



U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C.

April 4, 2025

Elizabeth Oyer

[REDACTED]
[REDACTED]
[REDACTED]

Dear Ms. Oyer,

The U.S. Department of Justice understands that you are planning to appear as a witness at a congressional hearing on Monday, April 7, 2025. I write to remind you of Department policies and to reiterate certain obligations concerning such an appearance that persist notwithstanding your recent departure.

The Department has significant confidentiality interests when it comes to congressional oversight of law enforcement matters. “Since the early part of the 19th century, Presidents have steadfastly protected the confidentiality and integrity of investigative files from untimely, inappropriate, or uncontrollable access by other branches, particularly the legislature.”¹ Accordingly, while the Department’s leaders may explain to Congress the reasons underlying many of the Department’s public decisions, the Department generally does not make deliberative documents or other information contained in law enforcement files available to Congress, or to the public at large.

The Department’s confidentiality interest is even stronger with regard to information and documents concerning pardons, clemency, or similar determinations handled by the Office of the Pardon Attorney, which functions as a “confidential advisor[] to the President” regarding the exercise of powers vested by the Constitution in the “exclusive province of the executive branch.”² As a result, the Department has a general, long-standing policy against providing congressional testimony regarding the deliberative processes of the Office of the Pardon Attorney. This policy extends to the production or dissemination of deliberative documents and internal Department communications, such as “documents containing confidential advice, analysis, recommendations and statements of position that the Pardon Attorney generated in connection with clemency review,” or documents that “other executive branch officials and employees submitted to the offices of the Pardon Attorney or the Deputy Attorney General in connection with that review.”³

¹ *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 117 (1984); see also *Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op. O.L.C. 31, 32-33 (1982).

² *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, at 1-4 (1999) (opinion of Attorney General Reno).

³ *Id.*; see also *Congressional Oversight of the White House*, 45 Op. O.L.C. ___, at *16-17 & n.8 (Jan. 8, 2021).

Should you choose to appear before Congress, the Department expects that you will abide by your obligations under the law, Department policy, and the applicable rules of professional responsibility to refrain from disclosing information relating to confidential Department matters and sensitive personal information. Those matters include the deliberative processes that underlie pardons, clemency, the restoration of firearm rights, and related decisions. Here, the information subject to executive privilege most likely will consist of attorney work product, deliberative process information, and information in law enforcement and civil investigative files.⁴

Although you have not advised the Department of the substance of your potential testimony, press reports indicate that you may testify about the Department's consideration of the restoration of firearm rights, including to certain individuals. The internal deliberations related to those matters, as well as associated non-public attorney communications and work product, are likely covered by one or more components of executive privilege and would implicate the rules of professional responsibility. Disclosing non-public information about such deliberations without authorization would compromise the confidentiality and integrity of that work and would have a chilling effect on Department attorneys going forward.⁵ Further, disclosure of non-public information regarding such deliberations "implicate[s] significant individual privacy interests," as deliberative material related to the restoration of firearm rights to individuals may contain sensitive personal information.⁶

Absent authorization, an individual Department attorney, including an attorney who has left the Department, lacks authority to reveal confidential deliberative information or attorney work product related to such matters. Accordingly, consistent with appropriate governmental privileges, the Department expects that you will decline to respond to questions seeking such information and will advise Members of Congress to contact the Department's Office of Legislative Affairs should they seek information you are unable to present.

Finally, the Department seeks to clarify that you are not authorized to disclose any records of the Department to Congress with respect to the Department's consideration of the restoration of firearm rights. Such records constitute property of the Department and are subject to restrictions on the unauthorized disclosure of information, including information protected by executive privilege. Department policy requires that the production of such records be coordinated through the Office of Legislative Affairs.⁷

⁴ See, e.g., *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. at 1 (1999) (discussing executive privilege with respect to matters within the Office of the Pardon Attorney); *Assertion of Executive Privilege Regarding White House Counsel's Office Documents*, 20 Op. O.L.C. 2, 3 (1996) (opinion of Attorney General Reno) (discussing the deliberative process, attorney-client, and attorney work product components of executive privilege); *Congressional Oversight of the White House*, 45 Op. O.L.C. at *20-24 (same).

⁵ See, e.g., *Assertion of Executive Privilege with Respect to Prosecutorial Documents*, 25 Op. O.L.C. 1 (2001) (opinion of Attorney General Ashcroft).

⁶ *Id.* at 2.

⁷ See Justice Manual § 1-8.200, 1-8.210.

Congressional interest in documents relevant to pending decisions by the Department raises concerns of political interference in the autonomy of those decisions. To the extent Members of Congress have legitimate interests in seeking that information, their requests should be directed to the Department.

Sincerely,

A handwritten signature in black ink, appearing to read "Kendra Wharton". The signature is fluid and cursive, with the first name "Kendra" being more prominent than the last name "Wharton".

Kendra Wharton
Associate Deputy Attorney General