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ALLEGED MISCONDUCT:  
DR. RONALD M. SEGA, FORMER DIRECTOR  
DEFENSE RESEARCH AND ENGINEERING, AND  
CHAIRMAN, TECHNICAL JOINT CROSS SERVICE GROUP

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I. INTRODUCTION AND SUMMARY

The investigation was initiated to address allegations that, while serving as the Chairman of the Technical Joint Cross Service Group (TJCSG), Dr. Ronald M. Sega, then Director, Defense Research and Engineering (DDRE), violated the Defense Base Closure and Realignment Act of 1990<sup>1</sup> (BRAC statute) by improperly withholding information from the BRAC Commission.<sup>2</sup> The allegations were raised in a letter to the Attorney General of the United States dated January 16, 2008, from five members of the New Jersey delegation to the Congress. The Department of Justice subsequently referred the letter to this Office for review.

This allegation stems from an e-mail dated May 16, 2005, from a member of the TJCSG to other members indicating that parts of the TJCSG Final Report were being withheld, and soliciting their opinion as to the appropriate classification of each section withheld. The final version of the TJCSG report, dated May 19, 2005, did not contain the parts at issue, although the parts had not been given a security classification.

We did not substantiate the allegation. We determined by a preponderance of evidence that the information at issue was available to the Commission in a disaggregated format.

II. BACKGROUND

On March 15, 2003, the Infrastructure Steering Group (ISG) established by the Secretary of Defense appointed Dr. Sega to chair the TJCSG, newly established to oversee the joint cross-Service analysis of technical functions related to the assessment of an installation's potential for closure or realignment under the BRAC statute. The BRAC statute established eight selection criteria for the 2005 BRAC round. Priority consideration was given to the first four criteria, which concerned military value, while the remaining factors concerned potential costs and savings; economic impact; infrastructure capabilities; and environmental impact.

The TJCSG had several tools with which to calculate the relative technical value of military installations. Initially, the recommendation process was to be data-driven using a Linear Optimization Model (LOM) as the principal analytical tool in the creation of recommended BRAC actions. A LOM uses mathematical calculations as a basis for making recommendations within certain established parameters. To provide data, DoD facilities and organizations responded to hundreds of questions from the Services and the Joint Cross Service Groups (JCSGs), providing information on, among other things, their facilities, personnel, area, and

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<sup>1</sup> As amended by FY 2005 Defense Authorization Act.

<sup>2</sup> The TJCSG was one of seven Joint Cross Service Groups established to compile and analyze installation data used in making DoD recommendations to the BRAC Commission.

finances, which were used as data inputs in various formulae and equations seeking to determine the best options for closure or realignment.

The TJCSG then used information provided at the installation level to analyze 39 technical capacity areas, or "bins" at facility and aggregated bin level, originally in eight generalized areas and later in three, having determined that five of the eight areas yielded unreliable results.

The results of calculations made on the basis of analytical modeling were included in a version of the TJCSG Final Capacity Analysis Report, Appendix A (Appendix A), dated May 10, 2005. Mathematical formulae, some relying on projection factors determined by "Delphi Method,"<sup>3</sup> were used for capacity calculations concerning the recommendations.

However, although the initial TJCSG policies appeared to favor an LOM, and mathematical formulae were used to evaluate some of the data, the final report was not entirely predicated on the results of mathematical modeling. Instead, the report and recommendations stressed the importance of expert military judgment in formulating the TJCSG recommendations. Although the mathematical calculations were applied to various measures of capacity, the approach finally used by the TJCSG in generating its Final Report focused on a strategy-driven -- rather than data-driven -- approach, with the goal of consolidating activities into "centers of excellence."

According to the BRAC statute, the TJCSG Final Report, with Appendices, was due to the BRAC Commission by May 16, 2005. The allegation of improperly withholding information arose as a result of an e-mail dated May 16, 2005, from [REDACTED] TJCSG, to the principals of the TJCSG indicating that 254 pages had been removed from the TJCSG Final Report, Appendix A. According to the e-mail, the removal was due to Dr. Segal's concerns about whether the original document contained sensitive information inappropriate for public release.

A version of Appendix A to the TJCSG Final Capacity Analysis Report, dated May 10, 2005, was 267 pages long and contained predominantly mathematical data and results of capacity calculations. By the time DoD provided the TJCSG Final Capacity Analysis Report to the BRAC Commission on May 19, 2005, the Appendix was only 13 pages long. The issue is whether the excision of material from the Appendix was improper. This report follows the Appendix from its original 267 pages dated May 10, 2005, through a version dated May 15, 2005, of 13 pages, to the final version, dated May 19, 2005, also of 13 pages.

The excised pages of the Appendix A dated May 10, 2005, included data on equations and bin values for Future Excess Capacity ( $C_{FE}$ ), as well as three Annexes, respectively entitled "Technical Facilities by Reported Location," "Technical Facility Capacity Data by Technical Capability/Function," and "Force Structure Adjustment and Funding Ratios." Thus, the TJCSG Final Capacity Report, dated May 19, 2005, did not include some of the equations, tables and charts reflecting capacity values that appeared in earlier versions.

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<sup>3</sup> The Delphi method is based on a structured process for building a consensus for forecasting futures. It recognizes human judgment as legitimate and useful inputs in generating such forecasts. See, generally, "The Delphi Method," Illinois Institute of Technology, at [www.iit.edu/~it/delphi.html](http://www.iit.edu/~it/delphi.html)

The BRAC statute required the Secretary of Defense to make all information used in preparing the Department's BRAC recommendations available to Congress and the Commission. Therefore, failure to make available in some format the information presented in Appendix A, if it was information used in preparing the recommendations, would constitute a violation of the BRAC statute.

### III. SCOPE

We interviewed Dr. Sega and 25 witnesses. We reviewed archived BRAC documents, e-mail files, TJCSG minutes, ISG minutes, data calls and responses, OSD BRAC guidance and instructions, GAO audits and statements, and BRAC legislation. In addition, we recalculated a random selection of values reported in the excised Appendix A to verify their accuracy and to determine whether the information contained in the excised Appendix A could be independently calculated from other data provided to the Commission.

The TJCSG report, with Appendix A, dated May 10, 2005, is in the public domain on the Internet. We asked the DoD Office of Security Review (WHS/ESD) for a post-publication opinion as to the current releasability of the data. On November 12, 2008, WHS/ESD verified that the report did not contain any damaging information, is releasable to the public, and is properly marked unclassified.

### IV. FINDINGS AND ANALYSIS

Did Dr. Sega improperly withhold information from the BRAC Commission?

#### Standards

**Defense Base Closure and Realignment Act of 1990, Public Law 101-510, Division B, Title XXIX, Part A (§2901 *et seq.*)**

Section 2914 (b), "Preparation of Recommendations," states that the Secretary of Defense shall comply with paragraphs (2) through (6) of section 2903(c) in preparing and transmitting the recommendations under this section.

Section 2903 (c), "DoD Recommendations," subsection (1), establishes dates by which the Secretary may transmit to the Congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

Section 2903 (c)(2) states that the Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the

preceding sentence not later than 7 days after the date of the transmittal to the Congressional defense committees and the Commission of the list referred to in paragraph (1).

Section 2903 (c)(4) states that in addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

Section 2903 (c)(5) states that the Secretaries of the military departments; the heads of the Defense Agencies; and each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information, when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

Section 2903 (c)(6) provides that any information provided to the Commission by a person described in the prior paragraph shall also be submitted to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House; and that such information shall be submitted to the Senate and House of Representatives within 48 hours<sup>4</sup> after the submission of the information to the Commission.

**Freedom of Information Act (FOIA), 5 United States Code Section 552, "Public information; agency rules, opinions, orders, records, and proceedings"**

(a)(2) Each agency, in accordance with published rules, shall make available for public inspection and copying . . . (D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(a)(3)(A) Except as otherwise provided within the section, each agency, upon any request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(b) This section does not apply to, among other things, matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

Facts

The TJCSG was chartered on March 15, 2003, by Mr. Michael Wynne, Chairman, ISG, and Under Secretary of Defense for Acquisition, Technology & Logistics (USD (ATL)). USD (ATL) "Policy Memorandum One -- Policy, Responsibilities, and Procedures," dated March 14,

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<sup>4</sup> As amended, Sec. 2914 (b).

