## U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

January 16, 2018
Charlie Savage
The New York Times
savage@nytimes.com

## Re: FOIA No. FY17-070; N.Y. Times, et al. v. DOJ, No. 17 Civ. 1946 (S.D.N.Y.)

Dear Mr. Savage:
This letter partially responds to your January 28, 2017 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC"), seeking "all e-mails, memos, and other documents related to[:] 1. Office of Legal Counsel review of proposed Trump administration executive orders for form and legality, including during the transition period[;] and 2. Office of Legal Counsel review of other proposed Trump White House matters, including during the transition period," through January 28, 2017. As you know, the request is also the subject of the above-captioned litigation, and the request has been narrowed in certain ways pursuant to agreement through counsel.

Since the last partial response, we have processed 372 pages of responsive records. We have enclosed 46 pages with material redacted as exempt from disclosure pursuant to FOIA Exemption Five, 5 U.S.C. §552(b)(5), and pursuant to FOIA Exemption Six, 5 U.S.C. §552(b)(6). For your information, Exemption Five exempts material protected by the attorneyclient, deliberative process, and presidential communications privileges, as well as the attorney work product doctrine and other privileges. Exemption Six exempts material the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. We have withheld the remaining 326 pages in full pursuant to Exemption Five, and in part pursuant to Exemption Six. We have determined that none of the withheld material is appropriate for discretionary release. We are continuing to process responsive records.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact Assistant U.S. Attorney Rebecca Tinio, at 212-637-2774, for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001,
e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Although your request is the subject of ongoing litigation, and administrative appeals are not ordinarily acted upon in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy ("OIP"), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline.regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,


Paul P. Colborn
Special Counsel

## Enclosures

cc: Rebecca S. Tinio
Assistant United States Attorney
Southern District of New York
Benjamin H. Torrance
Assistant United States Attorney
Southern District of New York

| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Thursday, December 15, 2016 10:16 PM |  |
| To: | (b) (6) | (OLC) |
| Cc: | Koffsky, Daniel L (OLC) |  |
| Subject: | Re: | (b) (5) |
|  | (b) (6) $(003)+$ rh 230 pm |  |
|  |  |  |

Thanks, ${ }^{(0)}$ (0)
RH
On Dec 15, 2016, at 9:59 PM, (b) (6) $\quad$ (OLC) $<$ (b) (6) $>$ wrote:
$\square$
From: Koffsky, Daniel L (OLC)
Sent: Thursday, December 15, 2016 7:15 PM
To: Hart, Rosemary (OLC)
Cc: (b) (6) (OLC)
Subject: $\mathrm{Re}: \quad$ (b) (5) $\quad(12-11-2016) t^{\text {(b) (0) }}(003)$
+rh 230 pm
That would be good.

Sent from my iPhone
On Dec 15, 2016, at 6:51 PM, Hart, Rosemary (OLC) < (b) (6) wrote:

## (b) (5)

From: Koffsky, Daniel L(OLC)
Sent: Thursday, December 15, 2016 6:33 PM
To: Hart, Rosemary (OLC) < (b) (6)
Cc: (b) (6) [OLC)
Subject: RE:
(b) (6)
$11-2016)+{ }^{(b)}(6)(003)+$ rh 230 pm


From: Hart, Rosemary (OLC)
Sent:Thursday, December 15, 2016 6:25 PM


## duplicate

| From: | Hart, Rosemary (OLC) |
| :--- | :--- |
| Sent: | Thursday, December 15, 2016 10:51 PM |
| To: | (b) (6) |
| Subject: | (OLC) |

Sounds good.


That's helpful, thanks. I'll finish up (b) (5) before turning to the(b) (5) EO.

From: Hart, Rosemary (OLC)
Sent: Thursday, December 15, 2016 10:06 PM


I need to do them both. I thought I would work on the EOs the first two hours and then switch to (b) (5) until we send them out.

I am only sending Steve the ones from Batch 1. So not the (b) (5) one.

will look through them all tomorrow.
I know you're trying to (b) (5) and EOs back to Steve tomorrow.
Which is your priority?

From: Hart, Rosemary (OLC)
Sent: Thursday, December 15, 2016 6:30 PM


Just a few additional edits, and an attempt at a response to your question.


