

ODAG 50

56. (U) ODAG 50 is a 13-page September 25, 2001, Memorandum to the Associate Deputy Attorney General, from a Deputy Assistant Attorney General, OLC, entitled “Constitutionality of Amending Foreign Intelligence Surveillance Act to Change the “Purpose” Standard for Searches,” with handwritten notes and comments. ODAG 50 is withheld under FOIA Exemption Five.

(U) Applicability of Exemption Five.

57. (U) ODAG 50 is a final memorandum containing the legal opinion of OLC and was produced in response to a request for OLC analysis from other Department officials. As discussed in my prior declaration, “[a]ttorneys in OLC are often asked to provide advice and analysis with respect to difficult and unsettled issues of law. . . . It is essential to the mission of the Executive Branch that OLC legal advice, and the development of that advice not be inhibited by concerns about public disclosure. Protecting the confidentiality of documents that contain such advice is essential in order to ensure both that creative and even controversial legal arguments and theories may be explored candidly, effectively, and in writing, and to ensure that Executive Branch officials will continue to request legal advice from OLC on sensitive matters.” See Bradbury Decl. ¶ 71; see also *id.* ¶ 72. ODAG 50, accordingly, is both deliberative and pre-decisional, as it reflects OLC’s advice which is considered as part of the decision-making process of those officials that ask for it, and as an attorney-client communication. Thus, ODAG 50 is properly withheld under FOIA’s Exemption Five.

58. (U) In addition, ODAG 50 contains handwritten underlining and comments from a former OLC attorney made in the course of reviewing the memorandum in preparation for working on other legal opinions on related matters. These sorts of notes and comments, created as part of an attorney’s ordinary work process, constitute materials properly protected under the deliberative process privilege. Disclosure of these comments and notes would discourage government attorneys