2004, tasked the Navy to lead a tri-Service effort to review and update the Optimization Model methodologies used in previous BRAC rounds. By letter dated May 14, 2004, the TJCSG was tasked to identify current capacity, maximum potential capacity, surge capacity requirements, current usage, and the capacity and percentage of capacity, if any, that currently existed in excess of current usage plus surge requirements.

USD (ATL) "Policy Memorandum Two -- BRAC 2005 Military Value Principles," dated October 14, 2004, stated that military value should be determined "through the exercise of military judgment built upon a quantitative analytical foundation." The TJCSG developed a strategic framework centered on establishing multifunctional and multidisciplinary technical Research, Development, Acquisition, Test and Evaluation (RDAT&E) Centers of Excellence.

The TJCSG originally analyzed the technical capacity at facility level in eight areas: Building Use (square feet (sq ft)); Workyears (Full Time Equivalents, or FTEs); Test Resource Workload (Test Hours); Equipment Use; Facility Use; Funding; Acquisition Category (ACAT) Funding; and number of ACATs. In order to complete the analysis, the TJCSG used data provided at the installation level in response to specific TJCSG questions.

However, on March 17, 2005, the TJCSG determined that calculations of the latter five areas yielded inconsistent and large variations, and decided to use Building Use, FTEs, and Test Hours as the primary measures of capacity.<sup>5</sup> The TJCSG created a "bin" system in order to better evaluate the gross capability value as well as the values among like capabilities at installation level. Each bin was formed when one of 13 technical capability areas intersected with one of three functional areas. Specifically, the 13 technical capability areas were: Air Platforms; Battlespace Environments; Biomedical; Chemical Biological Defense; Ground Vehicles; Human Systems; Information Systems Technology; Materials and Processes; Nuclear Technology; Sea Vehicles; Sensors, Electronics, and Electronic Warfare; Space Platforms; and Weapons Technology. These technical capability areas were grouped into three function areas: Research; Development and Acquisition (D&A); and Test and Evaluation (T&E), resulting in 39 categories, or "bins" of capacity data. A bin value was then calculated for each of the 39 bins for each of three primary areas of capacity: Building Use, FTEs, and Test Hours.<sup>6</sup> The Appendix A dated May 10, 2005, contained data indicating that, in addition to assessing the capacity values for a given bin area of the individual installation under consideration, capacity values for candidate installations within a bin were then aggregated, combining all facility values for that bin, to determine the overall capacity values, which were then used to calculate future excess capacity.<sup>7</sup>

The May 10, 2005, Appendix A explained the terms and definitions used in the mathematical capacity calculations, including Force Structure Adjustment (FSA) values. Also, this Appendix contained Tables 4-4 through 4-6, which reported, by bin, values for Future

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<sup>5</sup> The Team Leader for the Research and Development team of the Navy BRAC Directorate described Test Hours as the hours that are completed at a site for a formalized test and FTEs as "essentially a man-year."

<sup>6</sup> Test Hours has 13 bins, not 39, representing only the T&E function.

<sup>7</sup> To illustrate, the values for the aggregated current capacity calculations for each bin are at pages A-10 through A-12 of the TJCSG Final Capacity Analysis at Appendix A to the TJCSG Final Report, dated May 19, 2005.



Technical Capacity for Work Years, Building Use, and Test Hours. These tables listed Current Capacity ( $C_C$ ), Current Usage ( $C_U$ ), Future Required Capacity ( $C_{FR}$ ), Peak Capacity ( $C_P$ ),  $C_{FE}$ , and a list of ratios consisting of the sum of the Funding Term Ratio ( $R_F$ ) and the Force Structure Adjustment factors ( $A_{FS}$ )+.1. The .1 represented Surge Capacity ( $C_S$ ).

It also included three Annexes. Annex 1, "Technical Facilities by Reported Location," was a lengthy list of installations designated by zip code and the units considered as part of that zip code unit. Annex 2, "Technical Facility Capacity Data by Technical Capability/Function," reported, for each candidate installation, values for  $C_C$ ,  $C_U$ ,  $C_P$ , Capacity Available to Surge ( $C_{AS}$ ), Capacity Required to Surge ( $C_{RS}$ ), and Excess Capacity ( $C_E$ ). These headings addressed all of the areas mandated by the May 14, 2004, guidance. Annex 3, "Force Structure Adjustment and Funding Ratios," contained bin values for the Funding Term Ratio ( $R_F$ ) and the Force Structure Adjustment factors ( $A_{FS}$ ) necessary for future capacity calculations.

In total, the May 10, 2005, Appendix A was 267 pages long, and included reference to a number of mathematical equations and definitions, including  $C_C$ ,  $C_U$ ,  $C_P$ ,  $C_S$ ,  $C_{RS}$ ,  $C_{AS}$ ,  $C_{FR}$ ,  $R_F$ ,  $A_{FS}$ , and  $C_E$ .

On May 10, 2005, the Secretary of Defense was briefed by the Infrastructure Executive Council (IEC) on the proposed DoD recommendations. The Secretary accepted the recommendations without modification and, according to the IEC minutes of the briefing, intended to forward them to the BRAC Commission and Congress as DoD's final recommendations for the closure and realignment of military installations in the United States and territories. The Secretary's forwarding letter to the BRAC Commission was dated May 13, 2005.

The final reports and recommendations from the JCSGs were required to be certified as accurate and complete to the best of the submitter's knowledge and belief, and were due to the BRAC Commission no later than May 16, 2005. The cover letter forwarding the report and certifying the accuracy and completeness of the information, signed by Dr. Segal, was dated May 10, 2005. However, the TJCSG Final Report Appendix A, "Final Capacity Analysis Report," was dated May 19, 2005, and did not include the Annexes or information on  $C_{FE}$  which had been in the May 10, 2005, version. It was 13 pages long.

A witness, who was at the relevant time the DoD Legislative Liaison, testified that on May 13, 2005, the DoD Report, which included all of the working group volumes, had been prepared for distribution to Congress. The Liaison stated that on that date, the copies were on pallets and prepared for delivery from the Pentagon to each elected representative on Capitol Hill within moments after the final report was provided to the Commission. The Liaison recalled that it was on that date that "someone" realized that the information collectively could constitute a danger to security, and the distribution of the documents was held until the documents could be reviewed for security concerns. All of the documents -- the TJCSG as well as the Service and JCSG reports and data -- were reviewed by WHS/ESD as well as the Interagency Operations Security (OPSEC) Support Staff (IOSS), a part of the National Security Agency (NSA), in coordination with the Office of the Under Secretary of Defense for Intelligence (USDI).

The Department of Justice FOIA Guide and Federal case law recognize that the FOIA exemption for classified information can include aggregated materials, i.e., compilations of otherwise harmless information which, when assembled, can result in damaging revelations.

On May 13, 2005, Mr. Peter Potochney, Director, Office of the Secretary of Defense (OSD) BRAC Office, e-mailed Dr. Sega and others asking that the Directors certify that the JCSGs' Final Reports were not classified so they could be released. Dr. Sega's Deputy, the TJCSG Executive Director, Mr. Alan Shaffer, replied that the TJCSG volume was not classified, but the attachments might be For Official Use Only (FOUO),<sup>8</sup> and added that he wanted to make sure that there were no issues with aggregation of the electronic databases. Mr. Potochney replied that the data bases were being reviewed separately from the volumes. Mr. Shaffer responded that he had just spoken to Dr. Sega and that both agreed that the amount of data in the TJCSG capacity and military value appendices made them "nervous in the aggregate," adding that if FOUO was not an option, neither he nor Dr. Sega was in favor of "wholesale release of the appendices." In a later e-mail dated May 13, 2005, Mr. Shaffer explained that their first preference was restricted dissemination, rather than outright classification, citing as examples the Defense Technology Area Plan and the Joint Warfighting Science and Technology Plan. He added, "for now, a security review seems prudent."

