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**Congress of the United States**  
**Committee on Government Operations**  
**House of Representatives**

Subcommittee on  
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS

February 13, 1981

006315

The Honorable Ronald W. Reagan  
President of the United States  
The White House  
Washington, DC 20500

Dear Mr. President:

This subcommittee has traditionally written the newly elected President and requested a statement of his administration's policy regarding the use of the claim of "executive privilege" to withhold information from Congress. Enclosed are copies of earlier correspondence on this question with Presidents John Kennedy, Lyndon Johnson, Richard Nixon, Gerald Ford, and Jimmy Carter.

President Kennedy stated that executive privilege can be invoked only by the President and would not be used without specific Presidential approval. This policy was reaffirmed by Presidents Johnson and Nixon. President Ford did not respond to the subcommittee's inquiry, but in a dispute with the House Intelligence Committee in 1975, he personally invoked executive privilege, directing Secretary of State Kissinger not to comply with a committee subpoena.

Similarly, Deputy Assistant Attorney General Larry Hammond wrote on behalf of the Carter administration to a subcommittee of the House Committee on Energy and Commerce (formerly Committee on Interstate and Foreign Commerce) that only the President would assert the claim.

The abuse of executive privilege and the contentious relationship between Congress and the Executive in the past served not only to impair the operations of government but also to weaken its credibility in the eyes of the public. This must not be allowed to occur again.

The subcommittee and its staff would be pleased to work with you in the formulation of your policy on this important matter.

Sincerely,

  
Glenn English  
Chairman

  
Thomas N. Kindness  
Ranking Minority Member

GE:TNK:ti:em  
Enclosures

Department of Justice  
Washington, D.C. 20530

RECEIVED

NOV 16 1978

NOV 15 1978

SUBCOMMITTEE ON ENERGY & POWER

The Honorable John D. Dingell  
Chairman  
Subcommittee on Energy and Power of the  
Committee on Interstate and Foreign Commerce  
Room 3204  
House Office Building Annex No. 2  
Washington, D.C. 20515

Dear Mr. Chairman:

The Attorney General has asked me to respond to your letter of November 2, 1978, concerning a memorandum from this Office to the Counsel to the President, dated August 31, 1978. That memorandum dealt with a request for certain information addressed by the General Accounting Office (GAO) to the Council of Economic Advisers (CEA).

Your letter suggests that this Office's memorandum authorized CEA, rather than the President, to claim Executive privilege. I wish to point out initially that Executive privilege has not been claimed in this case. The GAO asked for two groups of documents. First, it sought:

A description of the computer model developed by CEA to measure the unemployment impact of the coal strike including (1) assumptions used, (2) variables used, and (3) any limitations of the model.

This information was made available to GAO in the report from CEA. Indeed, we understand that CEA offered to make the computer model itself available to GAO, but that the offer was declined.

The second request of GAO was as follows:

Memoranda from CEA to the White House and/or DOE concerning the computer model output on unemployment estimates and any comments, suggestions, or recommendations by CEA as to which estimate to use for policy decisions.

As you know, requests for documents between Cabinet Officers or other close Presidential advisers and the President raise disclosure questions under what the Supreme Court has identified as the presumptive privilege of confidentiality. United States v. Nixon, 418 U.S. 683, 705-713 (1974). Such documents are not absolutely privileged and, indeed, when requests come from congressional officials fulfilling appropriate legislative functions those requests are approached in an effort to accommodate the legitimate needs of both the Legislative and Executive branches. United States v. American Tel. & Tel. Co., 567 F. 2d 121, 127 (CA, DC, 1977).

It is our understanding that on our advice the GAO request in this case was handled in the same way that other such requests have been handled. Since this was the first time that a congressional request had been made to CEA for documents, that agency sought advice from the Office of the White House Counsel. And, in response to an inquiry from that Office, the Office of Legal Counsel provided the memorandum which you have seen. As the memorandum itself makes clear, we advised that the request should be approached in the same fashion that other similar requests are treated, and in fact it is our understanding that a reasonable accommodation was achieved whereby CEA prepared a full summary of the events in question and shared that memorandum with GAO. To our knowledge, the matter has progressed no further. We are unaware that there has been any further request, and therefore there has been no occasion to consider the invocation of any constitutional privilege.

