



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 14, 2007

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter, dated June 27, 2007, regarding the Department's response to a January 9, 2007 letter to the Attorney General from Mr. J. William Leonard, Director of the Information Security Oversight Office of the National Archives and Records Administration. We are sending a similar response to each of the other Chairmen who joined in your letter to us.

Mr. Leonard's letter requested an opinion addressing whether the Office of the Vice President is an "agency" for purposes of Executive Order 12958, as amended. By the enclosed letter, dated July 20, 2007, the Department responded to his request as follows:

On July 12, 2007, the Counsel to the President wrote a letter to Congress stating that "[t]he President has asked me to confirm to you that . . . the Office of the Vice President . . . is not an 'agency' for purposes of the Order." Letter to the Honorable Sam Brownback, United States Senate, from Fred F. Fielding, Counsel to the President (copy enclosed). That statement on behalf of the President directly resolves the question you presented to the Attorney General. Therefore, the Department of Justice will not be providing an opinion addressing this question.

With respect to your request for Department documents taking a position on or analyzing 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," we have enclosed copies of briefs and memoranda relating to your request. However, there are substantial Executive Branch confidentiality interests associated with the advisory and deliberative communications and internal legal analyses that you have also requested. Disclosure of these documents would harm the deliberative processes of the Executive Branch and undermine the ability of the Department to provide, and of senior Administration officials to receive, candid legal advice and analysis. In addition, nonpublic documents created by the Department in connection with litigation are protected attorney work product. We trust that the enclosed briefs and memoranda will assist the Committee in developing an understanding of the Vice Presidency and the Office of the Vice President.

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We understand that the Office of Counsel to the President is routinely involved in the review process for Executive Orders. We are unaware of any reason that would warrant the Attorney General's recusal from this matter.

We hope that this information is helpful. If you would like assistance regarding any other matter, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian A. Benczkowski". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Tom Davis
Ranking Minority Member