

EXHIBIT N



May 9, 2019

Director, Office of Information Policy
United States Department of Justice
Suite 11050, 1425 New York Avenue, NW
Washington, DC 20530-0001

Subject: Freedom of Information Act Appeal (FOIA Tracking No. FY19-001)

To whom it may concern:

This letter appeals the April 18, 2019, partial denial determination of the Project On Government Oversight's (POGO) request for a list of Office of Legal Counsel (OLC) opinions from 1998 through the present.

Upon review of the OLC's response, it is apparent to POGO that the agency did not conduct a thorough search and has not satisfied its obligations under the Freedom of Information Act. POGO was able to identify numerous responsive records that were not included in the list provided to POGO, but which the office has publicly posted on its website. Of the 41 records POGO identified, only 3 share a date with redacted entries in the records provided to POGO, indicating that this is primarily a failure to adequately search for responsive records.

If the three redacted entries are in fact the same as the three public records that share their date of issuance, then POGO also appeals their redaction, as the office has already made the records public and therefore cannot reasonably assert that the redactions rise to the "foreseeable harm" standard established in the FOIA Improvement Act of 2016.

Given that the records identified by POGO are all publicly available and posted on the OLC's website, POGO has no confidence that the office has conducted a thorough search for responsive records, whether they be public or non-public. Although POGO has appended the list of 41 identified records, POGO does not consider the simple addition of those records to the agency's final response to be fully responsive to this appeal. In order to be fully responsive, the agency must fulfill its obligation under the law to conduct a thorough search of both public and non-public opinions—as initially requested by POGO—and provide an accurate list of them.

In addition, POGO has identified several discrepancies related to the issuance dates of memos on the list the agency provided. In the identified instances, and likely in others, the records provided to POGO appear to contradict the records publicly available on the agency's public opinion database or its FOIA reading room. While it is possible that these discrepancies are the result of poor and inadequate record-keeping practices, POGO believes that they would be resolved if the

agency conducted a thorough search of the opinions requested, as the opinions themselves carry the date they were issued. Regardless of the method used to correct these dates, POGO requests that the agency either correct the dates in the list provided or those the public records.

Please contact us if this request requires further clarification. I can be reached at (202) 347-1122 or via email at dvanschooten@pogo.org. Thank you for your prompt attention to this matter.

Sincerely,

Daniel Van Schooten
Investigator
Project On Government Oversight

Public OLC opinions not included in agency response:

Memorandums available in the official database:

- 01/28/1998 [Application of 18 U.S.C. § 203 to Maintenance of Contingent Interest in Expenses Recoverable in Litigation Against the United States](#)
- 02/17/1998 [Applicability of 18 U.S.C. §§ 431–433 to Limited Partnership Interests in Government Leases](#)
- 05/13/1998 [Constitutionality of Proposed Limitations on Tobacco Industry](#) (Testimony)
- 05/26/1998 [Permissibility Under Posse Comitatus Act of Detail of Defense Department Civilian Employee to the National Infrastructure Protection Center](#)
- 09/24/1998 [Lack of Authority of the Office of the United States Trade Representative to Represent Private Industry in Proceedings Before the United States International Trade Commission](#)
- 09/16/1999 [Assertion of Executive Privilege With Respect to Clemency Decision](#)
- 10/12/1999 [Appointment of a Senate-Confirmed Nominee](#)
- 01/19/2001 [“Communications” Under 18 U.S.C. § 207](#)
- 01/19/2001 [Authority to Solicit Gifts](#)
- 01/19/2001 [Effect of the Alienage Restriction in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on the Provision of Stafford Act Assistance in the Federated States of Micronesia and the Republic of the Marshall Islands](#)
- 11/05/2001 [Authority of the Deputy Attorney General Under Executive Order 12333](#)
- 12/05/2001 [Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members](#)
- 12/07/2001 [Application of Federal Advisory Committee Act to Non-Governmental Consultations](#)
- 12/10/2001 [Assertion of Executive Privilege With Respect to Prosecutorial Documents](#)
- 05/23/2003 [Application of 18 U.S.C. § 603 to Contributions to the President’s Re-Election Committee](#)
- 07/22/2005 [Whether Conflict of Interest Laws Apply to a Person Assisting a Supreme Court Nominee](#)
- 07/28/2005 [Assignment of Certain Functions Related to Military Appointments](#) (possibly included but redacted in FOIA response)
- 10/16/2007 [Rate of Accrual of Annual Leave by a Civilian Employee Appointed While on Terminal Leave Pending Retirement From One of the Uniformed Services](#)
- 08/14/2009 [Legality of Intrusion-Detection System to Protect Unclassified Computer Networks in the Executive Branch](#) (possibly included but redacted in FOIA response)