Attorney-Adviser
Office of Legal Counsel

## (b) (6)

On Dec 15, 2016, at 9:59 PM, (b) (6) (OLC) $\quad$ (b) (6) wrote:


## duplicate



| From: | Hart, Rosemary (OLC) |
| :--- | :--- |
| Sent: | Friday, December 16, 2016 10:04 AM |
| To: | (b) (6) |
| Subject: | RE: (OLC) |

OK - Just remembered that you are doing(b) (5) first. I will continue working on the EOs and talk to you about them when you have a break.
From: (b) (6) (OLC)

Sent: Thursday, December 15, 2016 10:49 PM

(b) (6)

## From:

(b) (6)

Sent:
Friday, December 16, 2016 10:48 AM
To:
Subject:
Attachments:
Hart, Rosemary (OLC)


Rosemary: I'm attaching the

## (b) (5)

orders in a cleaned up redline form that would be ready for transmittal if everything looks good to you. You may want to take a quick look at the comment bubbles on (b) (5) that I've added to implement our discussions yesterday (see new comment on page 1 and revised comment about $\quad$ (b) (5) ${ }^{\prime \prime}$ " on page 2). You may also want to look at the comment I added to the $\quad$ (b) (5) order regarding the

## (b) (5)

Thanks!


From: Hart, Rosemary (OLC)
Sent: Friday, December 16, 2016 9:20 AM
To: (b) (6) (OLC); Koffsky, Daniel L (OLC)
Subject: RE:
(b) (5)
$(12-11-2016)+{ }^{(b)(6)}(003)+$ rh 230 pm
I tweaked the comment
(b) (5)
(b) (5)

From: (b) (6) (OLC)
Sent: Friday, December 16, 2016 6:48 AM


## duplicate



From:
Sent:
To:
Subject:

Attachments:

## (b) (6)

Friday, December 16, 2016 11:24 AM
Hart, Rosemary (OLC)

olc 1216 2016.docx

Thank you for catching that! All of your additions look good to me, and I've deleted the highlighting in the attached redline.

From: Hart, Rosemary (OLC)
Sent: Friday, December 16, 2016 11:16 AM
To: (b) (6) $\quad$ (b) (6)
Subject:
(b) (5)
$(12-11-2016)+$ olc 12162016
(b) (6): This looks great.
(b) (5)


```
From: Hart, Rosemary (OLC)
Sent:Thursday, December 15, 2016 6:30 PM
To: (b) (6) (OLC) & (b) (6) >
Subject:\square (b) (5) (12-13-16) +{(0)(0) + rh
```

Just a few additional edits, and an attempt at a response to your question.

Hart, Rosemary (OLC)

| From: | Hart, Rosemary (OLC) |
| :--- | :--- |
| Sent: | Friday, December 16, 2016 11:46 AM |
| To: | (b) (6) |
| Subject: | (b) (5) |
| Attachments: | (b) (5) |
|  |  |
| Here is the | (b) (5) |
|  | EO, with |

Hart, Rosemary (OLC)

| From: H | Hart, Rosemary (OLC) |
| :---: | :---: |
| Sent: Frid | Friday, December 16, 2016 11:49 AM |
| To: | (b) (6) |
| Subject: | (b) (5) (12-13-16) + OLC (12 16 2016) |
| Attachments: | (b) (5) (12-13-16) + OLC (12 16 2016).docx |
| Use this one. I adjusted | (b) (5) |


| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Friday, December 16, 2016 11:50 AM |  |
| To: | Koffsky, Daniel L (OLC) | (b) (6) |
| Cc: | (OLC) | (b) (5) |
| Subject: | RE: | (12-11-2016) |
|  | + OLC 12 162016 |  |

That makes sense. Thanks-this looks good.


From: Hart, Rosemary (OLC)
Sent: Friday, December 16, 2016 11:31 AM

Dan: Here is the final that ${ }^{[\operatorname{TrTV}]}$ and I propose sending. The comment on $\quad$ (b) (5) now reads:


Do you think this is OK?

| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Friday, December 16, 2016 12:20 PM |  |
| To: | (b) (6) | (b) (5) |
| Subject: |  | $(12-11-2016)+$ |
|  | OLC 12 162016 | (b) (5) |
| Attachments: |  |  |

This is the (b) (5) EO.

| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Friday, December 16, 2016 12:22 PM |  |
| To: | (b) (6) | (b) (5) |
| Subject: |  | $(12-11-2016)+$ |
|  | OLC 12 162016 | (b) (5) |
| Attachments: |  |  |

(b) (5) again, with (b) (5) slightly revised.

