

# EXHIBIT A

RON WYDEN  
OREGON

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WASHINGTON, DC 20510  
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## United States Senate

WASHINGTON, DC 20510-3703

July 23, 2012

### COMMITTEES:

COMMITTEE ON THE BUDGET  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
SPECIAL COMMITTEE ON AGING  
SELECT COMMITTEE ON INTELLIGENCE  
COMMITTEE ON FINANCE

The Honorable Eric Holder  
Attorney General  
United States Department of Justice  
Washington, D.C. 20530

Dear Attorney General Holder:

On June 10, 2010, Senator Feingold and I wrote to you regarding two classified opinions from the Justice Department's Office of Legal Counsel, including an opinion that interprets common commercial service agreements. We asked you to declassify both of these opinions, and we urged that the opinion pertaining to commercial service agreements be revoked. The Department of Justice has not yet provided a written response to this request.

The opinion regarding commercial service agreements has direct relevance to the ongoing debate in Congress regarding cybersecurity legislation. In my view, it will be difficult for Congress to have a fully informed debate on cybersecurity legislation if it does not understand how these agreements have been secretly interpreted by the executive branch.

I continue to believe that this opinion is inconsistent with the public's understanding of the law and that it should be withdrawn. However, I am concerned that simply withdrawing this opinion will not necessarily prevent its interpretation of commercial service agreements from being asserted again in the future. Therefore, I believe it is important to declassify this opinion and release it to the public, so that anyone who is a party to one of these agreements can consider whether they should be revised or modified. For these reasons, I renew my request that you both revoke and declassify this opinion.

Thank you for your attention to this matter. I look forward to your response.

Sincerely,



Ron Wyden  
United States Senator

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# EXHIBIT B

RON WYDEN  
OREGON

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United States Senate  
WASHINGTON, DC 20510-3703  
January 14, 2013

COMMITTEES:  
COMMITTEE ON THE BUDGET  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
SPECIAL COMMITTEE ON AGING  
SELECT COMMITTEE ON INTELLIGENCE  
COMMITTEE ON FINANCE

John O. Brennan  
Assistant to the President for Homeland Security and Counterterrorism  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. Brennan:

Congratulations on your nomination to be the next Director of the Central Intelligence Agency. I appreciated the opportunity to speak to you last week, and I look forward to meeting with you prior to your hearing to continue our discussion in more detail. I would also appreciate your help in providing me with responses to a number of questions that I and others have asked on topics relevant to your nomination.

First, as you may be aware, I have asked repeatedly over the past two years to see the secret legal opinions that contain the executive branch's understanding of the President's authority to kill American citizens in the course of counterterrorism operations. Senior intelligence officials have said publicly that they have the authority to knowingly use lethal force against Americans in the course of counterterrorism operations, and have indicated that there are secret legal opinions issued by the Justice Department's Office of Legal Counsel that explain the basis for this authority. I have asked repeatedly to see these opinions, and I have been provided with some relevant information on the topic, but I have yet to see the opinions themselves.

Both you and the Attorney General gave public speeches on this topic early last year, and these speeches were a welcome step in the direction of more transparency and openness, but as I noted at the time, these speeches left a large number of important questions unanswered. A federal judge recently noted in a Freedom of Information Act case that "no lawyer worth his salt would equate Mr. Holder's statements with the sort of robust analysis that one finds in a properly constructed legal opinion," and I assume that Attorney General Holder would agree that this was not his intent.

As I have said before, this situation is unacceptable. For the executive branch to claim that intelligence agencies have the authority to knowingly kill American citizens but refuse to provide Congress with any and all legal opinions that explain the executive branch's understanding of this authority represents an alarming and indefensible assertion of executive prerogative. There are clearly some circumstances in which the President has the authority to use lethal force against Americans who have taken up arms against the United States, just as President Lincoln had the authority to order Union troops to take military action against Confederate forces during the Civil War. But it is critically

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important for Congress and the American public to have full knowledge of how the executive branch understands the limits and boundaries of this authority, so that Congress and the public can decide whether this authority has been properly defined, and whether the President's power to deliberately kill American citizens is subject to appropriate limitations. I have an obligation from my oath of office to review any classified legal opinions that lay out the federal government's official views on this issue, and I will not be satisfied until I have received them. So, please ensure that these opinions are provided to me, along with the other members of the Senate Intelligence Committee and our cleared staff, and that we receive written assurances that future legal opinions on this topic will also be provided.

Second, as you may be aware, my staff and I have been asking for over a year for the complete list of countries in which the intelligence community has used its lethal counterterrorism authorities. To my surprise and dismay, the intelligence community has declined to provide me with the complete list. In my judgment, every member of the Senate Intelligence Committee should know (or be able to find out) all of the countries where United States intelligence agencies have killed or attempted to kill people. The fact that this request was denied reflects poorly on the Obama Administration's commitment to cooperation with congressional oversight. So, please ensure that the full list of countries is provided to me, along with the other members of the Senate Intelligence Committee and our cleared staff.

Third, over two years ago Senator Feingold and I wrote to the Attorney General regarding two classified opinions from the Justice Department's Office of Legal Counsel, including an opinion that interprets common commercial service agreements. We asked the Attorney General to declassify both of these opinions, and to revoke the opinion pertaining to commercial service agreements. Last summer, I repeated this request, and noted that the opinion regarding commercial service agreements has direct relevance to ongoing congressional debates regarding cybersecurity legislation. The Justice Department still has not responded to these letters. Please ensure that I receive a response, so that I can review this response as I consider your nomination.

Fourth, in December 2010 Senator Feingold and I wrote a classified letter to the Attorney General regarding the interpretation of a particular statute. Early last year, I repeated my request for a response to this letter. The Justice Department still has not responded to these letters. Please ensure that I receive a response, so that I can review this response as I consider your nomination.


I recognize that these requests encompass a substantial amount of information. I would note, however, that all of these requests date back more than one year, and all but one of them date back more than two years. Taken together, these failures to respond start to form a pattern in which the executive branch is evading congressional oversight by simply not responding to congressional requests for information. I ask that you help correct this problem by ensuring that I receive prompt, substantive responses to all of these requests.

I am also attaching a number of more specific questions about the executive branch's legal analysis regarding the killing of American citizens. I hope that these questions are directly addressed in the secret legal opinions, but to the extent that they are not, please ensure that I receive answers to them. I would also urge the executive branch to make all of these answers available to the public as well. As I have noted before, individual Americans generally do not expect to know every detail about sensitive military and intelligence operations, but voters absolutely have a need and a right to understand the boundaries of what is and is not permitted under the law, so that they can debate what should and should not be legal and ratify or reject decisions that elected officials make on their behalf. And I believe that every American has the right to know when their government believes it is allowed to kill them.

Finally, as you know, the Senate Intelligence Committee recently completed a 6000 page report on the use of torture and coercive interrogations by the CIA. Please be prepared to discuss the major findings and conclusions of this report. I am particularly interested in getting your reaction to the report's revelation that the CIA repeatedly provided inaccurate information about its interrogation program to the White House, the Justice Department, and Congress, and your view on what steps should be taken to correct inaccurate statements that were made to the public.

Thank you for your attention to these matters. I look forward to discussing these issues with you further.

Sincerely,



Ron Wyden  
United States Senator

## Attachment: Specific Questions Regarding the President's Authority to Use Lethal Force Against Americans

- How much evidence does the President need to determine that a particular American can be lawfully killed? Senior Administration officials have stated that the individual must pose a “significant” or “imminent” threat, but how much evidence is required to determine that this is the case?
- Does the President have to provide individual Americans with the opportunity to surrender before killing them? Does this obligation change if the President’s determination that a particular American is a valid target has not been publicly announced or publicly reported?
- Senior officials have stated that the use of lethal force is permitted in situations where capture is not feasible. What standard is used to determine whether it is feasible to capture a particular American?
- Is the legal basis for the intelligence community’s lethal counterterrorism operations the 2001 Congressional Authorization for the Use of Military Force, or the President’s Commander-in-Chief authority?
- Are there any geographic limitations on the intelligence community’s authority to use lethal force against Americans? Do any intelligence agencies have the authority to carry out lethal operations inside the United States?
- The United States Constitution states that no American may “be deprived of life, liberty, or property, without due process of law.” The Attorney General’s 2012 speech at Northwestern University, which addressed the use of lethal force, referred to past Supreme Court cases that have applied this protection, and made apparent references to three cases in particular (*Ex Parte Quirin*, *Hamdi v. Rumsfeld*, and *Mathews v. Eldridge*). However, none of these cases specifically addresses the government’s ability to kill Americans without trial. Given this distinction, what is the rationale for applying these particular decisions to the question of when the President may legally kill an American?
- The Attorney General’s speech also stated that “Where national security operations are at stake, due process takes into account the realities of combat.” This is another apparent reference to the Supreme Court’s *Hamdi v. Rumsfeld* decision. But in the *Hamdi* case the Supreme Court appears to have used a different, more traditional definition of “combat” – the *Hamdi* case involved the rights of an American who had been captured in Afghanistan, but the Attorney General noted that his speech referred to the use of lethal force “outside the hot battlefield of Afghanistan.” What impact, if any, does this broader definition of “combat” have on the applicable legal principles?

# EXHIBIT C



**UNCLASSIFIED**

**Questions for the Record from Senator Ron Wyden**

**September 26, 2013**

- Section 702 of FISA was intended to give the government new authority to target foreigners, but the executive branch has argued that the NSA should have the authority to deliberately go through communications collected under section 702 and conduct warrantless searches for the communications of individual Americans. Has the NSA ever conducted any of these warrantless searches for individual Americans' communications?
- How long has the NSA used Patriot Act authorities to engage in the bulk collection of Americans' records? And was this collection underway when Congress was voting to reauthorize the Patriot Act in late 2005 and early 2006?
- Over the last few years I have written multiple letters to Attorney General Holder regarding a particular opinion from the Justice Department's Office of Legal Counsel that interprets common commercial service agreements. I have said that I believe that this opinion is inconsistent with the public's understanding of the law, and that it needs to be both withdrawn and declassified. Despite multiple follow-ups from my staff I still have not received a response to any of these letters. Can you tell me when I can expect a response?
- One of the recurring debates about section 702 of FISA is whether the law should include stronger protections against reverse targeting, which is the prohibited practice of trying to spy on Americans by collecting the communications of foreigners that those Americans are believed to be talking to. Since the FISA Amendments Act was passed in 2008, have there been any instances of reverse targeting by NSA analysts?

# EXHIBIT D

# United States Senate

WASHINGTON, DC 20510-3703

February 3, 2015

**COMMITTEES:**

COMMITTEE ON THE BUDGET  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
SPECIAL COMMITTEE ON AGING  
SELECT COMMITTEE ON INTELLIGENCE  
COMMITTEE ON FINANCE

The Honorable Eric Holder  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Holder:

As you approach the end of your service as Attorney General, I would like to thank you for your years of service to our country. Your efforts to defend and expand civil rights and reform the criminal justice system will leave a legacy of which anyone would be proud. Before you depart office, I would also like to raise a number of outstanding national security issues which I hope you will be able to help address before your tenure concludes.

You and I have discussed my concerns about government agencies' reliance on secret interpretations of the law. This problem is particularly pronounced in the area of national security, and as I and others predicted it has led to an erosion of public confidence that has made it more difficult for intelligence and law enforcement agencies to do their jobs. The key to restoring public trust is increased openness about the government's interpretation of its own authorities, since this is an essential part of ensuring proper oversight by the American people and their elected representatives. With that in mind, I have four requests.

First, one area of particular importance is the President's authority to use military force outside of declared war zones, and particularly his authority to take lethal action against specific American citizens. In November 2013, Senators Mark Udall and Martin Heinrich and I wrote you a letter asking a number of questions about the limits and boundaries of this authority, and we have not yet received a response to this letter. I ask that you help ensure that we receive a substantive response to the questions in that letter.

Second, I have written to you on multiple occasions about a particular legal opinion from the Justice Department's Office of Legal Counsel (OLC) interpreting common commercial service agreements. As I have said, I believe that this opinion is inconsistent with the public's understanding of the law, and should be withdrawn. I also believe that this opinion should be declassified and released to the public, so that anyone who is a party to one of these agreements can consider whether their agreement should be revised or modified.

In her December 2013 confirmation hearing to be the General Counsel of the CIA, the deputy head of the OLC stated that she would not rely on this opinion today. While I appreciate her restraint, I believe the wisest course of action would be for you to withdraw and declassify this opinion, so that other government officials are not tempted to rely on it in the future. I urge you

to take these actions as soon as practicable, since I believe it will be difficult for Congress to have a fully informed debate on cybersecurity legislation if it does not understand how these agreements have been interpreted by the Executive Branch.

Third, I have asked repeatedly over the past several years for the Department of Justice's opinion on the lawfulness of particular conduct that involved an Executive Branch agency. I finally received a response to these inquiries in June 2014; however the response simply stated that the Department of Justice was not statutorily obligated to respond to my question. I suppose there may not be a particular law that requires the Department to answer this question, but this response is nonetheless clearly troubling. My question was not hypothetical, and I did not ask to see any pre-decisional legal advice – I simply asked whether the Justice Department believed that the specific actions taken in this case were legal. It would be reasonable for the Department to say “Yes, this conduct was lawful” and explain why, or to say “No, this appears to have been unlawful” and take appropriate follow-up action. Refusing to answer at all is highly problematic and clearly undermines effective oversight of government agencies, especially since the actions in question were carried out in secret. For these reasons, I renew my request for an answer to this question, and I hope that you can help provide one.

Finally, as you are aware, the Senate Select Committee on Intelligence recently released the declassified executive summary of the committee's bipartisan report on the use of torture by the CIA, and provided copies of the full classified report to several Executive Branch agencies, including the Department of Justice. During your tenure you have been a strong voice against the use of torture, and you have taken some important actions to ensure that it is not used again. This is why it was very surprising to learn that no one in the Justice Department has read the full classified version of the torture report, and that in fact the report has been locked away in a safe instead of being provided to appropriate officials.

This report provides substantial detail about how the Department of Justice came to reach flawed legal conclusions based on inaccurate information provided by CIA officials. It will be much more difficult to prevent these mistakes from being repeated if no one at the Justice Department understands how they happened in the first place. I strongly encourage you to disseminate this report to appropriate Justice Department personnel before you leave office, as there seems to be no valid reason why this cannot be done immediately.

Thank you for your attention to these matters. Your help in resolving these issues will be much appreciated.

Sincerely,



Ron Wyden  
U.S. Senator

# EXHIBIT E

RON WYDEN  
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## United States Senate

WASHINGTON, DC 20510-3703

March 24, 2016

### COMMITTEES:

COMMITTEE ON THE BUDGET  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
SPECIAL COMMITTEE ON AGING  
SELECT COMMITTEE ON INTELLIGENCE  
COMMITTEE ON FINANCE

The Honorable Loretta Lynch  
Attorney General  
United States Department of Justice  
Washington, D.C. 20530

Dear Attorney General Lynch:

As you may be aware, I have previously written to the Department of Justice regarding a particular secret legal opinion from the DOJ's Office of Legal Counsel, which has now been the subject of a recent suit under the Freedom of Information Act. This opinion remains classified, but it pertains to common commercial service agreements. The DOJ's motion to dismiss the now-pending FOIA case also noted that this opinion was signed by Deputy Assistant Attorney General John Yoo and dated March 30, 2003.

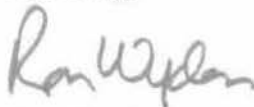
As I have noted in previous correspondence with the DOJ, I believe that this opinion is inconsistent with the public's understanding of the law, and should be withdrawn. I also believe that this opinion should be declassified and released to the public, so that anyone who is a party to one of these agreements can consider whether their agreement should be revised or modified. For these reasons, I encourage you to direct DOJ officials to comply with the pending FOIA request.

Additionally, I am greatly concerned that the DOJ's March 7, 2016, memorandum of law contains a key assertion which is inaccurate. This assertion appears to be central to the DOJ's legal arguments, and I would urge you to take action to ensure that this error is corrected.

I am enclosing a classified attachment which discusses this inaccurate assertion in more detail. If you or your staff have any difficulty obtaining the documents referenced in this attachment, please do not hesitate to let me know.

Thank you for your attention to this matter.

Sincerely,



Ron Wyden  
United States Senator

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# EXHIBIT F



March 10, 2015

**VIA FACSIMILE**

Department of Justice  
FOIA/PA Mail Referral Unit  
Room 115, LOC Building  
Washington, DC 20530-0001  
Fax: (301) 341-0772 fax  
Email: [mrfoia.requests@usdoj.gov](mailto:mrfoia.requests@usdoj.gov)

Federal Bureau of Investigation  
Attn: FOI/PA Request  
Record/Information Dissemination Section  
170 Marcel Drive  
Winchester, VA 22602-4843  
Fax: (540) 868-4391

Office of Legal Counsel  
Department of Justice  
Melissa Kassier  
Room 5511, 950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001  
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National Security Agency  
NSA FOIA Requester Service Center  
POC: Cindy Blacker  
NSA FOIA Requester Service Center/DJ4  
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Fax: (301) 688-4762  
Email: [foiarsc@nsa.gov](mailto:foiarsc@nsa.gov)

**Re: Freedom of Information Act Request**

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 the American Civil Liberties Union and the American Civil Liberties Union



Foundation (collectively “ACLU”)<sup>1</sup> request the legal opinion from the Justice Department’s Office of Legal Counsel interpreting “common commercial service agreements,” as referenced in Senator Ron Wyden’s letter to Attorney General Eric Holder, dated February 3, 2015.<sup>2</sup>

### **I. Background**

On February 3, 2015, Senator Ron Wyden sent a letter to Attorney General Eric Holder requesting a legal opinion from the Justice Department’s Office of Legal Counsel (“OLC”) interpreting “common commercial service agreements.” According to Senator Wyden, the opinion in question “is inconsistent with the public’s current understanding of the law” and should be “declassified and released to the public, so that anyone who is a party to one of these agreements can consider whether their agreement should be revised or modified.”<sup>3</sup> Senator Wyden went on to say that it would “be difficult for Congress to have a fully informed debate on cybersecurity legislation if it does not understand how these agreements have been interpreted by the Executive Branch.”<sup>4</sup>

Senator Wyden’s warning comes at a critical legislative moment. For the past few years, the executive branch—and the intelligence agencies in particular—have called for the enactment of cybersecurity legislation that would broadly immunize companies for their sharing of information with the government. Congress has considered two legislative proposals in particular—the Cyber Intelligence Sharing and Protection Act (“CISPA”)<sup>5</sup>

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<sup>1</sup> The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil-liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate, 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil-rights and civil-liberties cases, educates the public about civil-rights and civil-liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators.

<sup>2</sup> Letter from U.S. Senator Ron Wyden to U.S. Att’y General Eric H. Holder, Jr. (Feb. 3, 2015), *available at* <http://big.assets.huffingtonpost.com/WydenDOJ.PDF>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Cyber Intelligence Sharing and Protection Act of 2014, H.R. 624, 113th Cong. § 1 (2014), <https://www.congress.gov/bill/113th-congress/house-bill/624>.

and the Cybersecurity Information Sharing Act (“CISA”)<sup>6</sup>—which would have granted communications service providers broad legal immunity and permitted them to share their customers’ sensitive information with the government.<sup>7</sup>

The legislative fight over cybersecurity is far from over. In his 2015 State of the Union Address, President Obama announced that he would pursue further cybersecurity legislation in the coming year.<sup>8</sup> Before this legislation is enacted, it is critically important that the public and Congress understand how the executive branch works within the current law to address the risks of cyberattacks.

## II. Requested Records

The ACLU seeks disclosure of the legal opinion from the Justice Department’s Office of Legal Counsel interpreting common commercial service agreements, as referenced in Senator Wyden’s letter to Attorney General Holder, dated February 3, 2015.

## III. Limitation of Processing Fees

The ACLU requests a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .”), and 28 C.F.R. §§ 16.11(c)(1)(i), 16.11(d)(1) (search and review fees shall not be charged to “representatives of the news media.”). As a representative of the news media, the ACLU fits within this statutory and regulatory mandate. Fees associated with the processing of this request should, therefore, be limited accordingly.

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<sup>6</sup> Cybersecurity Information Sharing Act of 2014, S.2588, 113th Cong. § 1 (2014), <https://www.congress.gov/bill/113th-congress/senate-bill/2588>.

<sup>7</sup> Gregory S. McNeal, *Controversial Cybersecurity Bill Known as CISA Advances Out of Senate Committee*, Forbes, July 9, 2014, <http://www.forbes.com/sites/gregorymcneal/2014/07/09/controversial-cybersecurity-bill-known-as-cisa-advances-out-of-senate-committee/>

<sup>8</sup> Press Release, *Securing Cyberspace – President Obama Announces New Cybersecurity Legislative Proposal and Other Cybersecurity Efforts*, The White House (Jan. 13, 2015), <http://www.whitehouse.gov/the-press-office/2015/01/13/securing-cyberspace-president-obama-announces-new-cybersecurity-legislat>; Phillip Swartz, *Obama Budget Dedicates \$14B to Cybersecurity*, Wash. Times (Feb. 2, 2015), <http://www.washingtontimes.com/news/2015/feb/2/obama-budget-dedicat-es-14b-to-cybersecurity/>.

The ACLU meets the definition of a representative of the news media because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

The ACLU is a national organization dedicated to the defense of civil rights and civil liberties. Dissemination of information to the public is a critical and substantial component of the ACLU’s mission and work. Specifically, the ACLU publishes a continuously updated blog, newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly disseminated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee through its public education department and web site. The ACLU web site addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The website specifically features information obtained through FOIA.<sup>9</sup> For example, the ACLU’s “Accountability for Torture FOIA” webpage<sup>10</sup> contains commentary about the ACLU’s FOIA request for documents related to the treatment of detainees, press releases, analysis of the FOIA documents disclosed, and an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA. *See Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch to be a news-media requester because it posted documents obtained through FOIA on its website).

The ACLU maintains and publishes a widely read blog specifically dedicated to covering issues involving “civil liberties in the digital age,”<sup>11</sup> through which the organization disseminates news and commentary about FOIA requests similar to this one.<sup>12</sup> The ACLU publishes a newsletter at least twice a year that reports on and analyzes civil-liberties-related current events. The newsletter is distributed to approximately 450,000 people. The

<sup>9</sup> *See, e.g.*, <https://www.aclu.org/national-security/warrantless-electronic-communications-foia-requests>; <https://www.aclu.org/technology-and-liberty/foia-request-justice-department-policy-memos-gps-location-tracking>; <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.thetorturedatabase.org>; <http://www.aclu.org/mappingthefbi>.

<sup>10</sup> <https://www.aclu.org/accountability-torture>

<sup>11</sup> <https://www.aclu.org/blog/free-future>.

<sup>12</sup> *See, e.g.*, Nathan Freed Wessler, *New Documents Suggest IRS Reads Emails Without a Warrant*, Free Future (Apr. 10, 2013), <https://www.aclu.org/blog/technology-and-liberty-national-security/new-documents-suggest-irs-reads-emails-without-warrant>.

ACLU also publishes a bi-weekly electronic newsletter, which is distributed to approximately 300,000 subscribers (both ACLU members and non-members) by e-mail. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. *Cf. Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding the Electronic Privacy Information Center to be a representative of the news media under Department of Defense regulations because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements.”).

The ACLU also regularly publishes books,<sup>13</sup> “know your rights” publications,<sup>14</sup> fact sheets,<sup>15</sup> and educational brochures and pamphlets designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These materials are specifically designed to be educational and widely disseminated to the public. *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding the Electronic Privacy Information Center to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties).

<sup>13</sup> Some of the recent books published by the ACLU include: Susan N. Herman, *Taking Liberties: The War on Terror and the Erosion of American Democracy* (Oxford Univ. Press 2011); Lenora M. Lapidus, Emily J. Martin & Namita Luthra, *The Rights of Women: The Authoritative ACLU Guide to Women's Rights* (NYU Press 4th ed. 2009); Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007) (a book based on documents obtained through FOIA).

<sup>14</sup> Some of the more recent “know your rights” publications include: ACLU, *Know Your Rights: Pregnant, Post-Partum & Breastfeeding Workers* (Oct. 2013), available at [https://www.aclu.org/files/assets/kyr\\_pregant\\_breastfeeding.pdf](https://www.aclu.org/files/assets/kyr_pregant_breastfeeding.pdf); ACLU, *Know Your Rights: Demonstrations and Protests* (Nov. 2011), available at [http://www.aclu.org/files/assets/kyr\\_protests.pdf](http://www.aclu.org/files/assets/kyr_protests.pdf); ACLU, *Gender-Based Violence & Harassment: Your School, Your Rights* (May 2011), available at [http://www.aclu.org/files/assets/genderbasedviolence\\_factsheet\\_0.pdf](http://www.aclu.org/files/assets/genderbasedviolence_factsheet_0.pdf); ACLU, *Know Your Rights: What to Do If You're Stopped by Police, Immigration Agents or the FBI* (June 2010), available at [http://www.aclu.org/files/assets/bustcard\\_eng\\_20100630.pdf](http://www.aclu.org/files/assets/bustcard_eng_20100630.pdf).

<sup>15</sup> *See, e.g.*, ACLU, *Military Abortion Ban in Cases of Rape and Incest (Factsheet)* (2011), available at <http://www.aclu.org/reproductive-freedom/military-abortion-ban-cases-rape-and-incest-factsheet>; ACLU, *The Facts About “The No Taxpayer Funding For Abortion Act”* (2011), available at [http://www.aclu.org/files/assets/Chris\\_Smith\\_bill-\\_ACLU\\_Fact\\_Sheet-\\_UPDATED-4-30-11.pdf](http://www.aclu.org/files/assets/Chris_Smith_bill-_ACLU_Fact_Sheet-_UPDATED-4-30-11.pdf).

Depending on the results of this request, the ACLU plans to “disseminate the information” it receives “among the public” through these kinds of publications in these kinds of channels. The ACLU is therefore a news media entity.

Disclosure is not in the ACLU’s commercial interest. The ACLU is a “non-profit, non-partisan, public interest organization.” *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation and internal quotations omitted)). Any information disclosed by the ACLU as a result of this FOIA will be made available to the public at no cost.

#### **IV. Waiver of All Costs**

The ACLU additionally requests a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”), 28 C.F.R. §§ 16.11(4)(k)(i) and 32 C.F.R. § 1900.13(b) (Records will be furnished without charge or at a reduced rate whenever the agency determines “that it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.”).

Disclosure of the requested information will help members of the public understand how the Executive Branch works within the current law to address the risks of cyberattacks. Cybersecurity legislation currently being considered would come at a cost to the personal privacy of all Americans. Without the information contained in the requested legal opinion, Congress will not have the information necessary to debate, enact, and evaluate the privacy concerns associated with any proposed cybersecurity legislation. The requested information will “contribute significantly to public understanding” of the Executive Branch’s interpretation of common commercial service agreements that are a critical component to any such legislation. 5 U.S.C. § 552(a)(4)(A)(iii).

As a nonprofit 501(c)(3) organization and “representative of the news media” as discussed in Section III, the ACLU is well-situated to disseminate information it gains from this request to the general public and to groups that protect constitutional rights. Because the ACLU meets the test

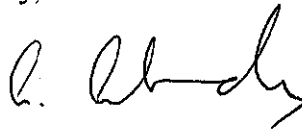
for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.<sup>16</sup>

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Alex Abdo  
ACLU  
125 Broad St., 17th Floor  
New York, NY 10004

If you have questions, please contact me at aabdo@aclu.org or (212) 549-2517.

