

# Exhibit A

09/21/12  
FY12



Matt Ehling  
President  
Public Record Media, LLC  
2375 University Ave W.  
Suite 200  
St. Paul, MN, 55114

October 11, 2011

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

Dear Ms. Farris,

This is a request under the Freedom of Information Act (5 USC § 552). I request that a copy of the following records be provided to me:

1. Any and all legal opinions and/or memoranda produced by your office between January 1, 2007 and October 1, 2011 that deal with the use of lethal force by the United States against United States person Anwar al-Awlaki, or against any United States person using a substantially similar name, or against any United States person using the name "Anwar al-Awlaki" as a pseudonym;
2. Any and all legal opinions and/or memoranda produced by your office between January 1, 2001, and October 1, 2011, that deal with the use of lethal force – including, but not limited to, the projection of lethal force via "unmanned aerial vehicles" (UAVs) - by the United States against United States persons physically located outside of any region under the jurisdiction of the government of the United States at the time that lethal force is or might be used.
3. Any and all legal opinions and/or memoranda produced by your office between January 1, 2001, and October 1, 2011, that deal with the use of lethal force by the United States via the use of UAVs, against any person physically located within any region under the jurisdiction of the government of the United States at the time that lethal force is or might be used.

In order to help you determine my status for the purpose of assessing fees, you should know that I am a freelance journalist, and that this request is made as part of news gathering, and is not for commercial use. Responsive files will be shared with researchers, journalists, and the public, and will not be licensed for profit.

I am seeking a waiver of fees for this request, since the public dissemination of the requested materials will aide the public's understanding of the legal basis for certain actions undertaken by U.S. executive branch officials in the course of the war against terrorism.

If my fee waiver is denied, I am willing to pay fees of up to \$100.00 without prior notice. If fees are estimated to exceed this amount, please notify me first.

If this request is denied in whole or in part, please notify me of the legal basis for the denial, as well as all appeals procedures available under law.

I can be contacted at 651-335-2037 or [info@publicrecordmedia.com](mailto:info@publicrecordmedia.com) if you need to discuss any aspect of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Ehling', with a stylized flourish at the end.

Matt Ehling  
President, Public Record Media

# Exhibit B



Office of Legal Counsel

Washington, D.C. 20530

November 3, 2011

Matt Ehling  
Public Record Media, LLC  
2375 University Ave. W., Suite 200  
St. Paul, MN 55114

Dear Mr. Ehling:

This responds to your Freedom of Information Act request dated October 11, 2011.

The first item in your request seeks “[a]ny and all legal opinions and/or memoranda produced by your office between January 1, 2007 and October 1, 2011 that deal with the use of lethal force by the United States against United States person Anwar al-Awlaki, or against any United States person using a substantially similar name, or against any United States person using the name “Anwar al-Awlaki” as a pseudonym.” Pursuant to FOIA Exemptions One, Three and Five, 5 U.S.C. § 552(b)(1), (3) and (5), the Office of Legal Counsel neither confirms nor denies the existence of the documents described in this item. We cannot do so because the very fact of the existence or nonexistence of such documents is itself classified, protected from disclosure by statute, and privileged.

We have identified several documents that are responsive to the remaining items in your request. We are withholding these documents pursuant to FOIA Exemption One, 5 U.S.C. § 552(b)(1), which protects classified information; Exemption Three, *id.*, § 552(b)(3), which protects information specifically exempted from disclosure by statute; and Exemption Five, *id.*, § 552(b)(5), which protects information that is privileged. The documents are protected by the deliberative process and attorney-client privileges.

I am required by statute and regulation to inform you that you have the right to file an administrative appeal. Any administrative appeal must be received within 60 days of the date of this letter by the Office of Information Policy, United States Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001. Both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

Paul P. Colborn  
Special Counsel

# Exhibit C



U.S. Department of Justice

Office of Information Policy

12-008

Telephone: (202) 514-3642

Washington, D.C. 20530

MAY -1 2012

Mr. Matt Ehling  
2375 University Ave. W.  
Suite 200  
Saint Paul, MN 55114

Re: Your letter dated December 29, 2011

Dear Mr. Ehling:

This is to advise you that your administrative appeal from the action of the Office of Legal Counsel was received by this Office on April 24, 2012.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2012-02076**. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal you may contact me at the number above.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones", written in a cursive style.

