



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 19, 2007

The Honorable John Conyers
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Linda T. Sanchez
Chairwoman
Subcommittee on Commercial and
Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Madam Chairwoman:

This supplements our previous responses to your letter, dated March 8, 2007, which requested documents and other information about the request for the resignations of eight United States Attorneys. Under the extraordinary circumstances of this matter, it is important for the Congress and the people it represents to understand both the reasons for our decisions to request these resignations and our efforts to provide testimony to Congress about this matter. It would be improper to remove a United States Attorney for partisan reasons in retaliation for bringing or failing to bring, or in an effort to prevent the U.S. Attorney from bringing, a particular prosecution or enforcement action -- such as for failing to pursue a public corruption case. Because the American public must have confidence that such considerations of partisan gain did not factor into the decision to ask for the resignation of these eight federal prosecutors, we are providing the Subcommittee with confidential, deliberative documents that disclose the process through which the Department reached those decisions and prepared for testimony. The release of such deliberative materials is virtually unprecedented and reflects the Department's commitment to ensuring that all the relevant information underlying these decisions is available to Congress.

Enclosed are over 3,000 pages of documents responsive to your request. Consistent with our prior production, we will make unredacted copies of these documents available for review at the Department by Committee staff. The enclosed documents were located in the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and the Executive Office for United States Attorneys. As indicated in our letter of March 13, 2007, we are

redacting personal information based upon individual privacy interests. Also redacted is information from multi-subject documents about other subjects, completely unrelated to the removal of any U.S. Attorneys; a few of these redactions concern non-public information about open criminal investigations, which will not be made available for review.

Additionally, we are redacting information that would identify other U.S. Attorneys who were considered for possible removal but ultimately were not asked to resign, and information about candidates to replace those who were removed unless that information played a role in the removal decision. We also have made a few redactions of information about consideration of candidates for judicial appointments. In making the redactions, we are seeking to preserve the privacy and professional viability of those who are continuing to serve as U.S. Attorneys as well as individuals who have been considered but not selected as nominees for that position. While we appreciate the Committee's interest in confirming the character of these redactions, we are unaware of any value in publicly disclosing the unredacted documents that would outweigh the damage to the individuals involved and their ability to function effectively as U.S. Attorneys or professionals in other roles. It would be patently unfair to the individuals and also risk destruction of the trust and collegiality that is critical to the Department's relationship with these and all other U.S. Attorneys. We are, of course, prepared to respond to Committee staff questions about particular redactions in these records.

We have identified three categories of documents that raise such significant confidentiality and privacy interests that we need to limit our response to making the documents available for Committee staff review at the Department or your personal review at your office. One category consists of documents relating to a request by the U.S. Attorney for the Western District of Michigan for an Office of Professional Responsibility (OPR) investigation into a leak of information about an ongoing OPR investigation regarding the conduct of an Assistant U.S. Attorney in that office. The second category consists of documents relating to the U.S. Attorney's Office in the Northern District of California, including internal management issues and a special EARS investigation. These documents include communications confidentially submitted to Department officials by career attorneys, and we believe that preservation of their confidentiality is important to preserving the candor of such communications in the future. As you may recall, we have previously produced the final EARS reports for the offices of the U.S. Attorneys who testified before the Subcommittee. The final category consists of recommendation memoranda submitted in connection with Attorney General decisions on whether to seek the death penalty in individual cases, which are extremely sensitive law enforcement deliberative materials.

As described above, we have made the full disclosure of deliberative documents leading up to the Department's decision to request the U.S. Attorney resignations because we recognize the Committee's interest in obtaining information about the motivation and reasons for that decision. And consistent with that rationale, we have also provided documents relating to our communications with those U.S. Attorneys both before and after December 7, 2006, the date the resignations were requested.

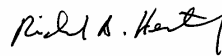
Our response regarding the remaining documents generated after December 7th is based on different considerations. We are providing another category of documents generated after that date, but are doing so to satisfy another legitimate Committee purpose: its interest in examining the Department's provision of incomplete information to Congress. We are providing deliberative documents concerning the preparation of the congressional testimony by Department officials in order to clarify the integrity of our process for preparing the testimony.

Except as previously indicated and consistent with long-standing Executive Branch practice, however, we are not providing other documents generated within the Executive Branch for the purpose of responding to the congressional (and media) inquiries about the resignations. The appropriate functioning of the separation of powers requires that Executive Branch officials preserve the ability to communicate confidentially as they discuss how to respond to inquiries from a coordinate branch of government. Such robust internal communications would be effectively chilled, if not halted, if they were disclosed, which could substantially impede any agency's ability to respond to congressional oversight requests. That result would be detrimental to the operations of both the Branches and serve no useful purpose.

Finally, although we have made available documents that concern our identification of replacement candidates for the U.S. Attorney positions prior to December 7th – because that information may have relevance to the decision to request the resignations, we are not releasing information about the Department's ongoing, confidential consideration of candidates to fill these positions, which began after December 7th. That consideration is integral to the exercise of the President's constitutional authority to appoint Executive Branch officials, and it implicates significant privacy interests for the individuals who may be, or may have been, subject to consideration for these positions.

We believe that the provision of the enclosures completes our response to your document request, although we will certainly supplement this response if we identify additional responsive documents. We hope that this information is helpful and would appreciate the opportunity to confer further with the Committee if you have further questions about this matter.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Lamar Smith
Ranking Minority Member
Committee on the Judiciary

The Honorable Christopher B. Cannon
Ranking Minority Member
Subcommittee on Commercial and
Administrative Law