Sincerely,



Alex Abdo

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

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<sup>16</sup> For example, in May 2012, the Bureau of Prisons granted a fee waiver to the ACLU for a FOIA request seeking documents concerning isolated confinement of prisoners in BOP custody. In March 2012, the Department of Justice Criminal Division granted a fee waiver to the ACLU for a FOIA request seeking records about the government's access to the contents of individuals' private electronic communications. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations.

# EXHIBIT G



**U.S. Department of Justice**

Office of Legal Counsel

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*Washington, D.C. 20530*

March 16, 2015

Alex Abdo  
American Civil Liberties Union  
American Civil Liberties Union Foundation  
aabdo@aclu.org

**Re: FOIA Tracking No. FY15-041**

Dear Mr. Abdo:

This letter responds to your March 10, 2015 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC") in which you sought "the legal opinion from [OLC] interpreting 'common commercial service agreements,' as referenced in Senator Ron Wyden's letter to Attorney General Eric Holder, dated February 3, 2015."

Our office has located the memorandum you have requested. We are withholding the document pursuant to FOIA Exemption Five, 5 U.S.C. § 552(b)(5), because it is protected by the deliberative process and attorney-client privileges. For your information, the withheld record also is classified, and it may also be exempt under FOIA Exemption Three, *id.* § 552(b)(3).

You have the right to file an administrative appeal. You must submit any administrative appeal within 60 days of the date of this letter by mail to the Office of Information Policy, United States Department of Justice, 1425 New York Avenue, N.W., Suite 11050, Washington, D.C. 20530; by fax at (202) 514-1009; or through OIP's e-portal at <http://www.justice.gov/oip/oip-request.html>. Both the letter and the envelope, or the fax, should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink that reads "Paul P. Colborn".

Paul P. Colborn  
Special Counsel



# EXHIBIT H



May 14, 2015

via facsimile

Office of Information Policy  
United States Department of Justice  
1425 New York Avenue, N.W., Suite 11050  
Washington, D.C. 20530  
Fax: (202) 514-1009

**Re: Freedom of Information Act Appeal  
FY15-041**

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
NATIONAL OFFICE  
125 BROAD STREET, 19TH FL.  
NEW YORK, NY 10004-2400  
77212 549 2500  
WWW.ACLU.ORG

To whom it may concern:

The American Civil Liberties Union writes to appeal the denial of its Freedom of Information Act request for the Office of Legal Counsel's legal memorandum interpreting "common commercial service agreements," which was referred to in a letter sent by Senator Ron Wyden to Attorney General Eric Holder on February 3, 2015. A copy of the request, dated March 10, 2015, is attached as Exhibit A. A copy of the OLC's response, dated March 16, 2015, is attached as Exhibit B.

The OLC located the memorandum but withheld it under FOIA Exemption Five, 5 U.S.C. § 552(b)(5), based on its claim that the memorandum is "protected by the deliberative process and attorney-client privileges."

The OLC did not provide any explanation of how the document satisfies the prerequisites of either of those privileges. There is, in any event, a compelling reason to believe that the memorandum at one point reflected official administration policy rather than merely deliberative analysis or advice. In his letter to the Attorney General, Senator Wyden describes the memorandum in a way that suggests it reflected the administration's "understanding of the law" and the manner in which the administration understood its "common commercial services agreements" with private companies. In other words, it appears that the memorandum was operative, not merely advisory.

Moreover, in Senate testimony responding to questions from Senator Wyden, the deputy head of the OLC, Caroline Krass, stated that the OLC would not rely on the memorandum today, based on its age and other factors.<sup>1</sup> The implication of her statement is that the OLC did in fact rely upon the memorandum at one point.

In its denial, the OLC also gestured to the possibility that the memorandum is classified and perhaps withholdable under Exemptions 1 and 3. It is unclear whether the OLC has in fact invoked those exemptions. To the extent it has, we appeal those determinations as well.

Finally, even if the memorandum is technically withholdable, the agency should consider a discretionary release given the importance of the memorandum to the ongoing legislative debate about cybersecurity.

If you have questions, please contact me at [aabdo@aclu.org](mailto:aabdo@aclu.org) or (212) 549-2517.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Sincerely,



Alex Abdo

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<sup>1</sup> *Nomination of Caroline Diane Krass to be General Counsel of the Central Intelligence Agency: Hearing before the Senate Intelligence Committee*, 113 Cong. (2013), available at <http://www.senate.gov/isvp/?type=live&comm=intel&filename=intel121713&stt=27:15> (1:24 - 1:25)

# EXHIBIT I

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER,	)	
	)	
Plaintiff,	)	Civil No. 06-00096 (HHK)
	)	
v.	)	
	)	
DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
<hr/>		
AMERICAN CIVIL LIBERTIES UNION, et al.,	)	
	)	Civil No. 06-00214 (HHK)
Plaintiffs,	)	
	)	
v.	)	
	)	
DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
<hr/>		

**REDACTED DECLARATION OF STEVEN G. BRADBURY**

I, Steven G. Bradbury, declare as follows:

1. (U) I am the Acting Assistant Attorney General for the Office of Legal Counsel (“OLC” or “Office”) of the United States Department of Justice (“DOJ” or “Department”). OLC is responsible for assisting the Attorney General in the discharge of his responsibilities as legal adviser to the President and to the heads of the Executive Branch departments and agencies. For the most part, OLC performs a purely advisory role, providing legal advice and assistance. In my capacity as the Acting Assistant Attorney General for OLC, I supervise all operations of OLC, including its response to requests under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

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2. (U) The information contained in this declaration is based on my personal knowledge, information and belief, and on information provided to me in my official capacity as Acting Assistant Attorney General for OLC.

3. (U) I am aware of the December 16, 2005, FOIA request made by the Electronic Privacy Information Center ("EPIC"), the December 20, 2005, FOIA request made by the American Civil Liberties Union ("ACLU"), and the December 21, 2005, FOIA request made by the National Security Archive Fund ("NSAF"), that are the subjects of this litigation. OLC received the EPIC request on December 16, 2005; it received the ACLU request, which was routed through the Justice Management Division, on February 27, 2006, and it received the NSAF request on December 22, 2005. Copies of those requests as received by OLC are attached hereto as Exs. A, B, & C, respectively.

4. (U) Each of plaintiffs' FOIA requests seeks information regarding the Terrorist Surveillance Program ("TSP"), a highly classified signals intelligence program which was acknowledged by the President in his radio address of December 17, 2005. Since assuming the position of Acting Assistant Attorney General for OLC on February 4, 2005, my duties have required me to become familiar with that program.

5. **REDACTED**

6. (U) In particular, as a result of being entrusted with such highly classified information, I have been informed as to the harms that are likely to result should information regarding the Program be disclosed without proper authorization and have been instructed as to the proper procedures to follow to ensure that classified information is not so disclosed. OLC has followed these procedures without exception.

7. (U) I provide this declaration to address OLC's responses to the three FOIA requests made by EPIC, the ACLU, and the NSAF, and to provide the justifications for OLC's determination

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that certain responsive documents must be withheld as exempt from disclosure under FOIA. In making its withholding determinations, OLC and those acting on its behalf have consulted with the National Security Agency (“NSA”), the Office of the Director of National Intelligence (“DNI”), and other federal agencies and officials regarding the harm to national security that would result from disclosure of the documents identified in this declaration. In particular, I have reviewed the Declaration of John D. Negroponte, Director of National Intelligence (“DNI Decl.”), attached hereto as Ex. D, provided in support of withholdings in all TSP-related FOIA matters, and have relied upon his expert assessment of the harm to the national intelligence program that would result from disclosure of documents related to the TSP.

**(U) OLC’S RESPONSE TO PLAINTIFFS’ FOIA REQUESTS**

8. (U) On March 8, 2006, OLC made its initial response to EPIC and ACLU, indicating that a search of OLC’s unclassified files had been completed and that documents responsive to both requests had been identified. At that time, OLC released five documents, totaling 63 pages, and indicated that additional documents were being withheld pursuant to the exemptions recognized by FOIA. Exs. E & F.

9. (U) On that same date, OLC informed plaintiff NSAF that no documents responsive to its request were located in OLC’s unclassified files. Ex. G.

10. (U) On March 20, 2006, OLC provided EPIC and ACLU with a preliminary index of the documents withheld from the unclassified files. That index identified 290 documents, totaling approximately 4740 pages, which were withheld pursuant to FOIA’s Exemption Five, 5 U.S.C. § 552 (b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process, attorney-client, attorney work product, and presidential communications privileges. It is my understanding that plaintiffs subsequently advised counsel for the Department

that plaintiffs did not intend to challenge OLC's withholding of these documents, and thus, they are not further discussed herein.

11. (U) On July 21, 2006, OLC notified EPIC and ACLU that the search of its classified files had been completed, resulting in the identification of 158 records or categories of records responsive to plaintiffs' requests. Ex. H & I. That letter advised EPIC and ACLU that a certain number of these records or categories of records were referred to other agencies or to other components of the Department of Justice for processing. OLC further advised EPIC and ACLU that the remaining records were being withheld as exempt from disclosure under FOIA Exemption One, 5 U.S.C. § 552(b)(1), which protects documents that are currently and properly classified pursuant to Executive Order, and FOIA Exemption Three, 5 U.S.C. § 552(b)(3), which protects documents that are exempted from disclosure under FOIA by federal statute, as well as FOIA Exemption Five, 5 U.S.C. § 552(b)(5).<sup>1</sup> Id.

12. (U) On July 21, 2006, OLC also provided ACLU with a response with respect to 30 records referred to OLC for processing by the Office of the Deputy Attorney General ("ODAG"). Ex. I at 2. These records, twenty-one of which were duplicative of documents already identified by OLC, were also withheld as exempt from disclosure under FOIA Exemptions One, Three, and Five. Id.

13. (U) On July 21, 2006, OLC notified the National Security Archive Fund that it had located a small number of documents responsive to its request in its classified files, but that these documents were withheld as exempt from disclosure under FOIA Exemptions One, Three, and Five. Ex. J.

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<sup>1</sup> (U) As a result of certain inadvertent errors, the responsive record counts were misstated in OLC's letter of July 21, 2006. As correctly described further herein, OLC ultimately identified 157 responsive records or categories of records, referred 66 of those records or categories of records to other components of the Department or other federal agencies, and, after appropriate consultations, withheld 91 records or categories of records under the exemptions provided for by FOIA.



(U) CLASSIFICATION OF DECLARATION

14. REDACTED

15. REDACTED

16. REDACTED

17. REDACTED

(U) THE TERRORIST SURVEILLANCE PROGRAM

18. (U) On September 11, 2001, al Qaeda terrorists attacked the United States. The attacks of September 11 resulted in approximately 3,000 deaths—the highest single-day death toll from hostile foreign attacks in the Nation’s history. In addition, these attacks shut down air travel in the United States, disrupted the Nation’s financial markets and government operations, and caused billions of dollars of damage to the economy.

19. (U) Following those attacks, the President of the United States authorized the National Security Agency to intercept international communications into and out of the United States of persons linked to al Qaeda or related terrorist organizations (hereinafter, “Terrorist Surveillance Program” or “TSP”). The TSP is a targeted and focused program intended to help “connect the dots” between known and potential terrorists and their affiliates. In order to intercept a communication under the TSP, there must be reasonable grounds to believe that one party to the communication is located outside the United States and that at least one party to the communication is a member or agent of al Qaeda or an affiliated terrorist organization. The TSP, which operates in the context of the ongoing armed conflict with al Qaeda and its allies, is an early warning system with one purpose: to detect and prevent another catastrophic attack on the United States in the wake of the attacks of September 11th.

20. (U) The TSP is a program critical to the national security of the United States. The President publicly acknowledged the existence of the Program on December 17, 2005. Although the

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existence of the TSP is now publicly acknowledged, and some facts about the Program have been disclosed, the President has made clear that sensitive information about the nature, scope, operation, and effectiveness of the Program remains classified and cannot be disclosed without causing exceptionally grave harm to U.S. national security.

21. **REDACTED**

22. **REDACTED**<sup>2</sup>

23. **REDACTED**

24. (U) Because of the grave harms to national security that might result from disclosure of operational details regarding the TSP, and pursuant to the criteria outlined in Executive Order 12958, as amended, information related to the TSP is classified TOP SECRET, and is subject to the special access and handling requirements reserved for “Sensitive Compartmented Information,” (“SCI”), because it involves or derives from particularly sensitive intelligence sources and methods. See DNI Decl. ¶¶ 8, 20. All TSP-related information maintained by OLC is maintained in accordance with these access and handling requirements.

#### (U) ADEQUACY OF SEARCH

25. (U) Upon receiving the FOIA requests at issue in this case, OLC conducted a search of its unclassified files. We searched my files as well as the files of the OLC staff attorneys and Deputy Assistant Attorney Generals who are principally responsible for matters involving the TSP. The files were searched both electronically, through Microsoft Word and WordPerfect directories, and in hard copy. In addition, the electronic mail messages (“e-mails”) of OLC staff relating to the TSP were reviewed either electronically or in hard copy. OLC also has a computer database which contains the full text of unclassified documents authored by the Office since 1945. OLC searches this voluminous central file by conducting a keyword search of this database. A keyword search was

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<sup>2</sup> **REDACTED**

performed in this database for documents relating to the plaintiffs' FOIA requests. In sum, this search was reasonably likely to uncover all unclassified documents responsive to plaintiffs' FOIA requests.

26. (U) With respect to the classified documents maintained in OLC files, because of their sensitive nature, all documents maintained by OLC relating to the TSP are kept in segregated and locked file cabinets to which only those with the necessary security clearances are allowed access. These file cabinets are themselves located in a secure facility approved for the storage of SCI material. Documents in these cabinets were reviewed for purposes of locating documents responsive to plaintiffs' request, and OLC does not maintain any significant number of classified documents relating to the TSP in any other location.<sup>3</sup>

#### (U) DOCUMENTS WITHHELD

27. (U) This declaration addresses OLC's justifications under FOIA Exemptions One, Three, and Five, for withholding the 91 records or categories of records identified by OLC as withheld in full, as well as eight documents referred by the Federal Bureau of Investigation ("FBI"), and 30 documents referred by the Office of the Deputy Attorney General ("ODAG"), plus nine additional documents identified by ODAG in which it was determined that OLC equities were at stake. Furthermore, this declaration also addresses certain of the 66 records or categories of records

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<sup>3</sup> (U) Certain OLC staff attorneys have accounts on a classified email system physically located in the Department's Office of Intelligence Policy and Review ("OIPR"). For logistical reasons including OIPR's forced displacement from their workspace as a result of the flooding of the Main Department of Justice building on or about June 26, 2006, the documents maintained on this email system have not yet been searched. Nonetheless, because access to this classified email system was provided to OLC staff so that they might communicate with their counterparts in other federal agencies in the furtherance of their work with more efficiency and speed than allowed by in-person or secure telephone or facsimile communications, I fully anticipate that any responsive documents identified in this system will be subject to withholding under the same exemptions and for the same reasons as the other documents described herein. In other words, OLC communications sent through this dedicated classified system are almost always deliberative exchanges among government agency staff about highly classified matters, and are ~~subject to the attorney-client privilege, and thus, will most likely be subject to withholding under~~ Exemptions One, Three, Five, and Six.

maintained by OLC that were referred to other components of the Department or other federal agencies, but (1) as to which OLC has consulted with such agencies or components and each has asked OLC to respond on its behalf, or (2) as to which OLC has independent equities. Finally, this declaration addresses 60 records or categories of records referred to OLC for processing by the Office of Intelligence Policy and Review (“OIPR”) in response to the request made by the ACLU, as to which no administrative response to that plaintiff has been made. OLC has reviewed the records referred by OIPR and has determined that 36 of them are not responsive to the ACLU’s request; the remaining 24 records are described further herein. All of the documents described in this declaration are collectively referred to as documents withheld by OLC.

28. (U) In addition to Exemptions One, Three, and Five, many of the documents withheld by OLC contain information that must be withheld to prevent against an unwarranted invasion of personal privacy. This information includes the names of third-party individuals (non-government employees) as well as OLC and other government agency staff, and their personal information (such as addresses (including email addresses), home telephone numbers, or cellular phone numbers) that occasionally appear in the documents. There is no legitimate public interest in the release of this information, as its disclosure would shed no light on the activities of the Department of Justice but could subject these individuals to unwanted public attention, harassment, or embarrassment. Thus, information of this type that appears in these documents is withheld by OLC under FOIA Exemption Six, 5 U.S.C. § 552(b)(6).

29. (U) The documents withheld by OLC under Exemptions One, Three, Five, and Six fall into six categories, which are discussed below. For the convenience of the Court, a chart, attached as Ex. K, is provided which identifies the records or categories of records described in this declaration in numerical order and cross-references the paragraphs of the declaration in which the justification for their withholding is explained or indicates if the record is one for which a different

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agency or component will respond. Because certain documents contain the equities of OLC as well as another component or agency, in certain cases, documents discussed below may also be discussed in another declaration.

**(U) A. Records or Categories of Records Relating to The  
President's Authorization of the TSP.**

30. (U) The TSP, by its terms, expires approximately every 45 days unless it is reauthorized. The President is responsible for reauthorizing the Program. The President's reauthorization determination is based on: reviews undertaken by the Intelligence Community<sup>4</sup> and the Department of Justice of the current threat to the United States posed by al Qaeda and its affiliates, a strategic assessment of the continuing importance of the Program to the national security of the United States, and assurances that safeguards continue to protect civil liberties. The Attorney General is involved in reviewing the legality of the Program.

31. (U) Members of this Office provide legal advice and counsel to the President and the Attorney General as they make periodic decisions regarding reauthorization of the TSP.

32. (U) Certain records or categories of records associated with this reauthorization process were withheld by OLC. Many of these records are drafts on which OLC comments have been sought or notes of OLC attorneys relating to the various stages of the authorization process. These records or categories of records, specifically, OLC 34, 67, 74, 78, 93, and 101; ODAG 10, 17,

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<sup>4</sup> (U) As used herein, the "Intelligence Community" includes the Office of the Director of National Intelligence; the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; other offices within the Department of Defense which collect specialized national intelligence through reconnaissance programs; the intelligence elements of the military services, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, the Drug Enforcement Administration, and the Coast Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the Department of Homeland Security concerned with the analysis of intelligence information; and such other elements of any other department or agency as may be designated by the President, or jointly designated by the DNI and heads of the department or agency concerned, as an element of the Intelligence Community. See 50 U.S.C. § 401a(4).

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18, 19, 48, and 65; OIPR 141; and FBI 7, totaling **REDACTED** pages and related electronic files,<sup>5</sup> contain classified information regarding the terms of the President's authorization of the TSP, which, if disclosed, would compromise the effectiveness of the Program to the detriment of national security. See DNI Decl. ¶ 26.

33. **REDACTED**

34. (U) In the process of compiling its FOIA response, OLC has conferred with the intelligence agencies that provided or compiled this information and they have advised that to disclose such sensitive intelligence information would both endanger the sources from which it was obtained and compromise the capabilities of the United States Intelligence Community to continue to secure such intelligence information in the future. See also DNI Decl. ¶ 26. They advise that such a result would have a devastating effect on U.S. national security. This material, accordingly, is properly and currently classified and is exempt from disclosure under FOIA Exemption One.

35. (U) In addition, intelligence information relating to the activities of al Qaeda and its affiliates is sensitive intelligence information that is subject to statutory protection under the National Security Act of 1947, as amended, which protects intelligence sources and methods from disclosure. See 50 U.S.C. § 403-1(i)(1); see also DNI Decl. ¶¶ 22, 26. The information contained in these documents was derived from these sources and methods and, as described by DNI Negroponte, its disclosure risks compromising the safety and effectiveness of these intelligence capabilities. As a result, this information is also exempt under FOIA Exemption Three.

36. (U) In addition, all of the records or categories of records identified in paragraph 32, supra, with the exception of FBI 7, are drafts provided to OLC or other Department components for inter-agency review and comment, or related notes of OLC staff. These records are deliberative in

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<sup>5</sup> (U) Throughout this declaration, the page totals may reflect both identical and non-identical copies of referenced documents. In the publicly filed version of this declaration, the totals are redacted in conformity with the concerns articulated by the DNI. See DNI Decl. ¶ 24.

two respects. First, they are deliberative in the sense that they are drafts and thus, the documents themselves, and the handwritten comments and notes made on or about them by OLC attorneys, reflect the internal deliberations surrounding the composition of the final product. Second, they are deliberative in the sense that even the final product is intended only as a recommendation in support of the ultimate decision to be made by the President, namely, the decision to reauthorize the TSP. Moreover, because these records contain communications shared by other federal agencies that contribute to the process of evaluating whether the TSP remains necessary to the war on terror, and because these documents seek OLC's legal opinion regarding applicable legal standards, these documents contain attorney-client communications. Thus, their disclosure would gravely injure the fair and frank exchange of ideas and recommendations between executive departments and violate the confidential exchange of information and advice critical to the maintenance of an attorney-client relationship.

37. (U) Finally, all the records or categories of records identified in paragraph 32, supra, with the exception of FBI 7, were collected and compiled in the course of advising the President as to his decision regarding the reauthorization of the TSP, and, therefore, are protected by the Presidential Communications Privilege, which protects communications between the President and his top advisers relating to decisions made by the President.

38. (U) For all of these reasons, the records or categories of records identified in paragraph 32, supra, with the exception of FBI 7, are properly exempt from disclosure under FOIA Exemption Five.

39. **REDACTED**<sup>6</sup>

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<sup>6</sup> (U) Of these, OLC 63, 64, 114, and 115; and ODAG 3, were determined to be responsive to the NSAF request, which sought only "memoranda, legal opinions, directives or instructions from the Attorney General, Assistant Attorney General or Office of Legal Counsel (OLC), issued between September 11, 2001, and December 21, 2005, regarding the government's legal authority for surveillance activity, wiretapping, eavesdropping, and other

40. **REDACTED**

41. (U) For the reasons discussed in paragraphs 39-41, supra, OLC 51, 63, 64, 114, and 115; ODAG 3 and 40; OIPR 138, 139, and 140; and FBI 4 and 5, are currently and properly classified, reflect information that cannot be disclosed with compromising intelligence gathering methods, and are protected by the deliberative process privilege, the attorney-client communications privilege, and the presidential communications privilege. Accordingly, these records or categories of records are properly withheld under Exemptions One, Three, and Five.

#### B. HEADING REDACTED

42. **REDACTED**

43. **REDACTED**

44. **REDACTED**

45. **REDACTED**

46. **REDACTED**

47. (U) Accordingly, the OLC records or categories of records described in this section, specifically, OLC 35, 36, 37, 75 and 207, and ODAG 12, totaling **REDACTED** pages plus related electronic files are properly withheld under Exemption One, as well as under Exemption Three. To the extent, moreover, that the documents are drafts, notes, or internal recommendations, they are also exempt under Exemption Five, as their disclosure would damage the internal give-and-take necessary to agency decision-making.

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signals intelligence operations directed at communications from or to U.S. citizens,” including “all documents discussing the President’s surveillance authority under the September 2001 congressional use of force resolution as well as the President’s independent authority to authorize signals intelligence activities.” See Ex. C. Other than the documents identified in footnote 7, infra, none of the other documents discussed in this declaration were determined to be responsive to the NSAF request.



**C. (U) Records or Categories of Records Relating to Targets of the TSP.**

48. (U) As described by the President, under the TSP, the NSA targets communications where there are reasonable grounds to believe that one party to the communication is located outside the United States and that at least one party to the communication is a member or agent of al Qaeda or an affiliated terrorist organization. OLC has been part of an extensive inter-agency process designed to identify those organizations that are properly considered to be affiliated with al Qaeda for purposes of this targeting and to develop the criteria to be applied when identifying potential targets. OLC thus withheld records or categories of records relating to the criteria used for targeting and the appropriateness of targeting certain groups or individuals under the TSP. These records or categories of records, OLC 76, 107, 139, 144, and 200, ODAG 23 and 24, and OIPR 9, totaling REDACTED pages and related electronic files, are exempt from disclosure under Exemptions One, Three, and Five, for the reasons explained below.

49. (U) OLC also withheld records or categories of records that contain reporting with respect to the intelligence successes achieved through the use of the TSP, specifically, OLC 78 and 145, and ODAG 10, 15, 16, 17, 18, and 19, totaling REDACTED pages. These documents are also exempt from disclosure under FOIA Exemptions One, Three, and Five for the reasons explained below.

50. (U) First, as described by DNI Negroponte, as a matter of course, the United States does not publicly confirm or deny whether any individual is subject to surveillance activities of the type described herein, because to do so would tend to reveal actual targets. See DNI Decl. ¶ 35. For example, if any member of the Intelligence Community were to confirm that any specific individuals are not targets of surveillance, but later refused to comment (as it would have to) in a case involving an actual target, a person could easily deduce by comparing such responses that the person in the latter case is a target. The harm of revealing targets of foreign intelligence surveillance is obvious.

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If an individual learns or suspects that his communications are or may be targeted for intelligence collection, he can take steps to evade detection, to manipulate the information received, or to implement other countermeasures aimed at undermining U.S. intelligence operations. The resulting loss of accurate intelligence from such a source deprives U.S. policy makers of information critical to U.S. interests, and in the case of the TSP, could result in the catastrophic failure of the early warning system that the President has established to detect and prevent the next terrorist attack See DNI Decl. ¶ 35.

51. REDACTED

52. REDACTED

53. (U) Finally, in addition to being properly withheld under Exemption One and Three as described above, all of the documents identified in this section were created or collected as part of an ongoing inter-agency deliberative process aimed at making decisions as to which individuals and entities are to be targeted by the TSP. Moreover, although factual information is ordinarily not subject to deliberative process protection, in this case the selection of the specific facts considered by the Department and other agencies involved in this process would reveal the nature of the process and the specific information recommended to be considered when determining whether to target an entity or individual under the TSP. Disclosure of these records or categories of records would compromise the inter-agency deliberative process and deter the fulsome exchange of ideas and information intended to assist in that process, to the detriment of informed government decision-making. Such documents are protected by the deliberative process privilege, and thus are properly withheld under Exemption Five.

**D. HEADING REDACTED**

54. REDACTED

55. REDACTED

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56. REDACTED

57. REDACTED

58. REDACTED

59. REDACTED

**E. (U) Records or Categories of Records Relating to Legal Opinions of OLC.**

60. (U) The principal function of OLC is to assist the Attorney General in his role as legal adviser to the President and to other departments and agencies in the Executive Branch. In connection with this function, OLC prepares memoranda addressing a wide range of legal questions involving operations of the Executive Branch, and participates in assisting in the preparation of legal documents and providing more informal legal advice as necessary and requested. A significant portion of OLC's work can be divided into two categories. First, OLC renders opinions that resolve disputes within the Executive Branch on legal questions. Second, OLC performs a purely advisory role as legal counsel to the Attorney General, providing confidential legal advice both directly to the Attorney General, and through him or on his behalf, to the White House and other components of the Executive Branch.

61. (U) All of the documents withheld by OLC under this category, as well as many of the other documents described in other sections of this declaration, were prepared or received by OLC in its role of assisting the Attorney General in the discharge of his responsibilities as legal adviser to the President and heads of the Executive Branch departments and agencies. In preparing and receiving these documents, OLC was performing a purely advisory role, providing legal advice and assistance. Although on rare occasions, specific OLC memoranda have been drafted with the expectation that they will be made public, and although some OLC documents are ultimately selected for publication, generally OLC memoranda are prepared with the expectation that they will be held in confidence, and that is of course the case with classified documents.

