

YET MORE WHITE HOUSE INVOLVEMENT IN FOIA RESPONSES

As I've been writing my series on the Administration's extensive efforts to hide all mention of what I have decided to call the Gloves Come Off Memorandum of Notification, this passage from Daniel Klaidman's article on the Administration's equivocations about revealing information on the Anwar al-Awlaki killing has been nagging me.

Another senior official expressing caution about the plan was Kathryn Ruemmler, the White House counsel. She cautioned that the disclosures could weaken the government's stance in pending litigation. *The New York Times* has filed a lawsuit against the Obama administration under the Freedom of Information Act seeking the release of the Justice Department legal opinion in the Awlaki case. (The department has declined to provide the documents requested.)

The suggestion here is that White House Counsel Kathryn Ruemmler didn't want to affirmatively reveal details about Awlaki's killing because doing so would mean they'd have to reveal details in the ACLU and NYT's FOIAs for ... the same information.

That never really made sense (though I never dwelt too much on it because the Administration's stance on secrecy rarely makes sense).

But in the last few days, I've been wondering if Ruemmler was thinking not about the drone FOIA—about revealing details of one element authorized by the Gloves Come Off MON—but instead thinking about the MON itself. After all, if the government reveals one (torture)

after another (drones) of the programs authorized by the Gloves Come Off MON, then it gets harder and harder to claim the whole MON must remain secret. And remember, still to be litigated in the torture FOIA is the MON itself, in addition to what I believe are references to it in the title of the Tenet memo.

And while this may mean nothing, the government has been stalling on its response to the drone FOIA. Back on April 9, the government asked for 10 more days to respond to the FOIA. Judge Colleen McMahon responded by snipping, "Ok, but don't ask for any more time. If government official can give speeches about this matter without creating security problem, any involved agency can." Yet in spite of her warning, they asked for an additional month-long extension today.

We write respectfully on behalf of the Department of Justice and the Central Intelligence Agency (collectively, the "Government") to seek a further extension until May 21, 2012, of the Government's deadline to file its consolidated motion for summary judgment in these related Freedom of Information Act cases seeking records pertaining to alleged targeted lethal operations directed at U.S. citizens and others affiliated with al Qaeda or other terrorist groups. **Attorney General Eric H. Holder, Jr. has personally directed us to seek this additional time** to allow the Government to finalize its position with regard to the sensitive national security matters presented in this case.

We are mindful of the Court's admonition in its April 9, 2012, order that the Government not seek an further extensions of its briefing deadline, and we do not take this request lightly. Given the significance of the matters presented in this case, **the Government's position is being deliberated at the**

highest level of the Executive Branch. It has become clear that further consultation and discussion at that level of the Executive Branch is necessary before the Government can make its submission to the Court.

We understand from the Court's April 9 order that, at this stage of the proceedings, the Court has expressed doubt about the relative complexity associated with the Government's position. It is not possible to fully inform the Court of that complexity associated with the Government's position. It is not possible to fully inform the Court of that complexity on the public record. Accordingly, in order that the Court be fully informed as to the basis for the Government's request, we respectfully seek leave to submit for the Court's ex parte and in camera review a classified declaration by Director of National Intelligence, James R. Clapper, Jr. [my emphasis]

McMahon was actually more sympathetic to this request, it seems, than the April 9 extension.

I have read Director Clapper's declarations (which must remain under seal—believe me, I appreciate the irony) and I will grant the extension requested by the government.

Maybe there's no connection. Maybe the government, after having gotten the National Security Advisor involved in one FOIA, has grown to like deliberating FOIA responses "at the highest level of the Executive Branch." Though you'd think the President would turn his attention to reelection rather than all these measly FOIAs.

You know. Running for reelection on his "Most transparent Administration in history" slogan?