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Request Submitted Under the Freedom of Information Act

Dear FOIA Officer,

This letter is a Request under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), submitted on behalf of Physicians for Human Rights (PHR).

We are filing the Request simultaneously with the Department of Defense (including the Department of the Air Force, the Department of the Navy, and U.S. Central Command), the Department of State (including the War Crimes Office), and the Central Intelligence Agency.

The Request relates to a mass grave at Dasht-e-Leili in Afghanistan, allegedly the burial site for hundreds of surrendered Taliban fighters. Our Request is based on international news reports and investigations from January 2002 to February 2004 that indicate that the bodies of as many as 2,000 Taliban fighters may lie in the mass grave at Dasht-e-Leili. According to such reports, hundreds of Taliban fighters died of asphyxiation when transported, in flatbed truck shipping containers, from the site of their surrender in Konduz to the prison in Sheberghan. The bodies were then allegedly buried in the mass grave in Dasht-e-Leili. The transport occurred at the end of November 2001, with the bodies allegedly buried in December. The reported mass grave site is

approximately 125 kilometers (78 miles) west of Mazar-I-Sharif near Sheberghan.¹

The alleged deaths have been the subject of reports by human rights and international organizations since early 2002. Physicians for Human Rights began investigating the grave in January 2002 during a fact-finding mission to Northern Afghanistan and later posted the results on its web site.² PHR personnel visited the site in January and February 2002, and documented skeletal remains (some with human tissue still attached, indicating recent burial), shoes, prayer beads, and prayer caps in the graves. The results were shared with the State Department. Two entities of the United Nations (U.N.), the U.N. Assistance Mission to Afghanistan (UNAMA) and the U.N. High Commissioner for Human Rights, investigated the site. On May 7, 2002, at the conclusion of a preliminary investigation, a spokesperson for the UN High Commissioner for Human Rights stated that based on findings from preliminary exhumation of graves at Dasht-e-Leili, asphyxiation was the likely cause of death; estimates of the number dead ranged from several hundred to up to 2,000.³

The ICRC also compiled a report of witness accounts.

In the summer of 2002, the U.N. Security Council was briefed on UN activities regarding mass graves in northern Afghanistan.

The mass grave was reported in the media. The first report of which we are aware was in the New York Times in May, 2002; a cover story in *Newsweek* magazine in July, 2002 contained accounts of the deaths, the gravesite, and surrounding events.⁴ Various media outlets worldwide, including print, radio and television, also chronicled the events as they emerged. The spokesman for General Abdul Rashid Dostum, the Afghan general who led the attacks on Konduz, issued a statement acknowledging the suffocation of prisoners.⁵ After *Newsweek* released its lengthy report on the graves, State Department

¹ Barry Neild, *No Quick Justice for Afghan War Crimes, UN Says*, AGENCE FRANCE PRESS, Oct. 23, 2002, available at www.globalpolicy.org/security/issues/afghan/2002/1023war.htm (last accessed Dec. 1, 2005).

² Physicians for Human Rights, Preliminary Assessment of Alleged Mass Gravesites in the Area of Mazar-I-Sharif, Afghanistan: January 16-21 and February 7-14, available at http://www.phrusa.org/research/afghanistan/report_graves.html.

³ John Barry, Babak Dehghanpisheh and Roy Gutman, *The Death Convoy of Afghanistan*, NEWSWEEK, (Aug. 26, 2002). Aziz ur Rahman Razek, director of the Afghan Organization of Human Rights, told the Newsweek reports that the death count was at least 1,000. *Id.*

⁴ *Id.*

⁵ Barry et al., *supra* note 3, *The Death Convoy of Afghanistan*.

spokesman Phillip Reeker said that the U.S. would investigate the circumstances.⁶

It has been reported that U.S. forces were at the Sheberghan prison when the container trucks arrived. The dozen-man 595 A-team, which is part of the Fifth Special Forces Group, was reportedly present when some of the containers arrived⁷ to locate potentially useful suspects or witnesses among the arrivals; a translator for the American military told *Newsweek* that the Americans quickly learned of the deaths due to their ongoing presence at the jail.⁸ According to reports, the primary concern of 595 appeared to be ensuring the security of the site. *Newsweek* also reports that the commander of the Fifth Special Forces Group, Colonel John Mulholland, told his A-team that Taliban prisoners had died during transport.⁹

U.S. officials have at various times called for an investigation or claimed to have conducted one.

We request the disclosure of the records related to these incidents:

1. All records pertaining to the existence or reported existence of a grave in or around Dasht-e-Leili (using this or other spelling) in Afghanistan in November or December 2001, including records of physical evidence of a mass grave or investigations conducted contemporaneously or subsequently to determine whether such a grave exists as well as observations, reports, investigations, witness statements, correspondence, memoranda, third-party reports or other records of the alleged creation, construction or existence of such a grave and/or activity surrounding the creation or construction of a grave at this site.
2. All records accounting for Taliban or other prisoners who surrendered or were captured at Konduz in or about November or December 2001, including records indicating (1) the numbers of captives unaccounted for and the stated reasons for their absence at the receiving prison; (2) the transport of such prisoners individually or in groups; (3) the destination of such prisoners; (4) records of subsequent interrogations performed by

⁶ Marianne Bray, *U.S. Probes Mass Taliban 'suffocations'*, CNN.COM, August 20, 2002, available at <http://archives.cnn.com/2002/WORLD/asiapcf/central/08/20/afghanistan.graves/index.html> (last accessed Dec. 1, 2005).

