



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

May 4, 2018

Ashley Gorski
Patrick Toomey
American Civil Liberties Union Foundation
agorski@aclu.edu

Re: FOIA No. FY13-051; ACLU v. DOJ; 2d Cir. No. 17-3399

Dear Ms. Gorski and Mr. Toomey:

This letter constitutes a supplemental response to the May 13, 2013 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC"), originally submitted by Alexander Abdo, seeking legal advice concerning electronic surveillance and Executive Order 12333. As you know, the request is also the subject of the above-captioned litigation, and the request was narrowed in certain ways pursuant to agreement.

On September 22, 2014, you were provided with a response enclosing three partially redacted records and informing you that seven more records were withheld in full. Following litigation in the District Court regarding all ten records, you have maintained interest in only two of those records, those identified to the court as OLC 8 and OLC 10. In light of the passage of time since that response, we have reevaluated the document identified as OLC 8 and as a matter of administrative discretion are waiving the applicable privileges and enclosing the document here, with material redacted pursuant to FOIA Exemptions One and Three, 5 U.S.C. § 552(b)(1), (b)(3). The withheld material is properly classified pursuant to Executive Order 13,526, § 1.4(c), and protected from disclosure by statute pursuant to 50 U.S.C. § 3605 and 50 U.S.C. § 3021(i)(1). We have determined that the document identified as OLC 10 is not appropriate for discretionary release.

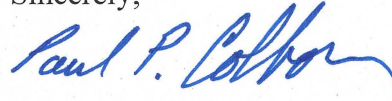
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact Assistant U.S. Attorney Jean-David Barnea, at 212-637-2679, or by email at Jean-David.Barnea@usdoj.gov, or Assistant U.S. Attorney David S. Jones, at 212-637-2739 or David.Jones6@usdoj.gov, for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510,

8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Although your request is the subject of ongoing litigation, and administrative appeals are not ordinarily acted upon in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy ("OIP"), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Paul P. Colborn
Special Counsel

Enclosure

cc: Jean-David Barnea
David S. Jones
Assistant United States Attorneys
Southern District of New York