

Congress of the United States

Washington, DC 20515

May 5, 2009

The Honorable Robert M. Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Gates:

Your internal budget process consists of serious deliberation on threat analysis, risk assessment and cost benefit tradeoffs in regard to budgetary decisions. This information is critical for Members of Congress and the public to know, and for this reason I am concerned about a disturbing trend of restricting budget and inspection information within the Department of Defense.

I understand that you recently asked senior officials in the Department to sign a Non-disclosure Agreement as it relates to the President's FY10 Budget proposal. While I fully understand that some of these discussions must be kept confidential, I am concerned that 1) this agreement is not strictly limited to predecisional discussions, and 2) that Congress may be excluded from oversight and engagement due to the restrictions put in place by this agreement.

Specifically, the Agreement states that, budget-related information restricted includes "[information,] **predecisional or otherwise**, concerning the Administration's deliberation of the nature and amounts of the President's budget for Fiscal Year 2010, and any supplemental budget request submitted during the current fiscal year." Can I expect a candid answer from a senior military official when I ask them about the process used to establish priorities, either now, or after the President's detailed Budget is released to the public? Members of Congress deserve candid answers from senior military officers that are not suppressed or censored--either directly, or implicitly via a culture of regulations that muzzles their independent professional judgment.

We are well aware that only the President and his staff see the full revenues and resource requirements of the United States Government, and members of his Administration are expected to implement his guidance. However, the Constitution charges Congress, not the Executive, with the mandate to raise and support armies and navies, and it grants authority to Congress to fund the budget for our defense and the other constitutional responsibilities. I am concerned that these restrictions on the deliberation of these tradeoffs are reflected in the President's Budget this year and future years severely and unnecessarily limits the Congress in these constitutional duties.

The Congress, and the Nation as a whole, can ill-afford our Nation's senior military leadership to be forced to equivocate or be pedantic in so far as their professional opinion is concerned, particularly as it relates to risk calculation and threat analysis associated with the priorities of the Department of Defense and the allocation of taxpayer dollars.

Furthermore, I am concerned to learn that previously unclassified INSURV inspections will now be classified. It is sometimes only through the media and public awareness, as was this case with the inspections of the *USS Stout* and *USS Chosin*, that we learn of the urgent need to address some of the shortfalls the military has, including the \$417 million shortfall in ship depot maintenance for this year alone. If these reports are classified, we are unable to communicate these needs to the public.

Lastly, senior Army officials abruptly withdrew from a recent hearing before the House Armed Services Air and Land Forces Subcommittee on Future Combat System. This hearing was to focus on the status of the FCS program in light of a recent GAO report that made recommendations on this system. These actions continue to contribute to the perception that the Department is not interested in engaging with Congress to determine the best possible solution. The classification of inspections and excluding Congress from budgetary discussion serve as an impediment for Congress to fulfill its constitutional responsibility to provide the necessary resources to support our national security strategy and the rest of the federal government.

More than ever, our budget needs a close look. In fact, President Obama indicated in one of his first Executive Orders concerning the Freedom of Information Act, that "A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, 'sunlight is said to be the best of disinfectants.'" We understand that most budget documents are not subject to FOIA under 5 USC 552(b)(5), and it may be timely to reconsider this exemption.

There is no more serious responsibility that President Obama, you, or we have than to ensure the security of this great Nation. We remain strong supporters of your efforts and of the candor with which you have testified before Congress. We look forward to working with you to ensure our Nation has the defense it needs. Thanks you for your assistance.

Sincerely,

J. Rudy Forche

Barry
Jeff Miller
W. Cadee Akin

Robert J. Wittman

Mark R. Dun

John Fleming
Kent Stank

John A. Lobnitz

Howard P. Buck King

Joe Wilson

Gates Transparency Letter

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