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**Collection:** Roberts, John G.: Files  
**Folder Title:** JGR/Executive Privilege  
(3 of 3)  
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# WITHDRAWAL SHEET

## Ronald Reagan Library

**Collection Name** ROBERTS, JOHN: FILES

**Withdrawer**

LOJ 7/31/2005

**File Folder** JGR/EXECUTIVE PRIVILEGE (3 OF 3)

**FOIA**

2005-139

**Box Number**

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ID Doc Type	Document Description	No of Pages	Doc Date	Restrictions
19463 LETTER	MAX FRIEDERSDORF TO CHAIRMAN, PERMANENT SELECT COMMITTEE ON INTELLIGENCE, RE HOUSE RESOLUTION 171	2	ND	B1

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

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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THE WHITE HOUSE

WASHINGTON

June 3, 1985

MEMORANDUM FOR ROBERT C. MCFARLANE  
ASSISTANT TO THE PRESIDENT  
FOR NATIONAL SECURITY AFFAIRS

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Middle East Counterterrorism Programs

I have reviewed your proposed memorandum for the President dealing with the House Intelligence Committee request for staff review of operational and working files relating to Middle East counterterrorism programs. As we have discussed, I agree that it would be undesirable for the documents in question to be turned over for staff review. On the other hand, based on CIA's representation that nothing illegal or improper is contained in the pertinent files, I am concerned that we not appear as if we have something to hide. Such a posture at this point will only fuel Hill interest in obtaining broad access to the files.

In my view, your decisional memorandum sets the stage for a precipitous Executive Privilege confrontation. It is too soon in the process, both as a practical and legal matter, to be obtaining and communicating to Congress final determinations from the President that specified documents will not be disclosed. No committee deliberations or votes have been taken on the subject resolutions, nor have any apparently been scheduled. There would appear to be several remaining stages at which this dispute could be settled, particularly given your willingness to show the files to Hamilton himself. From a legal perspective, any efforts to resolve the dispute short of an Executive Privilege confrontation will be helpful in the event of an ultimate court test.

In addition, any decision to assert Executive Privilege -- and the first sentence on page two of your proposed letter does just that -- must follow the procedures detailed in the President's memorandum of November 4, 1982, for the heads of executive departments and agencies (copy attached). In particular, those procedures require prompt notification and consultation with the Attorney General through the Assistant Attorney General for the Office of Legal Counsel, in addition to the Counsel to the President. Accordingly, the Department of Justice should be brought into this process without delay.

Further, if Privilege is to be asserted, it will not be done until a careful review of the documents is conducted.

In lieu of your proposed letter to Chairman Hamilton, I recommend that Max Friedersdorf reply to Hamilton, noting that he understands that efforts are underway to resolve the dispute and satisfy the Committee's concerns, that an offer has been made to permit Hamilton to review the documents, that he hopes Hamilton would reconsider that offer as a way to accommodate the legitimate needs of each branch, etc. In the meantime, NSC, White House, and agency legislative affairs staff should undertake to develop support among the other members of the House Intelligence Committee (e.g., Dick Cheney). At some point you may want to become personally involved in meetings with Hamilton.

It may well be necessary to assert Executive Privilege with respect to these documents, eventually, but that point has not, in my view, been reached. Not only may we avoid a Constitutional confrontation altogether by further maneuvering, but our legal and political position will be stronger as a result should a confrontation prove inevitable.

FFF:JGR:ml  
JGROBERTS ✓  
Chron (2)

THE WHITE HOUSE

WASHINGTON

June 3, 1985

MEMORANDUM FOR ROBERT C. MCFARLANE  
ASSISTANT TO THE PRESIDENT  
FOR NATIONAL SECURITY AFFAIRS

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Middle East Counterterrorism Programs

I have reviewed your memorandum for the President on the House Intelligence Committee request for staff review of operational and working files relating to Middle East counterterrorism programs. I agree whole-heartedly with your conclusion that the documents in question should not be turned over for staff review. On the other hand, based on your representation that nothing illegal or improper is contained in the pertinent files, I am concerned that we not appear as if we have something to hide. Such a posture at this point would only fuel Hill interest in obtaining broad access to the files.

In my view, your decisional memorandum sets the stage for a precipitous executive privilege confrontation. It is too soon in the process, both as a practical and legal matter, to be obtaining and communicating to Congress final determinations from the President that specified documents will be protected from disclosure. No committee deliberations or votes have been taken on the subject resolutions, nor have any apparently been scheduled. There would appear to be several remaining stages at which this dispute could be settled, particularly given your willingness to show the files to Hamilton himself. From a legal perspective, any efforts to resolve the dispute short of an executive privilege confrontation will be helpful in the event of an ultimate court test.

