

ACLU v. DOJ, 13 Civ. 7347 (S.D.N.Y.)
Documents Withheld in Full by National Security Division, August 2015

Doc. No.	Date	From/To	Pages	Subject/Description	Exemption/Privilege
1.	undated	National Security Division (unnamed author); no recipient specified	1	Segment of internal Executive Branch memo captioned "FISA versus Traditional Law Enforcement Warrants." Informal form (e.g., no letterhead, no identification of sender or recipient). Provides legal advice on questions, including whether information is FISA-derived in certain contexts. Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
2.	undated	National Security Division (unnamed author); no recipient specified	1	Segment of untitled internal Executive Branch memo providing legal advice on the meaning of "derived" and whether evidence should be considered "derived." Informal form (e.g., no letterhead, no identification of sender or recipient). Prepared in anticipation of litigation. Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
3.	2011-2013	National Security Division (unnamed author); no recipient specified	Varies	Multiple Drafts of an internal Executive Branch memo titled, "Memorandum of Law in Support of Guidance Regarding Whether Information is Derived from FISA." Memo provides legal analysis of FISA and its history, use of FISA-obtained and FISA-derived information in proceedings, scope of "derived" evidence, and FISA use practice in various scenarios; advises prosecutors on applying principles regarding whether information is FISA-derived. Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege

4.	undated	National Security Division (unnamed author); no recipient specified	3	Untitled internal Executive Branch memo setting forth and evaluating arguments regarding the meaning of derived from FISA. Informal form (e.g., no letterhead, no identification of sender or recipient). Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
5.	undated	Office of the Director of National Intelligence (ODNI), Office of General Counsel; no recipient specified	1	Note from ODNI's Office of the General Counsel (OGC) titled "FISA-Derived Views," regarding ODNI's approach to the FISA-derived issue and history and progress of interagency discussions. Informal form (e.g., no letterhead, no identification of sender or recipient). Informally expresses ODNI's views in advance of consultative meeting, expresses issues of concern to various agencies, recommends positions, and hopes for discussion of certain issues. Memo was prepared in anticipation of litigation.	(b)(5): deliberative process privilege; work product; attorney-client privilege
6.	undated	National Security Division, Office of Intelligence; no recipient specified	2	Internal Executive Branch memo titled "FISA Derived Additional Views," regarding the drafting of FISA-derived policy guidance, setting forth views on appropriate scope of future guidance, and discussing legal issues related to that guidance. Informal form (e.g., no letterhead, no identification of sender or recipient). Part of consultative process, making recommendation regarding how to proceed on guidance document. Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
7.	July 2006 to Jan 2008	Three United States Attorneys; no recipient specified	6	Internal Executive Branch memo titled "USAO Views on FISA Use and FISA Derived," setting forth views of three United States Attorneys on various dates regarding interpretations of FISA use and FISA-derived and effects on litigation. Informal form (e.g., no letterhead, no identification of sender or recipient); informal discussion (dialogue format). Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege

8.	Sept 26, 2008	National Security Division; no recipient specified (“to” and “from” fields in memo blank)	7	Draft Executive Branch Memo titled, “Guidance Regarding Information Derived From FISA Collection,” providing guidance on issues related to information derived from FISA collection and illustrative examples. Memo is saved with a file name which includes the date, but memo itself is dated “October __, 2008.” Memo was prepared in anticipation of litigation and discusses issues for prosecutors’ consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
9.	Oct 14, 2008	Assistant Attorney General for National Security Patrick Rowan /All Federal Prosecutors	8	Another draft of document 8. Memo is saved with a file name which includes the date, but memo itself is dated “October __, 2008.”	(b)(5): deliberative process privilege; work product; attorney-client privilege
10.	2010-2012	Attorney General Eric Holder /All Federal Prosecutors	Varies	Multiple Drafts of an Executive Branch memo titled, “Guidance Regarding Whether Information Is ‘Derived From’ FISA.” Memo is not on letterhead, but there is a note to place it on letterhead. Memo provides legal advice to prosecutors on when information is “derived from” FISA Surveillance. Memo is saved with a file name that has a date, but memo itself is undated. Memo was prepared in anticipation of litigation and discusses issues for prosecutors’ consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
11.	2011-2012	National Security Division/no recipient specified	Varies	Multiple Drafts of an Executive Branch memo titled, “Addendum to the Guidance Regarding How to Determine Whether Information is ‘Derived From’ FISA Surveillance” Memo includes illustrative case examples on whether information is FISA derived for use by Federal prosecutors and federal agents. Memo is saved with a file name that has a date, but memo itself is undated. Memo was prepared in anticipation of litigation and discusses issues for prosecutors’ consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege

