

July 17, 2008

By Fax (202) 514-1009 and first-class mail

Carmen L. Mallon
Chief of Staff
Office of Information and Privacy
Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Ms. Mallon:

Citizens for Ethics and Responsibility in Washington ("CREW") makes this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552, et seq., and U.S. Department of Justice ("DOJ") regulations, 28 C.F.R. Part 16.

Specifically, CREW seeks all transcripts, reports, notes and other documents relating to any interviews outside the presence of the grand jury of Vice President Richard B. Cheney that are part of Special Counsel Patrick Fitzgerald's investigation into the leak of the identity of Valerie Plame Wilson, a covert CIA officer. This request is coextensive with the subpoena issued by the House of Representatives Committee on Oversight and Government Reform to Attorney General Michael B. Mukasey on June 16, 2008, for the same records concerning Vice President Cheney.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any and all kind, including electronic records, audiotapes, videotapes, photographs, and computer print-outs. Our request includes any telephone messages, voice mail messages, and daily agenda and calendars and information about scheduled meetings.

If it is your position that any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents, as required under Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." Founding Church of Scientology v. Bell, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the Vaughn index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." King

v. U.S. Dep't of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. §552(b); Schiller v. Nat'l Labor Relations Bd., 969 F.2d 1205, 1209 (D.C. Cir. 1992). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. Mead Data Central v. U.S. Dep't of the Air Force, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Fee Waiver Request

In accordance with 5 U.S.C. §552(a)(4)(A)(iii) and 28 C.F.R. § 16.11(k), CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government and the disclosures will likely contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes, pursuant to 5 U.S.C. §552(a)(4)(A)(iii). *See, e.g.,* McClellan Ecological v. Carlucci, 835 F.2d 1282, 1285 (9th Cir. 1987). Specifically, the requested records are likely to contribute to the public's understanding of the role of the vice president in the disclosure of Ms. Wilson's covert identity, the information that formed part of the basis for DOJ's decision not to prosecute Mr. Cheney and whether the attorney general advocated that the president assert executive privilege in response to the congressional subpoena for these documents to protect the vice president and prevent the public from learning the truth about Mr. Cheney's role in the leak of Ms. Plame's covert identity.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue code. CREW is committed to protecting the citizens' right to be aware of the activities of government officials and to ensuring the integrity of those officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the government decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW's financial interest. CREW will analyze the information responsive to this request and intends to share its analysis with the public, either through memoranda, reports, or press releases. CREW has an established record of carrying out these types of activities, as evidenced through its website, www.citizensforethics.org. Currently, the CREW website contains links to thousands of pages of documents acquired from multiple FOIA requests. *See* <http://citizensforethics.org/activities/foia.php>. Visitors to CREW's website can peruse the FOIA request letters, the responses from government agencies, and a growing number of documents responding to FOIA requests. CREW's virtual reading room provides around-the-clock access to

anyone interested in learning about the government activities that were the focus of CREW's FOIA requests. The CREW website also includes documents relating to CREW's FOIA litigation, Internal Revenue Service complaints, Federal Election Commission complaints and requests for investigation, such as the one CREW recently made of Attorney General Michael B. Mukasey relating to the activities of lobbyist Stephen Payne, who is alleged to have solicited contributions to the Bush library in exchange for securing meetings with top administration officials. In addition, CREW will disseminate any documents it acquires from its request to the public through www.governmentdocs.org, an interactive website CREW founded that includes thousands of pages of public documents from a number of organizations in addition to CREW.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Request for Expedition

Pursuant to 5 U.S.C. § 552(a)(6)(E)(I) and 28 C.F.R. § 16.5(d)(iv), CREW requests that DOJ expedite the processing of this request. As required by DOJ regulations, 28 C.F.R. § 16.5(d)(2), CREW is submitting its request for expedition to the director of Public Affairs. A copy of CREW's request is enclosed.

CREW also requests that DOJ expedite its request pursuant to 28 C.F.R. § 16.5(d)(ii). As explained above, CREW is engaged primarily in the dissemination of information that it gathers from a variety of sources, including the FOIA, and seeks the information requested in this FOIA request for the express purpose of disseminating it to the public. In addition to the interactive website that CREW founded, www.governmentdocs.org, that contains the documents CREW has acquired through the FOIA, CREW's website contains numerous examples of its efforts, including reports it has published based on information it receives through the FOIA. For example, CREW's report, Record Chaos: The Deplorable State of Electronic Record Keeping in the Federal Government, was based in significant part on documents it requested under the FOIA from a variety of agencies, including DOJ.