Priscilla Jones  
Supervisory Administrative Specialist

OKC

Matt Ehling  
President  
Public Record Media, LLC  
2375 University Ave. W., Suite 200  
St. Paul, MN 55114



December 29, 2011

*AP-2012-02076*

FOIA  
@  
OLC  
PED

Office of Information Policy  
United States Department of Justice  
Flag Building, Suite 570  
Washington, D.C. 20530-0001

RECEIVED

RE: Freedom of Information Act Appeal

APR 24 2012

Office of Information Policy

Dear Office of Information Policy official,

I am writing to appeal a final determination related to a Freedom of Information Act (FOIA) request filed with the Office of Legal Counsel (OLC), a component of the United States Department of Justice (DOJ). This request was dated October 11, 2011, and was submitted by myself on behalf of Public Record Media, LLC. I am seeking administrative review pursuant to DOJ rules regarding appeals outlined in the DOJ FOIA regulations at 28 C.F.R. § 16.9.

**Procedural History**

On October 11, 2011, I filed a Freedom of Information Act request with the OLC. That request sought,

- "1 Any and all legal opinions and/or memoranda produced by your office between January 1, 2007 and October 1, 2011 that deal with the use of lethal force by the United States against United States person Anwar al-Awlaki, or against any United States person using a substantially similar name, or against any United States person using the name "Anwar al-Awlaki" as a pseudonym;
- 2. Any and all legal opinions and/or memoranda produced by your office between January 1, 2001, and October 1, 2011, that deal with the use of lethal force – including, but not limited to, the projection of lethal force via "unmanned aerial vehicles" (UAVs) - by the United States against United States persons physically located outside of any region under the jurisdiction of the government of the United States at the time that lethal force is or might be used.



3. Any and all legal opinions and/or memoranda produced by your office between January 1, 2001, and October 1, 2011, that deal with the use of lethal force by the United States via the use of UAVs, against any person physically located within any region under the jurisdiction of the government of the United States at the time that lethal force is or might be used.”

A copy of my request is attached to this letter

On November 3, 2011, Mr. Paul Colborn of the OLC authored a final response to my FOIA request. In his letter, Mr. Colborn effectively denied my request in its entirety, claiming that the “fact of the existence or nonexistence” of certain documents was classified. Mr. Colborn also withheld other responsive documents, citing several FOIA exemptions.

A copy of Mr. Colborn’s correspondence is attached to this letter.

**Claimed basis of withholding**

In his letter of November 3, Mr Colborn cited multiple FOIA exemptions as the bases for the withholding of responsive documents. These exemptions were noted as follows:

“We are withholding these documents pursuant to FOIA Exemption One, 5 U.S.C. § 552(b)(1), which protects classified information; Exemption Three, *id.*, § 552(b)(3), which protects information specifically exempted from disclosure by statute; and Exemption Five *id.*, § 552(b)(5), which protects information that is privileged. The documents are protected by the deliberative process and attorney-client privileges.”

**Reason for appeal**

By seeking administrative review, I am asking your office to evaluate the underlying documents, as well as the bases for the claimed exemptions. If such a review does not support the application of the exemptions as claimed, I would seek to have all responsive, segregable material released to me in accordance with the terms of the FOIA.

**Appeal seeks to review exemptions solely related to Item 3**

In Mr. Colborn’s letter of November 3, he issued a so-called “Glomar” response regarding documents relating to Item 1 of my request. (*See, generally, Phillippi v. CIA*, 546 F.2d 1009 (D.C.Cir.1976)). Such a response “neither confirms nor denies the existence” of requested documents.

With respect to materials responsive to Item 1 of my request only, I do not challenge the OLC’s “Glomar” response. For the purposes of this appeal, I wish to set aside matters relating to Item 1 (and also Item 2) of my request, and only pursue review of matters that relate to exemptions claimed for Item 3.

