

DEPARTMENT OF JUSTICE  
Office of Information Policy  
ATTN: FOIA Officer  
1425 New York Avenue, N.W., STE 11050  
Washington, D.C. 20530-0001

Mr. Matthew M. Aid  
[REDACTED]  
[REDACTED]

September 27, 2009

Dear Sir/Ma'am:

This is a request under the Freedom of Information Act as amended (5 U.S.C. 552).

I write to request copies of the following documents prepared by the Department of Justice's Office of Legal Counsel (OLC), but which your office will have cognizance over given their sensitivity:

- (1) Legal opinion written by OLC Deputy Assistant Attorney General John C. Yoo, dated November 2, 2001, concerning the legality of the National Security Agency's warrantless domestic eavesdropping program, also known as the Terrorist Surveillance Program (TSP).
- (2) Memorandum, OLC Deputy Assistant Attorney General John C. Yoo to William J. Haynes, II, General Counsel, Department of Defense, dated February 8, 2002, regarding the applicability of the Foreign Intelligence Surveillance Act (FISA) to the National Security Agency's warrantless domestic eavesdropping program.
- (3) Memorandum written by OLC Deputy Assistant Attorney General John C. Yoo, dated October 11, 2002, concerning the legality of the National Security Agency's warrantless domestic eavesdropping program.

The FOIA provides that if only portions of a file are exempted from release, the remainder must be released. I therefore request that I be provided with all non-exempt portions of these documents which can be reasonably segregated. I, of course, reserve my right to appeal the withholding or deletion of any information.

I am prepared to pay **reasonable** costs for locating the requested files and reproducing them. The amended Act does provide that you must reduce or waive fees if it "is in the public interest because furnishing the information can be considered as primarily benefitting the public." I believe this request plainly fits that category since the material being requested is for the purpose of completing a book. I have already published a book as well as a number of articles that have appeared in respected academic journals and periodicals on the subject of Signals Intelligence, so I therefore fall in the category of a "non-commercial" FOIA requestor since the sole purpose of requesting these documents is for the purpose of informing the public with no financial benefit to myself. I therefore respectfully ask you to waive any fees.

As provided in the Freedom of Information Act, I will expect to receive an interim reply from your office within ten working days.

Sincerely,

Matthew M. Aid



U.S. Department of Justice

Office of Legal Counsel

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Washington, D.C. 20530

August 10, 2011

Matthew M. Aid

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Mr. Aid:

This responds to your Freedom of Information Act request dated October 8, 2009, which was referred to us by the Office of Information Policy. We have searched the files of the Office of Legal Counsel and have found three documents that are responsive to your request. We are withholding two of the documents in full pursuant to FOIA Exemptions One and Five, 5 U.S.C. § 552(b)(1) & (5), because they are classified and are protected by the deliberative process privilege. We are releasing one document with redactions pursuant to FOIA Exemptions One, Three and Five, because the redacted information is classified, covered by non-disclosure provisions contained in other federal statutes, and is protected by the deliberative process privilege.

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

Enclosure



U.S. Department of Justice

Office of Legal Counsel

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

November 2, 2001

**MEMORANDUM FOR THE ATTORNEY GENERAL**

**From: John C. Yoo**  
**Deputy Assistant Attorney General**

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FISA only provides a safe harbor  
for electronic surveillance, and cannot restrict the President's ability to engage in warrantless searches  
that protect the national security.

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FISA purports to be the exclusive statutory means for conducting electronic surveillance for foreign intelligence.

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Such a reading of FISA would be an unconstitutional infringement on the President's Article II authorities.

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Thus, unless Congress made a clear statement in FISA that it sought to restrict presidential authority to conduct warrantless searches in the national security area - which it has not - then the statute must be construed to avoid such a reading

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we do not believe that Congress may restrict the President's inherent constitutional powers, which allow him to gather intelligence necessary to defend the nation from direct attack.

intelligence gathering in direct support of military operations does not trigger constitutional rights against illegal searches and seizures.

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A warrantless search can be constitutional "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."

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no governmental interest is more compelling than the security of the Nation." *Haig*  
*v. Agee*, 453 U.S. 280, 307 (1981).

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