

# DOJ SAYS IT'S NOT LEGALLY REQUIRED TO TELL WYDEN WHETHER EXECUTIVE BRANCH CONDUCT WAS LEGAL

Via Ali Watkins' story on Dianne Feinstein's vindication by the Senate parliamentarian, Ron Wyden has written Eric Holder a letter listing all the unfinished business he'd like the Attorney General to finish before going off to his sinecure defending banks (my assessment, not Wyden's).

Three of the requests are familiar:

- A request to know the limits of using deadly force against Americans outside of declared war zones
- A request for the withdrawal and declassification of an OLC opinion on common commercial service agreements
- A request that Holder share the Torture Report widely so it can be useful (or maybe even just open it)

But a fourth is, as far as I know, new:

I have asked repeatedly over the past several years for the Department of Justice's opinion on the lawfulness of particular conduct that involved an Executive Branch agency. I finally received a response to these inquiries in June 2014; however the response simply stated that the Department of

Justice was not statutorily obligated to respond to my question. I suppose there may not be a particular law that requires the Department to answer this question, but this response is nonetheless clearly troubling. My question was not hypothetical, and I did not ask to see any pre-decisional legal advice – I simply asked whether the Justice Department believed that the specific actions taken in this case were legal. It would be reasonable for the Department to say “Yes, this conduct was lawful” and explain why, or to say “No, this appears to have been unlawful” and take appropriate follow-up action. Refusing to answer at all is highly problematic and clearly undermines effective oversight of government agencies, especially since the actions in question were carried out in secret. For these reasons, I renew my request for an answer to the question, and I hope that you can help provide one.

Uh, with all due respect, Senator, I believe Holder has given you an answer: While I don’t know what the actions in question are, it seems the answer is, “Yes, those actions were illegal, but since we’re not going to do anything about it, we’re not going to tell you that.”

Or perhaps, “Yes, those actions were illegal. But if the President orders them, we don’t consider them illegal.”

Wyden has apparently been asking this for “several years.” While that doesn’t entirely rule out CIA spying on SSCI (which, after all, DOJ has answered by not prosecuting), it seems it is some other action he learned about under Obama’s tenure.

So is DOJ refusing to prosecute some clearly illegal action that happened under Obama?