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*Last Updated: 02/19/2025*

# WITHDRAWAL SHEET

Ronald Reagan Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
letter case (086797)			
1. memo	from William Clark to Kenneth Duberstein re: Zablocki letter on war powers (1p, partial)	7/21/82	<del>P-5</del>
2. letter	to Clement Zablocki re: war powers resolution (2pp)	n.d	<del>P-5</del>
3. memo	from W. Clark to K. Duberstien re: war powers relosution (1p, partial)	7/15/82	<del>P-5</del>
4. memo	from Robert Lilac to W. Clark re: Zablocki letter (1p, partial)	7/9/82	<del>P-5</del>
letter case (088104)			
5. memo	from Fred Fielding to the President re: war powers resolution - Lebanon, pages 2 and 3 (2pp, partial)	7/13/82	<del>P-5</del> WJD 11/18/00
COLLECTION:			
WHORM: Subject File			kb
FILE FOLDER:			
FE002-01 (086797 - 088104)			10/30/94

## RESTRICTION CODES

### Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

### Freedom of Information Act - [5 U.S.C. 552(b)]

- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

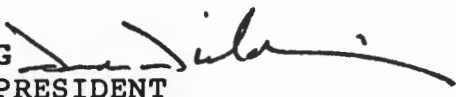
THE WHITE HOUSE  
WASHINGTON

July 13, 1982

WS

file  
088104  
FE002-01  
ND016  
C0086  
FE031-01

MEMORANDUM FOR THE PRESIDENT

FROM: FRED F. FIELDING   
COUNSEL TO THE PRESIDENT

SUBJECT: Applicability of War Powers Resolution  
to the Situation in Lebanon

In anticipation of your meeting with Congressional leaders this afternoon, we have prepared a synopsis of the War Powers Resolution (attached at Tab A) as it applies to the situation in Lebanon.

REQUIREMENTS OF THE WAR POWERS RESOLUTION

The Resolution imposes three types of duties upon the President:

1) Consultation: Section 3 of the Resolution requires that the President "consult" Congress "in every possible instance" before introducing the Armed Forces into "hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances" and regularly thereafter. As a practical matter, consultation in such instances with more than a select group of Congressional leaders has never been attempted. In the instant case, informal consultation has occurred.

2) Reporting: Relevant to Lebanon, section 4 of the Resolution requests that the President "report" to Congress within 48 hours after U.S. Armed Forces are introduced:

- "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances" [\$4(a)(1)]; or
- "into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments" for supply, replacement, repair or training [\$4(a)(2)].

REC'D. CA JUL 15 1982

'82 JUL 13 P3:18

3) Termination: The termination provisions of the Resolution apply only to those situations involving hostilities or the imminent threat of hostilities [§ 4(a)(1)]. The Resolution requires that the President must terminate the use of armed forces in those situations within 60 days after a report is submitted or required to be submitted under § 4(a)(1) unless the Congress i) has specifically authorized U.S. involvement by statute or a declaration of war; ii) has extended by law such 60-day period; or iii) is physically unable to meet. (The President may obtain a 30-day extension of the 60-day period by certifying to Congress that the extension is needed to achieve the safe withdrawal of U.S. Armed Forces.) If armed forces are actually engaged in hostilities, Congress may order their removal by concurrent resolution at any time. If troops are introduced "equipped for combat," absent "hostilities" or "imminent threat of hostilities," [§ 4(a)(2)] the termination provisions are not applicable.

#### RESOLUTION AS APPLIED TO LEBANON

In a letter to you dated July 6, 1982 (attached at Tab B), House Committee on Foreign Affairs Chairman Clement Zablocki concludes that because U.S. troops deployed to Lebanon would be entering a situation involving hostilities or the imminent threat thereof, you must report their deployment under § 4(a)(1) of the Resolution. Zablocki fears that you will seek to avoid the termination provisions of the Resolution by filing a report under § 4(a)(2) instead. While Congress might conceivably invoke the termination provisions of the Resolution even if you filed a report under § 4(a)(2), the legal dispute that might ensue creates a strong Congressional preference for § 4(a)(1) reports in borderline situations where the presence of "hostilities" or the "imminent threat" thereof can be legitimately questioned.

The Executive Branch has consistently defined "hostilities" and "imminent hostilities" more narrowly than Congress, and has noted that both terms are "definable in a meaningful way only in the context of an actual set of facts." Neither term necessarily encompasses irregular, infrequent or isolated violence which may occur in a particular area.

