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21-F-1059

Doc 001

OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, DC 20301

NOV 21 2008

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES**

SUBJECT: Updated Guidance for Engagement with the President-Elect's Transition Team (PETT)

(U) Pursuant to my memorandum of November 19, 2008, the following is the first round of additional guidance regarding the disclosure of sensitive information.

(b)(1); Sec. 1.4(a)

~~Classified by Multiple Sources~~
~~Declassify 21 November, 2010~~



OSD 77864-08



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(U) All procedures established in prior guidance memoranda must continue to be followed and all contacts between PETT members and DoD shall be through the undersigned or the appropriate Transition Assistance Coordinators (TACs) or members of the Transition Task Force. These procedures are intended to enhance the ability of the PETT to prepare for the next administration consistent with the ongoing responsibilities of the current leadership team in the Department. Questions should be addressed to

(b)(6)

(b)(6)

@sd.mil,

(b)(6)



Robert Rangel

The Special Assistant to the
Secretary and Deputy Secretary of Defense

~~SECRET~~



THE SPECIAL
ASSISTANT

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OFFICE OF THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

21-F-1059

Doc 002

NOV 19 2008

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF
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- REFERENCES:
- (a) Executive Order 13476, "Facilitation of a Presidential Transition," October 9, 2008
 - (b) "Memorandum of Understanding Regarding Transition Procedures, Identification of Transition Contacts, and Access to Non-Public Information and Transition Information" between the Chief of Staff to the President and the Designated Chair of the PETT, November 8, 2008
 - (c) White House "Policy Statement Concerning Identification of Transition Contacts and Information Disclosure to Transition Personnel," November 12, 2008
 - (d) Counsel to the President Memorandum, "Transition Guidance – Issues to Consider When Responding to Requests for Non-Public Information," November 12, 2008
 - (e) Secretary of Defense Memorandum, "Orderly Transition of DoD Leadership," August 7, 2008
 - (f) DoD Directive 5195.76, "Transition of Administration Appointees and Other Officials," August 8, 2008

SUBJECT: Engagement with the President-Elect's Transition Team (PETT)

Pursuant to References (a) through (f) the Department of Defense will provide the maximum practicable assistance permissible under the law and White House guidance to members of the DoD PETT supporting the transition to the new administration. The PETT members who are authorized to interact with DoD are listed at Attachment 1.

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OSD 14582-08



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Attachment 1 also provides the focus areas of the individual PETT members and it will be updated as necessary to reflect changes provided by the White House and/or the PETT. Prior to your scheduled interaction with the PETT, please consult Attachment 1 to ensure that the PETT member(s) is properly designated for your focus area and has the appropriate clearance to receive the information.

Public information may be provided to authorized PETT members. Such disclosures need not be logged. Non-public information in any form, which includes classified and FOUO information, can only be provided to PETT members with the appropriate level security clearance who are listed in Attachment 1. Additionally, the following recordkeeping is required:

- Documents containing non-public information shall be logged by date provided, general subject matter(s), name of the DoD official providing the document(s), and the name of the PETT member receiving the document(s). If more than one document is provided during the same day to the same PETT member, only one log entry will be necessary. It will not be necessary to log subsequent oral discussions regarding such document(s).
- Information provided orally but not contained in document(s) provided to a PETT member shall be logged by date of conversation or meeting, the general subject matter(s), the name of the senior participating DoD official, and the name of the senior participating PETT member. If more than one conversation or meeting involving those subject matter(s) are held, then the range of dates on which they occurred may be recorded, rather than making separate log entries.
- Reports of disclosure of non-public information to the PETT must be provided by the Component TAC concerned at the close of business each day by email to (b)(6)@sd.mil (b)(6)
(b)(6) Classified reports should be e-mailed to (b)(6) at
(b)(6)@sd.smil.mil. Reports should be in the format at
Attachment 2.

At the present time, disclosure of sensitive information in the following categories will not be provided until further guidance is issued: current military operations; special access programs; pre-decisional budget information; contingency operations/plans; personnel records; privileged and other legally protected information; competition sensitive acquisition information; and active National Security Council policy deliberations.

