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DATE: 12 JUL 79

FOR ACTION: STU EIZENSTAT

JACK WATSON

DICK PETTIGREW

FRANK MOORE (LES FRANCIS)

ANNE WEXLER

JODY POWELL

INFO ONLY: THE VICE PRESIDENT

JERRY RAFSHOON

SUBJECT: BROCK ADAMS MEMO RE CREATION OF A SURFACE TRANSPORTATION ADMINISTRATION WITHIN THE DEPARTMENT OF TRANSPORTATION

- go slow - no logic in House now; Hascup would be "spread out"

7/14 - attached

- Opt 2

concur!

**
7/19 - Hold per
- per McE (Durr)
& Harrison*

+++++
+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +
+ BY: 1200 PM SATURDAY 14 JUL 79 +
+++++

ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 11 1979

MEMORANDUM FOR THE PRESIDENT

FROM: Brock Adams
James T. McIntyre, Jr.

SUBJECT: Creation of a Surface Transportation Administration
Within the Department of Transportation

We are seeking your approval to submit a Reorganization Plan to combine within the Department of Transportation (DOT) the present Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), creating a single Surface Transportation Administration (STA). The proposed reorganization has been designed to eliminate duplicative oversight and review, to utilize Federal resources more effectively, and to establish a single point of accountability for Federal surface transportation programs.

I. BACKGROUND

Overview

- FHWA manages an \$8 billion/year Federal-aid program that provides financial and technical assistance to State governments for State and local highways and related facilities, and in some cases for urban transit. Funds are distributed by formula to State governments. FHWA administers its programs with a staff of about 4,300 and has 9 regional offices and 52 division (State) offices.
- UMTA manages a \$4 billion/year Federal grant program which provides financial and technical assistance directly to local governments and public agencies as well as States for transit facilities and operation. Operating and routine capital funds are distributed by formula for urban areas, while grants for large capital projects are distributed on a discretionary basis. UMTA has a staff of 550 located in Washington and in 10 regional offices.

Appendix A briefly describes the programs of these two agencies.

Problems

FHWA and UMTA are both professional organizations, but their narrow modal charters have caused the following problems in managing the converging highway/transit programs:

1. Outdated Modal Policy Orientation. Because their charters are oriented toward either highway or transit, it is difficult for FHWA and UMTA to assign their highest priorities to multi-modal activities that do not fall into their individual modal areas. Several important joint FHWA/UMTA programs (e.g., ride-sharing and transportation systems management) have suffered because of the diffused leadership and the relatively low priority accorded them compared to the traditional highway and transit programs of the two agencies. This also discourages innovation by State and local governments.
2. Inefficient Investment Decisions. The current organizational structure and decision process limits the ability for making trade-offs between highway and transit solutions in a given corridor. This can lead to duplication of facilities, excess capacity, or over-designed systems.
3. Artificial Distinctions. In response to new demands, the traditional distinctions between FHWA and UMTA programs have begun to fade, reducing the rationale for separate highway and transit administrations. For example, FHWA's Urban Highway program often funds transit projects and occasionally the traditional roles of FHWA and UMTA get completely reversed. In Houston, for example, UMTA is funding construction of a bus lane on a highway, while FHWA is funding the purchase of buses for the system.
4. Costly and Time-Consuming Coordination Activity. Increasingly, single projects are requiring both transit and highway funding (e.g., some cities are proposing large systems which utilize combinations of highways, rail lines, large park-and-ride facilities and bus operations). These require extensive coordination which consumes excessive Secretarial attention, and frequently causes delays that, with the effects of inflation (30% in 1978), escalates costs.
5. Inefficient Use of Technical Expertise and Administrative Personnel. Each Administration has its own technical and engineering staff to review proposals and sites (often at the same or nearby locations), its own administrative support system, and its own field structure (the two organizations maintain 19 regional offices, when 10 would suffice). In addition, while UMTA lacks adequate personnel to monitor the growing Federal public transportation construction investment, FHWA has 2,000 engineers with skills transferrable to transit projects. Without pooling of these resources, UMTA may need an additional 200-300 personnel over the next 4 years at a cost of \$6-9 million.

6. Administrative Burden on State and Local Governments. Finally, State and local governments confront duplicative, complicated and sometimes conflicting policies, procedures, data demands, and regulations from the two agencies. For example, there are separate procedures for public hearings, environmental impact statements, right-of-way acquisitions, project management, and financial reimbursement.

II. OPTIONS

There are three major alternatives available to deal with the problems identified above:

1. Administrative Reforms. This option would leave the separate FHWA and UMTA organizations intact, and extend the joint FHWA/UMTA initiatives already underway. Actions could include:
 - Administrative transfer of some responsibilities from UMTA to FHWA.
 - Increased joint reviews of highway and transit applications.
 - Sharing of technical and support staffs to the extent legally possible (e.g., UMTA could contract with FHWA for engineering and monitoring support or for personnel, finance, etc.).
 - Further standardization of procedures among similar or overlapping programs.
2. Submit a Reorganization Plan to Merge FHWA and UMTA into a single operating unit called the Surface Transportation Administration (STA).
3. Merge FHWA and UMTA by Legislation.