⁷ Id.

⁸ Id.

⁹ Id.

U.S. forces insofar as they relate to the alleged deaths of other prisoners while in transport.¹⁰

3. All records relating to the deaths or alleged deaths of Taliban or other prisoners in or subsequent to transit from Konduz to Sheberghan prison or elsewhere in the vicinity in late 2001, including (1) records of witness accounts of the use of closed containers to transport prisoners and/or the disposal and/or burial of bodies; (2) reports, observations, investigations, or other records relating to and/or made by members of the U.S. armed forces or intelligence agencies; (3) reports of third parties of such deaths.
4. All records of meetings between General Tommy Franks, the former head of U.S. Central Command, and Afghan President Hamid Karzai, in or about August 2002, regarding the alleged deaths of surrendered Taliban in container trucks and their alleged subsequent burial.¹¹
5. All records relating to any investigation called for or conducted regarding alleged deaths of Taliban prisoners in the vicinity of Sheberghan in November or December 2001. This includes records used to prepare Gen. Franks' August 11, 2002 statement of support for a further investigation into deaths of prisoners in containers as reported in the media.¹² We further request all records showing responses or follow-up to this statement, including whether or not such an investigation was considered or initiated.
6. All records generated in response to reports by human rights organizations, including Physicians for Human Rights, and the media regarding (1) the reported discovery of a mass grave site at Dasht-e-Leili and (2) allegations of the deaths of Taliban prisoners in containers.
7. All records of correspondence by U.S. military forces, intelligence, and the State Department with the United Nations (U.N.),¹³ other states, and international organizations regarding the alleged death of Taliban or

¹⁰ Phillip Smucker, *Afghan War Crimes a Low Priority*, THE CHRISTIAN SCIENCE MONITOR, Sept. 12, 2002. Smucker reports that according to Afghan officials, many of the prisoners had already been interrogated by U.S. Special Forces. *Id.*

¹¹ According to press reports, Franks consulted with President Karzai about the matter. *U.S. General Backs Probe of Reported Afghan Mass Graves*, CNN.COM, Aug. 25, 2002, available at <http://archives.cnn.com/2002/WORLD/asiapcf/central/08/25/afghanistan.franks/> (last accessed Dec. 1, 2005).

¹² Matthew Chance, *Mass Graves Raise Questions in Afghanistan: How did Taliban Prisoners Die and Who Knew?* CNN.COM, August 29, 2002, available at <http://archives.cnn.com/2002/WORLD/asiapcf/central/08/29/afghanistan.mass.graves/> (last accessed Dec. 1, 2005).

¹³The U.N. conducted an investigation into the site in the spring of 2003.

other prisoners in containers or burial in the Dasht-e-Leili site in November or December, 2001, or investigations of such deaths.

8. All records regarding the involvement of U.S. forces, including the 595 A-Team, with respect to the arrival of containers with prisoners in them at Sheberghan in November and December 2001, and the disposition of such prisoners. Please include all records about (1) the location of U.S. military personnel and foreign officials in the area around Sheberghan (including the presence of U.S. soldiers upon the arrival of the containers to Sheberghan prison); and (2) whether and how the surrender of Taliban prisoners was negotiated in the presence of American soldiers.
9. All records setting forth or discussing policies regarding the reporting by U.S. military and intelligence personnel of deaths or mistreatment of prisoners in the custody of a third party such as the Northern Alliance, as applicable in November and December, 2001.

We do not believe that the requested information is exempt under any of the FOIA exceptions. If information is marked classified, though we believe it would not be, please redact as appropriate before disclosure.

Fee Waiver

We request a waiver of fees as PHR qualifies as a “representative of the news media” and the records are not sought for commercial use. Accordingly, fees associated with the processing of the Request should be “limited to reasonable standard charges for document duplication.” 5 U.S.C. § 552 (a)(4)(A)(ii)(II). This organization is an “entit[y] that gather[s]... information of potential interest to a segment of the public, use[s] editorial skills to turn the raw materials into a distinct work, and distribute[s]... that work to an audience.”¹⁴

PHR is a not-for-profit organization of health professionals, scientists, and citizens that uses medical and forensic investigatory techniques to address human rights abuses. PHR has extensive experience in collecting forensic evidence of war crimes, genocide, and crimes against humanity. PHR publishes newsletters, reports, and informational materials for the public, many of which are available on its web site, www.phrusa.org. The web site contains a section on PHR’s forensics investigations. PHR also distributes an email newsletter free of charge to the public. PHR plans to disseminate the information disclosed as a result of the FOIA request through these channels.

We also request a waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure “is likely to

¹⁴ *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

contribute significantly to the public understanding of the activities or operations of the government.”¹⁵ In particular, this request is designed to further the public’s understanding of events in Afghanistan. As indicated above, numerous news articles reflect the significant public interest in the records we seek.

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific FOIA exemptions. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

We look forward to your reply to the Request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i).

Thank you for your prompt attention to this matter.

Please respond to Leonard S. Rubenstein.

Signed by:



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¹⁵ 5 U.S.C. § 552(a)(4)(A)(iii).