There is a particular urgency in informing the public about the role Vice President Cheney played in the leak of Ms. Wilson's covert CIA identity as well as the bases for the decision not to prosecute the vice president, despite Special Counsel Patrick Fitzgerald's statement at the trial of I. Lewis Libby that "[t]here is a cloud over what the Vice President did that week . . . That cloud remains." Further generating public concern are the recent actions of Attorney General Michael Mukasey, including his request of the White House that it assert executive privilege over the documents CREW is requesting here and the subsequent assertion of executive privilege. Attorney General Mukasey's actions raise a serious question of whether he is subverting a legitimate congressional inquiry to cover up the truth and protect the vice president. Disclosure of the documents CREW is requesting will go a long way toward answering those questions.

Pursuant to 28 C.F.R. § 16.5(d)(3), I hereby certify that the basis for CREW's request for expedition, as outlined above, is true and correct to the best of my knowledge and belief.

If you have any questions about this request, or foresee any problems in releasing fully the requested records on an expedited basis, please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination. Please send the requested documents to Anne Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Sincerely,



ANNE L. WEISMANN
Chief Counsel
Citizens for Responsibility and Ethics
in Washington

Enclosure

cc: Brian Roehrkasse

CREW | citizens for responsibility and ethics in washington

July 17, 2008

By fax (202-514-5331) and first-class mail

Brian Roehrkas
Director
Office of Public Affairs
U.S. Department of Justice
Room 1128
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: FOIA Request for Expedition

Dear Mr. Roehrkas:

Pursuant to U.S. Department of Justice ("DOJ") Freedom of Information Act ("FOIA") regulations, specifically 28 C.F.R. § 16.5(d)(2), Citizens for Responsibility and Ethics in Washington ("CREW") requests that you grant its request for expedition of the enclosed FOIA request of this date.¹

CREW's request seeks records relating to any interview outside the presence of the grand jury of Vice President Richard B. Cheney that are part of Special Counsel Patrick Fitzgerald's investigation into the leak of the identity of Valerie Plame Wilson, a covert CIA officer.

CREW requests expedition in light of the widespread and exceptional media interest in this matter and the questions that have been raised about the vice president's role in the leak of Ms. Wilson's covert identity, the evidence that was before DOJ when it made its decision not to prosecute the vice president and whether Attorney General Michael Mukasey requested that the president assert executive privilege in response to a congressional subpoena directed to the attorney general for these documents to protect the vice president. As a result, there are substantial concerns about the government's integrity that affect public confidence in the president, the attorney general and the agency he heads. See, e.g., Dan Froomkin, Bush Blocking Fitzgerald Cooperation, *Washingtonpost.com*, December 3, 2007; Dan Froomkin, Did Cheney Tell Libby to Do It?, *Washingtonpost.com*, June 3, 2008; Seth Stern, House Oversight Panel Threatens Attorney General With Contempt Citation, *Congressional Quarterly Today*, July 8, 2008; Joey Michalakes and David Matthews, White House Asserts Executive Privilege on Cheney, *The Hill*, July 16, 2008; Laurie Kellman, Bush Claims Executive Privilege on CIA Leak,

¹ CREW's FOIA request is enclosed as Exhibit 1.

Associated Press, July 16, 2008; Neil A. Lewis, Leak Material is Privileged, Bush Says, *The New York Times*, July 17, 2008; Dan Eggen, White House Blocks Release of FBI Files, *The Washington Post*, July 17, 2008.²

In light of this widespread and exceptional media interest and the possible questions about the government's integrity affecting public confidence, CREW satisfies the DOJ requirements for expedition. See 28 C.F.R. § 16.5(d)(1)(iv). Moreover, as CREW explained in its FOIA request, CREW is a non-profit corporation engaged primarily in disseminating information it gathers from a variety of sources, including the FOIA, and seeks the information requested in this FOIA request for the express purpose of disseminating it to the public. CREW's website, www.citizensforethics.org, contains links to thousands of pages of documents CREW acquired from multiple FOIA requests, as well as documents related to CREW's FOIA litigation and other complaints. Similarly, a website founded by CREW, www.governmentdocs.org, also includes the many thousands of pages of documents CREW acquired from its FOIA requests.

For the foregoing reasons, as well as those set forth in CREW's FOIA request of July 17, 2008, CREW requests that you grant its request for expedition.

