

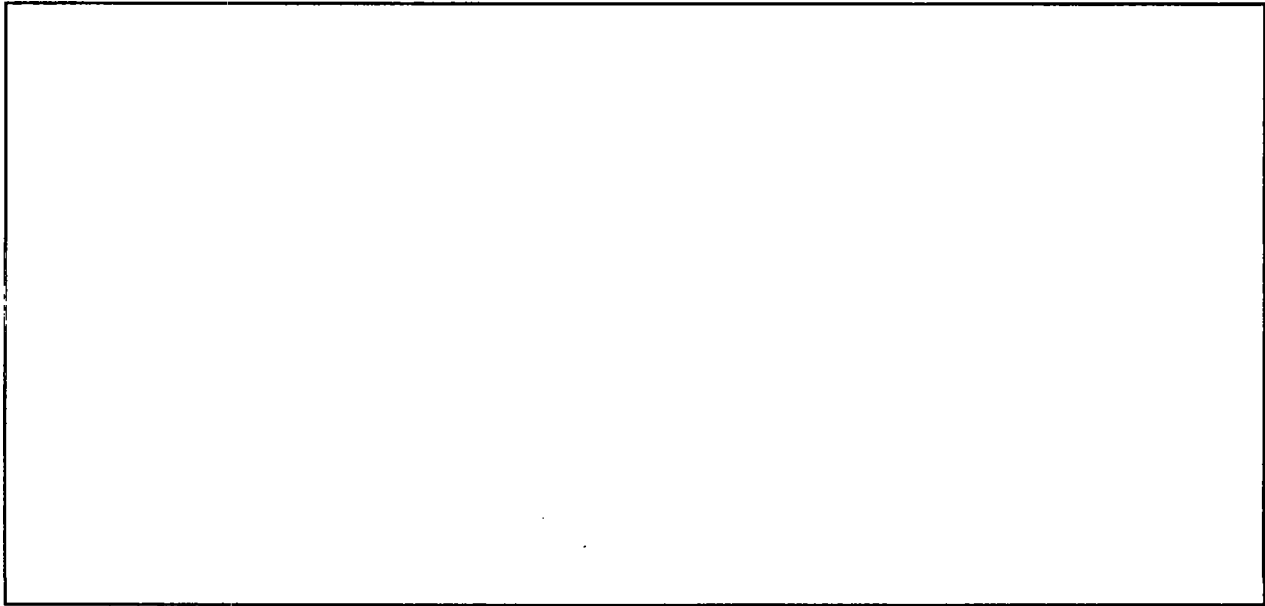
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TRANSFERS/REPATRIATIONS OF DETAINEES

Background

(U) Under the 1949 Geneva Convention on POWs, the detaining country may transfer POWs, but only if the receiving country is a party to the Convention and the detaining power has satisfied itself that the receiving country is willing and able to apply the Convention. The Convention states that POWs "shall be released and repatriated without delay after the cessation of active hostilities." Although there generally is no duty to repatriate POWs until the close of hostilities, there may be a duty to repatriate seriously wounded and sick POWs.

- (U) The US currently has no duty to repatriate the detainees because they are unlawful combatants, as opposed to POWs, and because hostilities are ongoing.



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- (U) Some countries may be reluctant to transfer their own suspects to the US due to concerns about the death penalty, military commissions, and a perceived lack of U.S. respect for international legal norms.
- (U) Thus, it may be useful to reiterate the US commitment to international humanitarian law (the Geneva Conventions and the customary law provisions of the GC Protocols) and international human rights law (the International Covenant on Civil and Political Rights).

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L: JThessin
L/NP: ECummings ok
S/WCI: BBlaschke

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United States Department of State

Washington, D.C. 20520

Case No. 200303827

Segment L017

Mr. Amrit Singh
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004-2400

DEC 20 2004

Dear Mr. Singh:

I refer to our previous correspondence regarding the release of certain Department of State material under the Freedom of Information Act (Title 5 USC Section 552) in your letters of October 7, 2003 and May 25, 2004.

We have retrieved 114 additional documents from the Office of the Legal Adviser that we have grouped as Segment L017. After reviewing these documents, we have determined that nine may be released, one may be released with excisions, and 80 may not be released. The released documents are enclosed. A decision on two documents requires interagency coordination. We will inform you when we receive the results of that coordination. Twenty-two documents originated with other government agencies and have been referred to those agencies for review and direct reply to you.

Material in 44 of the documents withheld in full is currently and properly classified under Executive Order 12958 in the interest of national defense or foreign relations. As such, it is exempt from release under subsection (b)(1) of the Freedom of Information Act.

Material in one of the documents withheld in full is specifically exempted from disclosure by statute, to wit, the Central Intelligence Agency Act of 1949 (Title 50 USC Section 403g). As such, it is exempt from release under subsection (b)(3) of the Freedom of Information Act.

Information in the one document released in part and in 62 of the documents withheld in full is exempt from release

under subsection (b) (5) of the Freedom of Information Act because it is protected by the deliberative process privilege, attorney client privilege, attorney work product privilege, and/or another privilege incorporated by subsection (b) (5).

In some cases, two or more exemptions apply to the same document. In the case of a document released in part, all non-exempt material that is reasonably segregable from the exempt material has been released.

Sincerely,



Margaret P. Grafeld
Director
Office of Information Programs
and Services

Enclosures:
As stated.