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62. (U) OLC withheld several final memoranda that are responsive to plaintiffs' FOIA requests. These documents, specifically, OLC 16, 54, 59, 62, 85, 113, 129, 131, 132, 133, and 146; ODAG 1, 2, 5, 6, 38, 2, and 52; OIPR 28, 29 and 37; and FBI 42 and 51, total REDACTED pages as well as related electronic files.<sup>7</sup> All of these memoranda were prepared with the expectation that they would be held in confidence, and to the best of my knowledge, they have been held in confidence.

63. (U) Compelled disclosure of these advisory and pre-decisional documents would cause substantial harm to the deliberative process of the Department of Justice and the Executive Branch and disrupt the attorney-client relationship between the Department and the President and other officers of the Executive Branch. Attorneys in OLC are often asked to provide advice and analysis with respect to very difficult and unsettled issues of law. Frequently, such issues arise in connection with highly complex and sensitive operations of the Executive Branch. It is essential to the mission of the Executive Branch that OLC legal advice, and the development of that advice, not be inhibited by concerns about public disclosure. Protecting the confidentiality of documents that contain such advice is essential in order to ensure both that creative and even controversial legal arguments and theories may be explored candidly, effectively, and in writing, and to ensure that Executive Branch officials will continue to request legal advice from OLC on such sensitive matters.

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<sup>7</sup> (U) Of these, OLC 54, 85, 113, 129, 131, 132 and 133; ODAG 1, 2, 5, 6 and 51; and OIPR 28 and 37 were determined to be responsive to the NSAF request, which sought only "memoranda, legal opinions, directives or instructions from the Attorney General, Assistant Attorney General or Office of Legal Counsel (OLC), issued between September 11, 2001, and December 21, 2005, regarding the government's legal authority for surveillance activity, wiretapping, eavesdropping, and other signals intelligence operations directed at communications from or to U.S. citizens," including "all documents discussing the President's surveillance authority under the September 2001 congressional use of force resolution as well as the President's independent authority to authorize signals intelligence activities." See Ex. C. Other than the documents identified in footnote 6, supra, none of the other documents discussed in this declaration were determined to be responsive to that request.

64. (U) Particularly in light of the Nation's ongoing fight against global terrorism, and the public interest in the effective performance of these activities, the need of the President and the heads of Executive Branch departments and agencies for candid, thoroughly considered legal advice in considering potential executive actions is particularly compelling. Thus, all of the documents identified in paragraph 62, supra, constitute documents subject to the deliberative process and attorney client privileges, and moreover, those provided to assist the President directly are also subject to the presidential communications privilege. As such, all of these documents are properly withheld as exempt under FOIA Exemption Five.

65. **REDACTED**

66. (U) In addition to the final, confidential memoranda described above, OLC also withheld drafts, notes, and attorney comments relating to the preparation of these memoranda or to the preparation or development of other legal advice offered by OLC, specifically, OLC 40, 41, 42, 53, 60, 83, 86, 87, 88, 89, 90, 108, 203, 204, and 205, as well as ODAG 8, 43, 44, 45, 49, 50, 51,<sup>8</sup> and 53, OIPR 1, 2, 32, 33, 34, 35, 82, and 142, and FBI 19 and 58, totaling **REDACTED** pages as well as related electronic files. Drafts and notes of this sort are, by their very nature, predecisional and deliberative.<sup>9</sup> Release of these drafts and notes would seriously inhibit and otherwise hinder the deliberations and frank discussions among attorneys within OLC when preparing legal advice, and would interfere with the relationship between OLC and its client agencies by undermining the process through which information pertinent to any particular legal analysis being performed by OLC is shared. OLC attorneys and officials at the agencies they are assisting would become inhibited and cautious in written expression of their preliminary analyses of legal issues, as well as

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<sup>8</sup> (U) ODAG 50 and 51 are nonresponsive final OLC memoranda, but contain responsive attorney notes.

<sup>9</sup> (U) Some of the final, confidential memoranda identified in paragraph 66, supra, also contain handwritten marginalia and highlighting. These notations, where responsive, are also exempt for the reasons identified in this paragraph.

their identification of options and submission of recommendations, to the great detriment of the attorney-client relationship and the Government's deliberative process.

67. **REDACTED**

68. (U) Finally, because these drafts and notes contain or reference highly classified material concerning the operation of the TSP, their disclosure implicates the same concerns regarding the release of classified information and the potential harm to intelligence sources and methods identified above and in the Declaration of DNI Negroponte, see DNI Decl. ¶¶ 22-35. Thus, all of the documents identified in paragraph 66, supra, are properly withheld under Exemptions One, Three, and Five.

69. (U) In addition to the documents described above, OLC withheld certain documents, specifically, OLC 8, 9, 26, 27, 28, 29, 32, 43, 61, 71, 77, 79, 94, 102, 103, 106, 118, 119, 120, 121, 123, 140, 141, 142, 143, 206, and 208; ODAG 21 and 22; and OIPR 75 and 129, totaling **REDACTED** pages, as well as related electronic files, which are informal communications (facsimile transmissions and electronic mail messages) to and from OLC and other federal government agencies containing attorney-client communications regarding very specific questions about the TSP and corresponding attorney advice, or notes relating to such communications.

70. (U) For example, OLC 27 is a one-page handwritten note recording that an OLC attorney recommended to the NSA General Counsel that certain language be included in documentation supporting collection of various communications under the TSP. Similarly, OLC 208 is a facsimile transmission from an attorney at OLC to an attorney at NSA seeking factual clarification regarding the operation of a particular technical aspect of the TSP so as to inform future advice regarding the Program.

71. (U) These sorts of communications contain information protected by the attorney-client privilege and the deliberative process privilege. It is essential to the quality and effectiveness

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of the decisionmaking process leading to the provision of OLC advice that client agencies provide OLC with all relevant facts and with their candid arguments and recommendations regarding legal questions presented to us. To disclose such communications between OLC attorneys and our federal agency clients would fundamentally disrupt the attorney-client relationship and would deter federal agencies from seeking timely and appropriate legal advice. Such documents are properly withheld under Exemption Five of FOIA. Moreover, because of the content of these documents, disclosure of these communications implicates the same concerns regarding the release of classified information and the potential harm to intelligence sources and methods identified above and in the Declaration of DNI Negroponete, see DNI Decl. ¶¶ 22-35. Thus, all of the records or categories of records identified in paragraph 69, supra, are also properly withheld under Exemptions One and Three.

**F. (U) Briefing Materials and Talking Points.**

72. (U) OLC has withheld various briefing materials and talking points that were created within the Department to assist senior Administration officials in addressing various points about the TSP. These documents, specifically, OLC 7, 46, 65, 80, 81, 82, 84, 116, 125, 126, 134, and 202; ODAG 34, 41 and 54; and OIPR 13 and 137, total **REDACTED** pages as well as related electronic files.

73. (U) Briefing materials and talking points are by their very nature deliberative, as they reflect an attempt by the drafters succinctly to summarize particular issues and provide key background information in an effort to anticipate questions or issues that may be raised at a briefing or other situation in which such documents are used. Thus, these materials attempt to ensure that senior Administration officials are prepared to respond in any particular setting by providing draft answers in response to anticipated questions. Because these draft answers may or may not be used or may be modified by the speakers in any particular setting, these materials reflect the exchange of ideas and suggestions that accompanies all decision-making, and in many cases they also reflect

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assessments by attorneys and other staff about issues on which they have been asked to make recommendations or provide advice.

74. (U) In addition to these briefing materials and talking points, OLC also maintains additional copies of the White Paper, OLC 105, which has previously been released to plaintiffs, and withheld drafts of that document, OLC 116 and 201; and OIPR 60, as deliberative under Exemption Five. Although the White Paper was drafted for public release, certain early drafts of this document may contain classified materials, and thus, to that extent, those drafts are also withheld under Exemptions One and Three for the reasons discussed above.

75. **REDACTED**

76. (U) Finally, OLC withheld OLC 117 and FBI 18, several copies of a letter from Senator J.D. Rockefeller, Vice Chairman, Senate Select Committee on Intelligence, to Lt. Gen. Keith B. Alexander, NSA, with copies to the Attorney General and the Director of National Intelligence, totaling **REDACTED** pages, which sought additional information relating to the “NSA Warrantless Surveillance Program(s).” The questions posed by Senator Rockefeller are classified because they seek information regarding operational details of the TSP and cannot be disclosed without harming national security. Thus, this document is properly exempt from disclosure under FOIA Exemption One and Three for all of the reasons set forth above and in the Declaration of DNI Negroponte. See DNI Decl. ¶¶ 22-35.

#### **G. (U) Records that Are Not Agency Records**

77. (U) OLC has temporary possession of three records, OLC 56, 57, 58, which are documents created by the President or his immediate staff in the course of carrying out the official duties of the President, namely the authorization of the TSP. These documents were provided to OLC for purposes of assisting OLC with completing its work but are subject to an express reservation of control by the White House. Other than taking steps to ensure that these highly

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classified documents are maintained in a secure environment, OLC has no authority to distribute these records or to dispose of them. As such, they are not "agency records," as that term is defined in FOIA, and thus were not processed by OLC in response to the three FOIA requests at issue in this litigation.

\* \* \*

78. (U) In exercising its responsibilities under FOIA, OLC has determined that each of the documents described herein must be withheld in full. Given the exceptionally grave harm that would be done to national security if United States intelligence sources and methods were compromised as a result of the disclosure of any classified detail concerning the TSP without proper authorization, I am confident that no portion of any of the documents withheld in full by OLC that is responsive to the FOIA requests at issue in this litigation may be disclosed without compromising the exemptions discussed at length herein.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_

September 15, 2006

  
\_\_\_\_\_  
STEVEN G. BRADBURY  
Acting Assistant Attorney General

**epic.org**

EXHIBIT A  
Bradbury Decl.

December 16, 2005

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VIA FACSIMILE — (202) 514-0563

Elizabeth Farris, Supervisory Paralegal  
Office of Legal Counsel  
Department of Justice  
Room 5515, 950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

RE: Freedom of Information Act Request and Request for Expedited Processing

Dear Ms. Farris:

This letter constitutes an expedited request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Department of Justice ("DOJ") Office of Legal Counsel on behalf of the Electronic Privacy Information Center ("EPIC").

We are seeking agency records (including but not limited to electronic records) from September 11, 2001 to the present concerning a presidential order or directive authorizing the National Security Agency ("NSA"), or any other component of the intelligence community, to conduct domestic surveillance without the prior authorization of the Foreign Intelligence Surveillance Court ("FISC").

The existence of such an order and the DOJ's familiarity with it was reported in an article entitled *Bush Lets U.S. Spy on Callers Without Courts* that appeared on the front page of the New York Times this morning (see attached article). The records requested by EPIC include (but are not limited to) the following items mentioned in this article:

1. an audit of NSA domestic surveillance activities;
2. guidance or a "checklist" to help decide whether probable cause exists to monitor an individual's communications;
3. communications concerning the use of information obtained through NSA domestic surveillance as the basis for DOJ surveillance applications to the FISC; and

4. legal memoranda, opinions or statements concerning increased domestic surveillance, including one authored by John C. Yoo shortly after September 11, 2001 discussing the potential for warrantless use of enhanced electronic surveillance techniques.

#### Request for Expedited Processing

This request clearly meets the standard for expedited processing under applicable Department of Justice regulations because it involves a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). In addition, this request pertains to a matter about which there is an "urgency to inform the public about an actual or alleged Federal government activity," and the request is made by "a person primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). A copy of this request has been provided to the Director of Public Affairs as required by 28 C.F.R. § 16.5(d)(2).

The government activity at issue here — President Bush's authorization of warrantless domestic surveillance, and the DOJ's knowledge of and relationship to such surveillance — raises serious legal questions about the government's intelligence activity and has received considerable media attention in the past few hours. The New York Times reported on its front page this morning:

Months after the Sept. 11 attacks, President Bush secretly authorized the National Security Agency to eavesdrop on Americans and others inside the United States to search for evidence of terrorist activity without the court-approved warrants ordinarily required for domestic spying, according to government officials.

Under a presidential order signed in 2002, the intelligence agency has monitored the international telephone calls and international e-mail messages of hundreds, perhaps thousands, of people inside the United States without warrants over the past three years in an effort to track possible "dirty numbers" linked to Al Qaeda, the officials said.

\* \* \*

In mid-2004, concerns about the program expressed by national security officials, government lawyers and a judge prompted the Bush administration to suspend elements of the program and revamp it.

For the first time, the Justice Department audited the N.S.A. program, several officials said. And to provide more guidance, the Justice Department and the agency expanded and refined a checklist to follow in deciding whether probable cause existed to start monitoring someone's communications, several officials said.

A complaint from Judge Colleen Kollar-Kotelly, the federal judge who oversees the Federal Intelligence Surveillance Court, helped spur the suspension, officials said. The judge questioned whether information obtained under the N.S.A. program was being improperly used as the basis for F.I.S.A. wiretap warrant requests from the Justice Department, according to senior government officials. While not knowing all the details of the exchange, several government lawyers said there appeared to be concerns that the Justice Department, by trying to shield the existence of the N.S.A. program, was in danger of misleading the court about the origins of the information cited to justify the warrants.

One official familiar with the episode said the judge insisted to Justice Department lawyers at one point that any material gathered under the special N.S.A. program not be used in seeking wiretap warrants from her court.

\* \* \*

[S]enior Justice Department officials worried what would happen if the N.S.A. picked up information that needed to be presented in court. The government would then either have to disclose the N.S.A. program or mislead a criminal court about how it had gotten the information.

\* \* \*

The legal opinions that support the N.S.A. operation remain classified, but they appear to have followed private discussions among senior administration lawyers and other officials about the need to pursue aggressive strategies that once may have been seen as crossing a legal line, according to senior officials who participated in the discussions.

For example, just days after the Sept. 11, 2001, attacks on New York and the Pentagon, Mr. [John C.] Yoo, the Justice Department lawyer, wrote an internal memorandum that argued that the government might use "electronic surveillance techniques and equipment that are more powerful and sophisticated than those available to law enforcement agencies in order to intercept telephonic communications and observe the movement of persons but without obtaining warrants for such uses."

James Risen and Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, NY Times, Dec. 15, 2005 at A1.

The matter has raised serious questions about the constitutionality of the NSA's domestic surveillance activities. According to the New York Times article, "some officials familiar with the continuing operation have questioned whether the surveillance has stretched, if not crossed, constitutional limits on legal searches." The article also states that "nearly a dozen current and former officials, who were granted anonymity because of the classified nature of the program, discussed it with reporters for The New York Times because of their concerns about the operation's legality and oversight. Furthermore, the Washington Post reported, "Congressional sources familiar with limited aspects of the

program would not discuss any classified details but made it clear there were serious questions about the legality of the NSA actions.” Dan Eggen, *Bush Authorized Domestic Spying*, Washington Post, Dec. 16, 2005, at A01 (attached hereto).

In addition, this subject has unquestionably been the subject of widespread and exceptional media interest. In addition to the New York Times and Washington Post, hundreds of local and national media organizations reported on this matter throughout the United States this morning. In fact, a Google News search identified approximately 316 news stories on the NSA’s domestic surveillance (Google News results attached hereto).

Furthermore, at least one congressional committee will be investigating the NSA’s domestic surveillance activities in the coming days. Senator Arlen Specter, Chairman of the Senate Judiciary Committee, said that the surveillance at issue is “wrong, clearly and categorically wrong . . . This will be a matter for oversight by the Judiciary committee as soon as we can get to it in the new year — a very, very high priority item.” *Specter Says Senate to Probe Report U.S. Broke Law on Spying*, Bloomberg.com, Dec. 16, 2005 (attached hereto). It is critical for Congress and the public to have as much information as possible about the DOJ’s role in this surveillance to fully consider and determine its propriety.

The purpose of EPIC’s request is to obtain information directly relevant to the DOJ’s knowledge of and relationship to the NSA’s domestic intelligence activities. The records requested therefore clearly meet both standards for expedited processing.

Further, as I explain below in support of our request for “news media” treatment, EPIC is “primarily engaged in disseminating information.”

#### Request for “News Media” Fee Status

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. This is accomplished through several means. First, EPIC maintains a heavily visited Web site ([www.epic.org](http://www.epic.org)) that highlights the “latest news” concerning privacy and civil liberties issues. The site also features scanned images of documents EPIC obtains under the FOIA. Second, EPIC publishes a bi-weekly electronic newsletter that is distributed to over 15,000 readers, many of whom report on technology issues for major news outlets. The newsletter reports on relevant policy developments of a timely nature (hence the bi-weekly publication schedule). It has been published continuously since 1996, and an archive of past issues is available at our Web site. Finally, EPIC publishes and distributes printed books that address a broad range of privacy, civil liberties and technology issues. A list of EPIC publications is available at our Web site.

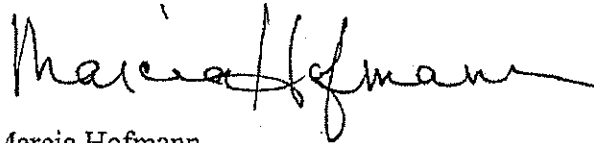
For the foregoing reasons, EPIC clearly fits the definition of “representative of the news media” contained in the FOIA. Indeed, the U.S. District Court for the District of Columbia has specifically held that EPIC is “primarily engaged in disseminating information” for the purposes of expedited processing, *American Civil Liberties*

*Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004), and is a “representative of the news media” for fee waiver purposes, *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on our status as a “news media” requester, we are entitled to receive the requested records with only duplication fees assessed. Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” as described above, any duplication fees should be waived.

Thank you for your consideration of this request. As the FOIA provides, I will anticipate your determination on our request for expedited processing within ten (10) calendar days. Should you have any questions about this request, please feel free to call me at (202) 483-1140 ext. 112.

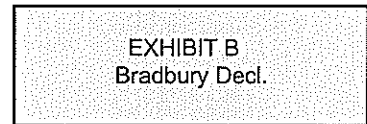
Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge.

Sincerely,



Marcia Hofmann  
Director, Open Government Project

Enclosures



December 20, 2005

FOIA/PA Mail Referral Unit  
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Re: REQUEST UNDER FREEDOM OF INFORMATION ACT /  
Expedited Processing Requested

Attention:

This letter constitutes a request by the American Civil Liberties Union and the American Civil Liberties Union Foundation ("ACLU") under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the Department of Justice implementing regulations, 28 CFR § 16.11.<sup>1</sup>

**I. The Request for Information**

The ACLU seeks disclosure of any presidential order(s) authorizing the NSA to engage in warrantless electronic surveillance<sup>2</sup> and/or warrantless physical searches in the United States, created from September 11, 2001 to the present.<sup>3</sup>

<sup>1</sup> The American Civil Liberties Union Foundation is a 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educates the public about civil rights and civil liberties issues. The American Civil Liberties Union is a separate non-profit, non-partisan, 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

<sup>2</sup> The term "electronic surveillance" includes but is not limited to warrantless acquisition of the contents of any wire or radio communication by an electronic, mechanical, or other surveillance device, and the warrantless installation or use of an electronic, mechanical, or other surveillance device for monitoring to acquire information, other than from a wire or radio communication.

<sup>3</sup> This request does not include surveillance authorized by 50 U.S.C. §§ 1802 or 1822(a).

In addition, the ACLU seeks disclosure of any record(s),<sup>4</sup> document(s), file(s), communications, memorandum(a), order(s), agreement(s) and/or instruction(s), created from September 11, 2001 to the present, about:

1. any presidential order(s) authorizing the NSA to engage in warrantless electronic surveillance and/or warrantless physical searches in the United States;
2. the policies, procedures and/or practices of the NSA:
  - a. for identifying individuals, organizations or entities to subject to warrantless electronic surveillance and/or warrantless physical searches in the United States, including but not limited to any “checklist to follow in deciding whether probable cause existed to start monitoring someone’s communications,”<sup>5</sup> or a requirement that there be a “clear link” between terrorist organizations and individuals subject to such surveillance;<sup>6</sup>
  - b. for gathering information through warrantless electronic surveillance and/or warrantless physical searches in the United States;
  - c. governing the maintenance and/or storage of information described in paragraph 2(b) above;
  - d. for analyzing and using information described in paragraph 2(b) above;
  - e. for sharing information described in paragraph 2(b) above with other government agencies;

AMERICAN CIVIL LIBERTIES  
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<sup>4</sup> The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

<sup>5</sup> James Risen and Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, New York Times, Dec. 16, 2005, at A1, A16.

<sup>6</sup> Transcript, President Bush’s Address, Dec. 17, 2005, available at <http://www.nytimes.com/2005/12/17/politics/17text-bush.html>



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- f. for sharing information described in paragraph 2(b) above to be “used as the basis for F.I.S.A. warrant requests from the Justice Department,”<sup>7</sup> or any other form of warrant;
  - g. for cross referencing information described in paragraph 2(b) above with information about other individuals, organizations, or groups;
  - h. for cross-referencing information described in paragraph 2(b) above with information in any database;
  - i. to suspend and/or terminate warrantless electronic surveillance and/or physical searches in the United States by the NSA;
  - j. governing the destruction of information described in paragraph 2(b) above;
  - k. for protecting the privacy of individuals who are subject to warrantless electronic surveillance and/or warrantless physical searches in the United States;
  - l. for consulting with, or obtaining approval from, the Justice Department or other departments, agencies, and/or executive branch officials before engaging in warrantless electronic surveillance and/or warrantless physical searches in the United States;
  - m. any minimization procedure, as that term is defined in 50 U.S.C. § 1801(h), for information described in paragraph 2(b) above;
3. the name of other government agencies with whom the information described in part 2(b) above is shared;
4. the date on which:
- a. President Bush signed an order permitting the NSA to engage in warrantless electronic surveillance and/or warrantless physical searches in the United States;

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<sup>7</sup> Risen and Lichtblau, Dec. 16., at A16.

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- b. the NSA began engaging in warrantless electronic surveillance and/or warrantless physical searches in the United States;<sup>8</sup>
5. the constitutionality, legality, and/or propriety of warrantless electronic surveillance and/or warrantless physical searches in the United States;
6. any Justice Department “legal reviews of the program and its legal rationale.”<sup>9</sup>
7. any actual or potential violations of, or deviations from, any policy, procedure or practice related to warrantless electronic surveillance and/or warrantless physical searches in the United States by the NSA;
8. any investigation, inquiry, or disciplinary proceeding initiated in response to any actual or potential violations of, or deviations from, any policy, procedure or practice related to warrantless electronic surveillance and/or warrantless physical searches in the United States by the NSA;
9. any Department of Justice audit of any NSA program carrying out warrantless electronic surveillance and/or warrantless physical searches in the United States;<sup>10</sup>
10. the number of:
  - a. individuals who have been subjected to warrantless electronic surveillance in the United States by the NSA since September 11, 2001;

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<sup>8</sup> It is unclear when the NSA began its domestic surveillance program and when the President provided written authorization for it to do so. On December 18, 2005, the New York Times reported that the NSA “first began to conduct warrantless surveillance on telephone calls and e-mail messages between the United States and Afghanistan months before President Bush officially authorized a broader version of the agency’s special domestic collection program.” Eric Lichtblau and James Risen, *Eavesdropping Effort Began Soon After Sept. 11 Attacks*, New York Times, Dec. 18, 2005.

<sup>9</sup> Eric Lichtblau and David E. Sanger, *Administration Cites War Vote in Spying Case*, New York Times, Dec. 20, 2005.

<sup>10</sup> Risen and Lichtblau, Dec. 16, at A16 (describing such an audit as taking place on or after 2004).

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- b. individuals who have been subjected to warrantless physical searches in the United States by the NSA since September 11, 2001;
- c. organizations or entities that have been subjected to warrantless electronic surveillance in the United States by the NSA since September 11, 2001;
- d. organizations or entities that have been subjected to warrantless physical searches in the United States by the NSA since September 11, 2001;

11. the average and maximum<sup>11</sup> number of:

- a. individuals who have been the target of warrantless electronic surveillance in the United States by the NSA at any one time since September 11, 2001;
- b. individuals who have been the target of warrantless physical searches in the United States by the NSA at any one time since September 11, 2001;
- c. organizations or entities that have been the target of warrantless electronic surveillance in the United States by the NSA at any one time since September 11, 2001;
- d. organizations or entities that have been the target of warrantless physical searches in the United States by the NSA at any one time since September 11, 2001;

12. the number of individuals who have been subjected to warrantless electronic surveillance and/or warrantless physical searches in the United States by the NSA who are United States citizens, lawful permanent residents, recipients of non-immigrant visas, lawful visitors without visas, and undocumented immigrants, respectively;

13. the types of communications that have been subjected to warrantless electronic surveillance by the NSA, including but not limited to whether such communications were carried out via telephone, email,

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<sup>11</sup> The New York Times reports that "officials familiar with [the program] say the N.S.A. eavesdrops without warrants on up to 500 people in the United States at any time." Risen and Lichtblau, Dec. 16, at A16.

instant messaging, chat, Voice Over IP, other Internet-based communications technologies, or in-person conversation;

14. elements of the NSA's warrantless surveillance program in the United States that were suspended or revamped after, "[i]n mid-2004, concerns about the program [were] expressed by national security officials, government lawyers and a judge";<sup>12</sup>
15. concerns expressed by national security officials, government lawyers, judges and others regarding the NSA's warrantless surveillance program;<sup>13</sup>
16. the number of instances in which the Attorney General has authorized warrantless electronic surveillance and/or physical searches under 50 U.S.C. §§ 1802 or 1822(a), and copies of each certification; and
17. President Bush's periodic reauthorization of the NSA's warrantless surveillance in the United States, including but not limited to the frequency with which the President reviews the surveillance program, the exact number of times the President has reauthorized the program, the basis and/or criteria for continued authorization of the program, and other government officials, departments, and/or agencies involved in the review process.<sup>14</sup>

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<sup>12</sup> Risen and Lichtblau, Dec. 16, at A16.

<sup>13</sup> *Id.*

<sup>14</sup> On December 17, 2005, President Bush said:

The activities I authorized are reviewed approximately every 45 days. Each review is based on a fresh intelligence assessment of terrorist threats to the continuity of our government and the threat of catastrophic damage to our homeland. During each assessment, previous activities under the authorization are reviewed. The review includes approval by our nation's top legal officials, including the attorney general and the counsel to the president. I have reauthorized this program more than 30 times since the Sept. 11 attacks and I intend to do so for as long as our nation faces a continuing threat from Al Qaeda and related groups.

Transcript, President Bush's Address, December 17, 2005, available at <http://www.nytimes.com/2005/12/17/politics/17text-bush.html>. See also David E. Sanger, *In Address, Bush Says He Ordered Domestic Spying*, New York Times, December 18, 2005.

## II. Limitation of Processing Fees

The ACLU requests a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .”) and 28 C.F.R. §§ 16.11(c)(1)(i), 16.11(d)(1) (search and review fees shall not be charged to “representatives of the news media.”). As a “representative of the news media,” the ACLU fits within this statutory and regulatory mandate. Fees associated with the processing of this request should, therefore, be limited accordingly.

The ACLU meets the definition of a “representative of the news media” because it is “an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.” National Security Archive v. Department of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

The ACLU is a national organization dedicated to the defense of civil rights and civil liberties. Dissemination of information to the public is a critical and substantial component of the ACLU’s mission and work. Specifically, the ACLU publishes newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly disseminated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee through its public education department. The ACLU also disseminates information through its heavily visited web site: <http://www.aclu.org/>. The web site addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The website specifically includes features on information obtained through the FOIA. See, e.g., [www.aclu.org/patriot\\_foia](http://www.aclu.org/patriot_foia); [www.aclu.org/torturefoia](http://www.aclu.org/torturefoia); <http://www.aclu.org/spyfiles>. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail.