In closing, I wish to reaffirm that this Administration and the Office of Legal Counsel firmly adhere to the principle first announced by President Kennedy and restated by Presidents Johnson and Nixon that a constitutional privilege can be

claimed only by or at the direction of the President, and that no official in the Executive branch, however high his position, may assert the privilege on his own behalf. In response to your request I will be in attendance at the hearing on Friday, November 17, and would be pleased to answer any other questions you or other members of the subcommittee may have.

Sincerely,



Larry A. Hammond  
Deputy Assistant Attorney General  
Office of Legal Counsel

cc: The Honorable Jack Brooks  
Chairman  
Committee on Government Operations

The Honorable Elmer B. Staats  
Comptroller General of the United States  
U. S. General Accounting Office

RICHARDSON PREYER, N.C., CHAIRMAN  
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225-3741

NINETY-FIFTH CONGRESS

# Congress of the United States

## House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS  
SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C  
WASHINGTON, D.C. 20515

September 27, 1978


Honorable Jimmy Carter  
President of the United States  
The White House  
Washington, D.C. 20500


Dear Mr. President:

On June 13, 1977, this subcommittee, following a long tradition dating back to the Presidency of John Kennedy, requested from you a statement of your Administration's policy regarding the use of the claim of "executive privilege." Since writing we have been in contact with your Counsel, Robert F. Lipshutz, on this matter and were happy to discover that it is your practice that only the President is authorized to invoke a claim of "executive privilege." We also were pleased to ascertain that thus far your Administration has been able to negotiate successfully all of the disputes between Congress and the Executive branch without the use of this concept.

The members of our subcommittee, however, still believe it would be helpful if you would publicly affirm this policy. In the past this has been accomplished by a letter to the subcommittee briefly stating the President's intentions in this area. Such a public affirmation, we believe, would materially aid both the Congress and the Executive branch in its day-to-day relationships.

Sincerely yours,

  
Richardson Preyer  
Chairman

  
Paul N. McCloskey, Jr.  
Ranking Minority Member

RICHARDSON PREYER, N.C., CHAIRMAN  
LEO J. RYAN, CALIF.  
JOHN E. MOSE, CALIF.  
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TED WISE, N.Y.  
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NINETY-FIFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS  
SUBCOMMITTEE  
OF THE  
COMMITTEE ON GOVERNMENT OPERATIONS  
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C  
WASHINGTON, D.C. 20515

June 13, 1977

The Honorable Jimmy Carter  
President of the United States  
The White House  
Washington, D.C. 20500

Dear Mr. President:

This subcommittee has traditionally written the new President and requested a statement of his administration's policy regarding the use of the claim of "executive privilege" to withhold information from Congress. Enclosed are copies of earlier correspondence on this question with Presidents John Kennedy, Lyndon Johnson, Richard Nixon and Gerald Ford.

President Kennedy stated that executive privilege can be invoked only by the President and would not be used without specific presidential approval. This policy was reaffirmed by Presidents Johnson and Nixon. President Ford did not respond to the subcommittee's inquiry, but in a dispute with the House Intelligence Committee in 1975, he personally invoked executive privilege, directing Secretary of State Kissinger not to comply with a committee subpoena.

The recent controversy over Deputy Attorney General Flaherty's initial reluctance to disclose an internal Department of Justice memorandum to the Senate Rules Committee and whether he had invoked executive privilege, underscored the confusion among new administration officials about the guidelines for such a claim.

We trust that the commitment of openness expressed in your campaign and these early days of your administration will be reflected in your policy regarding access to information by the Congress. The abuse of executive privilege and the contentious relationship between

The Honorable Jimmy Carter  
June 13, 1977

Page Two

Congress and the Executive in the past served not only to impair the operations of government but also to weaken its credibility in the eyes of the public. This must not be allowed to occur again.

The subcommittee and its staff would be pleased to work with you in the formulation of your policy on this important matter.

Sincerely,

Richardson Preyer  
Chairman

Paul N. McCloskey, Jr.  
Ranking Minority Member



August 13, 1974

The Honorable Gerald R. Ford  
President of the United States  
The White House  
1600 Pennsylvania Avenue, N. W.  
Washington, D. C. 20500

Dear Mr. President:

Enclosed are copies of correspondence between the former chairman of this subcommittee and each of the three previous Presidents, relating to their Administration's policies to limit the use of so-called "Executive Privilege" only upon personal invocation by the President himself.