RECOMMENDATIONS

1. That you stress that our current efforts are being directed to the development of a situation where hostilities are not imminent.
2. That you respond to any Congressional inquiries to the effect that the terms of U.S. participation in the Lebanon situation and the circumstances prevailing at the time will determine under which section of the War Powers Resolution you report to Congress. No decision can be made at this time, and we will continue to consult with Congress as events occur.

[NSC concurs with these recommendations.]

Attachments

cc: Edwin Meese III  
James A. Baker III  
William P. Clark  
Michael K. Deaver



## WAR POWERS RESOLUTION

*For Legislative History of Act, see p. 2346*

PUBLIC LAW 93-148; 87 STAT. 555

[H. J. Res. 542]

Joint Resolution concerning the war powers of Congress and the President.  
*Resolved by the Senate and House of Representatives of the United  
States of America in Congress assembled, That:*

### SHORT TITLE

Section 1. This joint resolution may be cited as the "War Powers Resolution".

57. 18 U.S.C.A. § 712.



## PURPOSE AND POLICY

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

## CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

## REPORTING

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces;

or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

#### CONGRESSIONAL ACTION

Sec. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a decla-

ration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

#### CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

#### CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent

resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

#### INTERPRETATION OF JOINT RESOLUTION

Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the head-

Nov. 7

WAR POWERS RESOLUTION

P.L. 93-148

quarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

Sec. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

Sec. 10. This joint resolution shall take effect on the date of its enactment.

Passed over Presidential veto Nov. 7, 1973.



BENJAMIN S. ROSENTHAL, N.Y.  
LEE C. HAMILTON, IND.  
CHRISTIAN S. BINGHAM, N.Y.  
GARY VAYRON, PA.  
STEPHEN J. SOLARZ, N.Y.  
DON BONKER, WASH.  
GERRY E. STUDOS, MASS.  
ANDY IRELAND, FLA.  
DAN WICK, FLA.  
MICHAEL D. BARNES, MD.  
HOWARD WOLFE, MICH.  
C'D. W. CROCKETT, JR., MICH.  
BOB SHAMANSKY, OHIO  
SAM GEJDESON, CONN.  
MERVYN M. DYMALLY, CALIF.  
DORIS E. ECKART, OHIO  
TON LANTOS, CALIF.  
DAVID R. BOWEN, MISS.

JOHN J. BRADY, JR.  
CHIEF OF STAFF

PAUL FINDLEY, ILL.  
LARRY WINK, JR., KANS.  
BENJAMIN A. GILMAN, N.Y.  
ROBERT J. LAGOMARSINO, CALIF.  
WILLIAM F. GOODLING, PA.  
JOEL PRITCHARD, WASH.  
MILLICENT FENWICK, N.J.  
ROBERT K. DORNAN, CALIF.  
JIM LEACH, IOWA  
ARLEN SPOHR, MINN.  
TORY ROTH, WIS.  
OLYMPIA J. SNOWE, MAINE  
JOHN LE BOUTILLIER, N.Y.  
HENRY J. HYDE, ILL.

# Congress of the United States

## Committee on Foreign Affairs

House of Representatives  
Washington, D.C. 20515

July 6, 1982

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

Dear Mr. President:

The Department of State informed me this morning of your willingness in principle to provide U.S. troops to a multinational force in Beirut in order to insure the orderly departure of the Palestine Liberation Organization from the city.

While I applaud your intent to fully comply with the War Powers Resolution, I am disturbed to learn that you may file a report pursuant to section 4(a)(2) of the Resolution rather than section 4(a)(1).

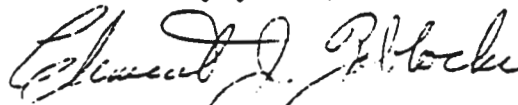
Any common-sense assessment of the situation in Lebanon must conclude that, if the United States agrees to participate in this multinational force, it would be introducing its armed forces into hostilities or into a situation where imminent involvement in hostilities is clearly indicated by the circumstances.

Thousands of lives have already been lost since Israel entered Lebanon on June 4. Several cities have been destroyed and countless ceasefires have been broken. The city of Beirut is presently under siege. These conditions clearly meet the section 4(a)(1) test for reporting under the War Powers Resolution should U.S. troops be sent to Beirut.

I trust that you, Mr. President, will report under section 4(a)(1) if the plan to send U.S. troops to Beirut is implemented. A report under section 4(a)(2) would not constitute full compliance with the War Powers Resolution in these circumstances. Rather, it could only be interpreted as an attempt to avoid capriciously the subsequent requirements of section 5 of the War Powers Resolution. Such an action would have incalculable effects on executive-legislative relations on a variety of foreign policy issues.

