

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND)
ETHICS IN WASHINGTON)
)
Plaintiff,)
)
v.)
)
UNITED STATES DEPARTMENT OF JUSTICE,)
)
Defendant.)
_____)

No. 1:08-cv-01468 (EGS)

DECLARATION OF STEVEN G. BRADBURY

I, Steven G. Bradbury, declare as follows:

1. 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 holds the position of Assistant Attorney General for OLC. Consequently, in my capacity as Principal Deputy Assistant Attorney General for OLC, I am the head of OLC and supervise all OLC operations, including its response to requests under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The information in this declaration is based on my personal knowledge, information, and belief, and on information provided to me in my official capacity.

OLC’s Responsibilities in the Department

2. The principal function of OLC is to assist the Attorney General in his role as a legal adviser to the President of the United States and to departments and agencies in the Executive Branch. In connection with these functions, OLC often provides advice to the Attorney General and to other components of the Executive Branch on a wide range of legal questions, including how to respond to requests for information or documents from congressional committees.

3. In connection with these responsibilities, in June 2008 the Office assembled Department records subpoenaed by the Committee on Government Reform of the House of Representatives (the "Committee"). (A copy of the Committee's subpoena is attached as Exhibit A.) As modified by the Committee to withdraw the demand for the report of the interview with the President, the subpoena sought the reports of voluntary interviews of the Vice President and senior White House staff by Special Counsel Patrick Fitzgerald in connection with his investigation into the disclosure of Valerie Plame's identity as a CIA employee.¹ Portions of the subpoenaed interview reports describe confidential internal White House deliberations among senior presidential advisers, including the Vice President, the White House Chief of Staff, and the National Security Adviser, concerning, among other things, the preparation of the President's January 2003 State of the Union Address, possible responses to inquiries about the accuracy of a statement in the President's address, and the decision to send Ms. Plame's husband, Ambassador Joseph Wilson, on a fact-finding mission to Niger in 2002.

4. Based on his concern that disclosure to Congress of the subpoenaed interview reports would risk impairing the effectiveness of future law enforcement investigations involving official White House conduct, and in order to protect the confidentiality of the high-level White House deliberative information contained in the reports, the Attorney General requested that the President assert executive privilege in response to the Committee's subpoena. In his request to the President, the Attorney General explained that the materials were protected by the presidential communications, deliberative process, and law enforcement components of

¹ Prior to receiving the subpoena, the Department had sought to accommodate the Committee's legitimate legislative interests by making available for Committee staff review, with limited redactions, the interview reports for senior White House staff. The accommodation did not include access to the reports of the interviews with the President and Vice President, because the request for those reports raised heightened separation of powers and confidentiality concerns.

executive privilege. (A copy of the Attorney General's letter to the President is attached as Exhibit B.) The Attorney General emphasized that the records reflect highly deliberative communications among senior White House staff and that releasing the records could deter Vice Presidents and senior White House officials from cooperating voluntarily with future Department of Justice criminal investigations involving official White House actions.

5. The President subsequently asserted executive privilege, and on July 16, 2008 the Department notified the Committee of the President's assertion and advised the Committee that it would not be producing the subpoenaed documents. (A copy of the Department's July 16 letter to the Committee is attached as Exhibit C.)

Processing Plaintiff's FOIA Request

6. The following day, July 17, 2008, Plaintiff submitted a FOIA request to the Department's Office of Information and Privacy seeking a subset of the documents subpoenaed by the Committee. Specifically, Plaintiff requested copies of records responsive to the subpoena that concerned the Vice President's interview with Special Counsel Fitzgerald.

7. OIP subsequently determined that it did not possess any responsive records. On September 4, 2008, OIP referred Plaintiff's FOIA request to OLC for processing. (A copy of the OIP referral is attached as Exhibit D.) On September 18, 2008, OLC informed Plaintiff that it had identified three records (totaling 67 pages) that are responsive to Plaintiff's request. OLC further advised Plaintiff that it was withholding each of the records pursuant to FOIA Exemptions Five, 5 U.S.C. § 552(b)(5), as well as FOIA Exemptions One, Three, and Seven, *id.* § 552(b)(1), (3), & (7). (A copy of OLC's September 18 response is attached as Exhibit E.) The three documents withheld by OLC are identified in the attached *Vaughn* index (Exhibit F). As the index indicates, the documents consist of a report prepared by the Federal Bureau of

Investigation summarizing the Special Counsel's interview of the Vice President and two sets of contemporaneous handwritten notes made by FBI agents during the course of the interview.

FOIA Exemption Seven

8. Each of the withheld documents is protected in its entirety by FOIA Exemption Seven. Among other things, Exemption Seven protects from disclosure records compiled for law enforcement purposes where production of the records "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A).

