacy interest of the individuals shown in the footage outweighed any interest the public may have in the disclosure of these records.

FOIA Exemption 7(E) – Investigative Techniques

57. On its own behalf and on behalf of the Federal Bureau of Investigation (the “FBI”) the Department withheld information in the 12 surveillance videos (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C05467921) under Exemption 7(E) to protect against the disclosure of law enforcement “...techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). The Department also exerted Exemption 7(E) to protect the written descriptions of security measures and techniques employed at the facility that appear in ARB interview notes C06052239, C06052240.

58. For all 12 of the surveillance videos, the Department has asserted Exemption 7(E) on the FBI's behalf to protect non-public investigative techniques and procedures used by the FBI to pursue its law enforcement and intelligence gathering missions, and also to protect non-public details about techniques and procedures that are otherwise known to the public. *See* Hardy Decl. ¶¶ 14-17.

59. The Department also asserted Exemption 7(E) on its own behalf to prevent circumvention of the law. The surveillance videos contain hours of synchronized footage from every camera angle available recording the Benghazi facility. This footage displays security measures and procedures, defensive capabilities, and counter-measures in place at the Benghazi facility, that are indicative of the protections currently in place at other current State Department facilities in other locations around the world. These include, for example, particular technologies or physical features in place, methods for covering an overall facility with camera surveillance, movements and responsive tactics of security personnel, and evacuation methods for such facilities. Analysis of the videos, especially when compared side by side with additional synchronized camera angles, would reveal the strategies utilized to protect diplomatic compounds, enabling future attempts to circumvent these techniques and procedures. The same concerns apply to the written descriptions of security measures and techniques employed at the facility that appear in ARB interview notes C06052239, C06052240, the disclosure of which would allow circumvention of those measures.

FOIA Exemption 7(F) – Physical Safety

60. Exemption 7(F) permits the withholding of law enforcement related information necessary to protect the physical safety of any individual when the disclosure could reasonably be expected to endanger their life or physical safety. Unlike Exemption 7(C), there is no

balancing of the need to protect the individual from harm against public interest in the information. Exemption 7(F) can be invoked as long as the risk of harm is reasonable.

61. The Department asserted Exemption 7(F), 5 U.S.C. § 552(b)(7)(F), on behalf of the FBI in all 12 of the surveillance videos (C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C0546792). *See* Hardy Decl. ¶¶ 18-19.

62. The Department asserted Exemption 7(F) on its own behalf with regard to six of the surveillance videos (C05467910, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919) in order to protect DS agents, government contractors and local forces assisting in the protection of the Benghazi facility, as well as other third party individuals, including potential bystanders witnessing the September 11, 2012, attack. DS agents whose identities are revealed, some of whom are currently serving at posts abroad where identification as a U.S. law enforcement official may be particularly dangerous, may be targeted by individuals hostile to their mission. In addition, the release of the identities of non-Americans appearing in the footage could expose them to serious bodily harm or death due to perceived association with either the U.S. Government or local militias. The circumstances of the underlying subject matter in this case factually support the real risk of grave harm coming to any individual positively identified in these records. Libya has an unstable security environment and it is reasonable to expect that individuals identified as working for or against the U.S. Government could be targeted for retribution.

IV. CONCLUSION

63. In summary, the Department has carefully reviewed all of the documents addressed herein for reasonable segregation of non-exempt information and has implemented

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 10th day of May 2018, Washington, D.C.

A handwritten signature in black ink, appearing to read "Eric F. Stein", written over a horizontal line.

Eric F. Stein

Exhibit 1

Exhibit 1**Department of State *Vaughn* Index***Accuracy in Media, Inc., et al. v. Department of State, et al. (No. 1:14-cv-01589)*

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
C05935290	Call Log	1	Sept. 12, 2012	Department of State	Released in Part ("RIP")	(b)(6)
<p>DESCRIPTION: This document is a telephone log noting the time of calls and persons conversing with Secretary Clinton on September 12, 2012. It is currently designated UNCLASSIFIED. The Department withheld the names of two family members of victims of the Benghazi attacks under Exemption 6, 5 U.S.C. § 552(b)(6), because release of this information could subject the individuals to harassment, unwanted attention, or unsolicited communications and would not shed light on the operations of the U.S. Government. As a result, release of this information would constitute an unwarranted invasion of personal privacy and the information is exempt from disclosure under FOIA Exemption 6, 5 U.S.C. § 552(b)(6). The Department conducted a thorough review of the document and determined that there is no additional meaningful, non-exempt information that may be reasonably segregated and released.</p>						
C06052236	Draft Interview Summary	3	Dec. 3, 2012	Accountability Review Board Interview Summary	Denied in Full ("DIF")	(b)(1), 1.4(c), (g); (b)(3) National Security Act 50 U.S.C. § 3024(i)(1), Central Intelligence Agency Act 50 U.S.C. §3507; (b)(5) DPP, (b)(6)

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>DESCRIPTION: This document is a draft summary of an interview conducted on December 3, 2012, by the Accountability Review Board (ARB), a group convened to analyze the facts and circumstance of the attack on the U.S. facilities in Benghazi, Libya, identify procedural vulnerabilities that allowed the attacks to occur, and recommend policy changes to prevent future similar events. It is marked “draft – pre-decisional and deliberative.”</p> <p>The Department withheld this document in full under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege, because release of these interview notes, which contain a selection and analysis of facts reflecting the judgment of the author, and are pre-decisional and deliberative, could reasonably be expected to chill the open and frank expression of ideas, recommendations, and opinions that occur when Department officials are formulating a strategy for official action on an international security matter. The notes also reflect deliberative comments by the interviewee concerning the security measures or tactics that would be advisable at a diplomatic facility. Recommendations and impressions collected through the ARB interviews are pre-decisional with respect to the ARB’s determination of factors contributing to the attacks and recommendations for policy changes to address identified security vulnerabilities as well as the ultimate decisions by Department leadership concerning which recommendations to adopt. Disclosure of this information would impede the ability of responsible Department officials to formulate and carry out executive branch programs by inhibiting candid internal discussion and the expression of recommendations and judgments regarding a preferred course of action.</p> <p>The Department also withheld portions of this document under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), on its own behalf and on behalf of the CIA, pursuant to E.O. 13526 sections 1.4(c) and (g), which pertain to intelligence activities (including covert action), intelligence sources or methods, or cryptology and vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security. This material was originally and is currently classified SECRET//NOFORN. Release of this material could compromise intelligence sources or methods by revealing the identities of CIA personnel who responded to the attacks, how they did or did not move or travel, the methods that they used in their response, and the nature and extent of their capabilities. Revealing this information would provide adversaries valuable insights into the CIA’s past overt and clandestine relationships with personnel, physical security and force protection measures, and security strategies, all of which could be exploited to reduce the effectiveness of the CIA’s ongoing intelligence operations. It could also reveal the capabilities or vulnerabilities of U.S. overseas missions, which could be exploited, endangering the physical security of those missions and personnel overseas.</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>Portions of this document were also withheld under 5 U.S.C. § 552(b)(3) at the request of the CIA, pursuant to National Security Act, 50 U.S.C. § 3024(i)(1), because it contains information about intelligence sources and methods, and the Central Intelligence Agency Act, 50 U.S.C. § 3507, because it contains information disclosing the identities of CIA employees and their duties or functions, including functions related to the protection of intelligence methods.</p> <p>The names of CIA employees were also withheld under Exemption 6, 5 U.S.C. § 552(b)(6), because release of this information could subject the individuals to harassment, unwanted attention, and unsolicited communications, and would not shed light on the operations of the U.S. Government. As a result, release of this information would constitute an unwarranted invasion of personal privacy, and the information is exempt from disclosure under FOIA Exemption 6, 5 U.S.C. § 552(b)(6).</p>						
C06052239	Draft Interview Summary	4	Oct. 12, 2012	Accountability Review Board Interview Summary	DIF	(b)(1), 1.4(g); (b)(5) DPP, (b)(6), (b)(7)(C), (b)(7)(E)
<p>DESCRIPTION: This document is a draft summary of an interview conducted on October 12, 2012, by the ARB, a group convened to analyze the facts and circumstance of the attack on the U.S. facilities in Benghazi, Libya, identify procedural vulnerabilities that allowed the attacks to occur, and recommend policy changes to prevent future similar events. It is marked “draft – pre-decisional and deliberative.”</p> <p>The Department withheld this document in full under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege, because release of these interview notes, which contain a selection and analysis of facts reflecting the judgment of the author, and are pre-decisional and deliberative, could reasonably be expected to chill the open and frank expression of ideas, recommendations, and opinions that occur when Department officials are formulating a strategy for official action on an international security matter. The notes also reflect deliberative comments by the interviewee concerning the security measures or tactics that would be advisable at a diplomatic facility. Recommendations and impressions collected through the ARB interviews are pre-decisional with respect to the ARB’s determination of factors contributing to the attacks and recommendations for policy changes to address identified security vulnerabilities as well as the ultimate decisions by Department leadership concerning which recommendations to adopt. Disclosure of this information would impede the ability of responsible Department officials to formulate and carry out executive</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>branch programs by inhibiting candid internal discussion and the expression of recommendations and judgments regarding a preferred course of action.</p> <p>The Department also withheld certain descriptions of the security measures and techniques employed at the facility under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because security measures and procedures, defensive capabilities, and counter-measures that were in place at the Benghazi facility are indicative of the protections currently in place at other current State Department facilities in other locations around the world. If released, this information could be exploited to circumvent security measures at Department facilities.</p> <p>The Department also withheld portions of the document under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 section 1.4(g), which pertains to vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security. This material was originally and is currently classified SECRET//NOFORN. Release of this material could reveal the capabilities or vulnerabilities of U.S. overseas missions, which could be exploited, endangering the physical security of those missions and personnel overseas.</p> <p>In addition, the Department withheld information revealing the identities of diplomatic security (DS) agents in these documents under FOIA Exemptions 6 and 7(C), 5 U.S.C. §§ 552(b)(6), (b)(7)(C), because the disclosure of this information would be reasonably likely to result in harassment and/or intimidation or other targeting of the individuals revealed due to their involvement in law enforcement or relationship to the controversial attacks. This information would not shed light on the operations of the U.S. Government and its release would constitute an unwarranted invasion of personal privacy.</p>						
C06052240	Draft Interview Summary	4	Oct. 12, 2012	Accountability Review Board Interview Summary	DIF	(b)(5) DPP, (b)(6), (b)(7)(C), (b)(7)(E)
<p>DESCRIPTION: This document is a draft summary of an interview conducted on October 12, 2012, by the ARB, a group convened to analyze the facts and circumstance of the attack on the U.S. facilities in Benghazi, Libya, identify procedural vulnerabilities that allowed the attacks to occur, and recommend policy changes to prevent future similar events. It is marked “draft – pre-decisional and deliberative.”</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>The Department withheld this document in full under FOIA Exemption 5, 5 U.S.C. § 552(b)(5), pursuant to the deliberative process privilege, because release of these interview notes, which contain a selection and analysis of facts reflecting the judgment of the author, and are pre-decisional and deliberative, could reasonably be expected to chill the open and frank expression of ideas, recommendations, and opinions that occur when Department officials are formulating a strategy for official action on an international security matter. The notes also reflect deliberative comments by the interviewee concerning the security measures or tactics that would be advisable at a diplomatic facility. Recommendations and impressions collected through the ARB interviews are pre-decisional with respect to the ARB's determination of factors contributing to the attacks and recommendations for policy changes to address identified security vulnerabilities as well as the ultimate decisions by Department leadership concerning which recommendations to adopt. Disclosure of this information would impede the ability of responsible Department officials to formulate and carry out executive branch programs by inhibiting candid internal discussion and the expression of recommendations and judgments regarding a preferred course of action.</p> <p>The Department also withheld certain descriptions of the security measures and techniques employed at the facility under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because security measures and procedures, defensive capabilities, and counter-measures that were in place at the Benghazi facility are indicative of the protections currently in place at other current State Department facilities in other locations around the world. If released, this information could be exploited to circumvent security measures at Department facilities.</p> <p>In addition, the Department withheld information revealing the identities of diplomatic security (DS) agents in these documents under FOIA Exemptions 6 and 7(C), 5 U.S.C. §§ 552(b)(6), (b)(7)(C), because the disclosure of this information would be reasonably likely to result in harassment and/or intimidation or other targeting of the individuals revealed due to their involvement in law enforcement or relationship to the controversial attacks. This information would not shed light on the operations of the U.S. Government and its release would constitute an unwarranted invasion of personal privacy.</p>						
C05467904 C05467908 C05467912 C05467919 C05467920	Video		Sept. 11-12, 2012	U.S. Special Mission in Benghazi	DIF	(b)(7)(A), (7)(E), (7)(F)

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
C05467921						
<p>DESCRIPTION: These records are surveillance video recordings containing sets of video feeds recorded at the State Department’s facility in Benghazi, Libya between September 11 and September 12, 2012. They are currently designated SENSITIVE BUT UNCLASSIFIED. The Department withheld these videos in full on its own behalf under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because the premature disclosure of the surveillance video feeds would interfere with the active FBI and DS investigations by identifying suspects, the scope of the investigation, and the evidence collected to date, which would jeopardize the investigations. Disclosure could further interfere with successful investigation and prosecution by revealing the images of potential witnesses to the crimes committed, including foreign nationals, and enabling them to be identified and intimidated prior to offering needed testimony.</p> <p>The Department also withheld these records under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because the videos indicate security measures and procedures, defensive capabilities, and counter-measures, in place at the Benghazi facility, that are indicative of the protections currently in place at other current State Department facilities in other locations around the world. These include, for example, particular technologies or physical features in place, methods for covering an overall facility with camera surveillance, movements and responsive tactics of security personnel, and evacuation methods for such facilities. Analysis of the videos, especially comparing the synchronized camera angles side by side, would reveal the strategies utilized to protect diplomatic compounds, enabling future attempts to circumvent these techniques and procedures.</p> <p>Furthermore, the FBI determined these records to be exempt from disclosure pursuant to FOIA Exemptions 7(A), 7(E), and 7(F), 5 U.S.C. §§ 552(b)(7)(A), (b)(7)(E), and (b)(7)(F). <i>See Hardy Decl.</i> ¶¶ 10-19. The Department, in consultation with the FBI, conducted a thorough review of the documents and determined that there is no meaningful, non-exempt information that may be reasonably segregated and released.</p>						
C05467910 C05467913 C05467914 C05467915 C05467916	Video		Sept. 11-12, 2012	U.S. Special Mission in Benghazi	DIF	(b)(6), (b)(7)(A), (7)(C), (7)(E), (7)(F)

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>DESCRIPTION: These records are surveillance video recordings containing sets of surveillance video feeds recorded at the State Department's facility in Benghazi, Libya between September 11 and September 12, 2012. They are currently designated SENSITIVE BUT UNCLASSIFIED.</p> <p>The Department withheld these videos in full on its own behalf under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A) because the premature disclosure of the surveillance video feeds would interfere with the active FBI and DS investigations by identifying suspects, the scope of the investigation, and the evidence collected to date, which would jeopardize the investigations. Disclosure could further interfere with successful investigation and prosecution by revealing the images of potential witnesses to the crimes committed, including foreign nationals, and enabling them to be identified and intimidated prior to offering needed testimony.</p> <p>The Department also withheld these records on its own behalf under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because the videos indicate security measures and procedures, defensive capabilities, and counter-measures, in place at the Benghazi facility, that are indicative of the protections currently in place at other current State Department facilities in other locations around the world. These include, for example, particular technologies or physical features in place, methods for covering an overall facility with camera surveillance, movements and responsive tactics of security personnel, and evacuation methods for such facilities. Analysis of the videos, especially comparing the synchronized camera angles side by side, would reveal the strategies utilized to protect diplomatic compounds, enabling future attempts to circumvent these techniques and procedures. The FBI also determined these records to be exempt from disclosure pursuant to FOIA Exemptions 7(A) and 7(E), 5 U.S.C. §§ 552(b)(7)(A) and (b)(7)(E). <i>See Hardy Decl.</i> ¶¶ 10-17.</p> <p>In addition, the Department withheld certain information in these documents under FOIA Exemptions 6, 7(C), and 7(F), 5 U.S.C. §§ 552(b)(6), (b)(7)(C), and (b)(7)(F), because the disclosure of the identities of DS agents, contractors, other employees, and third parties, including foreign nationals, that are contained in the surveillance video feeds are reasonably likely to result in harassment and/or intimidation and physical harm to the individuals pictured due to their involvement in law enforcement or relationship to the controversial attacks. Some of the DS agents or other employees pictured may currently be placed at State Department posts abroad where their identification as U.S. Government law enforcement agents would place them at particular risk. In addition, non-Americans currently living abroad who are identified as having aided the United States during the attacks are especially vulnerable to being targeted and harmed. The FBI also determined these records to be exempt from disclosure pursuant to FOIA Exemption 7(F), 5 U.S.C. § 552(b)(7)(F). <i>See Hardy Decl.</i> ¶¶ 18-19.</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>The Department, in consultation with the FBI, conducted a thorough review of the documents and determined that there is no meaningful, non-exempt information that may be reasonably segregated and released.</p>						
C05467917	Video		Sept. 11-12, 2012	U.S. Special Mission in Benghazi	DIF	(b)(1) 1.4(c), (d), (b)(3) National Security Act 50 U.S.C. § 3024(i)(1), Central Intelligence Agency Act 50 U.S.C. §3507, (b)(6), (b)(7)(A), (7)(C), (7)(E), (7)(F)
<p>DESCRIPTION: This record is a surveillance video recording containing sets of video feeds recorded at the State Department's facility in Benghazi, Libya between September 11 and September 12, 2012. It was originally designated SENSITIVE BUT UNCLASSIFIED and has subsequently been classified at the SECRET level by the CIA in accordance with Section 1.7(d) of E.O. 13526.</p> <p>The Department withheld these videos in full on its own behalf under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because the premature disclosure of the surveillance video feeds would interfere with the active FBI and DS investigations by identifying suspects, the scope of the investigation, and the evidence collected to date, which would jeopardize the investigations. Disclosure could further interfere with successful investigation and prosecution by revealing the images of potential witnesses to the crimes committed, including foreign nationals, and enabling them to be identified and intimidated prior to offering needed testimony.</p>						

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
						<p>The Department also withheld these records on its own behalf under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E) because the videos indicate security measures and procedures, defensive capabilities, and counter-measures, in place at the Benghazi facility, that are indicative of the protections currently in place at other current State Department facilities in other locations around the world. These include, for example, particular technologies or physical features in place, methods for covering an overall facility with camera surveillance, movements and responsive tactics of security personnel, and evacuation methods for such facilities. Analysis of the videos, especially comparing the synchronized camera angles side by side, would reveal the strategies utilized to protect diplomatic compounds, enabling future attempts to circumvent these techniques and procedures. The FBI also determined these records to be exempt from disclosure pursuant to FOIA Exemptions 7(A), and 7(E), 5 U.S.C. §§ 552(b)(7)(A) and (b)(7)(E). <i>See Hardy Decl.</i> ¶¶ 10-17.</p> <p>In addition, the Department withheld certain information in these videos under FOIA Exemptions 6, 7(C), and 7(F), 5 U.S.C. §§ 552(b)(6), (b)(7)(C), and (b)(7)(F) because the disclosure of the identities of DS agents, contractors, other employees, and third parties, including foreign nationals, that are contained in the surveillance video feeds are reasonably likely to result in harassment and/or intimidation and physical harm to the individuals pictured due to their involvement in law enforcement or relationship to the controversial attacks. Some of the DS agents or other employees pictured may currently be placed at State Department posts abroad where their identification as U.S. Government law enforcement agents would place them at particular risk. In addition, non-Americans currently living abroad who are identified as having aided the United States during the attacks are especially vulnerable to being targeted and harmed. The FBI also determined these records to be exempt from disclosure pursuant to FOIA Exemption 7(F), 5 U.S.C. § 552(b)(7)(F). <i>See Hardy Decl.</i> ¶¶ 18-19.</p> <p>Finally, the Department also withheld certain information in these surveillance video record on behalf of CIA under FOIA Exemptions 1 and 3. The CIA requested withholding of this set of recordings under 5 U.S.C. § 552(b)(1), pursuant to E.O. 13526 sections 1.4(c), intelligence sources or methods, and (d), foreign relations or foreign activities of the United States, including confidential sources. Release of this material could compromise intelligence sources and methods by revealing the identities of CIA personnel who responded to the attacks, how they did or did not move or travel, the methods that they used in their response, and the nature and extent of their capabilities. Revealing this information would provide adversaries valuable insights into the CIA's past overt and clandestine relationships with personnel, physical security and force protection measures, and security strategies, all of which could be exploited to reduce the effectiveness of the CIA's ongoing intelligence operations.</p>

<u>Doc No.</u>	<u>Doc. Type</u>	<u>Pages</u>	<u>Date/Date Range</u>	<u>From/To</u>	<u>Review Result</u>	<u>Exemptions Claimed</u>
<p>This information was also withheld under 5 U.S.C. § 552(b)(3) at the request of the CIA, pursuant to National Security Act, 50 U.S.C. § 3024(i)(1), because it contains information about intelligence sources and methods, and the Central Intelligence Agency Act, 50 U.S.C. § 3507, because it contains information disclosing the identities of CIA employees and their duties or functions, including functions related to the protection of intelligence methods. The Department, in consultation with the FBI and the CIA, conducted a thorough review of the documents and determined that there is no meaningful, non-exempt information that may be reasonably segregated and released.</p>						

Exhibit 2

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

February 21, 2014

By Certified Mail — Return receipt Requested
Article Number 7010 3090 0000 0316 6505

FOIA REQUEST

Office of Information Programs and Services
A/GIS/IPS/RL
US DEPARTMENT OF STATE, SA-2
Washington, DC 20522-8100

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA."

FOIA Requesters. I write on behalf of my clients, Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following seven individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (4) Clare Lopez, (5) James A. Lyons, Jr., (5) Kevin Shipp, and (7) Wayne Simmons.

FOIA Requests. These requests are for the following records of activities in Libya, in the care, custody or control of the State Department, regardless of the source of the records:

1. All records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi consulate and CIA Annex. Responsive records include those that disclose:

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 2

FEB 27 2014

- NEA DS
- DS
- DS
- DS
- PM
- A
- DS
- DS
- NEA
- WR
- DS
- (1) The comings and goings of all persons, whether civilian, military, American or foreign, including any non-US personnel questioned, interrogated, detained, or transported through, the CIA Annex and Benghazi consulate;
 - (2) The descriptions and inventories of all weapons brought into the Annex;
 - (3) The sources of all such weapons;
 - (4) The descriptions and inventories of all weapons removed from the Annex,
 - (5) The intended destinations and recipients of all such weaponry, including
 - (i) All transfers of arms and equipment to Libyan resistance fighters, both before or after the United Nations recognized the National Transitional Council as the legal representative of Libya;
 - (ii) Transportation of arms and equipment from Libya into Turkey; and
 - (iii) US Government supply of weapons into Syria.
 - (6) All communication and cryptographic equipment at the CIA Annex and Benghazi consulate;
 - (7) The weaponry, communication, and cryptographic equipment, that may have been left in the Annex and Benghazi consulate when US personnel abandoned these facilities on September 11th and 12th, 2012;
 - (8) Information about the weapons recovered from fallen attackers at the Ambassador's compound as well as the CIA Annex during and after the attacks;
 - (9) Information about the identities and affiliations of any of those fallen fighters as well as the disposition of their bodies, alive or dead; and
 - (10) CIA situation reports, or "sitreps," sent, including on September 11th, 12th, and 13th.
2. Any and all videos depicting the United States Consulate in Benghazi, Libya (including the Special Mission Compound and the Annex) between September 10, 2012 and September 12, 2012. This request includes, but is not limited to (1) all videos and photographs obtained, transmitted, or recorded via any unmanned aerial vehicles (UAVs), and (2) video of closed-circuit television monitor at the Benghazi Mission facility's Tactical Operations Center on September 11th and 12th, 2013.

3. *N/A* All records generated between September 11, 2012 and the present, by survivors of the September 11th and 12th attacks on the Benghazi mission and the Benghazi CIA Annex, or by any person regarding the survivors' accounts of the attack.
4. *VS* All records of radio communications emanating from the Compound's Tactical Operations Center (TOC), on September 11th and 12th, 2012, whether made by Regional Security Officer (RSO) Alec Henderson or any other person.
5. *N/A* All records of Secretary Panetta's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack. Responsive records include:
- (1) All records generated by Secretary Panetta, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of his telephone calls placed or received; and
 - (3) All records generated by anyone about the Secretary's actions and communications
6. *N/A S/S* All records of Secretary Clinton's actions and communications for the 24-hour period beginning when first notified that the Benghazi Consulate was under attack. Responsive records include:
- (1) All records generated by Secretary Clinton, including all emails, memoranda, or notes;
 - (2) Telephone logs or bills or other statements of all of her telephone calls placed or received; and
 - (3) All records generated by anyone about the Secretary's actions and communications.
7. *N/A* Any records reflecting the time, and substance, of the President's first notification that the Benghazi Consulate was under attack, and his actions, and communications, for the next 24 hours.
8. *N/A* All calendars, day books, journals, notes, memoranda, or other records reflecting Ambassador Stevens' schedule on September 11, 2012, including the Ambassador's diary, and all correspondence to or from the Ambassador regarding his meetings that day, including with the Turkish Consul General.
9. *N/A* All records of the purpose of Ambassador Stevens' meetings on September 11, 2012, including analysis or assessments of those meetings, whether written before or after September 11, 2012.

- NEA
10. All correspondence to or from Ambassador Stevens on September 10th and 11th, 2012.
- NEA
11. All notes, memoranda, and correspondence generated between January of 2007 and September 11, 2012, regarding meetings between Christopher Stevens or any other Tripoli Embassy official, and one or more of the following individuals:
- **Ahmed Abu Khattala**, a commander of the Libyan Ansar al-Shariah militia group
 - **Mustafa Abdul Jalil**, Chairman of the Libyan National Transitional Council from 5 March 2011-8 August 2012
 - **Mahmoud Jibril**, Interim Prime Minister of Libya and Chair of the Executive Board of the National Transitional Council from 5 March-23 October 2011
 - **Wissam bin Hamid**, a Libya Shield Brigade commander, supporter of the Libyan Muslim Brotherhood Justice & Construction Party, and veteran jihad fighter of Iraq & Afghanistan, who provided security for US representatives in Benghazi and was tentatively identified by the Library of Congress as the head of al-Qa'eda in Libya
 - **Abdelhakim Belhadj** (aka Abdallah al Sadeq), veteran jihad fighter of Iraq & Afghanistan, commander of the AQ franchise militia, Libyan Islamic Fighting Group (LIFG) (aka Libyan Islamic Movement for Change), post-revolution military commander of Tripoli, and Libyan delegation leader to the Syrian Free Army in late 2011
 - **Ismael al-Sallabi** (brother of Ali), commander of the Al-Qa'eda-linked al-Sahati Brigade during the revolution, and Benghazi Military Council commander afterwards, close ally of Abdelhakim Belhadj and Mustafa Jalil
 - **Ali al-Sallabi** (brother of Ismael), called the 'spiritual leader' of the Libyan revolution, Muslim Brotherhood links, led effort with Seif al-Qaddafi and US Embassy Tripoli to gain release of jihadi detainees from Libyan jails
 - **Mohammad al-Sallabi**, father of Ali and Ismael, among the founders of the Libyan Muslim Brotherhood in the 1960s
 - **Abu Sufian bin Qumu**, veteran jihad fighter in Afghanistan from Derna, Libya, captured in 2001, detained at GITMO, sent back to Libyan jail, released in 2010, led jihad vs Qaddafi in 2011, and led Benghazi Mission attack in Sep 2012.

- H
12. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records, shared with members of Congress, regarding collection, storage, transportation of arms and equipment in Libya.
- INR
13. For the period of February 15th, 2011, through December 31st, 2012, all DOD and CIA or other intelligence community records of Congressional approval for CIA transport of arms to Syrian rebel forces.
- NCA
14. All records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi.
- PA
15. Records of the names, and titles, of individuals indentified only as "Senior State Department Official Number One" and "Senior State Department Official Number Two" during the October 9, 2012, Background Briefing on Libya, given by the Office of the Spokesperson, the transcript of which was publicly disclosed, titled, "Background Conference Call With Senior State Department Officials."

Electronic Format. Kindly produce these records in electronic format. *See* e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." *See generally* FOIA Update Vol. XVII, No. 4, 1996.

Request for Waiver of Search and Review Fees. As a representatives of the news media, Accuracy in Media, Inc. ("AIM"), submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). AIM is organized and operated to publish or broadcast news to the public.

Kindly consider the six factors identified in 22 CFR 171.11(o), which, collectively, establish AIM's entitlement to "Representative of the News Media" status. First, the subject matter of the FOIA requests concern the operations or activities of the Department of State. Second, the requested information is not in the public domain.

Third, upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested, is beyond question. Accuracy in Media Articles on the subject include "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghaziigate," "Obama and His Media Loyalists Still Spinning Benghazi," and Does Navy Map Alter the Benghazi Narrative?"

Fourth, several of the individual requesters have published articles about the matter, demonstrating, *inter alia*, the background, experience, and expertise of the FOIA requesters in the subject area of the requests. See, for examples, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Fifth, AIM, as well as the individual FOIA requesters, intend to use the requested information in scholarly or other analytic work, for dissemination. Lastly, neither AIM nor the individuals identified above have any "commercial interest" that would be furthered by the disclosure of the requested information, as that term has been interpreted by the courts under 5 U.S.C. § 552 (a)(4)(A)(ii)(II).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... 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." Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

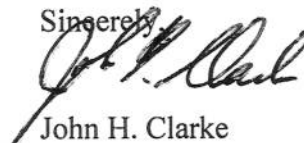
Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, in accordance with AIM's news dissemination function. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Release of the information will contribute to an understanding of government operations or activities regarding the Benghazi issue, as compared with awareness prior to the disclosure. Thus, the requesters provide an adequate showing of their concrete plans to disseminate the requested information, and adequately demonstrate how disclosure of the requested documents meets the requirements for a public interest fee waiver.

Expeditious Handling. Because the information is urgently needed by an entity primarily engaged in publicizing information, in order to inform the public concerning actual or alleged government activity, the Requesters seek expeditious handling, in accordance with 22 CFR 171.12(b).

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 3



United States Department of State

Washington, D.C. 20520

MAR 21 2014

Dear Requester,

RE: Benghazi records 11/11 - 9/30/12

This is in response to your request dated 2/21/14. We have assigned Case Control Number F-2014-03625 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

We have considered your request for a fee waiver. Based upon the information provided in your letter, your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

Unusual circumstances (including the number and location of Department components involved in responding to your request, the volume of requested records, etc.) may arise that would require additional time to process your request.

Our published regulations regarding expedition, 22 C.F.R. § 171.12(b), require a specific showing of a compelling need. **Expedited processing is granted only in the following situations:** (1) *imminent threat to the life or physical safety of an individual;* (2) *urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity and the information is urgently needed in that a particular value of the information would be lost if not disseminated quickly;* (3) *substantial humanitarian reasons;* and (4) *loss of substantial due process rights.* Your request does not meet any of the established criteria. Regrettably, I must advise that you have not provided adequate justification for expedition. However, you may be assured that we will make every effort to process your request in as timely a manner as possible. For your convenience, I have enclosed a copy of the Department's expedited processing criteria.

If you wish to appeal the denial of expedition, you may write to the Requester Liaison Division, at the address below, within 30 days of receipt of this letter.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you want to contact us, you may call our FOIA Requester Service Center on (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

Requester Communications Branch
Office of Information Programs & Services

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 3

Expeditious Processing Information Sheet

Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. A compelling need is deemed to exist where the requester can demonstrate one of the following:

1. **A Compelling Need** means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
2. **A Compelling Need** means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information to the public. Representatives of the news media would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just to a particular segment or group.
 - (a) **Urgently Needed** means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of historical interest only, or information sought for litigation or commercial activities would not qualify nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.
 - (b) **Actual or Alleged Federal Government Activity.** The information concerns some actions taken, contemplated, or alleged by or about the Government of the United States, or one of its components or agencies, including the Congress.
3. **Substantial Due Process** rights of the requester would be impaired by the failure to process immediately; or
4. **Substantial Humanitarian** concerns would be harmed by the failure to process immediately.

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge.

Exhibit 4

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

May 5, 2014

By email: PerlowHT@state.gov

Mr. Howard Perlow
US DEPARTMENT OF STATE

Re: FOIA Request to the Department of State: F-2014-03625

Dear Mr. Perlow:

Thank you for your April 25 email regarding the captioned FOIA request. I look forward to reviewing the new State Department website where relevant unclassified, declassified, and fully or partially released documents will be posted.

I appreciate your suggestion that I narrow the request, and for including examples of where State is not the correct agency from which to seek documents. To answer to your question, yes, I have sought disclosure from other U.S. government agencies where many of the particular records originated.

I understand that records in State's custody that originated from the CIA may need to be referred to the CIA, and that State may need to coordinate with CIA where State records contain CIA information. But I will not be narrowing the request to exclude these records because we seek records that disclose the relationship between the Benghazi compound and the CIA annex, particularly records that show State's knowledge of these CIA activities.

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 4

I do, however, eliminate some records sought in the first item of the request. Request number one as currently written begins:

All records of whatsoever nature regarding (1) the Benghazi consulate and (2) its CIA Annex, for the time period of January 1st, 2011, through September 30th, 2012. This request is all-inclusive for all records, however recorded, including emails, reports, memoranda, correspondence, teletypes, telephone calls, text messages, and audio and video recordings, regarding all uses of the Benghazi consulate and CIA Annex. Responsive records include those that disclose...

Please note that we hereby narrow this item to exclude any records "regarding (1) the Benghazi consulate," leaving only records in State's custody regarding (2), the CIA annex. Thus, full disclosure under this item will still reveal the relationship between State and CIA activities at the annex, but will eliminate the necessity to produce numerous other records. Kindly forward this letter as necessary.