In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools and organizations through a variety of means including their own websites, publications and newsletters. Further, the ACLU makes archived

material available at the American Civil Liberties Union Archives, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library. ACLU publications are often disseminated to relevant groups across the country, which then further distribute them to their members or to other parties.

Depending on the results of the Request, the ACLU plans to “disseminate the information” gathered by this Request “among the public” through these kinds of publications in these kinds of channels. The ACLU is therefore a “news media entity.” Cf. Electronic Privacy Information Ctr. v. Department of Defense, 241 F.Supp.2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA).

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Finally, disclosure is not in the ACLU’s commercial interest. The ACLU is a “non-profit, non-partisan, public interest organization.” See Judicial Watch Inc. v. Rossotti, 326 F.3d 1309, 1310 (D.C. Cir. 2003). Any information disclosed by the ACLU as a result of this FOIA will be available to the public at no cost.

### III. Waiver of all Costs

The ACLU additionally requests a waiver of all costs pursuant to 5 U.S.C. §552(a)(4)(A)(iii) (“Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. See Judicial Watch, Inc. v. Rossotti, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”).

Disclosure of the requested information is in the public interest. This request will further public understanding of government conduct; specifically, the NSA’s warrantless electronic surveillance and/or physical searches in the United States. This type of government activity concretely affects many individuals and implicates basic privacy, free speech, and associational rights protected by the Constitution.

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Moreover, disclosure of the requested information will aid public understanding of the implications of the President's decision to permit the NSA to engaging in warrantless electronic surveillance and/or physical searches in the United States and, consequently, to circumvent the judicial oversight required by the Foreign Intelligence Surveillance Act of 1978.<sup>15</sup> Congress passed this Act in response to scandalous revelations about widespread political surveillance by the FBI under the leadership of J. Edgar Hoover. Following those revelations, Congress convened hearings and established a commission to investigate the government's abuses and explore how best to prevent future excesses. The hearings, chaired by Idaho Senator Frank Church, revealed that the government had infiltrated civil rights and peace groups, had burglarized political groups to gain information about their members and activities, and had "swept in vast amounts of information about the personal lives, views, and associations of American citizens."<sup>16</sup> Understanding the current scope of the NSA's warrantless surveillance is, therefore, crucial to the public's interest in understanding the legality and consequences of the President's order and the NSA's current surveillance practices.

As a nonprofit 501(c)(3) organization and "representative of the news media" as discussed in Section II, the ACLU is well-situated to disseminate information it gains from this request to the general public and to groups that protect constitutional rights. Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.<sup>17</sup>

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<sup>15</sup> 50 U.S.C. § 1801 *et seq.*

<sup>16</sup> INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS, BOOK II: FINAL REPORT OF THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES. UNITED STATES SENATE. APRIL 26, 1976. Available at <http://www.icdc.com/~paulwolf/cointelpro/churchfinalreportIIa.htm>.

<sup>17</sup> For example, in May 2005, the United States Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request submitted that month regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. Also, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in August of 2004. In addition, the Office of Science and Technology Policy in the Executive Office of the President said it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003. In addition, three separate agencies – the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice – did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

The records requested are not sought for commercial use, and the requesters plan to disseminate the information disclosed as a result of this FOIA request through the channels described in Section II. As also stated in Section II, the ACLU will make any information disclosed as a result of this FOIA available to the public at no cost.

#### IV. Expedited Processing Request

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Expedited processing is warranted because there is “[a]n urgency to inform the public about an actual or alleged federal government activity” by organizations “primarily engaged in disseminating information.” 28 CFR § 16.5(d)(1)(ii).<sup>18</sup> This request implicates an urgent matter of public concern; namely, the NSA’s potentially extensive warrantless electronic surveillance and/or physical searches in the United States. Such government activity may infringe upon the public’s free speech, free association, and privacy rights, which are guaranteed by the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Requests for information bearing upon potential Constitutional violations require an immediate response so that any violations cease and future violations are prevented.

A requestor may also demonstrate the need for expedited processing by showing that the information sought relates to “a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(d)(1)(iv). The instant request clearly meets these standards as the request relates to possible violations of Constitutional rights by federal law enforcement officials. It took less than a day for Arlen Specter, the Republican chairman of the Senate Judiciary Committee, to pledge that the Senate would hold hearings to investigate the NSA’s warrantless surveillance. Jennifer Loven, *Report of NSA Spying Prompts Call for Probe*, San Francisco Chronicle, Dec. 16, 2005. That the President chose to give a rare, live radio address providing additional information about the NSA’s warrantless surveillance the day after it was revealed underscores the urgency of the ACLU’s request. The urgent and time sensitive nature of the request is also apparent from the widespread and sustained media coverage the NSA’s warrantless domestic surveillance activities have garnered. See, e.g., James Risen and Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, New

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<sup>18</sup> The ACLU is “primarily engaged in disseminating information,” as discussed in Sections II and III.



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York Times, Dec. 16, 2005, at A1; Maura Reynolds and Greg Miller, *Congress Wants Answers About Spying on U.S. Citizens*, Pittsburgh Post-Gazette, Dec. 16, 2005; Steven Thomma, *Spying Could Create Backlash on Congress; Public Reaction Hinges on Identity of Targets*, San Jose Mercury News, Dec. 16, 2005; Christine Hauser, *Bush Declines to Discuss Report on Eavesdropping*, New York Times, Dec. 16, 2005; Katherine Shrader, *Lawmakers Say Reported Spy Program Shocking, Call For Investigations*, San Diego Union Tribune, Dec. 16, 2005; Caren Bohan and Thomas Ferraro, *Bush Defends Eavesdropping and Patriot Act*, ABC News, Dec. 17, 2005; Dan Eggan and Charles Lane, *On Hill, Anger and Calls for Hearing Greet News of Stateside Surveillance*, Washington Post, Dec. 17, 2005, at A1; Jennifer Loven, *Bush Defends Secret Spying in U.S.*, San Francisco Chronicle, Dec. 17, 2005; Barton Gellman and Dafna Linzer, *Pushing the Limits of Wartime Powers*, Washington Post, Dec. 18, 2005, at A1; John Diamond, *NSA's Surveillance of Citizens Echoes 1970s Controversy*, USA Today, Dec. 18, 2005; James Kuhnhenn, *Bush Defends Spying in U.S.*, San Jose Mercury News, Dec. 18, 2005; Fred Barbash and Peter Baker, *Gonzales Defends Eavesdropping Program*, Washington Post, Dec. 19, 2005; Todd J. Gillman, *Bush Assails Disclosure of Domestic Spying Program*, San Jose Mercury News, Dec. 19, 2005; David Stout, *Bush Says U.S. Spy Program is Legal and Essential*, New York Times, Dec. 19, 2005; James Gerstenzang, *Bush Vows to Continue Domestic Surveillance*, L.A. Times, Dec. 19, 2005; Terence Hunt, *Bush Says NSA Surveillance Necessary, Legal*, Washington Post, Dec. 19, 2005; George E. Condon, *Bush Says Spying Is Needed To Guard US*, San Diego Union Tribune, Dec. 20, 2005; Jeff Zeleny, *No 'Unchecked Power' In Domestic Spy Furor*, Chicago Tribune, Dec. 20, 2005; Michael Kranish, *Bush Calls Leak of Spy Program Shameful*, Boston Globe, Dec. 20, 2005; Craig Gordon, *For Bush, 9/11 Justifies Eavesdropping*, Newsday, Dec. 20, 2005; Terence Hunt, *Bush Defends Domestic Spying Program as Effective Tool in War on Terror*, Detroit Free Press, Dec. 19, 2005.

Finally, pursuant to applicable regulations and statute, the ACLU expects the determination of this request for expedited processing within 10 calendar days and the determination of this request for documents within 20 days. See 28 CFR § 16.5(d)(4); 5 U.S.C. § 552(a)(6)(A)(i).

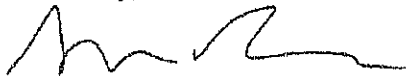
If this request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Ann Beeson  
Associate Legal Director  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> floor  
New York, NY 10004

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Ann Beeson  
Associate Legal Director  
American Civil Liberties Union

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EXHIBIT C  
Bradbury Decl.

## The National Security Archive

The George Washington University  
Gelman Library, Suite 701  
2130 H Street, N.W.  
Washington, D.C. 20037

Phone: 202/994-7000  
Fax: 202/994-7005  
nsarchiv@gwu.edu  
www.nsarchive.org

December 21, 2005

Elizabeth Farris, Supervisory Paralegal  
Office of Legal Counsel  
Department of Justice  
Room 5515, 950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

**RE: Request under the FOIA, in reply refer to Archive #20051739DOJ025**

Dear Ms. Farris:

Pursuant to the Freedom of Information Act (FOIA), I hereby request copies of the following:

*All memoranda, legal opinions, directives or instructions from the Attorney General, Assistant Attorney General, or the Office of Legal Counsel (OLC), issued between September 11, 2001 and December 21, 2005, regarding the government's legal authority for surveillance activity, wiretapping, eavesdropping, and other signals intelligence operations directed at communications to or from U.S. citizens. Please include all documents discussing the President's surveillance authority under the September 2001 congressional use of force resolution as well as the President's independent ability to authorize signals intelligence activities.*

The description of the requested legal opinions in a recent *New York Times* article (David Johnston and Linda Greenhouse, "'01 Resolution is Central to '05 Controversy," *New York Times*, Dec. 20, 2005) suggests that OLC has conducted an analysis as to the proper interpretation of constitutional presidential powers of surveillance. Although some portions of the opinions that specifically identify surveillance measures and technology may be properly classified, at least some portions of these records—namely those reflecting OLC's conclusive opinion as to the legal question at issue—are neither deliberative and predecisional nor inseparable as objective legal determinations that do not reveal particular facts about intelligence sources and methods. Rather, such legal opinions serve to inform the President, and thus are the administration's settled interpretation of a point of law.

Further, it is true that executive branch agencies are entitled to protection of the attorney-client privilege and so under FOIA Exemption 5 are not required to disclose confidential communications that would not be discoverable in ordinary civil litigation. *EPA v. Mink*, 410 U.S. 73, 85 (1973). Courts have held, however, that where the client agency is seeking legal guidance and the responsive communications "do not contain any confidential information concerning the Agency," they must be disclosed under FOIA. *Schlefer v. United States*, 702 F.2d 233, 245 (D.C. Cir. 1983). For example, Field Service Advice Memoranda (FSAs)—legal opinions issued at the request of IRS field offices by the IRS Office of Chief Counsel—were ordered disclosed because they did not involve confidential information concerning the IRS but rather answered a legal question in general or objective terms. *Tax Analysts v. IRS*, 117 F.3d 607 (D.C. Cir. 1997).

Moreover, non-disclosure of the OLC opinion does not serve the purposes Congress intended for FOIA Exemption 5: "The disclosure of documents that authoritatively state an agency's position will neither inhibit the free

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exchange of views within the agency nor confuse the public, because the agency's own purpose in preparing such documents is to obviate the need for further intra-agency deliberation on the matters addressed." *Schlefer*, 702 F.2d at 237. The OLC is not a policy-making body, nor does it, in the context of issuing legal opinions, form part of a deliberative inter-agency process for setting policy; rather, OLC responds to "requests typically deal[ing] with legal issues of particular complexity and importance or about which two or more agencies are in disagreement," conclusively resolving questions or disputes within the executive branch as to a particular legal matter. About OLC, <http://www.usdoj.gov/olc/index.html> (last visited July 27, 2005).

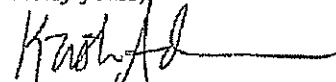
Disclosure of those portions of the OLC memorandum that contain unclassified, non-confidential factual information or final legal opinions regarding surveillance programs conducted at the direction of the President by the National Security Agency implicate an important public interest and fulfill an underlying purpose of the FOIA. The FOIA "was designed to expose operations of federal agencies to public scrutiny without endangering efficient administration, as means of deterring development and application of a body of secret law." *Providence Journal Co. v. United States Dep't of the Army*, 981 F.2d 552, 556 (1st Cir. 1992). I ask that you provide any releasable materials related to the Department's legal opinions on surveillance of individuals, including U.S. citizens, within the United States. It is critical, at this time in our history, for the American public to know and understand the motives and actions of the Government in the conduct of counter-terrorism operations, and particularly where such operations may infringe on the settled civil liberties guaranteed by the Constitution.

If you regard any of these documents as potentially exempt from the FOIA's disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. As the FOIA requires, please release all reasonably segregable non-exempt portions of documents. To permit me to reach an intelligent and informed decision as to whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims.

As you know, the National Security Archive qualifies for a waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. For details on the Archive's research and publication activities, please see our Web site at the address above. Please notify me before incurring any photocopying costs over \$100.

To expedite the release of the requested documents, please disclose them on an interim basis as they become available to you, without waiting until all the documents have been processed. If you have any questions regarding the identity of the records, their location, the scope of the request or any other matters, please call me at (202) 994-7219 or email at [adairk@gwu.edu](mailto:adairk@gwu.edu). I look forward to receiving your response within the twenty day statutory time period.

Sincerely yours,

  
Kristin Adair

## The National Security Archive

The George Washington University  
Gelman Library, Suite 701  
2130 H Street, N.W.  
Washington, D.C. 20037

Phone: 202/994-7000  
Fax: 202/994-7005  
nsarchiv@gwu.edu  
www.nsarchive.org

January 9, 2006

To: Ms. Elizabeth Farris, Supervisory Paralegal, Office of Legal Counsel

From: Meredith Fuchs – National Security Archive  
On behalf of Kristin Adair

RE: Addendum to Freedom of Information Act Request

**FOIA Number - 20051739DOJ025 – Faxed on 12/22/2005 (Attached)**

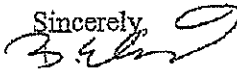
I would like to amend Kristin Adair's December 21, 2005 (Faxed on December 22, 2005) FOIA request to request expedited processing.

This FOIA request clearly meets the criteria for expedited processing under applicable provisions of the Freedom of Information Act, 5 U.S.C. § 552 (a)(E), as there exists a "compelling need" to review materials because the information is sought "by a person primarily engaged in disseminating information," and is "urgen[tly] [needed] to inform the public concerning actual or alleged Federal Government activity."

Please keep in mind that the documents requested are specifically and directly associated with an immediate current breaking news story of great general public interest whose focus involves questions regarding the government's integrity, namely the potentially extensive warrantless electronic surveillance activities undertaken within the United States, which affects public confidence. There has been widespread and sustained media coverage of this issue, effort by the President to provide additional information to the public and immediate congressional inquiry into the policies in question. Substantial privacy, free speech and free association concerns would be harmed by the failure to process this request immediately as the current controversy regards government domestic surveillance policy. There is a compelling need to review and release these documents as the current allegations of surveillance activity and the investigation into the legal authority for these actions are an immediate concern to the general public. The value of the information in these records will be lost if the information is not disseminated quickly. See generally 22 C.F.R. § 171.12. I certify that the statements contained in this letter regarding the alleged abuses and public concern are true and correct to the best of my knowledge.

I appreciate your consideration of this addendum and I look forward to your response. If you have any questions or concerns, please contact me at (202) 994-7059 or at [mfuchs@gwu.edu](mailto:mfuchs@gwu.edu).

Sincerely,

  
Meredith Fuchs  
General Counsel

An Independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's Budget.

In re: FOIA Litigation Seeking Federal Agency )  
Records Relating to the Terrorist )  
Surveillance Program )

**REDACTED DECLARATION OF JOHN D. NEGROPONTE,  
DIRECTOR OF NATIONAL INTELLIGENCE**

I, John D. Negroponte, do hereby state and declare as follows:

**(U) INTRODUCTION**

1. (U) I am the Director of National Intelligence (“DNI”) of the United States. I have held this position since April 21, 2005. From June 28, 2004, until appointed to be DNI, I served as United States Ambassador to Iraq. From September 18, 2001, until my appointment in Iraq, I served as the United States Permanent Representative to the United Nations. I have also served as Ambassador to Honduras (1981-1985), Mexico (1989-1993), the Philippines (1993-1996), and as Deputy Assistant to the President for National Security Affairs (1987-1989).

2. (U) In the course of my official duties, I have been advised of numerous requests under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq., directed at various federal agencies seeking documents relating to the Terrorist Surveillance Program, (“TSP”), a controlled access signals intelligence program authorized by the President in response to the attacks of September 11, 2001. Specifically, I have been advised of FOIA requests made by the Electronic Privacy Information Center (“EPIC”), the American Civil Liberties Union (“ACLU”), the National Security Archive Fund (“NSAF”), the People for the American Way (“PFAW”), Judicial Watch, and the New York Times, as well of the lawsuits filed by each of those entities in federal district court challenging the responses made to the FOIA requests by various agencies of the United States Government, including the Department of Justice and its various components,

and the National Security Agency. Although I understand that each of these parties' FOIA requests may differ in their particulars, and that they are directed to different federal agencies or components, I also understand that all of them seek, in one form or another, information relating to the TSP.

3. (U) The purpose of this declaration is to invoke and assert, in my capacity as the Director of National Intelligence and head of the United States Intelligence Community, the statutory authority created under the National Security Act of 1947, as amended by Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, to protect intelligence information, sources, and methods. See 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure").<sup>1</sup> Disclosure of information that falls within the terms of this statutory protection would cause exceptionally grave damage to the national security of the United States, and, indeed, because each of the FOIA requests at issue relates to the TSP – which is itself a method of intelligence-gathering – the risk is great that disclosure of the information requested would compromise the effectiveness of intelligence sources and methods.

4. (U) In this declaration, I explain, from the perspective of the Intelligence Community, the significant harms that would be done to United States intelligence gathering in the ongoing war against terror if documents that contain classified information about the TSP are compelled to be disclosed. Although the President publicly acknowledged the existence of the TSP in December 2005, highly sensitive information about the TSP remains classified and cannot be disclosed without causing exceptionally grave damage to U.S. national security.

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<sup>1</sup> Prior to the creation of the Office of the Director of National Intelligence, the Director of Central Intelligence exercised the Executive Branch's responsibility to protect this information.

5. **REDACTED**

6. (U) The statements made herein are based on my personal knowledge as well as on information provided to me in my official capacity as the Director of National Intelligence.

**(U) CLASSIFICATION OF DECLARATION**

7. **REDACTED**

8. **REDACTED**

9. **REDACTED**

10. **REDACTED**

**(U) BACKGROUND ON DIRECTOR OF NATIONAL INTELLIGENCE**

11. (U) The position of Director of National Intelligence was created by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, §§ 1011(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the Director of National Intelligence serves as the head of the U.S. Intelligence Community and as the principal adviser to the President, the National Security Council, and the Homeland Security Council for intelligence matters related to the national security. *See* 50 U.S.C. § 403(b)(1), (2).

12. (U) The United States "Intelligence Community" includes the Office of the Director of National Intelligence; the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; the intelligence elements of the military services, the Federal Bureau of Investigation, the Department of the



Treasury, the Department of Energy, the Drug Enforcement Administration, and the Coast Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the Department of Homeland Security concerned with the analysis of intelligence information; and such other elements of any other department or agency as may be designated by the President, or jointly designated by the DNI and heads of the department or agency concerned, as an element of the Intelligence Community. See 50 U.S.C. § 401a(4).

13. (U) The responsibilities and authorities of the Director of National Intelligence are set forth in the National Security Act, as amended. See 50 U.S.C. § 403-1. These responsibilities include ensuring that national intelligence is provided to the President, the heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C. § 403-1(a)(1). The DNI is also charged with establishing the objectives of, determining the requirements and priorities for, and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the Intelligence Community. Id. § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for developing and determining, based on proposals submitted by the heads of agencies and departments within the Intelligence Community, an annual consolidated budget for the National Intelligence Program for presentation to the President, and for ensuring the effective execution of the annual budget for intelligence and intelligence-related activities, and for managing and allotting appropriations for the National Intelligence Program. Id. § 403-1(c)(1)-(5).

14. (U) In addition, the National Security Act of 1947, as amended, provides that “[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI

establishes and implements guidelines for the Intelligence Community for the classification of information under applicable law, Executive orders, or other Presidential directives and access to and dissemination of intelligence. Id. § 403-1(i)(2)(A), (B). In particular, the DNI is responsible for the establishment of uniform standards and procedures for the grant of access to Sensitive Compartmented Information to any officer or employee of any agency or department of the United States, and for ensuring the consistent implementation of those standards throughout such departments and agencies. Id. § 403-1(j)(1), (2).

15. (U) By virtue of my position as the Director of National Intelligence, and unless otherwise directed by the President, I have access to all intelligence related to the national security that is collected by any department, agency, or other entity of the United States. Pursuant to Executive Order No. 12958, as amended by Executive Order 13292, the President has authorized me to exercise original TOP SECRET classification authority.

**(U) THE TERRORIST SURVEILLANCE PROGRAM**

16. (U) Following the September 11 attacks on the United States, the United States faced an urgent and immediate need for accurate intelligence regarding the threat posed by al Qaeda and affiliated terrorist groups. As a result, the President authorized signals intelligence activities designed to meet that need and to detect and prevent future terrorist attacks. The NSA is the component of the Intelligence Community that is responsible for signals intelligence activities, and the NSA utilizes various sources and methods, including the Terrorist Surveillance Program, to safeguard against the immediate threat of mass-casualty terrorist attacks within the United States. The TSP is critical to the national security of the United States.

17. (U) The TSP is a targeted and focused program intended to help “connect the dots” between known and potential terrorists and their affiliates. In order to intercept a

communication under the TSP, one party to the communication must be located outside the United States and there must be a basis to conclude that one party to the communication is a member of al Qaeda, affiliated with al Qaeda, or a member of an organization affiliated with al Qaeda. Thus, the TSP is an “early warning” system with one purpose: to detect and prevent another catastrophic attack on the United States.

18. **REDACTED**

19. **REDACTED**

20. (U) Due to its extraordinary sensitivity, information relating to the TSP is currently classified as TOP SECRET under the standards set forth in Executive Order 12958, as amended. In particular, information relating to the TSP concerns “intelligence activities (including special activities), intelligence sources or methods, or cryptology,” Exec. Order 12958, as amended, § 1.4(c); “foreign relations or foreign activities of the United States, including confidential sources”; *id.* § 1.4(d); “scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism,” *id.* § 1.4(e); and “vulnerability or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism,” *id.* § 1.4(g), the disclosure of which “reasonably could be expected to cause exceptionally grave damage to the national security of the United States.” *Id.* § 1.2(a)(1). Moreover, information relating to the TSP is also designated as “SCI” and is subject to special access and handling requirements necessary to maintain its strict confidentiality and prevent its unauthorized disclosure.

**(U) ASSERTION OF AUTHORITY  
TO PROTECT INTELLIGENCE SOURCES AND METHODS**

21. (U) For the reasons discussed in detail herein, I hereby invoke and assert the

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statutory authority held by the Director of National Intelligence under the National Security Act to protect intelligence sources and methods relating to the TSP.

22. (U) In particular, TSP-related information that falls within my authority to protect intelligence sources and methods falls within the categories described below:

- (1) (U) any classified intelligence information concerning the continuing threat to the United States posed by al Qaeda and its affiliates that forms the basis for the President's authorization and reauthorization of the TSP;
- (2) (U) any operational details concerning the technical methods by which the NSA intercepts communications under the TSP;
- (3) REDACTED
- (4) REDACTED
- (5) REDACTED
- (6) REDACTED
- (7) (U) any information that would reveal or tend to reveal whether someone is a target of surveillance under the TSP.

(U) Disclosure of information in each of these categories would compromise the effectiveness of the sources and methods used by the U.S. Intelligence Community to combat the threat of international terrorism and, thus, this information falls squarely within my authority to protect intelligence sources and methods under the National Security Act, as amended. I describe below each of those categories of information, and then describe the harm that would be caused by the disclosure of that information.

23. REDACTED

24. (U) Thus, even the release of what appears to be the most innocuous information about the TSP poses the substantial risk that our adversaries will be able to piece together sensitive information about how the Program operates. For example, disclosing the dates on

which documents were created, the subjects of the documents, or the volume of documents maintained by agencies involved in the TSP has the potential to reveal information about the capabilities, scope and effectiveness of the Program, which would be utilized by the enemy to allow them to plan their terrorist activities more securely. Thus, in fulfilling my responsibility to protect intelligence sources and methods, I must exercise my statutory authority to protect a full spectrum of information concerning particular intelligence methods in any case where disclosure of such information could reasonably be expected to assist foreign intelligence services or hostile entities such as international terrorist organizations, to the detriment of the United States.

25. (U) Because the information described in this declaration is critical to the continued successful operation of U.S. intelligence-gathering methods, and because its disclosure would cause exceptionally grave damage to the national security of the United States and render the nation more vulnerable to another terrorist attack, I fully support and defend any determination made to withhold information responsive to FOIA requests that seek the disclosure of classified information related to the TSP.

**(U) DESCRIPTION OF INFORMATION AND HARM FROM DISCLOSURE**

26. REDACTED

27. (U) I also invoke my statutory authority to protect intelligence sources and methods from disclosure with respect to *information that would reveal or tend to reveal operational details concerning the technical methods by which NSA intercepts communications under the TSP*. Detailed knowledge of the methods and practice of the U.S. Intelligence Community agencies must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, or damage

the intelligence efforts of the United States, including efforts by this country to counter international terrorism.

28. REDACTED

29. REDACTED

30. REDACTED

31. REDACTED

32. REDACTED

33. REDACTED

34. REDACTED

35. (U) Finally, I invoke my statutory authority to protect intelligence sources and methods from disclosure with respect to *information that would reveal or tend to reveal whether a particular person is a target of surveillance*. To confirm or deny whether any individual has been the target of communications surveillance under the TSP would disclose specifically, and in a more general sense, who is and is not being targeted—thus compromising that collection and providing our adversaries clues regarding those individuals who may or may not be available to be used as a secure means of communication. Confirmation of a target's identity would immediately disrupt the flow of accurate intelligence as the target takes steps to evade detection or manipulate the information received. Denying that any particular individual is targeted also becomes unworkable, and itself revealing, in cases where an individual may, indeed, be targeted. A refusal to confirm or deny only in cases where surveillance is occurring, of course, would effectively disclose and compromise that surveillance, and thus the accumulation of these responses would reveal, more broadly, the method by which surveillance under the TSP is conducted. The only viable way for the Intelligence Community to protect this

intelligence collection mechanism, accordingly, is neither to confirm nor deny whether someone has been targeted or subject to intelligence collection, regardless of whether the individual has been targeted. To say otherwise would result in the frequent, routine exposure of intelligence information, sources, and methods and would severely undermine surveillance activities in general, causing exceptionally grave harm to the national security of the United States.

**(U) CONCLUSION**


36. **REDACTED**

37. (U) For the foregoing reasons, I provide this declaration in my capacity as the Director of National Intelligence to assert and invoke my statutory authority and responsibility to protect from disclosure the intelligence information, sources, and methods implicated by the FOIA requests for information related to the TSP. Information of the type discussed in this declaration cannot be disclosed without causing exceptionally grave damage to the national security of the United States.

I declare under penalty of perjury that the foregoing is true and correct.

DATE:

9/7/2006

  
\_\_\_\_\_  
JOHN D. NEGROPONTE  
Director of National Intelligence



U.S. Department of Justice

Office of Legal Counsel

EXHIBIT E  
Bradbury Decl.