The Deputy Director for Operations Security and Technical Protection, Office of the Deputy Undersecretary of Defense for Intelligence, Counterintelligence and Security (DUSD (CI&S)),<sup>9</sup> testified that Deputy Secretary of Defense Gordon England saw that all the DoD data was going to go on the Defenselink public internet portal and said, "I need a review of this info." The Deputy Director recalled that Secretary England's concern "butted up to" the time OSD was to provide information to the Commission, and the materials pending release consisted of "millions of pages of stuff." She believed that the DUSD (CI&S) briefed Secretary England on potential security concerns on May 13, 2005. She stated that shortly thereafter, Secretary England issued a temporary classification for all of the material, during which time it was to be reviewed by the Service representatives, Washington Headquarters Services (WHS), and her division. She said that she was assigned to coordinate and oversee the review of the information, and that she pulled in interagency support staff from the NSA. The witness explained that WHS reviewed for classified and FOUO info, while the IOSS looked at the information "from an aggregation/OPSEC point of view: what could an enemy get from this?"

Ms. Carol Haave, the former DUSD (CI&S) and Director of the Intelligence JCSG, testified that "early on" she expressed concerns that all of the JCSGs needed to be conscious of the fact that when data was aggregated, even though it appeared to be unclassified, it could in the aggregate be classified. She explained, "essentially, what you're doing is laying out for the public and for our enemies sort of the target folder, if you will, of the United States and what capabilities are housed where, and all those kinds of things." She testified that other group participants were not initially concerned, but that "late in the game" a concern was expressed, possibly by Dr. Sega, about the aggregation of information. She recalled there were three

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<sup>8</sup> Information that is FOUO may not be so marked unless it is entitled to an exemption from the FOIA.

<sup>9</sup> Witnesses also tended to refer to the intelligence review community generally as "USD (I)," alluding to the Office of the Under Secretary of Defense for Intelligence.



examples where it was clear that information should not be released. Although she could not recall the specifics of each example, she thought that it “probably had to do with capacity.” She elaborated that although she had little recollection of the events, she did vaguely remember a discussion about capacity, because the concern was not about the U.S. public’s receipt of information, but that public release would “telegraph to our enemies what capacity we had, what capacity we were hoping to have, and how we were aggregating those capabilities together in a location that may or may not be advisable, from a defensive standpoint.” Given the totality of the information in the BRAC package, the witness opined that future excess capacity calculations and future requirements for the future force, in their specificity, would be sensitive information.

The Director of the IOSS testified that his organization was “essentially brought in as a consultant” because IOSS worked with Federal agencies to help them establish OPSEC programs to evaluate information release threats to their operations and missions. He stated that it was not until all of the information started coming together that OSD noted that the aggregation of all of the pieces into one database probably needed “a second look,” and at that point the OSD came to the IOSS for assistance. He testified that IOSS knew that the stakes were significant, due to the BRAC Commission’s involvement, and estimated that IOSS would not err on the side of caution in releasing it: “if we were on the line, if we can’t justify protecting it, we wouldn’t.”

The Technical Director and Chief of Operations, IOSS, testified that the IOSS recommended three classes of information back to OSD: what should be classified, what should be FOUO and segregated from public release, and what should be placed on the public websites. She stated that the IOSS knew that OSD was setting up a reading room in which the sensitive information was also available for review, and testified that her impression “was that as we were making recommendations, they were organizing the data in the Reading Room in those three categories.”

On May 16, 2005, at 10:31 a.m., an e-mail from [REDACTED], Chief of Staff, Technical JCSG, to the TJCSG principals, titled, “Report Conundrum” stated,

Please remove from unclassified computers any item that has any version of Appendix A, Annex 1 or Annex 2. That includes the versions I sent by e-mail Sunday night. Dr. Segal informs me he discussed Appendix A with [REDACTED] [REDACTED] felt Annex 1 may be FOUO and Annex 2 (all versions) may be subject to more severe restrictions than FOUO.

On May 16, 2005, at 12:47 p.m., [REDACTED] sent an e-mail to TJCSG principals and members informing them that the 267-page Appendix had been streamlined by Dr. Segal. He attached a copy of the streamlined report. The attachment was no longer attached to the e-mail at the time of our investigation.

The OSD BRAC Office provided an archival disk retrieved from the Defense Technical Information Center (DTIC). According to the records custodian, the disk contained copies of all of the archived folders containing electronic files from the TJCSG. She was unaware of any other BRAC Reading Room electronic or print materials archived at DTIC.

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One of the documents on the DTIC disk was a draft TJCSG report dated May 15, 2005. We determined this report had been foreshortened from the May 10, 2005, version by removing the annexes and values for future excess capacity. However, it still contained equations for calculating future excess capacity. The document properties reflected that the author was "[REDACTED]" and that the document had been created on May 10, 2005, last modified on May 17, 2005, and owned by "Everyone." We found it likely that a variation of this version was the attachment referred to in [REDACTED]'s e-mail as a "St[re]amlined TJCSG Report" and described in the e-mail as the document Dr. Sega proposed to release to the Commission.

The May 15 version of Appendix A included all of the equations that were in the May 10 version, but omitted the Annexes and the tables containing projected bin values for Future Excess Capacity.

In his e-mail, [REDACTED] reminded the principals that the version needed to be a publicly releasable document, and continued,

The vast majority of appendix A is gone (all but 13 pages). [Dr. Sega] asks the opinion of his TJCSG colleagues as to whether this document is just right or whether even less should be released to the public or if removed parts of Appendix A are releasable to the worldwide public and therefore should be reinserted. . . . Dr. Sega has concerns that the aggregated list of 282 locations should be FOUO. He has concerns that the aggregation of work years, test hours, and building information should be classified. The mention of technologies which may be important in the future might be controlled information too. He solicits the advice of the Principals concerning the specific classification of each section of Appendix A being withheld.

[REDACTED] testified that Dr. Sega declined to say that the entire TJCSG report was publicly releasable, but neither was Dr. Sega prepared to say that it was classified, considering all of the information contained in the earlier version of the report with annexes. [REDACTED] explained that the releasability concern was that the information told everybody specifically where the DoD's technical capability was, which "seemed like a dangerous thing to perhaps make it so easy for potential adversaries to know what they might want to attack if they wanted to harm the technical capacity of the Department of Defense in some way." [REDACTED] believed that Dr. Sega had the authority to determine if information was not publicly releasable.

[REDACTED] said that on Friday, May 13, 2005, he believed that a security review and decision would be made over the weekend. [REDACTED] explained that just past noon on Monday, May 16, at the behest of either Dr. Sega or his deputy on Dr. Sega's behalf, he sent the above e-mail to poll the principals and see if they shared Dr. Sega's concerns. However, he testified, his polling was overtaken by events because while he was waiting for the opinion from the principals, the Director of the OSD BRAC Office, IOSS and WHS/ESD were already making the determination. [REDACTED] stated that just a few hours after he sent the e-mail poll, he received an e-mail from the Director of OSD BRAC to deliver the report to WHS/ESD, which he did. He

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stated that he believed that all of the data that had been in the original Annexes was in the possession of the Commission by on or before June 1, 2005.

██████████ addressed the redactions of the equations concerning  $C_{FE}$ , explaining that the TJCSG estimated future excess capacity by taking current capacity and projecting the future using expert military judgment and adjustments for program funding and future force structure. He testified that the TJCSG was concerned that the data might not only "tip off" potential adversaries about the technical structure now, but also would tell them what the technical infrastructure might look like in the future. ██████████ added that the TJCSG did not feel "that either one of those were wise things to hand freely to adversaries." In addition, he explained that because the TJCSG Final Capacity Analysis Report included "military experts making prognostics about what they felt the future would be," he did not feel that it was in DoD's best interests to make available to potential adversaries "the deep thinking of technical military experts in the Department of Defense." He concluded, "So at the time the removal of this page was a very easy decision for me to make."

He testified that he left a reference to  $C_{FE}$  to "raise a flag" in the Final Report and signal to the Commission to look for that information in the Reading Room. He added, "It was just a matter of whether it was going to be made available to the public or not. The BRAC Commission was going to get everything."