**Relationship of FOIA disclosure and exemptions**

The purpose of the FOIA is to provide the public with information about “what their government is up to.” (*U.S. Dep’t of Justice v. Reporters Committee for Freedom of the*

*Press*, 489 U.S. 749, 773, (1989)). This rationale clearly applies to materials written by the OLC, which generates legal opinions that guide the actions of Executive Branch agencies that impact the lives of millions of Americans.

While the FOIA and its interpretive history presume openness, the text of the FOIA provides nine exemptions intended to protect government information from disclosure in certain instances. (*See, generally, Dep't of Air Force v. Rose*, 452 U.S. 352 (1976)). Mr Colborn cites three of these exemptions in his letter of November 3, 2011. Such exemptions must be "construed narrowly" in order to be properly invoked. (*U.S. Dep't of Justice v. Sullivan*, 486 U.S. 1,8 (1988)).

The OLC's final response to my FOIA request raises questions as to whether these exemptions were, in fact, narrowly construed, and thus properly invoked.

**Exemption 1 claim lacks specific support**

In Mr. Colborn's letter of November 3, 2011, he relies upon FOIA Exemption 1 as a basis for withholding documents responsive to Item 3 of my request. However, Mr. Colborn's letter does not specify the classification authority upon which he is relying as the basis for withholding under Exemption 1. For this reason, his Exemption 1 claim should be reviewed to determine if the claimed authority is indeed appropriate.

As case law has indicated, the FOIA requires the government to justify its withholdings as proper. Indeed, the "agency bears the burden to demonstrate -- not the requester to disprove -- that it has not improperly withheld agency records." (*Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 142 n. 3(1989)). Likewise, court decisions have long held that FOIA's "strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any of the requested documents." (*U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991)).

Without access to specific information about the classification authority upon which Mr. Colborn is relying to justify withholding under Exemption 1, it is difficult -- if not impossible -- to analyze the validity of the claimed exemption, and whether withholding under that exemption is, in fact, justified. To clarify this matter, the OLC should identify the specific classification authority upon which it is purporting to rely in its denial of my request.

**Exemption 3 claim lacks specific support**

Mr. Colborn's letter of November 3, 2011 also indicates that the OLC is relying upon FOIA Exemption 3 as a basis for withholding documents responsive to Item 3 of my request. Exemption 3 covers records that are "specifically exempted from disclosure by statute" provided that such statute either "(A) [requires withholding] in such a manner as to leave no discretion on the issue," or "(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." (5 U.S.C. § 552(b)(3) (*See also, Senate of the Commonwealth of Puerto Rico v. U.S. Dep't of Justice*, 823 F.2d 574, 582 (D.D.Cir.1987)).

5 U.S.C. § 552(b)(3) requires that statutes which trigger withholding under Exemption 3 be specific as to what they cover, “leave no discretion on the issue,” establish “particular criteria for withholding,” or refer to “particular types of matters to be withheld.” As with the other FOIA exemptions, Exemption 3 “should be narrowly construed.” (*Dep’t of the Air Force v. Rose*, 425 U.S. at 361). Such a narrow construction would necessitate a reliance upon the kinds of specific parameters noted in 5 U.S.C. § 552(b)(3).

The FOIA was enacted in 1966 to implement a “general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” (*Dep’t of the Air Force v. Rose*, 425 U.S. at 360-61.) Without access to the particular statutory authority underlying a FOIA exemption – particularly a withholding determination made under the auspices of Exemption 3 – it is impossible to determine whether the exemption has been properly invoked. To clarify this matter, the OLC should provide the specific statutory authority upon which it is purporting to rely in its denial of my request.

#### **Exemption 5 claims**

In Mr. Colborn’s letter of November 3, 2011, he relies upon FOIA Exemption 5 as a basis for withholding documents responsive to Item 3 of my request. Mr. Colborn further notes that the withheld documents “are protected by the deliberative process and attorney-client privileges.”

As with all other FOIA Exemptions, Exemption 5 must be “narrowly construed” in order to act as a proper basis for withholding. (*See Public Citizen Inc. v. Rubber Mfrs. Ass’n*, 533 F.3d 810, 813 (D.C.Cir 2008)).

FOIA Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency” (5. U.S.C. § 552(b)(5)).

In practice, “Exemption 5, when properly construed, calls for disclosure of all opinions and interpretations which embody the agency’s effective law and policy, and the withholding of all papers which reflect the agency’s group thinking in the process of working out its policy and determining what its law shall be.” (*See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975)).