Washington, D.C. 20530

March 8, 2006

Marcia Hofmann  
Electronic Privacy Information Center  
1718 Connecticut Ave., N.W.  
Suite 200  
Washington, DC 20009

Dear Ms. Hofmann:

This is in partial response to your Freedom of Information Act request dated December 16, 2005. We have completed our search of the unclassified files of the Office of Legal Counsel and have found a large number of documents that are responsive to your request. Five documents are enclosed. We are withholding the remaining documents pursuant to Exemption Five of the Act, 5 U.S.C. § 552 (b)(5). The withheld documents are protected by the deliberative process, attorney-client and attorney workproduct privileges, and a small number of the documents are also protected by the presidential communications privilege. The documents are not appropriate for discretionary release. The documents will be identified in a *Vaughn* index to be provided to you by March 20, 2006. We have referred documents to the Office of Information and Privacy, which will be responding directly to you.

Although I am aware that your request is the subject of litigation, I am required by statute and regulation to inform you that you have the right to file an administrative appeal.

Sincerely,

A handwritten signature in black ink that reads "Paul P. Colborn". The signature is fluid and cursive.

Paul P. Colborn  
Special Counsel  
Office of Legal Counsel

Enclosures





Office of Legal Counsel

EXHIBIT F  
Bradbury Decl.

Washington, D.C. 20530

March 8, 2006

Ann Beeson  
American Civil Liberties Union  
125 Broad Street  
18<sup>th</sup> Floor  
New York, NY 10004-2400

Dear Ms. Beeson:

This is in partial response to your Freedom of Information Act request dated December 20, 2005. We have completed our search of the unclassified files of the Office of Legal Counsel and have found a large number of documents that are responsive to your request. Five documents are enclosed. We are withholding the remaining documents pursuant to Exemption Five of the Act, 5 U.S.C. § 552(b)(5). The withheld documents are protected by the deliberative process, attorney-client and attorney workproduct privileges, and a small number of the documents are also protected by the presidential communications privilege. The documents are not appropriate for discretionary release. We have referred documents to the Office of Information and Privacy, which will be responding directly to you.

Although I am aware that your request is the subject of litigation, I am required by statute and regulation to inform you that you have the right to file an administrative appeal.

Sincerely,

Paul P. Colborn  
Special Counsel  
Office of Legal Counsel

Enclosures



U.S. Department of Justice

Office of Legal Counsel

EXHIBIT G  
Bradbury Decl.

Washington, D.C. 20530

March 8, 2006

Kristin Adair  
The National Security Archive  
The George Washington University  
Gelman Library, Suite 701  
2130 H Street, N.W.  
Washington, DC 20037

Dear Ms. Adair:

This is in partial response to your Freedom of Information Act request dated December 21, 2005. We have completed our search of the unclassified files of the Office of Legal Counsel and have identified no documents that are responsive to your request.

Although I am aware that your request is the subject of litigation, I am required by statute and regulation to inform you that you have the right to file an administrative appeal.

Sincerely,

A handwritten signature in black ink that reads "Paul P. Colborn".

Paul P. Colborn  
Special Counsel  
Office of Legal Counsel



U.S. Department of Justice

Office of Legal Counsel

EXHIBIT H  
Bradbury Decl.

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

July 21, 2006

Ms. Marcia Hofmann  
Electronic Privacy Information Center, Inc.  
1718 Connecticut Avenue, NW  
Suite 200  
Washington, DC 20009

Dear Ms. Hofmann:

This is in further response to your Freedom of Information Act ("FOIA") request dated December 16, 2005. We have completed our search of the classified files of the Office of Legal Counsel ("OLC") and have found 158 agency records or categories of agency records responsive to your request. Seventy-nine of these records or categories of records have been referred to other agencies or to other components of the Department of Justice for processing and/or consultations. With respect to these referrals, we have been asked to advise you that 62 are classified and/or contain information that is of the type described in Section 6 of the National Security Act of 1959, Pub. L. No. 86-36, 73 Stat. 63, 64, codified at 50 U.S.C. § 402 note, or in Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 403-1(i)(1). Accordingly, we have been asked to withhold these records or categories of records in full pursuant to Exemptions 1 and 3 of the FOIA, 5 U.S.C. § 552(b)(1), (3). We have also been asked to inform you that certain of these documents may also be subject to additional and overlapping exemptions, including but not limited to Exemption 2, *id.* § 552(b)(2), which protects documents relating to certain internal procedures; Exemption 5, *id.* § 552(b)(5), which protects documents subject to the deliberative process, attorney-client, attorney work product, and presidential communications privileges; and Exemption 7, *id.* § 552(b)(7), which protects certain law enforcement records. Our consultations with respect to the remaining seventeen records or categories of records are ongoing, and you will be advised when determinations are made.

Of the remaining 79 records, we have identified two additional copies of the January 19, 2006, Department of Justice White Paper, entitled "Legal Authorities Supporting the Activities of the National Security Agency Described by the President," which has previously been released to you. We have also identified numerous copies of various drafts of the White Paper and various talking points, similar to those previously identified in our correspondence of March 20, 2006, and these documents are being withheld in full pursuant to Exemption 5 of the FOIA. Certain early drafts of these documents also contain information that is classified and that is subject to the statutory protections described above, and thus, these are also withheld under

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Exemptions 1 and 3.

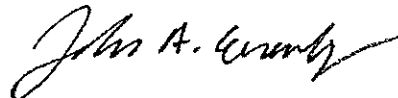
Additionally, a January 11, 2002, memorandum for the files is withheld pursuant to Exemption 5 because it contains information subject to the attorney-client and deliberative process privileges. Further, an October 23, 2001, memorandum from this Office to the Office of White House Counsel and another federal agency offering this Office's advice on a legal matter is also withheld pursuant to Exemption 5 because it contains information subject to the deliberative process privilege, the attorney-client privilege, and the presidential communications privilege.

The remaining responsive agency records or categories of records are currently and properly classified and, thus, are being withheld in full pursuant to Exemption 1 of the Act, 5 U.S.C. § 552(b)(1). Additionally, many of these documents contain information of the type described in Section 6 of the National Security Act of 1959, Pub. L. No. 86-36, 73 Stat. 63, 64, codified at 50 U.S.C. § 402 note, and/or Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 403-1(i)(1), and/or are protected by the deliberative process privilege, the attorney-client privilege, the presidential communications privilege, or the attorney work product doctrine. Thus, the documents subject to these protections are also being withheld pursuant to Exemptions 3 and 5 of the Act, 5 U.S.C. § 552(b)(3), (5).

Please be advised that we have also identified documents responsive to your request that are not agency records as defined in the Act. These documents are not provided.

Although I am aware that your request is the subject of litigation, I am required by statute and regulation to inform you that you have the right to file an administrative appeal.

Sincerely,



John A. Eisenberg  
Deputy Assistant Attorney General



U.S. Department of Justice

Office of Legal Counsel

EXHIBIT I  
Bradbury Decl.

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

July 21, 2006

Ms. Ann Beeson  
Associate Legal Director  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004

Dear Ms. Beeson:

This is in further response to your Freedom of Information Act ("FOIA") request dated December 20, 2005. We have completed our search of the classified files of the Office of Legal Counsel ("OLC") and have found 158 agency records or categories of agency records responsive to your request. Seventy-nine of these records or categories of records have been referred to other agencies or to other components of the Department of Justice for processing and/or consultations. With respect to these referrals, we have been asked to advise you that 62 are classified and/or contain information that is of the type described in Section 6 of the National Security Act of 1959, Pub. L. No. 86-36, 73 Stat. 63, 64, codified at 50 U.S.C. § 402 note, or in Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 403-1(i)(1). Accordingly, we have been asked to withhold these records or categories of records in full pursuant to Exemptions 1 and 3 of the FOIA, 5 U.S.C. § 552(b)(1), (3). We have also been asked to inform you that certain of these documents may also be subject to additional and overlapping exemptions, including but not limited to Exemption 2, *id.* § 552(b)(2), which protects documents relating to certain internal procedures; Exemption 5, *id.* § 552(b)(5), which protects documents subject to the deliberative process, attorney-client, attorney work product, and presidential communications privileges; and Exemption 7, *id.* § 552(b)(7), which protects certain law enforcement records. Our consultations with respect to the remaining seventeen records or categories of records are ongoing, and you will be advised when determinations are made.

Of the remaining 79 records or categories of records, we have identified two additional copies of the January 19, 2006, Department of Justice White Paper, entitled "Legal Authorities Supporting the Activities of the National Security Agency Described by the President," which has previously been released to you. We have also identified numerous copies of various drafts of the White Paper and various talking points, similar to those previously identified in our correspondence of March 20, 2006, and these documents are being withheld in full pursuant to Exemption 5 of the FOIA. Certain early drafts of these documents also contain information that is classified and that is subject to the statutory protections described above, and thus, these are

-2-

also withheld under Exemptions 1 and 3.

Additionally, a January 11, 2002, memorandum for the files is withheld pursuant to Exemption 5 because it contains information subject to the attorney-client and deliberative process privileges. Further, an October 23, 2001, memorandum from this Office to the Office of White House Counsel and another federal agency offering this Office's advice on a legal matter is also withheld pursuant to Exemption 5 because it contains information subject to the deliberative process privilege, the attorney-client privilege, and the presidential communications privilege.

The remaining responsive agency records or categories of records are currently and properly classified and, thus, are being withheld in full pursuant to Exemption 1 of the Act, 5 U.S.C. § 552(b)(1). Additionally, many of these documents contain information of the type described in Section 6 of the National Security Act of 1959, Pub. L. No. 86-36, 73 Stat. 63, 64, codified at 50 U.S.C. § 402 note, and/or Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 403-1(i)(1), and/or are protected by the deliberative process privilege, the attorney-client privilege, the presidential communications privilege, or the attorney work product doctrine. Thus, the documents subject to these protections are also being withheld pursuant to Exemptions 3 and 5 of the Act, 5 U.S.C. § 552(b)(3), (5).

The Office of the Deputy Attorney General has referred to this Office 30 agency records or categories of records responsive to your request. Twenty-one of these referrals are duplicative of documents already described above and are withheld for the same reasons. Of the remaining documents, seven consist of notes or mental impressions of an OLC attorney and thus are withheld pursuant to Exemption 5 on the grounds that they contain information protected by the deliberative process privilege, the attorney-client privilege, and the attorney work product doctrine. These referrals, moreover, contain information that is classified, and these documents are therefore also withheld under Exemption 1. The remaining two referrals are a May 30, 2003, memorandum from this Office to another federal agency offering this Office's opinion on a legal matter and a draft of that memorandum, both with handwritten marginalia by an OLC attorney. These referrals contain attorney client communications and material protected by the deliberative process privilege and thus are withheld under Exemption 5. Additionally, these documents contain information that is classified and are thus withheld under Exemption 1.

Please be advised that we have also identified documents responsive to your request that are not agency records as defined in the Act. These documents are not provided.

-3-

Although I am aware that your request is the subject of litigation, I am required by statute and regulation to inform you that you have the right to file an administrative appeal.

Sincerely,

A handwritten signature in black ink, reading "John A. Eisenberg". The signature is written in a cursive, flowing style with a prominent initial "J".

John A. Eisenberg  
Deputy Assistant Attorney General



U.S. Department of Justice

Office of Legal Counsel

EXHIBIT J  
Bradbury Decl.

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

July 21, 2006

Ms. Kristen Adair  
The National Security Archive  
The George Washington University  
Gelman Library, Suite 701  
2130 H Street, N.W.  
Washington, D.C. 20037

Dear Ms. Adair:

This is in further response to your Freedom of Information Act ("FOIA") request dated December 21, 2005, seeking final "memoranda, legal opinions, directives or instructions from the Attorney General, Assistant Attorney General, or the Office of Legal Counsel (OLC), issued between September 11, 2001 and December 21, 2005," relating to the Terrorist Surveillance Program, described by the President in his December 17, 2005, radio address. We have completed our search of the classified files of the Office of Legal Counsel ("OLC") and have found a small number of documents responsive to your request. These documents are classified and, thus, are being withheld in full pursuant to Exemption 1 of the FOIA, 5 U.S.C. § 552(b)(1). Additionally, these documents are protected by the deliberative process privilege, the attorney-client privilege, and/or the presidential communications privilege, and many of them contain information of the type described in Section 6 of the National Security Act of 1959, Pub. L. No. 86-36, 73 Stat. 63, 64, codified at 50 U.S.C. § 402 note, and/or in Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 403-1(i)(1). Thus, these documents are also being withheld pursuant to Exemptions 3 and 5 of the FOIA, 5 U.S.C. §§ 552(b)(3), (5).

Please be advised that we have also identified documents responsive to your request that are not agency records as defined in the FOIA. These documents are not provided.

Although I am aware that your request is the subject of litigation, I am required by statute and regulation to inform you that you have the right to file an administrative appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Eisenberg".

John A. Eisenberg  
Deputy Assistant Attorney General



EXHIBIT K  
Bradbury Decl.

**INDEX OF RECORDS OR CATEGORIES OF RECORDS WITHHELD  
BY THE OFFICE OF LEGAL COUNSEL ("OLC")**

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTION(S)	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT
OLC 1	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR	SAME as ODAG 28 & 30
OLC 2	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR	
OLC 3	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR	
OLC 4	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	NSA	
OLC 5	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		
OLC 6	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
OLC 7	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OLC 8	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 9	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 10	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		

\* Because certain documents implicate the equities of more than one component or agency, the withholding of certain documents may be discussed in more than one declaration.

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTION(S)	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT
OLC 11	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		
OLC 12				OIPR	
OLC 13				OIPR	
OLC 14				OIPR	
OLC 15	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	NSA	
OLC 16	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-68		SAME as ODAG 38 OIPR 1 & 2 are Drafts
OLC 17				NSA	
OLC 18	Memo	(b)(3) (b)(5)	¶¶ 54-58		SAME as OIPR 25
OLC 19	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
OLC 20				OIPR	
OLC 21				OIPR	SAME as OIPR 79
OLC 22	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as ODAG 58
OLC 23	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		
OLC 24				NSA	
OLC 25				NSA	
OLC 26	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 27	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71		

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTION(S)	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT
OLC 28	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71		
OLC 29	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 30				NSA	
OLC 31				NSA	
OLC 32	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71		
OLC 33				NSA	
OLC 34	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38		
OLC 35	Letter	(b)(1) (b)(3) (b)(6)	¶¶ 39-41		
OLC 36	Letter Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 39-41		
OLC 37	Letter Draft Memo	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 39-41		SAME as ODAG 12
OLC 38				NSA	
OLC 39				NSA	
OLC 40	Draft Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 66-68		
OLC 41	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 66-68	NSA	

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OLC 42	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 43	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA	
OLC 44				NSA	
OLC 45				NSA	
OLC 46	Draft Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OLC 47				NSA	
OLC 48				NSA	
OLC 49				NSA	
OLC 50				NSA	
OLC 51	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		
OLC 52				NSA	
OLC 53	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 54	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 1 & OIPR 28
OLC 55	Letter Memo	(b)(1) (b)(3)	¶ 59		
OLC 56	NOT AGENCY RECORD		¶ 77		
OLC 57	NOT AGENCY RECORD		¶ 77		
OLC 58	NOT AGENCY RECORD		¶ 77		
OLC 59	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OIPR 29
OLC 60	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTION(S)	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT
OLC 61	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71		
OLC 62	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 52
OLC 63	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as FBI 4
OLC 64	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as FBI 5
OLC 65	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OLC 66	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
OLC 67	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		
OLC 68	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		
OLC 69	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
OLC 70				NSA	
OLC 71	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 72	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as ODAG 26
OLC 73	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		

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OLC 74	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38		
OLC 75	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 42-47		
OLC 76	Notes Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 48-53		
OLC 77	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA	
OLC 78	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38, 48-53		
OLC 79	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 80	Briefing Materials	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 72-76		
OLC 81	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OLC 82	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OLC 83	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 84	Draft	(b)(5)	¶¶ 72-76		
OLC 85	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		

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OLC 86	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 87	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 88	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 89	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 90	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 91				OIPR	
OLC 92	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR	
OLC 93	Draft Notes	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		SAME as ODAG 48
OLC 94	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	OIPR	
OLC 95	<i>INTENTIONALLY LEFT BLANK</i>				
OLC 96				NSA	
OLC 97				NSA	
OLC 98				NSA	SAME as OIPR 57
OLC 99				NSA	
OLC 100	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
OLC 101	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38		

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OLC 102	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 103	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 104	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58	NSA	
OLC 105	Duplicates of White Paper	NOT EXEMPT	ALREADY RELEASED		
OLC 106	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA	
OLC 107	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 48-53		
OLC 108	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 109	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		
OLC 110	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR	
OLC 111	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
OLC 112	Draft Notes Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
OLC 113	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as FBI 42



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OLC 114	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		
OLC 115	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		SAME as ODAG 3
OLC 116	Drafts of White Paper	(b)(1) (b)(3) (b)(5)	¶ 75		SAME as OIPR 60
OLC 117	Letter	(b)(1) (b)(3)	¶ 76		SAME as FBI 18
OLC 118	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA	
OLC 119	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 120	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 121	Client Communication Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71		
OLC 122	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
OLC 123	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 124	Letter Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	NSA	
OLC 125	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME as ODAG 41

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OLC 126	Brief Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OLC 127				FBI	
OLC 128				OIPR	SAME as OIPR 12
OLC 129	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 6
OLC 130	Letter	(b)(1) (b)(3)	¶ 59		SAME as ODAG 7
OLC 131	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 2, OIPR 37, & FBI 51
OLC 132	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 5
OLC 133	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 51
OLC 134	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OLC 135				NSA	
OLC 136	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
OLC 137	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58	NSA	
OLC 138				OIPR	
OLC 139	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 48-53		
OLC 140	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	

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OLC 141	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA	
OLC 142	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71		
OLC 143	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA	
OLC 144	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 48-53		
OLC 145	Report	(b)(1) (b)(3)	¶¶ 48-53		SAME as ODAG 16
OLC 146	Memo Client Communication	(b)(5) (b)(6)	¶¶ 62-65		
OLC 147				NSA	
OLC 148				NSA	
OLC 149				NSA	
OLC 150				NSA	
OLC 151				NSA	
OLC 152				NSA	
OLC 153 - 199	<i>INTENTIONALLY LEFT BLANK</i>				
OLC 200	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 48-53		
OLC 201	Drafts of White Paper	(b)(5)	¶ 75		
OLC 202	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OLC 203	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		

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OLC 204	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 205	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
OLC 206	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71		
OLC 207	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 42-47		
OLC 208	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71		
<b>DOCUMENTS REFERRED BY ODAG</b>					
ODAG 1	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 54
ODAG 2	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 131, FBI 51, & OIPR 37
ODAG 3	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as OLC 115
ODAG 5	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 132
ODAG 6	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 129
ODAG 7	Letter Memo	(b)(1) (b)(3) (b)(5)	¶ 59		SAME as OLC 130
ODAG 8	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		FINAL at OLC 59

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTION(S)	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT
ODAG 10	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38, 48-53		
ODAG 12	Letter	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 42-47		SAME as OLC 37
ODAG 15	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 48-53		
ODAG 16	Client Communication Notes	(b)(1) (b)(3) (b)(5)	¶¶ 48-53		SAME as OLC 145
ODAG 17	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38, 48-53		
ODAG 18	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38, 48-53		
ODAG 19	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38, 48-53		
ODAG 21	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71		
ODAG 22	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71		
ODAG 23	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 48-53		
ODAG 24	Draft Notes Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 48-53		
ODAG 26	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as OLC 72
ODAG 28	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as OLC I  Also referred by ODAG to OIPR

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTION(S)	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT
ODAG 30	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as OLC 1  Also referred by ODAG to OIPR
ODAG 33	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58		
ODAG 34	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME as OLC 80
ODAG 38	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 16  OIPR 1 & 2 are Drafts
ODAG 40	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 39-41		
ODAG 41	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME as OLC 125
ODAG 42	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		
ODAG 43	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
ODAG 44	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
ODAG 45	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Final at OLC 116
ODAG 48	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		SAME as OLC 93
ODAG 49	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Final at OLC 54

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTION(S)	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT
ODAG 50	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
ODAG 51	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		
ODAG 52	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 62
ODAG 53	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Final at ODAG 42
ODAG 54	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME as OLC 46
ODAG 58	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as OLC 22
ODAG 65	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		
<b>DOCUMENTS REFERRED BY OIPR</b>					
OIPR 1	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 16 & ODAG 38
OIPR 2	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 16 & ODAG 38
OIPR 13	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OIPR 25	Memo	(b)(3) (b)(5)	¶¶ 54-58		SAME as OLC 18
OIPR 27	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		
OIPR 28	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 54 & ODAG 1

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OIPR 29	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 59
OIPR 30	DETERMINED TO BE NONRESPONSIVE				
OIPR 31	DETERMINED TO BE NONRESPONSIVE				
OIPR 32	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54
OIPR 33	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54
OIPR 34	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54
OIPR 35	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54
OIPR 36	DETERMINED TO BE NONRESPONSIVE				
OIPR 37	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 131, FBI 51, and ODAG 2
OIPR 38	DETERMINED TO BE NONRESPONSIVE				
OIPR 41	DETERMINED TO BE NONRESPONSIVE				
OIPR 43	DETERMINED TO BE NONRESPONSIVE				
OIPR 45	DETERMINED TO BE NONRESPONSIVE				
OIPR 46	DETERMINED TO BE NONRESPONSIVE				
OIPR 47	DETERMINED TO BE NONRESPONSIVE				
OIPR 48	DETERMINED TO BE NONRESPONSIVE				
OIPR 49	DETERMINED TO BE NONRESPONSIVE				
OIPR 50	DETERMINED TO BE NONRESPONSIVE				
OIPR 51	DETERMINED TO BE NONRESPONSIVE				
OIPR 52	DETERMINED TO BE NONRESPONSIVE				
OIPR 55	DETERMINED TO BE NONRESPONSIVE				
OIPR 60	Draft of White Paper	(b)(5)	¶ 75		SAME as OLC 116
OIPR 71	Internal Email	(b)(5)	¶¶ 54-58		
OIPR 75	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71		



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OIPR 82	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 66-68		
OIPR 85	DETERMINED TO BE NONRESPONSIVE				
OIPR 86	DETERMINED TO BE NONRESPONSIVE				
OIPR 87	DETERMINED TO BE NONRESPONSIVE				
OIPR 88	DETERMINED TO BE NONRESPONSIVE				
OIPR 89	DETERMINED TO BE NONRESPONSIVE				
OIPR 90	DETERMINED TO BE NONRESPONSIVE				
OIPR 91	DETERMINED TO BE NONRESPONSIVE				
OIPR 92	DETERMINED TO BE NONRESPONSIVE				
OIPR 93	DETERMINED TO BE NONRESPONSIVE				
OIPR 94	Internal Email	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		
OIPR 95	DETERMINED TO BE NONRESPONSIVE				
OIPR 97	DETERMINED TO BE NONRESPONSIVE				
OIPR 98	DETERMINED TO BE NONRESPONSIVE				
OIPR 99	DETERMINED TO BE NONRESPONSIVE				
OIPR 100	DETERMINED TO BE NONRESPONSIVE				
OIPR 101	DETERMINED TO BE NONRESPONSIVE				
OIPR 102	DETERMINED TO BE NONRESPONSIVE				
OIPR 103	DETERMINED TO BE NONRESPONSIVE				
OIPR 104	DETERMINED TO BE NONRESPONSIVE				
OIPR 105	DETERMINED TO BE NONRESPONSIVE				
OIPR 106	DETERMINED TO BE NONRESPONSIVE				
OIPR 113	DETERMINED TO BE NONRESPONSIVE				
OIPR 129	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 69-71		
OIPR 137	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		
OIPR 138	Letter	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		
OIPR 139	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTION(S)	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT
OIPR 140	Letter	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		
OIPR 141	Internal Email Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38		
OIPR 142	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 66-68		
<b>DOCUMENTS REFERRED BY FBI</b>					
FBI 4	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as OLC 63
FBI 5	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as OLC 64
FBI 7	Memo	(b)(1) (b)(3)	¶¶ 32-38		
FBI 18	Letter	(b)(1) (b)(3)	¶ 76		SAME as OLC 117
FBI 19	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54
FBI 42	Memo	(b)(1) (b)(3)	¶¶ 62-65		SAME as OLC 113
FBI 51	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 2, OLC 131 & OIPR 37
FBI 58	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54

# EXHIBIT J

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER,	)	
	)	
Plaintiff,	)	Civil No. 06-00096 (HHK)
	)	
v.	)	
	)	
DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
<hr/>		
AMERICAN CIVIL LIBERTIES UNION, et al.,	)	
	)	Civil No. 06-00214 (HHK)
Plaintiffs,	)	
	)	
v.	)	
	)	
DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	
<hr/>		

**SECOND REDACTED DECLARATION OF STEVEN G. BRADBURY**

I, Steven G. Bradbury, declare as follows:

- (U) I am the Principal Deputy Assistant Attorney General for the Office of Legal Counsel (“OLC” or the “Office”) of the United States Department of Justice (the “Department”). No one currently serves as the Assistant Attorney General for OLC. Consequently, in my capacity as Principal Deputy Assistant Attorney General for the Office, I am the head of OLC and supervise all OLC activities, including its responses to requests under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.
- (U) I provide this declaration in response to the Court’s Memorandum Opinion and Order of September 5, 2007 (“Mem. Op.”), requesting further information concerning the Department’s determination to withhold certain documents in response to

FOIA requests made by the Electronic Privacy Information Center (“EPIC”), the American Civil Liberties Union (“ACLU”), and the National Security Archive Fund (“NSAF”). Those FOIA requests sought information from OLC and other Department components regarding the Terrorist Surveillance Program (“TSP”), a classified foreign intelligence collection activity authorized by the President after the attacks of September 11, 2001.

3. (U) This declaration is based on my personal knowledge, information, and belief, and on information disclosed to me in my capacity as Principal Deputy Assistant Attorney General for OLC. This declaration also supplements, incorporates, and relies upon the In Camera, Ex Parte Declaration of Steven G. Bradbury, dated September 15, 2006 (cited herein as “Bradbury Decl.”), and also relies upon an exhibit to that Declaration, the In Camera, Ex Parte Declaration of John D. Negroponte, the former Director of National Intelligence, dated September 7, 2006 (cited herein as “DNI Decl.”).<sup>1</sup>

4. (U) For the convenience of the Court, Exhibit A to this declaration is an updated version of the chart provided as Exhibit K to my original declaration, which lists each of the records or categories of records withheld by OLC in this litigation. The updated chart identifies, as to each record or category of record, whether summary judgment has been granted by the Court’s earlier order or whether the record is addressed in this supplemental submission, and if so, provides the paragraph numbers of this declaration where the record is discussed. In addition, in connection with the Notice of Supplemental Authority that I understand has been filed in this case advising the Court of developments in litigation in the United States District Court for the Southern District of New York – where certain documents processed by OLC in response to a similar FOIA request seeking information

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<sup>1</sup> (U) In February 2007, J. Michael McConnell replaced Ambassador Negroponte as the Director of National Intelligence.

about the TSP have been at issue, and where I have also submitted a declaration – the chart attached hereto as Exhibit A also identifies those documents as to which summary judgment is still pending in the litigation before this Court but as to which OLC’s determinations to withhold have been upheld by the Court in The New York Times Company v. U.S. Dept. of Defense and U.S. Dept. of Justice, Civil Action No. 06-1553 (S.D.N.Y.) (Berman, J.).