██████████ the Army TJCSG principal, responded at 12:57 p.m., "I appreciate the sensitivity about making this FOUO. I think that is a good catch by Dr. Segal and support."

In an e-mail dated May 18, 2005, the Technical Director and Chief of Operations, IOSS, wrote to an OSD action officer that the IOSS reviewed the "long version – 497 pages" of the TJCSG report, but did not review the short version. She stated in the e-mail that "we don't think we can give you adequate justification to withhold this volume or do extensive edits at this time." She further recommended that OSD release the long volume to the Commission. This e-mail appeared to elaborate on an earlier e-mail from the Technical Director notifying the Deputy Under Secretary of Defense for Installations & Environment, the Director of the OSD BRAC Office, and other OSD personnel that Ms. Haave, DUSD (CI&S), had approved, among others, the release of Volume 12 -- the TJCSG Final Report with attachments.

In an e-mail dated May 19, 2005, the Chief of Security, WHS, wrote to the Director for Operations Security and Technical Protection that he believed WHS/ESD would finish its review on that date. He stated that his staff had identified some areas of concern, and was coordinating with originators to have certain information properly removed before the justification books were submitted. An e-mail later on that date from the Chief of Security, WHS, to the Deputy Director for Operations Security and Technical Protection noted that Dr. Segal had serious concerns about release of the TJCSG report because of the aggregation of information, disclosure of which would "provide clear advantage to the enemy." In the e-mail, the Chief of Security stated that Dr. Segal "feels the roadmap is too detailed to make publicly available in this format." The witness also testified that he would suspect that his office would err on the side of caution in reviewing potential risks, admitting "that may be the nature of the beast with which we work." The witness testified that an issuing authority did not need WHS/ESD permission to classify a

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document outright. Also, he stated, his office did normally require that FOUO information be withheld, and added that there was a presumption that redactions made by WHS/ESD were correct.

Several e-mails dated May 20, 2005, between the Director, Operations Security and Technical Protection, and Dr. Sega's military advisor, TJCSG, indicate that Dr. Sega authorized release of "the short version (without the Annexes to Appendix A)." The military advisor testified that it was his understanding that all the information, whether classified or not, would be made available to the Commission.

The Technical Director and Chief of Operations, IOSS, did not consider Dr. Sega's apparent difference of opinion with the IOSS recommendation for release to be unwarranted. She remarked that when Government data was put into the public forum, "the U.S. Government may not always be accurate, but it doesn't lie to the people . . . We don't knowingly put false data out for the public to consume and our adversaries know that." She added that she thought it "entirely possible" that the IOSS gave OSD and the TCJSG that threat background, and that as IOSS made its recommendations back to OSD, "they [OSD] looked at a piece and said, 'you know I think that's more sensitive than you're assessing it to be.' And they could have made that determination."

The final reports and recommendations from the JCSGs were due to the BRAC Commission by May 16, 2005. The TJCSG Final Report submitted to the BRAC Commission included a 13-page Appendix A, "Final Capacity Report," and was dated May 19, 2005, although the cover letter forwarding the document from the TJCSG to OSD was dated May 10, 2005.

This "short version" of the TJCSG Final Report, Executive Summary, and Appendix A ultimately included equations for  $C_U$ ,  $C_P$ ,  $C_S$ ,  $C_{RS}$ ,  $C_{AS}$ ,  $C_B$ ,  $C_U$ ,  $C_{U(FTE)}$ , and  $C_{P(FTE)}$ .

This TJCSG Final Capacity Report was substantially similar to the May 15, 2005, version, but still lacked data concerning future excess capacity as well as the three Annexes which had been present in the May 10, 2005, version and, in part, the May 15, 2005, version. It did contain all of the necessary equations for calculation of the data contained in the redacted Annexes except  $C_{PR}$ ,  $C_{FE}$ ,  $R_F$ , and  $A_{FS}$ , the latter two of which had initially been provided at Annex 3. All of the Appendix versions we reviewed included values for Current Technical Capacity.

The Deputy to the Principal Deputy DDRE testified that he was involved in future capacity calculations. He reviewed [REDACTED]'s e-mail, and recalled that he felt more strongly and thought the data should be classified, explaining that the TJCSG was dealing with future warfighting capability, and that the aggregated list of locations at the Annexes, for instance, told potential adversaries not only where the capability was being developed, but how its infrastructure was being developed. However, he did not know what happened to the information which, in the event, was not classified.

An e-mail dated May 25, 2005, from [REDACTED], BRAC Commission, to [REDACTED] and [REDACTED], both of OSD ATL, with a courtesy copy to Mr. Frank

Cirillo, the Director of Review and Analysis for the BRAC Commission, noted that the BRAC Commission had not received the Capacity Analysis data for each Service and JCS group.

██████████ noted, "Classification issue noted -- but we need ASAP [as soon as possible]."<sup>10</sup> He acknowledged that some of the "Justification Books," which provided detailed analysis for specific closure or realignment recommendations, contained parts of this information, but that the BRAC Commission still needed the overall data "to validate capacity and military value."

Mr. Cirillo testified that "the great majority" of DoD's backup data did not reach the Commission until well into June, if not the middle of June, because concerns arose within DoD just prior to May 16, 2005, that all the data provided as a whole compromised some information within the Department. The Director recalled that when the Reading Room became available, the Commission was sensitive to the concerns that everything needed to be publicly releasable and therefore they did not wish to take notes and did not "waste a lot of time" reviewing the information other than being familiar with what was there. He added, for example, that when the Reading Room became available and open after May 16, 2006, the Army Basing Study Group provided a server to review the information "and all the information was there." He described excess capacity as "a big deal." He testified that each BRAC Commission team did its own excess capacity analysis and they were "pretty good on figuring out if [DoD's] capacity numbers were off."

Mr. Cirillo explained that the BRAC Commission teams went through all of the minutes of the various groups and made sure that their calculations were correct, adding, "if we saw some errors, we'd ask questions." He described the TJCSG as one of the "toughest to get information from" because the individual groups all worked independently, but could not recall any information that the BRAC Commission knew it did not get. He could not recall any FOUO information that did not become part of the Commission proceedings, if submitted to the Commission. He related that any information that stayed classified was kept in the Reading Room and never became part of the Commission's official records. The witness stated that it would be hard for him to say what information DoD did not give to the Commission, unless the BRAC Commission realized it, asked for it, and was refused; or if the BRAC Commission determined information was missing or incorrect, and concluded that DoD personnel had lied about it when asked.

The minutes of the TJCSG for March 8, 2005, included slides defining  $C_C$ , Required Capacity ( $C_R$ ), and  $C_P$  and providing equations for  $C_E$ ,  $C_R$ , and  $C_{FR}$ . The minutes for March 17, 2005, defined  $C_C$ ,  $C_U$ , and Maximum Potential Capacity, and provided equations for  $C_{AS}$ ,  $C_{RS}$ , and  $C_E$ . The minutes for October 5, 2004, defined  $C_U$ ,  $C_P$ , and  $A_{FS}$  and provided equations for  $C_{FR}$ ,  $R_F$ ,  $C_S$ ,  $C_{FE}$ , and  $C_E$ .

On May 27, 2005, Secretary England issued a memorandum stressing the need to protect BRAC information that, standing alone or in aggregation, would cause serious damage to national security if known by U.S. adversaries. The memorandum temporarily classified all of the DoD BRAC databases and information contained therein<sup>11</sup> as "SECRET (Formerly

<sup>10</sup> All capitals in original.

<sup>11</sup> Except the BRAC questions asked.

Restricted Data)” and specified that by June 3, 2005, each of the Military Department Secretaries were to certify to him that their residual BRAC database was unclassified and did not pose any OPSEC vulnerabilities.

A memorandum dated May 27, 2005, from the Secretary England to Senator John Warner, Chairman, Senate Armed Services Committee (SASC) advised that DoD’s plan for making available the supplemental and temporarily classified BRAC databases included allowing the BRAC Commission and Members of Congress with ‘secret’ clearances to have access to the entire digital database accessible on computers in a secure reading room in Crystal City, VA, by Tuesday, May 31, 2005, and allowing the public, through the BRAC Commission, to have access to all unclassified information by Saturday, June 4, 2005.

