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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
FACSIMILE (202) 225-4784
MINORITY (202) 225-5074
TTY (202) 225-6852

<http://oversight.house.gov>

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June 21, 2007

The Vice President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. Vice President:

The Oversight Committee has learned that over the objections of the National Archives, you exempted the Office of the Vice President from the presidential executive order that establishes a uniform, government-wide system for safeguarding classified national security information. Your decision to exempt your office from the President's order is problematic because it could place national security secrets at risk. It is also hard to understand given the history of security breaches involving officials in your office.

Executive Order 12958, which President Bush has amended and endorsed, directs the National Archives to oversee a uniform system for protecting classified information. A key component of the executive order directs the Information Security Oversight Office within the National Archives to inspect federal agencies and White House offices to ensure compliance with the security procedures required by the President. Acting under the authority of the President's executive order, the National Archives sought to conduct an on-site inspection of the Office of the Vice President in 2004.

The National Archives has informed the Committee that your office intervened to block the inspection. According to a letter that the National Archives sent to your staff in June 2006, you asserted that the Office of the Vice President is not an "entity within the executive branch" and hence is not subject to presidential executive orders. To my knowledge, this was the first time in the nearly 30-year history of the Information Security Oversight Office that a request for access to conduct a security inspection was denied by a White House office.

In January 2007, the Information Security Oversight Office took the appropriate step under the executive order and asked Attorney General Alberto Gonzales to resolve whether the President's order applies to your office. According to the Director of the Information Security Oversight Office, you responded to this request by recommending that the executive order be amended to abolish the Information Security Oversight Office.

I question both the legality and the wisdom of your actions. In May 2006, an official in your office pled guilty to passing classified information to individuals in the Philippines. In March 2007, your former chief of staff, I. Lewis "Scooter" Libby, was convicted of perjury, obstruction of justice, and false statements for denying his role in disclosing the identity of a covert CIA agent. In July 2003, you reportedly instructed Mr. Libby to disclose information from a National Intelligence Estimate to Judith Miller, a former *New York Times* reporter. This record does not inspire confidence in how your office handles the nation's most sensitive security information. Indeed, it would appear particularly irresponsible to give an office with your history of security breaches an exemption from the safeguards that apply to all other executive branch officials.

Executive Order 12958

Executive Order 12958, "Classified National Security Information," was first issued by President Clinton in 1995.¹ President Bush amended the executive order in March 2003.² As amended by President Bush, the executive order prescribes a uniform system for classifying, safeguarding, and declassifying national security information.

The executive order gives important responsibilities to the Information Security Oversight Office within the National Archives. This office was created in 1978 by Executive Order 12065, "National Security Information," issued by President Carter.³ Under the Bush executive order, the National Archives, acting through the Information Security Oversight Office, is directed to ensure agency compliance with classified information safeguards by issuing directives to agencies; developing and monitoring security education programs; receiving and responding to reports of security violations; and acting on complaints about the program's implementation. In addition, the executive order and its implementing directive require executive branch agencies to provide data to the Archives about their classification and declassification activities, which the Archives then compiles to produce annual reports for the President.

An important part of the responsibilities of the National Archives is conducting on-site inspections of agencies' classified information programs. The executive order expressly authorizes the Information Security Oversight Office to conduct on-site inspections of all executive branch agencies to monitor the agencies' compliance with requirements for protecting classified information. These reviews allow the Archives to identify deficiencies in such areas as

¹ Exec. Order No. 12958, *Classified National Security Information* (Apr. 17, 1995).

² Exec. Order No. 12958, *Classified National Security Information*, as amended by Executive Order 13292 (Mar. 25, 2003).

³ Exec. Order No. 12065, *National Security Information* (Dec. 1, 1978).

security education and training, agency self-inspection programs, safeguarding practices, and security violation procedures.⁴

According to the Archives, the Information Security Oversight Office has conducted inspections of multiple White House offices, including the National Security Council. It also received regular reports in the prior Administration from the Office of the Vice President about the classification and declassification activities of the office.⁵

The Refusal to Comply with Executive Order 12958

In 2004, the Archives notified your office that it would conduct an on-site inspection of the Office of the Vice President, as authorized by the executive order. According to the National Archives, your staff blocked this inspection. Your office informed the Archives that it was not bound by the executive order applicable to all other executive branch entities and therefore would not permit the Archives to conduct an inspection of the procedures and facilities used by the Office of the Vice President to safeguard classified national security information.⁶

In 2001 and 2002, your office had provided the National Archives with data on its classification and declassification activities, as required by the executive order. Your office ceased to provide this information in 2003, and has refused to provide it in each year since.⁷ No rationale for this change in policy was provided to the Archives at that time.

