



**U.S. Department of Justice**

**Office of Legislative Affairs**

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Office of the Assistant Attorney General

Washington, D.C. 20530

May 4, 2009

The Honorable Sheldon Whitehouse  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senator Whitehouse:

This responds to your letter of March 31, 2009, which requested additional information, following up our March 25, 2009 letter, concerning the investigation by the Department's Office of Professional Responsibility (OPR) into legal advice provided by the Office of Legal Counsel (OLC) regarding interrogation techniques. We are sending an identical response to Senator Durbin, who joined in your letter to us.

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.

Then Principal Deputy Assistant Attorney General Steven Bradbury participated in OLC's review of and response to the draft report. OPR has considered the concerns you expressed regarding Mr. Bradbury's participation in the review process. Because Mr. Bradbury's participation in that process was transparent, OPR advised that it can evaluate the OLC response with the knowledge of Mr. Bradbury's participation just as it would evaluate a response from anyone whose actions were within the scope of OPR's investigation. Therefore, OPR does not believe that Mr. Bradbury's participation in the OLC response was improper.

OPR also shared its initial draft with the Central Intelligence Agency (CIA) for a classification review. In its response regarding classification issues, the CIA requested an opportunity to provide substantive comment on the report. OPR has since provided the revised draft for both classification review and substantive comment. We have not examined whether disclosures were made to the White House in either Administration. However, we can confirm that OPR has neither sought nor received comment from any other Executive Branch agencies or the White House.

Finally, the Attorney General and Deputy Attorney General will have access to whatever information they need to evaluate the final report and make determinations about appropriate next steps.

We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. Weich', is positioned above the printed name.

Ronald Weich  
Assistant Attorney General