III. DISCUSSION OF OPTIONS

Advantages and disadvantages of the three options are discussed below:

Option #1. Administrative Reforms.

Advantages:

- This option would avoid a political dispute with those traditional, modal-oriented interest groups that oppose a merger.
- Some progress could be made toward reducing administrative burdens on users, fostering more balanced transportation

decisions, and possibly making more efficient use of some Federal personnel.

Disadvantages:

- While some significant UMTA functions could legally be transferred to FHWA by administrative action of the Secretary, as a practical matter, constituent and Congressional objections would be likely, and few of these could be implemented without formal or informal Congressional approval. Also, any partial transfer of functions could create serious management and administrative problems because support units would then report to two different administrators.
- This option would perpetuate, and probably increase, the need for lengthy negotiations, memorandums of agreement, and multiple and duplicative reviews by the two agencies.
- The incentives for innovation and joint action would still be limited.

Option #2. Submit a Reorganization Plan to Merge FHWA and UMTA.

Advantages:

- Better investment decisions would result because STA would make it easier to make tradeoffs between highway and transit projects and would promote innovative transportation solutions rather than advocating one or another modal solution.
- The timeliness of decisions would be improved by unifying the review of plans and proposals and reducing costly coordination steps. DOT estimates that STA would achieve a five percent increase in purchasing power (\$300-\$500 million) by the end of the current four-year authorization through more timely project review and approvals.
- STA would permit more efficient use of personnel by combining administrative staffs and utilizing FHWA engineers to help monitor the growing transit investment program. In addition, the 19 regional offices now in existence could be reduced to 10.

- Greater standardization and simplification of regulations, policies, and procedures would be possible under STA, thereby reducing administrative burdens on State and local governments.

Disadvantages:

- Like any reorganization, STA involves initial disruption.
- There are several political concerns expressed by some interest groups and by some big city mayors:
 - Transit groups are concerned that UMTA will be "swallowed up" by the larger FHWA, while highway interests are concerned that the highway program will be downgraded and funds "diverted" to the benefit of urban transit.
 - Some major cities are concerned that the STA will jeopardize the direct Federal-local relationship they now have with UMTA, and substitute instead the FHWA pattern of dealing through States.
 - Some urban groups view UMTA as an innovative force which could be lost if UMTA is merged with FHWA.

Option #3. Submit Authorizing Legislation to Merge FHWA and UMTA.
This option has the same advantages and disadvantages as Option #2, with two additional disadvantages:

Disadvantages:

- The legislative route would expose the proposal to greater interest group pressure and possible undesirable programmatic, budgetary, and organizational amendments.
- The legislative route would be more prolonged, especially since the highway and transit programs fall under two committees in the Senate--Environment and Public Works, and Banking and Urban Affairs, respectively. Joint referral would be necessary.

IV. PUBLIC AND CONGRESSIONAL CONSULTATION

In November 1978, DOT formally announced the STA proposal and mailed 4,000 copies of the proposal to the transportation constituency. Officials from DOT, OMB, and Anne Wexler's office have met with a number of national associations and public officials to discuss their concerns with STA.

Public Support and Opposition

The following groups have endorsed the proposal: The American Association of State Highway and Transportation Officials (AASHTO); the National Association of Regional Councils (NARC); the National Conference of State Legislatures (NCSL); and the transportation committee of the National Association of Counties (NACO). Many individual governors, regional planning organizations, and transportation leaders also support the proposal.

There has been mixed support from cities for the proposal. The National League of Cities has endorsed STA. The U. S. Conference of Mayors (USCM) has opposed the proposal, though they have expressed a willingness to work with DOT to try to develop an acceptable variation. DOT has actively been soliciting support from mayors. Some have formally communicated support, including: Mayors Bradley (Los Angeles), Caliguiri (Pittsburgh), White (Boston), McConn (Houston), and Schaefer (Baltimore). Those who have expressed opposition include: Mayors Murphy (Tucson) and Latting (Oklahoma City). There are a number of mayors who have not taken a position or whose views are unknown; therefore, it is possible that additional opposition or support will surface if the proposal is formally submitted to the Congress.

Although the breadth of support for the proposal is impressive and encouraging, few of these groups put reorganization of highway and transit functions at the top of their legislative agendas. In addition, several key groups are strongly opposed, including: the American Road and Transportation Builders Association (ARTBA); the American Public Transit Association (APTA); and the Associated General Contractors (AGC). The Highway Users Federation has opposed the proposal, but is giving it continuing consideration. In general, except for USCM, the opposing groups tend to be the single focus, modal proponents who view the establishment of STA as a threat to their current level of accessibility in the transportation decisionmaking process.

