



ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

Yale Law School

FREEDOM OF INFORMATION ACT APPEAL

February 2, 2021

Via FAX (703-613-3007) and First-Class Mail

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

Re: Appeal of FOIA Request Reference No. F-2021-00898

Dear Mr. Lilly:

We represent investigative journalist Raymond Bonner in connection with this matter. This letter constitutes an administrative appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, of the denial by the Central Intelligence Agency (the “agency”) of Mr. Bonner’s request for expedited processing of his January 30, 2021 FOIA request, No. F-2021-00898. That request seeks a narrow category of records created during the limited time between March 30, 2002, and July 15, 2002 that are urgently needed for the preparation of a documentary that is to be shown later this year on the 20th anniversary of the 9/11 attacks. As explained below, the information Mr. Bonner seeks is directly relevant to a time-sensitive topic of intense public interest regarding actual or alleged federal activity. Pursuant to 5 U.S.C. § 552(a)(6)(E), Mr. Bonner has a compelling need for the information and his request is entitled to expedited processing

Procedural Posture of Mr. Bonner’s Request

On January 30, 2021, Mr. Bonner’s FOIA request was submitted to the agency via email and First-Class Mail. The request seeks:

1. All records created between March 30, 2002 and July 15, 2002, inclusive, authored by FBI Agent Ali Soufan.
2. All records created between March 30, 2002 and July 15, 2002, inclusive, which refer or pertain to Abu Zubaydah (also known as Zayn Al Abidin Muhammad Husayn).

Your February 2, 2021 letter acknowledges receipt of the request and states that, upon review, the agency “determined it does not meet the criteria for expedited processing.” In reaching this



determination, the agency acknowledged that the request is made by “a person primarily engaged in disseminating information,” but concluded that the information sought is “not relevant to a topic of public urgency regarding an actual or alleged federal activity.” This determination should be reconsidered and reversed.

Mr. Bonner Has a Compelling Need for the Information Requested

As set forth in greater detail in the FOIA request, Mr. Bonner is a Pulitzer Prize-winning investigative journalist and author with over 35 years of professional experience who has written extensively about international security, the U.S. War on Terror, and U.S. detention practices at Guantanamo Bay, Cuba. He is currently producing a documentary addressing these issues tied to the 20th anniversary of the 9/11 attacks, for which facts concerning the detention and interrogation of terrorist suspect Abu Zubaydah are indispensable.

The limited information sought from the agency by Mr. Bonner’s FOIA requests go to the heart of issues to be addressed in the documentary. The information undeniably involves “actual or alleged federal activity,” and it concerns a topic of public urgency given the upcoming anniversary of the historic attacks on our soil. Both the past treatment of Abu Zubaydah in the immediate aftermath of 9/11 and his continuing status as an uncharged Guantanamo detainee remain subjects of ongoing national and international reporting.¹

The information sought through Mr. Bonner’s FOIA requests is needed to educate the public not only about Zubaydah specifically, but more generally about our government’s response to the 9/11 attacks and its continued operation of the detention center at Guantanamo Bay. The information is needed to inform an ongoing public debate about the policies that we should pursue as a country in our continuing battle against foreign terrorism, and how terrorists should be brought to justice.²

¹ See, e.g., Peter Bergen, *Exclusive: More drawings allege CIA's horrific treatment of Abu Zubaydah*, CNN (February 13, 2020), <https://www.cnn.com/2020/02/12/opinions/bergen-more-drawings-allege-cias-horrific-treatment-of-abu-zubaydah/index.html>; Sheren Khalel, *Guantanamo parole board reviews case of 'forever prisoner' Abu Zubaydah*, Middle East Eye (February 4, 2020), <https://www.middleeasteye.net/news/guantanamo-parole-board-reviews-case-forever-prisoner-abu-zubaydah>; Greg Myre, *For Ex-FBI Interrogator Ali Soufan, Sept. 11 Still Frames His Life*, WAMU (September 11, 2020), <https://wamu.org/story/20/09/11/for-ex-fbi-interrogator-ali-soufan-9-11-still-frames-his-life/>.

² See, e.g., Daphne Eviatar, *On Guantanamo's 19th Anniversary, A Renewed Call to Close It*, Just Security (January 12, 2021) <https://www.justsecurity.org/74147/on-guantanamos-19th-anniversary-a-renewed-call-to-close-it/> (noting that then-Vice President Biden announced the Obama administration’s intention to close Guantanamo in 2009, and encouraging him to follow through on that intention as President); Carol Rosenberg, *Pentagon Official Approves Guantánamo Trial of 3 Men for Indonesia Bombings*, *New York Times* (January 21, 2021), <https://www.nytimes.com/2021/01/21/us/politics/guantanamo-trial-indonesia-bombings.html>



In *Leadership Conference on Civil Rights v. Gonzales*, an organization disseminating voting rights information was held to be entitled to expedited processing of a request for information about Department of Justice monitoring of federal elections, because the information was needed to inform a campaign seeking reauthorization of the Voting Rights Act that was set to expire two years later. 404 F. Supp2d 246, 260 (D.D.C. 2005). So also here, a compelling need exists for disclosure of the requested information in time for it to be useful before the upcoming anniversary, when public attention and debate will be uniquely focused on the 9/11 attacks and our nation's response to them.

Mr. Bonner and his counsel certify that the information above is true and correct to the best of their knowledge, pursuant to 5 U.S.C. § 552(a)(6)(E)(vi).

Pursuant to the requirements of FOIA, we request a response to this appeal within twenty (20) working days.

Very truly yours,

A handwritten signature in black ink, appearing to read "David A. Schulz", is enclosed in a thin black rectangular box.

David A. Schulz

(reporting on the first new case set for trial at Guantanamo since 2014); *U.S. congressmen request Guantánamo prison camp remain open*, OnCuba (February 2, 2021), <https://oncubanews.com/en/cuba-usa/u-s-congressmen-request-guantanamo-prison-camp-remain-open/> (reporting on a letter sent from U.S. congressmen to incoming Defense Secretary Lloyd Austin asking him to reconsider the Biden Administration's stated intention to close the prison); Brian Bouffard and Aaron Shepard, *There's no justice in Guantanamo Bay. For America's sake, that must change.*, Washington Post (January 12, 2021), <https://www.washingtonpost.com/opinions/2021/01/12/theres-no-justice-guantanamo-bay-americas-sake-that-must-change/> (arguing that fair trials and fair treatment of detainees is no longer possible at Guantanamo).