

THE ADMINISTRATION'S NON-APPEAL APPEAL ON THE AWLAKI MEMO

The Administration has informed the 2nd Circuit it won't appeal its order to release the Anwar al-Awlaki memo. (h/t Mike Scarcella)

But it is going to ask nicely that the Circuit reconsider some of its instructions on redactions.

Granted, we knew they were going to try to hide that CIA conducts the drone killing, and some other details (perhaps even that the drone killing happened in Yemen).

But they insist on doing this ex parte.

The government does not intend to seek further review of the Court's ruling that the OLC-DOD Memorandum may not be withheld in full under the Freedom of Information Act ("FOIA"). The government does intend, however, to seek panel rehearing, and alternatively, rehearing en banc, with respect to certain parts of the Court's opinion and its proposed redactions.

[snip]

The government intends to seek rehearing to protect certain information in the Court's opinion, the Court-redacted version of the OLC-DOD Memorandum, and the OLC classified Vaughn index ordered disclosed by the Court. In the government's view, that information is properly classified, protected from disclosure by statute, and/or privileged, and therefore exempt under FOIA Exemptions 1, 3, and/or 5, 5 U.S.C. § 552(b)(1), (3), and/or (5), even if the OLC-DOD Memorandum cannot be withheld in its entirety under FOIA.

Some of the information appears to have been ordered disclosed based on inadvertence or mistake, or is subject to distinct exemption claims or other legal protections that have never been judicially considered.

Of course, the Administration got David Barron confirmed before this was resolved (that was naive response from Mark Udall and Ron Wyden, in my opinion – I wouldn't trust the Administration's word after this!).

And now they're going to make a secret bid to keep the gist of the report (likely everything that hasn't already been published in the white paper) secret.