Pursuant to 28 C.F.R. § 16.5(d)(3), I hereby certify that the basis for CREW's request for expedition is true and correct to the best of my knowledge and belief.

Sincerely,



Anne L. Weismann
Chief Counsel

Enclosures

cc: Carmen L. Mallon

² Copies of these articles are enclosed as Exhibit 2.

EXHIBIT 1

CREW | citizens for responsibility and ethics in washington

July 17, 2008

By Fax (202) 514-1009 and first-class mail

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Office of Information and Privacy
Department of Justice
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Pursuant to 28 C.F.R. § 16.5(d)(3), I hereby certify that the basis for CREW's request for expedition, as outlined above, is true and correct to the best of my knowledge and belief.

If you have any questions about this request, or foresee any problems in releasing fully the requested records on an expedited basis, please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination. Please send the requested documents to Anne Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', with a stylized, flowing script.

ANNE L. WEISMANN
Chief Counsel
Citizens for Responsibility and Ethics
in Washington

Enclosure

cc: Brian Roehrkasse

EXHIBIT 2

washingtonpost.com

Bush Blocking Fitzgerald Cooperation

Advertisement

By Dan Froomkin

Special to washingtonpost.com

Monday, December 3, 2007; 2:00 PM

The White House is refusing to let special prosecutor Patrick J. Fitzgerald turn over to congressional investigators key documents from his investigation into the leak of Valerie Plame's identity as a covert CIA operative, including reports of interviews with President Bush, Vice President Cheney and five top White House aides.

House Oversight Committee Chairman Henry Waxman disclosed this morning that Fitzgerald is cooperating with the congressional investigation and had agreed to turn over the documents -- until the White House intervened.

Describing a renewed sense of urgency in the wake of former White House Press Secretary Scott McClellan's recent assertion that "five of the highest ranking officials in the administration were involved" in the public disclosure of false information about the leak, Waxman today appealed to newly installed Attorney General Michael Mukasey to overrule his White House masters and release the documents.

"I hope you will not accede to the White House objections," Waxman wrote in his letter to Mukasey. "During the Clinton Administration, your predecessor, Janet Reno, made an independent judgment and provided numerous FBI interview reports to the Committee, including reports of interviews with President Clinton, Vice President Gore, and three White House Chiefs of Staff. I have been informed that Attorney General Reno neither sought nor obtained White House consent before providing these interview records to the Committee. I believe the Justice Department should exercise the same independence in this case."

Waxman's request puts Mukasey in an unenviable spot: He can either defy the president who just appointed him, or be decried as a lickspittle like his predecessor, Alberto Gonzales. It also represents an ingenious way to learn the extent to which Bush and Cheney were involved in the criminality Fitzgerald uncovered in his investigation.

Fitzgerald investigated the leak for more than three years but ended up charging only one person: Vice presidential aide I. Lewis "Scooter" Libby, who was found guilty last year of perjury and obstruction of justice. The veteran prosecutor evidently concluded that he couldn't prove anybody else's criminal behavior beyond a reasonable doubt.

But the standard for legitimate political scandal is lower than that for a successful criminal prosecution, and the widespread belief is that Fitzgerald's investigation dug up information the Bush administration would rather keep secret.

In fact, even since Fitzgerald announced the end of his criminal investigation -- and even after Bush commuted Libby's prison sentence -- the White House, from the president on down, has refused to provide basic information about what happened, who knew about it and when.

During the Libby trial, witnesses testified that contrary to fervent White House denials, both Libby and

top presidential adviser Karl Rove had indeed told reporters about Plame's identity. Fitzgerald repeatedly indicated that there had been a coordinated campaign to out Plame in an attempt to discredit her husband, an administration critic -- and that he had been hot on Cheney's trail until that line of investigation was cut off by Libby's repeated lies.

Libby's defense team initially promised to call not only their client but also Cheney to the stand, but chose not to do so at the last minute, a massive bummer for those of us who had been looking forward to Cheney and his top aide finally facing some questions they couldn't duck.

Unlike special prosecutor Kenneth Starr, who was appointed under different rules, Fitzgerald was not empowered to write a report to Congress about his investigation. And in a letter to Waxman in March, Fitzgerald declined to testify before the committee, saying that grand jury secrecy rules limited what he could say, and noting that prosecutors "traditionally refrain from commenting outside of the judicial process on the actions of persons not charged with criminal offenses."

So until this morning, it looked like whatever other secrets Fitzgerald uncovered would remain out of public sight.