Hart, Rosemary (OLC)

| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Friday, December 16, 2016 1:06 PM |  |
| To: | (b) (6) | (b) (5) |
| Subject: |  |  |
|  | OLC 12 162016 | (b) (5) |
| Attachments: |  |  |

I promise-no more tinkering!

Hart, Rosemary (OLC)

| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Friday, December 16, 2016 1:17 PM |  |
| To: | (b) (6) | (b) (5) |
| Subject: |  | (b) (5) |
| Attachments: | olc 12 162016 |  |

I found a typo in one of my comments, so I fixed that. Also, made title all caps.

Hart, Rosemary (OLC)

| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Friday, December 16, 2016 1:18 PM |  |
| To: | (b) (6) | (b) (5) |
| Subject: |  | (b) (5) |
| Attachments: |  | $(12-11-2016)+$ OLC 12162016 |
|  | 2016.docx |  |

Another final.

Hart, Rosemary (OLC)


Good edits! This one was a bit messy. I've tried to respond to your questions and have added some additional edits.


From: Hart, Rosemary (OLC)

[ि(0): I liked all your edits and questions. In the attached redline, I have responded to your question by providing an outward-facing comment and have added some additional edits. (b) (5)

Happy to discuss.

Thanks,
Rosemary

Hart, Rosemary (OLC)

| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Friday, December 16, 2016 2:27 PM |  |
| To: | (b) (6) | (b) (5) |
| Subject: |  | (b) (5) |
| Attachments: |  |  |

Another final.
(b) (6)

From:

## (b) (6)

Sent:
To:
Subject:
Attachments:
Friday, December 16, 2016 2:45 PM
Hart, Rosemary (OLC)

(12-11-2016) + olc
(b) (5)
$(12-11-2016)+$ olc. doc $x$

Rosemary: A near-final version of this redline for your review. The yellow highlighting denotes where I added text.

Hart, Rosemary (OLC)

| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Friday, December 16, 2016 2:50 PM |  |
| To: | (b) (6) | (b) (5) |
| Subject: | (b) (5) | (12-11-2016) + olc |
| Attachments: |  |  |

Those look good. Thanks!
(b) (6)

From:
Sent:
To:
Subject:
Attachments:

## (b) (6)

Friday, December 16, 2016 4:04 PM
Hart, Rosemary (OLC)
RE: Executive Orders for OLC Review (Part 1)

| (b) (5) | (12-11-2016) + olc 1216 |
| :---: | :---: |
| 2016.....docx; | (b) (5) |
| ( (...docx; | (b) (5) |
| (12-11-20....docx; | (b) (5) |
| (12-11-20...docx; | (b) (5) |
| 11-2016) + OLC 1216 2....docx; | (b) (5) |
| (12-11-2016) + OLC 1216 ...doc |  |

Rosemary: I'm attaching cleaned up redlines for the six EOs in the first batch. I looked at the ${ }^{(b)(5)}$ PM and didn't think that any formatting changes, so I think all of this is ready for transmittal. Thanks!

From: Hart, Rosemary (OLC)
Sent: Monday, December 12, 2016 10:00 AM


## duplicate

(b) (6)

From:
(b) (6)

Sent: Friday, December 16, 2016 4:18 PM
To:
Subject:
Hart, Rosemary (OLC)
RE: (b) (5) (12-11-2016) + OLC 1216
2016
Attachments:
2016.docx

You're right! I've made that change in this version (as well as added underlining under the "sec. $\mathrm{X}^{\prime \prime}$ parts throughout to match the other orders).


(b) (6)

| From: | $(\mathrm{b})(6)$ |
| :--- | :--- |
| Sent: | Monday, December 19, 2016 9:58 AM |
| To: | Hart, Rosemary (OLC) |
| Subject: | RE: |
|  | (b) (5) EO |

Yes, will do. Thanks!

From: Hart, Rosemary (OLC)
Sent: Monday, December 19, 2016 9:57 AM

| To: (b) (6) |  | (b) (6) |
| :--- | :--- | :--- |
| Subject: FW: | (b) (5) | EO |

(b) (6): Could you please review this one? Just looking through this quickly,
(b) (5)

RH


| (b) (6) | (OLC) |
| :--- | :--- |
|  | (b) (6) $\quad$ (OLC) |
| From: | Monday, December 19, 2016 10:16 AM |
| Sent: | Hart, Rosemary (OLC) |
| To: | (b) (6) |
| Cc: | RE: Another EO |
| Subject: |  |

Sure.