Congressional Assessment

We have discussed the STA proposal with most of the key members of the House and Senate who have jurisdiction over highway and transit programs. These include Senators Randolph, Bentsen, Williams, and Heinz; and Congressmen "Bizz" Johnson, Howard, and Wright. We have also briefed the principal staff of the House Government Operations Committee and Senate Governmental Affairs Committee.

Among the members with whom we spoke, Senators Randolph and Bentsen said they would actively support the reorganization. In addition, Congressman "Bizz" Johnson told Brock Adams last week that he would also support the proposal. The balance of the members expressed varying degrees of concern about aspects of the proposal, though no one has said he would oppose the plan.

The active support of Senators Randolph and Bentsen is probably sufficient to ensure passage in the Senate. The outcome in the House is somewhat more difficult to predict. In the face of significant outside opposition, some

key members have been reluctant to take a public position in support of the proposal. Prior to Johnson's expression of support, Congressman Howard, who chairs the Transportation Subcommittee of the House Public Works Committee, said he would reserve judgment until the plan is submitted. Congressman Wright said he would follow the lead of Johnson and Howard. Congressman Jack Brooks had not taken a position on the merits of the plan, but indicated he would go along if Wright were not opposed, and a strong House sponsor, like Johnson, were identified. Johnson's expression of support to Secretary Adams thus promises to bring along Brooks as well as other key House members.

V. RECOMMENDATION AND DECISION

We recommend that you consolidate FHWA and UMTA into a Surface Transportation Administration by reorganization plan (Option #2). While this will not solve all of the problems in our highway and transit programs and will leave many key program features intact, it will greatly simplify procedures, streamline the delivery of Federal transportation assistance, and strengthen our ability to respond to today's complex transportation, energy, and environmental problems. We believe that a more unified management of surface transportation programs is necessary to make the most effective use of Federal resources and to promote sound investment decisions.

By contrast, the administrative route (Option #1) could not improve transportation decisionmaking without adding considerably to coordination burdens. Pursuing consolidation by legislation (Option #3) instead of reorganization plan is not recommended because of the reduced chances of passage, the likely delays, and the undesirable amendments that might be added. Neither Ribicoff nor Brooks will oppose use of reorganization authority for STA.

Although we anticipate continued opposition from highway and transit interests and from some mayors, we believe we have a sufficient coalition of mayors, governors, regional officials, and State transportation officials to secure Congressional approval.

If you approve a reorganization plan we would hope to submit the plan to Congress in July.

Decision

_____ Option #1: Continue and expand administrative coordination, but do not merge FHWA and UMTA.

_____ Option #2: Merge FHWA and UMTA into a Surface Transportation Administration through reorganization plan. (DOT, OMB support)

_____ Option #3: Merge FHWA and UMTA into a Surface Transportation Administration through legislation.

APPENDIX A

SUMMARY OF MAJOR HIGHWAY AND TRANSIT ASSISTANCE PROGRAMS

<u>MAJOR PROGRAMS</u>	<u>1980 AUTHORIZATIONS (000)</u>	<u>RECIPIENT</u>	<u>PURPOSE</u>
Interstate Highways (FHWA)	3,800	States	Construction of defined 42,500 mile system.
Primary Highways (FHWA)	1,700	States*	Construction of arterial highways
Secondary Highways (FHWA)	550	States	Construction of collector highways in areas under 5,000 population
Federal Aid to Urban Systems (FHWA)	800	States (in areas over 200,000 population, funds designated for area must be spent in that area)*	Construction of collectors and arterials in areas over 5,000 population. Funds may be used for transit projects also.
Bridge Program (FHWA)	1,100	States	Bridge reconstruction and rehabilitation
Transit Capital Grants (UMTA) (discretionary - Section 3)	1,410	States, cities and public agencies	Major transit capital acquisition
Transit Operating Grants (UMTA) (formula - Section 5)	1,580	States, cities and public agencies	Transit operating subsidies and minor capital acquisition (e.g., minor bus purchases)
Interstate Transfers (UMTA)	700**	States (city mutual approval)	Construction of transit and highway projects from funds associated with Interstate segments to be withdrawn from the system.
Rural Transit (UMTA)	100	States	Operating and capital assistance for transit services in areas under 50,000 population.

* in areas over 50,000 population, State selects projects from those

** 1980 Appropriations Ceiling developed by MPO.

THE WHITE HOUSE

WASHINGTON

July 18, 1979

MEMORANDUM FOR: THE PRESIDENT
FROM: STU EIZENSTAT *Stu*
SUBJECT: Adams Memo on Surface Transportation
Administration Reorganization

I believe that the Surface Transportation Administration reorganization proposal has merit. It would improve the coordination and efficiency of our highway and transit programs.

My sense of the politics, however, is that the chances for passage of this plan are questionable at best. As with most reorganization proposals our support is lukewarm while our opposition, particularly from transit supporters, may be very strong.

On balance I recommend that we send the proposal up but that all efforts to win passage be handled by DOT. We cannot afford to expend White House resources on this second level issue.

THE WHITE HOUSE
WASHINGTON

7/12

DF - m

Ralph Schorken.

