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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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June 27, 2008

Mr. Patrick J. Fitzgerald, Esq.  
Special Counsel  
U.S. Department of Justice  
Bond Building  
1400 New York Avenue, Ninth Floor  
Washington, DC 20530

Dear Mr. Fitzgerald:

On July 16, 2007, I requested documents from your office that are relevant to the Oversight Committee's investigation into the circumstances surrounding the leak of the cover identity of CIA officer Valerie Plame Wilson. The requested documents included:

Transcripts, reports, notes, and other documents relating to any interviews outside the presence of the grand jury of any of the following individuals:

- a. President George W. Bush
- b. Vice President Dick Cheney<sup>1</sup>

According to your letter of January 18, 2008, you "provided the White House and the other executive branch agencies with equities in the relevant documents an opportunity to review the materials we determined were not protected by Rule 6(e)," which is the rule governing grand jury material.<sup>2</sup> From discussions with the Justice Department, we understand that the FBI 302 interview reports of your interviews with the President and Vice President were included among those documents forwarded to the White House as not protected by grand jury rules.

On June 16, 2008, having been informed in writing by the Justice Department that it would not produce the interview reports of the President and Vice President, the Committee issued a subpoena for those interview reports, as well as other responsive documents not previously produced, with a return date of June 23, 2008. On June 24, 2008, the Justice Department informed the Committee by letter that it would not comply with the subpoena and

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<sup>1</sup> Letter from Henry A. Waxman, Chairman, to Patrick J. Fitzgerald, Special Counsel (July 16, 2007).

<sup>2</sup> Letter from Patrick J. Fitzgerald, Special Counsel, to Henry A. Waxman, Chairman (Jan. 18, 2008).

Mr. Patrick J. Fitzgerald  
June 27, 2008  
Page 2

would not "provide or make available any reports of interviews with the President or the Vice President from the leak investigation."<sup>3</sup>

To assist the Committee in evaluating the Department's position, I request that you produce the following information to the Committee no later than July 3, 2008:

1. Documents sufficient to show the date and terms of all agreements, conditions, and understandings between the Office of Special Counsel or the Federal Bureau of Investigation and the President of the United States, regarding the conduct and use of the interview or interviews of the President conducted as part of the Valerie Plame Wilson leak investigation.
2. Documents sufficient to show the date and terms of all agreements, conditions, and understandings between the Office of Special Counsel or the Federal Bureau of Investigation and the Vice President of the United States, regarding the conduct and use of the interview or interviews of the Vice President conducted as part of the Valerie Plame Wilson leak investigation.

If such agreements, conditions, and understandings were not memorialized in writing, I request that you submit a written description of the date and terms of any such agreements, conditions, and understandings.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions regarding this request, please contact David Rapallo or Theodore Chuang of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman  
Chairman

cc: Tom Davis  
Ranking Minority Member

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<sup>3</sup> Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, to Henry A. Waxman, Chairman (June 24, 2008).

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## **Responding to Oversight Committee Document Requests**

In responding to the document request from the Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

### **Instructions**

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information.
10. The Committee accepts electronic documents in lieu of paper productions. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page TIF files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates Numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
11. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
12. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject, and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
13. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
14. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
15. All documents should be bates-stamped sequentially and produced sequentially. In the cover letter, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set should be delivered to the minority staff in Room B350A in the Rayburn House Office Building. You should consult with committee staff regarding the method of delivery prior to sending any materials.
17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

## **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “documents in your possession, custody, or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term “communication” means each manner of means of disclosure or exchange of information, regardless of means utilized, where oral, electronic by document or otherwise, and whether fact-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” means natural persons, firms, partnerships, associations, corporations, subsidiaries, division, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms “referring” or “relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.