All contacts between PETT members and DoD shall be through the undersigned or the appropriate TACs or members of the Transition Task Force. These procedures are intended to enhance the ability of the PETT to prepare for the next administration

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consistent with the ongoing responsibilities of the current leadership team in the Department. Questions should be addressed to (b)(6)@sd.mil,

(b)(6)



Robert Rangel

The Special Assistant to the
Secretary and Deputy Secretary of Defense

Attachments: As stated

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(b)(6)

A	TS/Interim SCI	Center for A New American Security	Former Clinton USDP official
P	None	Harvard Kennedy School	Former Clinton DSD
	Interim TS/Interim SCI	Center for a New American Security	Former Clinton USDP official
B	Unconfirmed	Harvard University	Former Clinton USDP official
A	Unconfirmed	George Mason University	Former Bush II USDP official
C	TS/Interim SCI	DNC/ Obama for America	Former Navy Officer
C	Interim TS/Interim SCI	Paul, Weiss, Rind, Wharton & Garrison	Former AF General Counsel
L	TS/Interim SCI	Self-Employed	Former Deputy NSA
R	Unconfirmed	Senate Appropriations Committee	Former USD (C) Staff (Clinton, Bush II)
S	None	State of North Carolina	
M	None	Obama for America	Former Army CAPT; Obama Advisor
J	TS/Interim SCI	Senator Hillary Rodham Clinton	Lieberman staff; counsel to DoJ Intl Competition Advisory Committee
D	TS	Stanford University/Council on Foreign Relations	Former Clinton USDP DASD
B	TS	Raytheon	IAF General
	Unconfirmed	Steppe & Johnson	Senior National Security Adviser to Sen Majority Leader Harry Reid
O.	Unconfirmed	Center for Strategic and Budgetary Assessments	Former SecNav Danzig assistant

but individual has not had contact with PETT DoD review leads.

THE WHITE HOUSE
WASHINGTON

November 12, 2008

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: JOSHUA B. BOLTON
CHIEF OF STAFF

SUBJECT: MEMORANDUM OF UNDERSTANDING AND POLICY
STATEMENT REGARDING TRANSITION PROCEDURES

The purpose of this memorandum is to provide additional guidance for contact with President-elect Obama's Transition Team. Attached is a copy of a Memorandum of Understanding (MOU) regarding transition procedures and a policy statement to provide additional guidance in implementing the MOU.

Please review these documents carefully and distribute to your staff coordinating transition matters for your Department or Agency. Adherence to the policies and procedures outlined in the MOU and policy statement is critical to protecting the prerogatives and interests of the outgoing and incoming Administrations while ensuring an orderly transition.

If you have any questions about these documents, please contact Ross Kyle in the White House Transition Coordinating Office at (b)(6)@who.eop.gov or (b)(6).

OSD 14339-08



POLICY STATEMENT CONCERNING IDENTIFICATION OF TRANSITION CONTACTS AND INFORMATION DISCLOSURE TO TRANSITION PERSONNEL

To effect an orderly transition, the President-elect and his team must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office. This policy statement addresses the procedures for identifying individuals charged with transition responsibilities and for disclosing information to transition personnel. It implements a Memorandum of Understanding between the Chief of Staff to the President (the "Chief of Staff") and the designated Chair of the President-elect's Transition Team (the "Chair of the PETT").

I. Identification of Transition Contacts

In order to protect the interests of the President and the President-elect and to avoid unnecessary interference with ongoing government operations, it is important that Departments and Agencies verify that the individuals who seek access to government information or employees are, in fact, authorized members of the PETT. Consequently, the Departments and Agencies should, before they have any dealings with individuals representing themselves as members of the PETT, verify that the individuals' names appear on the official register of the PETT. The Chair of the PETT (or his designee) has agreed to provide to the Chief of Staff the names of all authorized individuals (including Transition Team leads for each Department and Agency), along with written assurance that the individuals have agreed to abide by the Transition's Code of Ethical Conduct and have thereby represented that they have no conflict of interest that precludes them from working on the matters they have been assigned to work on by the PETT. The Chief of Staff (or his designee, Ross Kyle, Special Assistant to the President for Cabinet Liaison) will forward to each Department or Agency the names of PETT members authorized to work with that Department or Agency and provide updated information as necessary. Only PETT members authorized to work with specific Departments or Agencies may receive assistance or information from those Departments or Agencies. Any unauthorized communication by a PETT member or a person purporting to be a PETT member should be referred to the designated Department or Agency contact person responsible for coordinating transition matters on behalf of that Department or Agency; the Department or Agency contact person should then inform the White House Transition Coordinating Office.

II. Transition Point of Contact

The official transition points of contact designated by each Department and Agency will serve as the points of contact for providing other contacts, information, and services to authorized members of the PETT. Accordingly, any meetings between Administration personnel and PETT members must be authorized by the contacts for the relevant Department or Agency, and any materials that may be provided to PETT members must be authorized by those contacts.