THE WHITE HOUSE
WASHINGTON

4/25

HOLD

Ralph Schlosker ²¹³²

Will revise McI/SE

memo to reflect target
goals & amt of \$.

Bay

4/30 - still w/ Ralph

5/15 soon

- late in
wk -

5/22 - done early

5/29 - Thurs/21



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

APR 10 1979

MEMORANDUM FOR: THE PRESIDENT

FROM: James T. McIntyre, Jr. *Jim*
Director

Stuart L. Eizenstat *Stu*
Assistant for Domestic Affairs
and Policy

SUBJECT: Urban Policy: Commitment to Labor Surplus Area
(LSA) Contract Set-Asides

Two separate laws and your Urban Policy expanded the program for giving preferential treatment for Federal contracts to firms located in areas of high unemployment.

We have met with members of the Northeast-Midwest Coalition (Congressmen LaFalce and Oberstar). While we have some remaining disagreements over extending the program into grants and defense, we are agreed that the civilian agencies have not done a creditable job in fulfilling the standing commitments.

Even the modest goal of 2% for FY 78 set by OMB's Office of Federal Procurement Policy was not met. New goals for FY 79 would channel \$1.3 billion to LSA firms but we will fall short again unless this program receives priority attention.

We feel the attached letter from you to agency heads will bolster our efforts.

Recommend you sign the letter.



APR 11 1979

MEMORANDUM FOR THE PRESIDENT

FROM: Paul Goulding *Paul E. Goulding*
Acting Administrator

SUBJECT: FY 1979 Labor Surplus Area Procurement Targets

In accordance with Executive Order 12073, Federal Procurement in Labor Surplus Areas, enclosed are the FY 1979 target figures for the labor surplus area procurement program. During the present fiscal year, we intend to set aside approximately \$1.2 billion in areas with high unemployment. While this amount is optimistic, it is one which we believe is attainable. It is approximately \$1 billion more than the Federal Government set aside under this program in FY 1978.

I have established target figures only for those civilian agencies which had substantial acquisition obligations susceptible for labor surplus set-aside consideration during FY 1978. These agencies account for approximately 97 percent of total dollar amount of civilian procurements. Also, I have written to each of the other agency heads, with annual procurement obligations over \$10 million, requesting their participation in this important program.

As directed by the Executive Order, we will submit a 6-month progress report during the month of May 1979 covering the period October 1978 through March 1979.

This targeting effort is expected to provide the momentum necessary to achieve a successful program. We will continue to monitor government-wide implementation.

Paul E. Goulding
Acting Administrator

Enclosure

FY 79 LSA TARGETS

(\$ Million)

	<u>Submitted by Agencies</u>	<u>Recommended by GSA</u>
ENERGY	100	200
TVA	200	200
NASA	20	90
GSA	110	140
HEW	91	100
VA	120	160
INTERIOR	130	130
TRANSPORTATION	30	45
AGRICULTURE	62.3	62.3
LABOR	12.7	12.7
COMMERCE	18	18
HUD	60.3	60.3
TREASURY	.5	3.3
EPA	20	20
JUSTICE	<u>1.5</u>	<u>3</u>
	976.3	1,244.6

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE HEADS OF

EXECUTIVE DEPARTMENTS AND AGENCIES

On August 16, 1978, I signed Executive Order 12073 covering Federal contracts in Labor Surplus Areas. On August 4, 1977, I signed Public Law 95-89, amending the Small Business Act. That legislation gives preference to firms performing in labor surplus areas and authorized, for the first time, total labor surplus area set-asides. The LSA program is mandated by law, P.L. 95-89, and must be implemented vigorously.

The LSA program is also an integral part of my National Urban Policy. In my March 27, 1978 statement of National Urban Policy I emphasized the need to increase Federal contract dollars going to areas of high unemployment.

I am gravely disappointed in the results to date shown by the Departments and Agencies. The set-aside percentages achieved fall short of even the very modest goals established for Fiscal 1978.

The Departments and Agencies have now received their goals for Fiscal Year 1979. I expect them to be met. I will hold each agency head responsible for meeting the goals and will follow up on this matter personally.

The Office of Federal Procurement Policy (OFPP), in the Office of Management and Budget, is responsible for the overall direction and oversight of policies affecting Federal procurement in LSA areas. The General Services Administration (GSA) is responsible for establishing with the agencies LSA procurement targets and reporting progress to me. Each department and agency should cooperate with the OFPP and GSA in following their guidance and carrying out their instructions.

THE WHITE HOUSE
WASHINGTON

7/12

CIA + DOT will be
submitting new memos.

Per Cardozo - it will
be \Rightarrow 30 days.

—
Tee

THE WHITE HOUSE
WASHINGTON

5/10/79

HOLD - various other agencies -
DIA, CIA, NRO will also be
requesting the same exemption
as NSA.

Cardozo will do one memo dealing
with all of them.

Kimmit in NSC is trying to get
the other agencies to get
their memos requesting exemptions
in for staffing here.