All other items remain requested as submitted. If you have any questions, please ask via email. As we noted in the FOIA request letters, we ask that State please produce records in electronic format, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,

/s/

John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 5

Law Office

John H. Clarke

1629 K Street, NW
Suite 300
Washington, DC 20006

(202) 332-3030

JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

August 5, 2014

Office of Information Programs and Services
A/GIS/IPS/RL
US DEPARTMENT OF STATE, SA-2
Washington, DC 20522-8100

And by email to Mr. Howard Perlow
PerlowHT@state.gov

Re: February 21, 2014 FOIA Request
State Department Case Control No. F-2014-03625

Dear Mr. Perlow:

This letter narrows the captioned request, by withdrawing eight of the requesters' initial 15 FOIA Requests. By May 5, 2014, letter, the requesters narrowed Request No. 1.


Please note that we further narrow the requests, and withdraw Request Nos. 1(10), 5, 7, 8, 10, 12, 13, and 14. Request 1(10) sought CIA situation reports. Request 5 sought "records of Secretary Panetta's actions and communications..." Request 7 asked for disclosure of records of "the President's first notification that the Benghazi Consulate was under attack..." Request 8 sought disclosure of records reflecting Ambassador Stevens' schedule on September 11, 2012. Request 10 sought disclosure Ambassador Stevens correspondence on September 10th and 11th, 2012. Request 12 sought "DOD and CIA... records shared with members of Congress regarding... collection, storage, transportation of arms and equipment in Libya." Request 13 asked that "DOD and CIA... records of Congressional approval for CIA transport of arms to Syrian rebel forces" be disclosed. Request 14 sought "records regarding Deputy National Security Adviser for Homeland Security and Counter-terrorism John Brennan's recommendations regarding the overthrow of Libyan leader Muammar Gaddafi."

'14 AUG 12 PM2:44

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 5

Thank you.

Sincerely



John H Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit 6



United States Department of State

Washington, D.C. 20520

MAR 16 2015

Case No.: F-2014-03625

Segment: EAN-0005

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

In response to your request dated February 21, 2014, under the Freedom of Information Act (Title 5 USC Section 552), and your subsequent narrowing of the request in correspondence dated May 5, 2014, and August 5, 2014, we conducted searches of the following Department of State record systems: the Central Foreign Policy Records (the principal record system of the Department of State), the files of the Bureau of Near Eastern Affairs, the files of the Bureau of Diplomatic Security, the files of the Bureau of Intelligence and Research, the files of the Bureau of Public Affairs, the files of the Bureau of Political-Military Affairs, the files of the Office of Logistics Management, and the files of the Office of the Executive Secretariat.

The search of the records of the Central Foreign Policy Records is partially complete and has resulted in the retrieval of 45 documents responsive to your request. After reviewing these 45 documents we have determined that 7 may be released in part, 4 must be withheld in full, and that 34 documents either originated in, or require consultation with, other U.S. Government agencies. We have referred the latter 34 documents to the relevant agencies with a request to respond upon making a determination as to releasability. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. Of the information withheld, all was withheld under FOIA Exemption 1,

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 6

- 2 -

5 U.S.C. § 552(b)(1). An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

Susan A. Weism For

John F. Hackett, Acting Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 7



United States Department of State

Washington, D.C. 20520

MAY 11 2015

Case No.: F-2014-03625

Segment: EAN-0001, EAN-0003, EAN-0004,
& EAN-0005

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated March 10, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

The search of the Central Foreign Policy Records is partially complete and has resulted in the retrieval of eight documents responsive to your request. After reviewing these eight documents we have determined that five may be released in full and that three documents may be released in part. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "John F. Hackett" with a stylized flourish at the end.

John F. Hackett, Acting Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 7

Exhibit 8



United States Department of State

Washington, D.C. 20520

JUL - 6 2015

Case No.: F-2014-03625

Segment: EAN-0006 & EAN-0008

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated May 11, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

The search of the records of the Central Foreign Policy Records is partially complete and has resulted in the retrieval of 14 documents responsive to your request. After reviewing these 14 documents we have determined that 7 may be released in full, 1 may be released in part, and that 6 documents either originated in, or require consultation with, other U.S. Government agencies. We have referred the latter six documents to the relevant agencies with a request to respond upon making a determination as to releasability. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "John F. Hackett" with a stylized flourish at the end.

John F. Hackett, Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 8

Exhibit 9



United States Department of State

Washington, D.C. 20520

AUG 31 2015

Case No.: F-2014-03625

Segment: EAN-0006 & EAN-0007

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

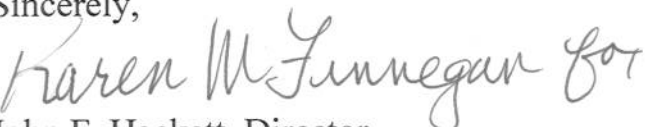
I refer you to our letter dated July 6, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

The search of the records of the Central Foreign Policy Records is partially complete and has resulted in the retrieval of 10 documents responsive to your request. After reviewing these 10 documents we have determined that 3 may be released in full and that 7 may be released in part. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,


John F. Hackett, Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 9

Exhibit 10



United States Department of State

Washington, D.C. 20520

OCT 26 2015

Case No.: F-2014-03625

Segment: EAN-0009, EAN-0010, EAN-0011,
& NEA-0001

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated August 31, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

The search of the records of the Central Foreign Policy Records and the Bureau of Near Eastern Affairs is partially complete and has resulted in the retrieval of 86 documents responsive to your request. After reviewing these 86 documents we have determined that 12 may be released in full, 3 may be released in part, 2 must be withheld in full, and that 69 documents either originated in, or require consultation with, other U.S. Government agencies. We have referred the latter 69 documents to the relevant agencies with a request to respond to you directly or to advise the Department of State of any impediments to release. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in cursive script that reads "Julia Navarro for".

John F. Hackett, Director
Office of Information Programs and Services

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 10

- 2 -

Enclosures: As stated

Exhibit 11



United States Department of State
Washington, D.C. 20520

DEC - 4 2015

Case No.: F-2014-03625
Segment: EAN-0012, NEA-0002,
& A/LM/AQM-0001

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated October 26, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The search of the Central Foreign Policy Records, the files of the Bureau of Near Eastern Affairs, and the files of the Office of Logistics Management is partially complete and has resulted in the retrieval of six documents responsive to your request. After reviewing these six documents we have determined that three may be released in full and three may be released in part. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 11

- 2 -

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Susan A. Weimer" followed by a stylized flourish.

John F. Hackett, Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 12



United States Department of State

Washington, D.C. 20520

DEC 21 2015

Case No.: F-2014-03625

Segment: EAN-0003, EAN-0004,
EAN-0006, EAN-0011, EAN-
0012, NEA-0001, NEA-0002, &
S/ES-0001

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated December 4, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The search of the Central Foreign Policy Records, the files of the Bureau of Near Eastern Affairs, and the files of the Office of the Executive Secretariat is partially complete and has resulted in the retrieval of 25 documents responsive to your request.¹ After reviewing these 25 documents we have determined that 1 may be released in full, 10 may be released in part, 5 must be withheld in full, and that 9 documents either originated in, or require consultation with, other U.S. Government agencies. We have referred the latter nine documents to the relevant agencies with a request to respond upon making a determination as to releasability. All released material is enclosed.

¹ As noted in the Department's December 21, 2015 Unopposed Motion for Extension of Final Production Deadline, State has very recently located a source of potentially-responsive documents that has not previously been searched. State will file a status report on January 22, 2016, in which it will provide the Court with an update on the status of the search and production of any responsive, non-exempt documents from this new source.

- 2 -

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. Of the information withheld in full, all was withheld under FOIA Exemptions 1 and 5, 5 U.S.C. § 552(b)(1) and § 552(b)(5) . An enclosure provides information on FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "John F. Hackett for".

John F. Hackett, Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 13



United States Department of State

Washington, D.C. 20520

MAR 2 2015

Case No.: F-2014-03625

Segment: S/ES-0002, S/ES-0003, &
S/ES-0004

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated December 21, 2015, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The search of the files of the Office of the Executive Secretariat has been completed and thus far resulted in the retrieval of seven documents responsive to your request. After reviewing these seven documents we have determined that one may be released in part and that six must be withheld in full. All released material is enclosed.

Where we have made excisions, the applicable exemptions are marked on each document. Where the information was withheld in full, all was withheld under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). An enclosure provides information on the FOIA exemptions and other grounds for withholding material.

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

Eric F. Stein for

Eric F. Stein, Acting Co-Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 13

Exhibit 14



United States Department of State

Washington, D.C. 20520

May 5, 2016

Case No.: F-2014-03625

Segment: S/ES-0007

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke:

I refer you to our letter dated March 21, 2016, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. §552.

Eleven additional documents responsive to your request have been retrieved. After reviewing these 11 documents we have determined that 2 may be released in full, 5 may be released in part, 2 must be withheld in full, and 2 documents originated in other U.S. Government agencies. We have referred the latter two documents to the relevant agencies with a request to respond to you directly. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. Where the information was withheld in full, all was withheld under FOIA Exemptions 1, 2, 3, 5, 6, and 7, 5 U.S.C. §§ 552(b)(1), (b)(2), (b)(3), (b)(5), (b)(6), and (b)(7). An enclosure provides information on the FOIA exemptions and other grounds for withholding material.

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 14

- 2 -

We will keep you advised as your case progresses. If you have any questions, please contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,

Susan A. Weidner for

Eric F. Stein, Acting Co-Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 15



United States Department of State

Washington, D.C. 20520

July 8, 2016

Case No.: F-2014-03625

Segment: M/PRI-0001-M/PRI-0005

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke,

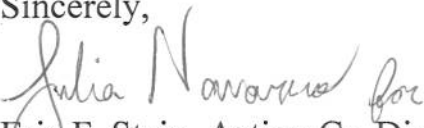
I refer you to our letter dated May 5, 2016, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The search of the files of the Office of Management Policy, Rightsizing, and Innovation is complete and has resulted in the retrieval of 31 records responsive to your request. After reviewing these 31 records, we have determined that 2 may be released in full, 1 may be released in part, 21 must be withheld in full, and 7 originated in another U.S. Government agency. We have referred the latter seven documents to the relevant agency with a request to respond to you directly. All released material is enclosed.

Where documents are released to you in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. Of the information withheld in full, all was withheld under FOIA Exemptions 1, 3, 5, 6, and 7, 5 U.S.C. §§ 552(b)(1), (b)(3), (b)(5), (b)(6), and (b)(7). An enclosure provides information on FOIA exemptions and other grounds for withholding material.

The Department has now completed its processing of your request. If you have any questions, your attorney may contact Trial Attorney Megan Crowley at (202) 305-0754 or at Megan.A.Crowley@usdoj.gov.

Sincerely,


Eric F. Stein, Acting Co-Director
Office of Information Programs and Services

Enclosures: As stated

Exhibit 16



United States Department of State

Washington, D.C. 20520

October 20, 2017

Case No.: F-2014-03625

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke,

I refer you to our letter dated September 1, 2017, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The Department has identified 60 additional documents responsive to your request, of which 31 have been released in part and 29 have been released in full. The vast majority of these documents have been previously released to the public under FOIA pursuant to other recent FOIA litigation cases, and most are available in the Department's online reading room of FOIA documents at <https://foia.state.gov/search>. However, for your convenience, we are enclosing all of the additional responsive documents here.

Where documents are released in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

If you have any questions, your attorney may contact Trial Attorney Tamra Moore at (202) 305-8628 or at Tamra.Moore@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Susan P. Weikmar" followed by "Eric" in a smaller, less legible script.

Eric F. Stein, Director
Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 16

Exhibit 17



United States Department of State

Washington, D.C. 20520

May 7, 2018

Case No.: F-2014-03625

John H. Clarke, Esq.
1629 K Street, N.W., Suite 300
Washington, D.C. 20006

Dear Mr. Clarke,

I refer you to our letter dated October 20, 2017, regarding the release of certain Department of State material under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552.

The Department has identified two additional documents responsive to your request, both of which may be released in full. In addition, upon further review, the Department has decided to make a discretionary release of information previously withheld in two documents. All released material is enclosed.

Where documents are released in part, all non-exempt material that is reasonably segregable from the exempt material has been released. Where we have made excisions, the applicable exemptions are marked on each document. An enclosure provides information on FOIA exemptions and other grounds for withholding material.

If you have any questions, you may contact Trial Attorney Tamra Moore at (202) 305-8628 or at Tamra.Moore@usdoj.gov.

Sincerely,

A handwritten signature in cursive script that reads "Eric F. Stein for".

Eric F. Stein, Director

Office of Information Programs and Services

Enclosures: As stated

Stein Declaration
Civil Action No. 1:14-cv-01589
Exhibit 17

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Case No.: 14-cv-1589 (EGS)
)	
DEPARTMENT OF DEFENSE, <i>et al.</i> ,)	
)	
Defendants.)	

**DECLARATION OF DAVID M. HARDY - DEPARTMENT OF
STATE CONSULTATION**

I, David M. Hardy, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to my joining the Federal Bureau of Investigation (“FBI”), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 243 employees who staff a total of twelve (12) Federal Bureau of Investigation Headquarters (“FBIHQ”) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and

information pursuant to the FOIA as amended by the OPEN Government Act of 2007, the OPEN FOIA Act of 2009, the FOIA Improvement Act of 2016; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information pursuant to the provisions of the FOIA, 5 U.S.C. § 552 and the Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a, including the procedures followed by the FBI for consultations with other agencies regarding FOIA requests.

Specifically, I am aware that in response to a FOIA request from Plaintiffs in connection with the September 11, 2012 attacks on U.S. government personnel and facilities in Benghazi, Libya, the U.S. Department of State (“DOS”) consulted with the FBI in making release determinations because of potential FBI equities in the information due to an ongoing FBI investigations related to those events.

(4) The FBI submits this declaration in support of Defendants’ Motion for Summary Judgment. This declaration provides justification for DOS’s withholding of information on behalf of the FBI pursuant to FOIA Exemptions 7(A), 7(E) and 7(F), 5 U.S.C. §§ 552, (b)(7)(A), (b)(7)(E) and (b)(7)(F).

PROCEDURAL HISTORY OF CONSULTATION FROM DOS

(5) Plaintiff submitted a FOIA request dated February 21, 2014, to DOS seeking a variety of records pertaining to the September 11, 2012 attacks on U.S. government personnel

and facilities in Benghazi, Libya. As a result of its search, DOS located responsive records. Aware of the FBI's investigations of the September 11, 2012 attacks on U.S. government personnel and facilities in Benghazi, Libya that resulted in the deaths of four Americans, DOS, in accordance with its FOIA regulations, consulted with the FBI regarding whether disclosure of information could jeopardize the FBI's investigations.¹

(6) Following review of the records, the FBI determined that the premature release of certain responsive information could potentially harm the pending investigations. The FBI requested that DOS assert FOIA Exemptions 7(A) and 7(E) to withhold certain information because release would interfere with the ongoing law enforcement investigations of the attacks on U.S. government personnel and facilities in Benghazi, Libya and would disclose techniques, guidelines and procedures for law enforcement investigations or prosecutions, the disclosure of which could reasonably be expected to risk circumvention of the law. The FBI also requested DOS assert FOIA Exemption 7(F) to withhold information to protect the physical safety of third-party individuals identified in the records.

JUSTIFICATION FOR NON-DISCLOSURE UNDER THE FOIA

EXEMPTION 7 THRESHOLD

(7) FOIA Exemption 7 exempts from mandatory disclosure records or information compiled for law enforcement purposes when disclosure could reasonably be expected to cause one of the harms enumerated in the subparts of the exemption. *See* 5 U.S.C. § 552(b)(7). In this

¹ DOS consulted with the FBI on the responsive records in 2013 in response to a separate FOIA litigation. In the instant action, the FBI determined the same records at issue still warrant being withheld in full due to the ongoing pending investigations. The records reviewed were DOS videos numbered: C05467904, C05467908, C05467910, C05467912, C05467913, C05467914, C05467915, C05467916, C05467917, C05467919, C05467920, and C05467921.

case, the harm that could reasonably be expected to result from disclosure concerns interfering with pending law enforcement proceedings, nullifying the effectiveness of sensitive law enforcement techniques or procedures, or risk the physical safety of third-party individuals.

(8) In order to assert Exemption 7, an agency first must demonstrate that the records or information it seeks to withhold were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within its law enforcement duties. In this case, certain responsive DOS records are an important part of the FBI's investigations of the attacks on U.S. government personnel and facilities in Benghazi, Libya, which resulted in the deaths of four American citizens, and the serious injuries of several others. The investigations are ongoing and within the law enforcement duties of the FBI to detect and undertake investigations into possible violations of Federal criminal and national security laws. For example, 28 U.S.C. § 540A[b]; 28 U.S.C. § 533; 28 C.F.R. § 0.85.

(9) The FBI's authority to investigate threats to the national security derives from the executive order concerning U.S. intelligence activities, from delegations of functions by the Attorney General, and from various statutory sources. E.O. 12333; 50 U.S.C. § 401 et seq. Activities within the definition of "threat to the national security" that are subject to investigation under the Attorney General's Guidelines for Domestic FBI Operations commonly involve violations or potential violations of federal criminal laws. Hence, investigations of such threats may constitute an exercise both of the FBI's criminal investigative authority and of the FBI's authority to investigate threats to the national security. As with criminal investigations generally, detecting and solving the crimes, and eventually arresting and prosecuting the perpetrators, are likely to be among the objectives of investigations relation to threats to the

national security. However, these investigations also often serve important purposes outside the ambit of normal criminal investigation and prosecution, by providing the basis for, and informing decisions concerning, other measures needed to protect the national security. The DOS videos implicate sensitive and evidentiary information concerning the terrorist group and network associated with the perpetrators of the September 11, 2012 attacks targeting U.S. interests abroad. Thus, the records DOS referred to the FBI for consultation as they pertain to open FBI investigations into the attacks on U.S. government personnel and facilities in Benghazi, Libya, were compiled for law enforcement purposes and readily meet the threshold for applying FOIA Exemption 7.

EXEMPTION 7(A) – PENDING ENFORCEMENT PROCEEDINGS

- (10) FOIA Exemption 7(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings. 5 U.S.C. § 552(b)(7)(A).

(11) Application of this exemption requires: the existence of law enforcement records; a pending or prospective law enforcement proceeding; and a reasonable expectation that release of the information would interfere with the enforcement proceeding. The FBI requested that DOS withhold twelve videos pursuant to Exemption 7(A), because the premature release of this information could reasonably be expected to interfere with the FBI's ongoing investigations.

(12) Any release of information the FBI has identified in the DOS' material would be premature due to the harm which could ensue. The material includes images and footage of parties of investigative interest and cooperating witnesses in the investigations. Once material is released in the public domain, the information concerning the investigation could reach the

individuals who are under investigation, and thus risk the untimely revealing of the suspects' identities and potentially alert them to the fact that they are subject to law enforcement scrutiny. This would allow individuals to critically analyze the information in the records pertinent to the investigation of themselves. Such individuals possess the unique advantage of knowing the details surrounding the investigation, the identities of potential cooperating witnesses, direct and circumstantial evidence, *etc.*, and could use the released information to their advantage. In this regard, the following potential harms from the release of these records exist:

- a. The identification of individuals, sources, and potential witnesses who possess information relative to the investigation and possible harm to, or intimidation of these individuals;
- b. Prematurely alerting suspects under investigation to the fact that they are subject to law enforcement scrutiny;
- c. The use of information released to counteract evidence developed by investigators;
- d. The identification of third parties who are also under investigation;
- e. The identification of the subject matter concerning classified information;
and
- f. The locations in the United States, as well as foreign countries where the FBI is focusing the investigation and collection of investigative and source material.

(13) Furthermore, the release of this information to third parties not directly involved in these matters could allow these third parties to interfere with the pending proceedings by harassment, intimidation, and creation of false evidence dispensing facts discussed during the

FBI's investigation. Once a release is made to a set of plaintiffs under the FOIA, the use and dissemination of the information to third parties is unrestricted. For these reasons, the FBI has requested DOS to assert FOIA Exemption 7(A) to withhold in full the videos at issue.

EXEMPTION 7(E) – INVESTIGATIVE TECHNIQUES AND PROCEDURES

(14) Exemption 7(E) protects records or information compiled for law enforcement purposes when release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E).

(15) DOS has asserted Exemption 7(E) on behalf of the FBI to protect non-public investigative techniques and procedures utilized by the FBI to pursue its law enforcement and intelligence gathering missions, and also to non-public details about techniques and procedures that are otherwise known to the public.

(16) The FBI requested that DOS assert Exemption 7(E) to protect sensitive intelligence gathering and investigative techniques. These techniques, particularly with respect to surveillance footage of the U.S. diplomatic mission abroad, implicate operational security force protection concerns and the U.S. government's ability to conduct relationships with and obtain information from foreign governments and foreign government services. Revealing these techniques would effectively reveal the blueprint for the security of a U.S. compound and the sophisticated surveillance capacity of the U.S. to protect the U.S. diplomatic mission in Libya from threats, thus risking the defeat of such security measures in the future. Release of the non-public details of these techniques and how they are utilized by the FBI would nullify their effectiveness, risk future criminal and terrorist activity, and make the FBI more vulnerable,

especially in context of continued and increased unrest in Libya. As a result, because release of information would enable terrorists to circumvent the law, this information has been protected pursuant to Exemption 7(E).

(17) The FBI also requested that DOS assert Exemption 7(E) to protect the FBI's strategy for using a particular type of evidence gathered during its investigations. The FBI's investigations are built around identifying individuals in photos and in images from security video footage of the U.S. diplomatic compound in Benghazi through an image by image review. Discerning the actions and determining the relationships between these individuals is critical to building the FBI's investigations and identifying who potentially led the attacks on the compound. The release of these images would lay out the strategy for the FBI's investigations concerning the attacks, would potentially reveal individuals charged in the investigations, and would enable others to access the same techniques used in these investigations. Revealing the utility of this type of information to the FBI would essentially instruct criminals on how best to maintain operational security when conducting their criminal activities. Disclosing how the FBI utilizes its effective investigative strategy would, in future investigations, allow criminals to become savvier at avoiding detection and disruption by the FBI, and enable criminals to circumvent the law. For these reasons, DOS has withheld this information in these videos on behalf of the FBI pursuant to Exemption 7(E).

EXEMPTION 7(F) – ENDANGERMENT OF THE LIFE OR PHYSICAL SAFETY OF ANY INDIVIDUAL

(18) 5 U.S.C. § 552(b)(7)(F) exempts from disclosure “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...could reasonably be expected to endanger the life or physical safety of any individual.”

(19) A primary concern for the FBI when it was reviewing the material responsive to this request was the possibility of harassment and physical violent retaliation against not only the third-party individuals mentioned in the material but against their families as well. The FBI was also concerned with the potential for violence against third parties who are merely mentioned among the material. Accordingly, the FBI has requested DOS to also assert Exemption 7(F) to protect the names and identifying information concerning these third-party individuals. The violence associated with terrorists is known to the world through their numerous acts of aggression. The disclosure of the identities of the individuals who are mentioned in the responsive records, and which are part of the FBI's investigation into the 2012 Benghazi attacks, could lead to violent reprisal once it is learned that they may have cooperated with the FBI. Many of these individuals have assisted in the investigations by providing information that is singular in nature. Considering the nature of the violent terrorist acts associated with the FBI's investigation and the potential for violence, the FBI has determined that the disclosure of the names and identifying information of these individuals would endanger their lives and physical safety. Accordingly, DOS has withheld this information on behalf of the FBI pursuant to Exemption 7(F).

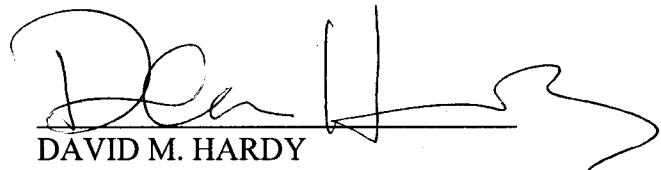
CONCLUSION

(20) As a result of the consultation with DOS regarding the records responsive to Plaintiff's request for information relating to the September 11, 2012 attacks on U.S. government personnel and facilities in Benghazi, Libya, the FBI has determined that the records are exempt from disclosure pursuant to FOIA Exemptions 7(A), 7(E) and 7(F), 5 U.S.C. §§ 552 (b)(7)(A), (b)(7)(E), and (b)(7)(F). The disclosure of any information from the specified records could reasonably be expected to interfere with ongoing investigations, as well as pending and

prospective prosecutions, reveal the details of non-public investigative techniques and procedures and/or non-public details about publicly-known techniques, or risk the physical safety of third party individuals.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of April, 2018.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACCURACY IN MEDIA, INC. <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.	)	Case No. 14-1589 (EGS)
)	
DEPARTMENT OF DEFENSE, <i>et al.</i> ,)	
)	
Defendants.)	
)	

DECLARATION OF ALESIA Y. WILLIAMS IN SUPPORT OF DEFENDANTS'

MOTION FOR SUMMARY JUDGMENT

I, Alesia Williams, do hereby declare the following to be true and correct:

1. I am the Chief of the Freedom of Information Act (FOIA) and Declassification Services Office for the Defense Intelligence Agency (DIA), Department of Defense (DoD). I have served as the Chief of the FOIA Office since June 2014. I previously served as the Chief, FOIA Services Section (an element within the DIA FOIA Office), from January 2008 to June 2014. Prior to that I was an administrative officer processing FOIA requests at DIA from November 2006 to December 2007, and I was a contractor assigned to DIA as a FOIA Senior Document Reviewer from January to November 2006. Prior to coming to DIA, throughout my career in the United States Air Force ("USAF"), one of my duties was to process FOIA requests. I also spent over five years supervising two USAF FOIA offices.

2. As Chief of the FOIA Office, I have been designated by the DIA Director as a declassification authority pursuant to Executive Order 13526 § 3.1. This authority extends to all

*Accuracy in Media, Inc., et al., vs. DoD, et al., No. 14-1589 (D.D.C.)
Alesia Y. Williams Declaration*

information that is classified by, originated by, or that is otherwise under the declassification purview of DIA. I have also been designated by the Director as the Initial Denial Authority for responses to FOIA requests. My administrative duties include the management of day-to-day operations of DIA's FOIA program. The FOIA Office receives, processes, and responds to requests for DIA records under the FOIA and the Privacy Act. At my direction, DIA personnel are tasked to search Agency records systems under their control to identify records and other information which may be responsive to individual requests. They forward any potentially responsive records that are located to my office, which in turn determines whether responsive records should be withheld in whole or in part under any applicable statutory FOIA or Privacy Act exemptions. The activities of my staff are governed by the "DOD Freedom of Information Act Program Regulation," found at 32 C.F.R. Part 286, as supplemented by the "Defense Intelligence Agency (DIA) Freedom of Information Act" regulation, found at 32 C.F.R. Part 292.

3. In the course of my official duties at DIA, I have become personally familiar with the FOIA requests submitted by Accuracy in Media, Inc., ("AIM"). The statements made herein are based upon my personal knowledge, upon information made available to me in my official capacity, and upon determinations made by me in accordance therewith.

4. DIA's mission is to collect, analyze, and provide intelligence on the military capabilities of foreign military forces to the Secretary of Defense, the Joint Chiefs of Staff, and other DOD components. DIA also manages the Defense Attaché System for DOD. The DIA's organization and mission are more fully set out at 32 C.F.R. Part 385, "Defense Intelligence Agency." Because of its mission to collect, analyze, and provide foreign intelligence, the vast

majority of Agency records are classified in the interests of national security in accordance with Executive Order 13,526, "Classified National Security Information."

5. By letter dated April 7, 2014, AIM submitted a FOIA request to DIA for records of (1) maps depicting all assets within fifteen hundred miles of Benghazi, Libya on September 11 and 12, 2012; (2) DOD assets that were pre-positioned off the coast of Tripoli on October 18, 2011; and (3) records in calendar year 2012 of the threat to U.S. personnel because of al-Qaida or Ansar al-Shariah or other belligerent build-up in Benghazi.

6. By letter dated May 28, 2014, AIM submitted a Second FOIA request to DIA for records pertaining to (1) OPREP-3 PINNACLE report(s) used to provide any DOD division with notification of, or information about, the September 11 and 12 2012 attacks on U.S. facilities in Benghazi, Libya; and (2) for the period of July 1, 2012, through September 30, 2012, records of all directives, orders, and other communications regarding the readiness status of United States armed forces on the anniversary of the September 11, 2001 attacks on the World Trade Center, to or from: U.S. European Command; U.S. Central Command; U.S. Africa Command; U.S. Special Operations Command; Office of the Secretary of Defense and the Joint Staff; Naval Air Station Sigonella, Sicily; Spanish naval base Naval Station Rota, Spain; Aviano Air Base, Italy; and U.S. Special Operations Forces.

7. In response to AIM's FOIA requests, the DIA initiated a search for records responsive to AIM's requests. On June 30, 2016, DIA notified AIM that it had identified 148 records responsive to its FOIA requests and that, of those records, 92 were referred to other government agencies for their review and direct response to AIM. Of the remaining 56 records, DIA notified AIM that one record was a duplicate of a previously processed record, 25 records

were withheld in part and 30 were withheld in full pursuant to the authority of specific FOIA exemptions and Executive Order (E.O.) 13,526.

8. With respect to DIA, it is my understanding that AIM challenges only DIA's decision to withhold in full the records identified as V-11, V-19, V-45, and V-48 in DIA's *Vaughn* Index.¹ See Joint Mot. to Amend Briefing Schedule at 6, ECF No. 65. Accordingly, this declaration explains the DIA's basis for withholding information in these four records under FOIA Exemptions (b)(1) and (b)(3).

Portions of V-11, V-19, V-45, and V-48 Were Withheld Under 5 U.S.C. § 552 (b)(1), Which Allows the Withholding of Records Required By Executive Order to Be Kept Secret

9. The current basis for classification of national security information is found in E.O. 13,526. Section 1.1 of E.O. 13,526 authorizes an Original Classification Authority (OCA) to classify information owned, produced, or controlled by the United States government if it falls within one of the following eight classification categories specified in Section 1.4 of E.O. 13,526:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;

¹ DIA also received several referrals from other government agencies in connection with AIM's related FOIA requests to those agencies. Since AIM is not challenging DIA's handling of these records, I have not addressed them in this declaration.

- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security;
- (f) United States government programs for safeguarding nuclear materials or facilities;
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to national security; or
- (h) the development, production, or use of weapons of mass destruction.

10. Section 1.2 of E.O. 13,526 provides that information covered by one or more of these classification categories may be classified at one of three classification levels - Top Secret (TS), Secret (S) or Confidential (C) - depending on the degree of harm that would result from the unauthorized disclosure of such information. Information is classified at the Confidential level if unauthorized disclosure could reasonably be expected to cause damage to national security. Information is classified at the Secret level if its release could reasonably be expected to cause serious damage to the national security. Classification at the Top Secret level is maintained if its release could reasonably be expected to cause grave damage to national security.

11. Exercising the declassification authority delegated to me by the Director of DIA and pursuant to E.O. 13,526, I have determined that certain information within V-11, V-19, V-45, and V-48 remains currently and properly classified at the TOP SECRET and SECRET levels under E.O. 13,526 and that it is appropriately withheld under FOIA Exemption 1. Section 552(b)(1) of the FOIA statute allows for withholding of information required by Executive Order to be kept secret in the interest of national defense or foreign policy where that information is

properly classified. In this case, the withheld information in V-11, V-19, V-45, and V-48 is properly classified under E.O. 13,526 because certain information in these four records references intelligence sources and methods and/or relates to foreign relations/activities. This determination is within my authority as a declassification review official and is further supported by the opinions of the subject matter experts within DIA with knowledge of the national security topics covered who have reviewed these records.

1.4(c) -- Intelligence Sources and Methods

12. DIA withheld certain information in V-11, V-19, V-45, and V-48 under Exemption (b)(1) because the information contained in the withheld records relates to intelligence sources and methods, the disclosure of which could reasonably be expected to cause either serious damage or exceptionally grave damage to national security, and thus properly classified as Secret or Top Secret under Section 1.4(c) of E.O. 13,526. Section 1.4(c) recognizes that the disclosure of intelligence sources may cause damage to the national security. Intelligence sources may include individuals, foreign or American, foreign entities, and the intelligence and security services of foreign governments. Willing intelligence sources may be expected to furnish information only when confident that they are protected from retribution by the absolute secrecy surrounding their relationship to the United States government. Sources that are compromised become extremely vulnerable to retaliation from a variety of entities including their own governments or others having a stake in the confidentiality of the information provided by the source. In certain parts of the world, the consequences of public disclosure of the identity of an individual that has served as a U.S. source are often swift and far reaching, from economic reprisals to possible harassment, imprisonment, or even death.

*Accuracy in Media, Inc., et al., vs. DoD, et al., No. 14-1589 (D.D.C.)
Alesia Y. Williams Declaration*

13. Section 1.4(c) of E.O. 13,526 also recognizes that the release of intelligence methods may cause damage to the United States' national security. Intelligence methods are the means by which (or the manner in which) an intelligence agency collects information to support military operations, assist in national policymaking, assess military threats, or otherwise accomplish its mission. Detailed knowledge of the methods and practices of an intelligence agency must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, avoid, or damage the intelligence operations of the United States.

14. Finally, disclosure of the intelligence sources or methods the U.S. government implements could reasonably be expected to enable persons and groups hostile to the United States to identify U.S. intelligence activities, methods or sources, and to design countermeasures to them. This would damage the ability of the U.S. government to acquire information that is often critical to the formulation of strategic plans and missions designed to safeguard the United States against our enemies. Based on the information provided to me in the course of my official duties, V-11, V-19, V-45, and V-48 contain information concerning intelligence sources and methods that must be protected:²

- V-11 is a finished intelligence product prepared by an analytic component of DIA. The product is an in-depth analysis related to the Benghazi consulate attack which is based on information obtained from classified sources and methods. In addition, this intelligence product contains a detailed statement summarizing the

² Because of the highly sensitive and classified nature of the withheld records, I am unable to disclose on the public record additional detail or information concerning any of these records without compromising information DIA has protected pursuant to its asserted exemptions.

sources upon which its analyses and assessments are based, and areas of intelligence gaps.