The WHS/ESD<sup>12</sup> official charged with establishing the Reading Room in the Polk Building, Crystal City, VA, where the BRAC Commission had its offices, testified that he did not personally review the information on each data disk brought to the Reading Room by a JCSG or Service representative. He provided a floor plan of the area set aside for the BRAC Reading Room showing a public area for reviewing information as well as a restricted and guarded area for reviewing sensitive or classified information. Two separate sections were provided for the JCSG material, as well as separate classified material reviewing areas. He also provided documentation showing that the Reading Room received Open Storage Approval for classified information on May 31, 2005, and that the Reading Room was open for public access by June 1, 2005. Further, he provided the sign-in log<sup>13</sup> maintained for access to the non-public area. The log indicated that Congressional staff members visited the controlled Reading Room more than two dozen times, while members of the BRAC Commission, including [REDACTED] and Mr. Cirillo, visited the controlled Reading Room at least one hundred times between June 1, 2005, and September 8, 2005.

In addition, the witness provided an undated document from his remaining BRAC Reading Room files titled “Joint Cross-Service Group (JCSG) and OSD BRAC 2005 Material” which indicated that the TJCSG had provided material described as minutes, Data Collected Outside of Databases; Guidance Documentation; and Scenario Data Calls on data disks. In addition, the list specified that one compact disk (CD) held the Defense Agencies’ Capacity Analysis Databases and Defense Agencies’ Military Value Analysis Databases.

A memorandum dated June 8, 2005, for BRAC Personnel in the Reading Room from the Director of WHS reminded them that all database information within the controlled part of Suite 700 was classified SECRET until determined otherwise.

We received five data CDs from WHS/ESD<sup>14</sup> containing copies of the TJCSG documents reviewed by that office. We found copies of Microsoft Access and Excel files on those disks containing all of the data contained in Annexes 1 and 2 in file number 05-C-0758/36, as well as

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<sup>12</sup> We note that WHS/ESD is a large organization with many subparts. This witness was, and is, not collocated with any other WHS/ESD witness referenced in this report.

<sup>13</sup> We were unable to obtain logs for the Capitol Hill Reading Rooms.

<sup>14</sup> Two of these disks appeared to duplicate each other.



all of the installation responses to the data call questions in aggregated and easily searchable formats. These responses are also available on the public Defenselink website, but in a disaggregated form which is not as readily evaluated by bin allocation or installation location. In addition, the individual installation responses contained in the Defenselink public databases do identify values for each bin and reporting unit; however, being disaggregated, each installation's data must be accessed individually, an undertaking that is distinctly less "user-friendly" than the data tables contained in the TJCSG disks provided by WHS/ESD or in the Annexes.

A copy of a memorandum from the Chief, Office of Freedom of Information and Security Review, WHS/ESD, dated June 3, 2005, to the Director, OSD BRAC Office, indicated that the vast majority of the documents and data in the CDs was unclassified, but also that

[u]sing current capabilities of knowledge management and data mining this data can be rapidly assimilated into data bases to analyze DoD force structure and basing information for the present, during the FYDP [Future Years' Defense Plan] and out to the year 2020. The release of this BRAC information may result in providing our adversaries the very information they will need to analyze our plans and develop and implement asymmetric solutions for their current and future defense plans to counter the DoD Transformation and future warfighting plans of the U.S. Military. The BRAC 2005 Office should consult with OUSD(I) and OASD(NII) prior to the public release of this BRAC information beyond the proposed BRAC Commission Reading Room.

The memorandum further stated that upon removal or redaction of the findings identified at Attachment 2 and National Security Agency certifications, the information was cleared for release by the DoD BRAC Office to the BRAC 2005 Commission and the public. Attachment 2 contained a list of reviewed data disks and, for each disk, noted whether there was an impediment to the public release of the referenced data. Remarks for file number 05-C-0758/36 noted "OPSEC data aggregation concern due to compilation for these documents." WHS/ESD is independent of DDRE and the TJCSG.

The General Counsel to the OSD BRAC Office testified that she recalled that there were concerns about the aggregation of data in the original report and that a foreshortened report was provided to address that concern. She opined that if data was used in the course of the TJCSG analysis, that data would have had to be submitted to the BRAC Commission, but that the TJCSG did not have to "put it in this pretty form" of the Annexes, choosing instead to submit the raw data and the formulas it used for calculation. She stated that her understanding, based on what was present in Appendix A dated May 10, 2005, was that all of the information contained therein went to the Commission, but not in the Annex format.

The TJCSG lead analyst and second tier supervisor in charge of compiling the data testified that he delivered one or two disks to the BRAC Reading Room in the Polk Building. He recalled concerns about the aggregate data being classified, and recalled that the issue affected all of the groups, which had to send their data sets to the Polk Building until someone made a releasability determination. He stated that he was told that until the information was reviewed,

two Reading Room locations would be established, one on Capitol Hill and one at the Polk Building, to which all data was supposed to go during the classification/redaction review process. The witness recalled sending electronic files in support of that direction. He identified the Appendix A with Annexes as the "raw data" and the review books as "what the decisions were." He was confident that all the backup raw data went to the Polk Building. He testified that "everything" was brought over to the Reading Room "until the determination was made because they wanted to continue on working until they figured out what could be done." The BRAC Reading Room log establishes that this witness was present in the Reading Room on June 1 and June 2, 2005.

The witness reviewed Appendix A dated May 10, 2005, with the Annexes, and identified it as "all the data that my team put together." He explained that the TJCSG report had 22 volumes, in both hard and soft copy. He testified that the soft copies went to the Polk Building "for a reading room" and that the books went to [REDACTED] "before they were forwarded out." He testified that he was "positive" that the data reflected in the original Appendix A was put on a disk that went to the BRAC Reading Room, specifically in Adobe Portable Document Format (".pdf") so that it could not be altered. He stated that the report and data had to be on those disks, because he "pulled everything -- swept everything over." He affirmed that when he was told to bring data over for review, because it was still determined classified, he pulled "everything" down to a disk and walked across the street to the Polk Building. He denied ever having been asked to destroy or omit information. Although he was not involved in calculating future excess capacity, he explained that the TJCSG "made a little bit of a shift" in decisions that were being made halfway through the process "saying straight numbers are not going to get us where we need to go."

The witness added that the TJCSG determined it had to re-design the way DoD does acquisition and that is where the TJCSG came up with the concept of aligning the structures and putting things together that made centers of excellence. The witness noted that shift "took away from absolute numbers being the deciding factor." He testified that he believed that future capacity, as an absolute number, compared with plain excess capacity, would have no bearing on the TJCSG's final decision. He described the notion of future capacity as "squishy," being 20 years out. He explained that he was not saying that future capacity values were not important, but that they had less of an impact because the TJCSG realized the numbers were "squishy in the first place" and determined it was better to build centers of excellence with what one has currently available than it is to try and say one has a specific value of disposable future capacity.

We reviewed the TJCSG minutes to determine whether these calculations were publicly available in the recorded course of the TJCSG analysis. We determined that the TJCSG minutes dated March 8, 2005, and October 5, 2004, contained the equations for calculating  $C_{FR}$  and  $C_{FE}$ , while the October minutes also explained  $R_F$  and  $A_{FS}$ .

The information at Annex 1, "Technical Facilities by Reported Location," was not reflected in the minutes, although the minutes do refer to the zip code rollup plan. Annex 1 listed which facilities or units were being reported as part of an organization's geographical zip code location. For instance, the Navy facilities at Norfolk, VA, are divided into four zip codes, and the chart indicates which activities are reported for that geographical designation. Similarly, the

same zip code at Patuxent River, MD, contains both Air Force and Navy facilities. The list identifies which facilities are reported within the geographical allocation. This zip code identification information was also provided within the data call responses, although in a disaggregated format. It was also on the TJCSG DTIC archived CD.