As you know, this subcommittee has conducted both investigative and legislative hearings on this subject during the past two Congresses and on March 14, 1974, favorably reported H. R. 12462, a bipartisan bill sponsored by Representative Erlenborn, myself, and other Members of both parties. A similar bill was passed by the Senate last December. A copy of our hearings and report on this measure is also enclosed.

In view of the then pending litigation over the tapes involving President Nixon and the Special Prosecutor, in which this issue was indirectly involved, we decided not to press for a rule on H. R. 12462 until after the Supreme Court had ruled in that case. Our staff analysis of the July 24, 1974, decision of the Court indicates that the ground rules for the use of "Executive Privilege" established in H. R. 12462 are not inconsistent with that decision since it did not deal directly with Congress' right to information from the Executive. We have since requested a rule on the measure and are awaiting the scheduling of a hearing by the Rules Committee.

The Honorable Gerald R. Ford  
Page Two  
August 13, 1974

As you were a long-time Member of the House, it is not necessary to spell out to you details about the steady erosion in the flow of information from the Executive to the Congress which has taken place over the past generation. You are well aware of such problems and of the disastrous effect which the wholesale withholding of information from the Congress under "Executive Privilege" has had on the credibility of our government and its leaders. Last Friday's New York Times quoted remarks you made on this subject more than a decade ago: "Congress cannot help but conclude that executive privilege is most often used in opposition to the public interest."

Before you make any decision with respect to an exchange of correspondence on the use of "Executive Privilege" in your Administration, we would appreciate the opportunity to meet with you to discuss this issue and your position on H. R. 12462.

With best wishes and highest regards,

Sincerely,

William S. Moorhead  
Chairman

John M. Erlenborn  
Ranking Minority Member

Enclosures

THE WHITE HOUSE

Washington

April 7, 1969

Dear Mr. Chairman:

Knowing of your interest, I am sending you a copy of a memorandum I have issued to the heads of executive departments and agencies spelling out the procedural steps to govern the invocation of "executive privilege" under this Administration.

As you well know, the claim of executive privilege has been the subject of much debate since George Washington first declared that a Chief Executive must "exercise a discretion."

I believe, and I have stated earlier, that the scope of executive privilege must be very narrowly construed. Under this Administration, executive privilege will not be asserted without specific Presidential approval.

I want to take this opportunity to assure you and your committee that this Administration is dedicated to insuring a free flow of information to the Congress and the news media -- and, thus, to the citizens. You are, I am sure, familiar with the statement I made on this subject during the campaign. Now that I have the responsibility to implement this pledge, I wish to reaffirm my intent to do so. I want open government to be a reality in every way possible.

This Administration has already given a positive emphasis to freedom of information. I am committed to ensuring that both the letter and spirit of the

Public Records Law will be implemented throughout  
the Executive Branch of the government.

With my best wishes,

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard T. Ly".

Honorable John E. Moss  
Chairman  
Foreign Operations and Government  
Information Subcommittee  
House of Representatives  
Washington, D. C.

MEMORANDUM FOR THE HEADS OF  
EXECUTIVE DEPARTMENTS AND AGENCIES

(Establishing a Procedure to Govern Compliance  
with Congressional Demands for Information)

The policy of this Administration is to comply to the fullest extent possible with Congressional requests for information. While the Executive branch has the responsibility of withholding certain information the disclosure of which would be incompatible with the public interest. This Administration will invoke this authority only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise. For those reasons Executive privilege will not be used without specific Presidential approval. The following procedural steps will govern the invocation of Executive privilege:

1. If the head of an Executive department or agency (hereafter referred to as "department head") believes that compliance with a request for information from a Congressional agency addressed to his department or agency raises a substantial question as to the need for invoking Executive privilege, he should consult the Attorney general through the Office of Legal Counsel of the Department of Justice.

2. If the department head and the Attorney General agree, in accordance with the policy set forth above, that Executive privilege shall not be invoked in the circumstances, the information shall be released to the inquiring Congressional agency.

3. If the department head and the Attorney General agree that the circumstances justify the invocation of Executive privilege, or if either of them believes that the issue should be submitted to the President, the matter shall be transmitted to the Counsel to the President, who will advise the department head of the President's decision.

4. In the event of a Presidential decision to invoke Executive privilege, the department head should advise the Congressional agency that the claim of Executive privilege is being made with the specific approval of the President.