With best wishes, I am

Sincerely yours,

  
Chairman

CJZ:gb1



THE WHITE HOUSE  
WASHINGTON

November 4, 1982

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MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS  
AND AGENCIES

SUBJECT: Procedures Governing Responses to  
Congressional Requests for Information

The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch. While this Administration, like its predecessors, has an obligation to protect the confidentiality of some communications, executive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary. Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches. To ensure that every reasonable accommodation is made to the needs of Congress, executive privilege shall not be invoked without specific Presidential authorization.

The Supreme Court has held that the Executive Branch may occasionally find it necessary and proper to preserve the confidentiality of national security secrets, deliberative communications that form a part of the decision-making process, or other information important to the discharge of the Executive Branch's constitutional responsibilities. Legitimate and appropriate claims of privilege should not thoughtlessly be waived. However, to ensure that this Administration acts responsibly and consistently in the exercise of its duties, with due regard for the responsibilities and prerogatives of Congress, the following procedures shall be followed whenever Congressional requests for information raise concerns regarding the confidentiality of the information sought:

1. Congressional requests for information shall be complied with as promptly and as fully as possible, unless it is determined that compliance raises a substantial question of executive privilege. A "substantial question of executive privilege" exists if disclosure of the information requested might significantly impair the national security (including the conduct of foreign relations), the deliberative processes of the Executive Branch or

*Executive Privilege Procedures*



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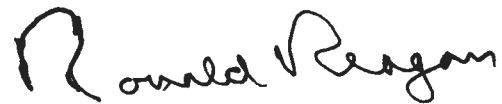
other aspects of the performance of the Executive Branch's constitutional duties.

2. If the head of an executive department or agency ("Department Head") believes, after consultation with department counsel, that compliance with a Congressional request for information raises a substantial question of executive privilege, he shall promptly notify and consult with the Attorney General through the Assistant Attorney General for the Office of Legal Counsel, and shall also promptly notify and consult with the Counsel to the President. If the information requested of a department or agency derives in whole or in part from information received from another department or agency, the latter entity shall also be consulted as to whether disclosure of the information raises a substantial question of executive privilege.
3. Every effort shall be made to comply with the Congressional request in a manner consistent with the legitimate needs of the Executive Branch. The Department Head, the Attorney General and the Counsel to the President may, in the exercise of their discretion in the circumstances, determine that executive privilege shall not be invoked and release the requested information.
4. If the Department Head, the Attorney General or the Counsel to the President believes, after consultation, that the circumstances justify invocation of executive privilege, the issue shall be presented to the President by the Counsel to the President, who will advise the Department Head and the Attorney General of the President's decision.
5. Pending a final Presidential decision on the matter, the Department Head shall request the Congressional body to hold its request for the information in abeyance. The Department Head shall expressly indicate that the purpose of this request is to protect the privilege pending a Presidential decision, and that the request itself does not constitute a claim of privilege.
6. If the President decides to invoke executive privilege, the Department Head shall advise the

-3-

requesting Congressional body that the claim of executive privilege is being made with the specific approval of the President.

Any questions concerning these procedures or related matters should be addressed to the Attorney General, through the Assistant Attorney General for the Office of Legal Counsel, and to the Counsel to the President.

Handwritten signature of Ronald Reagan in cursive script.

THE WHITE HOUSE

WASHINGTON

November 4, 1982

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: FRED F. FIELDING *[Signature]*  
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Memorandum on  
Executive Privilege Procedures

Attached for your review is a proposed Memorandum for the Heads of Executive Departments and Agencies specifying procedures to be followed in reviewing possible claims of executive privilege in connection with Congressional requests for information. The proposed Memorandum has been jointly prepared by our office and the Office of Legal Counsel at the Department of Justice. The Attorney General, Edwin Meese, James Baker, Michael Deaver and Judge Clark join me in recommending that you sign this Memorandum.

By way of background, the Subcommittee on Government Information and Individual Rights of the House Committee on Government Operations has asked that you formally state the procedures you will follow with respect to possible claims of executive privilege. The Subcommittee (or its predecessor) has made the same request to every President since President Kennedy. Presidents Kennedy, Johnson and Nixon each sent letters to the Subcommittee, stating that executive privilege would only be asserted with the specific approval of the President. While Presidents Ford and Carter did not send direct responses to the Subcommittee, the same requirement of specific Presidential approval was followed in their Administrations, as it has been in practice in yours.