III. Disclosure of Information Not Available to the General Public

As a general matter, most of the information needs of the PETT should be met by providing access to public information. In some circumstances, it likely will be necessary to provide

specified transition personnel with access to information or records not available to the general public. Such information may be protected by constitutional, statutory, or common law privileges, or its distribution may otherwise be restricted by law. In addition, providing such information may raise issues under the Government's standards of conduct, which preclude government employees from allowing the improper use of non-public information to further the private interests of another through knowing unauthorized disclosure. Care should also be taken to ensure that PETT members abide by any applicable nondisclosure requirements of each Department or Agency.

Department and Agency legal counsel will receive from Fred Fielding, Counsel to the President, a memorandum setting forth guidance on certain issues to consider when responding to requests for non-public information. Please discuss with agency counsel any questions about the propriety of disclosing non-public information in particular instances.

The following procedures should be observed in the event that a Department or Agency decides to provide non-public information to authorized members of the PETT.

A. General Procedures for Disclosure of Information Not Available to the General Public

Before providing non-public information to a member of the PETT, Departments and Agencies should expeditiously:

- Brief the PETT member on the importance of maintaining the constitutional, statutory and/or common law safeguards afforded the non-public information.
- Clearly label non-public records provided to PETT personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the PETT.
- Specifically advise PETT members that non-public information provided to them cannot be shared with other transition personnel unless those other personnel satisfy the requirements for access to that information set forth in the Memorandum of Understanding between the Chief of Staff and the Chair of the PETT.
- Require the PETT member to sign a statement representing that, to the member's knowledge, he or she has no financial interest or imputed financial interest that would be directly and predictably affected by a particular matter to which the information is pertinent.¹ It is sufficient to satisfy this requirement for the PETT member to pledge in writing that upon learning of any such conflict of interest, he or she will recuse him or herself from the

¹ The terms "financial interest," "imputed financial interest," "direct and predictable effect," and "particular matter" have the same meaning in this memorandum as in 18 U.S.C. § 208 and the regulations interpreting those terms set out in 5 C.F.R. parts 2635 & 2640. A financial interest for which 5 C.F.R. part 2640 provides a waiver will not block access to the information.

particular matter that raises the conflict. The Department or Agency may require such additional information from the PETT member as the Department or Agency deems necessary, in light of the proposed disclosure.

- Where advisable, prohibit the PETT member from removing records containing non-public information from the offices of the Department or Agency.

Upon request from the Executive Office of the President, a Department, or an Agency, the PETT will provide a written statement indicating that PETT member's need for access to the non-public information. The statement of need will be provided by the Chair of the PETT (or his designee) to the Chief of Staff (or his designee, Ross Kyle, Special Assistant to the President for Cabinet Liaison).

Department or Agency personnel must make a written record of any disclosure of non-public information to a member of the PETT, including when the disclosure was made, the form of disclosure (e.g., in written or oral form), a general description of the categories of information disclosed, the person(s) to whom the disclosure was made, the Administration personnel who approved the disclosure, the Administration personnel who provided the information, and a summary of the steps taken to protect the information from subsequent unauthorized disclosure.

B. Classified Information

Before providing any classified information to a member of the PETT, pursuant to Executive Order 12958, as amended, it must be established:

- That the member has the security clearances necessary to have access to that information, and has the requisite need to know, and
- That the member has signed the requisite non-disclosure agreement.

C. Attorney-Client Material

Information protected by the attorney-client privilege should not be disclosed without the express approval of the transition point(s) of contact for the relevant Department or Agency after consultation with the general counsel or other chief legal officer for that Department or Agency and other officials as appropriate.

D. Privacy Act Material

Consistent with the requirements of the Privacy Act, Departments and Agencies should not disclose any Privacy Act records or information including official personnel folders, performance evaluation information, information from a resume, or Form SF-171 Personnel Qualification Statement, without the express written consent of the affected employee.

E. Material Subject to Other Statutory and Legal Protections

The above list does not exhaust the statutory and legal protections that may limit disclosure of non-public information. Departments and Agencies should, of course, abide by other applicable legal and prudential restrictions on disclosure of information.

F. Issues Relating to This Policy Statement

Any issues between members of the PETT and Departments and Agencies should be addressed, in the first instance, by discussion between the Department's or Agency's transition contacts and the PETT designated Transition Team leads for the Department or Agency. Matters that cannot be resolved informally should be referred to the Chief of Staff (or his designee, Blake Gottesman, Assistant to the President and Deputy Chief of Staff for Operations).

