

FOIA MARKER

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Presidential Library Staff.**

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: Peter Belk

Subseries:

OA/ID Number: 18952

FolderID:

Folder Title:

Access to FBI Files

Stack:

S

Row:

114

Section:

2

Shelf:

8

Position:

2

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	re: Security Assurance for Facility (2 pages)	01/15/1997	b(7)(E)

COLLECTION:

Clinton Presidential Records
Counsel Office
Peter Belk
OA/Box Number: 18952

FOLDER TITLE:

Access to FBI Files

2006-1066-F

jm1360

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



KW
KW
PW

U. S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

December 13, 1996

MEMORANDUM FOR THE COUNSEL TO THE PRESIDENT

FROM: The Deputy Attorney General *SS*
SUBJECT: FBI Background Investigations
Conducted for the White House

In February of this year, the Department of Justice provided you with an information memorandum describing the process by which the FBI conducts background investigations (BIs) of job candidates for the White House. Since we are now in the Transition to a new Term, it seemed appropriate to update that memorandum and ensure that all parties have a common understanding of the process.

Attached is the original February 7, 1996 memorandum, as well as a November 13, 1996 supplement provided by the FBI. Please do not hesitate to call if you have any questions.



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

November 13, 1996

TO: The Deputy Attorney General

FROM: *LF/MD* Director, FBI

SUBJECT: FBI BACKGROUND INVESTIGATIONS (BIs)
CONDUCTED FOR THE WHITE HOUSE (WH)

INFORMATION MEMORANDUM

Pursuant to our telephone conference call of November 8, 1996, set forth below is the information responsive to your request.

Reference is made to my Information Memorandum dated February 7, 1996, captioned "FBI Background Investigations (BIs)" which concerns FBI BIs conducted for other Government entities (OGEs). That memorandum addressed various elements of such BIs; e.g., the identities of OGEs for which BIs are conducted, deadlines for completion, methods and areas of investigation, and methods of reporting. Information set forth below supplements my February 7, 1996, memorandum, and emphasizes BIs conducted for the WH. For your convenience, a copy of that memorandum is enclosed.

During the next six months, the FBI expects an increased number of WH requests for BIs due to the anticipated departures of some members of the current Administration, including Cabinet members, sub-Cabinet members and key WH staff. The Special Inquiry and General Background Investigation Unit (SIGBIU), Personnel Division, at FBI Headquarters (HQ), is responsible for overall direction and supervision of WH BIs. SIGBIU management has been, and will continue to be, in contact with appropriate WH personnel to determine the projected increase in the number of BIs, to coordinate their handling, and to ensure adequacy of Bureau resources.

Enclosure

The Deputy Attorney General
Re: FBI BACKGROUND INVESTIGATIONS (BIs)
CONDUCTED FOR THE WHITE HOUSE (WH)

SIGBIU's points of contact (POCs) at the WH are: Associate Counsels Kathleen Whalen and Peter Erichsen, Office of the Counsel to the President, concerning Presidential appointments; and Charles Easley, Security Officer, Office of Administration, Executive Office of the President, concerning WH staff cases.

As of November 8, 1996, Associate Counsel Whalen estimated an increase in the number of requests for Presidential appointment BIs (most of which will require Senate confirmation) through May, 1997, as indicated below. Presidential appointments and high-level WH staff positions are emphasized as those BIs have the highest profile and usually have the most urgent deadlines.

Through 1/1/97: at least 6 Cabinet-level positions and 30 sub-Cabinet (e.g., Deputy Secretaries) or high-level WH staff positions

Through 1/1/97: an additional 12 to 24 Federal Judicial positions

1/1/97-5/97: 170 sub-Cabinet positions (e.g., Assistant Secretaries)

1/1/97-5/97: 30 Federal Judicial positions

These estimates, if accurate, will tax FBI resources; however, as it has done in the past, the FBI should be able to handle the increased numbers. These increases are comparable to those following each Presidential election since 1980.

