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Last Updated: 07/12/2023

THE WHITE HOUSE
WASHINGTON

July 8, 1986

Subject
JMS/FOIA/
Kissinger
Commission

MEMORANDUM FOR JAY B. STEPHENS

FROM: J. MICHAEL SHEPHERD *JMS*
SUBJECT: FOIA Request Regarding Kissinger Commission

Brenda Reger's attached memorandum of June 3, 1986, asked for a meeting with someone in this office to discuss the attached referral from the State Department of a Freedom of Information Act request for documents produced by the National Bipartisan Commission on Central America ("Kissinger Commission"). I have discussed this issue with her and reviewed the attached documents. Without an opportunity to review the relevant documents, Brenda advised State in 1984 that the Commission's papers were Presidential records not subject to the FOIA.

The Kissinger Commission was established by the President by the attached Executive Order 12433. The Commission was established "in accordance with the provisions of the Federal Advisory Committee Act" to "study the nature of United States interests in the Central American region, . . . provide advice to the President, the Secretary of State and the Congress, . . . and report to the President."

The Federal Advisory Committee Act provides that, subject to the FOIA, requests for documents "which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying . . . until the advisory committee ceases to exist." 5 U.S.C. app. 2 § 10(b).

The request was submitted before the Commission ceased to exist. State has possession of the documents, prior to their accession by the National Archives. Accordingly, I believe that the State Department should process the request under the FOIA. As is our practice, State will refer White House documents for our review and comments on their suitability for release. Therefore, we will have an opportunity to recommend that State withhold privileged or exempt materials.

Attached for your review and signature is a memorandum to Brenda advising that we believe State should process this request under the FOIA.

Attachments

THE WHITE HOUSE

WASHINGTON

July 8, 1986

MEMORANDUM FOR BRENDA S. REGER

DIRECTOR

INFORMATION POLICY/SECURITY REVIEW

FROM:

JAY B. STEPHENS

DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT:

Armstrong FOIA Request Regarding Kissinger
Commission

As you have discussed with Michael Shepherd, this office has reviewed the attached documents referred to you by the State Department in connection with the Freedom of Information Act request of Scott Armstrong for materials developed by and for the National Bipartisan Commission on Central America ("Kissinger Commission").

The Kissinger Commission was established by the President by Executive Order 12433 "in accordance with the provisions of the Federal Advisory Committee Act" to "study the nature of United States interests in the Central American region, . . . provide advice to the President, the Secretary of State and the Congress, . . . and report to the President." The Federal Advisory Committee Act provides that, subject to the FOIA, requests for documents "which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying . . . until the advisory committee ceases to exist. 5 U.S.C. app. 2 § 10(b).

Because the request was submitted before the commission ceased to exist, and the State Department has possession of the documents, we believe that the State Department should process the request under the FOIA. As is our practice, we would appreciate it if State would refer White House documents for our review and comments on their suitability for release.

Thank you for bringing this matter to our attention.

Attachments

Code of federal regulations

The President

3

1983 COMPILATION

AND

PARTS 100 AND 101

Revised as of January 1, 1984



Commerce and Trade may request, and at such time as the Secretary of Commerce shall designate.

(e) The Secretary of Commerce shall provide an annual report to the President, through the Cabinet Council on Commerce and Trade, on activities under this Order and agency implementation of minority business development programs.

Sec. 2. Minority Business Development Responsibilities of Federal Agencies. (a) To the extent permitted by law and consistent with its primary mission, each Federal agency which is required to develop a minority business development plan under Section 1 of this Order shall, to accomplish the objectives set forth in its plan, establish programs concerning provision of direct assistance, procurement assistance, and management and technical assistance to minority business enterprises.

(b) Each Federal agency shall, to the extent permitted by law and consistent with its primary mission, establish minority business development programs, consistent with Section 211 of Public Law 95-507, to develop and implement incentive techniques to encourage greater minority business subcontracting by Federal prime contractors.

(c) Each Federal agency shall encourage recipients of Federal grants and cooperative agreements to achieve a reasonable minority business participation in contracts let as a result of its grants and agreements. In cases where State and local governments are the recipients, such encouragement shall be consistent with principles of federalism.