**MEMORANDUM OF UNDERSTANDING REGARDING TRANSITION PROCEDURES,
IDENTIFICATION OF TRANSITION CONTACTS, AND ACCESS TO NON-PUBLIC
GOVERNMENT AND TRANSITION INFORMATION**

- (1) The Chief of Staff to the President (the "Chief of Staff") and the designated Chair of the President-elect's Transition Team (the "Chair of the PETT") agree, on behalf of, respectively, the Administration and the PETT, that, in order to effect an orderly transition of power in accord with the Presidential Transition Act, as amended, the Intelligence Reform and Terrorism Prevention Act of 2004, and Executive Order 13476, the President-elect and certain of his associates must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office.
- (2) Executive Order 13476, Facilitation of a Presidential Transition, provides that the Presidential Transition Coordinating Council will "assist the President-elect by making every reasonable effort to facilitate the transition between administrations."
- (3) The Chief of Staff and the Chair of the PETT enter into this memorandum of understanding in order to establish an orderly process for identifying individuals charged with transition responsibilities, to ensure that the Government's and the Office of the President-elect's standards of conduct are observed, to protect the confidentiality of non-public government information made available to the PETT during the transition period, to preserve the constitutional, statutory, and common law privileges that attach to such information in the possession of the Executive Branch, and to protect the confidentiality of transition information made available to the Government.
- (4) The Chair of the PETT (or his designee) will furnish in writing to the Chief of Staff the name of each individual authorized by the PETT to work with the Executive Office of the President (EOP) and particular Departments and Agencies, including the designation of a Transition Team lead or leads for the EOP and each Department or Agency. The Chair of the PETT (or his designee) will also indicate in writing that each individual on the list has met the applicable public disclosure requirements of the Presidential Transition Act, as amended, has agreed to abide by the Transition's Code of Ethical Conduct, and has thereby represented that he or she has no conflict of interest that precludes the individual from working on the matters the individual has been assigned to work on with the EOP or the relevant Department or Agency. These lists will be updated as new members are added to the teams. The Chief of Staff (or his designee) will promptly forward these names to the appropriate Departments, Agencies, and EOP offices. The Chief of Staff (or his designee) will also provide in writing to the Chair of the PETT the names of individuals in the Departments, Agencies, and specified offices in the EOP who will serve as contacts responsible for coordinating transition matters on behalf of those Departments, Agencies, or specified EOP offices. The Chief of Staff (or his designee) is the contact person responsible for coordinating transition matters on behalf of those offices of the EOP for which contact persons have not otherwise been designated.

- (5) The Administration will conduct its transition activities with the PETT through the contacts authorized by the Chief of Staff and the Chair of the PETT. The authorized contacts for the PETT will initiate transition activities with a particular Department, Agency, or specified office of the EOP through the individual(s) at that Department, Agency, or EOP office designated by the Chief of Staff to coordinate transition activities for that Department, Agency, or EOP office. The authorized contacts for the PETT will initiate transition activities involving any other office of the EOP through the Chief of Staff (or his designee).
- (6) Each Department and Agency will use best efforts to locate and set aside available space in their offices for the duration of the transition for use by authorized members of the PETT to facilitate review of information provided by the Department or Agency and communication with authorized contacts at such Department or Agency. Each Department or Agency will provide, to the extent practicable, appropriate support to and equipment for use by the PETT in such office space. The exact details of space and equipment will be worked out between the PETT lead(s) for that Department or Agency and the individual(s) at that Department or Agency designated by the Chief of Staff.
- (7) In order to facilitate a smooth transition, it likely will be necessary in some circumstances to provide specified transition personnel with access to non-public information that may be protected by constitutional, statutory, or common law privileges, and material whose distribution is otherwise restricted by law. The Chief of Staff has advised the Chair of the PETT that Administration personnel will take the steps required by law, including the Executive Branch standards of conduct, the Privacy Act, and the attorney-client privilege, to protect such information. In particular, a government employee may not allow the improper use of non-public information to further his own private interest or that of another by knowing unauthorized disclosure. 5 C.F.R. § 2640. The PETT recognizes that there is some information that the Department or Agency may not be able to provide in order to comply with statutory requirements or otherwise preserve applicable privileges.
- (8) In order to facilitate a smooth transition and provide a mechanism for expeditiously addressing any concerns, including ethical, privacy, and privilege concerns, regarding access to non-public information as described in paragraph (7), the Chief of Staff and the Chair of the PETT will each designate in writing an individual or individuals authorized to confer in order to resolve such concerns informally.
- (9) The Chief of Staff further advises that, before providing any classified information to a member of the PETT, pursuant to Executive Order 12958, as amended, it must be established:
- That the member has the security clearances necessary to have access to that information, and the requisite need to know, and
 - That the member has signed the requisite non-disclosure agreement.