#### **Evaluation of Deliberative Process Privilege**

The “agency’s group thinking in the process of working out its policy,” encompasses the “deliberative process privilege” referenced by Mr. Colborn, but the parameters of that privilege are not limitless.

In *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir 1980), the court established the standard of review for agency claims made under Exemption 5. To determine “whether disclosure of a document is likely to adversely affect the purposes of the privilege,” it is necessary to ask “whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank

communication within the agency” In addition, in order for the court to determine if information is “deliberative” in nature, it must “reflect the personal opinions of the writer rather than the policy of the agency” (*Id.* at 866.)

The “candid and personal test” set out in *Coastal States Gas* is not the only basis for withholding via the deliberative process privilege available under Exemption 5. The deliberative process privilege may also be relied upon by an agency if documents contain “predecisional” information that was part of the deliberative process. (*Heggstad v. Dep't of Justice*, 182 F Supp. 2d 1, 7 (D.D.C. 2000)) (quoting *Coastal States Gas Co.*, 617 F.2d at 868)).

“To establish that a document is “predecisional” for purposes of deliberative process privilege” under FOIA exemption 5, “the agency need not point to an agency final decision, but merely establish what deliberative process is involved, and the role that the documents at issue played in that process.” (*Judicial Watch v. Export-Import Bank*, 108 F.Supp.2d 19, 35 (D.D.C.2000)).

Mr Colborn’s letter of November 3, 2011 does not provide details sufficient to support a determination that documents responsive to Item 3 of my request meet the “candid and personal” threshold set out in *Coastal Gas Corp.*, or are “predecisional” in nature. Thus, I would ask your office to review the responsive documents to determine if the deliberative process privilege available under Exemption 5 has been improperly invoked.

#### **Evaluation of Attorney-Client Privilege**

“Deliberative process privilege” is not the only basis for withholding available under FOIA Exemption 5. Documents can also be withheld on the basis of attorney-client privilege. In order to “invoke the [attorney-client] privilege, an agency must demonstrate that the document it seeks to withhold (1) involves ‘confidential communications between an attorney and his [or her] client’ and (2) relates to a ‘legal matter for which the client has sought professional advice.’” (*Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F Supp. 2d 252, 267 (D.D.C. 2004) (quoting *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977)). However, the attorney-client privilege does not give the agency the ability “to withhold a document merely because it is a communication between the agency and its lawyers.” (*Id.*)

In a recent FOIA case, the America Civil Liberties Union (ACLU) sought documents from the Civil Rights Office of the Department of Homeland Security (DHS). DHS argued that the documents in question were protected (in part) by the attorney-client privilege underlying FOIA Exemption 5. (*See Am. Civil Liberties Union v. U.S. Dep't of Homeland Sec.*, 738 F Supp. 2d 93 (D.D.C. 2010).

The ALCU relied upon contextual clues to make informed guesses about the content of the documents in question, and disputed DHS’s application of Exemption 5 to withhold documents containing the type of content that it speculated was contained therein.

The court held that, "while the defendants' maintain that the plaintiff relies on mere speculation to cast doubt on the defendants' invocation of the attorney-client privilege it must be remembered that the defendants bear the burden of showing that the withholding of documents is justified under the FOIA." (*Id.*)

The court also held that because there was "no basis to conclude that the information warrants a complete non-disclosure of all of these records on the basis of the defendants' representations, the defendants must at minimum either produce redacted versions of these records to the plaintiff or provide more detail as to how the specific information in the records warrants complete withholding under Exemption 5." While this order was delivered within the context of a summary judgment motion in a FOIA-related case, its underlying concept applies here.

Like its reliance upon an unsupported claim of deliberative process privilege under Exemption 5, the OLC has offered no support for its reliance upon the attorney-client privilege to justify withholding. As the agency bears the "burden to demonstrate that all of the information is fully protected," OLC's claim of privilege has not been properly invoked.

**It is likely that segregable material can be produced**

The FOIA requires that "any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." (5 U.S.C. § 552(b)).

