

DOJ WILL NEITHER CONFIRM NOR DENY THEY'VE OKAYED THE ASSASSINATION OF US CITIZENS

On October 7, Charlie Savage FOIAed the OLC memo authorizing Anwar al-Awlaki's assassination which he described in detail in this article. DOJ has responded—with a Glomar response.

Pursuant to FOIA Exemptions One, Three and Five, 5 U.S.C. § 552(b)(1), (3) and (5), the Office of Legal Counsel neither confirms nor denies the existence of the documents described in your request. We cannot do so because the very fact of the existence or nonexistence of such documents is itself classified, protected from disclosure by statute, and privileged.

Basically, DOJ is saying that for reasons of National Defense, statute (probably the National Security Act, but I bet they're also pretending that state secrets is a statute), and interagency process, they can't even tell Savage whether a memo the existence of which he has reported on page 1 of the NYT exists.

Back in the good old days of the Bush Administration, when a major news outlet reported on the existence of an OLC memo, DOJ generally accepted that reference in support of a FOIA. Through such means, reporters and the NGOs were able to lay out at least the dates and subjects—and ultimately, much of the content—of the OLC memos that authorized rendition, torture, and illegal wiretapping.

But not now, not under the “most transparent Administration ever.” Under this Kafkaesque Administration, the government can kill an

American citizen, leak details of the legal justification for doing so, and then boast about the killing, yet still tell FOIA requesters that it won't even confirm that the government has claimed the ability to kill American citizens.

Mind you, there is some consistency here. Given that the government has claimed all this is a state secret, a Glomar response is the appropriate FOIA response. Or it would be if the government were, at the same time, prosecuting all the Administration officials who have and continue to leak about this assassination.