President Nixon also forwarded to the Subcommittee a Memorandum for the Heads of Executive Departments and Agencies that detailed the steps that would be followed in reviewing possible claims of the privilege. In essence, the Nixon Memorandum required consultation with the Attorney General and the Counsel to the President when a serious case for assertion of the privilege was presented. In the meantime, Department Heads were to ask the Congressional agency to hold its request for information in abeyance pending a final decision on assertion of the privilege. The attached Memorandum establishes substantially the same procedures, though both the procedures themselves and the introductory portions of the Memorandum have been redrafted for greater clarity and precision.

*1/4/82: Pres. sig'd Memo to Depts. & Agencies*

*1/4/82: Dianna Holland advised*

*1/4/82: Press Off. advised*

*1/5/82: Memo to Mail Room for delivery via Run-Stop Mail (9:00 A.M.)*

*Note*



The procedures set forth in the proposed Memorandum serve the dual purposes of limiting the possibility that sensitive, internal Executive Branch documents will be released without careful review of whether they should be withheld under a claim of privilege, and of ensuring that the privilege will not be asserted without your specific approval, following White House review of the substantive and political features presented in any particular case. Issuance of the Memorandum, in addition to being responsive to the Congressional request for a formal statement of our policies in this area, will also ensure that department and agency officials know the steps that must be followed in cases where assertion of the privilege needs to be considered. Experience indicates that this guidance will be helpful.

Objectively speaking, nothing in the Memorandum would support any assertion that the Administration is attempting to expand the circumstances in which executive privilege will be asserted. Indeed, a fair-minded observer would reach the opposite conclusion. However, experience suggests that almost any Administration statement about executive privilege will be used by some as an excuse to claim that we are trying to "hide" something from the Congress or the public. Since there was no compelling reason for immediate issuance of the Memorandum, it seemed prudent to issue it after the midterm elections, to avoid creating opportunities for pre-election demagoguery in this area.

#### RECOMMENDATION

That you sign the Memorandum for the Heads of Executive Departments and Agencies attached at Tab A.

Attachment

OFFICE OF THE EXECUTIVE CLERK  
TRACKING SHEET FOR PRESIDENTIAL DOCUMENTS

TITLE: \_\_\_\_\_

*Executive Privilege*

TYPE DOCUMENT:

PROCLAMATION

MESSAGE TO THE CONGRESS

EXECUTIVE ORDER

SPECIAL MESSAGE

MEMORANDUM

LETTER(S)

OTHER: \_\_\_\_\_

RECEIVED: \_\_\_\_\_ / \_\_\_\_\_ /82

Time: \_\_\_\_\_ a.m./p.m.

SENT TO CORRESPONDENCE FOR TYPING IN FINAL:

Date: \_\_\_\_\_ / \_\_\_\_\_ /82

Time: \_\_\_\_\_ a.m./p.m.

TO RICHARD DARMAN'S OFFICE:

Date: \_\_\_\_\_ / \_\_\_\_\_ /82

Time: \_\_\_\_\_ a.m./p.m.

INFO, INCLUDING STENCIL, TO PRESS OFFICE:

Date: \_\_\_\_\_ / \_\_\_\_\_ /82

Time: \_\_\_\_\_ a.m./p.m.

NOTIFICATIONS:

\_\_\_\_\_  
(initial) Any transmittal to Congress, notify Nancy Kennedy (ext. 2230). ALSO send her a copy of each letter to Speaker and President of Senate so that she may refer to majority leaders.

\_\_\_\_\_  
(initial) N.S.C., when appropriate (Brian Merchant, ext. 2585)

OTHER INFORMATION:

*To duplicating: 11/4/82 (4:45p)*

*Don - call Donna in a.m. to let her know that it's going out.*

HEADS OF DEPARTMENTS, ESTABLISHMENTS  
AND AGENCIES OF THE GOVERNMENT (with names)

The Honorable George P. Shultz  
Secretary of State  
Washington, D.C. 20520

The Honorable Donald T. Regan  
Secretary of the Treasury  
Washington, D.C. 20220

The Honorable Caspar Willard Weinberger  
Secretary of Defense  
Washington, D.C. 20301

The Honorable John O. Marsh, Jr.  
Secretary of the Army  
Washington, D.C. 20310

The Honorable John F. Lehman, Jr.  
Secretary of the Navy  
Washington, D.C. 20350

The Honorable Verne Orr  
Secretary of the Air Force  
Washington, D.C. 20330

The Honorable William French Smith  
The Attorney General  
Washington, D.C. 20530

The Honorable James Gaius Watt  
Secretary of the Interior  
Washington, D.C. 20240