- V-19 is a finished intelligence product prepared by an analytic component of DIA providing analysis of multiple topics and regions. The responsive portion of this intelligence record contains information and analyses related to the Benghazi consulate attack which is based on classified sources and methods.³
- V-45 and V-48 are intelligence reports classified at the TOP SECRET level. The two intelligence reports contain information responsive to AIM's FOIA request. However, the release of the information in V-45 and V-48 would reveal specific areas of intelligence interest to the Intelligence Community and specific details about the sources and methods associated with obtaining the reported intelligence information.

15. DIA has not released intelligence contained in V-11, V-19, V-45, and V-48 because to do so would reveal classified sources and methods and impair the intelligence collection mission of the Intelligence Community. In particular, disclosure of the intelligence information in V-11, V-19, V-45, and V-48 would provide adversaries of the United States sufficient

³ V-19 is a finished intelligence product which contains multiple classified paragraphs addressing myriad intelligence topics. This is a typical format for many intelligence products in DIA, which is an all-source intelligence agency with multiple mission sets and customers. In addition to the paragraph containing specifically responsive information (which is exempt from release for reasons already discussed), it contains classified paragraphs that address issues and topics unrelated to AIM's FOIA requests. For example, hypothetically, one record may discuss drug activity in South America, another acquisition of new naval vessels by a foreign partner, and a third paragraph the political environment in Asia. DIA considers each paragraph to be a discrete record because each targets and is of interest to an entirely different customer, depending on the topic or issues addressed therein. Accordingly, DIA withheld those records addressing topics and issues that are not responsive to Plaintiff's FOIA request.

information about specific intelligence collection techniques utilized by the United States that adversaries could then use to develop countermeasures to resist such intelligence gathering techniques. This, in turn, would render useless the intelligence sources and methods upon which the United States' intelligence community relies. It is for this reason that the intelligence information contained in V-11, V-19, V-45, and V-48 remains currently and properly classified as SECRET or TOP SECRET under E.O. 13,526 and has been withheld by the DIA under FOIA exemption (b)(1).

1.4(d) – Foreign Relations or Foreign Activities of the United States, Including Confidential Sources

16. DIA also withheld certain information contained in V-11 (a finished intelligence report) and V-19 (a finished intelligence product) under Exemption (b)(1) because certain information in V-11 and V-19 relates to foreign relations or foreign activities of the United States, the disclosure of which could reasonably be expected to cause exceptionally grave damage to national security. Specifically, the responsive portions of V-11 and V-19 contain analyses related to the Benghazi consulate attack, including references to confidential sources and sensitive aspects of U.S. foreign relations. In order to protect this intelligence information from disclosure, V-11 and V-19 are classified under Section 1.4(d) of E.O. 13,526.

17. Moreover, if the DIA were compelled to disclose the properly classified intelligence information in the responsive portions of V-11 and V-19, it would have a chilling effect on current United States foreign relations with certain countries, and any future relations, inasmuch as potential associations might be precluded for fear of exposure, especially with sources that are confidential. As explained above, implicit in the Intelligence Community's

confidential relationships is the notion that identities and information provided will be afforded confidentiality. The United States government goes to great lengths to maintain effective foreign relations and even greater lengths to protect and maintain sources' confidentiality because it is an integral part of successful foreign relations policy. Release of the confidential information in V-11 and V-19 could reasonably be expected to damage our relations with governments whose cooperation is important to the United States' national security. The national security of the United States is clearly injured when other governments refuse to cooperate with the United States because they fear disclosure of the existence of that cooperation.

18. Relatedly, DIA also withheld certain information from V-11 and V-19 under Section 1.4(d) of E.O. 13,526 because V-11 and V-19 contain information regarding intelligence relationships and agreements that DIA has with certain foreign countries. Release of information concerning the United States' intelligence relationships and agreements with foreign governments would damage the United States' intelligence relationships with these particular nations and would hinder DIA's ability to collect and share intelligence. Further, release of the information in V-11 and V-19 would likely result in the loss of the United States' ability to obtain valuable national security information that the United States government cannot obtain from other sources or means. Because the information in V-11 and V-19 is currently and properly classified at either the Secret or Top Secret levels pursuant to Section 1.4(d) of E.O. 13526, the DIA has withheld in full these two documents under FOIA Exemption 1.

Portions of Records V-11, V-19, and V-48 Were Withheld Under 5 U.S.C. § 552(b)(3), Which Exempts From Disclosure Organizational and Personnel Information under 10 U.S.C. § 424

19. The DIA is also withholding responsive information in V-11, V-19, and V-48 under Subsection (b)(3) of the FOIA, which permits the withholding of records that are

*Accuracy in Media, Inc., et al., vs. DoD, et al., No. 14-1589 (D.D.C.)
Alesia Y. Williams Declaration*

“specifically exempted from disclosure by statute provided that such statute . . . requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue . . .” DIA generally applies 10 U.S.C. § 424 when asserting Exemption 3. 10 U.S.C. § 424 states “(a) Exemption from disclosure--Except as required by the President or as provided in subsection (c), no provision of law shall be construed to require the disclosure of--(1) the organization or any function of an organization of the Department of Defense named in subsection (b); or (2) the number of persons employed by or assigned or detailed to any such organization or the name, official title, occupational series, grade, or salary of any such person.” DIA is a covered organization under section 424(b).

20. DIA withheld portions of V-11 (a finished intelligence report), V-19 (a finished intelligence product), and V-48 (an intelligence report classified as Top Secret) under Exemption 3, pursuant to the authority set forth in 10 U.S.C. § 424, because certain portions of these three records specifically identify the names, email addresses, office affiliations, and contact information of DIA personnel, as well as other information, such as countries with which DIA shares intelligence and information concerning DIA’s coordination with other government agencies, which would reveal DIA functions. Because release of this information would identify DIA employees, and would reveal part of DIA’s organizational structure, as well as sensitive DIA functions, disclosure of this information in V-11, V-19, and V-48 is strictly prohibited under 10 U.S.C. § 424.

Portions of Records V-11, V-19, V-45 and V-48 Were Withheld Under 5 U.S.C. § 552(b)(3), Which Exempts From Disclosure Intelligence Sources and Methods under 50 U.S.C. § 3024

21. A separate Exemption 3 statute, 50 U.S.C. § 3024 (i)(1), provides that “[t]he Director of National Intelligence shall protect intelligence sources and methods from

*Accuracy in Media, Inc., et al., vs. DoD, et al., No. 14-1589 (D.D.C.)
Alesia Y. Williams Declaration*

unauthorized disclosure.” The National Security Act is an exemption (b)(3) withholding statute that refers to particular types of matters to be withheld, and “requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue.” 5 U.S.C. § 552(b)(3). DIA carries out its intelligence mission under guidance from the Director of National Intelligence and in accordance with the National Security Act. Therefore, to the extent that intelligence sources and methods are referenced in V-11, V-19, V-45, and V-48, 50 U.S.C. § 3024(i)(1) requires DIA to prevent the disclosure or release of this information.

22. DIA withheld certain information in V-11, V-19, V-45, and V-48 under Exemption 3 and 50 U.S.C. § 3024(i), because certain information in these four records would reveal intelligence sources and methods, as previously explained in this declaration, *see infra* ¶¶ 14-17. Although no showing of harm is required to justify the application of Exemption 3, it bears mentioning that disclosure of the intelligence sources and methods referenced in V-11, V-19, V-45, and V-48 would allow adversaries to employ countermeasures, thus reducing the effectiveness of the sources and methods as intelligence collection tools. Because 50 U.S.C. § 3024 prohibits DIA from disclosing the intelligence sources and methods contained in V-11, V-19, V-45, and V-48, the agency properly withheld the information under Exemption 3.

Non-Segregability of V-11, V-19, V-45, and V-48

23. As required under the FOIA, subject matter experts carefully reviewed the information set forth in V-11, V-19, V-45, and V-48 line-by-line to determine whether DIA could make any discretionary disclosures by segregating and releasing non-exempt information. Based on the recommendation of the subject matter experts, I have determined that each of the four documents being challenged was and still remains properly classified and that none of the

information contained in V-11, V-19, V-45, and V-48 may be segregated in any meaningful way without disclosing classified information.

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of May, 2018



Alesia Y. Williams
Chief, Freedom of Information Act and
Declassification Services Office

Exhibit 1

Accuracy in Media, et al. v. DoD, et al., No. 14-CV-01589 (D.D.C)
 Defense Intelligence Agency Vaughn Index

Document # / Page #	Title/Summary	Date	Agency	Class	Comments/Exemptions
V-011 5 pages	DIA-09-1209-823	12 Sep 2012	DIA	Top Secret	<p>Document Description – Defense Intelligence Report</p> <p>Document Denied in Full– Exemptions (b)(1), (b)(3)</p> <p>Exemption (b)(1): The document contains information which, if publicly released, would reveal intelligence sources and methods and compromise the intelligence information collection mission effectiveness of the intelligence community. Further, the document contains information concerning foreign relations and/or foreign activities of the United States Government, the disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Accordingly, the information is to be accorded protection from mandatory release under Executive Order 13526, section 1.4(c) and 1.4(d).</p> <p>Exemption (b)(3): was used in conjunction with 10 U.S.C. 424 to withhold employee names and contact information, as well as office names/symbols and similar information, the release of which would reveal DIA's organizational structure. The statute was also asserted to withhold information that, if released, would reveal DIA functions. The same statute is also asserted where DIA withheld the countries with which it shared intelligence. Statute 50 U.S.C. 3024(i) also is asserted in conjunction with this exemption to sections of the document to protect intelligence sources and methods withheld since their release could potentially disclose the method or program in which the information was collected.</p>

Document # / Page #	Title/Summary	Date	Agency	Class	Comments/Exemptions
<p>V-019</p> <p>4 pages</p>	<p>SENSITIVE NON-RELEASABLE TITLE</p>	<p>12 Sep 12</p>	<p>DIA</p>	<p>Top Secret</p>	<p>Document Description – Situation Report</p> <p>Document Denied in Full – Exemptions (b)(1), (b)(3)</p> <p>Exemption (b)(1): The document contains information which, if publicly released, would reveal intelligence sources and methods and compromise the intelligence information collection mission effectiveness of the intelligence community. Further, the document contains information concerning foreign relations and/or foreign activities of the United States Government, the disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Accordingly, the information is to be accorded protection from mandatory release under Executive Order 13526, section 1.4(c) and 1.4(d).</p> <p>Exemption (b)(3): was used in conjunction with 10 U.S.C. 424 to withhold office names/symbols and similar information, the release of which would reveal DIA's organizational structure. The statute was also asserted to withhold information that, if released, would reveal DIA functions. Email addresses from a classified network were also withheld. Release of this information would give computer savvy entities of hostile intent a tangible target and would compromise the nation's cyber security. The same statute is also asserted where DIA withheld the countries with which it shared intelligence and information concerning DIA's coordination with other government agencies. Statute 50 U.S.C. 3024(i) also is asserted in conjunction with this exemption to sections of the document to protect intelligence sources and methods withheld since their release could potentially disclose the method or program in which the information was collected.</p> <p>Non-Responsive: Portions of the document were not responsive to the request.</p>

Document # / Page #	Title/Summary	Date	Agency	Class	Comments/Exemptions
V-045 6 pages	CLASSIFIED TITLE	12 Sep 12	DIA	Top Secret	<p>Document Description – Intelligence Report</p> <p>Document Denied in Full – Exemptions (b)(1), (b)(3)</p> <p>Exemption (b)(1): The document contains information which, if publicly released, would reveal intelligence sources and methods and compromise the intelligence information collection mission effectiveness of the intelligence community. Accordingly, the information is to be accorded protection from mandatory release under Executive Order 13526, section 1.4(c).</p> <p>Exemption (b)(3): was used in conjunction with 50 U.S.C. 3024(i) to sections of the document to protect intelligence sources and methods withheld since their release could potentially disclose the method or program in which the information was collected.</p>
V-048 4 pages	CLASSIFIED TITLE	12 Sep 12	DIA	Top Secret	<p>Document Description – Intelligence Report</p> <p>Document Denied in Full – Exemptions (b)(1), (b)(3)</p> <p>Exemption (b)(1): The document contains information which, if publicly released, would reveal intelligence sources and methods and compromise the intelligence information collection mission effectiveness of the intelligence community. Accordingly, the information is to be accorded protection from mandatory release under Executive Order 13526, section 1.4(c).</p> <p>Exemption (b)(3): was used in conjunction with 10 U.S.C. 424 to withhold information the release of which would reveal DIA's organizational structure and function. Statute 50 U.S.C. 3024(i) also is asserted to sections of the document to protect intelligence sources and methods withheld since their release could potentially disclose the method or program in which the information was collected.</p>

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ACCURACY IN MEDIA, INC., <i>et al.</i>)	
)	
Plaintiffs,	)	Civil Action No.
	)	14-cv-1589 (EGS)
v.)	
)	
DEPARTMENT OF DEFENSE, <i>et al.</i>)	
)	
Defendants.)	
_____)	

DECLARATION OF REAR ADMIRAL JAMES J. MALLOY

Pursuant to 28 U.S.C. § 1746, I, James J. Malloy, Rear Admiral (upper half), United States Navy, hereby declare under penalty of perjury that the following is true and correct:

1. I am the Vice Director of Operations for the Joint Staff at the Pentagon and have served in this capacity since July 2017. In my capacity as the Vice Director of Operations, I assist in the execution of all Department of Defense (“DoD”) operational matters outside of the continental United States. As such, I coordinate and communicate frequently with the staffs of the Unified Combatant Commands, to include U.S. Africa Command, U.S. Central Command, U.S. European Command, U.S. Pacific Command, U.S. Southern Command, U.S. Strategic Command, U.S. Transportation Command and U.S. Special Operations Command, as well as with the Intelligence Community, to ensure on behalf of the Chairman of the Joint Chiefs of Staff that the President of the United States’ and Secretary of Defense’s direction and guidance are conveyed and executed, and that combatant command concerns are addressed by the Joint Staff. I evaluate and synthesize such concerns and advise and make recommendations to the Chairman of the Joint Chiefs of Staff regarding our worldwide military operations.

2. I make the following statements based upon my years of service and experience in the United States military, personal knowledge, and information made available to me in my official capacity. I have served in the United States Armed Forces for over thirty years at various levels of command and staff. In recent years, I have served as deputy director of operations, U.S. Central Command (J3), and commander, Carrier Strike Group 10. As the Vice Director of Operations, I receive and review daily operational plans and briefings, reports, and intelligence analyses from the Combatant Commands, the Joint Staff, and the Intelligence Community. I assist with the supervision of the National Military Command Center, which is responsible for monitoring worldwide events affecting national security and U.S. interests twenty-four hours a day, seven days a week. I have traveled in an official capacity to a number of countries where U.S. forces are conducting ongoing operations against al Qa'ida and associated terrorist groups, engaging with senior military and government officials. As a result of my experiences, I have extensive knowledge of our military forces and their capabilities, current operations, and the conventional and unconventional forces and capabilities of the enemies arrayed against us.

3. I am familiar with the FOIA request, dated March 31, 2014, submitted by Plaintiffs seeking categories of documents relating to the attack on US facilities in Benghazi, Libya, on September 11 and 12, 2012. The portion of the request relevant to this declaration sought “[m]aps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of [sic] such maps were created before or after September 11, 2012.” A true and correct copy of the March 31, 2014, letter is attached as Exhibit A.

Responsive Records

4. The Joint Staff located 12 pages responsive to section 1 of Plaintiffs' request and provided a response on September 19, 2014, which stated that those records were withheld in full pursuant to Exemption 1, as they are currently and properly classified. A copy of that response is attached as Exhibit B. The purpose of this declaration is to detail the basis of that withholding. I understand through counsel that this withholding is the only redaction in DoD's production being challenged by Plaintiffs.

FOIA Exemption (b)(1)

5. FOIA exemption (b)(1) provides that FOIA does not require the production of records that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b)(1).

6. In Section 1.3(a)(2) of Executive Order ("E.O.") 13526, the President authorized agency heads to designate officials that may classify information originally as TOP SECRET. In turn, and pursuant to Section 1.3(c) of E.O. 13526, the Deputy Secretary of Defense, acting pursuant to a delegation from the Secretary of Defense, has authorized me to exercise TOP SECRET and SECRET original classification authority.

7. Section 1.1(a) of E.O. 13526 provides that information may be originally classified under the terms of this order only if all of the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the U.S. Government, which these documents are; (3) the information falls within one or more of the categories of information listed in section 1.4 of Executive Order 13526; and (4) the original classification authority determines that the

unauthorized disclosure of the information reasonably could be expected to result in some level of damage to the national security, and the original classification authority is able to identify or describe the damage.

8. As relevant here, section 1.4(a) permits classification of information pertaining to military plans, weapons systems, or operations; 1.4(d) permits classification of information pertaining to, “foreign relations or foreign activities of the United States;” and 1.4(g) permits classification of vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security.

9. The 12 pages withheld by Joint Staff contain the force posture of the Department of Defense for the European Command, Central Command, and Africa Command areas of responsibility as well as the force posture of Special Operation forces worldwide during the relevant timeframe in September 2012. These documents contain the numbers and locations of ships, submarines, response forces, and aircraft surrounding Benghazi, Libya. They further contain the numbers of military personnel located in particular countries during that time. Finally, they contain the transit time required for each available asset to reach Benghazi.

10. This information fits squarely within sections 1.4(a), 1.4(d), and 1.4(g) of E.O. 13526, as it details military operations conducted overseas, describes foreign activities of the United States, and provides transit times and a list of assets that demonstrate the capabilities of DoD’s plans and infrastructure.

11. This information is sensitive and classified at the Secret level, because the release of this information reasonably could be expected to cause serious damage to the national security. Even with the passage of time, how DoD’s forces are positioned at a particular time could provide potentially damaging and/or threatening insight to adversaries regarding DoD’s interests, intent,

and potential operations in these volatile regions of the world. Tensions with hostile foreign governments could rise depending on the disclosure of such positioning. Terrorist organizations, violent extremist organizations, or hostile foreign governments could use transit time capability information to plan attacks within windows of perceived vulnerability. It is for this reason that this information is currently and properly classified and must not be released.

Review for Reasonably Segregable Information

12. Joint Staff has conducted a page-by-page and line-by-line review of the 12 pages at issue in this declaration. I can confirm that there is no reasonably segregable information contained in any of the records.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of May 2018, in Arlington, VA.



Rear Admiral James J. Malloy, USN
Vice Director of Operations, J-3, Joint Staff

Exhibit A

14-F-0683

Law Office
John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 332-3030
JohnHClarke@earthlink.net

Also Admitted in Virginia
and Maryland

FAX: (202) 332-3030
CELL: (202) 344-0776

March 31, 2014

By Certified Mail — Return Receipt Requested
Article Number 7013 2630 0000 5201 4415

FOIA REQUEST

OSD/JS (Office of the Secretary of Defense and the Joint Staff)
FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: **FOIA Requests**

Dear Ladies and Gentlemen:

This is a request for production of records under the Freedom of Information Act, 5 USC § 552, the "FOIA." I write on behalf of Accuracy in Media, Inc., a District of Columbia 501(c)(3) non-profit corporation, as well as the following eight individuals, all of whom serve as members of the "Citizens' Commission on Benghazi," an unincorporated, informal association of individuals, all working with Accuracy in Media. They are (1) Roger Aronoff, (2) Larry Bailey, (3) Kenneth Benway, (4) Dick Brauer, (5) Clare Lopez, (6) James A. Lyons, Jr., (7) Kevin Shipp, and (8) Wayne Simmons.

Requests. FOIA request Nos. 1, 2 and 3 are for disclosure of records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, 2012. Specifically, we seek production of:

1. **Maps.** Maps depicting all assets that could have been dispatched to the Benghazi mission or the CIA annex facility on September 11th and 12th, 2012, regardless of such maps were created before or after September 11, 2012.

2. **Appeals for help.** Records of requests for help for the Special Mission Compound and the CIA Annex, to:
 - (a) The Turkish Consulate in Benghazi;
 - (b) The Italian Consulate in Benghazi; and
 - (c) The U.K. Security Team.

3. **Records concerning joint military contingency plans:**
 - (a) Plan Identification (PID) Number and title of the operation plan or plans prepared using Deliberate Planning procedures, found in Joint Publication 5-0, Joint Operation Plan, August 2011, **for use** by the supported combatant commander (1) to support military, diplomatic and interagency activities in Libya, through 2012, and (2) to support the military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (b) Operation plan or plans for use by the supported combatant commander to support military crisis response to the attacks on the Benghazi facilities on September 11 and 12, 2012.
 - (c) List of commands, organizations and agencies comprising the joint planning and execution community (JPEC), found in Joint Publication 5-0, Joint Operation Plan, August 2011, which developed, coordinated, and approved the operation plans referred to under (a) above.
 - (d) Supported combatant commander's Joint Intelligence Preparation of the Operational Environment (JIPOE), developed to support the plans referenced under (a) above.
 - (e) List of commands, organizations, agencies and offices comprising the supported combatant commander's joint interagency coordinating group (JIACG), established to support the plans referenced under (a) above.
 - (f) Copies of any combatant command commercial contracts established to support military, diplomatic and interagency activities at Tripoli and at Benghazi prior to the attacks on the Benghazi facilities on September 11 and 12, 2012.

4. **Military assets pre-positioned in October 2011.** In addition to records regarding the attack on US facilities in Benghazi, Libya, on September 11th and 12th, we also seek records identifying DoD assets pre-positioned off the coast of Tripoli on October 18, 2011, when Secretary Clinton visited Libya.

Kindly note that Request No. 1, seeking maps of assets, is also being simultaneously made to (a) HQ USEUCOM (U.S. European Command), (b) United States Central Command CCJ6-RDF (FOIA), and (c) HQ U.S. AFRICOM (U.S. Africa Command). Request No. 2, for records of requests for assistance from the Turkish or Italian Consulates or the U.K. Security Team, as well as Request No. 4, regarding records of military assets pre-positioned in October 2011 off Tripoli on October 18, 2011, is also being submitted to (a) the Secretary of the Navy Chief of Naval Operations (SECNAV/CNO), and (b) HQ U.S. AFRICOM (U.S. Africa Command).

Expedited Processing. These FOIA requests are subject to expedited processing under DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286. Specifically § C1.5.4.3 mandates expedited processing "to a requester after the requester requests such and demonstrates a compelling need for the information." Under § C1.5.4.3.2:

A compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.... Representatives of the news media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information.

Accuracy in Media, Inc. ("AIM") is a "representatives of the news media," entitling it to a statutory fee waivers, as set forth below. Kindly accept this letter as a certification that the information contained herein is true and correct to the best of the requesters' knowledge, under § C1.5.4.3.3:

A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Request for Waiver of Search and Review Fees. As a representatives of the news media, AIM submits that it is entitled to a waiver of any fees associated with the search and review of records responsive to these FOIA Requests, under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). *See generally* DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," 32 CFR Part 286.

AIM is organized and operated to publish or broadcast news to the public, and has been doing so for more than 45 years. It clearly meets the standard of "representative of the news media" status. A "representative of the news media" is "a person or 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." *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Upon disclosure of the records sought, AIM has concrete plans to make the information public. Its ability and intent to disseminate the information requested is beyond question. Accuracy in Media articles on the subject include, "The MSM and Benghazi: Will Their Coverage Harm Obama Administration?," "Shameful Media Coverage of Benghazi Scandal and Cover-up," "Media Embrace Obama's Controversial Picks for National Security Team," "New York Times Attempts to Blur Benghazi Scandal," "McClatchy Reporter Changes Tune on Benghazi," "CBS in Damage Control Over Error-Filled Benghazi Report," "'60 Minutes' Reveals Little New in Benghazi Exposé," "The Left's Continued Assault on the Truth About Benghazi," "Media Coverage of Benghazi Leans Toward Political Theater," "Conservative Leaders Call on Speaker Boehner: Form a Select Committee on Benghazi," "Further Proof That Obama Knew the Truth About Benghazi," "Blaming the Victim in Benghazigate," "Obama and His Media Loyalists Still Spinning Benghazi," and "Does Navy Map Alter the Benghazi Narrative?"

Additionally, several of the individual requesters have published a number of articles about the matter. *See, for examples*, "Navy SEAL: 'There's guilt in this administration,'" by Captain Larry Bailey, published in WND.com in April of 2013; two articles by Clare Lopez appearing in Pundicity.com in October of 2012, "Benghazi: The Set-Up and the Cover-Up," and "Did Turkey Play a Role in Benghazi Attack?;" and Admiral James Lyons' pieces appearing in the Washington Times, "Obama's Chain of Command Unravels Over Benghazi (October 2012), "Obama needs to come clean on what happened in Benghazi" (October 2012), "The Key Benghazi Questions Still Unanswered" (January 2013), "A hard slog to get Benghazi answers" (January 2013), and "A call to Courage over Benghazi" (May 2013).

Public Interest Fee Waiver. 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced... 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."

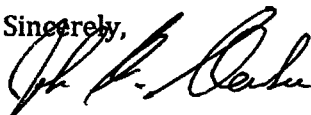
Here, the FOIA requesters do not have a commercial interest in the disclosure. Their purpose is to inform the public. The subject of the requested records concerns the operations or activities of the United States Government. The information sought is directed at finding out what information the government has about its failure to timely respond when its facilities came under attack. These FOIA Requests also concern what information the government did not provide to the public, as well as congressional investigators.

Upon disclosure of the records sought, AIM, as well as other several of the individual requesters, has concrete plans to make the information public, as demonstrated above. The information sought would be likely to contribute to an understanding of United States Government operations or activities, and disclosure will enhance public understanding of the Benghazi incident as compared with awareness prior to the disclosure. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct.

Electronic Format. Kindly produce these records in electronic format. See e-FOIA amendment 5 U.S.C. § 552 (a)(3)(B), as amended, requiring Agency to "provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." See FOIA Update Vol. XVII, No. 4, 1996.

Reply to Accuracy in Media. If you have any questions about handling this request, please ask via email, to JohnHClarke@earthlink.net. Otherwise, kindly respond, and produce records, to Accuracy in Media, 4350 East West Highway, Suite 555, Bethesda, MD 20814-4582.

Sincerely,



John H. Clarke

cc: Accuracy in Media, Inc.
Roger Aronoff
Larry Bailey
Kenneth Benway
Dick Brauer
Clare Lopez
James A. Lyons, Jr.
Kevin Shipp
Wayne Simmons

Exhibit B



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

19 SEP 2014

Ref: 14-F-0683

Mr. John Clarke
John H. Clarke Law Office
1629 K Street, NW, Suite 300
Washington, DC 20006

Dear Mr. Clarke:

This is the final response to your Freedom of Information Act (FOIA) request dated March 31, 2014, which was received in this office on April 7, 2014. Twelve pages of records were located as responsive to section 1 of your request.

Mr. Mark S. Patrick, Chief, Information Management Division, Joint Staff (JS) has determined that the records responsive to your request, totaling 12 pages, are being denied in their entirety. The records denied in their entirety do not contain meaningful portions that are reasonably segregable. The information is currently and properly classified in accordance with Executive Order 13526, Section 1.4 (a) concerning military plans, weapons, or operations; Section 1.4 (d), concerning foreign relations or foreign activities of the United States, including confidential sources; and Section 1.4 (g) concerning vulnerabilities or capability of systems, installations, infrastructures, projects, plans or protection services relating to the national security. Accordingly, this information is denied pursuant to 5 USC § 552 (b)(1). The pages denied in their entirety do not contain meaningful portions that are reasonably segregable.

Mr. Mark S. Patrick, Chief, Information Management Division, Joint Staff (JS) a FOIA Initial Denial Authority (IDA), advised that based on the information provided in sections 2, 3, and 4 of your request and thorough searches of the paper and electronic records and files of the JS, no documents of the kind you described could be located. We believe that these search methods were appropriate and could reasonably be expected to produce the requested records if they existed. Mr. Patrick further certified that after making a good faith effort and conducting a thorough search of records using methods, detailed above, that could reasonably be expected to produce the information requested, there are no records, and that to the best of their knowledge, no such documents exist within the records of the JS.

There are no assessable fees associated with this response. 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, by writing directly to the Defense Freedom of Information Policy Office, Attn: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter,

should cite to case number 14-F-0683, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

for Charles P. Marge

Paul J. Jacobsmeyer
Chief

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	
	)	Case No. 14-1589 (EGS)
DEPARTMENT OF DEFENSE, et al.,)	
)	
Defendants.)	
<hr/>		

DECLARATION OF JOHN H. CLARKE

John H. Clarke hereby deposes and says:

1. The attached exhibits one through 10, consisting of (1) a selection of pages from Congressional transcripts, (2) excerpts of a Congressional report, and (3) Executive Branch records, are authentic.

	Bates
Exhibit 1: Sept 12, 2012 3:00 a.m. EXORD, European Command.	1-2
Exhibit 2: DOD Timeline, November 2013.	3-4
Exhibit 3: Leon Panetta January 8, 2016 closed-door testimony before <i>U.S. House of Representative Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi</i> , excerpts.	5-48
Exhibit 4: <i>Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi</i> Report, excerpts.	49-60
Exhibit 5: Deputy Chief of Mission Gregory Hicks testimony before <i>House Oversight and Government Reform Committee</i> , excerpt.	61-64
Exhibit 6: Plaintiffs' Interrogatory to DOD.	65-66
Exhibit 7: Testimony Secretary Clinton before Senate Committee on Foreign Relations, U.S. Senate, Jan. 2013, re "Benghazi: The Attacks and the Learned," excerpts, and testimony before <i>U.S. House of Representative Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi</i> , excerpts.	67-76
Exhibit 8: CIA Inspector General Records.	77-103
Exhibit 9: September 19, 2012, CIA Memorandum for the Record.	104-08
Exhibit 10: Leon Panetta Feb 7, 2013 testimony before U.S. Senate Committee on Armed forces, "Hearing to Receive Testimony on Department of Defense's Response	109-11

Exhibit 11: Time Conversion Chart. 112
Exhibit 12: Map of assets.113

2. This Declaration is submitted pursuant to Federal Rule of Civil Procedure 56(d),

which provides:

- (d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
 - (1) defer considering the motion or deny it;
 - (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order.

Although plaintiffs believe that the DOD's Motion for Summary Judgment should be denied outright for the reasons set forth in their Memorandum, they submit this Declaration, averring that a review of the records attached hereto reveals that plaintiffs cannot present all facts essential to support their opposition to the DOD's dispositive motion. Summary Judgment is not appropriate at this juncture because plaintiffs have not been allowed to discover the facts of when, and by what means, communications with assets were first made.

3. On November 20, 2017, the Washington Post published, "After 7-week trial, Benghazi jury weighs \$7 million informant, surveillance video and phone traces." It included:

Surveillance video played at trial showed some of those men armed, one carrying a fuel can that prosecutors contend was used to ignite diplomatic vehicles, and another a looted map that prosecutors said showed the secret CIA annex's location not far from the diplomatic compound.

4. In late 2017, NBC Nightly News broadcast an excerpt of that video footage.

5. Under House Resolution 567, the *Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi* was "directed to conduct a full and complete investigation and study and issue a final report of its findings to the House regarding all... activities that contributed to the attacks... including any other relevant issues relating to the attacks...." The Committee will issue a final report "addressing the matters," which "may contain a classified

annex." H. Res. 36—113th Congress (2013-2014) INVESTIGATION AND REPORT ON THE EVENTS SURROUNDING THE 2012 TERRORIST ATTACK IN BENGHAZI, states:

- (a) The Select Committee is authorized and directed to conduct a full and complete investigation and study and issue a final report of its findings to the House regarding—
 - (1) all policies, decisions, and activities that contributed to the attacks...
 - * * *
 - (3) internal and public executive branch communications about the attacks on United States facilities in Benghazi, Libya, on September 11, 2012;
 - * * *
 - (9) any other relevant issues relating to the attacks, the response to the attacks, or the investigation by the House of Representatives into the attacks.
- (b) In addition to any final report addressing the matters in subsection (a), the Select Committee may issue such interim reports as it deems necessary.
- (c) Any report issued by the Select Committee may contain a classified annex.

6. "I make the following statements based upon my personal knowledge, which in tum is based upon information furnished to me in the course of my official duties" (DOS Decl. ECF 68-6). Prior to the publication of the *Select Committee* Report, six Congressional reports were issued on the matter:

- December 30, 2012, FLASHING RED: A SPECIAL REPORT ON THE TERRORIST ATTACK AT BENGHAZI, issued by both parties U.S. Senate Committee on Homeland Security and Governmental Affairs

Fifty security incidents in Benghazi was a "flashing red" warning, according to the Republican report. Failing to suspend or abandon the Benghazi facilities was a "grievous mistake." Key findings include State Department initial knowledge that the attack was preplanned and the absence of any protest, at least by September 15th. Report faults IC and open source reports for the account of a protest in Benghazi.

- April 23, 2013, INTERIM PROGRESS REPORT FOR THE MEMBERS OF THE HOUSE REPUBLICAN CONFERENCE ON THE EVENTS SURROUNDING THE SEPTEMBER 11, 2012 TERRORIST ATTACKS IN BENGHAZI, LIBYA, issued by Republican Majority of five House committees

On "the same day and prior to" Ambassador Rice's talk show appearances, "a senior official on the ground in Libya informed senior leaders at the State Department that there was no demonstration prior to the attack." The Administration had altered its talking points to "remove references to the likely participation of Islamic extremists." The President and Secretary Clinton for appeared in a \$70,000 advertisement campaign in Pakistan disavowing the YouTube video. Also, "State Department personnel have testified that funding was not a reason for the drawdown of security levels in Benghazi."