But Waxman and his staff didn't take no for an answer. They just changed the question. In a July letter to Fitzgerald, also released today, Waxman requested seven categories of documents.

As Waxman writes in his letter to Mukasey: "I have been careful in my dealings with Special Counsel Fitzgerald to narrow the Committee's request to documents that would not infringe on his prosecutorial independence or intrude upon grand jury secrecy. Before the Committee requested any documents, my staff, Justice Department staff, and Mr. Fitzgerald's staff discussed the types of documents that could be properly provided to the Committee. Mr. Fitzgerald's staff agreed that the Committee's request was appropriate and has already produced a number of the requested documents relating to CIA and State Department officials and other individuals."

But that's when the White House intervened, although Waxman doesn't specify exactly who or how: "To date, however, Mr. Fitzgerald has been frustrated in his attempts to transmit documents relating to White House officials to the Committee."

The documents in question are "transcripts, reports, notes, and other documents relating to any interviews outside the presence of the grand jury" of Bush, Cheney, Rove, McClellan, former chief of staff Andrew Card, national security adviser Stephen Hadley and former communications director Dan Bartlett.

Waxman writes that Fitzgerald agreed to give those documents to the committee. "However, to date, four months after the Committee's request, he has been unable to produce these documents to the Committee because the White House has not consented to their production. "

His letter continues: "There is no legitimate basis for the withholding of these documents. Mr. Fitzgerald has apparently determined that these documents can be produced to the Committee without infringing on his prosecutorial independence or violating the rules of grand jury secrecy. As records of statements made by White House officials to federal investigators, outside the framework of presidential decision-making, the documents could not be subject to a valid claim of executive privilege.

"Moreover, there is direct precedent for the production of these records to the Committee. During the

Clinton Administration, the Justice Department provided the Committee with dozens of FBI 302 reports of interviews with White House officials. No White House official -- including the President and the Vice President -- was exempted from the production."

Rove's Brain

Having studied Rove for many years now, I can claim a bit of expertise on how his brain works. My conclusion: Quite often, Rove embraces a very particular point that may technically be true -- for instance, that he didn't actually use Plame's name in his conversation with reporters, or that at one very specific moments Democrats were eager to get Bush's war-authorization vote over with -- to argue a point that is, by any normal standard, a lie.

And does it repeatedly, because he isn't brought to account.

That may finally be changing as the public focuses on Rove's recent assertion that the Democrats are to blame for the rush to war in Iraq. It's overwhelmingly, demonstrably obvious that this statement is untrue. Even some of his colleagues have said he's gone too far this time.

Peter Baker writes in Saturday's Washington Post: "Former White House aide Karl Rove said yesterday it was Congress, not President Bush, who wanted to rush a vote on the looming war in Iraq in the fall of 2002, a version of events disputed by leading congressional Democrats and even some former Rove colleagues.

"Rove said that the administration did not want lawmakers to vote on a resolution authorizing the use of force against Iraq that soon because it would 'make things move too fast,' before Bush could line up international allies, and politicize the issue ahead of midterm elections. But Democrats and some Republicans involved with the issue at the time said yesterday that Bush wanted a quick vote. . . .

"Speaking on PBS's 'Charlie Rose' talk show last week, Rove said Congress pushed to have the vote before the election. . . .

"Rove repeated his assertion in an interview yesterday, pointing to comments made by Democrats in 2002 that they wanted a vote. 'For Democrats to suggest they didn't want to vote on it before the election is disingenuous,' he said. The vote schedule, he said, was set by lawmakers. 'We don't control that.'

"News accounts and transcripts at the time show Bush arguing against delay. Asked on Sept. 13, 2002, about Democrats who did not want to vote until after the U.N. Security Council acted, Bush said, 'If I were running for office, I'm not sure how I'd explain to the American people -- say, "Vote for me, and, oh, by the way, on a matter of national security, I think I'm going to wait for somebody else to act." ' . . .

"Ari Fleischer, the White House press secretary at the time, said Daschle had pressed Bush over the summer to bring the matter to Congress but for consultation, not necessarily a vote. Bush decided to seek a vote authorizing force, Fleischer said. 'It was definitely the Bush administration that set it in motion and determined the timing, not the Congress,' he said. 'I think Karl in this instance just has his facts wrong.'"

Confronted on Fox News Sunday by fellow guest Rep. Chris Van Hollen (D-Md.), Rove amazingly stuck to his story. ThinkProgress has the video. Zachary Goldfarb writes in today's Washington Post

washingtonpost.com

Did Cheney Tell Libby to Do It?