12.	2013-2014	National Security Division/no recipient specified	Varies	Multiple Drafts of a Redlined Executive Branch Memo marked "Draft" and "Attorney Work Product," titled, "Determining Whether Evidence Is 'Derived From' Surveillance Under Title III or FISA," which provides legal advice on whether evidence is derived from surveillance under FISA or Title III. Memo is not on letterhead. There are no "To" or "From" fields. Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration. Various drafts contain revisions made by the Criminal Division.	(b)(5): deliberative process privilege; work product; attorney-client privilege
13.	June 17, 2013	National Security Division/ National Security Division	16	Draft internal Executive Branch "memorandum to the file" from a National Security Division attorney discussing the use of FISA information in notice proceedings. Memo was saved with a file name that included a date, but the memo itself is dated, "May __, 2013." The memo is watermarked "Draft" and was prepared in anticipation of litigation and discusses issues for government attorneys' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
14.	June 24, 2013	National Security Division/no recipient specified	24	Executive Branch memo watermarked "Draft" and marked "Confidential" and "Attorney-Client Work Product" which provides legal advice on when information is derived from FISA. Memo is not on letterhead, is not titled, and there are no "To" or "From" fields. Memo is saved with a file name which includes a date, but the memo itself is undated. Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege

15.	June 24, 2013	National Security Division/no recipient specified	6	Draft Executive Branch memorandum which analyzes when information is “derived from” FISA surveillance. Memo is not on letterhead; it is not titled, and there are no “To” and “From” fields. Memo is saved with a file name which includes a date, but the memo itself is undated. Memo was prepared in anticipation of litigation and discusses issues for prosecutors’ consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
16.	July 8, 2013	National Security Division	9	Draft Executive Branch memorandum which analyzes when information is “derived from” FISA surveillance. Memo is not on letterhead; it is not titled, and there are no “To” and “From” fields. Memo is saved with a file name which includes a date, but the memo itself is undated. Memo was prepared in anticipation of litigation and discusses issues for prosecutors’ consideration. Draft of document #5 in Feb. 2014 index of withheld documents.	(b)(5): deliberative process privilege; work product; attorney-client privilege
17.	July 3, 2013	National Security Division	9	Another draft of document 16. (Draft of document #5 in Feb. 2014 index of withheld documents).	(b)(5): deliberative process privilege; work product; attorney-client privilege
18.	July 15, 2013	National Security Division/no recipient specified	7	Draft Executive Branch memorandum which analyze when information is “derived from” FISA surveillance and how to properly satisfy FISA’s statutory notice obligation. Memo is not on letterhead; it is not titled, and there are no “To” and “From” fields. Memo was prepared in anticipation of litigation and discusses issues for prosecutors’ consideration. Draft of document #2 in Feb. 2014 index of withheld documents.	(b)(5): deliberative process privilege; work product; attorney-client privilege

19.	July 15, 2013	Office of the Solicitor General/no recipient specified	6	Document #1 in Feb. 2014 index of withheld documents, attached to cover email to federal executive branch employees.	(b)(5): deliberative process privilege; work product; attorney-client privilege
20.	July 16, 2013	National Security Division/no recipient specified	5	Draft Executive Branch memorandum which analyzes when information is “derived from” FISA surveillance and how to properly satisfy FISA’s statutory notice obligation. Memo is not on letterhead; it is not titled, and there are no “To” and “From” fields. Memo is saved with a file name that includes the date, but memo itself is undated. Memo was prepared in anticipation of litigation and discusses issues for prosecutors’ consideration. Draft of document #2 in Feb. 2014 index of withheld documents.	(b)(5): deliberative process privilege; work product; attorney-client privilege
21.	Sept 10, 2013	National Security Division/no recipient specified	14	Internal Executive Branch memo titled, “Memorandum of Law in Support of Guidance Regarding Whether Information is Derived from FISA.” Memo is marked “Draft.” Provides legal analysis of FISA and its history, use of FISA-obtained and FISA-derived information in proceedings, scope of “derived” evidence, and FISA use practice in various scenarios; advises prosecutors on applying principles regarding whether information is FISA-derived. Memo was prepared in anticipation of litigation and discusses issues for prosecutors’ consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
22.	Sept 16, 2013	Office of the Solicitor General/no recipient specified	15	Executive Branch Memo marked “Draft” which discusses when evidence is derived from surveillance under FISA. Memo is not on letterhead. Memo is saved with a file name that includes the date, but the memo itself is dated September [], 2013. Memo was prepared in anticipation of litigation and discusses issues for prosecutors’ consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege

23.	Oct 14, 2013	Office of the Solicitor General/no recipient specified	18	Another draft of document 22. Memo is saved with a file name that includes the date, but the memo itself is dated October [], 2013.	(b)(5): deliberative process privilege; work product; attorney-client privilege
24.	Nov 14, 2013	Office of the Solicitor General/no recipient specified	4	Redlined Executive Branch Memo marked "Draft" which addresses meaning of "derived from" FISA and includes sample scenarios. Memo is not on letterhead and contains no "To" or "From" fields. Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
25.	July 17, 2013	not stated	2	Draft "Summary of July 17, 2013 Meeting Concerning Interpretation of 'FISA-Derived' and Notice of Use of FISA Title VII Information in FISA Suppression Litigation." Summarizes issues for further consultation and consideration. Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration. Draft of document #3 from Feb. 2014 index of withheld documents.	(b)(5): deliberative process privilege; work product; attorney-client privilege
26.	2014-2015	National Security Division/All Federal Prosecutors	Varies	Multiple drafts of an Executive Branch Memo marked "Attorney Work Product" and "Privileged and Confidential" which provides legal advice by discussing when evidence is derived from surveillance under FISA. Memo is not on letterhead. Memo saved with a file name that includes a date, but memo itself is dated, "_____, 2014." Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration. Drafts contain edits from the Office of the Solicitor General.	(b)(5): deliberative process privilege; work product; attorney-client privilege

27.	March 4, 2015	National Security Division	3	Draft Redlined Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo is saved with a file name which includes the date, but the memo itself is undated. The memo is untitled, and there are no "To" or "From" fields. Memo was prepared in anticipation of litigation and discusses issues for prosecutors' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
28.	March 4, 2015	National Security Division	2	Another draft of document 27. Memo is saved with a file name which includes the date, but the memo itself is undated.	(b)(5): deliberative process privilege; work product; attorney-client privilege
29.	Aug 28, 2014	Department of Treasury/File	13	Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo is marked "Privileged" and "Draft – Predecisional and Deliberative." Memo discusses issues for government attorneys' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
30.	June 12, 2014	National Security Division/File	12	Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo is marked "Privileged and Confidential" and "Draft." Memo discusses issues for government attorneys' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
31.	Nov 2013	National Security Division/No recipient specified	6	Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo is marked draft. Memo was prepared in anticipation of litigation and discusses issues for government attorneys' consideration. Memo is saved with a file name which includes the month and year, but the memo itself is undated. Memo is classified pursuant to Executive Order 13526.	(b)(5): deliberative process privilege; work product; attorney-client privilege

32.	July 7, 2014	National Security Division/No recipient specified	4	Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo is not addressed to anyone. Memo was prepared in anticipation of litigation and discusses issues for government attorneys' consideration. Memo is classified pursuant to Executive Order 13526.	(b)(5): deliberative process privilege; work product; attorney-client privilege
33.	Undated	National Security Division/No recipient specified	4	Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo is marked draft. Memo was prepared in anticipation of litigation and discusses issues for government attorneys' consideration. Memo is undated, but it was emailed on April 1, 2014 which means it was drafted before that date. Memo is classified pursuant to Executive Order 13526.	(b)(1); (b)(5): deliberative process privilege; work product; attorney-client privilege
34.	Undated	National Security Division/No recipient specified	6	Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo is not addressed to anyone. Memo was prepared in anticipation of litigation and discusses issues for government attorneys' consideration.	(b)(5): deliberative process privilege; work product; attorney-client privilege
35.	April 14, 2014	National Security Division/File	7	Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo was prepared in anticipation of litigation and discusses issues for government attorneys' consideration. Memo is classified pursuant to Executive Order 13526.	(b)(1); (b)(5): work product; attorney-client privilege
36.	Nov 12, 2013	National Security Division/File	16	Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo is marked "For Official Use Only – Privileged and Confidential." Memo discusses issues for government attorneys' consideration.	(b)(5): work product; attorney-client privilege
37.	March 26, 2009	National Security Division/ National Security Division	12	Executive Branch Memo which addresses the FISA notice requirement in certain proceedings. Memo is marked "For Official Use Only – Privileged and Confidential." Memo discusses issues for government attorneys' consideration.	(b)(5): work product; attorney-client privilege