- September 16, 2013, BENGHAZI ATTACKS: INVESTIGATIVE UPDATE INTERIM REPORT ON THE ACCOUNTABILITY REVIEW BOARD, issued by Republican Majority of Committee on Oversight and Government Reform.

Under Secretary of Management at the Department of State Ambassador Kennedy personally oversaw the number staff at any time at the Special Mission Compound, decided to discontinue the Security Support Team, and approved the extension of the facility "as is."

All four State Department officials who were placed on administrative leave failed to receive due process from the State Department, three of whom were not permitted to see the charges against them for six months because the information was classified. Hillary Clinton selected four of the five Accountability Review Board members, Undersecretary Kennedy oversaw the selection of ARB staff, and the ARB failed to interview Clinton. Admiral Mullen gave Cheryl Mills a friendly "heads up" that Charlene Lamb would not be a good witness.

- January 15, 2014, REVIEW OF THE TERRORIST ATTACKS ON U.S. FACILITIES IN BENGHAZI, LIBYA, SEPTEMBER 11-12, 2012, TOGETHER WITH ADDITIONAL VIEWS," issued by U.S. Senate Select Committee on Intelligence

The bipartisan report holds the State Department responsible for inadequate security at the Mission in the face of an increased violence, and the tragedy "preventable." There were three diplomatic Security agents assigned to the Mission, whereas nine security officers were assigned at the CIA Annex. Itemization of security improvements at the CIA Annex is redacted, while the Mission failed to keep all surveillance cameras running or install its new cameras. The attacks were in three distinct phases, with probing attacks at the CIA Annex between 11:56 p.m. and 1:00 a.m.

This Report details the August 15, 2012 Emergency Action Committee Report and its corresponding classified cable: "A CIA officer 'briefed the EAC on the location of approximately ten Islamist militias and AQ training camps within Benghazi.'" "Individuals affiliated with terrorist groups, including AQIM, Ansar al- Sharia, AQAP, and the Mohammad Jamal Network, participated in the September 11, 2012, attacks." The FBI and CIA reviewed the closed circuit

television video from the Mission on September 18, 2012, and FBI intelligence reports regarding the interviews of the survivors were disseminated on September 20, 2012.

- February 7, 2014, BENGHAZI: WHERE IS THE STATE DEPARTMENT ACCOUNTABILITY?
Issued by Republican Majority of the House Foreign Affairs Committee Secretary Clinton was aware of the security problems in Libya and should have acted accordingly, according to this Republican report. Of the four reinstated employees who had been placed on leave (Charlene Lamb, Scott Bultrowicz, Ray Maxwell, and Eric Boswell), two retired with full benefits, and the other two have been reassigned to positions with commensurate pay and benefits. Elizabeth Dibble, Jake Sullivan, and Victoria Nuland, were all promoted. Patrick Kennedy was unaccountable, even after (1) "approv[ing] a one-year extension of the Benghazi SMC in December 2011," (2) telling "the Defense Department in July 2012 that the State Department would no longer need the U.S. military's 16-member SST," and (3) "terminat[ing] Embassy Tripoli's use of a DC-3 aircraft that provided logistical support to the SST" on May 3.
- February 10, 2014, MAJORITY INTERIM REPORT: BENGHAZI INVESTIGATION UPDATE, issued by Republican Majority of House Armed Services Committee

While this Republican report declares that there was no "stand down" order given and that the military acted appropriately given the resources available, the Committee questions the posture of military forces. Why didn't the Administration prioritize a violent Libya among the ongoing threats"? Why was the Commander's in Extremis Force training on September 11th? Why didn't General Ham know that the CIA had a facility in Benghazi?

The State Department was ultimately responsible for embassy security. The attack was "carefully planned," with a "scouted...scene beforehand."

Date: June 25, 2018.

I declare under penalty of perjury that the foregoing is true and correct.

/s/
John H. Clarke

~~SECRET//NONE~~

Subject: USEUCOM EXORD FOR COMMANDERS IN-EXTREMIS FORCE (CIF) DEPLOYMENT

Originator: EUCOM J3 DIRECTORATE(MC)

DTG: 120700Z Sep 12 Precedence: ROUTINE

To: SOCEUR(mc), COMUSNAVEUR NAPLES IT(sc), SOCEUR(mc), USAFECOMMANTCENTER(mc), USAREUR CG(mc), COMMARFOREUR(mc)

cc: SOCEUR J3 OPERATIONS DIRECTORATE(MC), EUCOM J1 DIRECTORATE(MC), EUCOM J37 Joint Readiness Training and Exercise Div(mc), EUCOM EPOC Antiterrorism Division(mc), EUCOM J4-Eddoc Eucom Deployment-Distribution Ops Ctr(mc), EUCOM J5-P Plans Div(mc), EUCOM J4-JLOC(mc), USCENTCOM COMMAND CENTER(mc), USAREUR G3(mc), EUCOM J2 DIRECTORATE(MC), EUCOM EPOC Operations Div(mc), EUCOM J4 DIRECTORATE(MC), EUCOM J5-J8 Directorate(mc), EUCOM J6 DIRECTORATE(MC), EUCOM J7 DIRECTORATE(mc), EUCOM J9 DIRECTORATE(mc), EUCOM PA Public Affairs(mc), EUCOM JA Judge Advocate Directorate(mc)

MSGID/ORDER/CDRUSEUCOM//
REF/A/PHONECON/CDRUSEUCOM/112228ZSEP12//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

ORDTYP/EXORD/CDRUSEUCOM//
TIMEZONE/Z//

NARR/+(S) (b)(1) EO 13526 § 1.4(a)

GENTEXT/SITUATION/
1. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/MISSION/
2. +(S)

(b)(1) EO 13526 § 1.4(a)

GENTEXT/EXECUTION/
3. +(S)

(b)(1) EO 13526 § 1.4(a)

3.B. (U) TASKS.
3.B.1. (U) CDR, SOCEUR (CDRSOCEUR).

(b)(1) EO 13526 § 1.4(a)

~~SECRET//NONE~~

EXHIBIT 1

~~SECRET//NONE~~

3.B.1.B. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.2. (U) COMMANDER, NAVAL FORCES EUROPE (CDRNAVEUR).

(b)(1) EO 13526 § 1.4(a)

3.B.4. (U) CDR, US ARMY EUROPE (CDRUSAREUR).

3.B.4.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

3.B.5. (U) CDR, US MARINE FORCES EUROPE (CDRUSMARFOREUR).

3.B.5.A. ~~(S)~~ (b)(1) EO 13526 § 1.4(a)

GENTEXT/ADMIN AND LOG/

(b)(1) EO 13526 § 1.4(a)

GENTEXT/COMMAND AND SIGNAL/

5. (U) COMMAND AND SIGNAL//

5.A. (U) COMMAND RELATIONSHIPS. CDRUSAFRICOM IS THE SUPPORTED COMBATANT COMMANDER FOR THIS MISSION. CDRUSEUCOM IS THE SUPPORTING COMBATANT COMMANDER. ALL OTHER COMPONENT COMMANDERS ARE SUPPORTING.

5.B. ~~(S)~~

(b)(1) EO 13526 § 1.4(a)

5.E (U) POINTS OF CONTACT.

(b)(3) 10USC 130b (b)(6)

Derived From: MULTIPLE SOURCES

Declassify On: 120700Z Sep 22

Date of Source: 010001Z Aug 08

~~SECRET//NONE~~

Timeline of Department of Defense Actions on September 11-12, 2012

All times are Eastern Daylight Time (EDT, Washington, DC)
and Eastern European Time (EET, Benghazi)

Tuesday, September 11, 2012

EDT // EET

- ~3:42 pm // 9:42 pm The incident starts at the facility in Benghazi.
- 3:59 pm // 9:59 pm An unarmed, unmanned, surveillance aircraft is directed to reposition overhead the Benghazi facility.
- 4:32 pm // 10:32pm The National Military Command Center at the Pentagon, after receiving initial reports of the incident from the State Department, notifies the Office of the Secretary of Defense and the Joint Staff. The information is quickly passed to Secretary Panetta and General Dempsey.
- 5:00 pm // 11:00pm Secretary Panetta and General Dempsey attend a previously scheduled meeting with the President at the White House. The leaders discuss potential responses to the emerging situation.
- 5:10 pm // 11:10 pm The diverted surveillance aircraft arrives on station over the Benghazi facility.
- ~5:30 pm // 11:30 pm All surviving American personnel have departed the facility.
- 6:00-8:00 pm //
12:00-2:00 am Secretary Panetta convenes a series of meetings in the Pentagon with senior officials including General Dempsey and General Ham. They discuss additional response options for Benghazi and for the potential outbreak of further violence throughout the region, particularly in Tunis, Tripoli, Cairo, and Sana'a. During these meetings, Secretary Panetta directs (provides verbal authorization) the following actions:
- 1) A Fleet Antiterrorism Security Team (FAST) platoon, stationed in Rota, Spain, to prepare to deploy to Benghazi, and a second FAST platoon, also stationed in Rota, Spain, to prepare to deploy to the Embassy in Tripoli.
 - 2) A EUCOM special operations force, which is training in Central Europe, to prepare to deploy to an intermediate staging base in southern Europe.
 - 3) A special operations force based in the United States to prepare to deploy to an intermediate staging base in southern Europe.
- During this period, actions are verbally conveyed from the Pentagon to the affected Combatant Commands in order to expedite movement of forces upon receipt of formal authorization.
- ~6:30 pm // 12:30 am A six-man security team from U.S. Embassy Tripoli, including two DoD personnel, departs for Benghazi.

EXHIBIT 2

- ~7:30 pm // 1:30 am The American security team from Tripoli lands in Benghazi.
- ~8:30pm // 2:30 am The National Military Command Center conducts a Benghazi Conference Call with representatives from AFRICOM, EUCOM, CENTCOM, TRANSCOM, SOCOM, and the four services.
- 8:39pm // 2:39 am As ordered by Secretary Panetta, the National Military Command Center transmits formal authorization for the two FAST platoons, and associated equipment, to prepare to deploy and for the EUCOM special operations force, and associated equipment, to move to an intermediate staging base in southern Europe.
- 8:53pm // 2:53 am As ordered by Secretary Panetta, the National Military Command Center transmits formal authorization to deploy a special operations force, and associated equipment, from the United States to an intermediate staging base in southern Europe.
- ~11:00 pm // 5:00 am A second, unmanned, unarmed surveillance aircraft is directed to relieve the initial asset still over Benghazi.
- ~11:15 pm // 5:15 am The second facility in Benghazi comes under mortar and rocket propelled grenade fire.

Wednesday, September 12, 2012

- 12:05 am // 6:05am AFRICOM orders a C-17 aircraft in Germany to prepare to deploy to Libya to evacuate Americans.
- ~1:40 am // 7:40 am The first wave of American personnel depart Benghazi for Tripoli via airplane.
- ~4:00 am // 10:00 am The second wave of Americans, including the fallen, depart Benghazi for Tripoli via airplane.
- 8:15 am // 2:15 pm The C-17 departs Germany en route Tripoli to evacuate Americans.
- 1:17 pm // 7:17 pm The C-17 departs Tripoli en route Ramstein, Germany with the American personnel and the remains of Ambassador Stevens, Sean Smith, Tyrone Woods, and Glen Doherty.
- 1:57 pm // 7:57 pm The EUCOM special operations force, and associated equipment, arrives at an intermediate staging base in southern Europe.
- 2:56 pm // 8:56 pm The FAST platoon, and associated equipment, arrives in Tripoli.
- 3:28 pm // 9:28 pm The special operations force deployed from the United States, and associated equipment, arrives at an intermediate staging base in southern Europe.
- 4:19 pm // 10:19 pm The C-17 arrives in Ramstein, Germany.

**INTERVIEW OF
SECRETARY OF DEFENSE
LEON PANETTA**

BEFORE THE

SELECT COMMITTEE ON BENGHAZI

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

HELD IN WASHINGTON, DC, JANUARY 8, 2016

EXHIBIT 3

APPEARANCES

FOR THE SELECT COMMITTEE ON BENGHAZI

PHILIP G. KIKO, *Staff Director and General Counsel*
CHRIS DONESA, *Deputy Staff Director*
DANA CHIPMAN, *Chief Investigative Counsel*
CRAIG MISSAKIAN, *Deputy Chief Counsel*
MAC TOLAR, *Senior Counsel*
CARLTON DAVIS, *Investigator*
SHERIA CLARKE, *Counsel*
KIM BETZ, *Member Outreach Liaison and Counsel*
SUSANNE SACHSMAN GROOMS, *Minority Staff Director/General Counsel*
HEATHER SAWYER, *Minority Chief Counsel*
PETER KENNY, *Minority Senior Counsel*
SHANNON GREEN, *Minority Counsel*
LINDA COHEN, *Minority Senior Professional Staff*
LAURA RAUCH, *Minority Senior Professional Staff*

FOR LEON PANETTA

HOWARD M. SHAPIRO
WilmerHale
Wilmer Cutler Pickering Hale and Dorr LLP

FOR THE U.S. DEPARTMENT OF DEFENSE

BILL HUDSON
EDWARD RICHARDS

295

4

Mr. Chipman. Let's go on the record.

(U) For the first time in the history of the Select Committee on Benghazi, we are starting precisely on time, on target, Mr. Secretary.

(U) This is a transcribed interview of Leon Panetta, who served as the Secretary of Defense from July 2011 to February 2013, conducted by the House Select Committee on Benghazi.

(U) This interview is being conducted voluntarily as part of the committee's investigations into attacks on U.S. diplomatic facilities in Benghazi, Libya, in September of 2012 and related matters pursuant to House Resolution 567 of the 113th Congress and House Resolution 5 of the 114th Congress.

(U) Sir, could you please state your full name for the record?

Mr. Panetta. (U) Leon Edward Panetta.

Mr. Chipman. (U) On behalf of the committee and Chairman Gowdy, we appreciate your time and willingness to come in and talk to us today.

(U) My name is Dana Chipman, and I am a counsel on the committee's staff. I would like to go around the room to ask everyone else in the room to introduce themselves as well.

Chairman Gowdy. (U) Trey Gowdy, South Carolina.

Mr. Jordan. (U) Jim Jordan.

Mr. Roskam. (U) Peter Roskam, Illinois.

Mr. Pompeo. (U) Mike Pompeo, Kansas.

Mr. Westmoreland. (U) Lynn Westmoreland, Georgia.

Mr. Hudson. (U) Bill Hudson from the Department of Defense Office of the General Counsel.

296

5

██████████

Mr. Richards. (U) Edward Richards, DOD Office of General Counsel.

Mr. Shapiro. (U) Howard Shapiro, Wilmer Cutler Pickering Hale and Dorr, for Mr. Panetta.

Mr. Davis. (U) Carlton Davis. I work for Chairman Gowdy.

Mr. Donesa. (U) I'm Chris Donesa with the committee staff.

Mr. Kiko. (U) Philip Kiko with the committee.

Ms. Betz. (U) Kim Betz with the committee.

Mr. Missakian. (U) Craig Missakian, majority staff.

Ms. Clarke. (U) Sheria Clarke, majority staff.

Mr. Kenny. (U) Peter Kenny, minority staff.

Ms. Sachsman Grooms. (U) Susanne Sachsman Grooms, minority staff.

Ms. Rauch. (U) I am Laura Rauch, minority staff.

Ms. Green. (U) Shannon Green with the minority staff.

Ms. Cohen. (U) Linda Cohen, minority staff.

Ms. Duckworth. (U) Tammy Duckworth.

Mr. Chipman. (U) I would like to go over some of the ground rules and explain how the interview will proceed.

(U) Generally, the way the questioning proceeds is that a member from the majority staff will ask questions first for up to an hour, and then the minority will have an opportunity to ask questions for an equal period of time if they so choose.

(U) And I note that we have been joined by Martha Roby.

(U) Questions may only be asked by a member of the committee or

██████████

307

16

of your trip to Tripoli?

A (U) Boy. That's not one I nailed down. But it was before -- it was soon after, I think, the transition had taken place. And it was a stop that I wanted to make to be able to talk with them and talk with the Defense officials, that they had to determine what kind of assistance we could help provide them.

(U) And it was also -- I used that as an opportunity to visit a graveyard in Tripoli that includes the remains of the Marines going back to the Barbary Coast days when a Marine ship was taken down and our Marines were buried in Tripoli. And I wanted to make sure that I paid my respects to them.

Q (U) And, sir, as I recall, on this trip, you did not make a specific visit to Benghazi?

A (U) No.

Q (U) Were you aware of a U.S. Government presence in Benghazi even during your trip to Tripoli, that particular trip?

A (U) I was aware that, you know, we had some segments of the government located in Benghazi.

Q (U) Were you aware of a single facility or more than one facility in that timeframe?

A (U) I was not aware of the number of facilities. I knew we had a presence there.

Q (U) And were you aware of the agencies that may have constituted that presence, whether State Department, CIA, or any other U.S. Government agency?

379

308

17

[REDACTED]

A (U) Because of my old job, I knew that there was a CIA presence there.

[Panetta exhibit No. 3
Was marked for identification.]

[Panetta exhibit No. 4
Was marked for identification.]

Mr. Chipman. (U) And if I could pass out exhibit 3.

(U) And, for the record, exhibit 3 is an unclassified DOD timeline that is also part of the same Senate report which the committee has used in a number of interviews before.

(U) And then if I could also pass out exhibit 4.

(U) And I would like the record to note we have been joined by Congresswoman Susan Brooks.

Mrs. Brooks. (U) Hello, sir. Thank you.

Mr. Panetta. (U) How are you?

BY MR. CHIPMAN:

Q (U) So with respect to exhibit 4, for the record, what I have done is to try to make it in a larger font because I had difficulty reading the font that was on the original exhibit. But I have also added some events, and so I would like to ask a few questions juxtaposed with some additional events and decisions that were made during that relevant timeframe.

(U) And so, Mr. Secretary, what we have is -- and I will use all times -- Washington, D.C.'s times, since that is the center of the universe. I will use all times in Washington and not Benghazi, Libya,

[REDACTED]

309

18

nor Croatia, nor anywhere else that might have been involved -- Stuttgart, Germany.

(U) And so what we have is an attack that occurred or that started at 3:42 on the 11th of September.

(U) Sir, where are you located or what were you doing, if you can recall, when you first learned of the attack?

A (U) My best recollection is that I was in the Secretary's office at the Pentagon, probably preparing for the meeting that we have with the President. I had a regularly scheduled meeting with the President that General Dempsey and I usually attended to discuss defense and national security issues.

Q (U) So the unclassified timeline reflects that at 3:42 the attack at the Benghazi Temporary Mission Facility begins and at 4:32 the National Military Command Center at the Pentagon notifies the Office of the Secretary of Defense.

(???) Who would the NMCC have notified both at OSD and at the Joint Staff? Would that be your military assistant? Would that be --

A (U) Well, yeah, I was going to say I don't specifically recall who actually mentioned the events that were taking place in Benghazi, but chances are pretty good that General Kelly, who was my Marine military aide, that he and probably Jeremy Bash both might have mentioned it to me as I was leaving. But I think the stronger likelihood is it would have been General Kelly. But I can't tell you for sure.

Q (U) Marine General Kelly, John Kelly, was a three-star. He

381

310

19

was your military aide.

A (U) That's right.

Q (U) And Mr. Jeremy Bash was your chief of staff --

A (U) That's correct.

Q (U) -- as the Secretary?

A (U) That's correct.

Q (???) It appears that notice was given to you, or to the Office of the Secretary of Defense more precisely, by 4:32 that afternoon, but then, as you indicated, you were preparing or getting ready to depart for a regularly scheduled meeting with the President along with General Dempsey?

A (U) That's correct.

Q (U) And so, at 5:00 p.m. -- is that your recollection of the start of the meeting you had with President Obama?

A (U) Approximately. I think, at the time -- and, again, I'm doing this by best recollection. General Dempsey and I arrived at the White House, and I think we both kind of pulled aside into the National Security Council quarters there to see if there was any additional information that we could get with regards to what we were picking up about events in Benghazi. And we did not have -- I don't think we received any additional intelligence. But I wanted to make sure that we knew everything possible before meeting with the President. And then we proceeded upstairs to the Oval Office. And so the meeting approximately began about 5 o'clock.

Q (U) And prior to the beginning of that meeting with the

311

20

President, had you had an opportunity to speak with General Ham, the combatant commander of Africa Command, or had you not heard anything from him as of that point?

A (U) I don't recall speaking with General Ham before that, going into that.

Q (U) Did General Dempsey indicate whether he had heard from General Ham that he relayed to you prior to you both journeying over to the White House?

A (U) I don't recall that.

Q (U) And so, when you began that meeting with the President, did you inform him of the incident in Benghazi that was ongoing?

A (U) As soon as we went into the Oval Office, took our seats on the couches that are next to the President's chair. And at the very beginning of that meeting, I mentioned to the President that we were picking up information about a potential attack that was taking place on our facilities in Benghazi and that we did not have information about the state of the situation and also the situation regarding our ambassador, that this was all very preliminary. We had just gotten these reports, but they clearly raised a concern.

Q (U) Was that news to the President? Had he heard this already before your arrival at the White House?

A (U) I don't believe so, but, you know, the head of the National Security Council, the National Security Director, Tom Donilon, I believe, participated in that meeting. He might have been given a heads-up, but I don't recall that.

383

312

21

Q (U) And during the course of that meeting with the President, the unclassified timeline indicates that the leaders discussed potential responses to the emerging situation. Can you recall what you were directed as a result of that meeting to do when you left that meeting and returned to the Pentagon?

A (U) The President made clear -- you know, again, these were all very preliminary reports about what was happening there. But the President made clear that we ought to use all of the resources at our disposal to try to make sure we did everything possible to try to save lives there.

Q (U) And did you or General Dempsey discuss with the President what resources might be available during the course of that meeting?

A (U) We did not go into particulars about what resources would or would not be deployed because, frankly, at that point, we had to get back to the Pentagon in order to determine what steps ought to be taken to try to respond to the situation.

Q (U) Yes, sir. So, to the best of your recollection, the specific direction that you took away from that meeting with the President was what?

A (U) To do everything possible to try to make sure that we tried to save the lives of those that were involved in the attack.

Q (U) Can you recall roughly what time you may have returned to the Pentagon after that meeting?

A (U) The meeting itself with the President perhaps lasted

313

22

about 15, 20 minutes, maybe a little longer, maybe a little less. But I remember immediately leaving the Oval Office, jumping into the vehicle, and heading right back to the Pentagon.

(U) And at the time I arrived back at the Pentagon, probably somewhere close to 6 o'clock, you know, if not before that, at that point immediately calling a meeting with General Dempsey, who was with me. Called them in. We added -- at that point realized General Ham, the AFRICOM commander, was not in Africa or in Europe but was there at the Pentagon, which was something I was not aware of, and asked General Ham to come in, as well.

(U) General Kelly was there. Admiral Winnefeld, who was the deputy to the Chairman, he also would come in and out as he was trying to get additional information. You know, I believe Jeremy Bash was also there.

(U) But my general approach to these things is to immediately have a meeting with the key principals that I could talk with to ask them, you know, get the best information. What is the situation? How do we respond? What steps can we take to make sure we are doing everything possible to respond to the situation?

(U) And, I mean, as a result of that meeting, you know, I ordered that, based on their recommendations, that we have our FAST teams, Marine FAST teams, respond, be prepared to -- you know, not only prepare to deploy but deploy into -- and be available to be able to go in. These are an elite force, as you probably know, of Marines who can quickly respond to those situations.

314

23

[REDACTED]

(U) So I directed that we get those FAST teams in place. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) We also had an in-extremis team. This is a team whose principal responsibility is to respond to crises. And that team was in Europe. I think they were in exercises in the Balkans. And we told them to, again, move to an intermediate base -- and Sigonella would have been the base that they would have gone to -- in order to deploy, as well.

(U) And then the third team, because we were concerned about the state of the Ambassador at that point -- I mean, initially, the concern was that the Ambassador might well have been taken hostage at that point. I can't tell you we had information to that effect, but we just didn't know what was happening with the Ambassador. And so, because of that, we thought it might be very important to have a hostage rescue operation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) So those were the orders that I gave. And I had the authority to give those orders. And those orders were carried out.

Q (U) And, sir, you had mentioned with respect to the FAST team and the In-extremis Force, the CIF, in the Balkans that you had

[REDACTED]

316

25

the national security -- usually, the Vice President would participate, but I don't remember him participating in this meeting.

Q (U) And do you recall if there were any other principals at that meeting, whether the Director of Central Intelligence, the Director of National Intelligence, the Secretary of State?

A (U) No.

Q (U) Okay.

(U) So a meeting that occurred back at the Pentagon that resulted in a series of directives from you to prepare to deploy and deploy these various forces, can you recall the timeframe that that meeting took, that you met with Admiral Winnefeld, General Dempsey, General Kelly, Jeremy Bash?

Mr. Shapiro. (U) And General Ham.

Mr. Chipman. (U) And General Ham. Thank you.

Mr. Panetta. (U) I mean, we were meeting kind of on an ongoing basis, as you can imagine. I mean, I issued the orders with regards to those teams that ought to respond, but we continued to be there. And I think, you know, it was probably at least a couple hours where the principals were still kind of talking and continuing to talk to make sure that the steps that I had ordered were taking place and also, frankly, trying to get intelligence about what the hell was happening in Benghazi. I mean, it was very fragmented information about what was taking place there.

BY MR. CHIPMAN:

Q (U) And as best you can recall, in that timeframe between

318

27

[Panetta exhibit No. 5
Was marked for identification.]

BY MR. CHIPMAN:

Q (U) And if I could pass out exhibit 5, please.

And I'd note for the record exhibit 5 is a document, STATE-SCB0060705, MOU. It's an email from Jeremy Bash to Jake Sullivan and others dated Tuesday, December 11, at 7:19 p.m.

(U) Sir, during your time as Secretary of Defense, were you a user of email?

A (U) No, and hell no.

(U) Actually, going back to when I was chief of staff to President Clinton, I made the decision not to use email at that time. I told people, if they wanted to talk to me, they came to my office and talked to me. And so I began that kind of approach going back to the time I was chief of staff, continued it when I was Director of the CIA and also as Secretary of Defense.

Q (U) So for purposes of --

A (U) So the answer is I did not use email.

Q (U) So for purposes of anyone who would wish to engage in email exchanges with the Secretary of Defense, would Jeremy Bash be the conduit for such emails?

A (U) He was my chief of staff both at the CIA and obviously at the Defense Department. And, you know, I always assumed that he was dealing with other staff using email.

Q (U) So you've already testified, sir, that you had this

320

29

[REDACTED]

SOF element that was in Croatia, which could fly to Souda Bay, Crete; and a Marine FAST team out of Rota, Spain.

[REDACTED]

[REDACTED]

[REDACTED]

A (U) That's correct.

Q (U) -- the U.S.?

A (U) That's correct.

Q (U) And then the email continues with the following sentence: "Assuming principals agree to deploy these elements" -- who are the principals that would've had to agree to deploy the elements that you had identified?

A (U) No one. I had the authority to deploy those forces. And I ordered those forces to be deployed. And I didn't have to ask anybody's permission to get those forces in place.

Q (U) Sir, that is my understanding, as well, that the national command authority consists of two people, the President and the Secretary of Defense.

A (U) That's right.

Q (U) And if you, as the Secretary of Defense, ordered the deployment of military assets, that is all it takes.

A (U) That's correct.

Q (U) And so, when Mr. Bash asks of State Department colleagues, "We will ask State to secure the approval from host nation," is that, again, from the nation to which we sought to deploy these

[REDACTED]

321

30

forces, whether that be Crete or Greece or Sigonella, Italy? Or is this Libya? Or do you have any recollection of what that might have referred to?

A (U) I don't know what he was referring to, but when you deploy a Marine FAST team, particularly going into Tripoli or elsewhere, you can't just drop these guys into a country without getting the permission of that country.

Q (U) And so it is consistent with your expectation that State would have been asked to secure the approval from the host nation, whatever that host nation would have been.

A (U) I assume that would have been the case.

Q (U) And then when Mr. Bash asked that an official from State convey that approval back to Mr. Miller or Admiral Winnefeld -- Mr. Miller was the Under Secretary for Policy --

A (U) That's correct.

Q (U) -- under your tenure?

(U) Was that an action that was predicate to your decision to deploy those forces, or were the forces ordered to be deployed regardless of this action ongoing at State?

A (U) My directions were very clear; those forces were to be deployed, period. And, you know, just because of the timeline involved, you know, my whole approach was we need to move them and move them as fast as we can in order to try to respond. And as I am sure you're all aware, we're dealing with a lot of time and distance in order to make it happen. So I wanted no interference with those orders to

324

33

sense that you want to alert all of the commands to what was taking place and to make sure that all of the commands were prepared to take action if we should run into any other incident that could take place.

Q (U) And then there were orders issued, the formal orders, issued by the National Military Command Center at 8:39 p.m. and 8:53 p.m., respectively, reflected in the DOD unclassified official --

A (U) As you know, those are the -- somebody then types those orders out, in terms of a formal authorization. But, as I said, it was the oral directions that commenced the action for the task forces and the other units to move.

Q (U) And, sir, as I look back at the time sequence that occurred, so if I go back to page 1 of exhibit 4 or the unclassified timeline -- for me, it is easier for me to read exhibit 4 -- I look at an event that was known at least as of roughly 4:30 p.m., 4:32 p.m. to be precise. And your recollection is that somewhere between 6 o'clock that evening and 8 p.m. that evening you had already given the order to get these forces moving.

A (U) That's correct.

Q (U) And as part of the sequence to get those forces moving, are you familiar with the use of the term "N-hour" or "notification hour"?

A (U) Yes.

Q (U) Who sets that notification hour, if you know?

A (U) I assume it's set through the military chain, but, you know -- I obviously knew there was a notice-plus time to prepare these

325

34

units, but, as to the specifics as to what that timeframe was, you know, it was not something, at least at that point, you know, that I was aware of.

(U) My point was these are elite units, and the purpose of those units is to move when I give the order to move. And that's what I expected.

Q (U) And, sir, as I look through this time sequence again, I look at roughly 4:30, the National Military Command Center is aware of the attack; at roughly 5 p.m. or shortly thereafter, the President is aware of the attack; roughly 6 p.m., somewhere between 6 and 7p.m. or 6 to 8 p.m., as the timeline reflects, you have already given the order to prep, deploy, and to move. And so it's still roughly 3 1/2 hours from notice of the attack to your decision to get them moving.

A (U) Right.

Q (U) And, in your experience and judgment, was that a reasonable timeframe to get these forces moving?

Mr. Shapiro. (U) I'm sorry. The 3 1/2 hours is to the outer end of that, to 8 o'clock, right?

Mr. Chipman. (U) The outer end.

BY MR. CHIPMAN:

Q (U) So, for purposes of the question, if it took all the way till 8 o'clock to get them moving -- although we know from the Jeremy Bash email that, as of 7:19 -- so somewhere short of 3 hours. Is that a reasonable timeframe to understand and work through the options?

A (U) Yeah, look, I believe it is. I mean, you know, it's

326

35

[REDACTED]

a -- I think it's important to understand that when you face a crisis like this, first of all, you're operating with preliminary information. You don't know all the facts of what's taking place. We didn't have a great deal of intelligence about just specifically, you know, what was happening at Benghazi. So you have to take that into consideration.

(U) You've got to take into consideration the units that can quickly deploy, where they're located and where they go. And you've got to take into consideration that these are the right units to try to deal with the contingencies that they may have to confront once they're put on the ground.

(U) I think all of those factors need to be considered. But I have to tell you that, in this instance, we moved pretty quickly to try to get the units that we wanted deployed to move. And I would have to tell you that, in dealing with other crises similar to what we were dealing with, this is roughly the same kind of timeframe.

Q [REDACTED]

A (U) That makes sense.

Q (U) And my understanding, as well, from the same governing plan is that for that Commander's In-extremis Force, the one that was training in Croatia, [REDACTED]

[REDACTED]

328

37

you've talked about this morning.

(U) And so, if I go to page 44, in the middle of the page, page 44, there's a question from Senator Graham. "My question is, did anybody leave any base anywhere to go to the aid of the people under attack in Benghazi, Libya, before the attack ended?" And Secretary Panetta responded, "No, because the attack ended before they could get off the ground."

A (U) Just to clarify the record, I was speaking specifically about the task forces that I had ordered to deploy. As you're aware, there was a security team that moved out of Tripoli on their own to be able to respond to what took place. I was not aware that that was taking place. But, clearly, there were some DOD personnel that were part of that team.

Q (U) Yes, sir. So the security personnel you were talking about were the people that were in Tripoli --

A (U) That's right.

Q (U) -- at the Embassy in Tripoli, two special operators that got on that flight --

A (U) That's right.

Q (U) -- from Tripoli down to Benghazi and performed to assist the mission.

A (U) Right.

Q (U) And, as well, just so the record's clear, DOD also directed a Predator, an armed drone, that was orbiting over Derna, Libya, to be transmitted to cover Benghazi. And do you recall that

329

38

direction, as well?

A (U) Yeah, we had -- as you know, during the Libyan war, one of the things that we had deployed were UAVs to try to focus on targets for the NATO forces that were engaged in that operation. So we had some of those resources there, and I'm assuming that General Ham made use of those UAVs in order to get at least one of them over the target.

Q (U) And, Mr. Secretary, I'd like to take this opportunity to determine -- I know the members have a vote series that will be occurring shortly.

(U) And if you would like to ask questions during the remainder of this hour or if you would prefer to wait until the second hour.

Mr. Jordan. (U) How much time have we got?

Mr. Chipman. (U) We've got 10 minutes, sir, in this particular hour.

Chairman Gowdy. (U) I'll wait.

Mr. Jordan. (U) I've got a couple rounds.

Chairman Gowdy. (U) Go for it.

Mr. Jordan. (U) Okay.

(U) Thank you, Mr. Secretary, for being with us.