E-mails between BRAC Commission staff indicate that the difficult situation brought on by disaggregated information was not unfamiliar. An e-mail from a BRAC Commission staff member, dated June 13, 2005, indicates, for instance, that the Air Force prepared two Mission Capability Index (MCI) documents for each installation which were available only in the classified Reading Room, although the BRAC Commission staffer seemed unconvinced of the classified nature of any of the information. The staffer asked the Deputy Director, BRAC Commission Review and Analysis, for assistance in obtaining these documents, noting that “without them, we would be required to sort through hundreds of Excel spreadsheets per base, pull out the bases’ raw data, do the calculations, and then perform the weighting.” The staff member described this as “an untenable solution,” with the result that the BRAC Commission contacted the Director of the OSD BRAC office for assistance in finding a resolution. We were unable to locate any similar document implying that the TJCSG data was similarly difficult to work with.

The former Team Leader for the Research and Development Team of the Navy BRAC section, TJCSG, testified that he recalled a concern about data aggregation sensitivity late in the process. However, he stated, he was not aware of anyone in the Technical JCSG or anywhere else in DoD that had intentionally suppressed information from the BRAC Commission. He stated that while he did not interface directly with the BRAC Commission, the BRAC Commission was clearly knowledgeable, knew what they needed to ask for, and asked specifically for those things.

The former Chief of Staff of the TJCSG did not recall any of the events at issue. He did not believe the TJCSG provided any classified information to the BRAC Commission. He recalled that information was often removed from the TCJSG products because if they had too much detail they would become classified. He stated that TJCSG reports tended to expand and contract “like an accordion” as there were “truckloads” of information which would be put in or taken out.

A former member of the TJCSG testified that he did not recall an issue about redacting the report. He recalled that there were parameters within which the TJCSG tried to measure things to see if a recommended action were appropriate. However, he stated that although the TJCSG looked at various things to measure to obtain a meaningful result, it was very difficult to measure output in science, for example, when talking about Research and Technology. He emphasized the difficulties the TJCSG had in obtaining meaningful results. He stated that he seemed to recall that there was a quarrel about how valid Future Excess Capacity was and whether the results were meaningful. He stated that the results were not particularly accurate as predictors.

██████████ testified that he did not believe the redacted information should have been considered classified, but that Dr. Segal was “being very cautious at the time.” He added, “The

cold, hard reality is that the data that we got in to support all of our findings was of such a volume and of such poor quality that I would encourage any of our adversaries to go through it and see if they could make sense of it." He stated that as the TJCSG went through the calculations for future excess capacity and excess capacity, the data did not support its use "in any meaningful way in the decision process." He asserted that for this reason, the TJCSG went back to a decision process of using the data that was available and then applying the best subjective judgment of the seniors and principals involved.

Mr. Potochney testified that he thought the material that was undergoing security classification review was available for the BRAC Commission's review in a classified reading room at the BRAC location, and recalled that the BRAC Commission was "chafing under that" because the BRAC Commission staff did not think access to the data should have been restricted. He testified to his belief that everything, including the Annexes to the Appendix that had been part of the May 10, 2005 version, was available to the BRAC Commission, and reiterated that he still believed it, but could not prove it. The witness testified that in his view, everything that was generated during the OSD recommendation process should be available to the BRAC Commission, whether or not the TJCSG considered that information helpful. The witness further testified that Dr. Sega never personally raised concerns to him regarding a possible aggregation issue.

The Operations Officer for TJCSG support services initially had little recollection of the events at issue. However, he later testified that "what stuck in his mind" was the idea that the rationale for not including the tables [in the public reports] was "they didn't change anything, any of the recommendations. And nobody's going to look at them anyhow." He thought that in addition to any security concerns that existed for not including the information in the May 19, 2005, report was to keep things "short and to the point" so the reader might more easily focus on the reports and read them. He thought the absence of the data tables was significant only if the BRAC Commission wanted to do verification or if someone wanted to challenge the findings, because if there were any questions on any aspect of one of those recommendations, the tables were necessary to illustrate how the TJCSG came to those conclusions. Although he had opined that the tables were unnecessary in the report, he also stated that he did not see how anybody could fully understand a recommendation without the tables. He testified that he had directed all of the data to be preserved along with the program and that it could have been produced at any time prior to it having been archived some time after July, but that he never received a request for tabulated data from the BRAC Commission.

The witness identified the Appendix and Annexes to the May 10, 2005, draft as the output data and asserted that this data, as well as the "raw" data points of the input data provided by the individual installations, should still exist. The officer noted that after Congress had voted, someone might have said that the information was no longer needed and disposed of it, but "no way in hell" would the data have been destroyed prior to his leaving the TJCSG in mid-June, 2005. He concluded, "That stuff [the data in the May 10, 2005, Appendix] existed; it was still there, of that I am certain."

Dr. Sega had little recollection of the events at issue. He testified that he believed that there was a request from the Deputy Secretary of Defense level that the Defense Intelligence

Agency (DIA) look at all of the aggregated information as it was to be released to the public. He stated that his understanding was that the commissioners had everything. He stated that the review for classification concerned unclassified, FOUO, and secret to “get those pieces right” and that the general public release would be the unclassified part and the commissioners would receive all of it. Dr. Sega testified he was not aware of 254 pages of data being removed from Appendix A and could not recall the final disposition of the security review. Reviewing [REDACTED]’s May 16, 2005, e-mail concerning redactions, he testified that he interpreted it as soliciting input so that the TJCSG could provide its input to the next review stage, which he believed was DIA.

Total physical capacity was provided in the final Candidate Recommendations (CR): all of an installation’s physical capacity bins were added for the result reflected in the CR. The CR formats did not include values for Future Excess Capacity.

We could not locate a full set of the values for  $A_{FS}$  in the minutes or on the disks provided by DTIC or WHS, although the values for  $R_F + A_{FS}$ , T&E bins, were included in an attachment to the TJCSG minutes of September 9, 2004.

The complete set of  $R_F$  and  $A_{FS}$  bin values, originally Annex 3 to Appendix A, was provided in an enclosure to a letter dated July 28, 2005, from the Deputy DDRE to a staff member for Senator John Warner, with a courtesy copy to a member of the SASC staff and the OSD BRAC Clearinghouse. The letter’s enclosure also identified the excess capacity listed in the TJCSG Final Report, Appendix A, as Current Excess Capacity, and explained that the TJCSG used military judgment to adjust ratios that were used in the calculations for Future Required Capacity. Then, the explanation continued, Future Excess Capacity was calculated and was equal to Future Peak Capacity minus Future Required Capacity. We took “Future Peak Capacity” to be an error: there are no equations for Future Peak Capacity and the values reported for Peak Capacity used in the calculation of future capacity values of Tables 4-4 through 4-6 reflect simple  $C_P$ . The enclosure also stated that projections for  $C_{FE}$  for each of the capability areas [bins] were not listed in the TJCSG Final Report, explaining that these factors served as a “gross check for the subgroups to ensure DoD ability to produce future warfighting capabilities.” Notwithstanding the reference to “Future Peak Capacity,” we noted that use of the values for  $R_F + A_{FS}$  in the enclosure did yield the correct results for future excess capacity using the reported bin values for  $C_P$  in the relevant equation. A copy of this letter, with enclosure, was included on the TJCSG CD archived at DTIC. The SASC staff member named as a recipient did not specifically recall the letter, but stated that he was probably provided a copy.

In a prepared statement before the BRAC Commission titled “Review of Legal Considerations Related to Certain 2005 Defense Base Closure and Realignment Recommendations Proposed by the Department of Defense,” dated August 10, 2005, Senator Warner maintained that there were a number of problems with DoD’s BRAC analyses, quoting a DoD issue analysis team as saying that the JCSGs exhibited “no consistency in approach taken in capacity analysis.”

BRAC Commissioner Philip Coyle testified that the OSD BRAC Clearinghouse was the DoD process for taking in and responding to BRAC Commission questions. He explained that

the Commission basically submitted questions to DoD, which had a team set up -- "effectively a clearinghouse" -- that would then parse those questions out to the Army, Navy, Air Force, and the different facilities for answers. He stated that the answers came back through that clearinghouse to the BRAC Commission. He testified that, at the time, he had no knowledge of Dr. Sega's allegedly withholding information, nor any perception that information was being withheld. He testified that some of the questions the BRAC Commission asked were never answered or were answered "in a way that wasn't actually an answer."