From: Hart, Rosemary (OLC)
Sent: Monday, December 19, 2016 10:14 AM
To: (b) (6) $(\mathrm{OLC})<$ (b) (6) $>$
Cc: (b) (6) $>$
Subject: Another EO
[0)(0): Could you please review the attached draft? I would like to send comments back this week if at all
possible.
Thanks,
Rosemary

| From: | Hart, Rosemary (OLC) |
| :--- | :--- |
| Sent: | Monday, December 19, 2016 11:07 AM |
| To: | Koffsky, Daniel L (OLC); |
| (b) (6) |  |
| Subject: | RE: Draft executive order, |

Let's meet in 5 minutes. I'll print out the latest order.

From: Koffsky, Daniel L(OLC)
Sent: Monday, December 19, 2016 11:06 AM

| To: Hart, Rosemary (OLC) | (b) (6) | (b) (6) |
| :--- | :--- | :--- |
| Subject: RE: Draft executive order, | (b) (5) | (b) (6) |

I can accommodate any time today.

From: Hart, Rosemary (OLC)
Sent: Monday, December 19, 2016 11:05 AM


I have a call from 2-3 but am otherwise flexible.
Dan: What works for you?
Rosemary

From: (b) (6)
Sent: Monday, December 19, 2016 10:19 AM
To: Hart, Rosemary (OLC) $¢$


Koffsky, Daniel L(OLC)
(b) (6)

Subject: RE: Draft executive order, $\quad$ (b) (5)
I have a 10:30 call but am otherwise free today.

From: Hart, Rosemary (OLC)
Sent: Monday, December 19, 2016 10:16 AM
To: Koffsky, Daniel L (OLC) (b) (6)
(b) (b) (6) (b) (6)

Subject: FW: Draft executive order, (b) (5)
We should discuss when convenient.


## duplicate



From: Hart, Rosemary (OLC)
Sent: Monday, December 19, 2016 12:15 PM


Subject: FW: Draft executive order, (b) (5)

Here is the electronic version. Thanks!

Rosemary


```
(b) (6)
```

From:
Sent:
To:
Subject:
Attachments:
(b) (6)

Monday, December 19, 2016 2:32 PM
Hart, Rosemary (OLC)
RE: EOs for OLC

Rosemary: Attaching a redline of the (b) (5) EO. Thanks!

From: Hart, Rosemary (OLC)
Sent: Thursday, December 15, 2016 1:15 PM



| From: | Hart, Rosemary (OLC) |
| :--- | :--- |
| Sent: | Monday, December 19, 2016 3:18 PM |
| To: | (b) (6) |
| Subject: | (OLC) |

I had not thought of that. We usually wait until they are final and we know they are going forward. But if you have time, and just hang onto the paperwork, it could save time later if a bunch of them go forward. It's really up to you and your workload.

Thanks,
Rosemary

From: (b) (6) (OLC)
Sent: Monday, December 19, 2016 3:07 PM
To: Hart, Rosemary (OLC)
(b) (6)

Subject: RE: Another EO

Here are my comments.
Are we supposed to be preparing F\&L memos for these EOs as we go as well?

From: Hart, Rosemary (OLC)
Sent: Monday, December 19, 2016 10:14 AM

(b) (6)

From:
Sent:
To:
Subject:
Attachments:

## (b) (6)

Tuesday, December 20, 2016 1:56 PM
Hart, Rosemary (OLC)
RE: (b) (5) EO
$\square(12-18-2016)+$ (b) (5)

Rosemary: Here's a draft redline.
(b) (5)

Thanks,
(b) (6)

From: Hart, Rosemary (OLC)
Sent: Monday, December 19, 2016 9:57 AM


## duplicate

(b) (6)


The Order has all of our internal comments removed and should be ready for transmittal.
Thanks!

From: Hart, Rosemary (OLC)
Sent: Wednesday, December 21, 2016 9:57 AM


Subject:
(b) (5)
$(12-14-2016)+{ }^{[010]|c|}+r h$
(b) (6): This looks good! I added a few technical edits, plus
(b) (5)

Let me know what you think.
Rosemary

| From: | Hart, Rosemary (OLC) |  |
| :--- | :--- | :--- |
| Sent: | Wednesday, December 21, 2016 11:31 AM |  |
| To: | (b) (6) | (b) (5) |
| Subject: |  | (12-14-2016) +olc (12-21- |
| Attachments: | $2016)$ | $(12-14-2016)+$ olc (12-21- |

(b) (6) : (b) (5)
. Let me know if you are OK with this change.
Thnx,
RH