The Honorable John R. Block  
Secretary of Agriculture  
Washington, D.C. 20250

The Honorable Malcolm Baldrige  
Secretary of Commerce  
Washington, D.C. 20230

The Honorable Raymond J. Donovan  
Secretary of Labor  
Washington, D.C. 20210

The Honorable Richard S. Schweiker  
Secretary of Health and  
Human Services  
Washington, D.C. 20201

The Honorable Samuel R. Pierce, Jr.  
Secretary of Housing and  
Urban Development  
Washington, D.C. 20410

The Honorable Andrew L. Lewis, Jr.  
Secretary of Transportation  
Washington, D.C. 20590

The Honorable James B. Edwards  
Secretary of Energy  
Washington, D.C. 20585

The Honorable T. H. Bell  
Secretary of Education  
Washington, D.C. 20202

---

The Honorable Thomas W. Pauken  
Director of the ACTION Agency  
Washington, D.C. 20525

The Honorable Loren A. Smith  
Chairman  
Administrative Conference of  
The United States  
2120 L Street, N.W.  
Washington, D.C. 20037

The Honorable M. Peter McPherson  
Administrator  
Agency for International Development  
Washington, D.C. 20523

General Mark Wayne Clark, USA, Ret.  
Chairman  
American Battle Monuments Commission  
Washington, D.C. 20314

The Honorable Jerome Holland  
Chairman of the Board of Governors  
American National Red Cross  
Washington, D.C. 20006

The Honorable Winifred Ann Pizzano  
Federal Co-chairman  
Appalachian Regional Commission  
1666 Connecticut Avenue, N.W.  
Washington, D.C. 20009

The Honorable William J. Casey  
Director of Central Intelligence  
Washington, D.C. 20505

The Honorable Clinton Dan McKinnon  
Chairman  
Civil Aeronautics Board  
Washington, D.C. 20428

The Honorable Clarence M. Pendleton, Jr.  
Chairman  
Commission on Civil Rights  
Washington, D.C. 20425

The Honorable J. Carter Brown  
Chairman  
Commission of Fine Arts  
708 Jackson Place, N.W.  
Washington, D.C. 20006



The Honorable Clyde C. Cook  
Chairman  
Committee for Purchase from  
the Blind and Other Severely  
Handicapped  
Suite 610  
2009 14th Street, North  
Arlington, Virginia 22201

The Honorable Philip F. Johnson  
Chairman  
Commodity Futures Trading Commission  
2033 K Street, N.W.  
Washington, D.C. 20581

~~The Honorable Charles A. Bowsher  
The Comptroller General  
of the United States  
Washington, D.C. 20548~~

The Honorable Nancy Harvey Steorts  
Chairman  
Consumer Product Safety Commission  
Washington, D.C. 20207

The Honorable Anne McGill Gorsuch  
Administrator  
Environmental Protection Agency  
Washington, D.C. 20024

The Honorable Clarence Thomas  
Chairman  
Equal Employment Opportunity Commission  
Washington, D.C. 20506

The Honorable William H. Draper III  
President of the Export-Import  
Bank of the United States  
Washington, D.C. 20571

The Honorable Donald E. Wilkinson  
Governor of the Farm Credit  
Administration  
Washington, D.C. 20578

The Honorable Mark S. Fowler  
Chairman  
Federal Communications Commission  
Washington, D.C. 20554

The Honorable William M. Isaac  
Chairman  
Federal Deposit Insurance Corporation  
Washington, D.C. 20429

The Honorable Louis O. Giuffrida  
Director  
Federal Emergency Management Agency  
1725 I Street, N.W.  
Washington, D.C. 20472

The Honorable Richard T. Pratt  
Chairman  
Federal Home Loan Bank Board  
Washington, D.C. 20552

The Honorable Ronald W. Houghton  
Chairman  
Federal Labor Relations Authority  
1900 E Street, N.W., Room 7P56  
Washington, D.C. 20424

The Honorable Alan Green, Jr.  
Chairman  
Federal Maritime Commission  
Washington, D.C. 20573

The Honorable Kay McMurray  
Director  
Federal Mediation and  
Conciliation Service  
Washington, D.C. 20427

The Honorable Rosemary M. Collyer  
Chairman  
Federal Mine Safety and  
Health Review Commission  
1730 K Street, N.W.  
Washington, D.C. 20006

The Honorable Paul A. Volcker  
Chairman  
Board of Governors of the  
Federal Reserve System  
Washington, D.C. 20551