In addition, any decision to assert executive privilege -- and the first sentence on page two of your proposed letter does just that -- must follow the procedures detailed in the President's memorandum of November 4, 1982, for the heads of executive departments and agencies (copy attached). In particular, those procedures require prompt notification and consultation with the Attorney General through the Assistant Attorney General for the Office of Legal Counsel, in addition

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FFF:JGR:aea 6/3/85

cc: FFFielding  
JGRoberts  
Subj  
Chron

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

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

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



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.

Ronald Reagan

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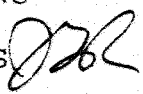
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THE WHITE HOUSE

WASHINGTON

January 3, 1986

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Potential Executive Privilege  
Dispute Involving EPA

By the attached letter Chairman John Dingell has requested a copy of draft asbestos regulations EPA sent to OMB pursuant to the Executive Order 12291 review process. This request goes beyond the 1981 compromise agreement worked out between the Administration and Dingell on access to deliberative, predecisional material involved in the 12291 process. Under that compromise, Dingell has been given access to such material only upon completion of OMB's review. Dingell has always maintained that he is not bound by this restriction, just as the Administration on its part has always maintained it is not bound to give him any of the material. The instant demand letter represents a conscious effort by Dingell to gain ground in his ongoing dispute over access to documents. Dingell has chosen his ground well -- the controversial asbestos regulations -- and his time -- when the Congress is in recess, Dingell may, by committee rule, issue a subpoena on his sole authority.

I attended a meeting today on this issue with OMB's Bob Bedell, EPA's Frank Blake, and representatives of OLC and OMB's General Counsel's office. It became clear that there is sharp disagreement on the substance of the asbestos regulations between OMB and EPA. OMB will not approve the current proposal, and it appears that EPA will not budge. The issue could become a test case for the 12291 process, since if pushed EPA Administrator Thomas may simply publish the regulations despite OMB's objections.

On the privilege issue, Blake was adamant in opposing any resistance to turning over all the requested documents. I raised the possibility of mooting the dispute by concluding OMB review on an expedited basis before responding to Dingell. Dingell could then be provided the documents under the 1981 compromise, since OMB review would have been completed, and there would be no adverse executive privilege precedent. Bedell like the suggestion, and said review (and OMB rejection of the rule) could be completed in time. What would probably happen upon OMB rejection is that a Cabinet Council meeting would be called to resolve the OMB-EPA

dispute (though EPA would probably resist such a meeting). OMB and EPA have reached an impasse on the substance in any event, so joining the issue now rather than in three months has no downside, and eliminates the executive privilege controversy. (Unless Dingell then requests the Cabinet Council documents, but if he does that we will be on much stronger executive privilege ground.)

A second meeting will be held Monday at 10:00 a.m.

JOHN D. DINGELL, MICHIGAN, CHAIRMAN

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DENNIS E. SCLART, OHIO  
JIM SLATTERY, KANSAS  
GERRY SIKORSKI, MINNESOTA  
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MICHAEL F. BARRETT, JR.  
CHIEF COUNSEL/STAFF DIRECTOR

*Picked up by request 12-31-85*  
U.S. House of Representatives

Subcommittee on Oversight and Investigations  
of the  
Committee on Energy and Commerce  
Washington, DC 20515

RECEIVED OPRE-DC/ENR  
31 DEC 1985 14 27

December 30, 1985

Advance

LMT  
Barnes  
Fisher  
Angell  
Russell  
Blake  
Moore  
Manson  
DeRomer  
Overman  
Prendergast

cc: AI J.  
JmCV  
orig to MR

The Honorable Lee M. Thomas  
Administrator  
U. S. Environmental Protection Agency  
401 M Street, S. W.  
Washington, D. C. 20460

Dear Mr. Thomas:

Pursuant to the authority of Rules X and XI of the Rules of the House of Representatives, the Subcommittee on Oversight and Investigations initiated early last year an investigation into the implementation of the Toxic Substances Control Act. This inquiry culminated in the issuance of a Subcommittee report in October 1985 entitled "EPA's Asbestos Regulations: A Case Study on OMB Interference in Agency Rulemaking."

As you know, the Subcommittee's concern about OMB's interference in EPA rulemaking is a continuing one. In an effort to keep the Subcommittee fully informed of EPA's asbestos regulatory activities, the Subcommittee hereby requests a copy of the asbestos ban/phasedown rule which the Agency submitted to the Office of Management and Budget in mid-December. Please provide this document and all supporting materials by the close of business on Wednesday, January 8, 1986.

Sincerely,

John D. Dingell  
Chairman  
Subcommittee on  
Oversight and Investigations

1/3

1981 - access to all material for completed review. w/hold pending, + OMO internal.

Already has rule from back sources

- contact minority (3)

- staff inquiries (2)

4: no

5: turn over

6: come EPA out

BB: will staff, will Ruyshill

Cabinet meeting

Package on what limit same plan.

Monday mtg follow-up 10:00