



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

April 8, 2013

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

Re: FOIA Tracking No. FY13-039

Dear Mr. Jones:

This letter responds to your March 20, 2013 Freedom of Information Act (FOIA) request addressed to the FOIA/PA Mail Referral Unit at the Department of Justice, in which you asked for a copy of a list of all Office of Legal Counsel ("OLC") opinions from January 20, 2009 to the present.

We received your request on March 21, 2013, and we have identified 16 lists of OLC opinions from that time frame. Enclosed are five lists of unclassified OLC opinions. We have redacted portions of these documents pursuant to FOIA Exemptions Five and Six, 5 U.S.C. § 552(b)(5) & (6). The material withheld pursuant to Exemption Five is protected by the deliberative process, attorney-client, and/or attorney work-product privileges. Material, the release of which would constitute a clearly unwarranted invasion of personal privacy, has been redacted pursuant to Exemption Six. We are withholding in full 11 lists of classified OLC opinions pursuant to FOIA Exemption One, *id.* § 552(b)(1), because the lists are classified. In addition, those documents are properly withheld pursuant to Exemption Five because they are protected by the deliberative process, attorney-client, and/or attorney work-product privileges.

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, Suite 11050, Washington, D.C. 20530, or by e-mail to DOJ.OIP.AdministrativeAppeal@usdoj.gov. Both the letter and the envelope, or the e-mail, should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Paul P. Colborn
Special Counsel

Enclosures

20130206DOJ003
RECNO:47517
4/11/2013
List of OLC memos

DOJ
SEQCOR:171902
FOISG: Jones, Nate

2009 LIST OF OPINIONS
January, 2009 through December, 2009

1. Counsel to the President: Memorandum re Legal Issues Relating to the Testing, Use, and Deployment of an Intrusion-Detection System (EINSTEIN 2.0) to Protect Unclassified Computer Networks in the Executive Branch (Lehotsky) dated January 9, 2009
2. General Counsel/JMD: Memorandum re Status of Presidential Memorandum Addressing the Use of Polygraphs (Marwell) dated January 14, 2009
3. _____ b(5)

4. _____ b(5)

5. Attorney General: Memorandum re Validity of Statutory Rollbacks as a Means of Complying with the Ineligibility Clause (Thompson/Anderson) dated May 20, 2009
6. Attorney General: Memorandum re the Withdrawal of Office of Legal Counsel CIA Interrogation Opinions dated April 15, 2009
7. Acting AAG/OLA: Memorandum re the Constitutionality of the Ronald Reagan Centennial Commission Act of 2009 dated April 21, 2009
8. Acting Legal Adviser/DOS: Memorandum re Constitutionality of Section 7054 of the Fiscal Year 2009 Department of State, Foreign Operations, and Related Programs Appropriations Act (Paisner) dated June 1, 2009
9. Attorney General: Memorandum re Withdrawal of the Office of Legal Counsel Opinion dated June 11, 2009
10. AAG/OLA: Memorandum re Constitutionality of the Matthew Shepard Hate Crimes Prevention Act (Stith) dated June 16, 2009
11. Counsel to the President: Memorandum re Eligibility of a Retired Military Officer and Appointment as Administrator of the National Aeronautics and Space Administration (LeBlanc) dated July 8, 2009
12. _____ b(5)

13. Associate Deputy Attorney General/DOJ: Memorandum re Additional Legal Questions Concerning the EINSTEIN 2.0 Program (Price) dated August 14, 2009

14. General Counsel/SBA: Memorandum re Permissibility of Small Business Administration Regulations Implementing the Historically Underutilized Business Zone, 8(a) Business Development, and Service-Disabled Veteran-Owned Small Business Concern Programs (LeBlanc) dated August 21, 2009
15. _____ b(5)

16. _____ b(5)

17. _____ b(5)

18. General Counsel/FHFA: Memorandum re Authority to the Former Inspector General of the Federal Housing Finance Board to Act as Inspector General for the Federal Housing Finance Agency (Price) dated September 8, 2009
19. _____ b(5)