(10) The Chief of Staff advises that, before providing non-public information (including classified information) as described in paragraph (7) to a member of the PETT authorized to receive it under the guidelines established in this memorandum, Departments and Agencies will expeditiously:

- Brief the Transition Team member on the importance of maintaining the constitutional, statutory, and/or common law safeguards afforded the non-public information.
- Clearly label non-public records provided to Transition Team personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the Transition Team.
- Specifically advise Transition Team members that non-public information provided to them cannot be shared with other Transition Team personnel unless those other personnel satisfy the requirements for access to that information set forth in this memorandum.
- Require the Transition Team member to sign a statement representing that, to the member's knowledge, he or she has no financial interest or imputed financial interest¹ that would be directly and predictably affected by a particular matter to which the information is pertinent. The Department or Agency may require such additional information from the Transition Team member as the Department or Agency deems necessary, in light of the proposed disclosure.
- Where advisable, prohibit the Transition Team member from removing records containing non-public information from the offices of the Department or Agency.


Upon request from the EOP, a Department, or an Agency, the PETT will provide a written statement indicating that Transition Team member's need for access to the non-public information. The statement of need will be provided by the Chair of the PETT (or his designee) to the Chief of Staff (or his designee).

Department or Agency personnel shall make a written record of any disclosure of non-public information made to a member of the PETT.


(11) It likely will be necessary for members of the PETT to share with the Administration information that they wish to be kept confidential. Accordingly, to the extent permitted by law, the Administration agrees to protect the confidentiality of information provided to it on a confidential basis by the PETT.

¹ The terms "financial interest," "imputed financial interest," "direct and predictable effect," and "particular matter" have the same meaning in this memorandum as in 18 U.S.C. § 208 and the regulations interpreting those terms set out in 5 C.F.R. parts 2635 & 2640. A financial interest for which 5 C.F.R. part 2640 provides a waiver will not block access to the information.

- (12) Any disagreements between the Administration and the PETT concerning the subject matter of this memorandum that are not resolved informally pursuant to paragraph (8) or otherwise will be referred by the Administration to the Chief of Staff (or his designee) and by the PETT to the Chair of the PETT (or his designee).
- (13) To the extent permitted by law, the Administration with respect to its staff members and the PETT with respect to its transition team members, state that they intend to take appropriate steps to discipline any person who fails to comply with the terms of this agreement.


Joshua B. Bolten
Chief of Staff to the President

Dated: 11/8/08



John Podesta
Designated Chair of the
President-elect's Transition Team

Dated: 11/8/08

THE WHITE HOUSE
WASHINGTON

November 5, 2008

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: JOSHUA B. BOLTEN 
CHIEF OF STAFF

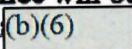
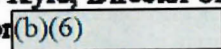
SUBJECT: TRANSITION PROCEDURES

Last night, President Bush called President-elect Obama to congratulate him on his victory and to emphasize the Administration's commitment to a smooth and effective transition. This requires that we work closely with President-elect Obama's Transition Team to ensure the transfer of power is as seamless as possible. This memorandum provides guidance for contact with the President-elect's team.

The White House Transition Coordinating Office (WHTCO) will serve as a central clearinghouse for contact between the outgoing and incoming administrations. Specifically, as the President-elect's Transition Team (PETT) notifies my office of those Transition Team members authorized to contact an agency, the WHTCO will inform the relevant agency's transition coordinator, in writing, of those individuals authorized for contact. Please alert your staff that contacts with the President-elect's Transition Team should be limited to those persons identified to your office by the WHTCO. If you are contacted by someone asserting association with the President-elect's Transition Team and that individual has not yet been identified to you by the WHTCO, please refer the individual to the WHTCO.

I will soon forward a Policy Statement Concerning Information Disclosure to Transition Personnel. The statement will underscore the need to limit contact to authorized members of the PETT; it will also outline the steps necessary to ensure that careful consideration is given to materials provided to the PETT. Your attention to this Policy Statement will be essential to protecting the prerogatives and interests of the outgoing and incoming Administrations while ensuring an orderly transfer of information.

This transition will require our best efforts, dedication, and professionalism. On behalf of the President, I thank you and your team for your continued service.

The White House Transition Coordinating Office will be headed by Ross Kyle, Director of Cabinet Liaison. The Office can be reached at (b)(6)  @who.eop.gov or (b)(6) 

OSD 14157-08

