



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 16, 2008

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 of July 8, 2008, informing the Attorney General that the Committee has scheduled a meeting on July 16, 2008, to consider a resolution citing him for contempt of Congress.

As set forth in our letter of June 24, 2008, the Executive Branch has attempted to accommodate the Committee's inquiry concerning White House procedures for handling classified information by permitting the staff to review the FBI reports (with limited redactions) of interviews of senior White House staff. We have made this extraordinary accommodation notwithstanding the Executive Branch's important institutional interests in the confidentiality of White House deliberations and communications and the integrity and effectiveness of Justice Department criminal investigations. We indicated in our letter that we are not prepared to make the same accommodation for reports of interviews with the President and Vice President because the confidentiality interests relating to those documents are of a greater constitutional magnitude. We believe that access to the senior White House staff interview reports will provide sufficient information to satisfy the Committee's legitimate legislative needs.

Although we appreciate your forbearance on seeking the report of the interview with the President, we are disappointed that the Committee has not been satisfied by our substantial accommodations of the Committee's needs and has scheduled a meeting to consider citing the Attorney General for contempt of Congress if the Department does not produce the Vice President's interview report, as well as copies of the other subpoenaed documents. Accordingly, the Attorney General has requested that the President assert executive privilege with respect to these documents, and the President has done so.

The constitutional support for the President's assertion of executive privilege is set forth in the enclosed letter to the President from the Attorney General. The interview reports demanded by the Committee deal directly with internal White House deliberative communications relating to foreign policy and national security decisions faced by the President and his advisers, communications that lie at the absolute core of executive privilege. Moreover, the Committee's demand to obtain copies of these reports raises a serious additional separation of

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powers concern relating to the integrity and effectiveness of future law enforcement investigations by the Department. Were future Presidents, Vice Presidents and senior White House staff to perceive that providing voluntary interviews in the course of Justice Department investigations would create records that would likely be made available to Congress (and then possibly disclosed publicly outside of judicial proceedings such as a trial), there would be an unacceptable risk that such knowledge could adversely impact their willingness to cooperate fully and candidly in voluntary interviews. They might insist, alternatively, on disclosing information only pursuant to grand jury subpoenas in order to ensure the secrecy protections of Rule 6(e) of the Federal Rules of Criminal Procedure. Such a result would significantly impair the Department's ability to conduct future law enforcement investigations where such investigations would benefit from full and voluntary White House cooperation.

If the Committee refrains from citing the Attorney General for contempt, the Department is prepared to continue the accommodation approach we have been taking in this matter by making available for Committee review, under the same terms we have previously made reports available, the remaining interview reports (other than those for the President and the Vice President) and other subpoenaed documents. Please do not hesitate to contact this office if you would like additional assistance regarding this matter.

Sincerely,



Keith B. Nelson
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Tom Davis
Ranking Minority Member