20. Assistant Secretary/TREAS: Memorandum re Constitutionality of Mandatory Registration of Credit Rating Agencies (Cedarbaum) dated October 22, 2009
21. General Deputy General Counsel/HUD: Memorandum re Applicability of Section 163 of Division B of Public Law 111-68 to Payments in Satisfaction of Pre-Existing Contractual Obligations _____ b(6) dated October 23, 2009
22. Principal Deputy Counsel to President: Memorandum re Removability of the Federal Coordinator for Alaska Natural Gas Transportation Projects (Venugopal) dated October 23, 2009
23. _____ b(5)

24. Assistant Attorney General, Criminal Div: Memorandum re Whether the Ten-Year Minimum Sentence in 18 U.S.C § 924(c)(1)(B)(I) Applies to Semiautomatic Assault Weapons (Gorod) dated November 10, 2009 [Note this version was updated on Nov. 24th for publication]

25.

_____ b(5)

26. Counsel to the President: Memorandum re Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President's Receipt of the Nobel Peace Prize
b(6) _____ dated December 7, 2009

27. General Counsel/EPA: Memorandum re Whether Subsection 104(b)(4) of the Clean Air Act Permits the Receipt of Monetary Donations (Kirschner) dated December 8, 2009

28. The Attorney General: Memorandum re The Scope of the Attorney General's Authority in Certifying Whether a State Has Satisfied the Requirements for Appointment of Competent Post-Conviction Counsel in Chapter 154 of Title 28, United States Code (Paisner) dated December 16, 2009

2010 LIST OF OLC OPINIONS
January, 2010 through December, 2010

1. _____ b(5)

2. Legal Adviser/NSC Memorandum re Engagement with the International Criminal Court (Bolman-Pozen) dated January 15, 2010
3. _____ b(5)

4. _____ b(5)

5. OMB: Memorandum re Proposed Constitution for the U.S. Virgin Islands. The following memorandum was initially drafted in the Office of Legal Counsel at the request of the Assistant Attorney General for Legislative Affairs. It analyzes several features of the proposed constitution of the U.S. Virgin Islands ("USVI"), including: (1) the absence of an express recognition of United States sovereignty and the supremacy of federal law; (2) provisions for a special election on the USVI's territorial status; (3) provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry; (4) residence requirements for certain officers; (5) provisions guaranteeing legislative representation of certain geographic areas; (6) provisions addressing territorial waters and marine resources; (7) imprecise language in certain provisions of the proposed constitution's bill of rights; (8) the possible need to repeal certain federal laws if the proposed USVI constitution is adopted; and (9) the effect of congressional action or inaction on the proposed constitution dated February 23, 2010 [this memo was drafted by OLC at the request of OLA for signature]
6. _____ b(5)

7. _____ b(5)

8. [REDACTED] b(5)
9. Acting Deputy Attorney General: Memorandum re Whether the Criminal Provisions of the Violence Against Women Act Apply to Otherwise Covered Conduct When the Offender and Victim Are the Same Sex (Bulman-Pozan) dated April 27, 2010
10. Chief Counsel/IRS: Memorandum re Applicability of Tax Levies Under 26 U.S.C. § 6334 to Thrift Savings Plan Accounts (Price) dated May 3, 2010
11. [REDACTED] b(5)
12. Testimony before the Committee on Energy and Natural Resources/Senate: Re Proposed Constitution for the Virgin Islands (Cedarbaum) dated May 19, 2010
13. Chairman/Administrative Conference of the U.S.: Memorandum re Applicability of the Emoluments Clause to Nongovernmental Members of ACUS (Venugopal) dated June 3, 2010
14. General Counsel OPM: Memorandum re Whether the Entitlement to Reservist Differential Pay Under the Prior Version of 5 U.S.C. § 5538 Extends to the Period Following the Completion of Active Duty During Which a Returning Reservist may Apply or Report for Reemployment Under 38 U.S.C. § 4312 (Akowuah) dated June 28, 2010
15. [REDACTED] b(5)
16. Assistant General Counsel/DOC: Memorandum re Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the Göteborg Award for Sustainable Development (Venugopal) dated October 6, 2010
17. General Counsel/Dept. of Treasury: Memorandum re Whether the Special Master for Troubled Asset Relief Program Executive Compensation Is a Principal Officer under the Appointments Clause (Lilley) dated November 5, 2010
18. Acting General Counsel, SSA: Memorandum re Disposition of Proceeds from the Sale of Real Property Acquired with Money from the Social Security Trust Funds (Venugopal) dated December 17, 2010
19. Acting Deputy Attorney General: Memorandum re The Availability of Crime Victims' Rights Under the Crime Victims' Rights Act of 2004 (Winn) dated December 17, 2010