(d) Each Federal agency shall provide the Cabinet Council on Commerce and Trade such information as it shall request from time to time concerning the agency's progress in implementing these programs.

RONALD REAGAN

THE WHITE HOUSE,

July 14, 1983.

Editorial Note: For the President's remarks of July 14, 1983, on signing Executive Order 12432, see the *Weekly Compilation of Presidential Documents* (vol. 19, p. 997).

Executive Order 12433 of July 19, 1983

National Bipartisan Commission on Central America

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), the National Bipartisan Commission on Central America, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the National Bipartisan Commission on Central America. The Commission shall be composed of not more than 12 members appointed or designated by the President. These

members shall be drawn from among distinguished leaders of the government, business, labor, education, Hispanic and religious communities. No more than seven members shall be of the same political party.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. Functions. (a) The Commission shall study the nature of United States interests in the Central American region and the threats now posed to those interests. Based on its findings, the Commission shall provide advice to the President, the Secretary of State and the Congress on elements of a long-term United States policy that will best respond to the challenges of social, economic, and democratic development in the region, and to internal and external threats to its security and stability. The Commission also shall provide advice on means of building a national consensus on a comprehensive United States policy for the region.

(b) The Commission shall report to the President by December 1, 1983.

Sec. 3. Administration. (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may, subject to the availability of funds, be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) The Secretary of State shall, to the extent permitted by law, provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the performance of its functions.

Sec. 4. General. (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended, which are applicable to the Commission, shall be performed by the Secretary of State, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall, unless otherwise extended, terminate 60 days after submitting its final report.

RONALD REAGAN

THE WHITE HOUSE,

July 19, 1983.

Editorial Note: The President's announcements of July 19 and 20, 1983, concerning his appointments to the Commission, are printed in the *Weekly Compilation of Presidential Documents* (vol. 19, pp. 1021 and 1027).

Code of federal regulations

The President

3

1983 COMPILATION

AND

PARTS 100 AND 101

Revised as of January 1, 1984



thority to promulgate regulations for voiding or rescinding contracts or other benefits obtained through bribery, graft or conflict of interest, it is hereby ordered as follows:

Section 1. The head of each Executive department, Military department and Executive agency is hereby delegated the authority vested in the President to declare void and rescind the transactions set forth in section 218 of title 18 of the United States Code in relation to which there has been a final conviction for any violation of chapter 11 of title 18.

Sec. 2. The head of each Executive department and agency described in section 1 may exercise the authority hereby delegated by promulgating implementing regulations; provided that the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration jointly shall issue government-wide implementing regulations related to voiding or rescission of contracts.

Sec. 3. Implementing regulations adopted pursuant to this Order shall, at a minimum, provide the following procedural protections:

(a) Written notice of the proposed action shall be given in each case to the person or entity affected;

(b) The person or entity affected shall be afforded an opportunity to submit pertinent information on its behalf before a final decision is made;

(c) Upon the request of the person or entity affected, a hearing shall be held at which it shall have the opportunity to call witnesses on its behalf and confront any witness the agency may present; and

(d) The head of the agency or his designee shall issue a final written decision specifying the amount of restitution or any other remedy authorized by section 218, provided that such remedy shall take into consideration the fair value of any tangible benefits received and retained by the agency.

RONALD REAGAN

THE WHITE HOUSE,

November 4, 1983.

Executive Order 12449 of November 18, 1983

National Bipartisan Commission on Central America

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered that Section 2(b) of Executive Order No. 12433, establishing the National Bipartisan Commission on Central America, is amended to provide as follows:

"(b) The Commission shall report to the President by February 1, 1984."

RONALD REAGAN

THE WHITE HOUSE,

November 18, 1983.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

June 3, 1986

416233 *u*MEMORANDUM FOR PETER WALLISON
COUNSEL TO THE PRESIDENTFROM: BRENDA *B. Reger* S. REGERSUBJECT: FOI Appeal Referral of
R. Scott Armstrong

The Department of State has referred the attached appeal regarding the Kissinger Commission.

Since this involves Presidential records, we would like to meet with the appropriate person on your staff to discuss a response to State.

