

GLOMAR AND CIA'S PROPAGANDISTIC CAMPAIGN OF SANCTIONED LEAKS

The ACLU submits briefs.

In response to Plaintiffs' January 2010 request under the Freedom of Information Act, the CIA asserted that its use (or non-use) of drones to carry out targeted killings was a "classified fact." The assertion was far-fetched then, but it is fantastical now.

[snip]

... allowing the CIA to deny the existence of the drone program while it carries on a propagandistic campaign of officially sanctioned leaks would make a mockery of the classification system.

[snip]

Indeed, the Court should approach the CIA's arguments here with special skepticism, because the volume and consistency of media leaks relating to the CIA's drone program strongly suggest that the government is relying on the Glomar doctrine in this Court while government officials at the same time, under cover of anonymity, disclose selected information about the program to the media. This kind of campaign of selective disclosure is precisely what FOIA was enacted to prevent.

As you can imagine, the filing makes liberal use of Jack Goldsmith's post from the other day.

Here's the nut of it:

The FOIA's particular concern with

selective disclosure should inform this Court's analysis here. The Glomar doctrine cannot be construed so broadly, or the official acknowledgment exception so narrowly, as to license the very "selective disclosures, managed news, half-truths, and admitted distortions" that the FOIA was meant to preclude. For more than two years now, senior government officials have freely disclosed information about the CIA's drone program, both on the record and off, while the CIA has insisted to this Court and others that the program cannot be discussed, or even acknowledged, without jeopardizing national security. **One consequence is that the public's understanding of the effectiveness, morality, and legality of the government's bureaucratized killing program comes solely from the government's own selective, self-serving, and unverifiable representations concerning it. This is not simply lamentable but dangerous,** and, again, it is precisely what the FOIA was designed to prevent. This Court should vacate the judgment below and order the CIA to process Plaintiffs' FOIA request.