Subtotal: 19

Memorandums available in the FOIA reading room:

- 11/2/2001 - [Memorandum for the Attorney General from John C. Yoo, Deputy Assistant Attorney General](#) (Constitutionality of Expanded Electronic Surveillance Techniques Against Terrorists)
- 1/26/2002 - [Memorandum Regarding Memorandum From Alberto Gonzales to the President](#) on the Application of the Geneva Convention to Al Qaeda and the Taliban
- 4/18/2002 - [Memorandum Regarding Swift Justice Authorization Act](#)
- 6/8/2002 - [Memorandum Regarding Determination of Enemy Belligerency and Military Detention](#)
- 7/23/2002 - [Memorandum Regarding Specter/Harkin Joint Resolution](#) Calling for Congress to Vote on a Resolution for the Use of Force by the United States Armed Forces Against Iraq
- 8/1/2002 - [Memorandum Regarding Interrogation of al Qaeda Operative](#)
- 10/21/2002 - [Memorandum Regarding Authorization for Use of Military Force](#) Against Iraq Resolution of 2002
- 2/7/2003 - [Memorandum for William J. Haynes II, General Counsel, Department of Defense, from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Response to the Preliminary Report of the ABA Task Force on Treatment of Enemy Combatants](#)
- 5/6/2004 - [Memorandum for the Attorney General from Jack L. Goldsmith III, Assistant Attorney General, Office of Legal Counsel, Re: Review of the Legality of the STELLAR WIND Program](#)
- 5/11/2004 - [Memorandum for the Files from Jack L. Goldsmith III, Assistant Attorney General, Office of Legal Counsel, Re: Advice to the Department of Defense on Interrogations](#)
- 5/16/2004 - [Memorandum for the Files from Jack Goldsmith, Assistant Attorney General, Office of Legal Counsel, Re: Voluntary Departure from Occupied Territory](#)
- 5/10/2005 - [Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of 18 U.S.C. §§ 2340–2340A to Certain Techniques That May Be Used in the Interrogation of a High Value al Qaeda Detainee](#)
- 5/10/2005 - [Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of 18 U.S.C. §§ 2340–2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees](#)
- 5/30/2005 - [Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques That May Be Used in the Interrogation of High Value al Qaeda Detainees](#)
- 8/5/2005 - [Memorandum for the Files from Howard C. Nielson, Jr., Deputy Assistant Attorney General, Re: Whether Persons Captured and Detained in Afghanistan are “Protected Persons” under the Fourth Geneva Convention](#)

- 4/13/2006 - [Memorandum for the Files from Steven G. Bradbury, Acting Assistant Attorney General, Re: Legal Review of Department of Defense Draft Documents Regarding Treatment and Interrogation of Detainees](#)
- 8/31/2006 - [Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Re: Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Detention Facilities](#)
- 7/20/2007 - [Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Re: Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to Certain Techniques That May Be Used by the CIA in the Interrogation of High Value al Qaeda Detainees](#)
- 10/6/2008 - [Memorandum for the Files, Re: October 23, 2001 OLC Opinion Addressing the Domestic Use of Military Force to Combat Terrorist Activities](#)
- 1/15/2009 - [Memorandum for the Files, Re: Status of Certain OLC Opinions Issued in the Aftermath of the Terrorist Attacks of September 11, 2001](#)
- 2/19/2010 - [Memorandum for the Attorney General from David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, Re: Lethal Operation Against Shaykh Anwar Aulaqi](#)
- 7/16/2010 - [Memorandum for the Attorney General from David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, Re: Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations Against Shaykh Anwar al-Aulaqi](#) (May be included but redacted in FOIA response)

Subtotal: 22

Date discrepancies:

1. "Coverage of issues under the Indian Self-Determination Act"
 - a. Public Database: 4/22/1998, FOIA Response: 4/20/1998
2. "Testimony of William Treanor re H.R. 4751, Entry of the Commonwealth of Puerto Rico into Permanent Union with the U.S. (Treanor/Moss)"
 - a. In correct order but not dated. I believe it should be dated 10/4/2000.
3. "Constitutional Issues Raised by Commerce, Justice and State Appropriations Bill"
 - a. Public Database: 11/28/2001, FOIA Response: 11/20/2001
4. "General Counsel, DOD: Memorandum re Possible Criminal charges Against American Citizen Who Was a Member of the al Qaeda Terrorist Organization or the Taliban Militia (Yoo) (issued on December 21, 2001)"
 - a. Out of chronological order
5. "General Counsel, DOD: Memorandum re Possible Criminal charges Against American Citizen Who Was a Member of the al Qaeda Terrorist Organization or the Taliban Militia (Yoo)"
 - a. FOIA Reading room: 12/21/2001, FOIA Response: 12/20/2001