By Dan Froomkin

Special to washingtonpost.com

Tuesday, June 3, 2008; 1:55 PM

Former vice presidential chief of staff I. Lewis "Scooter" Libby told the FBI that it was "possible" that Vice President Cheney instructed him to disseminate information about CIA agent Valerie Plame to the press, according to a redacted FBI report recently examined by Congressional investigators.

In part as a result of that revelation, the House Oversight and Government Reform Committee today reiterated its request for more Plame investigation documents -- including reports on the interviews investigators conducted with Cheney and President Bush.

In a letter to Attorney General Michael Mukasey, Committee Chairman Henry Waxman also writes that "[n]ew revelations by former White House Press Secretary Scott McClellan raise additional questions about the actions of the President and the Vice President. Mr. McClellan has stated that '[t]he President and Vice President directed me to go out there and exonerate Scooter Libby.' He has also asserted that 'the top White House officials who knew the truth -- including [Karl] Rove, Libby, and possibly Vice President Cheney -- allowed me, even encouraged me, to repeat a lie.' It would be a major breach of trust if the Vice President personally directed Mr. McClellan to mislead the public."

Back in December, I wrote about how special prosecutor Patrick J. Fitzgerald had agreed to give congressional investigators key documents from his investigation into the leak -- until the White House intervened. Waxman then asked the newly-installed attorney general to show some independence from his White House masters and release the documents. Committee investigators were eventually allowed to read redacted versions of the reports on interviews with senior administration officials, including Libby and Rove, but not Cheney or Bush.

Libby was convicted of perjury and obstruction of justice last year after repeatedly denying that he had told reporters about Plame's identity. Prosecutors presented evidence that he had done precisely that, as part of a coordinated White House campaign to discredit Plame's husband Joe Wilson, an administration critic. Fitzgerald even indicated that he had been hot on Cheney's trail until that line of investigation was cut off by Libby's repeated lies.

As I wrote in a February 2007 column, an FBI agent testified at the trial that Libby said he and Cheney may have discussed in July 2003 "whether to report to the press that Wilson's wife worked for the CIA."

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10 Second Poll. Do You Like Karl Rove?
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That Libby also told the FBI it was possible that Cheney actually instructed him to do so would seem to go beyond what we already knew. It was in phone calls placed immediately after the conversation in question that Libby mentioned Valerie Plame for a third time to Judith Miller, then of the New York Times, and spoke with Matt Cooper, then of Time Magazine. According to Cooper, it was during that phone call that Libby confirmed that Plame had been involved in her husband's trip -- an allegation Cooper had first heard from Karl Rove.

Waxman writes to Mukasey today: "The Committee is conducting an important investigation to answer questions that Mr. Fitzgerald's criminal inquiry did not address."

Waxman also complains about the redactions in the reports that investigators have been allowed to see and requests unredacted versions: "In his FBI interview, Mr. McClellan told the FBI about discussions he had with the President and the Vice President. These passages, however, were redacted from the copies made available to the Committee. Similar passages were also redacted from other interviews.

"There are no sound reasons for you to withhold the interviews with the President and the Vice President from the Committee or to redact passages like Mr. McClellan's discussions with the President and the Vice President. Mr. Fitzgerald's investigation is closed and he has indicated that it would be appropriate to share these records with the Committee. There has been no assertion of executive privilege."

The McClellan Factor

Years of experience in giving absolutely no ground under questioning paid off last night as former White House press secretary Scott McClellan sailed through a 30-minute Fox News interview with a sometimes fulminating Bill O'Reilly.

It's really worth watching. Here is the video, parts [one](#), [two](#) and [three](#).

McClellan, whose book adds new insider details to the growing portrait of a White House with a serious truth problem (see [yesterday's column](#)) repeatedly stuck to his talking points despite O'Reilly's scolding.

O'Reilly: "You know that every Bush-hater in the country is using you and your book to smash this administration. . . . Every Bush-hater, and you're playing right into their hands, is using this -- "

McClellan: "I'm just speaking the truth, from my perspective."

And again:

O'Reilly: "The hate-Bush press is using you -- using you -- to humiliate the man and to imply to the world that the man is dishonest. Using you. . . . What you write in your book, as you see it, is being used by people who absolutely want the worst for this country, and for the administration, doesn't that give you pause at all?"

