

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RAYMOND BONNER,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

Civil Action No. _____
ECF Case

COMPLAINT

INTRODUCTION

Plaintiff, Raymond Bonner, by his undersigned attorneys, alleges:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, for declaratory, injunctive, and other appropriate relief brought by Raymond Bonner, a prize-winning investigative journalist and author.

2. By this action, Mr. Bonner seeks to compel defendant, the Central Intelligence Agency, to release certain records about its history of interrogation practices, and about the capture, interrogation, and detention of Zayn al-Abidin Muhammad Husayn, more commonly known as Abu Zubaydah (“Zubaydah”).

PARTIES

3. Plaintiff Raymond Bonner is a prize-winning investigative journalist and author with over 35 years of professional experience. He has reported and written for major publications, including the *New York Times*, *New Yorker*, *Atlantic*, and *New York Review of Books*, and is currently a contributing writer for *ProPublica*, an independent, non-profit, online newsroom based in New York. Mr. Bonner has published numerous articles about the U.S. War

on Terror, treatment of terrorist suspects in the aftermath of 9/11, and detention practices at Guantanamo Bay, Cuba. He has written extensively on Zubaydah's capture, interrogation, and detention. *See, e.g.,* Raymond Bonner, *The Strange Case of the Forgotten Gitmo Detainee*, POLITICO (May 12, 2015), <https://www.politico.com/magazine/story/2015/05/abu-zubaydah-tortured-waterboarded-cia-dc-circuit-court-guantanamo-117833>.

4. Defendant Central Intelligence Agency ("CIA") is an intelligence agency established within the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the defendants pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this district under § 552(a)(4)(B) because plaintiff resides in this district.

FACTS

7. Zayn al-Abidin Muhammad Husayn, more commonly known as Abu Zubaydah, was captured in Pakistan in March 2002 and is currently being detained at the U.S. military base at Guantanamo Bay, Cuba.

8. According to the Senate Intelligence Committee Report on Torture, released in December 2014, Abu Zubaydah was one of the first post-9/11 terrorist suspects to be interviewed by the FBI and CIA and subjected to the CIA's "enhanced interrogation techniques," at a so-called "black site."

9. Abu Zubaydah filed a habeas petition in 2008, which remains pending today. *See Husayn v. Mattis*, 1:08-cv-1360 (D.D.C. Aug. 6, 2008).

10. The U.S. government has now held Abu Zubaydah without charge for more than fifteen years, during which time his capture, treatment, and continued confinement have been the subject of numerous investigations and reports, including by international tribunals, human rights groups, and the U.S. Senate.

11. Abu Zubaydah's name appears 1001 times in the publicly-released five-hundred-page summary of the Senate Intelligence Committee Report on Torture.

12. The facts and circumstances surrounding Abu Zubaydah's treatment remain matters of great public interest and concern. Numerous former CIA officials have written at length about his capture and interrogation, including: James E. Mitchell, *ENHANCED INTERROGATION: INSIDE THE MINDS AND MOTIVES OF THE ISLAMIST TERRORISTS TRYING TO DESTROY AMERICA* (2016) (written by the architect of the CIA's enhanced interrogation program and the chief interrogator of Abu Zubaydah at the black site); John Rizzo, *The Birth of the Enhanced Interrogation Program* (2002), in *COMPANY MAN: THIRTY YEARS OF CONTROVERSY AND CRISIS IN THE CIA 181-202* (2014); Jose A. Rodriguez, Jr., *Abu Zubaydah*, in *HARD MEASURES: HOW AGGRESSIVE CIA ACTIONS AFTER 9/11 SAVE AMERICAN LIVES 41-72* (written by the former head of the CIA's Counterterrorism Center); Ali H. Soufan, *The First High-Value Detainee*, in *THE BLACK BANNERS: THE INSIDE STORY OF 9/11 AND THE WAR AGAINST AL-QAEDA* (2011) (written by the senior FBI agent who interrogated Abu Zubaydah at the black site).

FOIA Request to the Central Intelligence Agency

13. On December 15, 2017, Mr. Bonner submitted to defendant CIA a FOIA request seeking copies of the following clearly identified documents:

- a) An unredacted copy of the transcript of the June 1998 hearing held by the Senate Select Committee on Intelligence ("SSCI") on the

Honduran Interrogation Manual, at which the CIA Deputy Director Operations Richard Stolz testified.