LIST OF OLC OPINIONS
January, 2011 through December, 2011

1. General Counsel, EPA: Memorandum re Reimbursement or Payment Obligation of the Federal Government Under Section 313(c)(2)(B) of the Clean Water Act (Dunbar) dated February 25, 2011.
2. Attorney General: Memorandum re Use of Military Force in Libya ——— b(6)
dated April 1, 2011
3. Counsel to the President: Memorandum re Authority to Employ White House Office Personnel Exempt from the Annual and Sick Leave Act Under 5 U.S.C. § 6301(2)(xi) During an Appropriations Lapse (Pulham) dated April 8, 2011
4. Counsel to the President: Memorandum re Whether Bills May be Presented by Congress and Returned by the President by Electronic Means (Forrester) dated May 3, 2011
5. Chair/Members, Access Review Committee: Memorandum re Applicability of the Foreign Intelligence Surveillance Act's Notification Provision to Security Clearance Adjudications by the Department of Justice Access Review Committee (Mizer) dated June 3, 2011
6. Counsel to the President: Memorandum re Constitutionality of Legislation Extending the Term of the FBI Director (Mizer) dated June 20, 2011
7. _____ b(5)

8. General Counsel/Office of Science and Technology Policy: Memorandum re Unconstitutional Restrictions on Activities of the Office of Science 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 ——— b(6) dated September 19, 2011
9. Assistant Attorney General/CRM: Memorandum re Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act (Mizer) dated September 20, 2011
10. _____ b(5)

11. Chief Counsel/ATF: Memorandum re Nonimmigrant Aliens and Firearms Disabilities under the Control Act. (Dunbar) October 28, 2011

12. General Counsel/OMB/General Counsel USPS: Memorandum re Whether Postal Employees are Entitled to Receive Service Credit, for Purposes of their Retirement Annuity Under the Federal Employees' Retirement System, for Periods of Employment During Which the U.S. Postal Service has not made its Required Employer Contributions (Robin-Vergeer) dated November 1, 2011

LIST OF OLC OPINIONS
January, 2012 through December, 2012

1. Chief Counsel ATF: Memorandum re State of Residence Requirements for Firearms Transfers (Akowuah) dated January 30, 2012
2. Counsel to President: Memorandum re Lawfulness of Recess Appointments During a Recess of the Senate Notwithstanding Periodic Pro Forma Sessions b(6) dated January 6, 2012
3. General Counsels VA and GSA: Memorandum re Whether the General Services Administration May Proceed with an Assisted Acquisition for the Department of Veterans Affairs in Fiscal Year 2012 Using the Department's Fiscal Year 2009/2010 Funds (Robin-Vergeer) dated March 2, 2012
4. Acting Chief Counsel, ATF: Memorandum re State and Local Deputation of Federal Law Enforcement Officers During Stafford Act Deployments (Price) dated March 5, 2012
5. _____ b(5)

6. _____

_____ b(5)

7. Assistant General Counsel for Administration/DOC: Memorandum re The Anti Deficiency Act Implications of Consent by government Employees to Online Terms of Service Agreements Containing Open-ended Indemnification Clauses (Robin-Vergeer) dated March 27, 2012
8. _____ b(5)

9. _____ b(5)

10. General Counsel/VA: Memorandum re Duty to Report Suspected Child Abuse Under 42 U.S.C. § 13031 (Mizer) dated May 29, 2012

11. The President: Memorandum re Assertion of Executive Privilege over Documents
Generated in Response to Congressional Investigation into Operation Fast and Furious
dated June 19, 2012

12. [REDACTED] b(5)

13. [REDACTED] b(5)

14. [REDACTED] b(5)

15. [REDACTED] b(5)

16. [REDACTED] b(5)

LIST OF OLC OPINIONS
January, 2013 through December, 2013

1. [REDACTED] b(5)
2. [REDACTED] b(5)

