



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 4, 2009

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Conyers:

This responds to your letter, dated March 4, 2009, to H. Marshall Jarrett, of the Office of Professional Responsibility (OPR), which requested information about the status of OPR's investigation of Department attorneys who provided legal advice regarding interrogation techniques, and the investigations of four cases of alleged selective criminal prosecution.

As noted in your letter, Senators Durbin and Whitehouse wrote to the Department about OPR's investigation concerning whether legal advice in Office of Legal Counsel (OLC) memoranda regarding interrogation techniques was consistent with the professional standards that apply to Department of Justice attorneys. We understand that you have asked that we advise you of the same information that we provide to the Senators in response to their request. We have now responded to Senators Durbin and Whitehouse, and are simultaneously with this response providing additional information in response to a follow-up letter from Senator Durbin. We have incorporated that additional information regarding the review process herein.

In the past, former Department employees who were subjects of OPR investigations typically have been permitted to appeal adverse OPR findings to the Deputy Attorney General's Office. A senior career official usually conducted that appeal by reviewing submissions from the subjects and OPR's reply to those submissions, and then reaching a decision on the merits of the appeal. Under this ordinary procedure, the career official's decision on the merits was final. This appeal procedure was typically completed before the Department determined whether to disclose the Report of Investigation to the former employees' state bar disciplinary authorities or to anyone else. Department policy usually requires referral of OPR's misconduct findings to the subject's state bar disciplinary authority, but if the appeal resulted in a rejection of OPR's misconduct findings, then no referral was made. This process afforded former employees roughly the same opportunity to contest OPR's findings that current employees were afforded through the disciplinary process. While the Department has previously released public summaries of OPR reports under some circumstances, public release of the reports themselves has occurred only rarely. In the past, the release of a public summary occurred only after the subjects were afforded an opportunity to appeal any adverse findings. The Department currently is reviewing some of these procedures, but the described process has been the historic practice.

The OPR investigation in this matter has been the subject of significant congressional and public interest, unlike most OPR matters. In late December 2008, OPR advised Attorney General Mukasey and Deputy Attorney General Filip that it intended to publicly release its report of investigation in early January. However, Attorney General Mukasey and Deputy Attorney General Filip understood that, in response to requests from the former employees during the course of the investigation, OPR had agreed to provide them with an opportunity to review and comment on the report. Based on that understanding and upon the recommendation of the senior career Department official referenced above, Attorney General Mukasey and Deputy Attorney General Filip asked OPR to afford the subjects the chance to respond to the report prior to any release. OPR agreed to that procedure. The Department's new leadership likewise agreed that this opportunity for review and comment was fair and reasonably correlates with the process usually applicable to OPR investigations relating to former employees. The former employees have until May 4, 2009, to provide their comments on the draft report. Any revisions to the report thereafter will be based upon OPR's best judgments about the accuracy and fairness of the document. OPR will then provide a final report to the Attorney General and Deputy Attorney General. After any additional review they deem appropriate, the Department will determine what disclosures should be made.

In determining appropriate disclosures, we will be mindful of the considerable interest that Congress has previously expressed in connection with this matter and will seek to accommodate the information needs of our oversight committees in response to requests from their chairmen. While we appreciate your request for a disclosure commitment, we can only fully evaluate the scope of appropriate disclosures once the review process is completed.

You also inquired about the status and projected dates of providing you with the results of OPR's investigations of allegations of selective prosecution in the criminal cases of former Alabama Governor Donald Siegelman, Georgia Thompson, Dr. Cyril Wecht, and Mississippi Supreme Court Justice Oliver Diaz and attorney Paul Minor. Unfortunately, we are not in a position to respond to your request for information on these investigations at this time, but will supplement this response when additional information on OPR's investigation of these matters becomes available.

Thank you for your continued interest in this matter. We will supplement this response when additional information becomes available.

Sincerely,



Ronald Weich
Assistant Attorney General

cc: The Honorable Lamar Smith
Ranking Minority Member