(U) Let's go back to the email from Mr. Bash. The email says, "We have identified the forces that could move to Benghazi. They include" -- and he mentions two. What other forces, again, were available?

Mr. Panetta. (U) Well, there were three that -- actually, four units that I had ordered. There were two FAST teams, Marine teams,

330

39

[REDACTED]

to get them to deploy, one to Tripoli and one to Benghazi. The other was the In-extremis Force that was located in Europe, get them to go, as well. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Jordan. (U) But when he says "they include" and what you just described, was there other things that could have been used but weren't, that you decided not to deploy? Fixed-wing, armed drone, other assets?

Mr. Panetta. (U) The ones I ordered were based on the recommendations of General Dempsey and the team I had in the office. And this is what they recommended, and that's what I ordered. We did not discuss other areas that we --

Mr. Jordan. (U) So FAST team, the Special Ops, and the CIF team.

Mr. Panetta. (U) That's correct.

Mr. Jordan. (U) And when did the first DOD asset -- or those three groups that you deployed, when did they first arrive in Libya? When did they first get there?

Mr. Panetta. (U) Well, we obviously, you know, ordered them to deploy. The FAST team was -- one was ordered, obviously, to respond to Benghazi, the other to go to Tripoli. Because the attack moved so fast and was concluded, we did get the FAST team into Tripoli, and that was the one unit that did hit the ground.

Mr. Jordan. (U) My question is, when you deployed -- you said three elements were deployed. I want to know when the first one -- when

[REDACTED]

333

42

of made it lowercase doesn't fix it. And the fact that he assumed it, there was nothing to assume. You had already told him to do it.

Mr. Panetta. (U) I had told our military people to do it. That's what counts.

Mr. Jordan. (U) Do you know what time that was then?

Mr. Panetta. (U) It would have been, you know --

Mr. Jordan. (U) 7:19?

Mr. Panetta. (U) It would have been, you know, soon after we got back to the Pentagon, because I knew we were dealing with something that was urgent and I wanted to get our forces in place as soon as we could.

Mr. Jordan. (U) Did you communicate --

Mr. Panetta. (U) So I'd say certainly within the hour I gave the orders.

Mr. Jordan. (U) Did you communicate with the President any further that evening?

Mr. Panetta. (U) I did not.

Mr. Jordan. (U) Okay.

(U) I've got some stuff that will take longer, Mr. Chairman.

Mr. Westmoreland. (U) I've just got one quick followup to what --

Mr. Chipman. (U) Yes, sir.

Mr. Westmoreland. (U) Mr. Secretary, when Mr. Bash sent this, as Mr. Gowdy pointed out, you had already given him this order. Had you already talked to the State Department about getting permission from some of these host countries about getting these assets rolling

337

46

the -- and now we're at 11 o'clock and so forth. After you gave the order to deploy, why did you not check to see what was happening and what was moving?

Mr. Panetta. (U) I did. And, I mean, I continued to talk with General Dempsey and with Admiral Winnefeld and, obviously, General Kelly, my military aide, and continued to ask, "Give me updates," to make sure these people are on the move and ready to deploy. And, you know, they indicated things were moving.

Mrs. Brooks. (U) And so is that as specific as they were? "Things are moving"?

Mr. Panetta. (U) Yeah, I mean, my whole point as Secretary was to make sure that the units that I had ordered were moving. And I didn't go into, you know, particulars about the number of people, you know, et cetera. But I said, I want to make sure that they are moving and that we are getting them deployed as soon as possible.

Mrs. Brooks. (U) Did they raise any obstacles with you as to any challenges they were having --

Mr. Panetta. (U) No.

Mrs. Brooks. (U) -- in moving?

Mr. Panetta. (U) No. No. You know, the problem is, as always, is that, you know, you've got these elite units; obviously, they're located in places -- I'm aware of the fact, having been both in the military and as Secretary, that, you know, it's not like they're wearing their backpack and ready to jump on a plane. They've got to prepare, they've got to get their backpacks ready, they've got to get all of

398

339

48

[REDACTED]

(U) But when you're dealing with the kind of elite units we're talking about here, my expectation is that they move as fast as they can.

Mr. Jordan. (U) So you knew it took time. You didn't realize it was going to be 23 hours. Did you convey that to anyone else in our government -- White House, Department of State -- that it's going to take a while to get people there and we may never get them actually to Benghazi? Because the facts are we never did get people to Benghazi; we only got them to Tripoli. Did you convey that to anyone else in our government?

Mr. Panetta. (U) I assumed that, you know, obviously, there were continuing contacts between the staffs as to what was taking place, and I think everybody understood that there's a timeframe involved here in order to get these units in place. But the bottom line was that, you know, this attack moved pretty fast, and it was --

Mr. Jordan. (U) Let me ask one --

Mr. Panetta. (U) -- going to be tough to get them there under any circumstance.

Mr. Jordan. (U) Did you specifically talk with Secretary Clinton and say -- well, first of all, did you talk with Secretary Clinton that night?

Mr. Panetta. (U) I did not.

Mr. Jordan. (U) Did you talk with anyone at the State Department and say, it's going to take some time to get folks there?

Mr. Panetta. (U) I did not.

[REDACTED]

399

340

49

Chairman Gowdy. (U) We're out of time. I just want to make sure this portion of the record is fair to you and that your testimony has the clarity that I think it has, but I'm going to give you an opportunity if I'm wrong.

(U) You did not issue an order to prepare to deploy. You issued an order to deploy.

Mr. Panetta. (U) That's correct.

Mr. Jordan. (U) So no one would have been waiting on you to issue a subsequent order.

Mr. Panetta. (U) That's correct.

Mr. Jordan. (U) You were clear the first time.

Mr. Panetta. (U) Absolutely.

Chairman Gowdy. (U) All right.

Mr. Chipman. (U) Off the record.

[Recess.]

400

343

52

██████████

Mr. Panetta. (U) Not at all. I was -- first of all, I would never have allowed that to happen. But secondly, I was not aware of anyone contradicting the orders to get these units deployed as quickly as possible.

Mr. Schiff. (U) So when my colleagues were asking you about the Jeremy Bash email, I think the implication is that some other principal ordered a standdown, notwithstanding your order to deploy. Are you aware of anyone doing that?

Mr. Panetta. (U) I am not.

Mr. Schiff. (U) Did anyone in the Defense Department, Mr. Bash, or anyone else, ever come to you and say, Mr. Secretary, they are ignoring your order to deploy?

Mr. Panetta. (U) No. Not at all. On the contrary. They were assuring me that the forces were moving into place.

Mr. Schiff. (U) There has been a similar urban myth surrounding the efforts by those at the Annex to rescue those at the diplomatic facility. That is, that the people at the Annex were ordered to stand down and not come to the assistance of those at the diplomatic facility. The Republican lead and bipartisan House Intelligence Committee debunked that myth, General Petraeus came in again yesterday and debunked that myth.

(U) Are you aware of any evidence from your involvement in this that there was any standdown order of those at the temporary -- at the Annex CIA facility to come to the rescue of those at the diplomatic facility?

██████████

401

344

53

██████████

Mr. Panetta. (U) No, not at all.

Mr. Schiff. (U) Mr. Secretary, I apologize I have to break up my questions. I have got to go.

Mr. Panetta. (U) I understand having been there.

Mr. Schiff. (U) We got a speech from the Speaker yesterday saying that he intends to enforce the time limits.

Mr. Panetta. (U) Oh, no kidding.

Mr. Schiff. (U) He will not be the first Speaker to try. He will be the first to succeed if he does.

Mr. Panetta. (U) Yeah, but I'm sure he will look at the bottom line before he makes that decision.

Mr. Schiff. (U) I will see you later. Thank you.

EXAMINATION

BY MS. SACHSMAN GROOMS:

Q (U) I want to talk a little bit about the different forces that we were talking about in the last round. You said you weren't aware that the team from Tripoli, which was a DOD-led team, had moved to Benghazi in order to provide support and help save lives until the day after, and that they had left on their own. ██████████

██
██
██

A (U) I don't know the particulars in the chain of command, you know, how it works there. But that team was not under my direction, or my authority at that point.

354

63

or maybe we shouldn't do this, I think shows a lack of understanding of the fundamental principles that these people operate by. They operate by the principle that you do your job, and you do it as quickly as you can in order to do what's necessary to protect this country and protect American lives. And I don't think -- I don't think it's a good thing to send a message to the world that we are any different in terms of our approach.

Q (U) And is it your understanding that your staff and the National Military Command Center was in continual communications with the national security staff and the White House on the night of the attack?

A (U) I'm sorry, say that again.

Q (U) I'm sorry. Is it your understanding that your staff at DOD, the National Military Command Center, that they were all in continual communications with the staff at the White House, the national security staff, and others?

A (U) That was my understanding. I mean, I knew that the White House was being kept informed of what steps we were taking.

Q (U) And was it your sense that your staff and your military generals were doing everything in their power to respond to the situation in Libya?

A (U) Absolutely, absolutely.

Q (U) Was it also your sense that the personnel from across the interagency were doing everything they could to assist in the crisis?

375

84

Mr. Jordan. (U) So let me first start with, Secretary, your -- when did you first talk with General Ham on the night of the attack?

Mr. Panetta. (U) He was at the Pentagon.

Mr. Jordan. (U) Right.

Mr. Panetta. (U) And General Dempsey made me aware that he was present there, and that's -- I asked him to come up to my office as soon as I got back from the White House.

Mr. Jordan. (U) So around, I think the time --

Mr. Panetta. (U) Sometimes around 6.

Mr. Jordan. (U) Sometime around 6 o'clock. So you met with General Ham around 6 o'clock. And did you talk with him several times during the evening, or you sort of --

Mr. Panetta. (U) Yeah.

Mr. Jordan. (U) And General Ham, just to be clear, he did not go with you to meet with the President --

Mr. Panetta. (U) No.

Mr. Jordan. (U) -- even though he was in Washington? And you had not talk to him prior to your meeting with the President?

Mr. Panetta. (U) That's correct.

Mr. Jordan. (U) When you got information of the attack, just so I'm clear, did that come from up through the chain of command to you at the Pentagon? How did you, at the Pentagon, get that information? Did it come through General Ham, and then someone at the Pentagon, General Kelly or Mr. Bash tell you, or how did that work?

392

101

[REDACTED]

Dempsey had informed you of all of the assets that were there, but yet you did not know that you had two DOD people in Tripoli. Is that correct?

Mr. Panetta. (U) We have DOD people assigned to embassies around the world, and so I mean, obviously, I think I could have assumed that there were DOD personnel there. But as to what they did and how they responded, they were obviously, at that point, under the chain of command of the Embassy.

Mrs. Brooks. (U) Were you told how many people, how many DOD people were there?

Mr. Panetta. (U) No.

Mrs. Brooks. (U) Is there a standard number that would be in a place like Tripoli?

Mr. Panetta. (U) Normally one or two, but it just depends on the embassy.

Mrs. Brooks. (U) Thank you. I have nothing further.

Mr. Chipman. (U) Mr. Westmoreland.

Mr. Westmoreland. (U) Secretary, this video that you saw, was this from the Predator feed?

Mr. Panetta. (U) You know, I know I saw it, and I think it was presented to the intelligence committees, and I know others have looked at it. I'll ask you guys.

Mr. Shapiro. (U) Your question was what he saw that night?

Mr. Panetta. (U) No, no. It's not from that night. This was several weeks afterwards.

[REDACTED]

401

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Panetta. (U) No. At the time in talking with General Dempsey, my question was what resources can we deploy as quickly as possible in order to save lives. In that discussion, they talked about, obviously, our fast units. They talked about our in extremis units, [REDACTED] and those were the primary things that were discussed.

Mr. Westmoreland. (U) Let's just play what-if. Would we have had to get permission to be able to arm those aircrafts there?

Mr. Panetta. (U) I think the problem is that although we used UAVs in the area, that you have to get permission from those countries to be able to arm.

Mr. Westmoreland. (U) You said, in your previous testimony, that if there was American lives in danger, you would getting permission.

Mr. Panetta. (U) Yeah, I know.

Mr. Westmoreland. (U) Would we have used them or not?

Mr. Panetta. (U) I guess we're all speculating here, my sense, it was never brought to my attention; and I assume the reason it wasn't is because General Ham didn't think it was a practical way.

Mr. Westmoreland. (U) Thank you.

[REDACTED]

406

402

111

██████████

Mr. Chipman. (U) Mr. Pompeo.

Mr. Pompeo. (U) Secretary Panetta, you said lessons learned, that we wanted to have good intelligence going on. That doesn't seem like a new lesson to me.

Mr. Panetta. (U) It's a lesson we keep repeating.

Mr. Pompeo. (U) I don't think that was a lesson learned. Was there an intelligence failure here? That's what you described.

Mr. Panetta. (U) Yes.

Mr. Pompeo. (U) You said we didn't have intelligence adequate intelligence?

Mr. Panetta. (U) Yeah, sure.

Mr. Pompeo. (U) Your judgment was there was an intelligence failure?

Mr. Panetta. (U) That's right.

Mr. Pompeo. (U) You talked about the video you saw afterwards. Did you have real-time video that evening that you were seeing?

Mr. Panetta. (U) No, no.

Mr. Pompeo. ██████████

██████████ Right?

Mr. Panetta. (U) I didn't see it, no.

Mr. Pompeo. ██████████

██████████

Mr. Panetta. (U) That's interesting.

Mr. Pompeo. (U) Okay. You said you didn't talk to the President

██████████

407

403

112

that night. When did you next talk to the President after the meeting that you had in the White House? Do you recall?

Mr. Panetta. (U) I don't recall.

Mr. Pompeo. (U) You said shortly after the attack, you said quote -- these are your words, and we can go find them: "You don't deploy forces into harm's way without knowledge of what's going on," end of quote. And because we didn't have real-time information, quote, "we couldn't put forces at risk." Do you stand by that statement?

Mr. Panetta. (U) Yes.

Mr. Pompeo. (U) But that's not true. We put folks in harm's way all the time without perfect real-time information. You did it, in fact, as the Secretary of Defense multiple times. So help me --

Mr. Panetta. (U) We had pretty good information. You don't drop people into a situation unless you have some idea what you're getting into.

Mr. Pompeo. (U) When there's a life at risk, sir, I just fundamentally disagree with you about that. I think we do it all the time to rescue folks, and we would and we should, in fact, do that. That night, you said you were there at the Pentagon. Did you stay there the whole evening?

Mr. Panetta. (U) Again, I can't recall specifically, but normally, I didn't get out of the Pentagon until 11 or 12 o'clock at night.

Mr. Pompeo. (U) Were you there until such time as all the personnel were removed from Benghazi to Tripoli, or did you depart the

408

[REDACTED]

there are patrols that go out and people die.

Mr. Pompeo. (U) Yes, sir.

Mr. Panetta. (U) That's a tragedy. But in Afghanistan, for all the equipment, for all the planes, for all the F-16s, for all the stuff we had in Afghanistan, people still died because we weren't able to get there in time.

Mr. Pompeo. (U) All right. I don't disagree. But I still can't figure out why the decisionmakers that night chose not to co-locate to make real good real-time decisions to try and save Ambassador Stevens. There's your explanation, I guess, so if you'd like to add anything else, that's great. But I still am --

Mr. Panetta. (U) When American lives are lost, it is tragic, and this was a tragedy.

Mr. Pompeo. (U) Yes, sir, it was.

Mr. Panetta. (U) And I guess my hope is that we learn from that tragedy and try to make sure that it never happens again.

Mr. Pompeo. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Panetta. (U) My understanding, and, again, almost every week I used to sit down with a whole set of deployment orders on all kinds of units, and I'd go through and sign orders on all kinds of deployments. In this instance, it was based on the State Department request, if there's a State Department request to basically reduce the size of that

[REDACTED]

409

118

██████████

would you find to be tolerable as the answer to what X is -- reasonable, excuse me, not tolerable, reasonable?

Mr. Panetta. (U) Let me tell you, it would be nice to do it in 30 minutes, but that's not practical.

Mr. Pompeo. (U) No, sir, I am deeply sympathetic to resource constraints and decisions in risk analysis. In that risk analysis, you have to eventually apply hard math to reach a decision.

Mr. Panetta. (U) Sure.

Mr. Pompeo. (U) Tell me what would be reasonable. I want to look at this going forward, because we have got to protect these State Department workers.

Mr. Panetta. (U) I understand what you're saying, but assuming that you're operating from the bases where we can operate from, which is either Rota in Spain, or Sigonella in Italy, which are the main bases we have because we don't have that capability in Africa to be able to deploy, you're still talking about 9 to 12 hours in transit time. You can, in the very least, ought to be able to cut that down to at least an hour or two preparation and then get on the plain and move.

Mr. Pompeo. (U) That's just an important question for we, the resource granters, to think about what's feasible, what's reasonable, what we ought to shoot for, and you've had a lot of experience in this, so thank you.

Mr. Chipman. (U) We're 5 minutes over our time. Mr. Jordan has --

Mr. Jordan. (U) Just a few quick ones if I could, with the

██████████

410

434

143

Benghazi talking points?

A (U) No. And he's not the kind of person that would do that.

Q (U) Do you have any evidence that the CIA Deputy Director, Mike Morell, altered the talking points provided to Congress for political reasons?

A (U) No.

Q (U) It has been alleged that Ambassador Susan Rice made a quote, "intentional misrepresentation," end quote, when she spoke on the Sunday talk shows about the Benghazi attacks.

(U) Do you have any evidence that Ambassador Rice intentionally misrepresented facts about the Benghazi attacks on the Sunday talk shows?

A (U) No.

Q It has been alleged that the President of the United States was, quote, "virtually AWOL as Commander in Chief," end quote, on the night of the attacks and that he was missing in action.

(U) Do you have any evidence to support the allegation that the President was virtually AWOL as Commander in Chief or missing in action on the night of the attacks?

A (U) No, I do not.

Q (U) It has been alleged that a team of four military personnel of Embassy Tripoli on the night of the attacks who were considering flying on a plane to Benghazi were ordered by their superiors to stand down, meaning to cease all operations. Military officials have stated that those four individuals were instead ordered

435

144

to remain in place in Tripoli to provide security and medical assistance in their current location.

(U) A Republican staff report issued by the House Armed Services Committee found that, quote, "there was no stand-down order issued to U.S. military personnel in Tripoli who sought to join the fight in Benghazi," end quote.

(U) Do you have any evidence to contradict the conclusion of the House Armed Services Committee that there was no stand-down order issued to U.S. military personnel in Tripoli who sought to join the fight in Benghazi?

A (U) No, I do not.

Q (U) It has been alleged that the military failed to deploy assets on the night of the attack that would have saved lives.

(U) However, former Republican Congressman Howard "Buck" McKeon, the former chairman of the House Armed Services Committee, conducted a review of the attacks, after which he stated, quote, "Given where the troops were, how quickly the thing all happened, and how quickly it dissipated, we probably couldn't have done more than we did," end quote.

(U) Do you have any evidence to contradict Congressman McKeon's conclusion?

A (U) No, I don't.

Q (U) Do you have any evidence that the Pentagon had military assets available to them on the night of the attacks that could have saved lives but that the Pentagon leadership intentionally decided not

436

145

to deploy those assets?

A (U) Absolutely not.

Ms. Sachsman Grooms. (U) That's what I have for now. Let's go off the record.

[Recess.]

Mr. Chipman. (U) Okay. Back on the record.

BY MR. DAVIS:

Q (U) Sir, just one quick question. During the last hour and earlier in the day, you had talked about a meeting with all the national security principals where you questioned Director Petraeus' analysts. That occurred the day after the attack. Is that right?

A (U) Yes.

Q (U) And when you say "the day after the attack," was that Wednesday, September 12, or was it Thursday, September 13?

A (U) You know, I'm working by my recollection, but I think it -- at least my memory is that it was soon after -- it could've gone into the next day, but I -- you know, whenever it was, it was the first meeting at the National Security Council to discuss what had happened there.

Q (U) And you're not sure whether that was the 12th or the 13th?

A (U) I'm not, no.

Mr. Davis. (U) Okay. That's it.

Mr. Chipman. (U) And no exhibit used?

BY MR. CHIPMAN:

439

148

[REDACTED]

A (U) That is correct.

Q (U) -- 225,000 civilians and 2.5 million servicemembers.

A (U) You got it.

Q (U) Yes, sir.

Q (U) So, when that occurred, then we have the sequence directed. And so, in response to an earlier question, it was exhibit 7, and it said -- this is a question on page 59 that I believe the minority posed, and it is General Dempsey. "Once we started moving forces, nothing stopped us, nothing slowed us." And if you could refer back to that.

A (U) Right.

Q (U) And I think that, from my perspective, Mr. Secretary, I would agree with you that that is an accurate assessment. But it's that idea of "started moving forces" that I think is worthy of some discussion.

(U) And so, if you don't start moving forces until the 11 o'clock order is issued, then you're going to build in some more time. So there is time from the incident to notification to liftoff. There is time from liftoff to arrival. And what I think I would take issue with, at least in part, from this particular statement, is that we seem to have a significant time from the incident to notification to deploy.

(U) And so, if I go back to exhibit 3, again, knowing that --
Mr. Shapiro. (U) Timeline?

Mr. Chipman. (U) The timeline.

[REDACTED]

440

149

BY MR. CHIPMAN:

Q (U) -- knowing that the incident was notified to the Office of SecDef at 4:30, it's that time, between 4:30 and 11, that would cause me to wonder, were we moving out as smartly as you, Mr. Secretary, directed personally.

(U) Is that a fair question? Is that a fair observation?

A (U) You know, I think it's a -- obviously, it's a fair question, but it's not one that I can answer, because, frankly, my view was, "Go," and I assumed that they were moving as expeditiously as they could.

Q (U) Yes, sir. And so one of the things that we as a Nation do is we resource these capabilities you've talked about, these elite forces, these elite units, and we expect a certain level of readiness --

A (U) Right.

Q (U) -- and ability to deploy on the timeline directed.

And so, from the perspective of those who have stopped me to ask about Benghazi, the folks with whom I served in these commands, they say, "Look, we know the timeline. The timeline was not met. Why is that?"

(U) Would you understand that to be a fair question?

A (U) Yeah, I think that's a fair question, you know, as to how these units move and get in place and move out. And, you know, again, from my perspective as Secretary of Defense, I had every confidence that they were moving out as quickly as they could.

Q (U) Yes, sir. And you made it clear that you directed that

[REDACTED]

in your meetings with General Dempsey and with General Ham.

[REDACTED]

A Right.

Q (U) -- and it would also include the CINCs or the Commander's In-extremis Force, the folks that were then training in Croatia. Does that comport with your recollection?

A (U) That's correct.

Q [REDACTED]

A (U) It makes sense to me. But, you know, again, as to the specific timeline, I was not -- you know, the Secretary is not really aware of the specific timeline. My view was: Get them going as quickly as you can.

Q (U) Sir, and, you know, the forces that maintain that alert posture, they do have a required alert capability. Does that seem reasonable?

A (U) Right.

Q [REDACTED]

[REDACTED]

A (U) That's correct.

Q [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

A (U) You know, the specifics of what they do or do not have, you know, it's not something I'm that familiar with. But, clearly, my viewpoint was: These are elite forces. When you order them to go, they go.

Q [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

A (U) Correct.

Q (U) Exhibit 4 is, in essence, a series of times and dates and activities, added to by majority counsel, in trying to get a compilation of what appears to be supported by other evidence and by other witnesses we have talked to and by message traffic. So there are no citations on this document, and we can certainly supplement the record, should we need to, with what we are basing these times on.

(U) But it appears that General Ham's guidance was issued certainly by 8:02 p.m., and the EUCOM SOF in Croatia learned then that they might have the potential to deploy into Benghazi.

(U) Sir, we have interviewed that CIF commander, and that is where

[REDACTED]

450

159

[REDACTED]

Q (U) And so you knew of there -- you'd already identified the risks in Sana'a and Yemen and Khartoum and Tripoli and Cairo. And so I think the concern that I have had in reviewing these documents is, why wouldn't we go ahead and move those forces as quickly as we can to get them postured? Would you agree with that?

A (U) That's correct.

Q [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A (U) That's correct.

Q (U) And so we interviewed that young CIF commander, who said, at about 02, I was notified to get ready for a deployment. By 5 o'clock that morning, my team and I were assembled and ready to roll, 3 hours later.

(U) Does that seem like a reasonable timeframe to get ready for a deployment?

A (U) Yes, it does.

Q Well, that same unit then had to wait for aircraft till about, if you look at the timeline here, 10:21 a.m.

(U) So that N-hour that was set at 11 o'clock east coast time on the night of the 11th, it was not until 11 hours later that EUCOM CIF was actually transported down to Sigonella from Croatia.

(U) Does that timeframe seem reasonable to you, given what you thought might be occurring in the region?

[REDACTED]

House Calendar No. 163

114TH CONGRESS }
2d Session

HOUSE OF REPRESENTATIVES

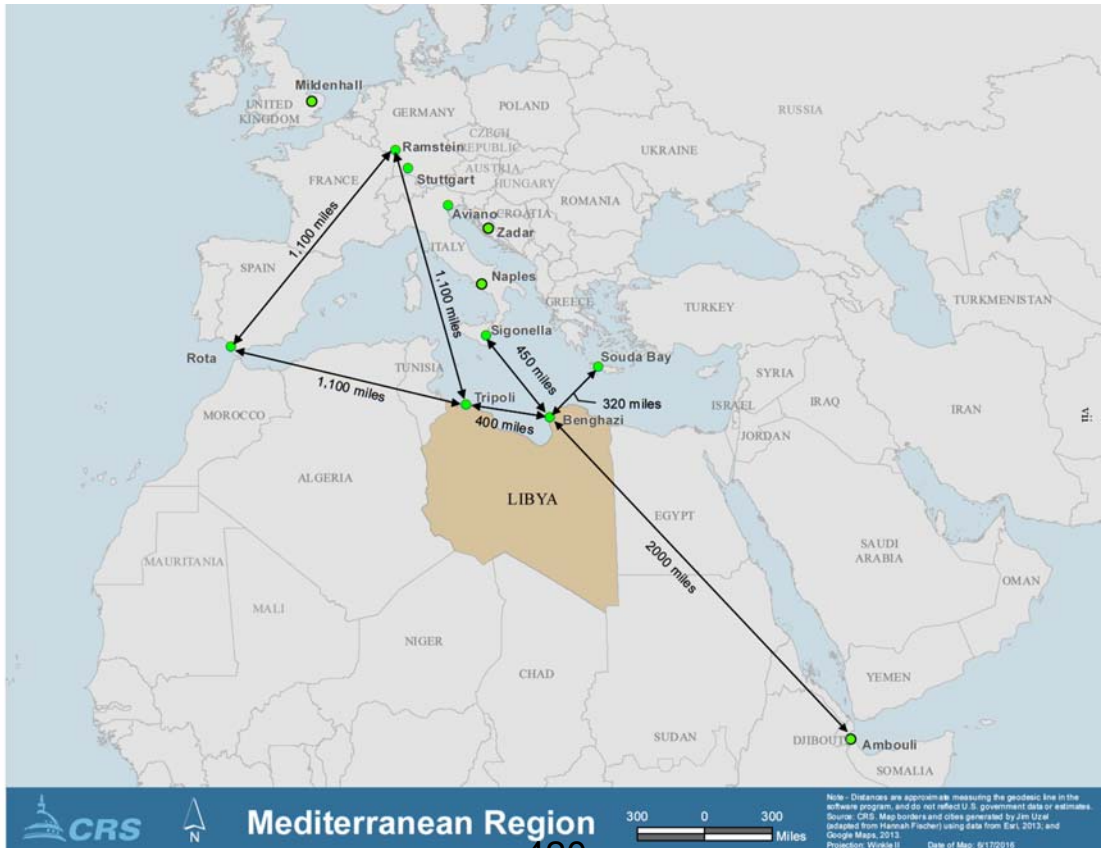
{ REPORT
114-848

F I N A L R E P O R T
OF THE
SELECT COMMITTEE ON
THE EVENTS SURROUNDING
THE 2012 TERRORIST
ATTACK IN BENGHAZI
HOUSE OF REPRESENTATIVES
together with
ADDITIONAL AND MINORITY VIEWS



DECEMBER 7, 2016.—Referred to the House Calendar and ordered to be printed

EXHIBIT 4



420

veillance of the Mission.⁵⁰ The Diplomatic Security Agent in charge reported the incident to the head security officer in country at the Embassy in Tripoli and to staff at both the Benghazi Mission compound and the Annex, including Stevens.⁵¹ The Diplomatic Security Agent described the incident:

We received word from our local guards that this morning they observed a member of the police force assigned to the Mission at a construction site across the street from our main gate taking pictures of our compound. I briefed the Ambo and provided him drafts of letters notifying the [Libyan Ministry of Foreign Affairs] and police. Will let you know any further details.⁵²

In Benghazi, the Supreme Security Council was the “most prominent” official police force, “assembled from former members of the various militias as an interim security measure.”⁵³ It was “designed to be an interim security measure” following the revolution but had not coalesced into an established force and had little impact on the security incidents in Benghazi.⁵⁴

Stevens’ last meeting of the day was with the Turkish Consul General. He escorted the Turkish diplomat to the front gate of the compound that evening at 7:39 p.m. [1:39 p.m. in Washington D.C.].⁵⁵

Stevens’ last entry in his personal journal, dated September 11, 2012, read: “Never ending security threats . . . ”⁵⁶

A Protest Begins at the U.S. Embassy in Cairo, Egypt on September 11

In the hours preceding the attacks in Benghazi, a protest of approximately 2,000 demonstrators assembled outside the U.S. Embassy in Cairo, Egypt.⁵⁷ Cairo is some 600 miles east of Benghazi. Plans for a demonstration in Cairo first began to coalesce in late August 2012 with the designated terrorist organization, Jamaa Islamiya, calling upon its supporters to protest the continued incarceration of its leader, Sheikh Omaar abdel Rahman, also known as the “Blind Sheik.”⁵⁸ Rahman is serving a life prison sentence for his role in the 1993 World Trade Center bombing.⁵⁹ Additionally, in the days preceding the September 11 demonstration in Cairo, an

⁵⁰ Email from Diplomatic Sec. Agent 2 (Sept. 11, 2012, 5:00 PM) (on file with the Committee, C05271656).

⁵¹ *Id.*; see also Diplomatic Sec. Agent 5 Testimony at 104–105; Diplomatic Sec. Agent 2 Testimony at 80.

⁵² Email from a Diplomatic Sec. Agent (Sept. 11, 2012, 5:00 PM) (on file with the Committee, C05271656).

⁵³ U.S. Dep’t of State, Cable, The Guns of August: security in eastern Libya (Aug. 8, 2012) (on file with the Committee, C055782149).

⁵⁴ *Id.*

⁵⁵ Comprehensive Timeline of Events—Benghazi (on file with the Committee, SCB0047843).

⁵⁶ J. Christopher Stevens, U.S. Ambassador to Libya, Personal Diary, Unofficial Transcript prepared by Patrick F. Kennedy, *et al.* (Sept. 10, 2012) (on file with the Committee, SCB0048881).

⁵⁷ Email to Susan E. Rice, U.S. Permanent Representative to the U.N. (Sept. 11, 2012, 7:55 PM) (on file with the Committee, C05390691) (re: FOR SER INFO: More on Cairo Embassy Attack).

⁵⁸ See Larry Bell, *Muslim Brotherhood Fox Was Hired To Protect Our Benghazi Consulate Henhouse*, FORBES (Dec. 2, 2012), <http://www.forbes.com/sites/larrybell/2012/12/02/muslim-brotherhood-fox-was-hired-to-protect-our-benghazi-consulate-henhouse-interview>.

⁵⁹ *Id.*

via radio with the other Americans at the second compound. And I keep Tripoli on speakerphone almost the whole time as we are working through and relaying what is going on.¹²⁶

Meanwhile, Stevens, Smith, and one Diplomatic Security Agent retreated to the safe haven of Villa C, a dedicated area within the Villa that was reinforced with a metal barred-door.¹²⁷ The Diplomatic Security Agent who was with Stevens and Smith described what happened:

I remember hearing the chants. I mean, they were fairly close already. I mean, yelling distance, which is pretty close especially in a city setting. So my impression is that I don't have much time. So I ran right to my room, you know, put my helmet on, put my vest on, grabbed my weapons, my additional weapons, and I turned to lock the gate, and basically, it was a jail cell door with three locks on it. I locked all three locks. And at about that time Ambassador Stevens and Sean Smith were coming out to their rooms. Sean Smith was already, you know, donning his helmet and vest. I guided them both into the safe haven, and set myself up in the safe haven with—I was holding my M4.”¹²⁸

Two other Diplomatic Security Agents attempted to “go back to Villa C to also provide protection for Stevens, but not to shoot at this large group.”¹²⁹

The agents in Villa B attempted to go to Villa C, but they were met with a very large hostile force of 7 to 10 attackers with “AKs and RPGs.”¹³⁰ The two agents made the tactical decision not to shoot at this large group because, “if we would have taken one of them out at the time, it could have gone substantially worse.”¹³¹ The Agents believed the attackers would have been “out for blood” and it would have inflamed an already bad situation.¹³²

Because of this concern, the agents chose to return to Villa B, which also served as the cantina or cafeteria for the Mission compound.¹³³ After seeking refuge, one of the agents in Villa B then contacted the TOC in Tripoli and the other agent contacted the State Department's Diplomatic Security Command Center [DSCC] in Washington D.C. at 9:49 p.m. Benghazi time [3:49 p.m. in Washington, DC].¹³⁴

Unknown to the Diplomatic Security Agents on the Mission compound, the attackers were a mix of local extremist groups, including the Benghazi-based Ansar al-Sharia, al-Qaeda in the Lands of

¹²⁶Diplomatic Sec. Agent 3 Testimony at 141; Diplomatic Sec. Agent 4 Testimony at 128–29.

¹²⁷Diplomatic Sec. Agent 3 Testimony at 141; *see also* Diplomatic Sec. Agent 5 Testimony at 114.