In practice, "the principle that guides the Court in the assessment of this question is that if a record contains information that is exempt from disclosure, any reasonably segregable information in a document must still be released after deleting the exempt portions, unless the nonexempt portions are inextricably intertwined with exempt portions." (See *Stolt-Nielsen Transp. Group, Ltd. v. United States*, 534 F.3d 728, 734(D.C. Cir. 2008); *Trans-Pacific Policing Agreement v. U.S. Customs Serv.*, 177 F.3d 1022(D.C. Cir. 1999)).

Further scrutiny of the OLC's claims underlying the use of FOIA exemptions 1, 3, and 5 to withhold responsive documents may reveal material that is suitable for disclosure under 5 U.S.C. § 552. If this is indeed the case, I ask your office to order the release of all responsive, segregable material.

**Documents responsive to Item 3 may contain abstract legal analysis**

While Item 1 of my request seeks OLC memoranda and opinions about government actions as they might apply to a specific individual, Item 3 of my request is not specific to a particular individual or circumstance, and could be advisory in a purely abstract sense. This sort of abstract, advisory legal analysis is often conducted by the OLC at the request of the President and Executive Branch agencies in order to guide future policy decisions. For a recent example of this sort of analysis, see the OLC opinion of September 19, 2011 entitled "*Unconstitutional Restrictions on Activities of the Office of Science and*

*Technology Policy in Section 1340(A) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011* " The language of the paragraph that comprises Item 3 of my request covers these sorts of purely abstract, advisory legal opinions.

**Documents containing abstract legal analysis may contain segregable material**

As previously noted, Mr. Colborn's letter does not cite any particular classification authority to support claims that documents responsive to Item 3 are exempt from disclosure under FOIA exemptions 1 and 3. It is certainly possible that properly classified information is contained within the withheld documents, or that the documents relate to programs that are themselves properly classified. Courts have, in fact, found this to be the case in some matters related to so-called "UAV" drones. For instance, on September 9, 2011, the D.C. Circuit Court ruled that documents relating to the use of UAV drones by the Central Intelligence Agency (CIA) were exempt from disclosure under FOIA Exemptions 1 and 3. (*See ACLU, et al., v. Dep't of Justice, et al.* 2011 WL 4005324 (D.D.C.))

However, any documents responsive to Item 3 of my request would be of a distinctly different type and nature than the documents at issue in *ACLU, et al. v. Dep't of Justice, et al.*

Documents responsive to Item 3 would be opinions or memoranda that deal with government actions – including the use of lethal force projected via UAVs - that might take place "within any region under the jurisdiction of the government of the United States." This category would cover materials that are distinct from the materials at issue in *ACLU, et al. v. Dep't of Justice, et al.*, which deals with documents that are primarily held by the CIA.

Title 50 of the U.S. Code sets out the powers and authorities of the CIA. Such powers do not include the ability to use lethal force within the United States against United States persons – the very powers at issue in Item 3 of my FOIA request.

By inference, any documents held by the OLC that are responsive to Item 3 would likely not relate to CIA activities. If so, this would substantially narrow the field of possible national security classification authorities available to justify withholding under Exemptions 1 and 3, and thus open the possibility that documents responsive to Item 3 of my request might be available for disclosure under the FOIA.

Furthermore, any classified, factual information that might exist in an otherwise largely abstract legal analysis could be reasonably segregated from the legal analysis itself. For example, please reference the document attached to this letter, which is a copy of a redacted legal opinion produced by the OLC in response to a September 27, 2009 FOIA request from Matthew M. Aid.

I request your review of documents responsive to Item 3 of my request to determine if, due to the nature of the content contained within, they (or any segregable portion thereof)

fall outside of the purview of withholding under Exemptions 1 and 3. If so, the disclosure of all segregable portions of the requested documents should be ordered.

**Presidential memorandum seeks to remedy "over classification"**

On May 27, 2009, President Barack Obama signed a memorandum entitled "Memorandum for the heads of Executive Departments and Agencies."

Section 1 (b)(ii) of the President's memorandum specifically addresses issues of national security classification, and seeks to remedy a problem it identifies as "over classification." The relevant text urges executive agencies to undertake "measures to address the problem of over classification, including the possible restoration of the presumption against classification, which would preclude classification of information where there is significant doubt about the need for such classification."