Rick

THE WHITE HOUSE
WASHINGTON

Hold til mtg Wed.

Cardozo will see if
DoD will alter
Their proposal
voluntarily

NRO
CIA
DIA

also to
submit

~~NSC~~
Kenneth - NSC

4970

R.L

THE WHITE HOUSE
WASHINGTON

5/4/79

Mr. President:

NSC concurs with Brown.

Rick



THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

26 APR 1979

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Exemption from Public Disclosure of Reports Filed
by National Security Agency Personnel Under the
Ethics in Government Act of 1978

I request that financial statements filed under the Ethics in Government Act of 1978 by civilian and military personnel holding positions in the National Security Agency be exempted from public disclosure. Section 205(a) of the Act provides that financial disclosure reports filed by any individual in the National Security Agency need not be made public "if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States."

Absent an exemption, the Act would require reports to be filed by all NSA supergrade employees and Flag or General military officers assigned to the Agency. Each of these individuals holds a senior position in Agency operations or management requiring access to highly sensitive compartmented intelligence information. Publication of the names and duties of any NSA personnel would make it difficult subsequently to assign those personnel to positions in which their identities as NSA representatives would need to be concealed. Congress intended that financial statements be exempt from public disclosure in these circumstances.

Public disclosure of the reports of NSA personnel and the accompanying description of their duties, as required by the Act, also would be inconsistent with existing legislation protecting from disclosure the identities of NSA personnel and information about the operations of the Agency. A criminal statute, 18 U.S.C. §798, makes it an offense to disclose to unauthorized persons classified information relating to NSA's cryptologic activities. Another statute, Pub. L. No. 86-36, specifically provides that no law "shall be construed to require the disclosure . . . of any information with respect to . . . the names, titles, salaries, or number of persons employed by NSA." The exemption of NSA officials' reports from public availability would, therefore, be consistent with the two statutes just described and is authorized by the Ethics in Government Act.

I respectfully request that you find the financial disclosure reports to be filed by NSA personnel under the Act shall be exempt from the public access provisions of the statute. A proposed memorandum for that purpose is enclosed.

Harold Brown

Enclosure
Proposed Memorandum of Findings

LIPSHUTZ/CAMPBELL
COMMENTS

THE WHITE HOUSE

WASHINGTON

May 3, 1979

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT J. LIPSHUTZ *RL*

SUBJECT: Harold Brown's Request for Exemption from Public Disclosure of Reports Filed by NSA Personnel under the Ethics in Government Act

I recommend that Secretary of Defense Harold Brown's proposal for a blanket exemption from the financial disclosure requirements of the Ethics in Government Act of 1978 for all NSA personnel be returned to him for further refinement.

The Ethics in Government Act does permit an exemption from public disclosure of financial statements filed by individual employees of CIA, DIA and NSA who qualify for a Presidential exemption. The Act does not contemplate the blanket exemption of all employees of an intelligence agency; it provides an exemption from public disclosure for individuals the identity of whom would compromise the national interest. For an individual to qualify for an exemption, the Act requires a Presidential finding that "due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States."

Secretary Brown's request for a blanket exemption does not explain why specified individuals should be exempted from disclosure, nor does it even propose that classes of NSA positions be exempted. His memorandum provides no information on any NSA position and even seeks exemption from disclosure for the two top NSA officials, even though their names and positions are publicly known and reported.

Under the Act, exemptions from disclosure for CIA, DIA and NSA employees are made by the President. Secretary Brown's memorandum does not provide sufficient information to allow you to grant a blanket exemption for an entire agency.

Refuse blanket exemption;
request specific information
to support individual exemptions

Grant blanket exemption
for all NSA employees

(Recommended)

Scotty Campbell concurs

Patte / Manner -

Pls send to Cardozo

Thanks,

Deey

	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND
	NO DEADLINE
	LAST DAY FOR ACTION -

ACTION
FYI

	ADMIN CONFID
	CONFIDENTIAL
	SECRET
	EYES ONLY

	VICE PRESIDENT
	EIZENSTAT
	JORDAN
	KRAFT
	LIPSHUTZ
	MOORE
	POWELL
	WATSON
	WEXLER
	BRZEZINSKI
	MCINTYRE
	SCHULTZE

	ARAGON
	BOURNE
	BUTLER
	H. CARTER
	CLOUGH
	COSTANZA
	CRUIKSHANK
	FALLOWS
	FIRST LADY
	GAMMILL
	HARDEN
	HUTCHESON
	JAGODA
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	PRESS
	RAFSHOON
	SCHNEIDERS
	VOORDE
	WARREN
	WISE

	ADAMS
	ANDRUS
	BELL
	BERGLAND
	BLUMENTHAL
	BROWN
	CALIFANO
	HARRIS
	KREPS
	MARSHALL
	SCHLESINGER
	STRAUSS
	VANCE

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 10, 1979

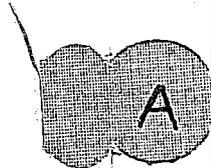
MEMORANDUM FOR: Rick Hutcheson

SUBJECT: Exemption for CIA from Public Disclosure
Provision of Ethics Act

The attached memorandum from Director Turner is forwarded to you for further staffing. The National Security Council Staff concurs with Director Turner's recommendation.

