

DOJ: Feinstein's Committee Controls CIA Torture Report; Has Final Say Over Public Release

By [Jason Leopold](#)

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A report completed more than a year ago by a Senate panel that investigated the CIA's torture program can only be released by the committee, which maintains complete "control" over the highly classified document, the Justice Department said in a court filing late Friday.

The Justice Department made that claim in response to a [Freedom of Information Act \(FOIA\) lawsuit I filed against the agency last September](#), in which I asked for a copy of the 300-page executive summary of the Senate Select Committee on Intelligence's (SSCI) much sought after \$40 million torture report. The Justice Department [asked a federal court judge Friday to dismiss my case](#), arguing it does not have the authority to disseminate the report because it is a "congressional record" as opposed to an "agency record," which would make it subject to provisions of FOIA.

The Senate Intelligence Committee [voted to approve](#) the 6,000-page report, which the panel's Democratic chairwoman, Sen. Dianne Feinstein, [said](#), "uncovers startling details about the CIA detention and interrogation program," on December 13, 2012. The panel [provided copies of the document](#) to the White House, Department of State, CIA and Office of Director of National Intelligence (ODNI) for their review and comment.

Over the past year, [dozens of op-eds, including one written by the editorial board of The New York Times](#), have been published calling for the declassification and public release of the report. Moreover, human rights organizations have launched [several campaigns](#) to pressure the Senate Intelligence Committee to move to publicly release the report. One Intelligence Committee staff member [characterized](#) the Senate's report for me in December 2012 as "the Pentagon Papers of the CIA torture program."

Feinstein is on record stating that, at the very least, the executive summary of the report should be declassified and released. She [told](#) The New York Times last year she would push the White House and CIA to declassify the executive summary because it is a part of the report that will take the least amount of time to undergo a security review.

However, since then she and other committee members have signaled that the CIA, which sharply disagrees with the veracity of the report, has been holding up the committee's plan to publicly release parts of it. Indeed, last month, during a confirmation hearing for Caroline Krass, who was tapped to be the CIA's next general counsel, Sen. Mark Udall rebuked the agency for holding up declassification of the report. In a [letter](#) sent to Obama January 6, Udall said he would not support Krass's nomination until the CIA begins to cooperate with the Senate Intelligence Committee inquiries revolving around the panel's torture report.

Last June, the CIA wrote a 122-page rebuttal to the report, which is also classified. According to an editorial [published](#) by The New York Times last month:

The C.I.A. and the committee's staff have conducted some 60 hours of negotiations on the agency's proposed changes to the report. Senator Dianne Feinstein, the California Democrat who is chairwoman of the Intelligence Committee, has expressed frustration with the delay. She has said she aims to have the committee vote in January to begin a formal declassification process at least for those sections of the report. That process could take weeks or it could take many months, depending on how long the C.I.A. drags it out.

Feinstein's office did not respond to queries as to whether the committee is still expected to vote this month on the CIA's proposed changes. But the Justice Department made it clear in court filings Friday that Feinstein's committee has the final say over the public release of the report, regardless of whether the CIA disagrees with its conclusions.

The Guardian [noted](#) in a report last month, however, that Feinstein and other committee members are "procedurally encumbered by the CIA": The committee is bound by rules that prevent it from making unilateral declassification decisions. Votes to compel public releases would involve the rest of the Senate, and the executive branch has broad leverage over declassification.

Since Congress is exempt from FOIA, and seeing no immediate resolution to the battle between the CIA and Senate Intelligence Committee, I filed a FOIA request with DOJ last August for a copy of the report's executive summary. My Washington, D.C.-based FOIA attorney, Jeffrey Light, filed the lawsuit after DOJ failed to comply with my request for expedited processing within 10 calendar days and we amended it after DOJ denied my request for the document. In its motion seeking dismissal of my case, the Justice Department claims that even though it obtained a copy of the report the Senate Intelligence Committee never intended for the document to become an "agency record," requiring the Justice Department to process the document under the FOIA.

"The SSCI Report was provided to the Department of Justice under strict controls, for the explicit purpose of conducting the information review described by Chairman Feinstein," states an eight-page declaration signed by Vanessa Brinkmann, a lawyer in the Justice Department's Office of Information Policy.

"Subject to Executive Branch classification review to protect against the public disclosure of classified information, SSCI has reserved complete control to make any public release of the document once Executive Branch comments are provided to SSCI for review." Brinkmann said the Senate Intelligence Committee "marked each paragraph of the Report itself with the appropriate classification markings, and most paragraphs are marked at the highest classification level contained in the document."

It's unclear if the Justice Department or the White House provided the committee with any comments or suggested edits to the document. Brinkmann also said that Feinstein only authorized eleven Justice Department officials to review the report. She noted "the first list of Department names was deemed by SSCI to be too broad; a more limited list was subsequently agreed to by the Committee, and a few additional names were later added to the list, and approved" by Feinstein. The Justice Department's copies of the report, Brinkmann said,

“Remain stored within Department Sensitive Compartmented Information Facilities (SCIFs), and can only be accessed and reviewed by those individuals previously approved by SSCI and who possess the requisite security clearances.”

Those factors led Brinkmann to conclude that the torture report “is a Congressional record, rather than an Executive Branch agency record, as SSCI maintains control over the report.”

“The controls that were placed on the Report by SSCI ... are clear, extensive, and indicate in no uncertain terms the Committee’s intent to retain full control over the distribution, dissemination, and ultimate disposition of the Report from the very outset,” Brinkmann said in her declaration.

I sent an email Friday evening to Brian Weiss, a spokesman for Feinstein, asking whether the senator, given her public statements in support of publicly releasing a portion of the report, would also support attempts to use FOIA to hasten the process to publicly release it. Additionally, I asked Weiss whether Feinstein believed Brinkmann’s interpretation of the document is correct: that it is indeed a congressional record and not an agency record. Weiss has not yet responded to my inquiry. Brinkmann attached two exhibits to her declaration that she said backs up her argument: a previously undisclosed letter, dated December 14, 2012, Feinstein sent to Obama a day after her committee voted to approve the report and a December 13, 2012 email written by David Grannis, the Senate Intelligence Committee’s staff director.

“I am ... sending copies of the report to appropriate Executive Branch agencies,” Feinstein wrote.

“I ask that the White House coordinate any response from these agencies and present any suggested edits or comments to the Committee by February 15, 2012. After consideration of these views, I intend to present this report with any accepted changes again to the Committee to consider how to handle any public release of the report, in full or otherwise ... Recognizing the many important issues before you, I urge you to review or get briefed on the report as soon as possible.”

In his email to CIA and ODNI officials, whose names the government redacted, Grannis wrote that the committee intended to share “a limited number of hard copies of the report with those agencies.” “However, by explicit instruction of [Feinstein] ... we will only provide copies of the report to specific individuals who are identified in advance to [Feinstein] through me,” he added.

Grannis’s email said the Intelligence Committee only permitted two people at ODNI to review the torture report. His email does not state how many CIA officials were authorized to access the report. Feinstein’s tight control over the torture report and restricting access to the document to just a handful of government officials seems to be a way to combat against unauthorized leaks.

What remains unclear is whether there are any markings on the torture report that specifically state it is a congressional record. That will be one of the questions that comes up in court in the months ahead when U.S. District Court Judge James E. Boasberg decides whether the document is or isn’t subject to FOIA. My response to the Justice Department’s

arguments are due in 30 days.

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