¹²⁸Diplomatic Sec. Agent 5 Testimony at 114.

¹²⁹Diplomatic Sec. Agent 3 Testimony at 142.

¹³⁰Diplomatic Sec. Agent 1 Testimony at 58.

¹³¹*Id.*

¹³²Diplomatic Sec. Agent 3 Testimony at 142.

¹³³*Id.* at 141–142.

¹³⁴Diplomatic Sec. Agent 2 Testimony at 86; *see also*, Email from the Diplomatic Sec. Command Ctr. to the Special Assistants for the Secretary, *et al.* (page 1) (Subject: Benghazi—Attack on Compound—09112012) (Sept. 11, 2012, 6:34 PM) (on file with the Committee, C05578314).

41

A: That's when they left to go on the rescue.¹⁶²

The Chief of Base was adamant that he never told the Annex team members to "stand down."

You said that you let them go. Did you give them an affirmative order for them to go?

A: I think I was working with [the Team Lead] the whole time—

Q: Okay.

A: —in an effort to get them to get them gone, to have them go. So whether or not I gave an affirmative order, but I wanted them to go. They were cleared to go. And they went.

Q: When you say they were cleared to go, is that you giving the clearance?

A: Yes.

Q: Did you have any discussions—do you recall having any discussions with the deputy chief of base about allowing the guys to go?

A: I don't recall any. It was never—I never had any doubt about the GRS people going to the State Department compound. I had great concerns and great worry about it but I did not, I did not tell anybody to stand down.¹⁶³

The Chief of Base acknowledged he may have told the team to wait while he was attempting to secure additional resources for them.

I may have said wait because we were trying to get this technical truck that the team lead wanted. But it wasn't 10 minutes, or 5 minutes. It was a short period of time. And the only time I remember ever talking to [Annex team member] was when he came up, and I said I'm trying to get a technical truck for [the Team Lead]. There was nobody, myself or anybody else in Benghazi, that did anything to hold up the GRS deploying. The team lead was always cleared to go.¹⁶⁴

He further added:

People were coming and going the entire time. But I did not issue a stand-down order. And if there was a delay, there was a very short delay, basically the team lead we have to try to get this gun truck.

* * *

I was doing everything, and to my knowledge, everybody on that base was doing everything. I think I carried an ammo can at one time to get those guys out the door.

¹⁶² *Id.* at 29.

¹⁶³ *Id.* at 31–32.

¹⁶⁴ *Id.* at 58–59.

into North Africa. It's a big place. We've constantly reminded State while I was the Vice Chairman and also, you know, National Security Council staff, gently, politely, that if you're counting on reactive forces from DOD to pull your fat out of the fire, basically, when there's an event going on, you're kidding yourselves. It's just too hard to get there. Usually, an event is over fairly quickly, and even in the best alert posture we can be in, it's going to be a couple of hours, two or three hours, before we can be someplace.

So what you should really be counting on is using these forces to either preemptively reinforce an area, like an embassy, or preemptively evacuate an area, like an embassy. Don't count on us to drop in in the middle of the night and stop a situation that's going on.

Now that won't prevent us from trying, certainly. If there's an event in a place that—you know, like a Benghazi and if we're postured in order to get there, we'll certainly try, we'll always try, but I've made it very clear to them—and they understand this—that they need to be very careful in their risk assessments. And it's a lot easier to reinforce and get out early than it is to save something that's under fire. And that has a lot to do not only with the tyranny of distance and how long it takes to get there, but you know, it's not easy to take a force and just drop it into the middle of an unknown area at night, and it's even harder when you're under fire. You know, V-22s don't like to fly when they're under fire, that sort of thing. So we've tried to make it very, very clear to [State], try, please, please, to do good risk assessment and evacuate or reinforce so that we don't have to rescue you in the middle of a firefight.²⁷⁴

The President's Directive and The Secretary's Order

Just minutes after word of the attack reached the Secretary, he and General Martin E. Dempsey, Chairman of the Joint Chiefs of Staff, departed the Pentagon to attend a previously scheduled 5:00 p.m. meeting at the White House with President Obama and National Security Advisor Thomas E. Donilon.²⁷⁵ The Secretary recalled two details about the attack on the U.S. facility in Benghazi: a building was on fire and Stevens was missing.²⁷⁶ As the Secretary and Dempsey briefed the President on the evolving situation in Benghazi, Libya, the Secretary recalled the following guidance:

The President made clear that we ought to use all of the resources at our disposal to try to make sure we did everything possible to try to save lives there.²⁷⁷

Immediately following the meeting with the President, at roughly 6:00 p.m., the Secretary and Dempsey returned to the Pentagon

²⁷⁴ Winnefeld Testimony at 74–75.

²⁷⁵ Panetta Testimony at 22.

²⁷⁶ *Id.* at 22–23.

²⁷⁷ *Id.* at 24.

and convened a meeting that included Ham, who was in Washington D.C. at the time, and relevant members of the Secretary's staff and the Joint Staff.²⁷⁸

During the meeting, three distinct capabilities were identified to deploy in response to the attacks in Benghazi: two FAST platoons, the CIF, and the U.S. SOF, capable of response to crises worldwide.²⁷⁹ Again, the Secretary was not aware, and was not told, of any assets in Tripoli.

The Defense Department provided copies of maps identifying assets present in European Command, AFRICOM, and Central Command's areas of responsibility on September 11, September 12, and September 13 to the Committee. The assets identified on the maps were purportedly considered during this meeting, although the Joint Staff at the time did not keep a daily updated list of assets and their locations.²⁸⁰ During its investigation, the Committee determined the maps failed to include assets that actually were deployed in response to Benghazi. For example, a C-17 medical airplane was deployed to Tripoli on September 12 to evacuate the wounded, deceased, and other American citizens. That asset was not identified on the maps provided by the Defense Department to the Committee. Given this discrepancy, the Committee requested it confirm whether there were any additional assets not identified on the maps or any assets withheld due to special access programs restrictions. It did not respond to the Committee's request. This failure to respond unnecessarily and unadvisedly leaves questions the Defense Department can easily answer, and it is in the public interest that it do so.

According to the Secretary, within an hour of his return to the Pentagon, he issued an order to deploy the identified assets.²⁸¹ The testimony of record is that the President's direction that night was clear: use all of the resources available to try to make sure we did everything possible to try to save lives there.²⁸² When asked whether he expected or needed the President to later extrapolate, clarify, or reissue that order, the Secretary said "no."²⁸³ The Secretary insisted he understood the President's directive and no further communication with the President was necessary. Nor did any further communication with the President take place.

Similarly, the Secretary insists his own intentions and actions that night, in the aftermath of the President's orders, were also clear: deploy the identified assets immediately. The Secretary said his orders were active tense. "My orders were to deploy those forces, period. . . . [I]t was very clear: They are to deploy."²⁸⁴ He did not order the preparation to deploy or the planning to deploy or the contemplation of deployment. His unequivocal testimony was that he ordered the identified assets to "deploy."²⁸⁵

By 7:00 p.m. in Washington [1:00 a.m. in Benghazi], nearly three hours after the attacks began, the Secretary issued what he be-

²⁷⁸ *Id.* at 22.

²⁷⁹ *Id.* at 24-25.

²⁸⁰ See Winnefeld Testimony at 45.

²⁸¹ Panetta Testimony at 25-26.

²⁸² *Id.* at 23.

²⁸³ *Id.* at 49.

²⁸⁴ *Id.* at 26.

²⁸⁵ *Id.*

lieved, then and now, to be the only order needed to move the FAST platoons, the CIF, and the U.S. SOF.²⁸⁶ Yet nearly two more hours elapsed before the Secretary's orders were relayed to those forces. Several more hours elapsed before any of those forces moved. During those crucial hours between the Secretary's order and the actual movement of forces, no one stood watch to steer the Defense Department's bureaucratic behemoth forward to ensure the Secretary's orders were carried out with the urgency demanded by the lives at stake in Benghazi. For much of the evening of September 11, principals in Washington D.C. considered Stevens to be missing and reliable information about his whereabouts was difficult to come by. For those on the ground and in the fight in Libya, the reality of a second American death was sinking in.

THE SECOND ATTACK ON THE COMPOUND

Evacuation to Annex

In Benghazi, the Diplomatic Security Agents determined Stevens would not have survived the fire in Villa C, and they were now engaged in a recovery mission.²⁸⁷ According to Diplomatic Security Agent 4, “[W]e were unable to find Stevens. I was very—at that point, I think it was decided that this was probably a recovery mission. We were looking to recover his body.”²⁸⁸

At 11:10 p.m. [5:10 p.m. in Washington], an explosive device detonated several meters inside the back gate, starting the second wave of attacks at the Benghazi Mission compound.²⁸⁹ Around the same time, the drone arrived on station over the compound.²⁹⁰ GRS officers returned fire after being fired on by the attackers, while the Diplomatic Security Agents loaded their vehicle and departed the compound under fire at 11:16 p.m. [5:16 p.m.].²⁹¹ Prior to leaving the compound, the Diplomatic Security Agents did not fire their weapons during the attacks. As one Diplomatic Security Agent explained:

I feel now, and I felt then at the time, that I had the support. At that time there was no opportunity to shoot. There was a situation, it was a moment where it was myself and [another Diplomatic Security Agent], and we were very close quarters with an overwhelming force of armed combatants, and at that situation it would not have been the smart thing, it would not have been the tactical thing to fire your weapon at that time.²⁹²

The Diplomatic Security Agents loaded Sean Smith's body in their vehicle and departed the compound through the main gate. One Diplomatic Security Agent described what they saw as they exited the compound:

²⁸⁶ *Id.* at 49.

²⁸⁷ Diplomatic Sec. Agent 4 Testimony at 137–138.

²⁸⁸ *Id.*

²⁸⁹ Video: DVR Footage of the Mission (Sept. 11, 2012, 2310).

²⁹⁰ See U.S. Dep't of Defense Timeline (“[At 11:10 PM EET t]he diverted surveillance aircraft arrives on station over the Benghazi facility.”).

²⁹¹ Committee analysis of DVR Footage of the Mission (Sept. 11, 2012, 2210 to 2216).

²⁹² Diplomatic Sec. Agent 2 Testimony at 156.

ploy and said “go,” one U.S. facility in Libya had already been attacked, Sean Smith had been killed, Chris Stevens was missing, and the U.S. Embassy in Tripoli was facing threats of another attack. The fact that nearly 24 hours elapsed until those forces actually arrived in Tripoli to reinforce the security there belies the expectations of the American people that the U.S. Military can and will move expeditiously. The Secretary said this on the time it took for forces to arrive in Libya:

Q: Mr. Secretary, did you know it was going to take 23 hours to get the first assets in country?

A: No.

Q: So what did you expect it was going to take?

A: I knew it was going to take some time, just because of the preparedness for the units and then the time and distance involved. You know, you’ve heard the term “tyranny of time and distance,” and it’s tough in this area.

* * *

But I didn’t—and I assumed these units moved as quickly as possible and that, you know, we can get them in place as quickly as possible, recognizing that there is a time element that’s involved. And, you know, I understand the time element involved here just because of the nature of moving the military.

I mean, as Secretary, I used to sit down with deployment orders all the time of units. And you go through a whole series of discussions about, you know, units that have to be deployed. And, normally, the timeframe to get these units deployed—it takes time. It takes time to put them on a plane. It takes time for them to locate, I understand that. But when you’re dealing with the kind of elite units we’re talking about here, my expectation is that they move as fast as they can.⁴⁵⁸

The Commander of the FAST Platoon testified he first became aware of the attack on the Mission compound in Benghazi through reports on Fox News.⁴⁵⁹ At the time, the FAST Platoon was stationed in Rota, Spain.

So, that evening, I recall I was actually talking to my dad on Skype, watching the Armed Forces Network news channel, which rotates through news affiliates, and I think it was Fox News that night. And all of a sudden we see a consulate building on fire.

As soon as I hung up with him, I got on the phone with my commanding officer, and we had a short talk. . . . And he said something more or less in the lines of, “Make sure you do your laundry and you got enough soap.”

⁴⁵⁸ Panetta Testimony at 47–48.

⁴⁵⁹ FAST Commander Testimony at 26.

WITNESSES

Table of Witnesses by Last Name

	Volume
Huma Abedin	7
Jeremy Bash	8
Sidney Blumenthal	4
Eric Boswell	1
General Philip Breedlove	10
Scott Bultrowicz	1
C-17 Pilot	9
Chief of Base	7
Chief of Operations for the Near East Division	7
Chief of Station	4
Ethan Chorin	9
CIA Official	4
CIF Commander	5
Communications Officer	4
Contracting Officer	5
Ambassador Gene Cretz	5
Defense Attaché	11
Deputy Chief of Base	4
Deputy Director, Office of Maghreb Affairs	7
Elizabeth Dibble	1
Ambassador RoseMary A. DiCarlo	5
Diplomatic Security Agent #01	3
Diplomatic Security Agent #02	3
Diplomatic Security Agent #03	4
Diplomatic Security Agent #04	4
Diplomatic Security Agent #05	3
Diplomatic Security Agent #06	5
Diplomatic Security Agent #07	1
Diplomatic Security Agent #08	3
Diplomatic Security Agent #09	4
Diplomatic Security Agent #10	3
Diplomatic Security Agent #12	2
Diplomatic Security Agent #13	2
Diplomatic Security Agent #15	2
Diplomatic Security Agent #16	4
Diplomatic Security Agent #17	2
Diplomatic Security Agent #19	10
Diplomatic Security Agent #21	2
Diplomatic Security Agent #22	5
Diplomatic Security Agent #23	3
Diplomatic Security Agent #25	3
Diplomatic Security Agent #27	2

(1615)

Diplomatic Security Agent #28	2
Diplomatic Security Agent #29	4
Diplomatic Security Agent #30	4
Director, Information Resource Management, Executive Secretariat	4
Director, Office of Terrorism Analysis	7
DOD Special Operator	6
F-16 Crew Chief	11
FAST Platoon Commander	6
Jeffrey David Feltman	7
Benjamin Fishman	8
Lieutenant General Michael Flynn	6
GRS Agent #1	4
GRS Agent #2	4
GRS Agent #3	4
GRS Agent #4	9
GRS Agent #5	10
GRS—Team Lead	10
GRS—Tripoli	4
General Carter Ham	10
Stephen C. Hedger	11
Gregory Hicks (OGR)	1
Gregory Nathan Hicks (SCB)	10
Elizabeth Jones	1
General John Kelly	9
Under Secretary Patrick Kennedy	11
Charlene Lamb (OGR)	1
Charlene Lamb (SCB)	8
Admiral Richard Landolt	10
Admiral Charles Joseph Leidig, Jr.	10
Libyan National	9
Lee Lohman	1
Rear Admiral Brian Losey	11
Managing Director, Office of Management Policy, Rightsizing and Innovation	9
Raymond Maxwell (OGR)	1
Raymond Maxwell (SCB)	9
Bernadette Meehan	7
Dr. James Northey Miller, Jr.	10
Cheryl Mills	6
Brigadier General Patrick Mordente	10
NEA/EX Post Management Officer for Libya	5
Thomas Nides	7
Victoria Nuland	2
ODNI Analyst	7
ODNI Analyst	10
Officer A	9
Matt Olsen	9
Brian Pagliano	6
Secretary Leon Panetta	8
Erin Pelton	9
David Petraeus	7
Physical Security Specialist	9
Joan Polaschik	5
Principal Officer #1	2
Principal Officer #2	3
Principal Officer #3	3

1617

Principal Officer #4	4
Regional Director, Near East Bureau, Diplomatic Security	2
Remotely Piloted Aircraft Pilot #1	10
Remotely Piloted Aircraft Pilot #2	10
General Michael S. Repass	10
Ben Rhodes	8
Ambassador Susan E. Rice	8
William Roebuck	1
Rexon Ryu	5
Senior Advisor for Strategic Communications, Near Eastern Affairs Bureau ...	5
Senior Libyan Desk Officer, Office of Maghreb Affairs	7
Sensor Operator #1	11
Sensor Operator #2	11
Gentry Smith	9
Special Assistant to Under Secretary Patrick Kennedy	1
Speechwriter #1	7
Speechwriter #2	7
Spokesperson, Near Eastern Affairs Bureau	6
State Department Chief Records Officer	4
Jacob Sullivan (OGR)	2
Jacob Sullivan (SCB)	6
Team Chief, Office of Terrorism Analysis	9
Admiral Kurt Tidd	9
Admiral James Winnefeld	9

BENGAZI: EXPOSING FAILURE AND RECOGNIZING COURAGE

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

MAY 8, 2013

Serial No. 113-30

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.fdsys.gov>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

81-563 PDF

WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

EXHIBIT 5

military and/or security assets to the airport to assist our response team. At this point this response team looks like it may be a hostage rescue team, that they are going to—we are going to need to send them to try to save the Ambassador, who was in a hospital that is, as far as we know, under enemy control. Our contacts with the government in Tripoli are telling us that the Ambassador is in a safe place, but they imply that he is with us in the annex in Benghazi, and we keep telling them, No, he is not with us, we do not have his—we do not have him.

At about 12:30, at the same time that we see the Twitter feeds that are asserting that Ansar al-Sharia is responsible for the attack, we also see a call for an attack on the embassy in Tripoli, and so we begin to—we had always thought that we were under threat, but we now have to take care of ourselves, and we begin planning to evacuate our facility. When I say our facility, I mean the State Department residential compound in Tripoli and to consolidate all of our personnel in—at the annex in Tripoli. We have about 55 diplomatic personnel in the two annexes.

On that night, if I may go back, I would just like to point out that with Ambassador Stevens and Sean Smith in Benghazi there are five diplomatic security agents, assistant regional security officers. With us in, at our residential compound in Tripoli we have the RSO John Martinec, three assistant regional security officers protecting 28 diplomatic personnel. In addition, we also have four Special Forces personnel who are part of the training mission.

During the night I'm in touch with Washington, keeping them posted of what's happening in Tripoli and to the best of my knowledge what I'm being told in Benghazi. I think at about 2 p.m.—2 a.m., sorry, the Secretary, Secretary of State Clinton called me, along with her senior staff, we're all on the phone, and she asked me what was going on, and I briefed her on developments. Most of the conversation was about the search for Ambassador Stevens. It was also about what we were going to do with our personnel in Benghazi, and I told her that we would need to evacuate, and that was—she said that was the right thing to do.

At about 3 a.m. I received a call from the Prime Minister of Libya. I think it's the saddest phone call I've ever had in my life. He told me that Ambassador Stevens had passed away.

Mr. HICKS. I immediately telephoned Washington that news afterwards and began accelerating our efforts to withdraw from the villas compound and move to the annex.

Excuse me. I will take a glass of water.

Our team responded with amazing discipline and courage in Tripoli in organizing our withdrawal. I have vivid memories of that. I think the most telling, though, was of our communications staff dismantling our communications equipment to take with us to the annex and destroying the classified communications capability.

Our office manager, Amber Pickens, was everywhere that night, just throwing herself into some task that had to be done. First, she was taking a log of what we were doing. Then she was loading magazines, carrying ammunition to the—carrying our ammunition supply to our vehicles. Then she was smashing hard drives with an axe.

36

Mr. HICKS. They remained in Tripoli with us. The medic went with the nurse to the hospital to lend his skills to the treatment and care of our wounded.

Mr. CHAFFETZ. How did the personnel react to being told to stand down?

Mr. HICKS. They were furious. I can only say—well, I will quote Lieutenant Colonel Gibson. He said, “This is the first time in my career that a diplomat has more balls than somebody in the military.”

Mr. CHAFFETZ. So the military is told to stand down, not engage in the fight. These are the kind of people willing to engage. Where did that message come down, where did the stand-down order come from?

Mr. HICKS. I believe it came from either AFRICOM or SOCAFRICA.

Mr. CHAFFETZ. Now, my understanding is that General Ham was actually not in Stuttgart, where AFRICOM is headquartered, but he was in Washington, D.C. Is that correct?

Mr. HICKS. I don’t know the whereabouts of General Ham on that night.

Mr. CHAFFETZ. Mr. Chairman, this is something that we are going to have to continue to explore.

I need to move quickly now to Mr. Thompson, if I could.

You were the leader there at the what is called the F.E.S.T. within the State Department. According to the State Department Web site, the F.E.S.T. is the Foreign Emergency Support Team, the U.S. Government’s only interagency, on-call, short-notice team poised to respond to terrorist attacks worldwide.

I want to read to you an excerpt of an email sent by you to Kathleen Austin-Ferguson on Tuesday, September 11th, 2012, at 9:58 p.m. Could you help me understand, who is Kathleen Austin-Ferguson?

Mr. THOMPSON. She is Under Secretary Kennedy’s deputy.

Mr. CHAFFETZ. You wrote, “I am told that Pat Kennedy participated in a very senior conference call with the White House and discouraged the F.E.S.T. option. To remind, F.E.S.T. has dedicated aircraft able to respond in 4 hours, is Department of State-led, and provides the below skills. When FBI was contacted, they responded that this situation would be better addressed via a F.E.S.T. response. Thus, there are others who are thinking the same way. Ready to discuss further as needed. Mark.”

Two questions—

Chairman ISSA. Can the gentleman suspend for a moment?

Earlier, there was one document that had not been placed in the record because it hadn’t been provided through official channels. And I would ask that we get that. I think it came from Mr. Gowdy.

And then, Mr. Chaffetz, if you could make your document available so we could make copies.

And then for any other Members on either side of the dais, if you plan to use a document that is not currently committee record—and I realize, since we have gotten very little, there is very little committee records—please do us the favor of having copies so they can be distributed at or prior to the beginning of the questioning.

I am sorry to interrupt.

59

ing what we know today. So I want to thank all three of you gentlemen for your service to the American people and to our government. And I want to say to you that the tough treatment you have gotten as a result not only on that day in September but since then is a horrible tragedy.

I want to go back to Mr. Gowdy's line of questions here. Mr. Hicks was there a protocol within the consulate in the event of a protest?

Mr. HICKS. Yes, there was.

Mr. MCHENRY. Was there any evidence when you were there in Libya on that day that this was a protest?

Mr. HICKS. No, there was none. And I am confident that Ambassador Stevens would have reported a protest immediately if one appeared on his door. The protocol of course was for us to evacuate immediately from the consulate and move to the annex.

Mr. MCHENRY. Okay. Was there anything in connection to a YouTube video, was there any awareness that the events occurred because of a YouTube video?

Mr. HICKS. The YouTube video was a non-event in Libya.

Mr. MCHENRY. Okay. And did you know about that within a couple of days or the day of?

Mr. HICKS. Yes.

Mr. MCHENRY. Okay. And so did you report to anyone in Washington within the first couple of days that there was anything in connection—a protest in connection to a YouTube video?

Mr. HICKS. No. The only report that our mission made through every channel was that there had been an attack on a consulate.

Mr. MCHENRY. Not a protest?

Mr. HICKS. No protest.

Mr. MCHENRY. You can leave your microphone off. I'm going to come back to you a few times.

Mr. Gowdy mentioned this earlier, but on September 16th Ambassador Susan Rice went on the Sunday shows, recited a whole group of talking points. Were you a part of those talking points.

Mr. HICKS. No, I had no role in that preparation.

Mr. MCHENRY. Okay. So one month later we had an Under Secretary Kennedy. Let's play his statement:

"Always made clear from the very beginning that we are giving out the best information we have at the time we are giving it out. That information has evolved over time. For example, if any administration official, including any career official, had been on television on Sunday, September 16, they would have said the same thing that Ambassador Rice said. She had information at that point from the intelligence community, and that is the same information I had and I would have made exactly the same point. Clearly we know more today, but we knew what we knew when we knew it."

By September 16th, did you know what you know what you know, which is apparently what Susan Rice said? Let me rephrase that actually. Let me actually make that a question, if you will.

Ambassador Rice recited a set of facts. A month later they defended—the State Department defends that. You are a career State Department official. Would you have said the things that Ambassador Rice said?

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCURACY IN MEDIA, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	
	)	Case No. 14-1589 (EGS)
DEPARTMENT OF DEFENSE, et al.,)	
)	
Defendants.)	
_____)	

PLAINTIFFS' INTERROGATORY TO
DEFENDANT DEPARTMENT OF DEFENSE

Plaintiffs propound the following interrogatory to Defendant Department of Defense, under Rule 33 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

- A. The Interrogatory is to be answered fully.
- B. Provide not only such information that is in your possession, but also information that is reasonably available. In the event that you are able to provide only part of the information called for by any particular Interrogatory, please provide all the information you are able to provide and state the reason for your inability to provide the remainder.
- C. If you object to or otherwise decline to answer any portion of the Interrogatory, please provide all information called for by that portion of the Interrogatory to which you do not object or to which you do not decline to answer. For those portions of an Interrogatory to which you object or to which you do not decline to answer, state the reason for such objection or declination.

EXHIBIT 6

D. The Interrogatory is regarding your communications on September 11 and 12, 2012, regarding the attack on U.S. facilities in Benghazi Libya. The times are Eastern Daylight Time.

Interrogatory No. 1: State the times of all electronic, verbal, and written, communications, from 3:32 p.m., through 3:00 a.m., by and among all DOD components, the total number of individuals on the communication, their titles and locations, and the substance of that communication. Include in your answer a description of all records, in any form, containing, reflecting, or otherwise corroborating, that communication.

Date: June 25, 2018.

Respectfully submitted,

/s/

John H. Clarke Bar No. 388599
Attorney for plaintiffs
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 344-0776
johnhclarke@earthlink.net

S. HRG. 113-184

BENGHAZI: THE ATTACKS AND THE LESSONS LEARNED

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

JANUARY 23, 2013

Printed for the use of the Committee on Foreign Relations



Available via the World Wide Web: <http://www.gpo.gov/fdsys/>

U.S. GOVERNMENT PRINTING OFFICE

86-780 PDF

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

EXHIBIT 7

COMMITTEE ON FOREIGN RELATIONS

JOHN F. KERRY, Massachusetts, *Chairman*

BARBARA BOXER, California	BOB CORKER, Tennessee
ROBERT MENENDEZ, New Jersey	JAMES E. RISCH, Idaho
BENJAMIN L. CARDIN, Maryland	MARCO RUBIO, Florida
ROBERT P. CASEY, JR., Pennsylvania	RON JOHNSON, Wisconsin
JEANNE SHAHEEN, New Hampshire	JEFF FLAKE, Arizona
CHRISTOPHER A. COONS, Delaware	JOHN McCAIN, Arizona
RICHARD J. DURBIN, Illinois	JOHN BARRASSO, Wyoming
TOM UDALL, New Mexico	RAND PAUL, Kentucky
CHRISTOPHER MURPHY, Connecticut	
TIM KAINE, Virginia	

WILLIAM C. DANVERS, *Staff Director*

LESTER E. MUNSON III, *Republican Staff Director*

(II)

CONTENTS

	Page
Clinton, Hon. Hillary Rodham, Secretary of State, U.S. Department of State, Washington, DC	6
Prepared statement	10
Responses to questions submitted for the record by the following Sen- ators:	
Robert Menendez	48
Tom Udall	52
James E. Risch	53
Marco Rubio	56
Jeff Flake	61
John Barrasso	63
Corker, Bob, U.S. Senator from Tennessee, opening statement	4
Menendez, Hon. Robert, U.S. Senator from New Jersey, opening statement	1

(III)

My understanding is that the discussion of the location of Mission Benghazi was an ongoing one and that the ultimate conclusion of Ambassador Stevens was that we needed to be in Benghazi, the cradle of the Libyan revolution. That, while he was continuously reviewing other location options, it was his conclusion—as well as that of security personnel in the State Department—that the current mission site was the best choice despite a higher price tag because it was more secure than returning to the hotel where there had been a bomb and bomb threats or moving closer to the annex because it was closer to the road.

Can you give us your insights on the decisionmaking process regarding the location of the Benghazi Mission? And as part of your answer can you touch upon what actions were you and your staff taking the night of September 11 and into September the 12th?

Secretary CLINTON. Well, first, you are right, Mr. Chairman, that there was an ongoing discussion. When Chris first landed in Benghazi, he stayed in a hotel, along with other representatives of different nations. There were attacks in the vicinity, including the parking lot of the hotel.

The decision was made to move. The compound was selected as being a much better location in terms of security than the alternatives. But there was an ongoing discussion between Chris and others in the Embassy in Tripoli, those going in and out of Benghazi, about how best to situate our post there.

I did see some overnight reporting about a document. I am not sure what it is, but I would observe that there were a lot of ongoing efforts because it was important that we were constantly asking what was the best place. As you said, in general, Chris was committed to not only being in Benghazi, but to the location. The professionals in Washington paid close attention to Chris's judgment, based on his experience and his firsthand knowledge.

And so, we stayed. We continued to try to upgrade the facility that was attacked. Obviously, as the ARB has pointed out, there were inadequacies in the response, and those are the specific kinds of recommendations that we are currently implementing.

Regarding what I was doing on September 11, I was at the State Department all day and late into the night. During most of the day prior to getting notice of the attack on our compound at Benghazi, we were very focused on our Embassy in Cairo. That was under assault by a group of protesters.

We were assessing the security of our Embassy, which is, as those of you who have been there, certainly well defended. But there were crowds that were intent upon trying to scale the wall, and we were in close communication with our team in Cairo.

I was notified of the attack shortly after 4 p.m. Over the following hours, we were in continuous meetings and conversations, both within the Department, with our team in Tripoli, with the inter-agency, and internationally. I instructed our senior Department officials and our diplomatic security personnel to consider every option, to just break down the doors of the Libyan officials to get as much security support as we possibly could, to coordinate with them.

14

I spoke to the National Security Adviser, Tom Donilon, several times. I briefed him on developments. I sought all possible support from the White House, which they quickly provided. Tom was my first call.

I spoke with our chargé in Tripoli to get situation updates. I spoke with former CIA Director Petraeus to confer and coordinate, given the presence of his facility, which, of course, was not well known but was something that we knew and wanted to make sure we were closely lashed up together. I talked with the then-Libyan National Congress President to press him on greater support not only in Benghazi, but also in Tripoli.

I participated in a secure video conference of senior officials from the intelligence community, the White House, and DOD. We were going over every possible option, reviewing all that was available to us, any actions we could take. We were reaching out to everyone we could find to try to get an update about Ambassador Chris Stevens, also our information specialist, Sean Smith. So it was a constant, ongoing discussion and sets of meetings.

I spoke with President Obama later in the evening to bring him up to date, to hear his perspective. Obviously, we kept talking with everyone during the night. Early in the morning on the 12th, I spoke with General Dempsey, again with Tom Donilon.

The two hardest calls that I made were obviously to the families of Ambassador Stevens and Sean Smith. And they, I have to say, were extraordinary in their responses, in their understanding of the pride we had in both men and gratitude we had for their service.

I would also just quickly add, Mr. Chairman, that while this was going on and we were trying to understand it, get on top of it, we were continuing to face protests, demonstrations, violence across the region and as far as India and Indonesia. There were so many protests happening, and thousands of people were putting our facilities at risk.

So we were certainly very determined to do whatever we could about Benghazi. We were relieved when we finally got the last of the Americans out of Benghazi, but then we were turning around, dealing with the very serious threats facing so many of our other facilities.

Senator MENENDEZ. Thank you very much. My time has expired.
Senator Corker.

Senator CORKER. Thank you, Mr. Chairman.

Madam Secretary, I agree with you when people go into the field to do the things they do, they do it knowing of the risk, and I agree with you one of the untold stories here is that of the heroic nature of many in Libya and what they did to save lives. I met several of the JSOC folks and others that risked their lives saving others.

But I also have to say, in reading all the cables and that many of us have done, there were systemic deficiencies. And I know you know that. And I would like for you to just speak to that for a moment.

To my knowledge, no one has been held accountable. Our staff had a meeting with one of the State Department officials, and I hate to use this word again, but it was nothing short of bizarre as they talked about the communications. These officials were scream-

HEARING 4

HEARING 4

BEFORE THE
SELECT COMMITTEE ON
THE EVENTS SURROUNDING
THE 2012 TERRORIST
ATTACK IN BENGHAZI
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION

HELD IN WASHINGTON, DC, OCTOBER 22, 2015

Printed for the use of the Select Committee on the Events Surrounding the
2012 Terrorist Attack in Benghazi



Available on the Internet:
www.fdsys.gov

U.S. GOVERNMENT PUBLISHING OFFICE

98-884

WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

HOUSE SELECT COMMITTEE ON BENGHAZI

TREY GOWDY, South Carolina, *Chairman*

LYNN WESTMORELAND, Georgia	ELIJAH CUMMINGS, Maryland
JIM JORDAN, Ohio	<i>Ranking Minority Member</i>
PETER ROSKAM, Illinois	ADAM SMITH, Washington
MIKE POMPEO, Kansas	ADAM SCHIFF, California
MARTHA A. ROBY, Alabama	LINDA SANCHEZ, California
SUSAN BROOKS, Indiana	TAMMY DUCKWORTH, Illinois

PROFESSIONAL STAFF

PHIL KIKO, *Staff Director*

SUSANNE SACHSMAN GROOMS, *Minority Staff Director*

HEARING 4

THURSDAY, OCTOBER 22, 2015

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON BENGHAZI,
Washington, DC.

The committee met, pursuant to call, at 10:01 a.m., in Room 1100, Longworth House Office Building, Hon. Trey Gowdy [chairman of the committee] presiding.

Present: Representatives Gowdy, Brooks, Jordan, Pompeo, Roby, Roskam, Westmoreland, Cummings, Smith, Schiff, Sanchez, and Duckworth.

