

Congress of the United States
Washington, DC 20515

June 27, 2007

The Honorable Alberto Gonzales
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing to request information about a legal review that the Department of Justice is currently conducting concerning whether the Office of the Vice President is required to comply with procedures to safeguard classified information that apply to other White House offices, such as the National Security Council.

The Oversight and Judiciary Committees have learned that the Vice President unilaterally exempted his office from Executive Order 12958, "Classified National Security Information," which establishes a uniform, government-wide system for classifying, safeguarding, and declassifying national security information.¹ The executive order gives important responsibilities to the Information Security Oversight Office within the National Archives to ensure compliance with classified information safeguards. Although the Office of the Vice President initially complied with this executive order, it then refused to make required reports of classification activity covering 2003 and refused to permit a 2004 inspection based on the argument that the office is not an "entity within the executive branch."

On January 9, 2007, J. William Leonard, Director of the Information Security Oversight Office, wrote to you requesting an interpretation as to whether the Office of the Vice President is bound by the executive order.² Mr. Leonard's request was made pursuant to a provision in the executive order that requires the Attorney General to resolve legal questions in response to such inquiries.³

Due to conflicting statements from your department, the status of your review of this matter is unclear. More than six months have passed since Mr. Leonard's letter to you, and the Information Security Oversight Office has received no response to its inquiry. In response to a FOIA request, the department's Office of Legal Counsel stated on June 4, 2007, that no

¹ Executive Order 12958, *Classified National Security Information*, as amended by Executive Order 13292 (Mar. 25, 2003).

² Letter from J. William Leonard, Director, Information Security Oversight Office, to the Honorable Alberto Gonzales, Attorney General of the United States (Jan. 9, 2007).

³ *Id.* at sec. 6.2(b) ("The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration").

The Honorable Alberto Gonzales
June 27, 2007
Page 2

documents exist relating to your department's response to Mr. Leonard's letter.⁴ A department spokesperson confirmed that no "substantive work product" has been generated by the department in this matter.⁵ Last week, however, a spokesperson for the Department of Justice stated that this matter is under review in the department.⁶

To help our Committees understand your actions in response to the request from the Archives, as well as the Department's views on the legal status of the Office of the Vice President, we ask that you provide written answers and documents in response to the following questions:

- (1) What is the status of your department's response to the January 2007 request from the Archives?
 - a. When did the review commence?
 - b. Which individuals at the department have been assigned to review this matter?
 - c. Please produce all documents relating to your department's review of this matter, including without limitation all communications, analyses, memoranda, or other documents.

- (2) Have officials from the Department of Justice ever communicated with officials from the White House, including the Office of the Vice President, concerning the request from the Archives or the issue of whether the executive order does or should apply to the Office of the Vice President?
 - a. If so, please identify and explain the substance of any such communication.
 - b. Please produce all documents relating to any such communication.

⁴ Letter from Bradley T. Smith, Attorney-Advisor, Office of Legal Counsel, Department of Justice, to Steven Aftergood, Federation of American Scientists (June 4, 2007).

⁵ *A New Dick Cheney-Alberto Gonzales Mystery*, Newsweek (July 2-9, 2007 issue) (available online at www.msnbc.msn.com/id/19391241/site/newsweek/).

⁶ *Agency is Target in Cheney Fight on Secrecy Data*, New York Times (June 22, 2007).

- (3) Has the Department of Justice ever taken a position on or analyzed the issue of the status or existence of the Vice President or the Office of the Vice President within the executive branch, the legislative branch, both, or neither?
 - a. If so, please identify all instances in which the department has addressed this issue and explain the position, if any, taken by the department.
 - b. Please produce all documents relating to this issue, including memoranda, legal briefs, communications, and any other documents.

- (4) Have officials from the White House, including the Office of the Vice President, ever communicated with officials from the Department of Justice concerning the status or existence of the Vice President or the Office of the Vice President within the executive branch, the legislative branch, both, or neither?
 - a. If so, please identify and explain the substance of any such communication.
 - b. Please produce all documents relating to any such communication.

- (5) When you were serving as White House Counsel, were you or anyone in your office involved in any way with drafting, assessing, or otherwise reviewing proposed revisions to the Executive Order in 2003?
 - a. If so, please explain whether you have considered recusing yourself from consideration of this issue.
 - b. If you have elected not to recuse yourself, please explain the basis for your decision.

As set forth in House Rule X, the Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction, and the Committee on Judiciary has primary jurisdiction over the Department of Justice. An attachment to this letter provides additional information about how to respond to the Committees' request.

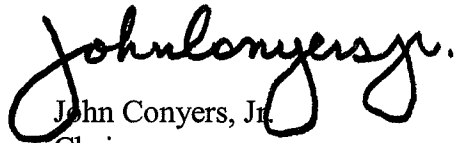
The Honorable Alberto Gonzales
June 27, 2007
Page 4

We would appreciate your cooperation in this important matter. Please provide answers to the questions above and the requested materials by July 12, 2007. If you have any questions regarding this letter, please contact Michael Gordon at (202) 225-5420 or Elliot Minberg at (202) 226-7687.

Sincerely,



Henry A. Waxman
Chairman
House Committee on Oversight
and Government Reform



John Conyers, Jr.
Chairman
House Committee on Judiciary



Wm. Lacy Clay
Chairman
Subcommittee on Information Policy,
Census, and National Archives
House Committee on Oversight
and Government Reform

Enclosure

cc: Tom Davis
Ranking Minority Member
House Committee on Oversight and Government Reform

Lamar Smith
Ranking Minority Member
House Committee on Judiciary

Michael Turner
Ranking Minority Member
Subcommittee on Information Policy, Census, and National Archives

HENRY A. WAXMAN, CALIFORNIA,
CHAIRMAN

TOM LANTOS, CALIFORNIA
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
WIM LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
BRIAN HIGGINS, NEW YORK
JOHN A. YARMUTH, KENTUCKY
BRUCE L. BRALEY, IOWA
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
BETTY McCOLLUM, MINNESOTA
JIM COOPER, TENNESSEE
CHRIS VAN HOLLEN, MARYLAND
PAUL W. HODES, NEW HAMPSHIRE
CHRISTOPHER S. MURPHY, CONNECTICUT
JOHN P. SARBANES, MARYLAND
PETER WELCH, VERMONT

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-6051
FACSIMILE (202) 225-4784
MINORITY (202) 225-5074
TTY (202) 225-6852

<http://oversight.house.gov>

TOM DAVIS, VIRGINIA,
RANKING MINORITY MEMBER

DAN BURTON, INDIANA
CHRISTOPHER SHAYS, CONNECTICUT
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, FLORIDA
MARK E. SOUDER, INDIANA
TODD RUSSELL PLATTS, PENNSYLVANIA
CHRIS CANNON, UTAH
JOHN J. DUNCAN, JR., TENNESSEE
MICHAEL R. TURNER, OHIO
DARRELL E. ISSA, CALIFORNIA
KENNY MARCHANT, TEXAS
LYNN A. WESTMORELAND, GEORGIA
PATRICK T. McHENRY, NORTH CAROLINA
VIRGINIA FOXX, NORTH CAROLINA
BRIAN P. BILBRAY, CALIFORNIA
BILL SALI, IDAHO

Responding to Oversight Committee Document Requests

In responding to the document request from the Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format should also be produced in a searchable format.
10. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other. Please note that the Committee generally recognizes only constitutional privileges.
11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. All documents should be bates-stamped sequentially and produced sequentially.
15. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set should be delivered to the minority staff in Room B350A in the Rayburn House Office Building.
16. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.