The President's memorandum provides general guidance to executive agencies on classification matters. It has pointedly urged them to undertake a review of classifications standards, and to specifically address matters of "over classification."

In addition to the reasons previously articulated, I am seeking administrative review to determine whether the requested materials have been reviewed in concert with the President's guidance on matters of national security classification.

**Conclusion**

In light of the issues raised above, and in accordance with the cited authorities, I request that your agency review the OLC's basis for withholding documents under FOIA Exemptions 1, 3, and 5. I also request your review of the OLC's application of these exemptions, and a determination about whether the exemptions were properly applied by the OLC. In addition, I am seeking to determine whether responsive documents that might be covered by any classification claims have been reviewed in concert with the President's guidance on national security classification. Finally, I request that your office order the production of any segregable portions of documents that are responsive to my FOIA request of October 11, 2011

Thank you for your consideration of this matter. If you have questions related to this administrative appeal, I can be contacted by telephone at 651-335-2037, or e-mail at [info@publicrecordmedia.com](mailto:info@publicrecordmedia.com).

Sincerely,



Matt Ehling  
President  
Public Record Media, LLC

# Exhibit D





**U.S. Department of Justice**  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

12-008

Telephone: (202) 514-3642

JUL 19 2012

Jonathan Haines, Esq.  
Suite 120  
2375 University Avenue West  
Saint Paul, MN 55114

Re: Appeal No. AP-2012-02076  
KWC:PED

Dear Mr. Haines:

Your client, Public Record Media, LLC, appealed from the action of the Office of Legal Counsel (OLC) on its request for access to certain legal opinions and memoranda.

I have been informed that your client filed a lawsuit concerning OLC's action in the United States District Court for the District of Minnesota. Inasmuch as this matter is now before the Court, I am closing this appeal file in this Office in accordance with 28 C.F.R. § 16.9(a)(3) (2011).

Sincerely,

A handwritten signature in cursive script that reads "Kenneth Coates/for".

Janice Galli McLeod  
Associate Director

OLC

# Exhibit E

Office of Legal Counsel Search Terms

“target! kill!”

“drones”

“assassinat!”

“extrajudicial killing”

“UAV”

“unmanned”

“awlaki”

“aulaqi”

“khan”

“lethal force”

“lethal operation”

# EXHIBIT F



**U.S. Department of Justice**  
Office of Legal Counsel

---

Washington, D.C. 20530

August 3, 2012

Matt Ehling  
Public Record Media, LLC  
2375 University Ave. W., Suite 200  
St. Paul, MN 55114

Dear Mr. Ehling:

I write to confirm information previously conveyed by our counsel in connection with your suit regarding your Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC") dated October 11, 2011 (FOIA Tracking No. FY12-008). Your request sought three categories of records. We responded to your request on November 3, 2011. With respect to the first category, we neither confirmed nor denied the existence of any responsive records, relying on FOIA Exemptions One, Three, and Five, 5 U.S.C. § 552(b)(1), (3), and (5). With respect to the remaining categories, we indicated generally that we had identified responsive records but were withholding them pursuant to the same exemptions.

I understand that the litigation is limited to the third category of your request, which sought any legal opinions or memoranda produced by OLC between January 2001 and October 1, 2011 relating to the use of lethal force by the United States via the use of unmanned aerial vehicles against any person physically located in the territories of the United States. As our counsel has previously informed your counsel, please be advised that none of the responsive records we identified are responsive to this category. Rather, any responsive records located are responsive to the second category, construed broadly. When responding to a FOIA request, we do not typically identify the categories of a request to which exempt records are responsive.

Your counsel also inquired regarding the status of your FOIA appeal to the Department's Office of Information Policy ("OIP"). It is our understanding that OIP has previously informed your counsel that the appeal had been closed, consistent with the Department's typical practice to close any appeal when a FOIA request becomes a subject of litigation. *See* 28 C.F.R. 16.9(3) ("An appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation").

Sincerely,

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

Paul P. Colborn  
Special Counsel

Cc: Amy Powell, Trial Attorney, Civil Division, U.S. Department of Justice  
J. T. Haines, Public Record Media, L.L.C.