To the best of our knowledge, this is the final memorandum on this subject from a major component of the intelligence community.


Christine Dodson
Staff Secretary



The Director
Central Intelligence Agency



Washington, D. C. 20505

10 May 1979

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

I am writing to you at this time to request that you exercise your authority under the Ethics in Government Act of 1978 to exempt from public disclosure the financial reports filed under that Act by CIA personnel and to authorize the filing of additional reports as are necessary to protect the identities of such personnel. Not included in this request for an exemption are the reports of the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the designated agency official who is responsible for implementation of the Act within CIA. These three reports will be available for public inspection.

I wish to assure you that in reaching this conclusion I have not taken my responsibilities lightly, but have considered several alternatives and balanced the competing interests. In attempting to determine the extent to which public availability of the reports of CIA personnel would compromise the national interest, I have conducted an Agency-wide review over the past four months.

At the outset I must say that, without a doubt, the public disclosure of the reports of employees who are or in the future may be utilized in an undercover status would render cover arrangements ineffectual, lead to a severance of CIA relationships with some organizations that provide cover, and, quite likely, result in placing many Agency personnel and their families in immediate personal jeopardy. The same is true with respect to certain employees, past or present, who at one time were under cover. In addition, even employees never under cover nor likely to be would, with their families, be caused to assume an unacceptable degree of personal jeopardy which would not occur if they were employees of an agency engaged in less newsworthy activities.

I considered as one alternative an approach that would leave open to public disclosure the financial reports of CIA employees who could never be expected to assume a cover status and whose identities may not seem to require protection under the law. However, I rejected this option both because it would diminish the utility and flexibility now enjoyed in assigning Agency personnel for tours of duty and because it cannot be determined with any certainty that an employee would never be placed under cover at some later date. Moreover, since my responsibilities for the security of intelligence agencies and personnel and the exemption afforded under the Act extend beyond undercover individuals and encompass other sensitive information that would compromise the national interest, an exemption even for the reports of overt employees is important. One example of this is that official job descriptions of reporting officials must be released to the public along with the financial disclosure statements. These descriptions could reveal the internal organization and workings of the Agency, even if the officials involved could be identified openly as CIA employees. The risks inherent in such disclosures caused Congress, in 1949, to enact Section 6 of the Central Intelligence Agency Act, in order to implement the more general proviso of the National Security Act of 1947, "[t]hat the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." Section 6 specifically exempts the Agency from any law which requires "the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency." If the Director is to be able to carry out his statutory responsibility to protect intelligence sources and methods from unauthorized disclosure, information of this sort, which is specifically protected against disclosure by the Central Intelligence Agency Act of 1949, also warrants the protection afforded under the ethics law.

An additional factor leading me to my conclusion is the counterintelligence impact of financial disclosures by intelligence officials for the scrutiny not only of the American public but also of hostile clandestine services. While it is true that in some instances the names of Agency personnel already are being disclosed today, as for example in the open correspondence with Congress by members of my legal, legislative and intelligence community staffs, and in other contexts as well, these effects cannot be equated with the disclosure of detailed financial information. Disclosure of such personal information could prove a valuable asset indeed in assessment, targeting, or exploitation efforts directed at Agency employees by foreign intelligence services.

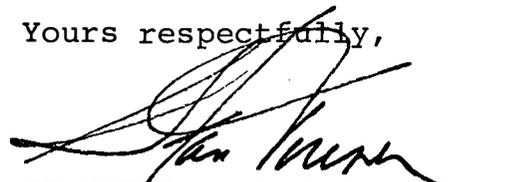
A further consideration is the undue personal jeopardy in which employees and their families could be placed without regard to their cover status or Agency duties. The constant publicity given to Agency activities and the controversy which some of this publicity generates make it likely that publicly available financial disclosure statements of Agency employees will be publicized. Such publicity will make those employees possible targets not only for terrorists or ordinary criminals, but particularly for cranks and mentally unstable individuals who constantly blame the Agency for their problems, whether real or imagined.

Finally, I considered, and rejected, the alternative of permitting the public availability of the reports of a handful of the most senior, and most visible, Agency officials. An approach of this nature, I believe, falls victim to the same considerations applicable to other employees and, indeed, is exacerbated because of the access of these senior employees to our most vital secrets.

Accordingly, I believe that the publication of the names and financial statements of senior Agency officials would adversely affect the security of U. S. intelligence collection efforts generally and, as a result, compromise the national interest. In view of these considerations, I am hopeful you will agree to a total exemption, except as to the three reports indicated. If you do agree, I recommend that you sign a letter such as that enclosed in draft to the Director, Office of Government Ethics, Office of Personnel Management, indicating your decision to exempt from the public disclosure provisions of the law those reports filed by present, past, or future employees of the CIA, and of individuals assigned for duty with CIA from elsewhere in the Federal Government, and to authorize the filing of additional reports as may be necessary to protect the identities of such individuals in accordance with the provisions of the Ethics in Government Act.