The alternate Navy member of the TJCSG's Capabilities Integration Team (CIT), which had oversight responsibility over the TJCSG subgroups, prepared several issue papers throughout the TJCSG BRAC process, identifying areas of concern and suggesting improvements. One paper by this individual, "Military Judgment: Necessary - But Not Sufficient," dated November 14, 2004, asserted that the TJCSG's approach to determining capacity was "overly complicated," and used "too many metrics of dubious value," including square footage and the Force Structure Adjustment [Annex 3, May 10, 2005, report]. He asserted that the FSA was unreliable "because of its total reliance on judgment." He also noted that the FSA was intended to account for any current capacity that may not be necessary in 2025, but that the FSA value resulted from a merger of "our individual judgments" into a collective judgment. Concerning the FSA, he stressed, "it is unclear how to defend pure speculation about the world 20 years from now. Needless to say, the FSA is not certified data."

In a later paper, "The Conduct and Lessons of BRAC-05," dated November 29, 2005, this member stated he disagreed with the Executive Director's emphasis on current capacity and stated that "essential data on future required capacity was expunged and withheld." He stated that the decision to rely on current excess capacity, instead of future excess capacity, "appear[ed] to have been made outside the deliberative process," and stated that DoD had "withheld it from the public and the affected DoD workforces." He asserted that "by expunging the future required capacity data," OSD based all BRAC-05 technical proposals "on today's force, not the future force." The witness testified that he did not believe that Future Required Capacity data was "spongy" or otherwise flawed. He opined that a deficit of future technical infrastructure was plausible based on current capacity data and world events. He recalled that the Military Value and Capacity data became available well after the proposals were developed, and [REDACTED] Dr. Sega, Mr. Shaffer, and [REDACTED] "defended that inversion of the usual way one develops proposals" by saying the process was "strategy-driven," using the technical expertise and military judgment of the subgroup personnel.

The BRAC Commission Final Report, Volume I, explained the TJCSG 39-bin technical capacity analysis, and stated that the TJCSG "considered current capacity, surge capacity estimates, and possible future capacity estimates." It determined that a majority of the TJCSG recommendations deviated from the Force Structure Plan, but did not elaborate on whether this determination was based on future capacity projections.



Discussion

We conclude that the preponderance of available evidence supported Dr. Sega's assertion that he did not improperly withhold data from the BRAC Commission or Congress. Our analysis considered, first, the absence of the C<sub>FE</sub> and Annex information in the May 19, 2005, TJCSG Final Report and second, whether the information was "made available" in the Reading Room or by other means, notwithstanding its redaction from the public document.

The BRAC statute required that DoD make all information used by the Secretary to prepare the recommendations available to Congress and the Commission. We determined that the transmission document dated May 10, 2005, and the IEC minutes indicating the Secretary's acceptance of the recommendations, signaled that all of the information that had been prepared for release by the TJCSG as of that date was information "used by the Secretary" in making his recommendations, and was subject to the dictates of the BRAC statute. Although witnesses differed in their opinion of the usefulness of the calculated data, the TJCSG itself admitted that the omitted capacity data was used as a "gross check" for its results. That being said, we found no evidence that the original May 10, 2005, or May 15, 2005, versions themselves were provided to the BRAC Commission.

On the basis of Dr. Sega's own and other witness testimony, as well as e-mails written at the time of the events at issue, we found that at the time of ██████████'s May 16, 2005, e-mail, Dr. Sega and his superiors had a genuine concern that the type of information aggregated in Appendix A to the TJCSG Final Report could enable persons or organizations with malign intent to analyze parts of the resulting mosaic of information to identify sensitive security information, even though no individual piece or segment of information was itself classified.

The e-mail trail between the security and WHS reviewers suggested that the DUSD (CI&S) might contemplate a "discretionary release" of the TJCSG report, as she had on earlier volumes. The very terminology of "discretionary release" indicates that the information was subject to exemption from FOIA disclosure. Although the IOSS action officer found nothing necessitating redaction in Appendix A, WHS/ESD -- which also had expertise in these matters and routinely screened documents for public release -- did find necessity for redaction. The difference in opinion is actually slight: the IOSS officers testified that IOSS would tend to err on the side of disclosure, while WHS/ESD personnel testified that WHS/ESD tended to err on the side of nondisclosure. However, both appear to have recognized by the discussion of discretionary release that the material was not required to be disclosed to the public. We determined that at and before this time, the FOIA Exemption 2 had been used to exempt from disclosure information related to national and homeland security to prevent damage that could be caused by the assembly of different pieces of similar information which would not by itself reveal sensitive information by a requestor.

The WHS/ESD Memorandum with attachment, dated June 3, 2005, indicates that WHS/ESD was in agreement with Dr. Sega's concern and recommended certain Appendix A information be redacted. The e-mail dated May 20, 2005, from the TJCSG military advisor to the Director of Security, DUSD (CI&S), indicated that at that time, Dr. Sega authorized release of the "short version."

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We found the witnesses' recollection of the Department's nascent worry about the electronic aggregation of data credible. ██████'s e-mail noting Dr. Sega's discussions with ██████ leading up to the redactions suggests that ██████, an attendee at the Secretary's briefing, was familiar with the Secretary's concerns and brought those concerns back for discussion with Dr. Sega. Reviewing the redacted data in conjunction with other evidence, we found that Dr. Sega's superiors had expressed concerns about aggregation prior to Dr. Sega's action. Because WHS/ESD was provided with the TJCSG electronic information on or after May 13, and the information included the redacted material, we found it less likely that Dr. Sega removed the information in an attempt to conceal data from the BRAC Commission, for in that case the TJCSG would have had ample opportunity to provide WHS/ESD a CD with no Annex information at all.

By May 13, the TCJSG final report had already been certified by Dr. Sega and was ready for dissemination. The only intervening event was the Secretary and Deputy Secretary of Defense's concern, not apparently instigated by Dr. Sega, that the material could prove sensitive or classified in the aggregate. By the time ██████ sent his e-mail, the TJCSG final report was already late to the Commission, being reviewed by IOSS and pending WHS/ESD review. Several witnesses, including the Army principal, WHS/ESD, and the former DUSDI (CI&S) also felt that such information in its aggregate form could pose a security risk, although the latter proposed discretionary release. We therefore concluded that Dr. Sega's determination to withhold the data from the report was not unreasonable and was not prompted by a motive to conceal information.

The May 15, 2005, draft still included data on future capacity calculations: the archived drafts indicate the Annexes were removed first. Only one of the Annexes held information relevant to future capacity. We found this piecemeal approach and the initial removal of the Annexes in conjunction with ██████'s May 16, 2005, e-mail to be consistent with redaction of lists of aggregated information rather than censorship to delete future capacity data in and of itself. The TJCSG CDs contained a wealth of aggregated data, including that originally at Annexes 1 and 2 about which ██████ reportedly expressed particular concern.

We found plausible the witness testimony and issue paper identifying the projection of future excess capacity as a "squishy" and somewhat speculative matter, being calculated with values derived in part upon a rather subjective "Delphi" estimate. However, we discovered no evidence that specific calculations of projected future capacity were required of the JCSGs, provided that the recommendations were believed to be consistent with the long-range Force Structure Plan. Also, we considered significant the fact that the hard copy of the TJCSG volume, including the original Appendix A, was, with the other JCSG volumes, on a pallet ready for delivery on May 13, 2005. Changes to the TJCSG report and Appendix A did not commence until after that date. We considered and dismissed as unlikely the notion that Dr. Sega persuaded the Secretary of Defense to recall over 500 lots of material, containing conclusions from all 10 working groups, in order to remove one Appendix of questionable value.