**(U) CLASSIFICATION OF DECLARATION**

5. **REDACTED**
6. **REDACTED**
7. **REDACTED**
8. **REDACTED**
9. **REDACTED**

**(U) PLAINTIFFS’ FOIA REQUESTS AND THE TERRORIST SURVEILLANCE PROGRAM**

10. (U) Each of plaintiffs’ FOIA requests seeks information regarding the Terrorist Surveillance Program (“TSP”), a highly classified signals intelligence activity authorized by the President after the terrorist attacks on the United States of September 11, 2001. Under the TSP, the National Security Agency (“NSA”) was authorized to intercept the contents of international communications for which there were reasonable grounds to believe that one party was located outside the United States and that at least one party to the communication was a member or agent of al Qaeda or an affiliated terrorist organization. See Bradbury Decl. ¶ 19.

11. (U) The President publicly acknowledged the existence of the TSP on December 17, 2005. See Bradbury Decl. ¶ 20. On January 17, 2007, after my original declaration in this case was executed, the Attorney General announced that any electronic

surveillance that was occurring under the TSP would now be conducted subject to the approval of the Foreign Intelligence Surveillance Court (“FISC”). See Ex. B hereto. On August 5, 2007, Congress enacted the Protect America Act of 2007, Pub. L. No. 110-55, which exempted the acquisition of certain foreign intelligence information from the definition of “electronic surveillance” subject to the procedures of the Foreign Intelligence Surveillance Act (“FISA”). Under these circumstances, the President has not renewed his authorization of the TSP.

12. (U) Although the existence of the TSP is now publicly acknowledged, and some general facts about the TSP have been officially disclosed, the President has made clear that sensitive information about the nature, scope, operation, and effectiveness of the TSP and other communications intelligence activities remains classified and cannot be disclosed without causing exceptionally grave harm to U.S. national security. The declaration of the former Director of National Intelligence, provided in this litigation, sets forth the categories of information related to the TSP that cannot be disclosed without causing such harms, and describes these harms in detail. See DNI Decl. ¶¶ 22, 26-35.

13. **REDACTED**

14. **REDACTED**

15. **REDACTED**

16. **REDACTED**

(A.)

17. **REDACTED**

18. **REDACTED**

(B.)

19. **REDACTED**

20. REDACTED

21. REDACTED

22. REDACTED

(C.)

23. REDACTED

24. REDACTED

**(U) FURTHER EXPLANATION OF WITHHOLDINGS**

**(U) A. Records or Categories of Records Relating to the President's Authorization of the TSP.**

25. (U) Within this category, the Court has sought further justification concerning the proper withholding of the following documents: OLC 51, 63, 64, 114, and 115; ODAG 3 and 40; OIPR 138, 139, and 140; and FBI 4, 5, and 7, which are internal memoranda reflecting the views of Department officials regarding the President's reauthorization of the TSP and related matters. These documents reflect internal deliberations regarding the reauthorization process as well as the confidential advice of attorneys in the course of formulating recommendations to the President regarding these matters.

OLC 51

26. (U) OLC 51 is a one-page memorandum, dated August 9, 2004, from the Acting Assistant Attorney General for OLC to the Deputy Attorney General entitled "Proposed Memorandum," which contains OLC's advice concerning a decision to be made by the Deputy Attorney General regarding an intelligence collection activity.

27. REDACTED



*Applicability of Exemption Five*

28. (U) In any event, disclosure of OLC 51 would interfere with the attorney-client relationship between OLC and the leadership of the Department, which relies upon OLC for its legal advice with respect to a broad range of issues. Disclosure of communications of this nature would substantially harm the relationships intended to be protected by this privilege by compromising OLC's ability to provide legal advice and to do so in writing. Thus, OLC 51 is properly withheld under FOIA's Exemption Five.

OLC 63, OLC 64, OLC 114, OIPR 139, and OIPR 140

29. (U) OLC 63 is a two-page memorandum (and related electronic file) dated March 16, 2004, from the Acting Attorney General to the Counsel to the President, copied to the President's Chief of Staff, containing legal recommendations regarding classified foreign intelligence activities. OLC 63 is withheld under FOIA Exemptions One, Three, and Five.

30. (U) OLC 64 consists of four copies of a three-page memorandum dated March 15, 2004, for the Deputy Attorney General from the Assistant Attorney General for OLC, plus an electronic file, which outlines preliminary OLC views with respect to certain legal issues concerning classified foreign intelligence activities. The memorandum specifically notes that OLC's views have "not yet reached final conclusions" and that OLC is "not yet prepared to issue a final opinion." OLC 64 is withheld under FOIA Exemptions One, Three, and Five.

31. (U) OLC 114 consists of two copies of a three-page memorandum dated March 22, 2004, to the Deputy Attorney General from the Assistant Attorney General for OLC, which confirms oral advice provided by OLC on a particular matter concerning classified foreign intelligence activities. OLC 114 is withheld under FOIA Exemptions One, Three, and Five.

32. (U) OIPR 139 is a one-page memorandum dated March 12, 2004, to the Deputy Attorney General from the Assistant Attorney General for OLC, which provides legal advice concerning certain decisions relating to classified foreign intelligence activities. OIPR 139 is withheld under FOIA Exemptions One, Three, and Five.

33. (U) OIPR 140 is a one-page letter dated March 11, 2004, from the Assistant Attorney General for OLC, to the White House Counsel seeking clarification regarding advice that OLC had been requested to provide concerning classified foreign intelligence activities. OIPR 140 is withheld under FOIA Exemptions One, Three, and Five.

*Applicability of Exemptions One and Three.*

34. REDACTED

35. REDACTED

*Applicability of Exemption Five.*

36. (U) Disclosure of each of these documents would interfere with privileged attorney-client relationships. Specifically, disclosure of OLC 64, OLC 114, and OIPR 139, which contain recommendations and legal advice from OLC to the Deputy Attorney General, would interfere with the attorney-client relationship between OLC and Department leadership who rely upon OLC for its legal advice with respect to a broad range of issues. Disclosure of communications of this nature would substantially harm the relationships intended to be protected by the attorney-client privilege by compromising OLC's ability to provide legal advice and to do so in writing. Thus, OLC 64, OLC 114, and OIPR 139 are properly withheld under FOIA's Exemption Five.

37. (U) Similarly, disclosure of OLC 63, which contains recommendations and legal advice from the Department to the President and his advisors, would interfere with the attorney-client relationship between the Department of Justice and White House officials,

who rely upon the Department for its legal advice with respect to a broad range of issues. Disclosure of communications of this nature would substantially harm the relationships intended to be protected by the attorney-client privilege by compromising the Department's ability to provide candid legal advice and to do so in writing. Thus, OLC 63 is also properly withheld under Exemption Five.

38. (U) OIPR 140 is similarly exempt from disclosure in that it is a protected attorney-client communication between OLC and the White House seeking clarification regarding a question put to OLC with respect to a particular request for legal advice that was then pending in OLC. Disclosure of this sort of document would demonstrate the nature of the advice sought from OLC, and the nature of the clarification request that OLC then made of the White House, each of which are confidential communications that are protected by the attorney-client privilege. OIPR 140, accordingly, is properly withheld in its entirety under FOIA Exemption Five.

39. (U) In addition, all of these documents (and particularly OLC 64, which notes, on its face, that OLC's views have "not yet reached final conclusions" and that OLC is "not yet prepared to issue a final opinion") were part of an ongoing decisionmaking process, whereby certain advice and recommendations were provided by OLC and the Department in the course of decisions by the President concerning the continued authorization of particular foreign intelligence activities. Disclosure of predecisional, deliberative documents that were part of ongoing decisionmaking would seriously undermine the process by which the Government makes decisions by discouraging the frank exchange of ideas critical to effective decisionmaking. Thus, OLC 63, OLC 64, OLC 114, OIPR 130, and OIPR 140 are also properly withheld under the deliberative process privilege component of Exemption Five.

OLC 115

40. (U) OLC 115 is a two-page memorandum for the Attorney General from a Deputy Assistant Attorney General, OLC, dated January 9, 2002, which relates to the Attorney General's review of the legality of the President's order authorizing the TSP in the course of considering that program's reauthorization, which was done approximately every 45 days. See Bradbury Decl. ¶ 30. OLC 115 is withheld under FOIA Exemptions One, Three, and Five.

(U) *Applicability of Exemptions One & Three.*

41. REDACTED

(U) *Applicability of Exemption Five.*

42. (U) In addition, as discussed in my earlier declaration, OLC 115 reflects internal deliberations regarding the process by which the TSP was authorized. See Bradbury Decl. ¶ 40. This document contains a recommendation from OLC to the Attorney General concerning his review of the legality of the TSP in the course of its periodic reauthorization. To disclose such deliberative recommendations from OLC to the Attorney General would compromise the process by which the Attorney General receives advice from OLC attorneys, see id. ¶ 5, and would disclose the factors and recommendations presented to the Attorney General for his consideration when making certain decisions concerning the TSP. Both the deliberative process privilege and the attorney-client privilege are intended to protect against compromising the confidentiality of these types of communications, and, accordingly, OLC 115 is also properly withheld under Exemption Five.

ODAG 3

43. (U) ODAG 3 is a duplicate of OLC 115 and is withheld for the reasons explained in paragraphs 40-42, supra.

ODAG 40

44. (U) ODAG 40 is a one-page undated document (plus an electronic file) which contains the personal notes of a former Department attorney concerning matters relating to classified foreign intelligence activities. This document is withheld under FOIA Exemptions One, Three, and Five.

*(U) Applicability of Exemptions One & Three.*

45. **REDACTED**

*(U) Applicability of Exemption Five.*

46. (U) As described in my prior declaration, ODAG 40 reflects internal deliberations regarding the process of reauthorizing the TSP, as well as the confidential advice of attorneys in the course of formulating recommendations to the President regarding classified communications intelligence activities. See Bradbury Decl. ¶ 39. The substance of the communications contained in these notes is protected under a variety of privileges. For example, the notes reflect communications between OLC and a senior adviser to the President related to presidential decisionmaking concerning intelligence collection activities, and thus, are protected by the presidential communications privilege. The notes also reflect the substance of communications related to advice from OLC to the NSA that is protected by the attorney-client privilege, as well as internal Executive Branch deliberations within the Department, and involving other agencies, that are protected by the deliberative process privilege. Disclosure of communications of this nature would substantially harm the relationships and confidentiality concerns intended to be protected by these privileges, and, thus, ODAG 40 is properly withheld under FOIA's Exemption Five.

47. **REDACTED**

OIPR 138

48. (U) In reviewing OIPR 138 for purposes of preparing this declaration, I have observed that the document is subject to an express reservation of control by the White House. As with OLC 56, 57, and 58, which OLC previously determined did not constitute agency records as that term is defined in FOIA, see Bradbury Decl. ¶ 77, OLC has no authority to distribute this record or to dispose of it. OIPR 138, accordingly, is not an “agency record,” as that term is defined in FOIA, and should not have been processed by OLC in response to the three FOIA requests at issue in this litigation. Because plaintiffs do not challenge OLC’s determinations with respect to records that are not Department of Justice records, this record is not further discussed herein.

FBI 4

49. (U) FBI 4 is a duplicate of OLC 63 and is withheld for the reasons explained in paragraphs 29, 34-35, 37, 39, supra.

FBI 5

50. (U) FBI 5 is a duplicate of OLC 64 and is withheld for the reasons explained in paragraphs 30, 34-36, 39, supra.

FBI 7

51. (U) FBI 7 is a one-page memorandum, dated October 20, 2001, from the Attorney General to the Director of the FBI, advising the Director that certain intelligence collection activities are legal and have been appropriately authorized. The memorandum is classified TOP SECRET and is withheld under FOIA Exemptions One and Three.

52. **REDACTED**

REMAINING DOCUMENTS IN CATEGORY A

53. (U) The Court has upheld OLC's withholding of the remaining records contained within this category, identified and described in my previous declaration at paragraphs 32-38: OLC 34, 67, 74, 78, 93, and 101; ODAG 10, 17, 18, 19, 48, and 65; and OIPR 141. See Mem. Op. at 14.

**B. REDACTED**

54. (U) The documents withheld by OLC in Category B related to certain arrangements and activities necessary to the operation of the foreign intelligence activities authorized by the President. Further information about this category of documents cannot be provided without disclosing classified information.

55. **REDACTED**

56. (U) The Court has upheld OLC's withholding of all the records contained within this category, identified and described in my previous declaration at paragraphs 42-47: OLC 35, 36, 37, 75 and 207, and ODAG 12.

**C. (U) Records or Categories of Records Relating to Targets of the TSP.**

57. (U) Within this category, the Court has sought further justification regarding the proper withholding of the following documents: OLC 76, 107, 139, 144, 145, and 200, ODAG 15, 16, 23 and 24, and OIPR 9.

OLC 76 and ODAG 24

58. (U) As described in my earlier declaration, see Bradbury Decl. ¶ 48, OLC has been part of an extensive interagency process designed to identify organizations affiliated with al Qaeda for purposes of the surveillance authorized under the TSP and to develop the criteria to be applied when identifying potential targets. OLC thus withheld records or

categories of records relating to the criteria used for targeting and the appropriateness of targeting certain groups or individuals under the TSP.

59. (U) These interagency discussions were intended to ensure that the TSP operated in a manner consistent with the President's authorizations and were part of the Department's review of the President's authorizations for form and legality. In addition, much of this interagency discussion occurred in the course of the Department's extended effort to devise an application for the FISC that would, if granted, allow activities authorized by the President under the TSP to be placed under FISC authorization. This extended effort required consultation among a variety of intelligence agencies and components to ensure that the application made to the FISC sought authorization for a surveillance effort that was appropriately targeted to ensure that useful information could be obtained through intelligence collection efforts and in compliance with applicable legal requirements.

60. (U) OLC 76 and ODAG 24 are categories of records that reflect this interagency discussion. The documents are identified in a log attached hereto as Exhibit C. As that log demonstrates, the documents withheld by OLC in this category of records fall into three overlapping categories: interagency communications, much of it preliminary, concerning consideration of international terrorist groups potentially affiliated with al Qaeda; OLC drafts and notes concerning the same, often identifying questions requiring interagency resolution; and intelligence information and analysis concerning terrorist groups considered relevant to such consideration. All of these documents are properly withheld under FOIA Exemptions One, Three, and Five.

***Applicability of Exemptions One and Three.***

61. (U) As described in my prior declaration, the United States cannot confirm or deny the identities of any target of foreign surveillance without fundamentally compromising



the intelligence sources and methods as well as intelligence information that might be collected from that source. See Bradbury Decl. ¶ 50; DNI Decl. ¶ 35. To disclose any of the discussion contained in these documents, preliminary or otherwise, concerning consideration of international terrorist groups potentially affiliated with al Qaeda, and whose members or agents, accordingly, might be targeted for collection under the TSP, would identify the priorities of United States intelligence collection activities, and put persons affiliated with these groups on notice that their communications may be compromised, inevitably resulting in the loss of intelligence information. See Bradbury Decl. ¶¶ 51-52; DNI Decl. ¶ 35.

62. **REDACTED**

*Applicability of Exemption Five*

63. (U) As described in my earlier declaration, all of the documents identified in this section were created or collected as part of an ongoing interagency deliberative process concerning consideration of groups potentially affiliated with al Qaeda. Moreover, although factual information is ordinarily not subject to deliberative process protection, in this case the selection of the specific facts considered by the Department and other agencies involved in this process would reveal the nature of the process and the specific information recommended to be considered when identifying groups potentially affiliated with al Qaeda. Disclosure of these records or categories of records would compromise the interagency deliberative process and deter the full exchange of ideas and information intended to assist in that process, to the detriment of informed government decisionmaking. Such documents are protected by the deliberative process privilege, and thus are properly withheld under FOIA's Exemption Five.

64. (U) Furthermore, many of the documents withheld in this category constitute attorney-client communications between OLC and other Department attorneys, and the other

agencies, particularly in the Intelligence Community, to which we provide legal advice. To disclose these communications would hamper that relationship and make it difficult for the Department to request and for the client agencies to provide factual information and opinions critical to producing well-informed legal opinions from the Department that can support effective decisionmaking at the agency level. Documents reflecting these attorney-client communications, accordingly, are properly withheld under FOIA's Exemption Five.

65. (U) In addition, deliberations concerning the nature and scope of an application for a FISC order relating to interception of the content of one-end foreign communications were ongoing at the time the plaintiffs' FOIA requests were processed in the spring of 2006. Because these deliberations occurred in the context of preparing for a court filing, and involved views submitted at the request of the OLC attorneys that were preparing the filing, all of these documents are protected by the attorney work product doctrine, and, thus, are properly withheld in their entirety.

#### OLC 107

66. (U) OLC 107 consists of four copies of a two-page document that addresses generally standards for considering whether international terrorist groups would be considered to be potentially affiliated with al Qaeda. This document is identified on its face as "preliminary" and thus constitutes a draft. It is my understanding that plaintiffs do not contest OLC's determination to withhold drafts, and thus OLC 107 is not discussed further herein.<sup>2</sup>

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<sup>2</sup> (U) All of the draft documents withheld by OLC are withheld under Exemption Five, but most are also properly withheld under other exemptions, including under Exemptions One and Three. Because plaintiffs concede that these draft documents are properly withheld under Exemption Five, other equally applicable and overlapping exemptions are not further discussed.

OLC 139

67. (U) OLC 139 consists of three copies of a six-page document, all with handwritten comments and marginalia, entitled “Factors.” This document is a draft of a portion of a proposed submission to the FISC concerning the factors to be considered in decisions regarding targeting, and is withheld under FOIA Exemptions One, Three, and Five. It is my understanding that plaintiffs do not contest OLC’s determination to withhold drafts, and thus OLC 139 is not discussed further herein.

OLC 144

68. (U) OLC 144 consists of five copies of a two-page draft memorandum setting forth preliminary views on standards for considering whether international terrorist groups might be considered to be potentially affiliated with al Qaeda, with handwritten comments and marginalia. It is my understanding that plaintiffs do not contest OLC’s determination to withhold drafts, and thus OLC 144 is not discussed further herein.

OLC 145 and ODAG 15

69. (U) OLC 145 and ODAG 15 are copies of two different classified intelligence reports provided to the Department by an intelligence agency in connection with, and for the purpose of, the preparation of legal advice. These reports also contain classified information that may have been collected through the use of classified intelligence sources and methods. As explained in my prior declaration, the Department has conferred with the intelligence agencies that provided or compiled this information and has been advised that the disclosure of such sensitive intelligence information would both endanger the sources and methods through which it was obtained and also compromise the capabilities of the United States Intelligence Community to continue to secure such intelligence information in the future. See also DNI Decl. ¶ 26. They advise that such a result would have an exceptionally grave

effect on U.S. national security. This material, accordingly, is properly and currently classified, and is exempt from disclosure under FOIA Exemptions One and Three.<sup>3</sup>

OLC 200

70. (U) OLC 200 is a typewritten note, with attachments, totaling 11 pages, plus a related electronic file, from one of my staff attorneys to me which discusses a legal question relating to foreign intelligence activities. This document is withheld under FOIA Exemptions One, Three and Five.

*Applicability of Exemptions One & Three.*

71. (U) The legal analysis contained in this document was derived from, and summarizes, a classified NSA operational directive that was provided to OLC in the course of performing its function of providing advice to other Executive Branch agencies. Because the NSA directive remains classified, this derivative document cannot be disclosed without compromising the national security information contained in that document. Accordingly, it is properly withheld under Exemptions One and Three.

*Applicability of Exemption Five.*

72. (U) Disclosure of such intra-OLC communications conveying information from staff level attorneys to their supervisors would fundamentally undermine the manner in which this office conducts business. I rely upon my staff to provide me with concise legal explanations and analysis on topics of interest, and it is not unusual that they are asked to do so in writing. To require the disclosure of such informal communications when they are reduced to writing would seriously impinge on my ability – and the ability of my staff – to fulfill our duties to the Department.

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<sup>3</sup> (U) Although certain portions of these intelligence reports are marked as unclassified, those sections do not address the TSP, and thus the unclassified portions of these reports are not responsive to the plaintiffs' FOIA requests and are not required to be disclosed.

ODAG 16

73. (U) ODAG 16 is a duplicate of OLC 145 and is withheld for the reasons explained in paragraph 69, supra.

ODAG 23

74. (U) ODAG 23 is a six-page memorandum, dated August 18, 2005, from an intelligence agency official to OLC attorneys discussing classified intelligence concerning consideration of international terrorist groups potentially affiliated with al-Qaeda. This document is part of the interagency discussion described above at paragraphs 58-60, and is withheld under FOIA Exemptions One, Three, and Five for all of the reasons stated therein.

OIPR 9

75. (U) OIPR 9 is a copy of an undated three-page memorandum from an intelligence agency official to another intelligence agency official concerning consideration of particular international terrorist groups potentially affiliated with al Qaeda. This document is part of the interagency discussion described above at paragraphs 58-60, and is withheld under FOIA Exemptions One, Three, and Five for all of the reasons stated therein.

REMAINING DOCUMENTS IN CATEGORY C

76. (U) Several of the documents contained within this category also fell within Category A, and their withholding was upheld by the Court in connection with its decisions regarding that category. Specifically, the Court has upheld OLC's withholding of the following records, identified and described in my previous declaration at paragraphs 32-33 and 49: OLC 78 and ODAG 10, 17, 18, and 19. See Mem. Op. at 14.

**D. (U) Records or Categories of Records Relating to Matters Before the Foreign Intelligence Surveillance Court.**

77. (U) The Court has upheld OLC's withholding of all the records contained within this category, see Mem. Op. at 15, which consisted of documents associated with the drafting of applications or other pleadings filed with the FISC, and correspondence with that Court.

78. (U) The documents as to which OLC has been granted summary judgment contained within this category were identified and described in my previous declaration at paragraphs 54-59: OLC 1, 2, 3, 4, 5, 6, 10, 11, 15, 18, 19, 22, 23, 55, 66, 68, 69, 72, 73, 92, 100, 104, 109, 110, 111, 112, 122, 124, 130, 136, and 137; ODAG 7, 26, 28, 30, 33 and 58; and OIPR 25, 27, 71, and 94. See Mem. Op. at 15.

**E. (U) Records or Categories of Records Relating to Legal Opinions of OLC.**

79. (U) Within this category, the Court has sought further justification regarding the proper withholding of the following documents: OLC 16, 54, 59, 62, 85, 113, 129, 131, 132, 133, 146, and 201; ODAG 1, 2, 5, 6, 38, 42, and 52; OIPR 28, 29, 37, and 60; and FBI 42 and 51.

80. (U) Before discussing these particular documents, it is important to address the unique function of OLC and the unique expectations associated with legal memoranda generated by OLC. The principal function of OLC is to assist the Attorney General in his role as legal adviser to the President and to other departments and agencies in the Executive Branch. In connection with this function, OLC prepares memoranda addressing a wide range of legal questions involving operations of the Executive Branch, and participates in assisting in the preparation of legal documents and providing more informal legal advice as necessary and requested. A significant portion of OLC's work can be divided into two categories.

First, OLC renders opinions that resolve disputes within the Executive Branch on legal questions. Second, OLC performs a purely advisory role as legal counsel to the Attorney General, providing confidential legal advice both directly to the Attorney General, and through him or on his behalf, to the White House and other components of the Executive Branch.

81. (U) Although OLC's legal advice and analysis may inform decisionmaking on policy matters, the legal advice is not itself dispositive as to any policy adopted by the Executive Branch. OLC does not purport, and in fact lacks authority, to make any policy decisions. OLC's role is to advise, not to mandate that its advice be implemented into agency policy. Although on some occasions, specific OLC memoranda have been drafted with the expectation that they will be made public, and although some OLC documents are ultimately selected for publication, generally OLC memoranda are prepared with the expectation that they will be held in confidence, and that is of course the case with classified OLC opinions and related documents.

OLC 16, 54, 59, 62, 85, 129, 131, 132, and 146

82. (U) These nine documents are OLC memoranda prepared in response to particular requests for OLC advice either from within the Department or from elsewhere within the Executive Branch in the context of decisions being made regarding the legal parameters of foreign intelligence activities in the months and years following the terrorist attacks of September 11, 2001. Each of these memoranda was prepared in OLC's advisory capacity and with the expectation that the legal advice provided by OLC was to be held in confidence. Although, as described above, OLC advice often informs Administration decisionmaking, none of these advisory memoranda announced or established Administration

policy, but rather provided advice, analysis, and/or recommendations in response to requests for OLC views.

83. (U) The nine final memoranda withheld by OLC are:
  - a. (U) OLC 16, which consists of four copies, one with handwritten marginalia, of a 12-page memorandum, dated February 25, 2003, for the Attorney General from a Deputy Assistant Attorney General for OLC, prepared in response to a request from the Attorney General for legal advice concerning the potential use of certain information collected in the course of classified foreign intelligence activities. OLC 16 is withheld under FOIA Exemptions One, Three, and Five.
  - b. (U) OLC 54, which consists of six copies, some with handwritten comments and marginalia, of a 108-page memorandum, dated May 6, 2004, from the Assistant Attorney General for OLC to the Attorney General, as well as four electronic files, one with highlighting, prepared in response to a request from the Attorney General that OLC perform a legal review of classified foreign intelligence activities. OLC 54 is withheld under FOIA Exemptions One, Three, and Five.
  - c. (U) OLC 59, which consists of four copies of an 18-page memorandum for the file, dated November 17, 2004, from the Acting Assistant Attorney General in OLC, plus an electronic file, prepared in response to a request for OLC views regarding the applicability of certain statutory requirements. OLC 59 is withheld under FOIA Exemptions One, Three, and Five.
  - d. (U) OLC 62, which consists of two copies, one with highlighting and marginalia by an OLC attorney, of a February 8, 2002, memorandum from a Deputy Assistant Attorney General in OLC to the General Counsel of another federal agency,



prepared in response to a request for OLC views regarding the legality of certain hypothetical activities. OLC 62 is withheld under FOIA Exemptions One, Three, and Five.

e. (U) OLC 85, which is a nine-page memorandum, with highlighting, dated July 16, 2004, from the Assistant Attorney General in OLC to the Attorney General, evaluating the implications of a recent Supreme Court decision for certain foreign intelligence activities. OLC 85 is withheld under FOIA Exemptions One, Three, and Five.

f. (U) OLC 129, which consists of two copies, one with handwritten comments and marginalia, of a nine-page memorandum, dated October 11, 2002, from a Deputy Assistant Attorney General in OLC to the Attorney General, prepared in response to a request for OLC's views concerning the legality of certain communications intelligence activities. OLC 129 is withheld under FOIA Exemptions One, Three, and Five.

g. (U) OLC 131, which consists of two copies, both with underscoring and marginalia, of a 24-page memorandum, dated November 2, 2001, from a Deputy Assistant Attorney General in OLC to the Attorney General, prepared in response to a request from the Attorney General for OLC's opinion concerning the legality of certain communications intelligence activities. OLC 131 is withheld under FOIA Exemptions One, Three, and Five.

h. (U) OLC 132, which consists of two copies, one with handwritten comments and marginalia, of a 36-page memorandum, dated October 4, 2001, from a Deputy Assistant Attorney General in OLC to the Counsel to the President, created in response to a request from the White House for OLC's views regarding what legal standards might govern the use of certain intelligence methods to monitor communications by potential terrorists. OLC 132 is withheld under FOIA Exemptions One, Three, and Five.

i. (U) OLC 146, which is a 37-page memorandum, dated October 23, 2001, from a Deputy Assistant Attorney General in OLC, and a Special Counsel, OLC, to the Counsel to the President, prepared in response to a request from the White House for OLC's views concerning the legality of potential responses to terrorist activity. OLC 146 is withheld under FOIA Exemption Five.

