



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

October 21, 2005

MEMORANDUM

TO: Heads of Department Components
United States Attorneys

FROM: Robert D. McCallum, Jr. RDM
Acting Deputy Attorney General

SUBJECT: Waiver of Corporate Attorney-Client and Work Product Protection

The Department of Justice places significant emphasis on the prosecution of corporate crimes. The Department's policy on charging business organizations is contained in the Memorandum from Deputy Attorney General Larry D. Thompson to Heads of Department Components and United States Attorneys, *Re: Principles of Federal Prosecution of Business Organizations* (Jan. 20, 2003) (hereinafter "*Thompson Memorandum*"), reprinted in *United States Attorneys' Manual*, tit. 9, Crim. Resource Manual, §§ 161-62. The *Thompson Memorandum* sets forth nine factors that federal prosecutors must consider in determining whether to charge a corporation or other business organization. One of the nine factors is "the corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agents, including, if necessary, the waiver of corporate attorney-client and work product protection." *Thompson Memorandum* § II.A.4.

To ensure that federal prosecutors exercise appropriate prosecutorial discretion under the principles of the *Thompson Memorandum*, some United States Attorneys have established review processes for waiver requests that require federal prosecutors to obtain approval from the United States Attorney or other supervisor before seeking a waiver of the attorney-client privilege or work product protection. Consistent with this best practice, you are directed to establish a written waiver review process for your district or component. The *United States Attorneys' Manual* will be amended to reflect this policy. Such waiver review processes may vary from district to district (or component to component), so that each United States Attorney or component head retains the prosecutorial discretion necessary, consistent with their circumstances, to seek timely, complete, and accurate information from business organizations.