In June 2006, the Director of the Information Security Oversight Office, J. William Leonard, wrote to your Chief of Staff, David Addington, to contest your claim that the Office of the Vice President is not subject to the President's executive order. According to Mr. Leonard's letter, your position was that your office "does not believe it is included in the definition of

⁴ See, e.g., Information Security Oversight Office, *2005 Report to the President* (May 25, 2006) (online at www.archives.gov/isoo/reports/2005-annual-report.pdf).

⁵ See Letter from J. William Leonard, Director, Information Security Oversight Office, to Alberto Gonzales (Jan. 9, 2007).

⁶ Briefing by J. William Leonard, Director, Information Security Oversight Office, to the Staff of the House Committee on Oversight and Government Reform (May 29, 2007); Telephone Conversation between J. William Leonard, Director, Information Security Oversight Office, and the Majority Staff of the House Committee on Oversight and Government Reform (June 7, 2007).

⁷ See Information Security Oversight Office, *2003 Report to the President* (Mar. 31, 2004) (online at www.archives.gov/isoo/reports/2003-annual-report.pdf).

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‘agency’ as set forth in the Order” and “does not consider itself an ‘entity within the executive branch that comes into the possession of classified information.’”⁸

Your office did not respond to Mr. Leonard. As a result, he wrote your office again in August 2006. In this letter, Mr. Leonard suggested that the question of the applicability of the executive order be referred to the Justice Department, writing: “Absent a common understanding as to how Executive Order 12958, ‘Classified National Security Information’ applies to the OVP, I would suggest referral of this matter to the Office of Legal Counsel at the Department of Justice in accordance with the order’s section 6.2(b).”⁹

Your office apparently did not respond to this letter either. As a result, Mr. Leonard wrote to Attorney General Alberto Gonzales in January 2007 to seek his resolution of the impasse, as specifically authorized in the executive order.¹⁰

In his letter to the Attorney General, Mr. Leonard argued that the “plain text reading” of the executive order supported the position of the National Archives, writing:

There are several explicit references in the Order to the constitutional position of the Vice President that confer specific authorities and exemptions upon the individual encumbering that position. There is but a single explicit reference to the government entity (the OVP) which serves the Vice President. This sole explicit reference for the purpose of exempting the OVP ... supports an interpretation that the rest of the Order does apply.¹¹

Mr. Leonard also argued that a consideration of “policy implications” supported the position that the order applies to the Office of the Vice President. According to Mr. Leonard: “If the OVP is not considered an entity within the executive branch, I am concerned that this could impede access to classified information by OVP staff, in that such access would be considered a disclosure outside the executive branch.”¹²

Mr. Leonard concluded:

⁸ Letter from J. William Leonard, Director, Information Security Oversight Office, to David S. Addington, Chief of Staff to the Vice President (June 8, 2006).

⁹ Letter from J. William Leonard, Director, Information Security Oversight Office, to David S. Addington, Chief of Staff to the Vice President (Aug. 23, 2006).

¹⁰ Letter from J. William Leonard, Director, Information Security Oversight Office, to Alberto Gonzales (Jan. 9, 2007).

¹¹ *Id.*

¹² *Id.*

I believe that OVP staff, when they are supporting the Vice President in the performance of executive duties, are an entity within the executive branch. ... As such, it is entirely appropriate that security classification activity by OVP staff ... be reportable to this office. ... I also believe it is appropriate to affirm that all provisions of the Order apply to the staff of the OVP when they are acting in support of the Vice President's performance of executive duties.¹³

To date, Attorney General Gonzales has not responded to Mr. Leonard's letter.

Possible Retaliation Against the National Archives

Executive Order 12958 is currently being revised. During this process, it appears that your office has proposed revisions to the order that could be construed as retaliation against the Information Security Oversight Office and the National Archives.

Mr. Leonard told the Committee staff that after he wrote to your staff in June and August 2006, your office suggested the elimination of the provision in the executive order that allows the National Archives to appeal disputes to the Attorney General.¹⁴

Mr. Leonard also said that your office proposed a more drastic change after the National Archives continued to press the matter by seeking an opinion from the Attorney General. According to Mr. Leonard, your office urged the inter-agency committee considering revisions to the executive order to abolish the Information Security Oversight Office which he heads. Mr. Leonard said that your office also proposed a change to the definitions in the executive order that would exempt the Office of the Vice President from oversight.¹⁵

The process of revising the executive order is not yet final. According to Mr. Leonard, however, the changes proposed by your office have been rejected by the inter-agency group charged with making recommendations to the President.