9. Each of the withheld documents is a law enforcement record. As discussed above, FBI agents generated the documents in the course of the Special Counsel's investigation into the disclosure of Valerie Plame's status as an employee of the Central Intelligence Agency. For the reasons the Attorney General set forth in his letter to the President, releasing the investigative interview report and notes of the interview with the Vice President, which include discussion of confidential internal White House deliberations, could significantly undermine future Department of Justice criminal investigations involving official White House activities. Their release could deter senior White House officials from participating fully and frankly in voluntary interviews in such investigations. Alternatively, rather than risk having notes or summaries from interviews disclosed to congressional committees or FOIA requesters, the officials might insist on disclosing information only pursuant to a grand jury subpoena in order to ensure the secrecy protections of Rule 6(e) of the Federal Rules of Criminal Procedures. The Attorney General determined that under either scenario, the Department's ability to conduct future law enforcement investigations that might require White House cooperation would be significantly impaired.

10. Accordingly, release of these documents “could reasonably be expected to interfere with enforcement proceedings” by significantly impairing the integrity and effectiveness of future Department of Justice criminal investigations involving official conduct of the White House.

FOIA Exemption Five

11. Each of the documents withheld by OLC is also protected by FOIA Exemption Five. That exemption protects from disclosure “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.” This exemption has been construed to exempt from release documents or information normally privileged in the civil discovery context, including documents or information protected by the deliberative process, presidential communications, and law enforcement investigative privileges.

12. The withheld documents are protected in their entirety under FOIA Exemption Five by the law enforcement investigative privilege. The reasons supporting the applicability to these documents of Exemption Five by virtue of the law enforcement privilege are the same reasons that are set forth above in paragraph 9 to support the applicability of Exemption Seven.

13. In addition, portions of each of the withheld documents are also protected by the deliberative process privilege, which protects the internal deliberations of the Government by exempting from mandatory release under FOIA recommendations, analysis, opinions, speculation, and other non-factual information prepared in the course of Government decisionmaking. Portions of the withheld documents reflect or describe frank and candid deliberations involving, among others, the Vice President, the White House Chief of Staff, the National Security Adviser, the Director of the Central Intelligence Agency, and the White House

Press Secretary. These deliberations concern, among other things, the preparation of the President's January 2003 State of the Union Address, possible responses to media inquiries about the accuracy of a statement in the President's address and the decision to send Ambassador Joseph Wilson on a fact-finding mission to Niger in 2002, the decision to declassify portions of the October 2002 National Intelligence Estimate, and the assessment of the performance of senior White House staff. These high-level deliberations do not represent final decisions; rather, they reflect simply the preliminary and predecisional interactions and deliberations that accompany any decisionmaking process.

14. Similarly, portions of each of the withheld documents are also protected by the presidential communications privilege, which protects communications with the President and confidential communications that relate to possible presidential decisionmaking and that involve the President, his senior advisers, or staff working for senior presidential advisers. Portions of the withheld documents summarize communications among the Vice President and senior presidential advisers in the course of preparing information or advice for potential presentation to the President. In addition, some portions explicitly reference a conversation between the President and the Vice President. Disclosing such sensitive conversations involving the President, the Vice President, and other senior White House officials could impair effective presidential decisionmaking.

Other Applicable FOIA Exemptions

15. Each of the withheld documents also contains personal information protected from disclosure by FOIA Exemptions Six and Seven, 5 U.S.C. § 552(b)(6) & (7)(C). The protected information was collected in the course of a law enforcement investigation and includes the names of third-party individuals (non-government employees), law enforcement personnel,

and low-level government employees who were not the subject of the Special Counsel's investigation, as well as private personal information (such as social security numbers and other extraneous personal information). There is no legitimate public interest in the release of this information; its disclosure would shed no light on official government activities but could subject individuals to an unwarranted invasion of personal privacy, harassment, or embarrassment.

16. Finally, a number of paragraphs in the FBI interview report and portions of the notes are protected under FOIA Exemptions One and Three, 5 U.S.C. § 552(b)(1) & (3), because they contain information currently classified at the SECRET level by the Central Intelligence Agency and exempted from disclosure by the National Security Act of 1947, as amended, *see* 50 U.S.C. § 403-1(i)(1). In particular, the CIA has determined that the documents contain information concerning intelligence sources and methods that is properly classified pursuant to section 1.4(c) of Executive Order 12958. The information regarding intelligence sources contained within the documents relates to foreign government information and liaison relationships. The information regarding intelligence methods contained within the documents relates to the practices and procedures that the CIA uses to assess and evaluate intelligence and to inform policymakers.

17. I have reviewed the documents withheld by OLC for segregation of non-exempt information, and I have determined that, for the reasons discussed above, no meaningful information in the documents can be released without disclosing information protected under the FOIA Exemptions that authorize their withholding.

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

Executed on October 10, 2008.



Steven G. Bradbury