McClellan: "But this is the whole thing about the book is, that there are a lot of good people on both sides. We've got to get rid of the venom and hatred on both sides, and find out how we can come together. I'm a centrist. I believe in working together to solve the problems we've got."

O'Reilly was particularly outraged by McClellan's decision to give his first prime-time interview last week to MNSBC's [Keith Olbermann](#). "You sat there while these people on NBC and some on CNN

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Congressional Quarterly Today

July 8, 2008 Tuesday

House Oversight Panel Threatens Attorney General With Contempt Citation

BYLINE: By Seth Stern, CQ Staff

LENGTH: 583 words

A House panel is threatening Attorney General Michael B. Mukasey with a possible contempt citation for failing to comply with a subpoena demanding FBI reports of an interview of Vice President Dick Cheney regarding the disclosure of CIA agent Valerie Plame's covert status.

Henry A. Waxman, D-Calif., chairman of the House Oversight and Government Reform Committee, wrote Mukasey on Tuesday that his committee will take up a contempt resolution on July 16.

"You have neither complied with this subpoena by its returnable date nor asserted any privilege to justify withholding documents from the committee," Waxman wrote.

Waxman said the committee would no longer seek access to the FBI report on an interview with President Bush "in deference to your concerns and in a further attempt at accommodation."

The subpoena instructed Mukasey to comply by noon on June 23. According to Waxman, Keith B. Nelson, the principal deputy assistant attorney general in the Office of Legislative Affairs, replied one day later, renewing the Justice Department's position that it would not "provide or make available any reports of interviews with the president or the vice president from the leak investigation. . . . Communications of the president and the vice president with their staffs relating to official executive branch activities lie at the absolute core of executive privilege."

Waxman had similarly threatened a contempt resolution, which rarely results in any action, against Susan Dudley, administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget, and EPA Administrator Stephen L. Johnson for failing to provide documents regarding two controversial environmental issues.

The subpoena and potential contempt resolution stem from the publication of Scott McClellan's book "What Happened," in which the former White House press secretary asserts that staff members misled him about whether senior administration officials had played any role in revealing Plame's identity in 2003.

McClellan testified before the House Judiciary Committee on June 20.

Waxman originally wrote Mukasey on June 3 requesting the interview reports, as well as unredacted versions of similar reports of FBI interviews with other senior administration officials provided last year at his request. Waxman wrote that McClellan's "new revelations . . . raise additional questions about the actions of the president and vice president."

Waxman also cited the FBI's interview with I. Lewis "Scooter" Libby, the former chief of staff to Cheney, who was convicted in March 2007 of lying and obstructing a probe into the leak.

According to Waxman, Libby indicated in his interview with the FBI that it was "possible" that Cheney had instructed him to share information about Plame with the media.

"This is a significant revelation and, if true, a serious matter," Waxman wrote. "It cannot be responsibly investigated without access to the vice president's FBI interview."

Mukasey is scheduled to testify Wednesday morning before the Senate Judiciary Committee. He is likely to face questions on topics including a rewrite of electronic-surveillance guidelines (HR 6304), which the Senate is expected to be voting on at the same time he testifies, as well as a recent report on the politicization of hiring attorneys in the Justice Department earlier in the Bush administration.

Source: **CQ Today**

Round-the-clock coverage of news from Capitol Hill.

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LEADING THE NEWS



White House asserts executive privilege on Cheney

By Joey Michalakes and David Matthews

Posted: 07/16/08 12:30 PM [ET]

The White House asserted executive privilege Wednesday and refused to turn over FBI reports of its interviews with Vice President Dick Cheney on the leaking of a covert CIA operative's identity to the media.

As a result, the House Oversight and Government Reform Committee held off on a previously scheduled vote to hold Attorney General Michael Mukasey in contempt.

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"Rather than go to a vote on contempt, I thought we ought to have to step back, have a look at his arguments, evaluate them, and want to talk to Ranking Member [Tom] Davis and other members of the committee to decide what our next step will be," Waxman said. "But we're not going to end it today. We're going to move forward. We are not going to accept this answer that he's given to us."

In a letter dated Wednesday to Rep. Henry Waxman (D-Calif.), the panel's chairman, a deputy assistant attorney general said Mukasey had advised Bush to assert executive privilege on the FBI interview reports on Cheney.

The letter noted that Justice has permitted the panel's staff to look at FBI reports, with limited redactions, of interviews agents conducted with senior White House staff.