Request for Information

Your office may have the worst record in the executive branch for safeguarding classified information. As Special Prosecutor Patrick Fitzgerald established, I. Lewis "Scooter" Libby,

¹³ *Id.*

¹⁴ Briefing by J. William Leonard, Director, Information Security Oversight Office, to the Staff of the House Committee on Oversight and Government Reform (May 29, 2007).

¹⁵ *Id.*; Telephone Conversation between J. William Leonard, Director, Information Security Oversight Office, and the Majority Staff of the House Committee on Oversight and Government Reform (June 7, 2007).

your former Chief of Staff, leaked the identity of a covert CIA operative to several reporters in June 2003. Mr. Libby was convicted in March of perjury, obstruction of justice, and false statements for lying to a grand jury and to FBI agents in order to conceal his role in the leaking of this information.

The prosecution of Mr. Libby also revealed that you apparently misused the declassification process for political reasons. In July 2003, you reportedly instructed Mr. Libby to leak to the media portions of an October 2002 National Intelligence Estimate regarding Saddam Hussein's purported efforts to develop nuclear weapons.¹⁶ Your selective declassification of this information was apparently made outside the formal declassification process and done as part of a damage-control effort you undertook to defend the Administration's rationale for going to war in Iraq.¹⁷

In a separate incident, Leandro Aragoncillo, a former aide in your office, pleaded guilty in May 2006 to passing classified information to plotters allegedly trying to overthrow Philippine President Gloria Macapagal Arroyo. Mr. Aragoncillo reportedly disclosed numerous secret and top secret documents to Philippine officials over several years while working in your office.¹⁸

Given this record, serious questions can be raised about both the legality and the advisability of exempting your office from the rules that apply to all other executive branch officials. To help the Committee understand your perspective on these matters, I ask that you provide written answers and documents in response to the following questions:

- (1) What is the basis for your view that the Office of the Vice President is not bound by Executive Order 12958?
- (2) In the absence of compliance with Executive Order 12958, what steps has the Office of the Vice President taken to ensure that classified information is adequately safeguarded within your office?

¹⁶ In his grand jury testimony, Mr. Libby stated that you had requested and received from the President his permission to release portions of the National Intelligence Estimate. According to Mr. Libby, however, no one else in the Administration — not the National Security Advisor, the Director of Central Intelligence, or any other national security official — was aware of your actions at the time of Mr. Libby's disclosure. *See Testimony of I. Lewis Libby Before Grand Jury* at 116-123 (D.D.C. Mar. 5, 2004); *Testimony of I. Lewis Libby Before Grand Jury* at 30-34, 45-53 (D.D.C. Mar. 24, 2004).

¹⁷ *See, e.g., Cheney Authorized Leak of CIA Report, Libby Says*, National Journal (Apr. 14, 2006); *Libby Says Bush Authorized Leaks*, National Journal (Apr. 6, 2006).

¹⁸ *See, e.g., Suspected Spy Traveled to Philippines*, The Washington Post (Oct. 8, 2005).

- a. Specifically, which, if any, of the classified information responsibilities exercised by the National Archives has your office undertaken on its own?
 - b. Has the Office of the Vice President implemented directives or guidelines for personnel regarding the classification, handling, and declassification of national security information? If so, please provide a copy of these directives or guidelines to the Committee.
 - c. Has the Office of the Vice President conducted self-inspections to ensure compliance with any such guidelines?
 - d. Has the Office of the Vice President received and acted upon reports of security violations within your office? If so, please provide a copy of the reports and a description of your office's response to the Committee.
- (3) Is it the official position of the Office of the Vice President that your office exists in neither the executive nor legislative branch of government?
- a. If so, when and why did you adopt this view?
 - b. Has your office asserted in any other contexts that its nonexistence in the executive branch justifies avoiding oversight or accountability?
- (4) Has the Office of the Vice President sought to retaliate against the National Archives for asserting authority to conduct inspections in or require reporting by the Office of the Vice President?
- a. What is the rationale for proposing the elimination of the right of the National Archives to appeal inter-agency disputes to the Attorney General?
 - b. What is the rationale for proposing the elimination of the Information Security Oversight Office within the National Archives?
 - c. Please provide a copy of all documents relating to your office's proposed changes to the executive order.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

I would appreciate your cooperation with this request. Please provide answers to the questions above and the requested materials to the Committee by July 12, 2007. If you have any

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questions regarding this letter, please contact me or ask your staff to contact Michael Gordon or David Rapallo of the Committee staff at (202) 225-5420.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, slightly slanted style.

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member