

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037



Phone: 202.994.7045
Fax: 202.994.7005
nsarchiv@gwu.edu
<http://www.nsarchive.org>

Ms. Melanie Pustay
Office of Information Policy
Department of Justice
Suite 11050
1425 New York Ave., NW
Washington DC 20530

Dear Ms. Pustay:

Under Executive Order 13526, I am appealing the Department of Justice's response to my October 6, 2011 Mandatory Declassification request for "a Justice Department memorandum authorizing the lethal targeting of Anwar al-Aulaqi (al-Awlaki), referred to in [an] attached *Washington Post* article."

In a letter dated November 3, 2011 the Department of Justice Office of Legal Counsel stated that it neither confirmed nor denied the existence of the memorandum. The letter (attached) advised of my right to appeal this decision to the Department of Justice Office of Information Policy.

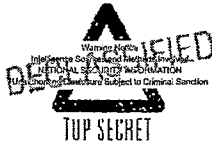
To deny this request, the Department of Justice Office of Legal Counsel quoted section 3.6(a) of Executive Order 13526 which states, "An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors."

For the following reasons, I argue the existence of this memorandum should be acknowledged and that all or part of it should be declassified and released to the public:

- The US government has previously authorized the disclosure of legal memorandums advising of the legality of assassinations and the "war on terror." It is extremely likely that the arguments and legal analysis produced in these documents are identical or extremely similar to the information contained in the Department of Justice memorandum authorizing the lethal targeting of Anwar al-Aulaqi. At a minimum, information –including legal arguments– already in the public domain does not meet the standards for continued classification and should be declassified. See, for just two examples, the US Army document entitled "**Memorandum of Law Subject: Assassination,**" and the Central Intelligence Agency's "Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Q'ida Personnel." Both documents are attached.
- US government officials have acknowledged the assassination of al-Awlaki and stated that US citizens are "legitimate military targets" if they take up arms with

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037



Phone: 202.994.7045
Fax: 202.994.7005
nsarchiv@gwu.edu
<http://www.nsarchive.org>

al-Qaeda. The existence or nonexistence of this fact does not meet the threshold for classification. (See the Associated Press article, “**Obama lawyers: Citizens targeted if at war with US,**” attached.)

- **The extreme public interest of United States citizens to know which legal requirements must be met before they can be “authorized for lethal targeting” certainly outweighs the harm of releasing the contents of a memo already widely reported throughout the American and world press.** Section 3.6(a) of Executive Order 13526 which states, “An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.” **The Department of Justice has the legal authority to declassify this memorandum. Doing so would add much weight to Attorney General Holder’s and President Obama’s proclamations on the importance of open government. (Attached.)**
- Even if some portions of this document must remain classified, please conduct a line by line review to release all segregable portions.
- Finally, In Executive Order 13526 3.1(g) President Obama instructed that, “No information may be excluded from declassification under section 3.3 of this order **based solely on the type of document or record in which it is found. Rather, the classified information must be considered on the basis of its content.**” Claiming that a “the existence or nonexistence of such records in itself classified” clearly does not consider the basis of the document’s content.

Thank you for considering this Mandatory Declassification appeal of your decision not to release –or even confirm the existence of– the Department of Justice memorandum authorizing the lethal targeting of Anwar al-Awlaki.

A handwritten signature in black ink, appearing to read 'Nate Jones', with a long, sweeping underline that extends to the right.

Sincerely, Nate Jones
FOIA Coordinator, National Security Archive

cc: Attorney General Eric Holder