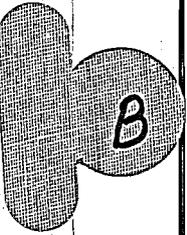
If you approve my recommendation, CIA personnel of course will remain fully subject to the filing and other requirements of the Act. They will become exempt only from the Act's provisions relating to the public availability of financial reports.

Yours respectfully,



STANSFIELD TURNER

Enclosure



Mr. Bernhardt K. Wruble
Director, Office of Government Ethics
Office of Personnel Management
Washington, D. C. 20415

Dear Mr. Wruble:

This is to inform you that I hereby exercise my authority under Section 205 of the Ethics in Government Act of 1978 to exempt from the public disclosure provisions of that Act the financial reports submitted by employees of the Central Intelligence Agency.

I authorize this exemption after finding that, due to the nature of the offices and positions held by such individuals, public disclosure of their financial reports would, by revealing their identities or other sensitive information, compromise the national interest of the United States. This exemption applies to the reports submitted by any current employee, former employee, and any individual detailed or assigned for duty with the Central Intelligence Agency. The exemption does not apply, however, to the reports of the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Agency official designated to administer the Act, which will be submitted to you for review and made available for public inspection.

In addition, I am authorizing the filing of such additional reports as are necessary to protect the identities of CIA personnel required to file reports under the Act because I have found that such additional filings are necessary in the national interest. Such additional reports will be prepared in accordance with procedures established by the CIA official designated to administer the Act.

My decision of course does not relieve any CIA official of an obligation to file a complete financial report with the designated Agency official for review and adjudication in accordance with the provisions of the Act.

Jimmy Carter

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

#2786

May 10, 1979

MEMORANDUM FOR:

RICK HUTCHESON
STAFF SECRETARY
THE WHITE HOUSE

SUBJECT:

Exemption from Public Disclosure
of Reports Filed by Department
of Defense Personnel (Less NSA
Personnel) Under the Ethics in
Government Act of 1978

hutter
The attached memorandum from Secretary Brown is forwarded to you for staffing. The National Security Council Staff concurs with Secretary Brown's recommendation.

Ch
Christine Dodson
Staff Secretary

Attachment



THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

7 MAY 1979

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Exemption from Public Disclosure of Reports
Filed by DoD Personnel (Less NSA Personnel)
Under the Ethics in Government Act of 1978

I request that financial statements filed under the Ethics in Government Act of 1978 by civilian and military personnel holding certain sensitive positions in the Department of Defense be exempted from public disclosure. Section 205(a) of the Act provides that financial disclosure reports filed by any individual engaged in intelligence activities within the DoD need not be made public "if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national security of the United States." The individuals whose financial statements will be maintained in confidence if you so direct occupy sensitive positions in the Defense Intelligence Agency; foreign intelligence and counter-intelligence elements of the Military Departments; and offices within the Department for the collection of specialized intelligence through reconnaissance programs. The reports of certain individuals within the Office of the Secretary of Defense who have extensive managerial responsibility with respect to operational intelligence assets, or decision-making responsibility in the area of intelligence policy, would also be exempted, on a case-by-case basis, from public disclosure under Section 205(a) or the Ethics in Government Act.

Absent an exemption, the Act would require reports to be filed by all DoD supergrade employees and flag or general military officers who occupy sensitive operational or policymaking positions within the Department of Defense's intelligence-gathering structure. Many of the intelligence officers who would be covered by this exemption are or may be undercover in the future. Their identity as intelligence officers must therefore remain confidential.

*Staff to 2786
Bob Kimmitt*

The other individuals within the Department whose financial statements would be kept confidential are managers of operational intelligence assets, or individuals charged with the responsibility to make intelligence-related policy. These officials have access to highly sensitive compartmented intelligence information and daily make decisions that affect intelligence gathering and analysis on behalf of the U.S. Public release of information concerning their assets would, in some cases, expose them to increased risks of harassment and to financial threats against their interests or those of their families. There is also a possibility of infiltration of foreign agents into organizations with which these individuals are associated. Any such harmful activities based on these individuals' financial disclosures would pose a serious threat to national security -- and to the welfare of the individuals involved.

I respectfully request that you find that the financial disclosure reports to be filed by Department of Defense intelligence officials under the Act shall be exempt from the public access provisions of the statute. A proposed memorandum for that purpose is enclosed.

Harold Brown

Enclosure
Proposed Memorandum of Findings

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Exemption of DoD Personnel (Less NSA Personnel)
From the Financial Disclosure Requirements of
the Ethics in Government Act

Pursuant to the authority vested in me under Section 205(a) of Public Law 95-521, the Ethics in Government Act of 1978, I hereby find that the disclosure of reports filed by personnel holding positions in the Defense Intelligence Agency, the offices within the Department of Defense for the collection of specialized intelligence through reconnaissance programs, the foreign intelligence and counterintelligence elements of the Military Services, and the Office of the Secretary of Defense with responsibility for operational intelligence assets or decision-making responsibility, would compromise the national interest of the United States. The reports of such personnel shall be maintained in confidence and shall be disclosed only as the Secretary of Defense may direct.

