

REQUEST FOR RECORDS DISPOSITION AUTHORITY		LEAVE BLANK (NARA use only)	
To. NATIONAL ARCHIVES & RECORDS ADMINISTRATION 8601 ADELPHI ROAD, COLLEGE PARK, MD 20740-6001		JOB NUMBER	11-60-10-16
1. FROM (Agency or establishment) Department of Justice		Date Received	1/20/10
2. MAJOR SUB DIVISION Civil Division		NOTIFICATION TO AGENCY	
3 MINOR SUBDIVISION Torts Branch		In accordance with the provisions of 44 U S C 3303a, the disposition request, including amendments is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10	
4 NAME OF PERSON WITH WHOM TO CONFER Larry J Easterling		5 TELEPHONE (202) 616-8074	DATE 12 Sept 10
6 AGENCY CERTIFICATION I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal on the attached _____ page(s) are not needed now for the business of this agency or will not be needed after the retention periods specified, and that written concurrence from the General Accounting Office, under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies,		ARCHIVIST OF THE UNITED STATES	
<input checked="" type="checkbox"/> is not required <input type="checkbox"/> is attached; or <input type="checkbox"/> has been requested			
DATE 1/15/2010	SIGNATURE OF AGENCY REPRESENTATIVE Jeanette Plante	TITLE Director, Office of Records Management Policy, JMD, DOJ	
7 ITEM NO.	8 DESCRIPTION OF ITEM AND PROPOSED DISPOSITION	9. GRS OR SUPERSEDED JOB CITATION	10 ACTION TAKEN (NARA USE ONLY)
	See attached sheets RG-060, DEPARTMENT OF JUSTICE: CIVIL DIVISION: Privileged Attorney-Client File Sections in "Bivens" Actions Department of Justice attorneys, or private counsel furnished by the Department, may represent Federal employees (and former employees) in "Bivens" actions, where the employee is being sued, subpoenaed, or charged in his or her individual capacity (instead of or in addition to the Government being sued, subpoenaed, or charged), if the Department determines that the employee's actions reasonably appear to have been performed within the scope of the employee's employment and the Department determines that providing representation would otherwise be in the interest of the United States. After receipt of an individual employee's request for representation, including all available factual information, Department attorneys participating in the process of determining whether the Department should provide representation and any Department attorneys who represent an employee undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Any adverse information		

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1	<p>communicated by the client-employee to an attorney during the course of such an attorney-client relationship may not be disclosed to anyone, either inside or outside the Department, other than the attorneys responsible for representation of the employee</p> <p>Accordingly, the Civil Division must physically separate all documentation reflecting the substance of privileged attorney-client communications from all other records for the case that are maintained in the official litigation case file within the Department's duplex-numeric classification system (NARA Job No N1-60-88-10, et al), and the Division must protect it from disclosure to any unauthorized parties. The courts have indicated that any unauthorized disclosure – or even a potential post-litigation disclosure – of these attorney-client communications could breach the privilege and could, thereby, unfairly and adversely affect the interests of the defendant employee. The Civil Division maintains all such privileged documentation in separate file sections of the same DJ-numbered case file within the duplex-numeric classification system but physically segregates and protects those privileged file sections from disclosure to anyone other than the attorneys reviewing and deciding the request for representation, the attorneys representing the employee, and the attorneys procuring, overseeing, and authorizing payment of private counsel for the employee. Currently, these segregated, privileged file sections are specifically not authorized for disposition under NARA Job No N1-60-88-10, Items 145 A.(1) and 157 A (1)</p> <p>The privileged file sections typically contain the formal requests for representation from the employees, which can contain privileged information about the incident involved in the litigation, documentation of internal Civil Division consideration of the request for representation, which can contain defendant information provided under privilege, privileged attorney-client communications during the course of representation, and explanations from retained private counsel concerning their expenses and needs, which can contain prejudicial information about private counsel's strategy and handling of the defendant employee's case</p> <p>Disposition TEMPORARY Physically segregate from the regular, unprivileged file sections of the duplex-numeric case file and retain securely in the possession of Civil Division officials responsible for considering and deciding requests for representation, for representing the employee, and for overseeing the procurement and payment of private counsel representing those employees. Destroy 10 years after closure of the case to which the file sections pertain</p>	Job No 60-88-10, Items 145 A (1) and 157 A (1)	