The Honorable James C. Miller III  
Chairman  
Federal Trade Commission  
Washington, D.C. 20580

The Honorable J. Raymond Bell  
Chairman  
The Foreign Claims Settlement Commission  
of the United States  
Washington, D.C. 20579

The Honorable Gerald P. Carmen  
Administrator of General Services  
Washington, D.C. 20405

The Honorable Reese H. Taylor, Jr.  
Chairman  
Interstate Commerce Commission  
Washington, D.C. 20423

~~The Honorable Daniel J. Boorstin  
Librarian of Congress  
Washington, D.C. 20540~~

The Honorable Herbert E. Ellingwood  
Chairman  
Merit Systems Protection Board  
1120 Vermont Avenue, N.W.  
Washington, D.C. 20419

The Honorable Frank Press  
President  
National Academy of Sciences  
Washington, D.C. 20418

The Honorable James Montgomery Beggs  
Administrator  
National Aeronautics and  
Space Administration  
Washington, D.C. 20546

The Honorable Helen M. Scharf  
Chairman  
National Capital Planning Commission  
1325 G Street, N.W.  
Washington, D.C. 20576

The Honorable Edgar F. Callahan  
Chairman  
National Credit Union Administration Board  
1776 G Street, N.W.  
Washington, D.C. 20456

The Honorable Francis F. M. Hodson  
Chairman  
National Endowment for the Arts  
806 15th Street, N.W. (Shoreham Bldg.)  
Washington, D.C. 20506

The Honorable William J. Bennett  
Chairman  
National Endowment for the Humanities  
806 15th Street, N.W. (Shoreham Bldg.)  
Washington, D.C. 20506

The Honorable John R. Van de Water  
Chairman  
National Labor Relations Board  
Washington, D.C. 20570

The Honorable Robert Oberndorfer Harris  
Chairman  
National Mediation Board  
1425 K Street, N.W.  
Washington, D.C. 20572

~~The Honorable John Brooks Slaughter~~  
Director  
National Science Foundation  
Washington, D.C. 20550

The Honorable James Eugene Burnett, Jr.  
Chairman  
National Transportation Safety Board  
Washington, D.C. 20594

The Honorable Nunzio J. Palladino  
Chairman  
Nuclear Regulatory Commission  
Washington, D.C. 20555

The Honorable Robert A. Rowland  
Chairman  
Occupational Safety and Health  
Review Commission  
1825 K Street, N.W.  
Washington, D.C. 20006

The Honorable Donald J. Devine  
Director  
Office of Personnel Management  
1900 E Street, N.W.  
Washington, D.C. 20415

The Honorable Loret M. Ruppe  
Director of the Peace Corps  
Washington, D.C. 20525

The Honorable Craig A. Nalen  
President  
Overseas Private Investment Corporation  
Washington, D.C. 20507

Secretary  
Panama Canal Commission  
312 Pennsylvania Building  
425 13th Street, N.W.  
Washington, D.C. 20004

The Honorable Janet Dempsey Steiger  
Chairman  
Postal Rate Commission  
Washington, D.C. 20268

The Honorable Danford L. Sawyer, Jr.  
The Public Printer  
Washington, D.C. 20401

The Honorable William P. Adams  
Chairman  
Railroad Retirement Board  
844 Rush Street  
Chicago, Illinois 60611

The Honorable John S. R. Shad  
Chairman  
Securities and Exchange Commission  
Washington, D.C. 20549

The Honorable Thomas K. Turnage  
Director of Selective Service  
Washington, D.C. 20435

The Honorable James C. Sanders  
Administrator  
Small Business Administration  
Washington, D.C. 20416

~~Secretary  
Smithsonian Institution  
Washington, D.C. 20560~~

The Honorable Charles H. Dean, Jr.  
Chairman  
Board of Directors  
Tennessee Valley Authority  
Washington, D.C. 20444

The Honorable Eugene Victor Rostow  
Director  
United States Arms Control  
and Disarmament Agency  
Washington, D.C. 20451

The Honorable Charles Z. Wick  
Director  
United States Information Agency  
Washington, D.C. 20547

The Honorable  
Director  
United States International  
Development Cooperation Agency  
Washington, D.C. 20523

The Honorable Alfred E. Eckes, Jr.  
Chairman  
United States International  
Trade Commission  
Washington, D.C. 20436

Governor  
United States Soldiers'  
and Airmen's Home  
Washington, D.C. 20315

The Honorable Robert P. Nimmo  
Administrator of Veterans' Affairs  
Washington, D.C. 20420