ID 791701

THE WHITE HOUSE

WASHINGTON

DATE: 30 APR 79

FOR ACTION: CHAIRMAN CAMPBELL

BOB LIPSHUTZ

ZBIG BRZEZINSKI

attached
usc esnum

attached
with comment by [signature]

Memo being re typed w/ [signature]

INFO ONLY: TIM KRAFT

FRANK MOORE (LES FRANCIS)

ARNIE MILLER

SUBJECT: BROWN MEMO RE EXEMPTION FROM PUBLIC DISCOLSURE OF REPORTS
FILED BY NATIONAL SECURITY AGENCY PERSONNEL UNDER THE
THICS IN GOVERNMENT ACT OF 1978

++++
+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +
+ BY: 1200 PM WEDNESDAY 02 MAY 79 +
++++

ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

United States Government
MEMORANDUM

**Office of
Personnel Management**

Subject: Application on behalf of the National Security Agency for exemption from public financial disclosure under the Ethics in Government Act of 1978 ("the Act")

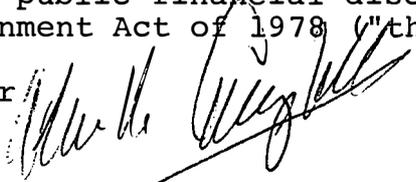
Date: **MAY 2 1979**

From: Alan K. Campbell, Director

To: Rick Hutcheson

Reply Refer To:

Your Reference:



The memorandum of the Secretary of Defense dated April 26, 1979, requests a blanket exemption for personnel of the National Security Agency from public financial disclosure under the Ethics in Government Act of 1978 ("the Act"). I have discussed this matter with the Director of the Office of Government Ethics, and I concur in the following view.

Section 205(a) of the Act does not appear to contemplate the blanket exemption of all persons in the specified intelligence agencies, but rather seems to require consideration of individual positions. Specifically, the Act requires a Presidential finding that "due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States." (Underscore Added.) The legislative history is to the same effect; see Congressional Record, Sept. 27, 1979, at H.10870-71. Although it may not be necessary to examine an agency strictly on a position-by-position basis, nevertheless at least groups of positions should be examined by class to determine whether the statutory criteria have been met.

The submission of the Secretary of Defense contains no information on the positions involved. Indeed, there is a suggestion that certain positions would not qualify under the statute in the contention that publication of the names and duties of "any NSA personnel would make it difficult to reassign those persons to offices in which their identities as NSA personnel would need to be concealed." But even if potential reassignment to a sensitive position satisfied the Act's apparent requirement that current status control, there is no demonstration that such a reassignment of every member of the agency is a realistic prospect.

The provisions of the other statutes cited in the Secretary's memorandum would not appear to alter the procedure prescribed in section 205(a) of the Act for dealing with the intelligence agencies' legitimate needs for exemption from public disclosure.

Perhaps a blanket exemption will ultimately be the correct result. Our difficulty is that the current submission does not support such a result.

The Act contemplates that exemptions for the CIA, DIA, and NSA would be made by the President and not by the Office of Personnel Management or the Office of Government Ethics. Accordingly, the foregoing is provided as a consultative view under Section 402(a) of the Act.

THE WHITE HOUSE

WASHINGTON

May 3, 1979

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT J. LIPSHUTZ *RJL*

SUBJECT: Harold Brown's Request for Exemption from Public Disclosure of Reports Filed by NSA Personnel under the Ethics in Government Act

I recommend that Secretary of Defense Harold Brown's proposal for a blanket exemption from the financial disclosure requirements of the Ethics in Government Act of 1978 for all NSA personnel be returned to him for further refinement.

The Ethics in Government Act does permit an exemption from public disclosure of financial statements filed by individual employees of CIA, DIA and NSA who qualify for a Presidential exemption. The Act does not contemplate the blanket exemption of all employees of an intelligence agency; it provides an exemption from public disclosure for individuals the identity of whom would compromise the national interest. For an individual to qualify for an exemption, the Act requires a Presidential finding that "due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States."

Secretary Brown's request for a blanket exemption does not explain why specified individuals should be exempted from disclosure, nor does it even propose that classes of NSA positions be exempted. His memorandum provides no information on any NSA position and even seeks exemption from disclosure for the two top NSA officials, even though their names and positions are publicly known and reported.

Under the Act, exemptions from disclosure for CIA, DIA and NSA employees are made by the President. Secretary Brown's memorandum does not provide sufficient information to allow you to grant a blanket exemption for an entire agency.

Refuse blanket exemption;
request specific information
to support individual exemptions

Grant blanket exemption
for all NSA employees

(Recommended)

Scotty Campbell concurs