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July 8, 2011

Chief of the Requester Liaison Division  
c/o Office of Information Programs and Services  
U.S. Department of State, SA-2  
Washington, DC 20522-8100

*Sent via certified mail*

**Re: Freedom of Information Act Request #201007164  
Appeal of Denial of Expedited Processing**

I am writing this letter on behalf of Benjamin Becker and Liberation Newspaper, of which he is the Editor. This letter constitutes an appeal of the denial of expedited processing of FOIA request #201007164, submitted from Liberation Newspaper to the Department of State on October 20, 2010.

The FOIA request sought “contracts in the possession or control of the Department of State regarding all grants, payments, purchase orders and/or obligations of funds to be transferred to the journalists that are identified in the enclosed spreadsheet” for the period from January 1998 to December 2002. The Department of State possesses or has control over the responsive information that was previously held by the USIA, the predecessor agency to the Broadcasting Board of Governors and the Office of Cuba Broadcasting.

**Timeliness of Appeal**

On October 20, 2010, Liberation Newspaper submitted the above captioned FOIA request. Having received no response to that request, on November 20, 2010, Mr. Becker sent an email to foiastatus@state.gov requesting to know the status of the request. He received no response to this inquiry either. Having still heard nothing, on June 8, 2011, he sent another letter via facsimile and certified mail again requesting a response to the October 20 FOIA.

In response to that letter, he received an email from Harry Hammitt on June 9 stating that the request “was acknowledged by letter dated Nov. 9. in which your request for expedited processing was denied.”

Mr. Hammitt attached that letter, which is a form letter stamped with a date of November 9, 2010, and bears no addressee.<sup>1</sup> That mass produced pre-printed form letter states in part: “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.”

The first time that Mr. Becker saw this letter was on June 9, 2011, when Mr. Hammitt sent it via email. It was never received previously – nor did he receive any communication from anyone at the Department of State – via email, phone or mail. This is despite the fact that all of his contact information was included in his original FOIA request.

In Mr. Hammitt’s email he also stated that he would “contact the individual handling your request and try to see where it stands.” No additional information or status update has yet been provided.

As the date of receipt for that letter is June 9, 2011, this appeal is timely made within the deadline of 30 days from the date of receipt.

### **Appeal of Denial of Expedited Processing**

Liberation Newspaper requested expedited processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E) as there is an “urgency to inform the public concerning actual or alleged Federal Government activity” and, as a representative of the news media, Liberation Newspaper is primarily engaged in the dissemination of information. 5 U.S.C. § 552(a)(6)(E)(v); 22 C.F.R. § 171.12(b). We certify that the compelling need for expedited processing is true and correct to the best of our knowledge and belief.

The Office of Cuba Broadcasting and the Broadcasting Board of Governors, and their predecessor agency, the U.S. Information Agency, which was integrated into the Department of State, are responsible for the operation of Radio Marti and TV Marti, by which the U.S.

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<sup>1</sup> Please also note that the Department of State’s deadline for responding to the request for expedited processing was November 4, 2010. Even if the November 9 letter had been received in a timely fashion, it would have been beyond the deadline. Accordingly, the State Department is now barred from assessing fees for Liberation Newspaper’s request pursuant 5 U.S.C. § 552(a)(4)(A)(viii).

government broadcasts into Cuba and into Florida. The U.S. government appears to have paid journalists in Miami who also published reports that were inflammatory and prejudicial towards Cuba and the five Cuban defendants tried in Miami, known as the "Cuban Five." Those journalists, who presented themselves as independent reporters, did not disclose that they were paid by the U.S. Government despite publishing and airing stories in the Miami media during the prosecution and trial that were supportive of the U.S. government's prosecution of the Cuban Five and which contained hostile and false information about the Cuban Five.

Disclosure of these contracts may evidence serious government malfeasance in intentionally and covertly funding the "independent" U.S. media to propagandize and influence domestic public opinion including the jury pool and sitting jury during the high-profile government prosecution and the resulting conviction of the Cuban Five.

The USIA, the BBG and the State Department were and are barred by law from propagandizing the U.S. public under the Smith-Mundt Act. To what extent the government was and is engaged in covert propaganda operations that would illegally influence U.S. domestic public opinion on Cuba and the Cuban Five is a critical issue that requires exposure.

This request is crucial to the effort at transparency that is required in order for there to be an accurate accounting and assessment of the activities of the United States government in regard to Cuban relations, in regard to the right to a fair trial, and in regard to the rights of the people of the United States to be free from government-sponsored covert propaganda.

On October 10, 2010, the week before the FOIA request was filed, Amnesty International submitted a report to U.S. Attorney General Eric Holder seeking review of the case of the Cuban Five and appropriate action to remedy injustice, expressing doubts about the fairness and impartiality of the trial of the five men, including questions as to the government's payments to Miami journalists and the impact of prejudicial media coverage on the defendants' rights to a fair trial. The report includes the "pervasive community hostility toward the Cuban government in [Miami] and media" as among the factors making it impossible to ensure a wholly impartial jury. See USA: The Case of the 'Cuban Five' at 7, Amnesty International Report available at <http://www.amnesty.org/en/library/asset/AMR51/093/2010/en/9911673a-a171-49db-b757-581f2fbdf11/amr510932010en.pdf>; "Rights Group Questions Fairness of Cuban Spy Trial in U.S.," David Ariosto, *CNN*, October 16, 2010.

The release of this information at this time is critical. The Cuban Five were convicted and sentenced in December 2001 and are serving lengthy prison sentences. They are in the process of their final *Habeas Corpus* appeals at this moment in an attempt to have their convictions overturned or to win a new trial. In this interest of their right to seek a fair trial in U.S. courts, and for the public to have confidence in the U.S. justice system and its government's prosecutions, it is in the public interest and the absolute interests of justice to urgently make available relevant documents.

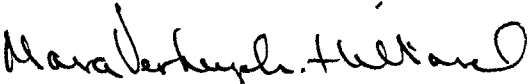
Regarding criteria #2, Liberation Newspaper, which is primarily engaged in dissemination of information, urgently needs the material as it seeks to immediately disseminate this information to inform the public regarding actual or alleged Federal Government activity

and the information is urgently needed, and late production of the information will have a significant effect on its value. In addition to analyzing and publishing the information Liberation is receiving on this matter in its newspaper, it has also created a Liberation Newspaper website specifically focused on this matter, [www.ReportersforHire.org](http://www.ReportersforHire.org), which is receiving widespread interest from the public.

Because of the final appeals at issue, it is thus also a matter of criteria #1, imminent threat to the life and physical safety of these incarcerated individuals and criteria # 3, a matter of substantial humanitarian reasons for this information to be immediately released.<sup>2</sup> If the information sought reveals government misconduct that would be determinative to their liberty interests, but is withheld by the U.S. government until after their final appeals, this would be an extreme act of malfeasance and would unquestionably cause a loss of substantial due process rights, as in criteria #4, should they remain unjustly imprisoned. In addition, the interests of the U.S. public in having access to this information is significant, and the continued withholding of this information at this most critical hour also raises the specter that there is something to hide.

Please feel free to contact us with any questions.

Sincerely,



Mara Verheyden-Hilliard

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<sup>2</sup> In addition to lengthy imprisonment, the Cuban 5 have been held in punitive conditions including at times, solitary confinement, and two of the men held have never been allowed to see their wives, as the U.S. government refuses to grant the wives necessary visas.