Director  
Water Resources Council  
Suite 800  
2120 L Street, N.W.  
Washington, D.C. 20037

EXECUTIVE OFFICE OF THE PRESIDENT

The Honorable *MARTIN S. FELDSTEIN*  
~~Acting~~ Chairman  
Council of Economic Advisers  
Washington, D.C. 20506

The Honorable A. Alan Hill  
Chairman  
Council on Environmental Quality  
Washington, D.C. 20006

Director  
Office of Policy Development  
Washington, D.C. 20500

Staff Secretary  
National Security Council  
Washington, D.C. 20500

The Honorable John F. W. Rogers  
Director  
Office of Administration  
Washington, D.C. 20500

The Honorable David A. Stockman  
Director  
Office of Management and Budget  
Washington, D.C. 20503

The Honorable George A. Keyworth, II  
Director  
Office of Science and Technology Policy  
Washington, D.C. 20500

The Honorable William Emerson Brock III  
United States Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20506

THE WHITE HOUSE  
WASHINGTON

26 August 1982

NOTE FOR DIANNA HOLLAND

FROM: KENNETH CRIBB, JR. *Ken*

Ed Meese has taken no action  
on the attached. What is the  
current status?

*Central file*

28 MAY 1982

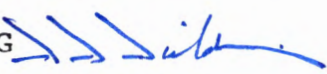
MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 24, 1982

FOR: ✓ EDWIN MEESE III  
JAMES A. BAKER III  
MICHAEL K. DEEVER  
WILLIAM P. CLARK

FROM: FRED F. FIELDING 

SUBJECT: Presidential Memorandum on  
Executive Privilege Procedures

Attached for your review and consideration is a draft of a proposed Presidential "Memorandum for the Heads of Executive Departments and Agencies" specifying procedures to be followed for review of possible claims of executive privilege. This proposed Memorandum has been jointly prepared by our office and the Department of Justice, and Attorney General Smith, Deputy Attorney General Schmults and Assistant Attorney General Ted Olson of the Office of Legal Counsel strongly recommend, as do I, that it be issued by the President.

By way of background, the Subcommittee on Government Information and Individual Rights of the House Committee on Government Operations has formally requested the President, on more than one occasion, to state what procedures he will follow with respect to possible claims of executive privilege. The Subcommittee (or its predecessor) has submitted identical requests to every President since Kennedy. Presidents Kennedy, Johnson and Nixon each sent letters to the Subcommittee, stating that executive privilege would only be asserted with the specific approval of the President. While Presidents Ford and Carter did not send direct responses to the Subcommittee, the same requirement of specific Presidential approval was followed in their Administrations, as it has been in practice in this one.

President Nixon also forwarded to the Subcommittee a "Memorandum for the Heads of Executive Departments and Agencies" that detailed the steps that should be followed in reviewing possible claims of the privilege. In essence, the Nixon Memorandum required consultation with the Attorney General and the Counsel to the President when a serious case for assertion of the privilege was presented. In the meantime, Department Heads were to ask the Congressional agency to hold its request for information in abeyance pending final determination of whether to assert the privilege. The attached draft establishes substantially the same procedures, though both the procedures themselves and the introductory portions of the Memorandum have been redrafted for greater clarity and precision.

These procedures worked fairly well, and have been used in practice in this Administration. The procedures serve the dual purposes of limiting the possibility that sensitive, internal Executive Branch documents will be released without careful review of whether they should be withheld under a claim of executive privilege, and of insuring that the privilege will not be asserted without White House review of the substantive and political aspects presented in any particular instance.

Given the importance of both these objectives, I believe it would be wise to specify the relevant procedures in a Presidential Memorandum for this Administration. At the same time, forwarding a copy of the final Memorandum to the House Subcommittee would probably help somewhat in our dealings with Congress on this sensitive subject. The President himself, of course, does not need to sign the cover letter to the Subcommittee, and our office will handle this task when the Memorandum is issued.

Please let me know your thoughts on this matter as soon as it is convenient. If you agree the Memorandum should be issued, our office will prepare it in final form for submission to and signature by the President.

Thank you.

Attachment

cc: Kenneth M. Duberstein

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

COMMENTS \_\_\_\_\_  
\_\_\_\_\_



**DRAFT**

[Draft, 5/22/82]

[Date]

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS  
AND AGENCIES

SUBJECT:            Procedures Governing Responses to  
Congressional Requests for Information

The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch. While this Administration, like its predecessors, has an obligation to protect the confidentiality of some communications, executive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary. Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches. To ensure that every reasonable accommodation is made to the needs of Congress, executive privilege shall not be invoked without specific Presidential authorization.