Attachments



United States Department of State

Washington, D.C. 20520

May 27, 1986

Ms. Brenda Reger
Office of Information Policy
and Security Review
National Security Council
Old Executive Office Building
Room 375
Washington, D.C.

Re: National Bipartisan Commission on Central America

Dear Brenda:

In February, 1984, Scott Armstrong filed an FOI request for documents relating to the National Bipartisan Commission on Central America (attached). After consultation with the N.S.C., the Department informed Mr. Armstrong that the Commission was a Presidential Commission and its records were not subject to the Act (attached).

Mr. Armstrong is now appealing that determination as violative of the Federal Advisory Committee Act and the Commission's charter (attached). We have been unable to locate a copy of the charter in the Department's records and no one involved in the original decision recalls ever having seen it. However, Mr. Armstrong has conveniently provided us with a copy of it, and we have no reason to doubt its authenticity. The charter, which is attached, was signed by the then Under Secretary for Management and provides that Commission records shall be available for public inspection and copying to the extent required by the FOIA. It also states that the records shall be maintained by the Commission for the term of its operations, and shall be deposited with the Department of State upon the termination of the Commission.

The Department still has the Commission's records and must respond to Mr. Armstrong's appeal. We are requesting the views of the N.S.C. as to whether the records are State Department records subject to the Act.

Sincerely,

Linda Jacobson
Attorney-Adviser

107-2000000
107-2000000
107-2000000

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May 9, 1986

Assistant Secretary for Public Affairs
Chairperson
Appeals Review Panels
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Chairperson:

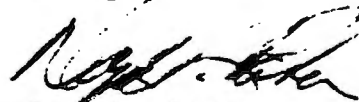
By this letter, our client Mr. Scott Armstrong appeals the denial of documents requested of the State Department pursuant to the Freedom of Information Act (5 U.S.C. §552 as amended). On February 5, 1984, Mr. Armstrong filed a written request for the disclosure of documents relating to the National Bipartisan Commission on Central America. Although Mr. Armstrong received an informal communication dated March 9, 1984, from Harry W. Shlaudeman, then Executive Director of the Commission, he has yet to receive a formal response to his request as required by law. We construe this continued failure to respond as a denial of the request. Copies of Mr. Armstrong's request and Mr. Shlaudeman's letter are appended to this appeal.

Mr. Shlaudeman's letter of March 4, 1984 mischaracterizes both the Commission's function and its obligations under the FOIA. The Federal Advisory Committee Act (5 U.S.C.A. app. 2 (Supp. 1986)) commands that requests for documents made of an advisory committee during the committee's existence are subject to the terms of the FOIA. Moreover, the Commission's charter unambiguously provides that its records "shall be available for public inspection and copying to the extent required by the Freedom of Information Act." (Charter of the National Bipartisan Commission on Central America, §VI(D), appended to this appeal). Additionally, this office has been informed that Commission records have not been transferred to the custody of the National Archives as stated by Mr. Shlaudeman. We note finally that its

charter requires that Commission records "shall be deposited with the Department of State upon [the Commission's] termination." (Charter SVI D). Since Mr. Armstrong's original request was made while the documents were in its custody, the State Department remains the agency responsible for processing that request, regardless of the present location of the Commission records.

The denial of Mr. Armstrong's request meets neither the substantive nor procedural criteria for withholding information required by law. Therefore, we request that you produce the records as originally requested. Failure to rule on this appeal within the time proscribed by law constitutes an improper denial of Mr. Armstrong's request which may be challenged in federal court. In order to avoid time consuming litigation, your prompt attention to this matter is appreciated.

Sincerely,



Douglas L. Parker



William Walsh

March 9, 1984

Mr. Scott Armstrong
The Washington Post
1150 15th St., N.W.
Washington, D.C. 20071

Dear Mr. Armstrong:

This is in response to your letter of February 5, requesting under provisions of the Freedom of Information Act (FOIA), certain records of the National Bipartisan Commission on Central America.

The Commission is a Presidential Commission, the sole function of which is advisory. The records of the Commission itself are, therefore, not yet subject to the FOIA. However, the final report and the appendix thereto (consisting of over 800 pages) have been printed and are publically available through the Government Printing Office for a small fee.

For your information, the Commission has completed its task and is going out of existence. Its records are in the process of being transferred to the custody of the National Archives in the near future and will be made available in accordance with appropriate laws and regulations governing such material.