Also, although the future capacity bin tables showed about one-third of the total projected future excess capacity bin values as negative, we noted that the numbers involved were generally

small. Considering that DoD used a strategic plan with an abundance of military judgment rather than linear modeling to a mathematical certainty, we determined that, used as a “gross check,” the numbers did not grossly contradict the TJCSG recommendations. While the Navy alternate CIT member’s point is well-taken concerning the timing of the candidate recommendations and the math, we determined that the decision of whether to place greater reliance upon strategy or math fairly belonged to Dr. Sega and the Secretary, provided the data was provided in accordance with the BRAC statute.

Although some information in the May 10, 2005, draft was not made public, we found sufficient evidence that the equations, minutes, and raw data were available to the Commission, and enabled the relevant calculations and projections. Based on a review of the Clearinghouse questions and responses and the testimony of a senior BRAC analyst, we determined that the Commission had the means and knowledge to perform calculations and request additional information as required. Therefore, we concluded a preponderance of the evidence indicated that the information omitted from public release in the May 19, 2005, TJCSG Appendix A, was “made available,” whether in a substantially similar format or by other means, to both the BRAC Commission and Congress.

The TJCSG minutes, reflecting the entire course of TJCSG deliberations and processes, including concerns about capacity calculations, and the “Delphi” process, were open to, and reviewed by, the BRAC Commission. Adverse comments by a quality evaluation team and the team’s own members were part of the minutes, including the paper which freely accused the TJCSG of using “metrics of dubious value” for capacity calculations. We found no indication that the record of proceedings, discussions, and disagreements had been tampered with to hide reference to the information redacted from the public report. Populating the equations in the minutes with values obtained from the data calls or the disks previously reviewed by WHS/ESD and the  $R_F + A_{FS}$  values provided to Senator Warner, we were readily able to calculate values for the Future Capacity information provided in Tables 4-4 through 4-6 that was omitted in the May 19 version of the Appendix.

We found that it was more likely than not that the BRAC Commission and other interested parties had meaningful access to the information redacted from the TJCSG Final Report in the BRAC Commission Reading Room, in aggregated and disaggregated formats. Testimony established that the CDs under review by IOSS and WHS/ESD were provided to the Reading Room for the BRAC Commission’s review during the security review process. The WHS disks contained the Annex 1 and 2 information. Although [REDACTED] had directed those Annexes be removed from unclassified computers on May 16, 2005, one action officer stated that a soft copy of the pre-May 16 data was made prior to the information being turned over to [REDACTED] for review. He specifically recalled copying the information to CD and later personally taking it over to the Polk Building Reading Room, and staying there all day. His testimony was corroborated by his signature on the BRAC Reading Room log on June 1 and June 2, 2005.

Although it is possible that the information had been removed from the TJCSG electronic portal prior the TJCSG officer’s transferring it to a disk, we found that unlikely. The officer was confident that all of his databases had been transferred, and the databases on the WHS/ESD CDs

were in good order and could easily be printed in a format similar to those originally in the May 10, 2005, Annexes 1 and 2. Also, ██████'s testimony established that his concern was public releasability of the report, not the databases themselves, which we concluded made it less likely that he would have the knowledge or inclination to interfere in the actual data access programs.

In addition, the fact that the Reading Room was available on June 1, 2005, and WHS/ESD did not issue a final opinion on its review of the TJCSG data until June 3, 2005, bears out a finding that the information provided to WHS/ESD for review was available in the room for the BRAC Commission's use. Although Dr. Sega made the decision to publicly release a redacted report prior to completion of the WHS/ESD review, the complete material was already on the WHS/ESD disks, copies of which were ostensibly provided to the Reading Room. We determined that ██████'s May 25, 2005, e-mail concerning capacity data and the security issue corroborated the Department officials' testimony that capacity data was provided to the BRAC Commission as soon as possible, and before the review process was complete. We found no other requests from the Commission for future capacity data.

We considered the testimony of the BRAC Commission Director of Review and Analysis that the BRAC Commission delegates did review the information in the Reading Room, but chose not to take notes or make copies, as some evidence that the Reading Room contained information of interest to the Commission which was not suitable for public release. We considered the Air Force document request to be an example, first, that information was contained in the Reading Room which was not formally classified, but restricted nonetheless; and second, that the Commission would specifically request the public release of a document if it were important to their analysis and not obviously classified.

Lists of information pertaining to "Technical Facilities by Reported Location," originally Annex 1, were not only in the DTIC-archived TJCSG and WHS CDs, but also in part of an archival file containing copies of some data audited by the DoD Assistant Inspector General for Acquisition Technology and Management in the publicly available Audit Report D-2005-086, "Technical Joint Cross-Service Group Data Integrity and Internal Control Processes for Base Realignment and Closure 2005," dated June 17, 2005. This availability suggested that the TJCSG did not seek to conceal this data but rather made it available as part of the audit process. The zip code and unit data was also available in Data Call Question 3000.

Further, the BRAC Commission Director of Review and Analysis testified that the Commission had available and did read the information contained the JCSG minutes. In the TJCSG minutes we located all of the equations necessary to compute the values provided in the May 10, 2005, Appendix, Annex 2, pages A-162 through A-265, using installation-specific values for Workyears/FTEs and Test Hours as reported by the installations at Data Call questions 4277, 4278, 4279, 4283, and 4284. Values for installation square footage were reported not only in data calls, but also in the TJCSG Justification Books as part of a given Candidate Recommendation, in a format substantially similar to that appearing in the May 10, 2005, Appendix A.

Bin values for Square Feet, Workyears/FTEs, and Test Hours remained available in Tables 4-1 through 4-3 of Appendix A. The only values for future excess capacity were provided in bin calculations at Tables 4-4 through 4-6 of the May 10, 2005, Appendix A. References and equations regarding calculations of future capacity appeared in the minutes, and a reference to computation of future excess capacity remained in the final version of the TJCSG report. According to [REDACTED], the reference was intentional. Using the equations for future capacity in the minutes, we found that calculation of bin values for future excess capacity was possible provided one had the ratios provided in Annex 3. Although the equation for calculation of  $R_F$  was provided, and could be calculated with reference to data call information, the same was not so for  $A_{FS}$ , the factor based upon "expert military judgment."

We found the  $R_F + A_{FS}$  values in the minutes, but only for T&E. However, the TJCSG freely provided the complete values for  $R_F + A_{FS}$  to a staff member for Senator Warner by letter dated July 28, 2005. The fact that a copy of the letter was provided to the Clearinghouse (as indicated by the "copy to" line) as well as to TJCSG archive files also argues against an attempt to suppress the information.

The statute's own terms do not require DoD to 'provide' or 'volunteer,' but to "make available." We take this as a term of some precision, ensuring that the BRAC Commission is provided all of the documents it may require, while avoiding involuntary inundation with minutiae. In that regard, we note that the Commission made numerous requests to DoD for additional documentation. In view of the criticism that Senator Warner communicated to the BRAC Commission regarding TJCSG's capacity analysis, we believe that the Commission would have requested any available data needed to address that criticism.

Certainly, the BRAC Commission could not request that which it did not know was absent: for instance, if all references to the information at issue were expurgated, the Commission would have no reason to suspect additional information might be available. However, we found numerous references to capacity and the calculation processes used by the TJCSG, not only in the DTIC and WHS/ESD data disks, but also in freely accessible public documents such as the minutes, the Candidate Recommendations, Clearinghouse congressional correspondence, and raw data provided by the installations. In addition, the BRAC Commission's final report specifically notes that "possible future capacity" was considered by the TJCSG, and we would find it surprising were the BRAC Commission to specifically note this fact and not have educated itself as to the meaning of the phrase to its complete satisfaction.

We found no evidence of an attempt to hide or suppress the basic information initially presented in the Annexes. Recognizing that the public redaction of the detailed format was approved by WHS/ESD, and considering the timing involved, the wealth of information contained in the minutes, and the provision of the  $R_F + A_{FS}$  factors to Senator Warner and the OSD WHS Clearinghouse, we conclude that Dr. Sega did not improperly withhold information, and, further, that the required data was 'made available' within the meaning of the BRAC statute.

V. CONCLUSIONS

Dr. Sega did not improperly withhold information from the BRAC Commission.

VI. RECOMMENDATIONS

We have no recommendations in the matter.