The Supreme Court has held that the Executive Branch may occasionally find it necessary and proper to preserve the confidentiality of military, diplomatic or national security secrets, deliberative communications that form a part of the decision-making process, or other information important to the discharge of the President's constitutional responsibilities. Legitimate and appropriate claims of privilege should not thoughtlessly be waived. However, to ensure that this Administration acts responsibly and consistently in the exercise of its duties, with due regard for the responsibilities and prerogatives of Congress, the following procedures shall be followed whenever Congressional requests for information implicate concerns regarding the confidentiality of the information sought:

1. Congressional requests for information shall be complied with as promptly and as fully as possible, unless it is determined that compliance raises a substantial question of executive privilege. A "substantial question

**DRAFT**

-2-

of executive privilege" exists if disclosure of the information requested might significantly impair the conduct of foreign relations, the national security, the deliberative processes of the Executive Branch or the performance of the Executive's constitutional duties.

2. If the head of an executive department or agency ("Department Head") believes, after consultation with department counsel, that compliance with a Congressional request for information raises a substantial question of executive privilege, he shall promptly notify and consult with the Attorney General through the Assistant Attorney General for the Office of Legal Counsel, and shall also promptly notify and consult with the Counsel to the President.
3. Every effort shall be made to comply with the Congressional request in a manner consistent with the legitimate needs of the Executive Branch. The Department Head, the Attorney General and the Counsel to the President may, in the exercise of their discretion in the circumstances, determine that executive privilege shall not be invoked and release the requested information.
4. If the Department Head, the Attorney General or the Counsel to the President believes, after consultation, that the circumstances justify invocation of executive privilege, the issue shall be presented to the President by the Counsel to the President, who will advise the Department Head and the Attorney General of the President's decision.
5. Pending a final Presidential decision on the matter, the Department Head shall request the Congressional body to hold its request for the information in abeyance. The Department Head shall expressly indicate that the purpose of this request is to protect the privilege pending a Presidential decision, and that the request itself does not constitute a claim of privilege.



**DRAFT**

-3-

6. If the President decides to invoke executive privilege, the Department Head shall advise the requesting Congressional body that the claim of executive privilege is being made with the specific approval of the President.

Any questions concerning these procedures or related matters should be addressed to the Attorney General through the Assistant Attorney General for the Office of Legal Counsel and to the Counsel to the President.

[/s/ Ronald Reagan]

# THE WHITE HOUSE

WASHINGTON

November 4, 1982

## MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT:            Procedures Governing Responses to  
                     Congressional Requests for Information

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other aspects of the performance of the Executive Branch's constitutional duties.

2. If the head of an executive department or agency ("Department Head") believes, after consultation with department counsel, that compliance with a Congressional request for information raises a substantial question of executive privilege, he shall promptly notify and consult with the Attorney General through the Assistant Attorney General for the Office of Legal Counsel, and shall also promptly notify and consult with the Counsel to the President. If the information requested of a department or agency derives in whole or in part from information received from another department or agency, the latter entity shall also be consulted as to whether disclosure of the information raises a substantial question of executive privilege.
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-3-

requesting Congressional body that the claim of executive privilege is being made with the specific approval of the President.

Any questions concerning these procedures or related matters should be addressed to the Attorney General, through the Assistant Attorney General for the Office of Legal Counsel, and to the Counsel to the President.

Handwritten signature of Ronald Reagan in cursive script.

MEMORANDUM  
OF DATE

TO : ☐ MR. [illegible] ☐ MR. [illegible]

FROM : ☐ MR. [illegible] ☐ MR. [illegible]

SUBJECT : ☐ [illegible] ☐ [illegible]

REFERENCE : ☐ [illegible] ☐ [illegible]

Original



THE WHITE HOUSE  
WASHINGTON

November 4, 1982

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS  
AND AGENCIES

SUBJECT:           Procedures Governing Responses to  
                  Congressional Requests for Information

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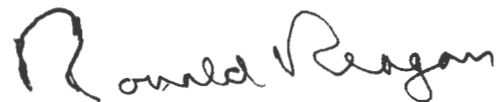
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-3-

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Any questions concerning these procedures or related matters should be addressed to the Attorney General, through the Assistant Attorney General for the Office of Legal Counsel, and to the Counsel to the President.

A handwritten signature in black ink, reading "Ronald Reagan". The signature is written in a cursive style, with the first name "Ronald" and the last name "Reagan" clearly legible.



copy to Mary Hitchhiss) 4-27-87  
(Law Library)