"We are not prepared to make the same accommodation for reports of interviews with the president and vice president because the confidentiality interest relating to those documents are of a greater constitutional magnitude," wrote Keith Nelson, principle deputy assistant attorney general.

"We are disappointed by the committee's actions given our cooperation," Nelson wrote of the scheduled contempt vote.

At issue are reports on interviews the FBI conducted with Vice President Cheney during its investigation of who leaked former CIA agent Valerie Plame's name to the media.

Waxman had argued his committee could not pursue its own investigation into the leaking of Plame's name without the Cheney documents. He had imposed a July 16 deadline for Justice to comply with a subpoena for the documents, or for Justice to assert executive privilege.

Waxman previously has said he does not believe the privilege could apply to the Cheney interview documents.

"It is now clear that the vice president knew when the interview was conducted that its contents could be made public in a criminal trial," he said in the July 8 letter, adding that "executive privilege cannot be asserted over the contents of communications voluntarily disclosed outside the White House."

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Associated Press Worldstream

July 16, 2008 Wednesday 5:00 PM GMT

Bush claims executive privilege on CIA leak material

BYLINE: By LAURIE KELLMAN, Associated Press Writer

SECTION: WASHINGTON DATELINE

LENGTH: 597 words

DATELINE: WASHINGTON

President George W. Bush has asserted executive privilege to prevent Attorney General Michael Mukasey from having to comply with a House of Representatives panel subpoena for material on the leak of CIA operative Valerie Plame's identity.

A House committee chairman, meanwhile, held off on a contempt citation of Mukasey who had requested the privilege claim but only as a courtesy to lawmakers not present.

Among the documents sought by House Oversight Chairman Henry Waxman are FBI interviews of Vice President Dick Cheney.

They also include notes about the 2003 State of the Union address, during which Bush made the case for invading Iraq in part by saying Saddam Hussein was pursuing uranium ore to make a nuclear weapon. That information turned out to be wrong.

Waxman rejected Mukasey's suggestion that Cheney's FBI interview on the CIA leak should be protected by the privilege claim and therefore not turned over to the panel.

"We'll act in the reasonable and appropriate period of time," Waxman, a Democrat, said. But he made clear that he thinks Mukasey has earned a contempt citation and that he'd schedule a vote on the matter soon.

"This unfounded assertion of executive privilege does not protect a principle; it protects a person," Waxman said. "If the vice president did nothing wrong, what is there to hide?"

The assertion of the privilege is not about hiding anything but rather protecting the separation of powers as well as the integrity of future Justice Department investigations of the White House, Mukasey wrote to Bush in a letter dated Tuesday. Several of the subpoenaed reports, he wrote, summarize conversations between Bush and advisers are direct presidential communications protected by the privilege.

"I am greatly concerned about the chilling effect that compliance with the committee's subpoena would have on future White House deliberations and White House cooperation with future Justice Department investigations," Mukasey wrote to Bush. "I believe it is legally permissible for you to assert executive privilege with respect to the subpoenaed documents, and I respectfully request that you do so."

White House spokesman Tony Fratto said Bush invoked the privilege on Tuesday.

Waxman said he would wait to hold a vote on Mukasey's contempt citation until all members of the panel had a chance to read up on the matter.

The Bush administration had plenty of warning. Waxman warned last week that he would cite Mukasey with contempt unless the attorney general complied with the subpoena. The House Judiciary Committee also has subpoenaed some of the same documents from Mukasey, as well as information on the leak from other current and former administration officials.

Congressional Democrats want to shed light on the precise roles, if any, that Bush, Cheney and their aides may have played in the leak.

State Department official Richard Armitage first disclosed Plame's identity as a CIA operative to columnist Robert Novak, who used former presidential counselor Karl Rove as a confirming source for a 2003 article. Around that time Plame's husband, former Ambassador Joseph Wilson, was criticizing Bush's march to war in Iraq.

Cheney's then-chief of staff, I. Lewis "Scooter" Libby, also was involved in the leak and was convicted of perjury, obstruction and lying to the FBI. Last July, Bush commuted Libby's 2 1/2-year sentence, sparing him from serving any prison time.

Libby told the FBI in 2003 that it was possible that Cheney ordered him to disclose Plame's identity to reporters.

Associated Press writer Lara Jakes Jordan contributed to this report.