I hope the above information will be of assistance.

Sincerely,

Harry W. Shlaudeman
Executive Director
National Bipartisan
Commission on Central America

The Washington Post

WASHINGTON, D.C. 20001

334-7422

Feb 5,
~~Jan. 31~~, 1984

National Binarisan Commission on Central America
Department of State
2201 C Street N.W.
Washington, D.C. 20520

To Whom It May Concern:

Pursuant to the Freedom on Information Act (5 U.S.C. §552 as amended), I hereby request disclosure of the documents described on the attached page for inspection and possible copying.

If you regard any of these documents as exempt from required disclosure under the Act, I hereby request that you exercise your discretion to disclose them nevertheless.

If the documents include classified information and the volume of classified material would make a lengthy declassification review necessary, I will accept, in lieu of mandatory declassification review at this time, the prompt release of all portions individually identified as unclassified or declassified (not otherwise exempt). I will then identify which of the remaining classified portions -- if any -- I wish to have processed under the mandatory declassification review. This attempt to narrow the request would be further aided by the release of any table of contents, summary, and index.

I further request that you disclose the listed documents as they become available to you, without waiting until all the documents have been assembled.

I am making this request on behalf of The Washington Post, a newspaper of general circulation in the Washington, D.C. metropolitan area and throughout the United States. The records disclosed pursuant to this request will be used in the preparation of news articles for dissemination to the public. Accordingly, I request that, pursuant to 5 U.S.C. §552 (a)(4)(A), you waive all fees in the public interest because the furnishing of the information sought by this request will primarily benefit the public. If, however, you decline to waive all fees, I am prepared to pay your normal search fees (and copying fees if I decide to copy any records), but I request that you notify me if you expect the search fees to exceed \$100.

(1) (a) All analytical, intelligence, summary, or periodic reports prepared by U.S. government agencies--and provided to the Commission--concerning socio-economic, political and military events in Central America from 1978 through 1982.

(b) Any summaries or staff analyses prepared by the Commission staff of the above materials.

(2) All interviews with, testimony by, comments and materials submitted to the Commission by present or former U.S. government officials and/or present or former officials of foreign governments.

The requester is willing to consider suggestions to further narrow or frame the request and can be contacted at the Washington Post at 334-7422.

*For please
ack + return*

*Received
1-14-84*

CHARTER OF THE
.....NATIONAL BIPARTISAN COMMISSION ON CENTRAL AMERICA

I. AUTHORITY

The National Bipartisan Commission on Central America was established by Executive Order No. 12433 of July 19, 1983 ("the Order"), and is governed by the provisions of the Federal Advisory Committee Act ("the Act"), 5 U.S.C. App. I, which sets forth standards for the formation, use, and operation of advisory committees.

II. PURPOSE

The National Bipartisan Commission on Central America was established to study the nature of United States interests in the Central American region and the threats now posed to those interests. Based on its findings, the Commission will provide advice to the President, ~~the Secretary of State and the~~ Congress on elements of a long-term United ~~States~~ policy that will best respond to the challenges of social, economic, and democratic development in the region, and to internal and external threats to its security and stability. The Commission will also provide advice on means of building a national consensus on a comprehensive United States policy for the region.

III. ORGANIZATION AND MEMBERSHIP

A. Membership. Pursuant to section 1(a) of the Order, the Commission shall be composed of twelve members appointed by the President from among distinguished leaders of the government, business, labor, education, Hispanic, and religious communities. No more than seven may be members of the same political party.

B. Officers. Pursuant to section 1(b) of the Order, the President shall designate one of the members of the Commission to be the Chairman. The Chairman may appoint, from among the members of the Commission, other officers as he deems appropriate.

C. Subgroups. The Chairman may establish formal or informal subgroups as he deems appropriate to carrying out the work of the Commission.

IV. SENIOR COUNSELLORS

The President may designate Senior Counsellors to the Commission, who, based on their individual experience and expertise, shall each be available for consultation at the request of the Chairman. Such Senior Counsellors may include up to eight Members of Congress, drawn in equal numbers from the Senate and the House of Representatives.

