

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION, AMERICAN
CIVIL LIBERTIES UNION FOUNDATION, *and* CENTER
FOR CONSTITUTIONAL RIGHTS,

Plaintiffs,

-v-

U.S. DEPARTMENT OF JUSTICE *and* DEPARTMENT
OF DEFENSE,

Defendants.

25 Civ. 10189 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

This case involves a request under the Freedom of Information Act, 5 U.S.C. § 552, for the disclosure of a September 2025 memorandum (the “OLC Memo” or “Memo”) prepared by the Office of Legal Counsel of the United States Department of Justice.

On September 30, 2026, the Court resolved a subset of the issues presented by the parties’ cross-motions for summary judgment. Dkt. 72 at 65. As relevant here, the Court concluded that the existing record does not enable the Court to resolve the question whether the Memo is protected by the presidential communications privilege. *Id.* at 62. It thus directed defendants, by October 14, 2026, to:

1. “[I]n a sworn declaration or declarations, . . . identify, by name and title, every person who, from its creation in September 2025 to date, has had or been given access to the OLC Memo in whole or in part, the date(s) of such access, the purposes for and context in which this access was given, and the basis on which these factual determinations have been made.”
2. Submit “the Memo itself . . . for its *in camera* review.”

Id. at 62.

Today, defendants moved for reconsideration of the first directive and for an administrative stay of that directive pending resolution of their motion. Dkt. 76 at 1. Defendants do not seek reconsideration of the second directive, which remains in force. *See id.* at 1–2.

A brief administrative stay of the first directive is warranted to permit orderly consideration of the motion for reconsideration. Accordingly, defendants’ request for an administrative stay pending resolution of the motion is granted. Plaintiffs shall respond to the motion by October 16, 2026. Defendants may reply by October 21, 2026. Defendants are to be prepared, in the event that the Court denies the motion for reconsideration, to fully comply with the first directive within 14 days of such a denial.

For the avoidance of doubt, to the extent defendants appear to construe the September 30, 2026 Order to require defendants to disclose the requested information to plaintiffs or the public, *see id.* at 9 (referring to “discovery obligations”), that is wrong. Defendants may submit the declaration(s), in whole or in part, to the Court alone for its *in camera* review. *See* Dkt. 72 at 63 (“Defendants are authorized to make appropriate redactions in the declaration as publicly filed, while filing the unredacted declaration under seal.”).

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: October 8, 2026
New York, New York