- b) A CIA manual for interrogation techniques, which Mr. Stolz said was assembled in March of 1964, and which was referred to in the SSCI hearing.
- c) All documents, emails, cables, memoranda, pertaining directly, or indirectly, to the CIA's July 2002 request to the Department of Justice for a formal declination of prosecution for any employee of the United States who was involved in the interrogation of Zayn al-Abidin Muhammad Husayn (Abu Zubaydah).
- d) The Psychological Assessment of Abu Zubaydah, prepared in July 2002.
- e) All documents, emails, cables, and memoranda that were used in the preparation of said Psychological Assessment.
- f) All memoranda, emails, and documents prepared in July 2002 with the subject: Increased Pressure in the Next Phrase of the Abu Zubaydah Interrogations.
- g) A cable, written on or about July 23, 2002 by the Chief of Base at a CIA detention site where Abu Zubaydah was being held, in which he or she said, *inter alia*, "we are a nation of law and we do not wish to parse words".
- h) All documents, emails, cables, and memoranda with the subject "Effectiveness of the CIA Counterterrorist Interrogation Techniques".

A true and correct copy of Mr. Bonner's request to CIA is annexed hereto as Exhibit A.

14. Mr. Bonner's request sought a fee waiver under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because Mr. Bonner is "a representative of the news media" within the meaning of the statute.

15. By letter dated December 15, 2017, CIA acknowledged receipt of Mr. Bonner's request. A true and correct copy of this letter is annexed hereto as Exhibit B.

16. More than two weeks later, on January 5, 2018, CIA asked Mr. Bonner to provide a date range for his final request seeking records with the subject "Effectiveness of the CIA Counterterrorist Interrogation Techniques." CIA indicated it would hold Mr. Bonner's entire

request “in abeyance” pending a response. A true and correct copy of this CIA request is annexed hereto as Exhibit C.

17. Mr. Bonner provided the requested clarification on or about January 26, 2018, identifying a date range from January 2005 through December 2007 for his final request. A true and correct copy of Mr. Bonner’s response is annexed hereto as Exhibit D.

18. Since Mr. Bonner provided the requested clarification, CIA has not provided any information about when it anticipates responding substantively to Mr. Bonner’s request.

19. More than twenty business days have passed since Mr. Bonner submitted his FOIA request to CIA, even excluding the days during which the CIA unilaterally held the request “in abeyance.” None of the requested documents have been produced to Mr. Bonner, in full or in part.

20. CIA has constructively denied plaintiff’s FOIA request, and Mr. Bonner has thus exhausted his administrative remedies. 5 U.S.C. § 552(A)(6)(C).

FIRST CLAIM

Violation of FOIA for failure to respond to plaintiff’s requests

21. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

22. Defendant’s failure to timely provide a substantive response to plaintiff’s requests violates FOIA, 5 U.S.C. § 552(a)(6)(A) and defendant’s implementing regulations.

SECOND CLAIM

Violation of FOIA for failure to make records available

23. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

24. Defendant's failure to make available the records sought by plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and defendant's implementing regulations.

25. Defendant's withholding of specific responsive records, or portions thereof, violates the FOIA, 5 U.S.C. § 552(a)(3)(A), (6)(A), and defendant's implementing regulations.

THIRD CLAIM

Violation of FOIA for failure to perform adequate search

26. Plaintiff repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

27. Defendant's failure to make a reasonable effort to search for records responsive to the plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(C), and defendant's implementing regulations.

RELIEF REQUESTED

WHEREFORE, plaintiff respectfully requests this Court to:

1. Declare that the records sought in plaintiff's FOIA requests are public records under 5 U.S.C. § 552 and must be disclosed;
2. Order defendant immediately to conduct a thorough search for all records responsive to plaintiff's requests;
3. Order defendant to immediately disclose, in their entirety, all records responsive to plaintiff's requests that are not specifically exempt from disclosure under FOIA;
4. Enjoin defendants from charging plaintiff for the search, review, or duplication fees for processing his requests;
5. Award plaintiff the costs of this proceeding, including reasonable attorneys' fees; and
6. Grant such other and further relief as the Court deems just and proper.

Dated: February 14, 2018

Respectfully submitted,

MEDIA FREEDOM AND INFORMATION
ACCESS CLINIC

By: /s/ David A. Schulz_____

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