5. Pending a final determination of the matter, the department head should request the Congressional agency to hold its demand for the information in abeyance until such determination can be made. Care shall be taken to indicate that the purpose of this request is to protect the privilege pending the determination, and that the request does not constitute a claim of privilege.

RICHARD NIXON

NINETY-FIRST CONGRESS

**Congress of the United States**  
**House of Representatives**

FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE  
OF THE  
COMMITTEE ON GOVERNMENT OPERATIONS  
RAYBURN HOUSE OFFICE BUILDING, ROOM B371-B  
WASHINGTON, D.C. 20515

January 28, 1969

The Honorable Richard M. Nixon  
The President of the United States  
The White House  
Washington, D. C.

Dear Mr. President:

The claim of "executive privilege" as authority to withhold government information has long been of concern to those of us who support the principle that the survival of a representative government depends on an electorate and a Congress that are well informed.

As you know, some administrations in the past made it a practice to pass along to Executive branch subordinates a discretionary authority to claim "executive privilege" as a basis to refuse information to the Congress. The practice of delegating this grave Presidential responsibility was ended by President John F. Kennedy when he restored a policy similar to that which existed under previous strong administrations, including those of Presidents George Washington, Thomas Jefferson and Theodore Roosevelt. In a letter to the Foreign Operations and Government Information Subcommittee, dated March 7, 1962, he enunciated the policy as follows:

" . . .this Administration has gone to great lengths to achieve full cooperation with the Congress in making available to it all appropriate documents, correspondence and information. That is the basic policy of this Administration, and it will continue to be so. Executive privilege can be invoked only by the President and will not be used without specific Presidential approval."

President Lyndon B. Johnson informed the Subcommittee by letter, dated April 2, 1965, he would continue the

policy enunciated by President Kennedy. He stated:

"Since assuming the Presidency, I have followed the policy laid down by President Kennedy in his letter to you of March 7, 1962, dealing with this subject. Thus, the claim of 'executive privilege' will continue to be made only by the President."

In view of the urgent need to safeguard and maintain a free flow of information to the Congress, I hope you will favorably consider a reaffirmation of the policy which provides, in essence, that the claim of "executive privilege" will be invoked only by the President.

Sincerely,

/s/ John E. Moss

JOHN E. MOSS  
Chairman

JEM: jmj



THE WHITE HOUSE

WASHINGTON

April 2, 1965

Dear Mr. Chairman:

I have your recent letter discussing the use of the claim of "executive privilege" in connection with Congressional requests for documents and other information.

Since assuming the Presidency, I have followed the policy laid down by President Kennedy in his letter to you of March 7, 1962, dealing with this subject. Thus, the claim of "executive privilege" will continue to be made only by the President.

This administration has attempted to cooperate completely with the Congress in making available to it all information possible, and that will continue to be our policy.

I appreciate the time and energy that you and your Subcommittee have devoted to this subject and welcome the opportunity to state formally my policy on this important subject.

Sincerely,

s/ Lyndon B. Johnson

The Honorable John E. Moss, Chairman  
Foreign Operations and Government  
Information Subcommittee  
of the  
Committee on Government Operations  
House Office Building  
Washington, D.C.

March 31, 1965

The Honorable  
Lyndon B. Johnson  
President of the United States  
The White House  
Washington, D. C.

Dear Mr. President:

The use of the claim of "executive privilege" to withhold government information from the Congress and the public is an issue of importance to those who recognize the need for a fully informed electorate and for a Congress operating as a co-equal branch of the Federal Government.

In a letter dated May 17, 1954, President Eisenhower used the "executive privilege" claim to refuse certain information to a Senate Subcommittee. In a letter dated February 8, 1962, President Kennedy also refused information to a Senate Subcommittee. There the similarity ends, for the solutions of "executive privilege" problems varied greatly in the two Administrations.

Time after time during his Administration, the May 17, 1954 letter from President Eisenhower was used as a claim of authority to withhold information about government activities. Some of the cases during the Eisenhower Administration involved important matters of government, but in the great majority of cases Executive Branch employees far down the administrative line from the President claimed the May 17, 1954 letter as authority for withholding information about routine developments. A report by the House Committee on Government Operations lists 44 cases of Executive Branch officials refusing information on the basis of the principles set forth in President Eisenhower's letter.