Staff Present: Philip G. Kiko, Staff Director and General Counsel; Chris Donesa, Deputy Staff Director; Dana Chipman, Chief Investigative Counsel; Sharon Jackson, Deputy Chief Counsel; Craig Missakian, Deputy Chief Counsel; Mark Grider, Deputy General Counsel; Mac Tolar, Senior Counsel; Carlton Davis, Investigator; Sara Barrineau, Investigator; Sheria Clarke, Counsel; Paige Oneto, Clerk; Kim Betz, Member Outreach Liaison; Paul Bell, Minority Press Secretary; Krista Boyd, Minority Senior Counsel; Linda Cohen, Minority Senior Professional Staff; Ronak Desai, Minority Counsel; Shannon Green, Minority Counsel; Susanne Sachsman Grooms, Minority Staff Director and General Counsel; Jennifer Werner, Minority Communications Director; Peter Kenny, Minority Senior Counsel; Erin O'Brien, Minority Detailee; Laura Rauch, Minority Senior Professional Staff; Dave Rapallo, Minority Senior Advisor to the Ranking Member; Daniel Rebnord, Minority Professional Staff; Mone Ross, Minority Staff Assistant; Heather Sawyer, Minority Chief Counsel; and Brent Woolfork, Minority Senior Professional Staff.

Chairman GOWDY. Good morning. The committee will come to order, and the chair notes the presence of a quorum.

Good morning. Welcome, Madam Secretary.

Welcome to each of you.

This is a public hearing of the Benghazi Select Committee.

Just a couple of quick administrative matters before we start, Madam Secretary.

There are predetermined breaks, but I want to make it absolutely clear, we can take a break for any reason or for no reason. If you or anyone would just simply alert me, then we will take a break, and it can be for any reason or for no reason.

To our guests, we are happy to have you here. The witness deserves to hear the questions, and the members deserve to hear the answers. So proper decorum must be observed at all times. No reaction to questions or answers, no disruptions. Some committees

(1)

Lindsey Graham tweeted, “Where the hell were you on the night of the Benghazi attack?”

Those appear to be based on the testimony of witnesses and the documentation that we have obtained in this committee and other previous committees. They seem to run counter to the truth, because the testimony we have received states pretty much that you were deeply engaged the night of the attacks.

So can you describe for us what the initial hours of that night were like for you and how you learned about the attacks and what your initial thoughts and actions were?

Mrs. CLINTON. Well, Congresswoman, I learned about attacks from a State Department official rushing into my office shortly after or around 4 o’clock to tell me that our compound in Benghazi had been attacked. We immediately summoned all of the top officials in the State Department for them to begin reaching out. The most important quick call was to try to reach Chris himself. That was not possible. Then to have the Diplomatic Security people try to reach their agents. That was not possible. They were, obviously, defending themselves along with the Ambassador and Sean Smith.

We reached the second in command in Tripoli. He had heard shortly before we reached him from Chris Stevens telling him that they were under attack. We began to reach out to everyone we could possibly think who could help with this terrible incident. During the course of the, you know, following hours, obviously, I spoke to the White House. I spoke to CIA Director Petraeus. I spoke to the Libyan officials, because I hoped that there were some way that they could gather up and deploy those who had been part of the insurgency to defend our compound. I had conference calls with our team in Tripoli. I was on a, what’s called a SVTC, a, you know, video conference with officials who had operational responsibilities in the Defense Department, in the CIA, at the National Security Council.

It was just a swirl and whirl of constant effort to try to figure out what we could do, and it was deeply—it was deeply distressing when we heard that the efforts by our CIA colleagues were not successful, that they had had to evacuate the security officers, our Diplomatic Security officers, that they had recovered Sean Smith’s body. And they could not find the Ambassador. We didn’t know whether he had escaped and was still alive or not.

Ms. SANCHEZ. If I may, because my time is running short, I just want to point out that you spoke with folks on the ground, you spoke with folks in the White House, the CIA, the Libyan President of the General National Congress.

Now, interestingly enough, former Director of the CIA David Petraeus has not been before this committee and has not spoken with this committee, but he did testify before the House Intelligence Committee in 2012, and he said that you personally called him and asked him for help that night.

And I just want to end on this quote. “When Secretary Clinton called me later that afternoon to indicate that Ambassador Stevens was missing and asked for help, I directed our folks to ensure that we were doing everything possible. And that is, of course, what they were doing that night.” Is that correct?

396

Mrs. CLINTON. I talked to the survivors when they came back to the United States, and one, who was for many months in Walter Reed, on the telephone.

Mrs. ROBY. Okay. And——

Mrs. CLINTON. You know——

Mrs. ROBY [continuing]. Going back to Panetta and Dempsey, you had stated that they were the decisionmakers——

Mrs. CLINTON. Uh-huh.

Mrs. ROBY [continuing]. But you never spoke with them while your people were on the ground?

Mrs. CLINTON. I'm sorry.

Mrs. ROBY. I want to make sure this is clear. Panetta and Dempsey were the decisionmakers when it came to response. We've already talked about the FEST, so I'm not going to get back into that, but what I'm trying to clarify is that they were the decisionmakers, your people were on the ground in harm's way, and you never had a conversation with them.

Mrs. CLINTON. I did not need to. During the turmoil of that afternoon and into the evening, we knew the President had personally told them both in the Oval Office that he expected them to do everything they possibly could do. And I knew that they would then turn to those officers responsible for carrying out that order. They were represented on that SVTC. That's why I sat in it.

And remember, too, Congresswoman, we had a lot of other threats coming in. We were still worried about Cairo. We had——

Mrs. ROBY. Well, I understand, but you had your people on the ground that were being attacked.

I want to get back to the survivors in the little time I have left. Did you talk to the survivors directly at all——

Mrs. CLINTON. Yes, I did.

Mrs. ROBY [continuing]. At any point? Can you tell us when?

Mrs. CLINTON. It was kind of a rolling series of conversations. When they came back to the State Department, I met with and talked with them. As you know, their names have never been made public. I don't intend to today.

Mrs. ROBY. Can you give me a month?

Mrs. CLINTON. I'm sorry. What?

Mrs. ROBY. A month?

Mrs. CLINTON. It was—for some of them, it was less time than that, and for one of them, I did not—I talked with him on the phone. I did not get to physically see him until he'd been released from the hospital, and that was early in 2013.

Mrs. ROBY. I think, Mr. Chairman, there's two messages here. I think the first message is that—is the message that you sent to your personnel the night of the attack, that you went home. They all stayed there, and you didn't go back till the next morning. I think the second message that is sent is that you used the FBI's inquiry as an excuse not to check in with your agents who were on the ground who survived that horrible night just to ask them how they were.

And I yield back.

Mrs. CLINTON. Well, if I could respond, Congresswoman. I think that, again, is part of a theory that you and your colleagues are attempting to weave.

Central Intelligence Agency



Washington, D.C. 20505

30 September 2015

John H. Clarke
1629 K Street, NW
Suite 300
Washington, DC 20006

Re: F-2015-00060; 14-cv-1589

Dear Mr. Clarke:

This letter is in response to your 1 October 2014 Freedom of Information Act (FOIA) request for:

- “1. Any and all reports, memoranda, correspondence, maps, diagrams, charts, printouts, whether or not recorded electronically, regarding allegations that Executive Branch personnel deleted, destroyed, erased, obliterated, or obscured, records of CIA activities in Libya in the aftermath of the September 11 and 12, 2012 attacks in Benghazi, Libya, including but not limited to records in the possession of the CIA Office of Inspector General.
2. Records of all communications generated in March of 2011 regarding Colonel Muammar Gaddafi’s expressed interest in a truce and possible abdication and exile out of Libya, by or to:
 - (a) Head of Qaddafi’s personal security General Abdulqader Yusef Dibri;
 - (b) Rear Admiral (ret.) Chuck Kubic;
 - (c) AFRICOM personnel, including but not limited to:
 - (i) General Carter Ham; and
 - (ii) Lieutenant Commander Brian Linvill; and
 - (d) The CIA.”

We processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the National Security Act, 50 U.S.C. § 3141, as amended.

With regard to Item 1, we completed a thorough search for records responsive to your request and located twenty (20) documents. Eight (8) documents can be released in segregable form with redactions made on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(c), (b)(7)(d), and (b)(7)(e). In addition, it has been determined that twelve (12) documents must be denied in their entirety on the basis of FOIA exemptions (b)(1), (b)(3), (b)(5), (b)(6), (b)(7)(c), and (b)(7)(d). Exemption (b)(3) pertains to Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3507, noted as exemption “(b)(3)CIAAct” on the enclosed documents, and/or Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1), noted as exemption “(b)(3)NatSecAct” on the enclosed documents.

EXHIBIT 8

With regard to Items 2 (a) and (d), in accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of such records is itself currently and properly classified and relates to CIA intelligence sources and methods information that is protected from disclosure by Section 6 of the CIA Act of 1949, 50 U.S.C. § 3507, and Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C § 3024(i)(1). Therefore, this portion of your request is denied pursuant to FOIA exemptions (b)(1) and (b)(3).

With regard to Items 2 (b) and (c) of your request, as noted in the acceptance letter, the information you seek would fall under the auspices of the Department of Defense.

This concludes our response to the above referenced request.

Sincerely,

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

Michael Lavergne
Information and Privacy Coordinator

Enclosures

Approved for Release: 2015/09/30 C06354620

(b)(3) NatSecAct

~~SECRET~~ / ~~NOFORN~~

Central Intelligence Agency



Washington, D.C. 20505

Inspector General

(b)(3) CIAAct

3 December 2013

The Honorable Dianne Feinstein
 Chairman
 Select Committee on Intelligence
 United States Senate
 Washington, D.C. 20510

The Honorable Saxby Chambliss
 Vice Chairman
 Select Committee on Intelligence
 United States Senate
 Washington, D.C. 20510

Dear Madam Chairman and Mr. Vice Chairman:

1. (U//~~FOUO~~) Thank you for your letter of 26 November 2013 regarding information a Central Intelligence Agency officer had asked the Office of Inspector General (OIG) to provide to the Director, CIA (DCIA) in November 2012, pertaining to the 11 September 2012 attacks in Benghazi, Libya.

2. (U//~~FOUO~~) In response to your request, "Please provide any information related to the complaint, in its entirety, and any information related to your office's response or investigation of the complaint?" we provide the following documents:

A) (U//~~FOUO~~) A copy of the 1 November 2012 internal email sent by the CIA officer to my office.

I have redacted any identifying information regarding the officer in accordance with 50 USC 3517, and because of the officer's specific request for confidentiality.

B) (U//~~FOUO~~) A copy of my 2 November 2012 internal email to then Director Petraeus forwarding, at the officer's request, concerns raised by the CIA

Upon Removal of Enclosures,
 This Document is ~~SECRET~~

(b)(3) NatSecAct

~~SECRET~~ / ~~NOFORN~~

(b)(3) NatSecAct

(b)(3) NatSecAct
~~SECRET~~ / [redacted] / ~~NOFORN~~

The Honorable Dianne Feinstein
 The Honorable Saxby Chambliss

officer. Please note that all of the text below my signature was taken directly from the 1 November 2012 internal email sent by the CIA officer to the OIG. In the 1 November 2012 email, the officer's main concern was for the information to be provided to the DCIA for his situational awareness. The officer wanted to remain unidentified and apparently determined that the best way to get the information to the DCIA anonymously was through my office. As you will note, we accomplished that by means of my 2 November 2012 internal email to the DCIA. I informed the DCIA in the email that I was not planning any further inquiry by my office but was prepared to conduct any inquiry into the concerns raised by the CIA officer if the Director so requested. Director Petraeus did not make any such request.

C) (U//FOUO) The Interview Report dated 8 November 2012 documenting the interview of the CIA officer conducted on 5 November 2012 by OIG investigators [redacted] and [redacted] (b)(3) CIAAct. I have again redacted any identifying information regarding the officer.

3. (S) In response to your question, "Why did you decide not to make this complaint into a more formal "full case"?" There were several reasons. First, I was aware that the FBI was conducting a criminal investigation into the attacks. Second, I was aware that the officer's concerns were largely matters that would fall within the purview of issues that would be addressed by the Accountability Review Board, as required under 22 U.S.C. §§4031 et seq. That statutory provision requires the Secretary of State to convene an accountability review board in any case of serious injury, loss of life, or significant destruction of property at a U.S. Government mission abroad. I did not see sufficient value-added for an investigation by my office that would offset the potential disruption an additional parallel investigation might cause to the ongoing FBI and State Department investigations.

4. (S) In response to your question, "Separate from this complaint, did you consider opening an investigation into the attacks in Benghazi? Why or why not?" I did, but elected not

2

~~SECRET~~ / [redacted] / ~~NOFORN~~
 (b)(3) NatSecAct

(b)(3) NatSecAct
SECRET/ [redacted] NOFORN

The Honorable Dianne Feinstein
The Honorable Saxby Chambliss

to, chiefly for the same reasons cited above. [redacted]

[redacted] (b)(1)
(b)(3) NatSecAct

We included this topic in our Fiscal Year 2014 Work Plan in response to the tragic events in Benghazi as well as the recent shooting at the Washington Navy Yard.

5. (U//~~FOUO~~) Lastly, in response to your question, "In our staff's discussions with your office, your staff made several references to a "Director's investigation" or "Director's internal investigation" into Benghazi. What is your understanding of this investigation and who was in charge of it?" The OIG officers that met with your staff members on 20 November 2013 have informed me that they were referring to an interview team then Director Petraeus was putting together to interview Agency personnel [redacted] I do not have any additional information. I recommend you contact the CIA Office of Congressional Affairs for information regarding any review or investigation that was conducted at the direction of then Director Petraeus or then Acting Director Morell.

(b)(1)
(b)(3)
NatSecAct

6. (U) If you have any additional questions, please contact me or the OIG counsel, [redacted] (b)(3) CIAAct

Sincerely,

[redacted] (b)(6)
David B. Buckley

Enclosures: As Stated

3
SECRET/ [redacted] NOFORN
(b)(3) NatSecAct

(b)(3) NatSecAct

SECRET / [redacted] / NOFORN

[redacted] (b)(3) NatSecAct



From: [redacted] (b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
Date: 11/01/2011 (b)(7)(d)

Subject: Comments on the Benghazi Attacks
To: DIR-OIG-Investigations

This message is digitally signed.

History: This message has been replied to and forwarded.

Classification: SECRET (b)(3) NatSecAct NOFORN

[redacted] (b)(3) NatSecAct

It has come to my attention on 01 November 2012 that the CIA has not been provided full details regarding the events that took place during the 11/12 September attacks on the U.S. Mission (Consulate) in Benghazi and Benghazi Base. For the record, all my accounts herein are second/third-hand [redacted]

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

[redacted] however, I have talked with multiple officers on site that evening [redacted] (b)(1) making me privy to numerous meetings/discussions regarding the events. [redacted] (b)(3) NatSecAct that the correct information be made available to Ag [redacted] numerous officers [redacted] were surprised that the CIA did not appear to know the chain of events which is crucial as this information helps him and other leaders make operational decisions, and respond to policy related questions.

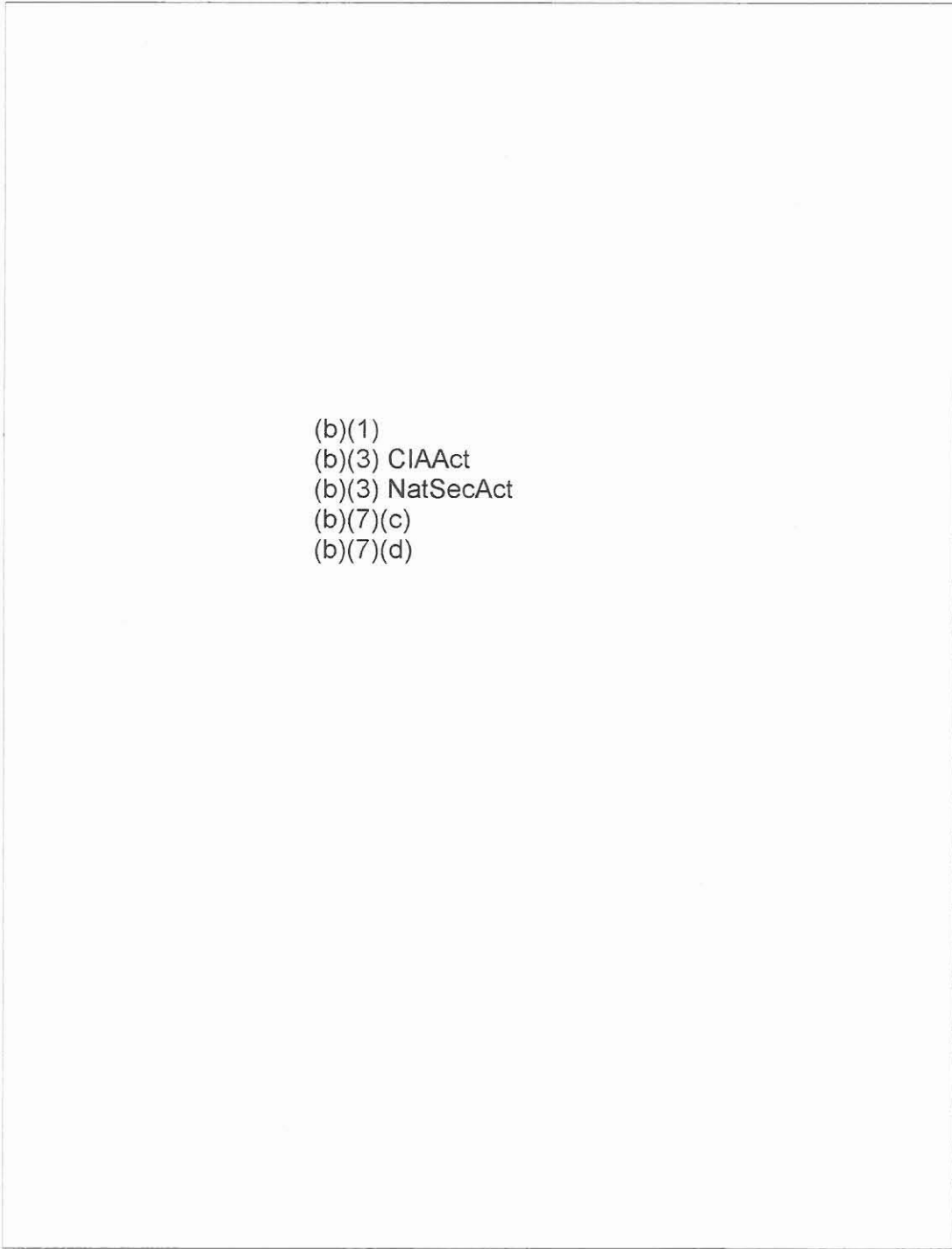
[Large redacted block containing the main body of the email]

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

SECRET / [redacted] / NOFORN

(b)(3) NatSecAct

(b)(3) NatSecAct
~~SECRET~~ [] ~~NOFORN~~



(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

~~SECRET~~ [] ~~NOFORN~~
(b)(3) NatSecAct

(b)(3) NatSecAct

~~SECRET~~ [redacted] ~~NOFORN~~

	(b)(1)
	(b)(3) CIAAct
	(b)(3) NatSecAct
	(b)(7)(c)
	(b)(7)(d)

COPY

~~SECRET~~ [redacted] ~~NOFORN~~

(b)(3) NatSecAct

(b)(3) NatSecAct
~~SECRET~~ / [redacted] ~~NOFORN~~

[redacted] (b)(3) NatSecAct



From: David B. Buckley
Inspector General
Central Intelligence Agency
Date: 11/02/2012 03:52 PM
Subject: Allegation pertaining to Benghazi (U)
To: David H. Petraeus
Cc: Michael J. Morell, V. Sue Bromley, [redacted]
Bcc: [redacted] (b)(3) CIAAct
David B.
Buckley/STF/AGENCY@WMA

(b)(3) NatSecAct
Classification: ~~SECRET~~ / [redacted] ~~NOFORN~~

[redacted] (b)(3) NatSecAct

Director,

(b)(6)

(b)(7)(c)

(b)(7)(d)

- IG received an allegation from an officer [redacted] based on your comments made [redacted] officers, you may have not been provided with all the details regarding the attack in Benghazi and subsequent response. (b)(1) (b)(3) NatSecAct
- The officer asked that the information below be provided to you. I have redacted the officer's identity in compliance with 50 USC 403q.
- The officer acknowledges that the information provided is second and third hand. However, given the sensitivities concerning this issue, I am providing this information directly to you for your action as you deem appropriate. I informed DDCIA.
- The officer calls into question some actions and decisions made by the Chief of Base, Benghazi.

While we plan to conduct a preliminary interview of the officer, we are not planning further work on this issue by my office. However, we stand ready to conduct any inquiry you may request, if indicated.

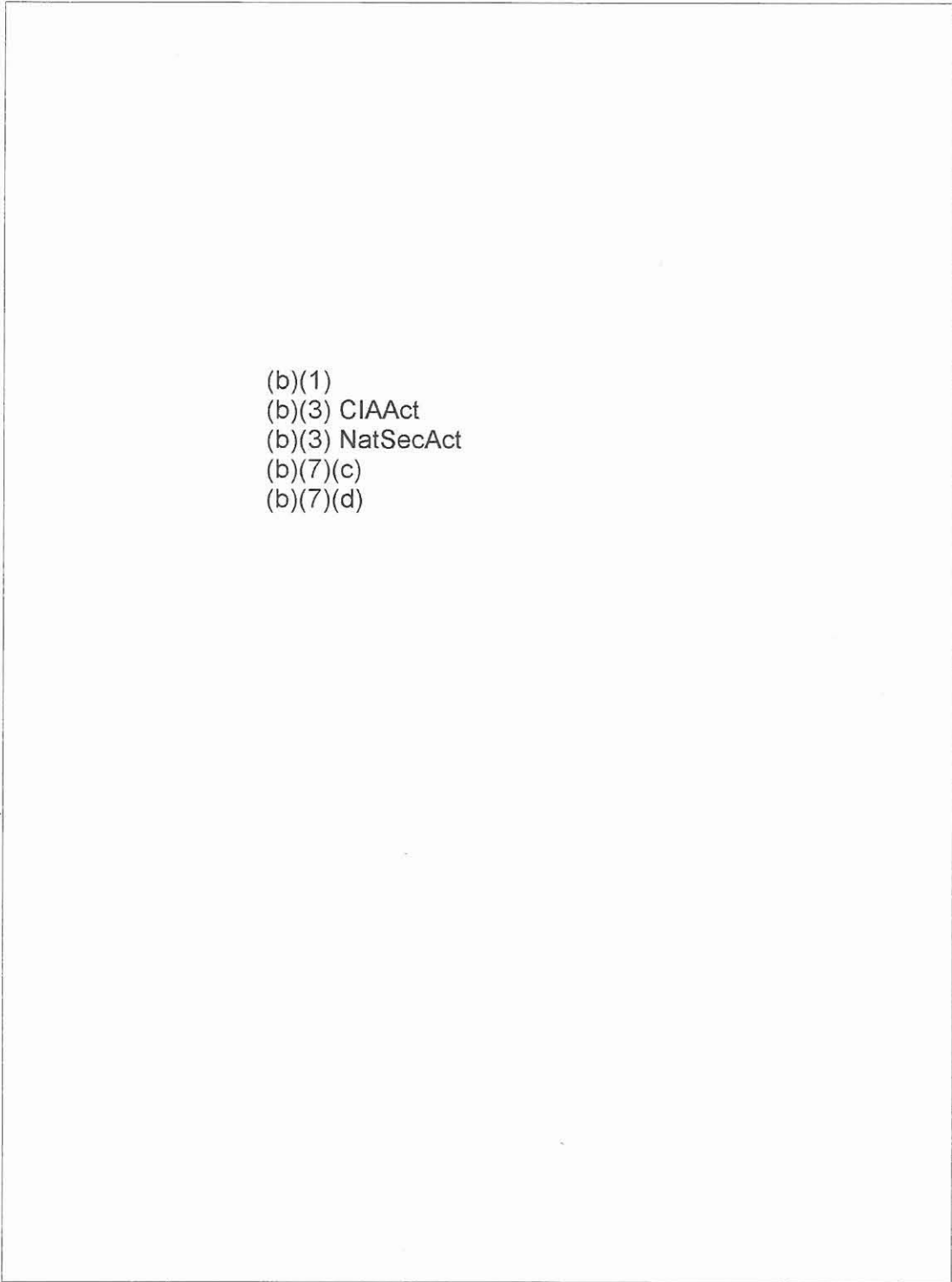
Safe travels,

David Buckley

I request the following information be provided to the DCIA for his situational awareness:

~~SECRET~~ / [redacted] ~~NOFORN~~
(b)(3) NatSecAct

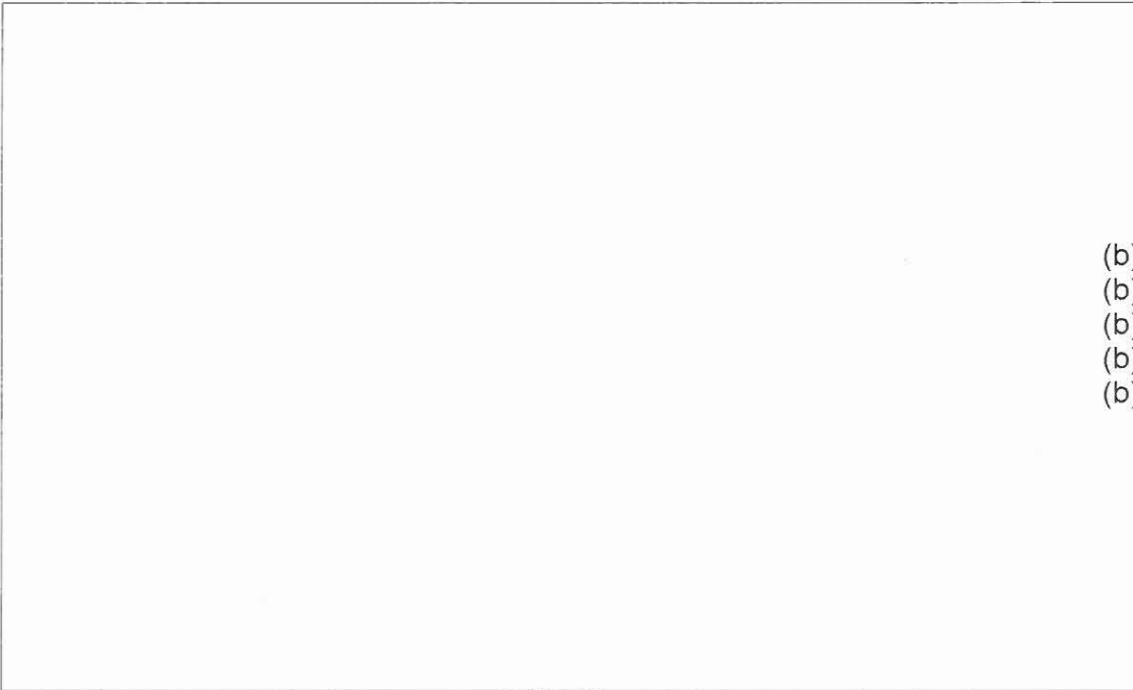
~~SECRET~~ (b)(3) NatSecAct
[redacted] ~~NOFORN~~



(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

~~SECRET~~ (b)(3) NatSecAct
[redacted] ~~NOFORN~~

(b)(3) NatSecAct
~~SECRET~~ / [redacted] ~~NOFORN~~



(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

Confidentiality Notice: The information in this email and any attachments may be confidential or privileged under applicable law, including protection from public disclosure under the Freedom of Information Act (FOIA), 5 USC §552, or otherwise protected from disclosure to anyone other than the intended recipient(s). Any use, distribution, or copying of this email, including any of its contents or attachments by any person other than the intended recipient, or for any purpose other than its intended use, is strictly prohibited. If you believe that you received this email in error, please permanently delete it and any attachments, and do not save, copy, disclose, or rely on any part of the information. Contact the OIG if you have any questions or to let us know that you received this email in error.

=====
Classification: ~~SE~~(b)(3) NatSecAct ~~NOFORN~~

~~SECRET~~ / [redacted] ~~NOFORN~~
(b)(3) NatSecAct

(b)(3) NatSecAct

~~SECRET~~ ~~NOFORN~~

8 November 2012

INTERVIEW REPORT

INTERVIEWEE: [redacted] (b)(3) CIAAct
(b)(6)
(b)(7)(c)

PREPARED BY: (b)(3) CIAAct

CASE: (b)(3) CIAAct **Benghazi Attacks, 11-12 September 2012**

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

(b)(3) NatSecAct (b)(3) NatSecAct
1. (S [redacted] NOFORN) On 5 November 2012, Office of Inspector General (OIG),
Investigations Staff (INV), Special Agents (S(b)(3) NatSecAct(b)(3) NatSecAct
[redacted] telephonically interviewed [redacted]
contacted SAs [redacted] The interview
took place from 1800 to 1940 hours. The interview was conducted at [redacted] request
because of [redacted] concern that the Director of CIA, David H. Petraeus, had been
misinformed concerning the events surrounding the attacks on the US Consulate and
the CIA Base in Benghazi, Libya, on 11 and 12 September 2012.

(b)(3) CIAAct
(b)(6)
(b)(7)(c)

(b)(3) NatSecAct
2. (S [redacted] NOFORN) At the beginning of the interview, [redacted] was informed
of the following:

(b)(7)(c)
(b)(3) CIAAct
(b)(6)
(b)(7)(c)

- On 2 November 2012, OIG provided to Director Petraeus the information [redacted] had provided to OIG via Lotus Notes e-mail on 2 November 2012.
- Director Petraeus wanted [redacted] to know he appreciates having the information [redacted] provided.
- Director Petraeus is not aware of [redacted] identity.

[redacted]
(b)(1)
(b)(3) NatSecAct

[redacted] (b)(3) NatSecAct

~~SECRET~~ ~~NOFORN~~

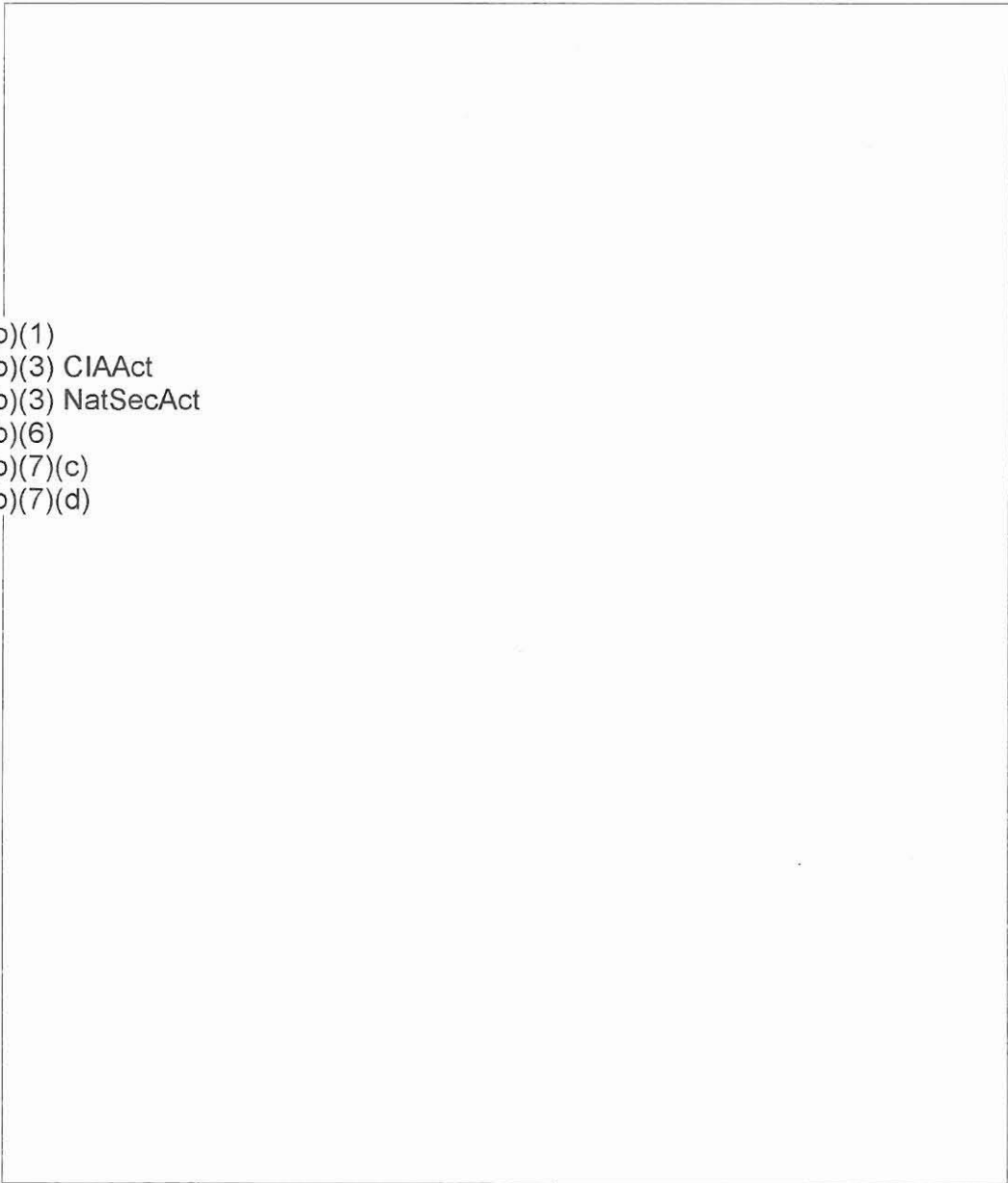
(b)(3) NatSecAct

(b)(3) NatSecAct

~~SECRET~~ [redacted] ~~NOFORN~~

(b)(3) CIAAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

INTERVIEWEE: [redacted]



(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

(b)(3) NatSecAct. ~~(S)~~ [redacted] ~~NOFORN~~ [redacted] said that the information from [redacted] 2 November 2012 Lotus Notes e-mail, and the information [redacted] would provide to OIG about the attacks during this telephone interview, is second-hand information [redacted] learned while

(b)(3) CIAAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

~~SECRET~~ ² [redacted] ~~NOFORN~~

(b)(3) NatSecAct

C06354620

Approved for Release: 2015/09/30 C06354620

(b)(3) NatSecAct

~~SECRET~~ ~~NOFORN~~

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

~~SECRET~~ ³ ~~NOFORN~~

(b)(3) NatSecAct

Approved for Release: 2015/09/30 C06354620

C06354620

Approved for Release: 2015/09/30 C06354620

(b)(3) NatSecAct

~~SECRET~~ ~~NOFORN~~

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

~~SECRET~~ ⁴ ~~NOFORN~~

(b)(3) NatSecAct

Approved for Release: 2015/09/30 C06354620

C06354620

Approved for Release: 2015/09/30 C06354620

(b)(3) NatSecAct

SECRET/NOFORN

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

SECRET/NOFORN
5
(b)(3) NatSecAct

C06354620

Approved for Release: 2015/09/30 C06354620

(b)(3) NatSecAct

~~SECRET~~ ~~NOFORN~~

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

~~SECRET~~ ⁶ ~~NOFORN~~
(b)(3) NatSecAct

Approved for Release: 2015/09/30 C06354620

(b)(3) NatSecAct

~~SECRET~~ ~~NOFORN~~

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(c)
(b)(7)(d)

Special Agent

Attachment: Lotus Note e-mail from to
OIG(b)(3) CIAAct dated 2 November 2012

(b)(3) CIAAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

COPY

7

~~SECRET~~ ~~NOFORN~~

(b)(3) NatSecAct

(b)(3) NatSecAct

~~SECRET~~ / [redacted] ~~NOFORN~~

[redacted] (b)(3) NatSecAct



From: [redacted] (b)(3) CIAAct
Assistant Inspector General for
Investigations

[redacted] (b)(3) CIAAct

Date: 11/15/2013 01:13 PM

Subject: **Benghazi Timeline re Contact with OIG**

To: [redacted] (b)(3) CIAAct

Cc:

[**** Document has been archived. Click "Retrieve" button to retrieve document contents and attachments. ****]

[redacted] (b)(3) NatSecAct

- 1 November 2012-- An Agency employee contacted the OIG via LN, to express a concern that the D/CIA had not been provided with "fulsome details" regarding the events of 11-12 September 2012, and the attack on the US compounds in Benghazi, Libya.