V. SUPPORT FUNCTIONS

A. Provision of Support. Pursuant to section 3(c) of the Order, the Department of State shall, to the extent permitted by law, provide administrative services and other necessary support to the Commission. Expenses of the Commission shall be paid from funds available to the Secretary of State.

B. Assistance from Executive Agencies. Pursuant to subsection 3(a) of the Order, heads of Executive agencies shall, to the extent permitted by law, provide the Commission such information as it may require for the purpose of carrying out its functions.

C. Staff. The Under Secretary for Management of the Department of State shall designate an officer or employee of the Department of State to serve as Executive Director of the Commission, and other persons to serve as Counsel to the Commission and to fill such other staff positions as he deems appropriate.

VI. OPERATIONS

A. Functions of the Chairman. In accordance with the Act, the Chairman shall:

- (1) call meetings with the concurrence of the Executive Director;
- (2) prepare or approve the agenda for meetings;
- (3) preside at meetings;
- (4) provide for the keeping of detailed minutes of meetings of the Commission;
- (5) provide for the maintenance and retention of the records of the Commission; and
- (6) certify the accuracy of the minutes of meetings of the Commission.

B. Functions of the Executive Director. In accordance with the Act, the Executive Director shall:

- (1) attend each meeting of the Commission and adjourn such meetings if adjournment is in the public interest;
- (2) call or concur in the calling of all meetings of the Commission;

(3) serve as contact point for the public to provide current information concerning the operations of the Commission; and

(4) under the general direction of the Commission and its Chairman, supervise the operations of the staff.

C. Meetings of the Commission. No quorum for meetings is required. All meetings of the Commission will be open to the public unless a determination has been made, in accordance with section 10(d) of the Act and 41 CFR 101-6.1023, that a meeting or a portion of a meeting should be closed to the public. All necessary measures shall be taken to protect information of a classified nature. Unless otherwise expressly directed by the Chairman, attendance at closed meetings shall be limited to Commissioners and Commission staff and, at the invitation of the Chairman, Senior Counsellors and those called by the Commission to testify or consult on a particular matter. Unless otherwise determined by the President for reasons of national security, timely notice of each meeting, whether open or closed, shall be published in the Federal Register stating the name of the Commission, the time, place, and purpose of the meeting, and the name, address, and telephone number of the designated Government employee that members of the public may contact for further information. Except in exceptional circumstances, such notice shall be published at least 15 days in advance of the meeting day. If shorter notice is given, the reason must be stated in the notice. It is estimated that the Commission will hold approximately 40 meetings.

D. Records of the Commission. The Commission's records will consist of all papers, documents, and other materials pertinent to its establishment and activities, including its charter, agendas of meetings, determinations for closed meetings, minutes, reports, and all documents related to its proceedings and those of its subgroups, including working papers, drafts, studies or other documents made available to or prepared for or by the Commission or its subgroups. These records shall be available for public inspection and copying to the extent required by the Freedom of Information Act, 5 U.S.C. 552. These records shall be maintained by the Commission for the term of its operations, and shall be deposited with the Department of State upon the termination of the Commission.

E. Minutes of Meetings. Detailed minutes shall be kept of each meeting of the Commission, which shall include a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued or approved by the Commission. The accuracy of such minutes shall be certified by the Chairman.

F. Public Participation. At any meeting of the Commission open to the public, but not at closed meetings, interested persons shall be permitted to attend and, at the discretion of the Chairman, to make an appearance before or to file written statements with the Commission.

VII. REPORT

The Commission shall make a report to the President as provided by Executive Order.

VIII. COMPENSATION OF MEMBERS

Pursuant to subsection 3(b) of the Order, members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized for persons serving intermittently in the government service (5 U.S.C. 5702-5707), to the extent funds are available therefor.

IX. ESTIMATED COSTS

Subject to the availability of funds, the estimated cost for operating the Commission, including travel expenses for members but excluding staff support, is \$475,000. Estimated staff support required is five man-years, at an estimated cost of \$225,000.

X. TERMINATION

Pursuant to subsection 4(b) of the Order, the Commission shall, unless otherwise extended, terminate 60 days after submitting its final report.

Dec. 4, 1983
Date ✓

J. M. [Signature]
Under Secretary for Manage