President Kennedy carefully qualified use of the claim of "executive privilege". In a letter of February 8, 1962 refusing information to a Senate Subcommittee, he stated that the "principle which is at stake here cannot be automatically applied to every request for information." Later, President Kennedy clarified his position on the claim of "executive privilege", stating that --

Honorable Lyndon B. Johnson

- 2 -

March 31, 1965

"...this Administration has gone to great lengths to achieve full cooperation with the Congress in making available to it all appropriate documents, correspondence and information. That is the basic policy of this Administration, and it will continue to be so. Executive privilege can be invoked only by the President and will not be used without specific Presidential approval."

As a result of President Kennedy's clear statement, there was no longer a rash of "executive privilege" claims to withhold information from the Congress and the public. I am confident you share my views on the importance to our form of government of a free flow of information, and I hope you will reaffirm the principle that "executive privilege" can be invoked by you alone and will not be used without your specific approval.

Sincerely,

JOHN E. MOSS  
Chairman

JEM:ab

THE WHITE HOUSE  
Washington

March 7, 1962

Dear Mr. Chairman:

This is in reply to your letter of last month inquiring generally about the practice this Administration will follow in invoking the doctrine of executive privilege in withholding certain information from the Congress.

As your letter indicated, my letter of February 8 to Secretary McNamara made it perfectly clear that the directive to refuse to make certain specific information available to a special subcommittee of the Senate Armed Services Committee was limited to that specific request and that "each case must be judged on its merits".

As you know, this Administration has gone to great lengths to achieve full cooperation with the Congress in making available to it all appropriate documents, correspondence and information. That is the basic policy of this Administration, and it will continue to be so. [Executive privilege can be invoked only by the President and will not be used without specific Presidential approval.] Your own interest in assuring the widest public accessibility to governmental information is, of course, well known, and I can assure you this Administration will continue to cooperate with your subcommittee and the entire Congress in achieving this objective.

Sincerely,

/s/ John F. Kennedy

Honorable John E. Moss  
Chairman  
Special Government Information  
Subcommittee of the Committee  
on Government Operations  
House of Representatives  
Washington, D. C.

EIGHTY-SEVENTH CONGRESS

# Congress of the United States

## House of Representatives

SPECIAL GOVERNMENT INFORMATION SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

HOUSE OFFICE BUILDING

ROOM 218, GEORGE WASHINGTON INN

WASHINGTON, D.C.

February 15, 1962

The Honorable  
John F. Kennedy  
The President of the United States  
The White House  
Washington, D. C.

Dear Mr. President:

In your letter of February 8, 1962 to Secretary McNamara you directed him to refuse certain information to a Senate Subcommittee. The concluding paragraph of your letter stated:

"The principle which is at stake here cannot be automatically applied to every request for information. Each case must be judged on its merits."

A similar letter from President Eisenhower on May 17, 1954 also refused information to a Senate Subcommittee, setting forth the same arguments covered in your letter. President Eisenhower did not, however, state that future questions of availability of information to the Congress would have to be answered as they came up.

I know you are aware of the result of President Eisenhower's letter. Time after time Executive Branch employees far down the administrative line from the President fell back on his letter of May 17, 1954 as authority to withhold information from the Congress and the public.

Some of the cases are well known -- the Dixon-Yates matter and the investigation of East-West trade controls, for instance -- but many of the refusals based on President Eisenhower's letter of May 17, 1954 received no public notice. A report of the House Committee on Government Operations covering the five years from June, 1955 through June, 1960 lists 44 cases of Executive Branch officials refusing information on the basis of the principles set forth in the May 17, 1954 letter.

I am confident that you share my belief that your letter of February 8, 1962 to Secretary McNamara should not be seized upon by Executive Branch employees -- many of them holding the same policy-making positions of responsibility they did under the Eisenhower Administration -- to make a new claim of authority to withhold information from the Congress and

The Honorable John F. Kennedy

-2-

February 15, 1962

the public. A Subcommittee staff study indicates that during the year between the time you took office and February 8, 1962, the claim of an "executive privilege" to withhold government information was not used successfully once, compared to the dozens of times in previous years administrative employees held up "executive privilege" as a shield against public and Congressional access to information.

Although your letter of February 8, 1962 stated clearly that the principle involved could not be applied automatically to restrict information, this warning received little public notice. Clarification of this point would, I believe, serve to prevent the rash of restrictions on government information which followed the May 17, 1954 letter from President Eisenhower.

Sincerely,

/s/ John E. Moss  
Chairman

Copy to M. Shepherd 11-28-86