



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street, 3rd floor
New York, New York 10007*

September 21, 2011

BY FACSIMILE

Hon. Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, New York 10007-1312

Re: *ACLU v. Department of Defense et al.*, 04 Civ. 4151
(AKH)

Dear Judge Hellerstein:


At the Court's request, we write on behalf of the Central Intelligence Agency ("CIA") to provide the Court with a summary of the two policies attached to our letter dated August 15, 2011 that were recently adopted by the Office of General Counsel of the CIA. The CIA has no objection to the Court's reliance on the enclosed summary in any written decision addressing Plaintiffs' motion for contempt and sanctions.

We thank the Court for its consideration.

Respectfully,

PREET BHARARA
United States Attorney

By:


TARA M. La MORTE
AMY A. BARCELO
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. (212) 637-6559
Fax (212) 637-2730

Encl.

cc: Alexander A. Abdo, Esq.
Alicia Bannon, Esq.

Summary of CIA Policies Regarding Document Preservation

In August 2011, the Office of General Counsel (OGC) of the Central Intelligence Agency (CIA) formally adopted two new policies regarding document preservation. These policies serve to refine and institutionalize a set of best practices – many of which have previously been standard within OGC – for handling preservation obligations and to generally heighten work force awareness of these issues.

The first of these new policies establishes a formal procedure for handling client proposals to destroy documents outside the existing process for routine management of CIA materials under applicable law or Agency regulations. The aim of the policy is to ensure that any internal CIA proposal to destroy documents is given a thorough and well-documented legal review. Pursuant to this policy, when an OGC attorney receives a proposal from a CIA component to destroy documents that may relate to any pending or anticipated criminal investigation or prosecution, civil litigation, administrative proceeding or congressional oversight activity, the OGC attorney will advise that CIA component, in writing, to preserve such records pending the completion of the procedures required by the policy.

The policy provides that the OGC attorney will then forward such document destruction proposal to an OGC senior manager, who

will facilitate consideration of the relevant circumstances and coordination with the appropriate internal and external entities including, where appropriate, the Department of Justice or any other relevant department or agency.

Once coordination is complete and the Agency's legal obligations are determined, the OGC senior manager will make a recommendation to the CIA General Counsel whether or not to clear the proposal. The CIA General Counsel will be the final decision-maker with respect to that determination, and the General Counsel's decision on that issue will also be documented. After the General Counsel has reached a decision, the OGC attorney handling the matter will notify the requesting CIA component of that decision. Compliance with the procedure, as well as the legal analysis supporting the decision, will be documented. Finally, the policy provides that instruction on the contents of the policy will be provided in the regular orientation curriculum for attorneys new to OGC.

Second, OGC has also adopted a policy that covers the issuance of document preservation notices, and provides practical guidance to attorneys regarding when and how such notices should be issued and implemented in connection with criminal investigations, civil litigation, administrative proceedings and congressional inquiries. Among other things, the policy specifically provides instruction regarding with whom

an OGC attorney should consult after he or she becomes aware of such a preservation obligation, the contents of such a preservation notice, and the process an OGC attorney should undergo to determine to whom such a preservation notice should be distributed. The policy specifically provides that where a Department of Justice attorney is assigned to a case, the OGC attorney shall coordinate with the Department of Justice attorney regarding the obligation to issue a preservation notice and the content of such notice. This policy also provides that instruction on the contents of the policy will be provided in the regular orientation curriculum for attorneys new to OGC.