



U.S. Department of Justice

Office of the Deputy Attorney General

Bradley Weinsheimer  
Associate Deputy Attorney General

Washington, D.C. 20530

June 23, 2020

David Z. Seide  
Government Accountability Project  
1612 K Street NW  
Washington, D.C. 20006  
By email: [davids@whistleblower.org](mailto:davids@whistleblower.org)

Dear Mr. Seide:

I write in response to your June 22, 2020 letter concerning the testimony your client, John Elias, a trial attorney in the criminal section of the Department's Antitrust Division, plans to provide in connection with a subpoena he received to appear before the Committee on the Judiciary of the U.S. House of Representatives (Committee).

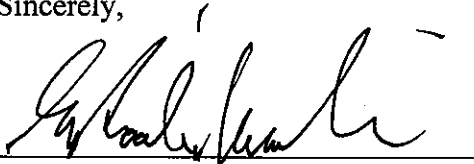
In your letter, you offer conclusory claims about Mr. Elias's expected testimony but do not furnish any specific information about its content. Lacking such information, the Department is unable to evaluate the nature of his claims or his assertion that he has knowledge of "abuses of authority and other wrongdoing." Mr. Elias should understand, however, that he does not have the Department's authorization to testify about privileged matters.

In addition, it is incorrect as a matter of law to suggest that your client has no responsibility to honor the deliberative process privilege because he believes himself to be a witness to unidentified government misconduct. Although you cite the D.C. Circuit's decision in *In re Sealed Case*, that decision made clear that with respect to the relevant privileges, "*courts* must balance the public interests at stake in determining whether the privilege should yield in a particular case, and must specifically consider the need of the party seeking evidence." 121 F.3d 729, 746 (D.C. Cir. 1997) (emphasis added). Your client does not have the authority to perform such a balancing of interests on his own.

As I indicated previously, absent authorization, an individual attorney such as Mr. Elias lacks authority to reveal confidential deliberative information or attorney work product related to investigative and enforcement matters in response to a congressional subpoena. The balancing of a congressional committee's need for information and the Executive Branch's need for confidentiality occurs through the constitutionally mandated accommodation process between authorized representatives of the Executive Branch and Congress. Accordingly, consistent with appropriate governmental privileges, the Department expects that Mr. Elias will decline to respond to questions seeking such information and advise the Committee to contact the

Department's Office of Legislative Affairs should it seek information that he is unable to provide.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bradley Weinsheimer', written over a horizontal line.

Bradley Weinsheimer  
Associate Deputy Attorney General