[redacted]

The officer stated that his/her information was entirely second hand, based upon his/her subsequent discussions [redacted]

The officer expressed concern that the information provided to the D/CIA by official channels was not complete, and requested that the OIG ensure that his/her information was provided to D/CIA.

[redacted]

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)
(b)(7)(c)
(b)(7)(d)

- 2 November 2012 - The 1 November letter minus the identity of the complainant, was forwarded to the D/CIA, DD/CIA, ADD/CIA, and [redacted] by the IG, via LN. The identity of the complainant was not provided, IAW 50 USC 403q. [redacted] (b)(3) CIAAct

- 5 November 2012 - The officer was interviewed telephonically by SA [redacted] (b)(3) CIAAct and SA [redacted] (b)(3) CIAAct

The officer provided further details to the LN provided to the OIG on 1 November. The officer also requested confidentiality regarding his/her identity.

(b)(3) NatSecAct

We have no record that anyone affiliated [redacted] ever contacted the Hotline or Investigations concerning the events in Benghazi in September 2012.

=====
~~SECRET~~ / [redacted] ~~NOFORN~~ Classification:

(b)(3) NatSecAct

~~SECRET~~ (b)(3) NatSecAct ~~NOFORN~~

(b)(3) NatSecAct

~~SECRET~~ / [redacted] ~~NOFORN~~

[redacted] (b)(3) NatSecAct



From: (b)(3) CIAAct Subject: Re: Benghazi Timeline re Contact with OIG
Date: 11/15/2013 01:41 PM To: [redacted] (b)(3) CIAAct
Cc: [redacted]

This message is digitally signed.

[***** Document has been archived. Click "Retrieve" button to retrieve document contents and attachments. *****]

(b)(3) NatSecAct

Classification: ~~SECRET~~ [redacted] ~~NOFORN~~

[redacted] (b)(3) NatSecAct

(b)(3) CIAAct

Thanks for your quick response.
The Hill hasn't contacted our offices as yet.
Let's make sure that our staff knows to route any such calls to the FO—goes without saying.

[redacted] (b)(3) CIAAct

Confidentiality Notice: The information in this email and any attachments may be confidential or privileged under applicable law, including protection from public disclosure under the Freedom of Information Act (FOIA), 5 USC §552, or otherwise protected from disclosure to anyone other than the intended recipient(s).

Any use, distribution, or copying of this email, including any of its contents or attachments by any person other than the intended recipient, or for any purpose other than its intended use, is strictly prohibited.

If you believe that you received this email in error, please permanently delete it and any attachments, and do not save, copy, disclose, or rely on any part of the information.

Contact the OIG at (b)(3) CIAAct if you have any questions or to let us know that you received this email in error.

[redacted]

The officer stated that his/her information was entirely second hand, based upon his/her subsequent discussions [redacted]

(b)(1)

The officer expressed concern that the information provided to the D/CIA by official channels was not complete, and requested that the OIG ensure that his/her information was provided to D/CIA.

(b)(3) CIAAct

(b)(3) NatSecAct

(b)(6)

(b)(7)(c)

(b)(7)(d)

The officer provided further details to the LN provided to the OIG on 1 November.

The officer also requested confidential (b)(3) NatSecAct identity.

We have no record that anyone affiliated [redacted] ever contacted the Hotline or Investigations concerning the events in Benghazi in September 2012.

~~SECRET~~ / [redacted] ~~NOFORN~~

(b)(3) NatSecAct

(b)(3) CIAAct

From: David Buckley
Sent: Thursday, January 16, 2014 1:22 PM
To: (b)(3) CIAAct
Cc:
Subject: Immediate Action: Alleged Complaints related Benghazi
Importance: High

*****This message has been archived. Double-Click the message to view the contents.*****

Classification: UNCLASSIFIED

=====

All,

The Vice Chairman of the Senate Select Committee on Intelligence, along with several other Senators, included in their "Additional Views" of the SSCI Report on the Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012, dated January 15, 2014:

"At the same time, the Committee has learned that the CIA Inspector General did not investigate complaints relating to the Benghazi attacks from CIA whistleblowers. Whether these complaints are ultimately substantiated or dismissed is irrelevant. On a matter of this magnitude involving the deaths of four Americans, the Inspector General has a singular obligation to take seriously and fully investigate any allegation of wrongdoing. His failure to do so raises significant questions that we believe the Committee must explore more fully."

Since the attack, I have repeatedly inquired of Investigations and the Hotline of the receipt of any such complaints. And, in preparation for a response to a SSCI inquiry in November 2013, we again searched the INV and Hotline files regarding the receipt of any Benghazi related complaint or issues that have been made to the OIG. There was one identified matter. I replied to the SSCI on December 3, 2013 regarding that one issue. Notwithstanding that response, however, the Report's Additional Views contained the statement above.

Accordingly, in further due diligence, I am requiring you all to check your files for any such complaints.

COPY 69

C06354614

Approved for Release: 2015/09/30 C06354614

Double check your records and identify to me any and all complaints relating to the Benghazi attacks. Please conduct the records check immediately and report the results to me in writing as soon as possible but no later than tomorrow, COB.

Thank you,

David

David B. Buckley

Inspector General

Confidentiality Notice: The information in this email and any attachments may be confidential or privileged under applicable law, including protection from public disclosure under the Freedom of Information Act (FOIA), 5 USC Â§552, or otherwise protected from disclosure to anyone other than the intended recipient(s). Any use, distribution, or copying of this email, including any of its contents or attachments by any person other than the intended recipient, or for any purpose other than its intended use, is strictly prohibited. If you believe that you received this email in error, please permanently delete it and any attachments, and do not save, copy, disclose, or rely on any part of the information. Contact the OIG at if you have any questions or to let us know that you received this email in error

(b)(3) CIAAct

=====
Classification: UNCLASSIFIED

COPY

I searched my Lotus Notes and have 9 emails dated between 2 Nov 2012 and 14 Nov 2012 related to an allegation INV received concerning the Benghazi attack on 11-12 Sep 2012. They are related to INV case [redacted], and INV should have the complete case file. Please let me know if you would like me to forward my LNs.

(b)(3)
CIAAct

From: [redacted]
To: [redacted] (b)(3) CIAAct
Cc: [redacted]
Date: 01/22/2014 12:32 PM
Subject: RE: Benghazi documents

Classification: ~~SECRET~~

[redacted] (b)(3) NatSecAct

=====
What the IG is looking for specifically is complaints made by officers about the Benghazi events. I hope this will narrow down the search.

From: [redacted] (b)(3) CIAAct
Sent: Wednesday, January 22, 2014 10:13 AM
To: [redacted] (b)(3) CIAAct
Cc: [redacted]
Subject: Fw: Benghazi documents

Classification: ~~SECRET~~

[redacted] (b)(3) NatSecAct

=====
In response to your request for Benghazi materials, I had sent the the note below to [redacted] in regard to information [redacted] [redacted] I will check my records for any other materials and get back to you by the 2pm. due date.

(b)(3) CIAAct

----- Forwarded by [redacted] (b)(3) CIAAct on 01/22/2014 10:09 AM

(b)(1)
(b)(3) NatSecAct
(b)(7)(e)

~~SECRET~~

From: [redacted] (b)(3) CIAAct
Date: 01/16/2014 04:38 PM
Subject:
Fw: Benghazi documents
To:

COPY 43

(b)(3) CIAAct

Classification: ~~SECRET~~

(b)(3) NatSecAct

(b)(3) CIAAct

-- The list below is a partial listing of the Benghazi documents that have been collected

[Redacted]

Please advise if it is necessary to search with that granularity. Additionally, I will review my LNs on Friday to see if I have potentially relevant material from my former days.

(b)(1)
(b)(3) NatSecAct
(b)(7)(e)

----- Forwarded by (b)(3) CIAAct on 01/16/2014 04:27 PM

From: (b)(3) CIAAct
To:
Cc:
Date: 01/16/2014 03:09 PM
Subject: Benghazi documents

Classification: ~~SECRET~~

(b)(3) NatSecAct

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(e)

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(7)(e)

=====
Classification: ~~SECRET~~

=====
Classification: ~~SECRET~~

COPY₄₅

=====
Classification: ~~SECRET~~
=====
Classification: ~~SECRET~~

=====
Classification: ~~SECRET~~
=====
Classification: ~~SECRET~~

=====
Classification: ~~SECRET~~

COPY

UNCLASSIFIED//~~ATUO~~



From: [redacted] (b)(3) CIAAct
Chief of Staff (b)(3) CIAAct
Office of Inspector General
Date: 11/27/2013 08:51 AM

Subject: URGENT ACTION: SSCI QFRs re Benghazi - draft response due 12N TODAY

To:
Cc:

[redacted]

(b)(3) CIAAct

This message is digitally signed.

[***** Document has been archived. Click "Retrieve" button to retrieve document contents and attachments. *****]

Classification: UNCLASSIFIED//~~ATUO~~

=====
Good Morning --

This LN is just to document the urgent action cited above.
To recap, the IG received a memo dated 26Nov13 signed by SSCI Chair/Vice Chair with the following questions re a complaint received by OIG on or around 1 November from a CIA employee related to the 11 September 2012 terrorist attacks in Benghazi, Libya:

Please provide any information related to the complaint in question including the substance of the complaint, in its entirety, and any information related to your office's response or investigation of the complaint?

Why did you decide not to make this complaint into a more formal "full case"?

Separate from this complaint, did you consider opening an investigation into the attacks on Behghazi?

Why or why not?

In our staff's discussion with your office, your staff made several references to a "Director's investigation" or "Director's internal investigation" into Behghazi.

What is your understanding of this investigation and who was in charge of it?

While written response is requested no later than Wednesday, 4 December -- Dave would like to see a draft response by 12 noon today.

Thank you!

(b)(3) CIAAct [redacted] Chief of Staff Office of Inspector General [redacted] (b)(3) CIAAct

=====
Classification:
UNCLASSIFIED//~~ATUO~~

UNCLASSIFIED//~~ATUO~~

~~SECRET~~ [redacted] ~~NOFORN~~

REQUEST1-004056

Memorandum for the Record

Events of 11-12 SEP 2012 at Benghazi Base, Libya

DCOB [redacted] (b)(3) CIAAct [redacted]
(b)(6)

19 SEP 2012

Note all times local, approximate unless specifically noted.

(b)(3) CIAAct [redacted] (b)(3) CIAAct [redacted]
(b)(6) (b)(6)

At circa 2140 hrs local 11 SEP, I was sitting in the Base SCIF working on a cable when GRS T/L [redacted] entered the SCIF and asked me to come into the (b)(3) NatSecAct [redacted] room. [redacted] advised he had just received a call from the State compound indicating they had been penetrated and were taking fire. He strongly recommended taking the available GRS personnel then on base, himself and five other personnel [redacted] I found the COB and we apprised him of the situation. He authorized the move, and began to call local security and militia contacts to render assistance to the DoS compound. At the same time, we had [redacted] be (b)(3) NatSecAct to advise COS Tripoli and HQS of the evolving situation. The six GRS officers and the Base linguist departed Base at circa 2150. Base continued to maintain contact with ARSO personnel (b)(6) who reported he was with the Ambassador, an (b)(6) who was in the TOC. Calls from (b)(6) in the compound became increasingly urgent as the GRS team was enroute, noting the main building had been set on fire (b)(3) NatSecAct and smoke/heat conditions were becoming increasingly difficult.

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

[redacted] (b)(1) [redacted] (b)(3) CIAAct [redacted]
(b)(3) NatSecAct [redacted] (b)(6) [redacted] and COB were
(b)(1) [redacted] attempting to contact [redacted]

(b)(1)
(b)(3) NatSecAct

[redacted] to assist. Circa 15-20 minutes after the GRS departed base, one of the ARSOs (b)(6) advised via radio he had been separated from the Ambassador. The GRS T/L copied this transmission, and shortly thereafter we heard via radio he had initiated a search with GRS personnel of building C in the mission. Various other reports via radio indicated the GRS team was taking fire, and moving to locate RSO personnel. The GRS T/L radioed base approximately one hour after their departure from Base to advise they had located all ARSOs, one other State employee who was KIA, but could not locate the Ambassador despite multiple searches. They advised they were returning to

EXHIBIT 9

~~SECRET~~ ~~NOFORN~~

REQUEST1-004057

Base. ARSOs, in a separate vehicle, called base shortly thereafter to advise they were inbound to Base, and had taken heavy fire nearby the Mission. Personnel on the base prepared for their arrival, and received them shortly before 2200. The ARSO vehicle had obviously taken heavy gunfire. (b)(1) One ARSC (b)(6) suffered serious smoke inhalation, and another (b)(6) had a severe gash in his left arm. GRS officer (b)(6) who had arrived back at base at circa 2230 and other Base personnel initiated treatment of (b)(6) wound, cleaning and bandaging it. Base did not have O2 available to provide (b)(6) to assist with his smoke inhalation. The GRS team arrived shortly thereafter.

(b)(3) CIAAct
(b)(6)

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

Shortly before 0000 12 SEP, Base began taking fire which was returned by GRS. After this initial attack, which lasted for 15-20 minutes, petering out into sporadic gunfire, the GRS T/L recommended to COB that Base personnel prepare for evacuation of the compound. By this point, Base had been advised by Tripoli that they had chartered an aircraft and were deploying four GRS and two TF operators to Benghazi.

(b)(1)
(b)(3) NatSecAct

(b)(3) CIAAct (b)(1)
(b)(6) (b)(3) NatSecAct

(b)(3) CIAAct
(b)(6)

At several other points during the night Base took fire from surrounding areas. Efforts continued by COB, (b)(6) and (b)(6) to determine who was behind the attacks against the Mission, to determine the location of the Ambassador, and to secure security assistance for the Base. By this point we were coordinating ISR coverage of the area around the base attempting to identify the source of the attacks. This proved to be of limited utility in identifying specific threats. (b)(1)

(b)(3) NatSecAct

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct

SECRET [redacted] **NOFORN**

REQUEST1-004058

(b)(1)
(b)(3) NatSecAct

At circa 0200 Base was advised the GRS / TF group from Tripoli had arrived at Benghazi airport, but were unable to secure transportation. GRS at Base were resupplied, and positions were rotated. ARSC (b)(6) pinned GRS on the roof of one of the Base buildings, while ARSO (b)(6) maintained contact with DoS Washington, and (b)(6) attempted to recover from smoke inhalation (b)(6) was close to losing consciousness at several points in the evening, and Base officers stayed close by him to ensure he was getting fluids and staying awake. After about 3.5 hours he appeared to recover to the point he was sitting upright and was more alert. ARSC (b)(6) and (b)(6) TDY with the Ambassador from Tripoli, also assisted with Base defensive positions.

[redacted]
(b)(1)
(b)(3) NatSecAct

[redacted]
(b)(1)
(b)(3) NatSecAct

Sometime after 0330 hrs Base GRS T/L was advised, and conveyed to COB and I, that the Tripoli GRS/TF officers had secured transportation and were enroute to Base. At this point, Base had not received fire for circa 90 minutes.

[redacted]
(b)(1)
(b)(3) NatSecAct

The Tripoli GRS/TF team arrived at circa 0430, and immediately took up defensive positions.

[redacted]
(b)(1)
(b)(3) NatSecAct

In the midst of these discussions, 15-20 minutes after the Tripoli GRS/TF team arrived, Base came under attack again from what I later learned was mortar fire. I heard several explosions which became increasingly louder culminating in two very loud explosions which were direct hits on Building 3

[redacted]
(b)(1)
(b)(3) NatSecAct

SECRET [redacted] **NOFORN**

REQUEST1-004059

Within two-three minutes of this attack, (b)(6) was carried into the main interior room of Building 3 with a chest wound, and severe wounds to his arms. He was suffering additional wounds to his legs from shrapnel fragments. I and other Base personnel initiated first aid, which was assisted and directed by Tripoli GRS officer [redacted]. After treating (b)(6) immediate wounds and providing morphine, he was moved to a couch and ARSO (b)(6) who had been on the roof of Building 3 with (b)(6) was brought into the same room suffering from a severe wound.

(b)(3) CIAAct
(b)(6)

(b)(6)

Working under [redacted] direction, [redacted]

(b)(3) CIAAct
(b)(3) CIAAct
(b)(3) CIAAct
(b)(6)

(b)(3) CIAAct [redacted] myself and two of the RSOs attempted to address (b)(6) injuries. [redacted] started a plasma (b)(6) IV, and we provide (b)(6) with two morphine shots about 10 minutes apart. [redacted] (b)(6) (b)(6) It was clear (b)(6) was bordering on shock, and had lost a significant amount of blood. We continued to treat both injured officers for approximately one hour while security for the move was coordinated.

Shortly after the mortar attack it was decided all personnel would evacuate the Base as soon as possible.

[Large redacted block]

(b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

We then departed the compound.

(b)(1)
(b)(3) NatSecAct

It took about 25 minutes to reach the airport.

(b)(3) CIAAct [redacted] After arrival at the airport, we loaded the two wounded, GRS Officer [redacted] and ARSO (b)(6) onto the aircraft.

(b)(1) [redacted]
(b)(3) CIAAct [redacted] The plane departed at circa 0815 hrs.

(b)(3) NatSecAct [redacted]
(b)(6) [redacted] (b)(1)
(b)(3) NatSecAct
(b)(6)

COMMENT: Without the efforts of the Benghazi GRS contingent to enter the DoS compound and recover the personnel there, I have no doubt the surviving ARSOs would have

Approved for Release: 2017/02/28 C06631277
(U)(S) NatSecAct

~~SECRET~~ [redacted] ~~NOFORN~~

REQUEST1-004060

been killed or taken captive. The actions of the six Base GRS personnel, who entered this situation without hesitation and with the full knowledge they were outnumbered and out-gunned, was a heroic action. This team's professionalism in recovering successfully the ARSO personnel, conducting repeated searches for the Ambassador in extremely hazardous conditions, entering a building fully involved in smoke and fire while taking fire, was an incredible act of bravery. This same group then established effective, sustained defense against superior forces attempting to attack our Base, and deterred these attacks successfully. GRS T/L

(b)(3) CIAAct [redacted] conduct throughout the 11-12 SEP recovery operation and subsequent attacks
(b)(6) was exemplary.

The actions of the GRS/TF team from Tripoli were also exemplary, and enabled us to successfully and in a controlled manner evacuate from our compound

[redacted] (b)(1)
(b)(3) CIAAct
(b)(3) NatSecAct
(b)(6)

Finally, all members of the Base staff performed to the highest possible level, continuing to collect intelligence, provide reporting, attend to the wounded, account for sensitive equipment and funds, support base defense, and successfully execute destruction procedures. There were no/no examples of officers panicking or losing composure, even following the mortar attack. It was a privilege to serve with this team of officers.

HEARING TO RECEIVE TESTIMONY ON DEPARTMENT OF DEFENSE'S RESPONSE TO THE ATTACK ON U.S. FACILITIES IN BENGHAZI, LIBYA, AND THE FINDINGS OF ITS INTERNAL REVIEW FOLLOWING THE ATTACK

THURSDAY, FEBRUARY 7, 2013

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m. in room SDG-50, Dirksen Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Reed, Nelson, McCaskill, Udall, Hagan, Manchin, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Inhofe, McCain, Chambliss, Wicker, Ayotte, Graham, Vitter, Blunt, Lee, and Cruz.

Committee staff members present: Richard D. DeBobes, staff director; Leah C. Brewer, nominations and hearings clerk; and Barry C. Walker, security officer.

Majority staff members present: Joseph M. Bryan, professional staff member; Jonathan D. Clark, counsel; Richard W. Fieldhouse, professional staff member; Michael J. Kuiken, professional staff member; Peter K. Levine, general counsel; Jason W. Maroney, counsel; Thomas K. McConnell, professional staff member; William G.P. Monahan, counsel; Michael J. Noblet, professional staff member; John H. Quirk V, professional staff member; and Russell L. Shaffer, counsel.

Minority staff members present: Adam J. Barker, professional staff member; Christian D. Brose, professional staff member; Thomas W. Goffus, professional staff member; Anthony J. Lazarski, professional staff member; Daniel A. Lerner, professional staff member; and Lucian L. Niemeyer, professional staff member.

Staff assistants present: Jennifer R. Knowles, Kathleen A. Kulenkampff, Brian F. Sebold, and Lauren M. Gillis.

Committee members' assistants present: Carolyn Chuhta, assistant to Senator Reed; Jeffrey Fatora, assistant to Senator Bill Nelson; Jason Rauch, assistant to Senator McCaskill; Brian Nagle, assistant to Senator Hagan; Mara Boggs, assistant to Senator Manchin; Chad Kreikemeier, assistant to Senator Shaheen; Elana Broitman, assistant to Senator Gillibrand; Ethan Saxon, assistant to Senator Blumenthal; Marta McLellan Ross, assistant to Senator

(1)

45

had that knowledge—and I recognize that is a hypothetical, but if we had that knowledge—what military options would there have been to prevent that loss of life and to stop that attack at the annex?

Secretary PANETTA. Senator, as you said, it's tough to respond to a hypothetical. As long as we're talking about hypotheticals, the best that would have happened here is that we would have had a heads-up and we would have had troops on the ground to protect that facility. That's the best scenario and that's what works the best.

Once an attack takes place, the biggest problem you have is getting accurate information about exactly what is taking place in order to then develop what response you need to do it. You can't just willy-nilly send F-16s there and blow the hell out of a place without knowing what's taking place. You can't send AC-130s there and blow the hell out of a target without knowing what's taking place. You've got to be able to have good information about what is taking place in order to be able to effectively respond.

Senator CRUZ. So in your judgment, if I understand you correctly, the most effective means would have been to have boots on the ground?

Secretary PANETTA. That's correct.

Senator CRUZ. If—and again this is a hypothetical—at 9:42 p.m. you had received a direct order to have boots on the ground to defend our men and women there, what is the absolute fastest that could have been carried out?

General DEMPSEY. Well, based on the posture, our posture at the time, it would have been N plus 6 plus transit time with the closest ground force available. So you're looking at something best case between 13 and 15 hours.

Senator CRUZ. So if I understand your testimony correctly, in your military judgment there was no way conceivably to get troops on the ground sooner than 13 to 15 hours?

General DEMPSEY. That's correct.

Senator CRUZ. How about assets like an AC-130. If you had received an order at the outset to deploy an aircraft like an AC-130, what would have been the absolute fastest it could have arrived at Benghazi?

General DEMPSEY. I don't even know exactly where they were, but I know there were no AC-130s anywhere near North Africa that night.

Senator CRUZ. I'd like to also spend a few moments on the decisionmaking as this crisis unfolded. I take it neither of you received the hypothetical order at any point to get boots on the ground immediately?

Secretary PANETTA. No, that's right.

Senator CRUZ. Now, both of you mentioned that at 5 p.m. D.C. time you met with President Obama for a regularly scheduled meeting, during which you discussed the attack at Benghazi that had happened about an hour and 20 minutes earlier. You said the total meeting lasted roughly 30 minutes. How much of the meeting would you estimate covered Benghazi?

Secretary PANETTA. We teed up that issue when we walked into the Oval Office, so I would say that the first 15 or 20 minutes was

spent on the concern about that, as well as Cairo and what might happen there.

Senator CRUZ. After that 15 or 20 minutes discussion of Benghazi, do I understand your testimony correct that neither of you had any subsequent conversations with the President the rest of that day and that evening?

Secretary PANETTA. We continued to talk. I think we teed up some other issues that we were dealing with at the time to inform the President, and then once that concluded we both went back to the Pentagon and immediately I ordered the deployment of these forces into place.

Senator CRUZ. In between 9:42 p.m. Benghazi time when the first attack started and 5:15 a.m. when Mr. Doherty and Mr. Woods lost their lives, what conversations did either of you have with Secretary Clinton?

Secretary PANETTA. We did not have any conversations with Secretary Clinton.

Senator CRUZ. General Dempsey, the same is true for you?

General DEMPSEY. Yes.

Senator CRUZ. One final question because my time has expired. Senator Lee asked you about securing the compound and noted that it took some 23 days to do so, and I think to the astonishment of many viewers, we had CNN News crews discovering what appeared to be sensitive documents, rather than U.S. forces or law enforcement.

I just want to make sure I understood your answer correctly, in that you said that you were not requested to secure the compound and had you been requested to secure the compound in your judgment the U.S. military could have done so and it could have done so effectively?

Secretary PANETTA. Yes.

Senator CRUZ. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Cruz.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

Secretary Panetta, as I'm sure everybody said, this is your last time before this committee. We certainly want to take an opportunity to thank you for your extraordinary service as Secretary and all the other accolades and services that you have provided to the people of the United States. So I too want to echo my sincere thanks.

General Dempsey, thank you too for your continued service as we go forward.

The September 11 attack drew attention to the use of local militia by the Department of State for protection in Benghazi. On the night of the attack, security consisted of three armed militia members as well as four locally hired unarmed guards and five armed Diplomatic Security agents. I understand that the three militia personnel were members of the February 17th Martyrs Brigade, which is a local militia that participated in the anti-Qaddafi uprising.

Documents recovered from the post indicated that, while the local militias trained with U.S. officials for this role, militia mem-

TIME CONVERSION CHART

EASTERN STANDARD TIME				EASTERN DAYLIGHT TIME			
LOCAL <u>12 HR</u>	LOCAL <u>24 HR</u>	"ZULU" <u>UTC</u>		LOCAL <u>12 HR</u>	LOCAL <u>24 HR</u>	"ZULU" <u>UTC</u>	
12:00 AM	0000	0500		12:00 AM	0000	0400	
1:00 AM	0100	0600		1:00 AM	0100	0500	
2:00 AM	0200	0700		2:00 AM	0200	0600	
3:00 AM	0300	0800		3:00 AM	0300	0700	
4:00 AM	0400	0900		4:00 AM	0400	0800	
5:00 AM	0500	1000		5:00 AM	0500	0900	
6:00 AM	0600	1100		6:00 AM	0600	1000	
7:00 AM	0700	1200		7:00 AM	0700	1100	
8:00 AM	0800	1300		8:00 AM	0800	1200	
9:00 AM	0900	1400		9:00 AM	0900	1300	
10:00 AM	1000	1500		10:00 AM	1000	1400	
11:00 AM	1100	1600		11:00 AM	1100	1500	
12:00 PM	1200	1700		12:00 PM	1200	1600	
1:00 PM	1300	1800		1:00 PM	1300	1700	
2:00 PM	1400	1900		2:00 PM	1400	1800	
3:00 PM	1500	2000		3:00 PM	1500	1900	
4:00 PM	1600	2100		4:00 PM	1600	2000	
5:00 PM	1700	2200		5:00 PM	1700	2100	
6:00 PM	1800	2300		6:00 PM	1800	2200	
7:00 PM	1900	2400	<i>next day</i>	7:00 PM	1900	2300	
8:00 PM	2000	0100	<i>next day</i>	8:00 PM	2000	2400	<i>next day</i>
9:00 PM	2100	0200	<i>next day</i>	9:00 PM	2100	0100	<i>next day</i>
10:00 PM	2200	0300	<i>next day</i>	10:00 PM	2200	0200	<i>next day</i>
11:00 PM	2300	0400	<i>next day</i>	11:00 PM	2300	0300	<i>next day</i>
12:00 AM	2400	0500	<i>next day</i>	12:00 AM	2400	0400	<i>next day</i>

HF Bands:

Start	CW | Phone	End
3.500	3.600	4.000
7.000	7.125	7.300
10.100	10.150	-
14.000	14.150	14.350
18.065	18.110	18.168
21.000	21.200	21.450
24.890	24.930	24.990
28.000	28.300	29.300

60 Meter:
"channels":

1	5.330.5
2	5.346.5
3	5.366.5
4	5.371.5
5	5.403.5

CB frequencies:

26.965 = Ch. 1
27.065 = Ch. 9
27.185 = Ch. 19
27.225 = Ch. 23
27.265 = Ch. 26
27.305 = Ch. 30
27.375 = Ch. 37
27.405 = Ch. 40

... (29.3 - 29.5.10 Satellite) ... 29.5 -29.7 FM (-split)

EXHIBIT 11

Assets, Flight Times

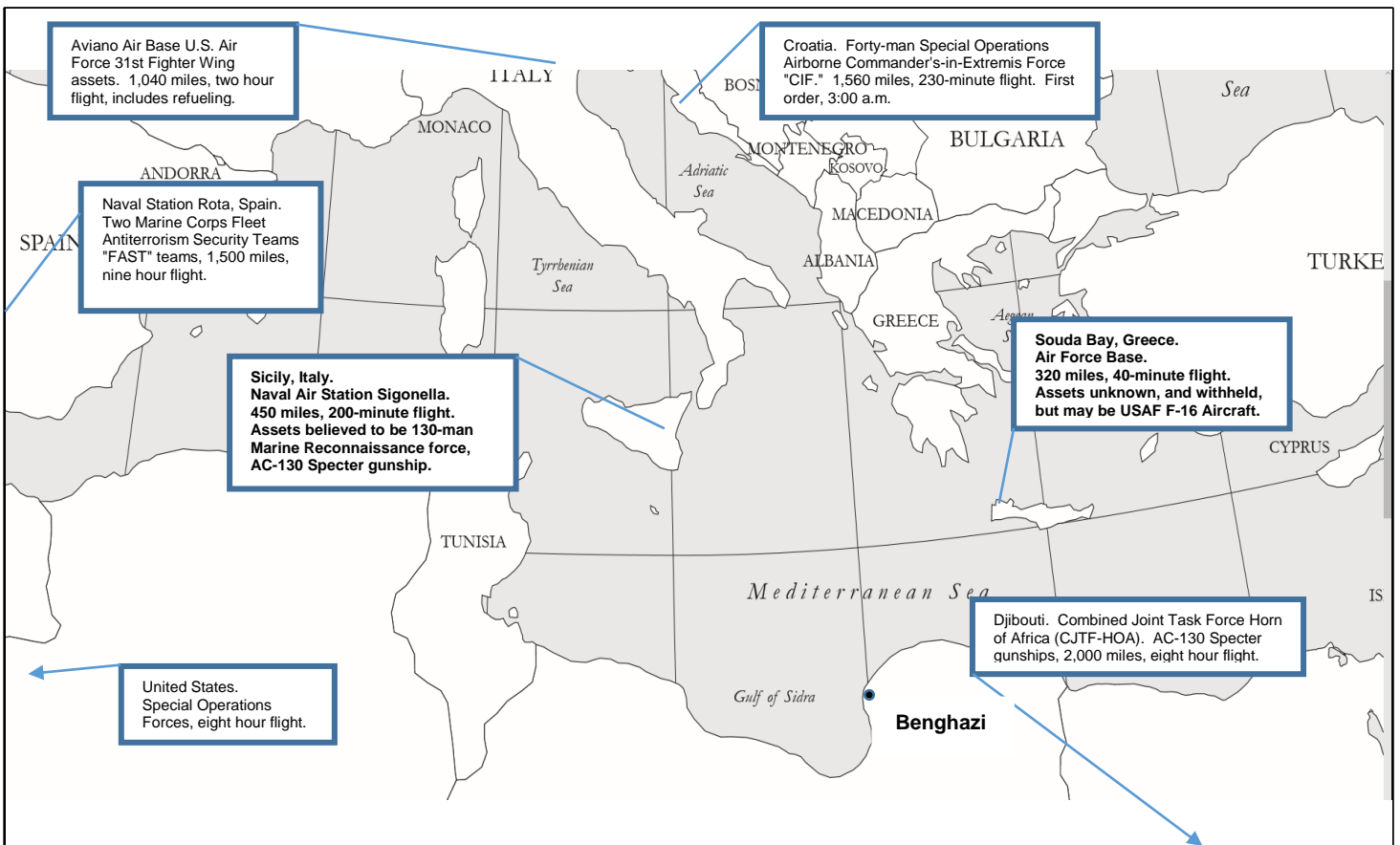


EXHIBIT 12