*Applicability of Exemptions One and Three.*

84. REDACTED

*Applicability of Exemption Five.*

85. (U) The nine documents identified above were all prepared by OLC in its role of assisting the Attorney General in the discharge of his responsibilities as legal adviser to the President and heads of the Executive Branch departments and agencies. In preparing these documents, OLC was performing a purely advisory role, providing legal advice and assistance. Thus, the nine final memoranda withheld by OLC in this category were created in response to specific requests for OLC advice on particular topics. OLC's preparation and provision of advice to the White House and other Executive Branch agencies is part of the process of attorney-client communications that would be seriously disrupted if such documents are publicly disclosed. As described in my prior declaration, the White House and other Executive Branch agencies rely upon OLC to provide candid and useful advice on a range of issues, including difficult and complex legal questions critical to national security. See Bradbury Decl. ¶¶ 63-64. To disclose such communications between OLC attorneys and our clients would fundamentally disrupt the attorney-client relationship and would deter federal agencies and officials in the White House from seeking timely and appropriate legal advice. Id.

86. (U) Compelled disclosure of these advisory and pre-decisional documents would cause substantial harm to the deliberative process of the Department of Justice and the Executive Branch and disrupt the attorney-client relationship between the Department and the President and other officers of the Executive Branch. Attorneys in OLC are often asked to provide advice and analysis with respect to very difficult and unsettled issues of law. Frequently, such issues arise in connection with highly complex and sensitive operations of the Executive Branch. It is essential to the mission of the Executive Branch that OLC legal advice, and the development of that advice, not be inhibited by concerns about public disclosure. Protecting the confidentiality of documents that contain such advice is essential in order to ensure both that creative and even controversial legal arguments and theories may be explored candidly, effectively, and in writing, and to ensure that Executive Branch officials will continue to request legal advice from OLC on such sensitive matters.

87. (U) Particularly in light of the Nation's ongoing fight against global terrorism, and the public interest in the effective performance of these activities, the need of the President and the heads of Executive Branch departments and agencies for candid, thoroughly considered legal advice when considering potential executive actions is especially compelling. Thus, all nine of the documents identified in paragraph 83, supra, constitute documents subject to the deliberative process and attorney-client communication privileges, and moreover, those provided to inform a decision to be made by the President are also subject to the presidential communications privilege. As such, all of these documents are properly withheld as exempt in their entirety under FOIA Exemption Five.

88. (U) I have specifically reviewed each of the documents identified in paragraph 83 and have determined that all portions of these documents contain either classified information or deliberative and privileged legal advice and analysis of OLC.

89. (U) In assessing the determination stated in paragraph 88, it is useful to recall that, with respect to the TSP in particular, the Department of Justice publicly released an extensive legal analysis of the TSP shortly after its existence was acknowledged by the President in December 2005. The Department's January 19, 2006, "White Paper," which is available at [www.usdoj.gov](http://www.usdoj.gov), and was released to the plaintiffs in this litigation, provides the official view of the Department with respect to the legality of the TSP from which classified and privileged information has already been removed for public disclosure.

OLC 113

90. (U) OLC 113 consists of three copies of a one-page memorandum, dated September 15, 2004, from the Deputy Attorney General to the Director of the Federal Bureau of Investigation, entitled "National Security Agency Collection Activity." This document is withheld under FOIA Exemptions One and Three.

91. **REDACTED**

OLC 133

92. OLC 133 is a duplicate of ODAG 51, as to which I understand the Court has already granted summary judgment, and which was responsive only for certain handwritten notes that appeared on the copy of the document maintained in ODAG. See Mem. Op. at 16; Bradbury Decl. ¶ 66 n. 8. Accordingly, this document is not further discussed herein.

ODAG 1

93. (U) ODAG 1 is a duplicate of OLC 54, as well as of OIPR 28, and is withheld for the reasons explained in paragraphs 82-89, supra.

ODAG 2

94. (U) ODAG 2 consists of three additional copies, two with underscoring and marginalia by a Department attorney, of the memorandum described as OLC 131, as well as OIPR 37 and FBI 51, and is withheld for the reasons explained in paragraphs 82-89, supra.

ODAG 5

95. (U) ODAG 5 is a duplicate of OLC 132 and is withheld for the reasons explained in paragraphs 82-89, supra.

ODAG 6

96. (U) ODAG 6 is a duplicate of OLC 129 and is withheld for the reasons explained in paragraphs 82-89, supra.

ODAG 38

97. (U) ODAG 38 is a duplicate of OLC 16 and is withheld for the reasons explained in paragraphs 82-89, supra.

ODAG 42

98. (U) ODAG 42 is a 19-page memorandum, dated May 30, 2003, from a Deputy Assistant Attorney General in OLC to the General Counsel of another Executive Branch agency. This document is withheld under FOIA Exemptions One, Three, and Five.

*(U) Applicability of Exemptions One & Three.*

99. **REDACTED**

100. **REDACTED**

*(U) Applicability of Exemption Five.*

101. (U) OLC's preparation and provision of advice to other Executive Branch agencies is part of the process of attorney-client communications that would be seriously disrupted if such documents, whether in draft or final form, are publicly disclosed. As

described in my prior declaration, Executive Branch agencies rely upon OLC to provide candid and useful advice on a range of issues, including difficult and complex legal questions critical to national security. See Bradbury Decl. ¶ 63-64. To disclose such communications between OLC attorneys and our federal agency clients would fundamentally disrupt the attorney-client relationship and would deter federal agencies from seeking timely and appropriate legal advice. See id. Thus, for this reason as well, ODAG 42, which is a memorandum prepared at the request of another Executive Branch agency, is properly withheld under FOIA's Exemption Five.

ODAG 52

102. (U) ODAG 52 is a duplicate of OLC 62 and is withheld for the reasons explained in paragraphs 82-89, supra.

OIPR 28

103. (U) OIPR 28 is a duplicate of OLC 54, as well as of ODAG 1, and is withheld for the reasons explained in paragraphs 82-89, supra.

OIPR 29

104. (U) OIPR 29 is a duplicate of OLC 59 and is withheld for the reasons explained in paragraphs 82-89, supra.

OIPR 37

105. (U) OIPR 37 is a duplicate of OLC 131, as well as of ODAG 2 and FBI 51, and is withheld for the reasons explained in paragraphs 82-89, supra.

FBI 42

106. (U) FBI 42 is a duplicate of OLC 113 and is withheld for the reasons explained in paragraphs 90-91, supra.

FBI 51

107. (U) FBI 51 is a duplicate of OLC 131, as well as of ODAG 2 and OIPR 37, and is withheld for the reasons explained in paragraphs 82-89, supra.

REMAINING DOCUMENTS IN CATEGORY E

108. (U) The Court has upheld OLC's withholding of the remaining documents in this category, identified and described in my previous declaration at paragraphs 66-70: OLC 8, 9, 26, 27, 28, 29, 32, 40, 41, 42, 43, 53, 60, 61, 71, 77, 79, 83, 86, 87, 88, 89, 94, 102, 103, 106, 108, 118, 119, 120, 121, 123, 140, 141, 142, 143, 203, 204, 205, 206, and 208; ODAG 8, 21, 22, 43, 44, 45, 49, 50, 51, and 53; and OIPR 1, 2, 32, 33, 34, 35, 75 and 129, and FBI 19 and 58. See Mem. Op. at 16.

**F. (U) Briefing Materials and Talking Points.**

109. (U) Within this category, the Court has requested further justification with respect to the withholding of the following documents: OLC 7, 46, 65, 80, 81, 82, 84, 116, 125, 126, 134, and 202; ODAG 34, 41 and 54; and OIPR 13 and 137.

110. (U) With four exceptions, all of the briefing materials and talking points withheld by OLC in this category were prepared for internal use only in the course of briefings by Department staff for higher level officials or for use in meetings or discussions with official from elsewhere in the Government. With the exception of OLC 84, OLC 116, OLC 201, and OIPR 60, discussed further below, none of these materials was prepared for public briefing or discussion, and, again with the same four exceptions, none was adopted as official positions in subsequent public discussion of the TSP. Accordingly, as explained in my previous declaration, these briefing materials and talking points are by their very nature deliberative, as they reflect an attempt by the drafters succinctly to summarize particular issues and provide key background information in an effort to anticipate questions or issues

that may be raised at a briefing or other situation in which such documents are used. These materials provide concise summaries of information necessary for informed discussion of particular issues and attempt to anticipate and respond to questions that might be raised in any particular setting. Thus, these materials reflect the exchange of ideas and suggestions that accompanies all decisionmaking, and in many cases they also reflect assessments by attorneys and other staff about issues on which they have been asked to make recommendations or provide advice.

OLC 7

111. (U) OLC 7 consists of two copies of a one-page document. In reviewing OLC 7 in the course of preparing this declaration, I have determined that it contains information that originated with the NSA and thus should have been referred to NSA along with OLC's other referrals. The document has now been referred to NSA, and I understand that NSA will address the proper withholding of OLC 7 in its separate supplemental submission made in response to the Court's Order of September 5, 2007.

OLC 46

112. (U) OLC 46 consists of two copies of an undated one-page document entitled "Talkers," and a related electronic file, containing talking points that were created within the Department to assist senior administration officials in addressing various points about the TSP in internal discussions. This document is properly withheld under FOIA's Exemptions One, Three, and Five.

***(U) Applicability of Exemptions One & Three.***

113. **REDACTED**



***(U) Applicability of Exemption Five.***

114. (U) OLC 46 appears to have been created to provide high level Department officials with a concise summary of information that might be required for an internal meeting or a presentation. As described in my earlier declaration, briefing materials and talking points are by their very nature deliberative, as they reflect “an attempt by the drafters to succinctly summarize particular issues and provide key background information in an effort to anticipate questions or issues that may be raised at a briefing or other situation in which such documents are used” and reflect only “draft answers [that] may or may not be used or may be modified by the speakers in any particular setting.” Bradbury Decl. ¶ 73. For the reasons given in my prior declaration, OLC 46 is properly considered deliberative and pre-decisional, and thus exempt from disclosure under FOIA’s Exemption Five.

OLC 65

115. (U) OLC 65 is a five-page document (plus an electronic file), dated March 30, 2004, entitled “Briefing for AG.” This outline for a briefing to be provided to the Attorney General by the Deputy Attorney General prepared by Department staff includes a summary of preliminary OLC conclusions concerning the TSP and other intelligence activities; a discussion of issues for decision concerning these intelligence activities; a description of advice provided by OLC to other Executive Branch agencies and components concerning these activities; and an identification of legal issues requiring further discussion. OLC 65 is withheld pursuant to FOIA Exemptions One, Three, and Five.

***Applicability of Exemption One & Three.***

116. (U) OLC 65 contains classified information relating to the operation of the TSP and other intelligence activities that would be compromised by disclosure. For the reasons identified in my earlier declaration, see Bradbury Decl. ¶¶ 21-23, and in the

declaration of the former Director of National Intelligence, see DNI Decl. ¶¶ 22, 27-35, such information cannot be publicly disclosed without causing exceptionally grave harm to the national security of the United States.

117. **REDACTED**

*Applicability of Exemption Five.*

118. (U) OLC 65 is an internal briefing outline, which summarizes information compiled by Department staff for purposes of ensuring that higher level officials have the information necessary adequately to understand issues being presented to them for decision, which is protected by the deliberative process privilege. Disclosure of internal communications such as OLC 65 would identify the factors considered by Department decisionmakers in the course of their deliberations about intelligence activities and would impermissibly interfere with the provision of candid and concise summaries of critical information and recommendations to higher level Department officials by Department staff. OLC 65, accordingly, is properly exempt from disclosure under the deliberative process component of FOIA's Exemption Five.

OLC 80

119. (U) OLC 80 consists of six copies of an undated two-page document entitled "Technical Operation of [REDACTED],"<sup>4</sup> some with handwritten notes and marginalia. These documents are withheld under FOIA Exemptions One, Three and Five.

*(U) Applicability of Exemptions One & Three*

120. (U) OLC 80 contains a detailed description of the operation of the TSP and other classified foreign intelligence activities and thus falls squarely within the category of "information that would reveal or tend to reveal operational details concerning the technical

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<sup>4</sup> (U) A classified codename is redacted.

methods by which NSA intercepts communications under the TSP,” which the former DNI identified as information that must be protected from disclosure. DNI Decl. ¶ 27. As the former DNI explained, “[d]etailed knowledge of the methods and practice of the U.S. Intelligence Community agencies must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, or damage the intelligence efforts of the United States, including efforts by this country to counter international terrorism.” *Id.* Information falling within this category, accordingly, including OLC 80, is properly protected as both classified and subject to the DNI’s authority to protect intelligence sources and methods. OLC 80, thus, is properly withheld under FOIA Exemptions One and Three.

121. **REDACTED**

122. **REDACTED**

***(U) Applicability of Exemption Five.***

123. (U) As described in my prior declaration, OLC 80 is a briefing paper that was created within the Department to assist senior Administration officials in addressing various points about the TSP. *See* Bradbury Decl. ¶ 73. This document was used for purposes of internal deliberations only; it was not prepared for purposes of providing information to the public. Briefing materials are by their very nature deliberative, as they reflect an attempt by the drafters succinctly to summarize particular issues and provide key background information in an effort to anticipate questions or issues that may be raised at a briefing or other situation in which such documents are used. *See id.* ¶ 80. OLC 80 reflects assessments by OLC attorneys about the relative importance of information considered necessary for purposes of briefing senior Administration officials, and the details of the information that need to be conveyed in any particular circumstance. To disclose such assessments would

harm the Department's deliberative process, and thus OLC 80 is properly withheld under FOIA's Exemption Five.

OLC 81 and OLC 82

124. (U) OLC 81 consists of 11 copies, some drafts and some with handwritten marginalia and notes, of four pages of briefing notes, dated December 18, 2005, which describe the TSP and other foreign intelligence activities and summarize various OLC legal opinions related to foreign intelligence collection activities. OLC 81 is withheld pursuant to FOIA Exemptions One, Three, and Five.

125. (U) OLC 82 consists of 20 copies, some drafts and some with handwritten edits and marginalia, plus eight related electronic files of a briefing outline, dated January 6, 2006, summarizing various topics related to foreign intelligence activities. OLC 82 is withheld pursuant to FOIA Exemptions One, Three, and Five.

***Applicability of Exemption One & Three.***

126. (U) OLC 81 and OLC 82 contain classified information relating to the scope and operation of the TSP and other intelligence activities that would be compromised by disclosure of these documents. For the reasons identified in my earlier declaration, see Bradbury Decl. ¶¶ 21-23, and in the declaration of the former Director of National Intelligence, see DNI Decl. ¶ 22, 27-35, such information cannot be publicly disclosed without causing exceptionally grave harm to the national security of the United States.

***Applicability of Exemption Five.***

127. (U) OLC 81 and OLC 82 are internal briefing outlines, created by my staff at my request and for my use, intended to be used to prepare me to brief others within the Government on issues concerning the TSP and other foreign intelligence activities. Specifically, OLC 81 was created so that I could brief Department officials regarding foreign

intelligence activities and OLC views following the publication of the article in The New York Times which divulged without authorization classified information concerning the TSP. OLC 82 was created as an outline for my use in the course of briefing members of the FISC. These documents contain recommendations from my staff as to topics for discussion, and are both deliberative and predecisional in the sense that, as I spoke in these meetings, I made the ultimate decision regarding which points would be made in any particular context. Disclosure of these documents would impermissibly interfere with my ability to ask my staff to create candid and concise summaries of critical information and recommendations for my use in discussions with higher level Department officials or other officials within the Government and, thus, would interfere with my ability to fulfill my official duties. OLC 81 and OLC 82, accordingly, are properly exempt from disclosure under the deliberative process component of FOIA's Exemption Five.

OLC 84

128. (U) OLC 84 is a nonfinal draft of a set of talking points, which was released to the public in final form on January 19, 2007, in a document entitled "Legal Authorities for the Recently Disclosed NSA Activities." The final version of this document is available on the Department's Internet site, [www.usdoj.gov](http://www.usdoj.gov), and was provided to plaintiffs in response to their FOIA requests. It is my understanding that plaintiffs do not contest OLC's determination to withhold drafts, and thus this document is not further discussed herein.

OLC 116, OLC 201 & OIPR 60

129. (U) OLC 116, OLC 201, and OIPR 60 consist of nonfinal drafts of the Department's January 19, 2007, White Paper, which was released by the Department to the public in its final form, see [www.usdoj.gov](http://www.usdoj.gov), and provided to plaintiffs in response to their

FOIA requests. It is my understanding that plaintiffs do not contest OLC's determination to withhold drafts, and thus these documents are not further discussed herein.

OLC 125, OLC 126, and OIPR 13

130. (U) OLC 125 is an undated two-page document entitled "Presentation: Where DOJ is on [REDACTED]." <sup>5</sup> This document is withheld under FOIA Exemptions One, Three, and Five.

131. (U) OLC 126 consists of two copies of a five-page document, dated March 14, 2004, which consists of bullet points related to OLC 125. This document is also withheld under FOIA Exemptions One, Three, and Five.

132. (U) OIPR 13 is a duplicate of OLC 126, and is withheld for the same reasons that apply to that record.

*(U) Applicability of Exemptions One & Three.*

133. **REDACTED**

*(U) Applicability of Exemption Five.*

134. (U) OLC 125 and OLC 126 contain preliminary legal analysis of OLC. The disclosure of such preliminary analysis would have the effect of discouraging thoughtful analysis of difficult legal questions as well as discouraging the creation of documents that set forth such preliminary analysis in order to assist in the process of developing final views. Disclosure of OLC's preliminary analysis, accordingly, would cause harm to the deliberative process by which OLC attorneys review legal issues and reach conclusions about them. Accordingly, OLC 125 and OLC 126 are exempt from disclosure under FOIA under the deliberative process privilege incorporated into Exemption Five.

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<sup>5</sup> (U) A classified codename is redacted.

135. (U) In addition, OLC 125 and OLC 126 were prepared for purposes of providing legal assistance and advice to other Executive Branch officials concerning DOJ's views about foreign intelligence activities. Disclosure of such advice would interfere with the attorney-client relationship between DOJ and other Executive Branch agencies and would discourage requests for timely and fully informed legal advice. Accordingly, OLC 125 and OLC 126 are protected by the attorney-client privilege, and are properly exempt under FOIA's Exemption Five for this reason as well.

OLC 134

136. (U) OLC 134 consists of three copies of a six-page set of attorney notes in bullet point form describing options to be considered in pending litigation before the FISC.

*Applicability of Exemptions One and Three.*

137. (U) OLC 134 is a set of attorney notes in bullet point form that should have been included in the category of documents described in my original declaration as category D. See Bradbury Decl. ¶¶ 54-59. It is my understanding that the court has entered summary judgment as to all of the documents in that category, see Mem. Op. at 15. OLC 134 is properly withheld for the same reasons. See Bradbury Decl. ¶¶ 54-59.

138. **REDACTED**

*Applicability of Exemption Five*

139. (U) OLC 134 is both deliberative and predecisional in that it consists of a list of options to be considered in pending litigation before the FISC. Thus, the document is protected by the deliberative process privilege and is properly withheld under Exemption Five of FOIA. In addition, OLC 134 is protected by the attorney work product doctrine in that it constitutes notes of an attorney concerning options that might be available in the

context of pending litigation and, thus, OLC 134 is properly withheld in its entirety under Exemption Five for this reason as well.

OLC 202

140. (U) OLC 202 is a set of draft talking points on legal matters which were not located in final form in OLC's classified files. It is my understanding that plaintiffs do not contest OLC's determination to withhold drafts and, thus, this document is not further discussed herein.

ODAG 34

141. (U) ODAG 34 is a duplicate of OLC 80 and is withheld for the reasons explained in paragraphs 123-27, supra.

ODAG 41

142. (U) ODAG 41 is a duplicate of OLC 125 and is withheld for the reasons explained in paragraphs 130, 133-35, supra.

ODAG 54

143. (U) ODAG 54 is a duplicate of OLC 46 and is withheld for the reasons explained in paragraphs 112-14, supra.

OIPR 13

144. (U) OIPR 13 is a duplicate of OLC 126 and is withheld for the reasons explained in paragraphs 131-35, supra.

OIPR 137

145. (U) OIPR 137 is a duplicate of OLC 65 and is withheld for the reasons explained in paragraphs 115-18, supra.

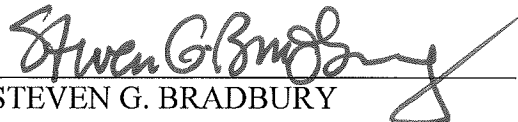


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146. (U) Finally, the Court has requested clarification concerning the entries identified as OLC 95 and OLC 153-199 on the exhibit (Exhibit K) provided in support of my previous declaration, which were marked “intentionally left blank.” These identifiers were either not assigned to any document, were assigned to documents that were determined to be duplicative and thus removed from the index, or were assigned to documents that were determined during administrative review to be nonresponsive to plaintiffs’ requests. Accordingly, no responsive documents bear the designations OLC 95 or OLC 153-199.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 18, 2007

  
STEVEN G. BRADBURY  
Principal Deputy Assistant Attorney General  
Office of Legal Counsel

# EXHIBIT A

**UPDATED INDEX OF RECORDS OR CATEGORIES OF RECORDS WITHHELD  
BY THE OFFICE OF LEGAL COUNSEL (“OLC”)**

<b>NO.</b>	<b>DOCUMENT TYPE</b>	<b>APPLICABLE EXEMPTIONS</b>	<b>FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY</b>	<b>SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*</b>	<b>DUPLICATE DOCUMENT</b>	<b>SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION</b>	<b>CURRENT LITIGATION STATUS</b>
OLC 1	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR	SAME as ODAG 28 & 30		Summary Judgment Granted (Mem. Op. at 15)
OLC 2	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR			Summary Judgment Granted (Mem Op. at 15)
OLC 3	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR			Summary Judgment Granted (Mem. Op. at 15)
OLC 4	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	NSA			Summary Judgment Granted (Mem. Op. at 15)
OLC 5	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 6	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)

\* Because certain documents implicate the equities of more than one component or agency, the withholding of certain documents may be discussed in more than one declaration.

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 7	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76	NSA			Subject of Renewed Motion (Second Bradbury Decl. ¶ 111)
OLC 8	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 9	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 10	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem Op. at 15)
OLC 11	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 12				OIPR			Summary Judgment Granted (Mem. Op. at 21)
OLC 13				OIPR			Summary Judgment Granted (Mem. Op. at 21)
OLC 14				OIPR			Summary Judgment Granted (Mem. Op. at 21)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 15	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	NSA			Summary Judgment Granted (Mem. Op. at 15)
OLC 16	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-68		SAME as ODAG 38 OIPR 1 & 2 are Drafts	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 82-89)
OLC 17				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 18	Memo	(b)(3) (b)(5)	¶¶ 54-58		SAME as OIPR 25		Summary Judgment Granted (Mem. Op. at 15)
OLC 19	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 20				OIPR			Summary Judgment Granted (Mem. Op. at 21)
OLC 21				OIPR	SAME as OIPR 79		Summary Judgment Granted (Mem. Op. at 21)
OLC 22	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as ODAG 58		Summary Judgment Granted (Mem. Op. at 15)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 23	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 24				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 25				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 26	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 27	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
OLC 28	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
OLC 29	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 30				NSA			Summary Judgment Granted (Mem. Op. at 23)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 31				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 32	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
OLC 33				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 34	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38				Summary Judgment Granted (Mem. Op. at 14)
OLC 35	Letter	(b)(1) (b)(3) (b)(6)	¶¶ 39-41				Summary Judgment Granted (Mem. Op. at 15)
OLC 36	Letter Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 39-41				Summary Judgment Granted (Mem. Op. at 15)
OLC 37	Letter Draft Memo	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 39-41		SAME as ODAG 12		Summary Judgment Granted (Mem. Op. at 15)
OLC 38				NSA			Summary Judgment Granted (Mem. Op. at 23)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 39				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 40	Draft Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 41	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 66-68	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 42	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 43	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 44				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 45				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 46	Draft Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76			YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 112-14)



NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 47				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 48				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 49				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 50				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 51	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 26-28)
OLC 52				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 53	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 54	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 1 & OIPR 28	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 82-89)
OLC 55	Letter Memo	(b)(1) (b)(3)	¶ 59				Summary Judgment Granted (Mem. Op. at 15)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 56	NOT AGENCY RECORD		¶ 77				Objections Disclaimed or Withdrawn (Mem. Op. at 5)
OLC 57	NOT AGENCY RECORD		¶ 77				Objections Disclaimed or Withdrawn (Mem. Op. at 5)
OLC 58	NOT AGENCY RECORD		¶ 77				Objections Disclaimed or Withdrawn (Mem. Op. at 5)
OLC 59	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OIPR 29	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 82-89)
OLC 60	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 61	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
OLC 62	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 52	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 82-89)
OLC 63	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as FBI 4		Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 29, 34-35, 37, 39)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 64	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as FBI 5		Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 30, 34-36, 39)
OLC 65	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 115-18)
OLC 66	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 67	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 32-38				Summary Judgment Granted (Mem. Op. at 14)
OLC 68	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 69	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 70				NSA			Summary Judgment Granted (Mem. Op. at 23)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 71	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 72	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as ODAG 26		Summary Judgment Granted (Mem. Op. at 15)
OLC 73	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 74	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38				Summary Judgment Granted (Mem. Op. at 14)
OLC 75	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 42-47				Summary Judgment Granted (Mem. Op. at 15)
OLC 76	Notes Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 48-53				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 58-65)
OLC 77	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 78	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38, 48-53				Summary Judgment Granted (Mem. Op. at 14)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 79	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 80	Briefing Materials	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 72-76			YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 119-23)
OLC 81	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 124, 126-27)
OLC 82	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 125, 126-27)
OLC 83	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 84	Draft	(b)(5)	¶¶ 72-76				Subject of Renewed Motion (Second Bradbury Decl. ¶ 128)
OLC 85	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 82-89)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 86	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 87	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 88	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 89	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 90	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 91				OIPR			Summary Judgment Granted (Mem. Op. at 21)
OLC 92	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR			Summary Judgment Granted (Mem. Op. at 16, 21)
OLC 93	Draft Notes	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		SAME as ODAG 48		Summary Judgment Granted (Mem. Op. at 14)
OLC 94	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	OIPR			Summary Judgment Granted (Mem. Op. at 16, 21)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 95	<i>INTENTIONALLY LEFT BLANK</i>						No Responsive Document was identified with this designation (Second Bradbury Decl. ¶ 146)
OLC 96				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 97				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 98				NSA	SAME as OIPR 57		Summary Judgment Granted (Mem. Op. at 23)
OLC 99				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 100	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 101	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38				Summary Judgment Granted (Mem. Op. at 14)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 102	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 103	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 104	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58	NSA			Summary Judgment Granted (Mem. Op. at 15)
OLC 105	Duplicates of White Paper	NOT EXEMPT	ALREADY RELEASED				Document was Released to Plaintiffs
OLC 106	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 107	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 48-53				Subject of Renewed Motion (Second Bradbury Decl. ¶ 66)
OLC 108	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 109	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)



NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 110	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	OIPR			Summary Judgment Granted (Mem. Op. at 15)
OLC 111	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 112	Draft Notes Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 113	Memo	(b)(1) (b)(3)	¶¶ 62-65		SAME as FBI 42		Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 90-91)
OLC 114	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 32-38				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 31, 34-36, 39)
OLC 115	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		SAME as ODAG 3	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 40-42)
OLC 116	Drafts of White Paper	(b)(1) (b)(3) (b)(5)	¶ 75		SAME as OIPR 60		Subject of Renewed Motion (Second Bradbury Decl. ¶ 129)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 117	Letter	(b)(1) (b)(3)	¶ 76		SAME as FBI 18		Summary Judgment Granted (Mem. Op. at 18)
OLC 118	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 119	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 120	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 121	Client Communication Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
OLC 122	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 123	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 124	Letter Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 54-58	NSA			Summary Judgment Granted (Mem. Op. at 15)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 125	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME as ODAG 41	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 130, 133-35)
OLC 126	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME AS OIPR 13		Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 131, 133-35)
OLC 127				FBI			To be Addressed in Supplemental Submission on Behalf of FBI, to be filed November 20, 2007
OLC 128				OIPR	SAME as OIPR 12		Summary Judgment Granted (Mem. Op. at 21)
OLC 129	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 6	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 82-89)
OLC 130	Letter	(b)(1) (b)(3)	¶ 59		SAME as ODAG 7		Summary Judgment Granted (Mem. Op. at 15)
OLC 131	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 2, OIPR 37, & FBI 51	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 82-89)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 132	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 5	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 82-89)
OLC 133	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 51	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 133)
OLC 134	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76			YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 136-39)
OLC 135				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 136	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OLC 137	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58	NSA			Summary Judgment Granted (Mem. Op. at 15)
OLC 138				OIPR			Summary Judgment Granted (Mem. Op. at 21)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 139	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 48-53				Subject of Renewed Motion (Second Bradbury Decl. ¶ 67)
OLC 140	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 141	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 142	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
OLC 143	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71	NSA			Summary Judgment Granted (Mem. Op. at 16)
OLC 144	Draft Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 48-53				Subject of Renewed Motion (Second Bradbury Decl. ¶ 68)
OLC 145	Report	(b)(1) (b)(3) (b)(5)	¶¶ 48-53		SAME as ODAG 16		Subject of Renewed Motion (Second Bradbury Decl. ¶ 69)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 146	Memo Client Communication	(b)(5) (b)(6)	¶¶ 62-65				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 82-89)
OLC 147				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 148				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 149				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 150				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 151				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 152				NSA			Summary Judgment Granted (Mem. Op. at 23)
OLC 153 - 199	<i>INTENTIONALLY LEFT BLANK</i>						No Responsive Documents were Identified with these Designations (Second Bradbury Decl. ¶ 146)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 200	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 48-53				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 70-72)
OLC 201	Drafts of White Paper	(b)(5)	¶ 75				Subject of Renewed Motion (Second Bradbury Decl. ¶ 129)
OLC 202	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76				Subject of Renewed Motion (Second Bradbury Decl. ¶ 140)
OLC 203	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 204	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 205	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OLC 206	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
OLC 207	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 42-47				Summary Judgment Granted (Mem. Op. at 15)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OLC 208	Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
<b>DOCUMENTS REFERRED BY ODAG</b>							
ODAG 1	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 54	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 93; see also ¶¶ 82-89)
ODAG 2	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 131, FBI 51, & OIPR 37	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 94; see also ¶¶ 82-89)
ODAG 3	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as OLC 115	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 43; see also ¶¶ 40-42)
ODAG 5	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 132	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 95; see also ¶¶ 82-89)



NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
ODAG 6	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 129	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 96; see also ¶¶ 82-89)
ODAG 7	Letter Memo	(b)(1) (b)(3)	¶ 59		SAME as OLC 130		Summary Judgment Granted (Mem. Op. at 15)
ODAG 8	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		FINAL at OLC 59		Summary Judgment Granted (Mem. Op. at 16)
ODAG 10	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38, 48-53				Summary Judgment Granted (Mem. Op. at 14)
ODAG 12	Letter	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 42-47		SAME as OLC 37		Summary Judgment Granted (Mem. Op. at 15)
ODAG 15	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 48-53				Subject of Renewed Motion (Second Bradbury Decl. ¶ 69)
ODAG 16	Client Communication Notes	(b)(1) (b)(3) (b)(5)	¶¶ 48-53		SAME as OLC 145		Subject of Renewed Motion (Second Bradbury Decl. ¶ 73; see also ¶ 69)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
ODAG 17	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38, 48-53				Summary Judgment Granted (Mem. Op. at 14)
ODAG 18	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38, 48-53				Summary Judgment Granted (Mem. Op. at 14)
ODAG 19	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38, 48-53				Summary Judgment Granted (Mem. Op. at 14)
ODAG 21	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
ODAG 22	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
ODAG 23	Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 48-53				Subject of Renewed Motion (Second Bradbury Decl. ¶ 74)
ODAG 24	Draft Notes Client Communication	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 48-53				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 58-65)
ODAG 26	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as OLC 72		Summary Judgment Granted (Mem. Op. at 15)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
ODAG 28	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as OLC 1  Also referred by ODAG to OIPR		Summary Judgment Granted (Mem. Op. at 15)
ODAG 30	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as OLC 1  Also referred by ODAG to OIPR		Summary Judgment Granted (Mem. Op. at 15)
ODAG 33	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
ODAG 34	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME as OLC 80	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 141; see also ¶¶ 123-27)
ODAG 38	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 16  OIPR 1 & 2 are Drafts		Subject of Renewed Motion (Second Bradbury Decl. ¶ 97; see also ¶¶ 82-89)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, <u>SEE</u> DECLARATION OF STEVEN G. BRADBURY	<u>SEE ALSO</u> DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
ODAG 40	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 39-41			YES	Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 44-47)
ODAG 41	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME as OLC 125	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 142; see also ¶¶ 130, 133-35)
ODAG 42	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 32-38				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 98-101)
ODAG 43	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
ODAG 44	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
ODAG 45	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Final at OLC 116		Summary Judgment Granted (Mem. Op. at 16)
ODAG 48	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 32-38		SAME as OLC 93		Summary Judgment Granted (Mem. Op. at 14)
ODAG 49	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Final at OLC 54		Summary Judgment Granted (Mem. Op. at 16)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
ODAG 50	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
ODAG 51	Notes	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		SAME as OLC 133		Summary Judgment Granted (Mem. Op. at 16)
ODAG 52	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 62		Subject of Renewed Motion (Second Bradbury Decl. ¶ 102; see also ¶¶ 82-89)
ODAG 53	Draft Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Final at ODAG 42		Summary Judgment Granted (Mem. Op. at 16)
ODAG 54	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME as OLC 46	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 143; see also ¶¶ 112-14)
ODAG 58	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 54-58		SAME as OLC 22		Summary Judgment Granted (Mem. Op. at 15)
ODAG 65	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 32-38				Summary Judgment Granted (Mem. Op. at 14)
<b>DOCUMENTS REFERRED BY OIPR</b>							

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OIPR 1	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 16 & ODAG 38		Summary Judgment Granted (Mem. Op. at 16)
OIPR 2	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 16 & ODAG 38		Summary Judgment Granted (Mem. Op. at 16)
OIPR 9	Memo	(b)(1) (b)(3) (b)(5)					Subject of Renewed Motion (Second Bradbury Decl. ¶ 75)
OIPR 13	Talking Points	(b)(1) (b)(3) (b)(5)	¶¶ 72-76		SAME AS OLC 126		Subject of Renewed Motion (Second Bradbury Decl. ¶ 132; see also ¶¶ 131, 133-35)
OIPR 25	Memo	(b)(3) (b)(5)	¶¶ 54-58		SAME as OLC 18		Summary Judgment Granted (Mem. Op. at 15)
OIPR 27	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OIPR 28	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 54 & ODAG 1	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 103; see also ¶¶ 82-89)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OIPR 29	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 59		Subject of Renewed Motion (Second Bradbury Decl. ¶ 104; see also ¶¶ 82-89)
OIPR 30	DETERMINED TO BE NONRESPONSIVE						
OIPR 31	DETERMINED TO BE NONRESPONSIVE						
OIPR 32	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54		Summary Judgment Granted (Mem. Op. at 16)
OIPR 33	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54		Summary Judgment Granted (Mem. Op. at 16)
OIPR 34	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54		Summary Judgment Granted (Mem. Op. at 16)
OIPR 35	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54		Summary Judgment Granted (Mem. Op. at 16)
OIPR 36	DETERMINED TO BE NONRESPONSIVE						
OIPR 37	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as OLC 131, FBI 51, and ODAG 2	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 105; see also ¶¶ 82-89)
OIPR 38	DETERMINED TO BE NONRESPONSIVE						
OIPR 41	DETERMINED TO BE NONRESPONSIVE						
OIPR 43	DETERMINED TO BE NONRESPONSIVE						

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OIPR 45			DETERMINED TO BE NONRESPONSIVE				
OIPR 46			DETERMINED TO BE NONRESPONSIVE				
OIPR 47			DETERMINED TO BE NONRESPONSIVE				
OIPR 48			DETERMINED TO BE NONRESPONSIVE				
OIPR 49			DETERMINED TO BE NONRESPONSIVE				
OIPR 50			DETERMINED TO BE NONRESPONSIVE				
OIPR 51			DETERMINED TO BE NONRESPONSIVE				
OIPR 52			DETERMINED TO BE NONRESPONSIVE				
OIPR 55			DETERMINED TO BE NONRESPONSIVE				
OIPR 60	Draft of White Paper	(b)(5)	¶ 75		SAME as OLC 116		Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 129)
OIPR 71	Internal Email	(b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OIPR 75	Draft	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
OIPR 82	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
OIPR 85			DETERMINED TO BE NONRESPONSIVE				
OIPR 86			DETERMINED TO BE NONRESPONSIVE				
OIPR 87			DETERMINED TO BE NONRESPONSIVE				
OIPR 88			DETERMINED TO BE NONRESPONSIVE				



NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OIPR 89			DETERMINED TO BE NONRESPONSIVE				
OIPR 90			DETERMINED TO BE NONRESPONSIVE				
OIPR 91			DETERMINED TO BE NONRESPONSIVE				
OIPR 92			DETERMINED TO BE NONRESPONSIVE				
OIPR 93			DETERMINED TO BE NONRESPONSIVE				
OIPR 94	Internal Email	(b)(1) (b)(3) (b)(5)	¶¶ 54-58				Summary Judgment Granted (Mem. Op. at 15)
OIPR 95			DETERMINED TO BE NONRESPONSIVE				
OIPR 97			DETERMINED TO BE NONRESPONSIVE				
OIPR 98			DETERMINED TO BE NONRESPONSIVE				
OIPR 99			DETERMINED TO BE NONRESPONSIVE				
OIPR 100			DETERMINED TO BE NONRESPONSIVE				
OIPR 101			DETERMINED TO BE NONRESPONSIVE				
OIPR 102			DETERMINED TO BE NONRESPONSIVE				
OIPR 103			DETERMINED TO BE NONRESPONSIVE				
OIPR 104			DETERMINED TO BE NONRESPONSIVE				
OIPR 105			DETERMINED TO BE NONRESPONSIVE				
OIPR 106			DETERMINED TO BE NONRESPONSIVE				
OIPR 113			DETERMINED TO BE NONRESPONSIVE				
OIPR 129	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 69-71				Summary Judgment Granted (Mem. Op. at 16)
OIPR 137	Briefing Materials	(b)(1) (b)(3) (b)(5)	¶¶ 72-76				Subject of Renewed Motion (Second Bradbury Decl. ¶ 145; see also ¶¶ 115-18)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
OIPR 138	Letter	(b)(1) (b)(3) (b)(5)	¶¶ 39-41				Subject of Renewed Motion (Second Bradbury Decl. ¶ 48)
OIPR 139	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 32, 34-36, 39)
OIPR 140	Letter	(b)(1) (b)(3) (b)(5)	¶¶ 39-41				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 33-35, 38-39)
OIPR 141	Internal Email Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 32-38				Summary Judgment Granted (Mem. Op. at 14)
OIPR 142	Notes	(b)(1) (b)(3) (b)(5) (b)(6)	¶¶ 66-68				Summary Judgment Granted (Mem. Op. at 16)
<b>DOCUMENTS REFERRED BY FBI</b>							
FBI 4	Memo Client Communication	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as OLC 63		Subject of Renewed Motion (Second Bradbury Decl. ¶ 49; see also ¶¶ 29, 34-35, 37, 39)

NO.	DOCUMENT TYPE	APPLICABLE EXEMPTIONS	FOR JUSTIFICATION OF EXEMPTION, SEE DECLARATION OF STEVEN G. BRADBURY	SEE ALSO DECLARATION BY OTHER AGENCY OR COMPONENT*	DUPLICATE DOCUMENT	SUMMARY JUDGMENT GRANTED ON WITHHOLDING IN NYT LITIGATION	CURRENT LITIGATION STATUS
FBI 5	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 39-41		SAME as OLC 64		Subject of Renewed Motion (Second Bradbury Decl. ¶ 50; see also ¶¶ 30, 34-36, 39)
FBI 7	Memo	(b)(1) (b)(3)	¶¶ 32-38				Subject of Renewed Motion (Second Bradbury Decl. ¶¶ 51-52)
FBI 18	Letter	(b)(1) (b)(3)	¶ 76		SAME as OLC 117		Summary Judgment Granted (Mem. Op. at 18)
FBI 19	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54		Summary Judgment Granted (Mem. Op. at 16)
FBI 42	Memo	(b)(1) (b)(3)	¶¶ 62-65		SAME as OLC 113		Subject of Renewed Motion (Second Bradbury Decl. ¶ 106; see also ¶¶ 90-91)
FBI 51	Memo	(b)(1) (b)(3) (b)(5)	¶¶ 62-65		SAME as ODAG 2, OLC 131 & OIPR 37	YES	Subject of Renewed Motion (Second Bradbury Decl. ¶ 107; see also ¶¶ 82-89)
FBI 58	Draft	(b)(1) (b)(3) (b)(5)	¶¶ 66-68		Draft of OLC 54		Summary Judgment Granted (Mem. Op. at 16)

# **EXHIBIT B**



**The Attorney General**  
Washington, D.C.

January 17, 2007

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Arlen Specter  
Ranking Minority Member  
Committee of the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I am writing to inform you that on January 10, 2007, a Judge of the Foreign Intelligence Surveillance Court issued orders authorizing the Government to target for collection international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization. As a result of these orders, any electronic surveillance that was occurring as part of the Terrorist Surveillance Program will now be conducted subject to the approval of the Foreign Intelligence Surveillance Court.

In the spring of 2005—well before the first press account disclosing the existence of the Terrorist Surveillance Program—the Administration began exploring options for seeking such FISA Court approval. Any court authorization had to ensure that the Intelligence Community would have the speed and agility necessary to protect the Nation from al Qaeda—the very speed and agility that was offered by the Terrorist Surveillance Program. These orders are innovative, they are complex, and it took considerable time and work for the Government to develop the approach that was proposed to the Court and for the Judge on the FISC to consider and approve these orders.

The President is committed to using all lawful tools to protect our Nation from the terrorist threat, including making maximum use of the authorities provided by FISA and taking full advantage of developments in the law. Although, as we have previously explained, the Terrorist Surveillance Program fully complies with the law, the orders the Government has obtained will allow the necessary speed and agility while providing substantial advantages. Accordingly, under these circumstances, the President has

Letter to Chairman Leahy and Senator Specter  
January 17, 2007  
Page 2

determined not to reauthorize the Terrorist Surveillance Program when the current authorization expires.

The Intelligence Committees have been briefed on the highly classified details of these orders. In addition, I have directed Steve Bradbury, Acting Assistant Attorney General for the Office of Legal Counsel, and Ken Wainstein, Assistant Attorney General for National Security, to provide a classified briefing to you on the details of these orders.

Sincerely,



Alberto R. Gonzales  
Attorney General

cc: The Honorable John D. Rockefeller, IV  
The Honorable Christopher Bond  
The Honorable Sylvester Reyes  
The Honorable Peter Hoekstra  
The Honorable John Conyers, Jr.  
The Honorable Lamar S. Smith

# EXHIBIT C

**DETAILED LOG OF DOCUMENTS WITHHELD AS  
OLC 76 and ODAG 24**

<i>NO.</i>	<i>DATE</i>	<i>DOCUMENT DESCRIPTION</i>	<i>PAGES</i>
<b>OLC 76</b>			
OLC 76-1	Various	Handwritten notes, all containing classified information, by OLC attorneys concerning consideration of international terrorist groups potentially affiliated with al Qaeda	44
OLC 76-2	10/19/05	Fax from OLC attorneys to General Counsel of Intelligence Agency attaching draft memorandum setting forth "preliminary views" concerning consideration of international terrorist groups potentially affiliated with al Qaeda	4
OLC 76-3	02/07/06	Two copies of document entitled "Affiliates to Discuss," concerning consideration of international terrorist groups potentially affiliated with al Qaeda	4
OLC 76-4	Undated	Two copies of a draft document discussing the procedures employed to establish probable cause to believe that a communication is to or from a member of al Qaeda or an al Qaeda-affiliated organization	14
OLC 76-5	01/31/06	Email chain re: "Last DOJ Q&A," between OLC attorney and Intelligence Agency attorneys concerning consideration of international terrorist groups potentially affiliated with al Qaeda	1
OLC 76-6	01/23/06	Email chain re: "Affiliated Groups," between OLC attorney and Intelligence Agency attorney concerning consideration of international terrorist groups potentially affiliated with al Qaeda	2
OLC 76-7	01/19/06	Agenda for meeting between OLC and the intelligence agencies identifying questions for discussion concerning consideration of international terrorist groups potentially affiliated with al Qaeda	3
OLC 76-8	01/04/06	Email chain between OLC attorney and Intelligence Agency employees transmitting intelligence information concerning consideration of international terrorist groups potentially affiliated with al Qaeda	3
OLC 76-9	10/13/05	Fax from DOJ attorney to Intelligence Agency attorney, transmitting comments and questions asking for additional details concerning consideration of international terrorist groups potentially affiliated with al Qaeda; attached is a one-page attachment listing certain groups that contains a significant amount of handwritten notes	2+1
OLC 76-10	Undated	Document, marked "draft," containing information concerning consideration of international terrorist groups potentially affiliated with al Qaeda	1
OLC 76-11	08/16/05	Fax from OLC attorney to Intelligence Agency employee providing a list of international terrorist groups potentially affiliated with al Qaeda.	2
OLC 76-12	07/08/05	Fax from Intelligence Agency staff to OLC attorney, transmitting, 07/06/05 Memo from Intelligence Agency official, re: Intelligence agency views concerning consideration of international terrorist groups potentially affiliated with al Qaeda; and requesting certain additional information from DOJ	3
OLC 76-13	Undated	15 copies of various versions of a list indicating OLC views concerning consideration of international terrorist groups potentially affiliated with al Qaeda; all are marked "preliminary draft for discussion"; all contain handwritten marginalia, notes, and/or highlighting	76
OLC 76-14	Undated	Two copies of document entitled "Preliminary Draft for Discussion," concerning consideration of international terrorist groups potentially affiliated with al Qaeda, one with handwritten comments	2



<i>NO.</i>	<i>DATE</i>	<i>DOCUMENT DESCRIPTION</i>	<i>PAGES</i>
OLC 76-15	Undated	Two copies of document, marked "draft," which sets forth a list of factors concerning consideration of international terrorist groups potentially affiliated with al Qaeda, one with handwritten comments and marginalia, and one page of annexed handwritten notes	5
OLC 76-16	06/17/05	Fax from Intelligence Agency employee to OLC attorney transmitting Intelligence Agency report containing intelligence assessment of international terrorist activities for OLC's review concerning consideration of international terrorist groups potentially affiliated with al Qaeda	11
OLC 76-17	06/16/05	Fax from Intelligence Agency employee to OLC attorney transmitting Intelligence Agency response to DOJ questions concerning consideration of international terrorist groups potentially affiliated with al Qaeda	19
OLC 76-18	06/16/05	Four copies of document providing Intelligence Agency response to DOJ query concerning consideration of international terrorist groups potentially affiliated with al Qaeda, three with handwritten marginalia	68
OLC 76-19	06/14/05	Memo to OLC Attorney from Intelligence Agency official re: Intelligence Agency interim views concerning consideration of international terrorist groups potentially affiliated with al Qaeda, with attachment, one-page classified document containing intelligence information	3
OLC 76-20	06/03/05	Fax from Intelligence Agency attorney to OLC attorney transmitting lists of groups potentially affiliated with al Qaeda.	4
OLC 76-21	06/05/05	Fax from OLC attorney to Intelligence Agency attorney transmitting a version of OLC 76-13	5
OLC 76-22	05/19/05	Three copies of fax from Intelligence Agency to OLC attorney attaching intelligence information relating to a particular individual; two with handwritten comments, marginalia, and highlighting.	9
OLC 76-23	05/16/05	Three copies of fax from Intelligence Agency to OLC attorneys re: "Questions and Answers for OLC," transmitting Intelligence Agency response to DOJ questions concerning consideration of international terrorist groups potentially affiliated with al Qaeda, two with handwritten comments and marginalia	27
OLC 76-24	04/20/05	Three copies of fax from Intelligence Agency to OLC attorney transmitting Intelligence Agency response to DOJ request for intelligence information concerning consideration of international terrorist groups potentially affiliated with al Qaeda with handwritten comments, marginalia and/or attached post-its.	78
OLC 76-25	04/19/05	Fax from Intelligence Agency to OLC attorney transmitting Intelligence Agency Response to DOJ request for intelligence information concerning consideration of international terrorist groups potentially affiliated with al Qaeda	27
OLC 76-26	04/05/05	Fax from Intelligence Agency to OLC attorney transmitting intelligence information concerning consideration of international terrorist groups potentially affiliated with al Qaeda, with handwritten comments and marginalia	16
OLC 76-27	03/16/05	Classified Intelligence Agency report discussing the designation of a particular group as a Foreign Terrorist Organization	4
OLC 76-28	03/22/05	Three copies of a draft chart, one printed 03/22/05, two undated, concerning consideration of international terrorist groups potentially affiliated with al Qaeda; undated copies contain handwritten comments and marginalia	6
OLC 76-29	05/06/04	Fax from Intelligence Agency attorney to OLC attorney attaching list of international terrorist groups potentially affiliated with al Qaeda	2
OLC 76-30	05/06/04	Fax from Intelligence Agency attorney to OLC attorney transmitting list of international terrorist groups potentially affiliated with al Qaeda	5

<i>NO.</i>	<i>DATE</i>	<i>DOCUMENT DESCRIPTION</i>	<i>PAGES</i>
OLC 76-31	10/20/05	Three copies of fax from Intelligence Agency attorney to OLC attorney transmitting recommended criteria concerning consideration of international terrorist groups potentially affiliated with al Qaeda, with handwritten comments and marginalia	15
OLC 76-32	03/29/04	Fax from Intelligence Agency attorney to OLC attorney attaching chart listing international terrorist groups potentially affiliated with al Qaeda	2
OLC 76-33	09/20/04	Classified Intelligence Agency report, discussing intelligence information concerning international terrorist groups potentially affiliated with al Qaeda	17
OLC 76-34	07/28/03	Classified Intelligence Agency report, discussing intelligence information related to possible terrorist activity in a particular region of the world, with highlighting	14
OLC 76-35	09/--/05	Classified Intelligence Agency report, discussing intelligence information relating to international terrorism.	38
OLC 76-36	09/01/04	Classified Intelligence Agency report, discussing intelligence information relating to a potential terrorist threat	3
OLC 76-37	06/01/04	Fax from Intelligence Agency attorney to OLC attorney transmitting two sets of charts listing international terrorist groups potentially affiliated with al Qaeda.	8
<b>ODAG 24</b>			
ODAG 24-1	Undated	Three versions of OLC 76-13, all marked as "preliminary draft for discussion," two with handwritten comments and marginalia	12
ODAG 24-2	07/06/05	Fax from Intelligence Agency to ODAG Attorney transmitting OLC 76-12 and OLC 76-19	6
ODAG 24-3		COPY OF OLC 76-11	2
ODAG 24-4		COPY OF OLC 76-16	11
ODAG 24-5		COPY OL OLC 76-26	16
ODAG 24-6		COPY OF OLC 76-28, with handwritten comments	2
ODAG 24-7	03/30/05	Fax from OLC attorney to Intelligence Agency attorney, transmitting list of international terrorist groups potentially affiliated with al Qaeda.	3
ODAG 24-8	12/03/03	Intelligence Agency information re: international terrorist groups potentially affiliated with al Qaeda	1
ODAG 24-9	Undated	Two copies of classified Intelligence Agency briefing slide containing intelligence information regarding the activities of al Qaeda and certain of its affiliates.	2
ODAG 24-10	06/10/05	Fax from Intelligence Agency to OLC attorney transmitting two documents containing intelligence information concerning consideration of international terrorist groups potentially affiliated with al Qaeda	6
ODAG 24-11	Various	Handwritten notes concerning international terrorist groups potentially related to al Qaeda	4
ODAG 24-12	06/16/05	Copy of OLC 76-18, with handwritten comments and marginalia	17
ODAG 24-13	06/14/05	Copy of OLC 76-19	3

# EXHIBIT A

# EXHIBIT K

**Unofficial Partial Transcript of *Nomination of Caroline Diane Krass to be General Counsel of the Central Intelligence Agency: Hearing before the Senate Intelligence Committee, 113 Cong. (2013)***

Sen. Wyden: The other question that I wanted to ask you about dealt with this matter of the OLC opinion, and we talked about this in the office as well. This is the particular opinion in the Office of Legal Counsel I've been concerned about — I think the reasoning is inconsistent with the public's understanding of the law and as I indicated I believe it needs to be withdrawn. As we talked about, you were familiar with it. And my first question — as I indicated I would ask — as a senior government attorney, would you rely on the legal reasoning contained in this opinion?

Ms. Krass: Senator, at your request I did review that opinion from 2003, and based on the age of the opinion and the fact that it addressed at the time what it described as an issue of first impression, as well as the evolving technology that the opinion was discussing, as well as the evolution of case law, I would not rely on that opinion if I were—

Sen. Wyden: I appreciate that, and again your candor is helpful, because we talked about this. So that's encouraging. But I want to make sure nobody else ever relies on that particular opinion and I'm concerned that a different attorney could take a different view and argue that the opinion is still legally valid because it's not been withdrawn. Now, we have tried to get Attorney General Holder to withdraw it, and I'm trying to figure out — he has not answered our letters — who at the Justice Department has the authority to withdraw the opinion. Do you currently have the authority to withdraw the opinion?

Ms. Krass: No I do not currently have that authority.

Sen. Wyden: Okay. Who does, at the Justice Department?

Ms. Krass: Well, for an OLC opinion to be withdrawn, on OLC's own initiative or on the initiative of the Attorney General would be extremely unusual. That happens only in extraordinary circumstances. Normally what happens is if there is an opinion which has been given to a particular agency for example, if that agency would like OLC to reconsider the opinion or if another component of the executive branch who has been affected by the advice would like OLC to reconsider the opinion they will come to OLC and say, look, this is why we think you were wrong and why we believe the opinion should be corrected. And they will be doing that when they have a practical need for the opinion because of particular operational activities that they would like to conduct. I have been thinking about your question because I understand your serious concerns about this opinion, and one approach that seems possible to me is that you could ask for an assurance from the relevant elements of the Intelligence Community that they would not rely on the opinion. I can give you my assurance that if I were confirmed I would not rely on the opinion at the CIA.

Sen. Wyden: I appreciate that and you were very straightforward in saying that. What concerns me is unless the opinion is withdrawn, at some point somebody else might be tempted to reach the opposite conclusion. So, again, I appreciate the way you've handled a sensitive matter and I'm going to continue to prosecute the case for getting this opinion withdrawn. And Madame Chair I thank you.