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The New York Times

July 17, 2008 Thursday
Late Edition - Final

Leak Material Is Privileged, Bush Says

BYLINE: By NEIL A. LEWIS**SECTION:** Section A; Column 0; National Desk; NATIONAL BRIEFING WASHINGTON; Pg. 19**LENGTH:** 159 words

President Bush has invoked executive privilege to block the Justice Department from providing a House panel with material about Vice President Dick Cheney's knowledge of the leak of a C.I.A. officer's identity. Representative Henry A. Waxman, Democrat of California and the chairman of the Government Oversight Committee, has said Attorney General Michael B. Mukasey should be held in contempt for refusing to provide the record of Mr. Cheney's interview with investigators regarding the leak of Valerie Wilson's name. Mr. Waxman described the invocation of executive privilege as ludicrous because the information sought did not involve any communication between the vice president and the president. Mr. Mukasey wrote to Mr. Bush earlier this week, saying executive privilege would be appropriate because "I am greatly concerned about the chilling effect that compliance with the committee's subpoena would have on future White House deliberations."

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The Washington Post**washingtonpost.com**

The Washington Post

July 17, 2008 Thursday
Suburban Edition

White House Blocks Release of FBI Files; Privilege Is Cited in CIA Leak Case

BYLINE: Dan Eggen; Washington Post Staff Writer**SECTION:** A-SECTION; Pg. A04**LENGTH:** 678 words

The White House yesterday blocked a House committee's attempt to obtain internal FBI reports about the leak of a CIA officer's identity, asserting that notes from interviews of Vice President Cheney and other administration officials are protected by executive privilege.

The move further escalates the conflict between President Bush and the House Government Reform Committee, which had issued a subpoena to Attorney General Michael B. Mukasey in an attempt to get the records.

Cheney and other officials were interviewed as part of a probe by Special Prosecutor Patrick J. Fitzgerald into the leak of the identity of former CIA officer Valerie Plame Wilson. The investigation eventually resulted in the conviction of Cheney's former chief of staff, I. Lewis "Scooter" Libby, for perjury, obstruction of justice and lying to the FBI.

Rep. Henry A. Waxman (D-Calif.), the panel's chairman, said yesterday that Bush's claim of executive privilege in the case is "ludicrous" and vowed to move ahead with a contempt citation against Mukasey.

"This unfounded assertion of executive privilege does not protect a principle; it protects a person," Waxman said. "If the vice president did nothing wrong, what is there to hide?"

But in a letter to Bush released by Waxman's committee, Mukasey argued that some of the reports include summaries of conversations between Bush and his aides, which are covered by executive privilege. Mukasey also warned that releasing such documents could imperil future Justice Department probes.

"I am greatly concerned about the chilling effect that compliance with the committee's subpoena would have on future White House deliberations and White House cooperation with future Justice Department investigations," Mukasey wrote.

White House spokesman Tony Fratto said Bush relied on Mukasey's advice in deciding to invoke the privilege.

Sen. Patrick J. Leahy (D-Vt.), chairman of the Senate Judiciary Committee, said Mukasey had a conflict of interest in offering a legal opinion because the information request was directed at him.

Wilson's identity was leaked as part of an effort by senior administration officials to discredit her husband, former U.S. ambassador Joseph C. Wilson IV, who was publicly critical of Bush's justifications for going to war in Iraq. Democrats are seeking documents from the case in hopes of determining whether Bush, Cheney or other senior officials played a direct role in the breach.

The Wilsons criticized Bush's decision and said they will continue to pursue a civil lawsuit against the government.

"We seek to hold those public officials responsible for this serious breach of national security accountable for their actions, and to ensure that future generations of public servants are not tempted to engage in similarly despicable behavior," the couple said in a statement.

Fitzgerald's inquiry revealed that State Department official Richard L. Armitage first revealed Plame's identity as a CIA operative to columnist Robert D. Novak, who then used former presidential adviser Karl Rove as a confirming source for a 2003 column at the heart of the case. Libby, whose prison sentence was commuted by Bush, also told the FBI that it was possible that Cheney ordered him to reveal Plame's identity to reporters.

The standoff over the Cheney records is the latest in a series of conflicts between the Bush administration and congressional Democrats over internal White House records.

The Bush administration has invoked executive privilege in four cases since 2001, including the leak probe, according to the White House. Earlier this year, the House voted to hold former White House counsel Harriet E. Miers and White House Chief of Staff Joshua B. Bolten in contempt of Congress for not providing testimony and documents related to firings of nine U.S. attorneys in 2006.

As part of a separate dispute yesterday, two top Senate Democrats asked the head of the Environmental Protection Agency to testify about the administration's refusal to turn over documents related to public health risks associated with global warming.

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