

*Text of subpoena attachment to the Department of Justice; Similar attachments were sent to the Office of the White House, the Office of the Vice President, and the National Security Council –*

## **Attachment A**

### **Documents Subpoenaed**

1. Complete and unredacted versions of the following:
  - A. All documents from September 11, 2001 to the present constituting the President's authorization or reauthorization of the warrantless electronic surveillance program (see Definitions, #1);
  - B. All documents from September 11, 2001 to the present containing analysis or opinions from the Department of Justice, the National Security Agency, the Department of Defense, the White House, or any other entity within the Executive Branch on the legality of, or legal basis for, the warrantless electronic surveillance program, including documents that describe why the surveillance at issue should not or could not take place consistent with the requirements and procedures of the Foreign Intelligence Surveillance Act (FISA);
  - C. All documents from September 11, 2001 to the present, including orders, decisions, or opinions of the Foreign Intelligence Surveillance Court (FISC), and pleadings submitted to the FISC, that reflect communications with the FISC or any FISC judges about the warrantless electronic surveillance program, containing legal analysis, arguments, or decisions concerning the interpretation of FISA, the Fourth Amendment to the Constitution, the Authorization for the Use of Military Force enacted on September 18, 2001, or the President's authority under Article II of the Constitution;
  - D. All documents from September 11, 2001 to the present that reflect, discuss, or describe agreements or understandings between the White House, the Department of Justice, the National Security Agency, or any other entity of the Executive Branch and telecommunications companies, internet service providers, equipment manufacturers, or data processors regarding criminal or civil liability for assisting with or participating in the warrantless electronic surveillance program;
  - E. All documents from September 11, 2001 to the present in the categories described in sections A-D, above related to the classified intelligence program that was the subject of discussion during the March 2004 hospital visit to former Attorney General John Ashcroft and other events that former Deputy Attorney General James Comey described in his May 15, 2007 testimony

before the Senate Judiciary Committee, whether or not you consider that program to be covered by sections A-D, above;

- F. All documents from December 1, 2005 to the present related to the investigation by the Department of Justice's Office of Professional Responsibility (OPR) into the role of Department of Justice attorneys in the authorization and oversight of the warrantless electronic surveillance program, which was opened on January 11, 2006 and closed approximately three months later after OPR investigators were denied the necessary security clearances ("OPR Investigation") that reflect, discuss, or describe: 1) consideration of the request for security clearances; 2) communications between White House personnel, including the President or the Vice President, and Department of Justice personnel about the OPR investigation or consideration of the request for security clearances; or 3) the reasons for ending that investigation;
- G. All documents from January 1, 2004 to the present related to the transfer of the powers of the Attorney General from then-Attorney General John Ashcroft to then-Deputy Attorney General James Comey in or around March, 2004 that reflect, discuss, or describe 1) the date, time, or manner of that transfer of power; 2) communication with or notice to White House personnel, including the President or the Vice President, about that transfer of power; 3) knowledge of White House personnel about that transfer of power.

The documents produced under sections A-G, above shall include, but not be limited to:

- i. Any memoranda authored or co-authored by former Deputy Attorney General James Comey on or around March 10, 2004 concerning legal issues related to the warrantless electronic surveillance program or the classified intelligence program described in section E, above;
- ii. All memoranda or opinions authored or co-authored by former Department of Justice officials Jack Goldsmith, Patrick Philbin, or John Yoo concerning legal issues related to the warrantless electronic surveillance program or the classified intelligence program described in section E, above;
- iii. Any memoranda from the Department of Justice Office of Intelligence Policy and Review concerning legal issues related to the warrantless electronic surveillance program or the classified intelligence program described in section E, above.
- iv. Any Department of Justice Office of Legal Counsel (OLC) memoranda or opinions concerning legal issues related to the warrantless electronic surveillance program or the classified intelligence program described in section E, above;

- v. Any memoranda or opinions from then-Counsel to the President Alberto Gonzales and provided to Former Deputy Attorney General James Comey on or about March 10, 2004 concerning legal issues related to the warrantless electronic surveillance program or the classified intelligence program described in section E, above;
- vi. Any certifications by the Attorney General or other Executive Branch official pursuant to 18 USC 2511(2)(a)(ii) provided to any telecommunications company, internet service provider, equipment manufacturer, or data processor in connection with requests for assistance with the warrantless electronic surveillance program or the classified intelligence program described in section E, above;
- vii. The January 10, 2007 orders of the FISC referenced in the January 17, 2007 letter from Attorney General Gonzales to Senator Patrick Leahy, authorizing the warrantless electronic surveillance program.

### **Instructions**

1. In complying with this subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agent, employee, or representative acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. No documents as defined herein called for by this request shall be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee. If you have knowledge that any subpoenaed document as defined herein has been destroyed, discarded, or lost, identify the subpoenaed document and provide an explanation of the destruction, discarding, loss or disposal and the date at which then document was destroyed, discarded or lost.
3. This subpoena is continuing in nature. Any document not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto with an explanation of why it was not located or discovered by the return date.
4. If you believe any responsive documents are protected by a privilege, you are required to provide a privilege log that (1) identifies any and all responsive documents to which the privilege is asserted, (2) sets forth the date, type, addressee(s), author(s) (and, if different, the preparer and signatory), general subject matter, and indicated or known circulation of the document, and (3) states the privilege asserted in sufficient detail to ascertain the validity of the claim of privilege.

5. Production with respect to each document shall include all electronic versions and data files from email applications as well as from word processing, spreadsheet, or other electronic data repositories applicable to any attachments, and shall be provided to the Committee where possible in its native file format and shall include all original metadata for each electronic documents or data file.
6. To the extent possible, documents containing classified national security information must be segregated from those not containing such information. All classified documents must be handled consistent with relevant security laws and regulations and delivered to the Office of Senate Security in room S-407 of the United States Capitol.

### **Definitions**

1. The term “the warrantless electronic surveillance program” as used in this subpoena refers to a classified intelligence program or programs that include electronic surveillance involving the interception without a court order, and without following the requirements and procedures of the Foreign Intelligence Surveillance Act, of communications with at least one participant present in the United States, including all related, predecessor, or subsequent versions of that program or programs. This includes a program that the Bush Administration has identified as the “Terrorist Surveillance Program” and at least some portion of which the President confirmed publicly in December 2005.
2. The term “document” as used in this subpoena includes all emails, memoranda, reports, agreements, notes, correspondence, files, records, and other documents, data or information in any form, whether physical or electronic, maintained on any digital repository or electronic media, and should be construed as it is used in the Federal Rules of Civil Procedure.
3. The terms “related” and “relating” with respect to any given subject, shall be construed broadly to mean anything that constitutes, contains, embodies, reflects, identifies, concerns, states, refers to, deals with or is in any manner whatsoever pertinent to the subject.
4. The terms “including” and “includes,” with respect to any given subject, shall be construed broadly so that specification of any particular matter shall not be construed to exclude any documents that you have reason to believe the Committee might regard as responsive.
5. The term “Department of Justice” includes without limitation, anyone presently or formerly employed, assigned, or detailed there.

6. The term “White House” includes: all offices, individuals, or entities within the White House Office, including the Office of the Counsel to the President, the Office of the Chief of Staff, and the President himself; the Office of the Vice President, including the Vice President himself; and the National Security Council and its staff.
7. The term “Bush Administration” refers to the Executive Branch during the terms of presidency of George W. Bush.
8. The terms “you” and “your” include you individually, in your capacity as Attorney General, as well as the Department of Justice, and, without limitation, anyone presently or formerly employed, assigned, or detailed there.

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