An average annual breakdown of OGE BIs is:

300	+	200	+	750	+	2,750	=	4,000
Cabinet,		Federal		WH		OGE BIs,		TOTAL
sub-		Judicial		Staff/		includes		BIs
Cabinet,		positions		Access		Department		
and high-				positions		of Justice		
level WH						(DOJ) staff		
staff								
positions								

WH BI requests are hand-delivered by FBI courier to the SIGBIU. Requests for Presidential appointments and high-level White House staff positions, are received from the Office of the Counsel to the President, although BI requests concerning U.S. Attorneys, U.S. Marshals, and certain Federal Judgeships, are received from the DOJ (by DOJ courier), following DOJ coordination with the WH. Requests for other, lower-level WH staff and for access BIs are received from the Executive Office of the President, Office of Administration.

The Deputy Attorney General
Re: FBI BACKGROUND INVESTIGATIONS (BIs)
CONDUCTED FOR THE WHITE HOUSE (WH)

Before a BI is initiated by the SIGBIU, each request is reviewed by the FBI's Office of the General Counsel (OGC) to ensure that only WH personnel who are authorized to do so have requested the BI and that the candidate has consented to the BI. Once WH authorization and the candidate's consent are reviewed and approved by the OGC, the request and, additionally, its accompanying application (Standard Form 86) are reviewed for completeness in SIGBIU. Should there be deficiencies, prompt contact is made with the WH Office which requested the BI in order to rectify those deficiencies. Resolution could include returning the request if the necessary authorization, consent, or other information in the application is missing.

When initiating the BI, SIGBIU sets an FBI deadline. This deadline is the date field offices and FBIHQ units are to provide completed results for their part of the investigation to the SIGBIU. SIGBIU also sets a projected completion date (PCD) which is the date it is to provide the completed results to the WH. PCDs for Cabinet-level, sub-Cabinet and high-level WH staff positions are normally set for 15 calendar days. However, the deadlines may be shorter; e.g., when requested by the WH due to extenuating circumstances. When the WH requests a shorter PCD, SIGBIU is in contact with the WH to determine the latest date by which the results are needed, so that the FBI will have sufficient time to complete the BI. Although the FBI makes every effort to provide the BI results to the WH within the established time frames, there are occasions when circumstances prevent the FBI from doing so; e.g., significant unfavorable information, unavailability of records that must be reviewed and/or persons who must be interviewed. While timeliness is always of concern, it is never allowed to overshadow the primary importance of the thoroughness of the investigation. Additional information concerning deadlines is set forth in my February 7, 1996, Information Memorandum.

After setting the deadlines, the BI is initiated by SIGBIU, with leads to FBIHQ units for records checks, and to FBI field offices for both interviews and records checks (specific areas addressed for all OGE BIs are set forth in my February 7, 1996, Information Memorandum). The scope of the BI (i.e., that period of the candidate's life which is addressed) will vary depending upon the nature of the position for which the candidate is being considered. These scopes have been established to meet the needs

The Deputy Attorney General
Re: FBI BACKGROUND INVESTIGATIONS (BIs)
CONDUCTED FOR THE WHITE HOUSE (WH)

of the OGEs. All OGEs have been contacted during the past six months, and scopes have been re-examined and adjusted as necessary to ensure compliance with the language of the applications (e.g., the Standard Form 86) used to conduct the BIs. BI scopes involving Presidential appointments normally cover either the last 15 years of the candidate's life or the candidate's entire adult life. Occasionally, they will cover the last 10 years of the candidate's life.

As reported in my February 7, 1996, Information Memorandum, if the BI develops information of alleged misconduct or any other type of unfavorable information or issues which may be pertinent to the candidate, all aspects of the allegation or issue are thoroughly explored. Inquiries will be conducted, within the parameters of the BI, in an effort to substantiate or refute the information, and both sides of the allegation or issue are fully reported. If unfavorable information developed is of a serious nature, and except as set forth below, the WH is notified immediately. If requested by the WH to do so, the FBI will provide the WH with an interim report containing the unfavorable information while completing the remainder of the investigation. Normally, the FBI arranges an interview with the candidate in an attempt to resolve the issue and to make the candidate's response to any allegations part of an official record.

If, during the course of a BI, information is developed which may constitute a violation of Federal law, or if a pending criminal investigation is disclosed, in accordance with guidelines established earlier this year, no information will be disseminated without first consulting, and coordinating such dissemination, with appropriate FBI and DOJ officials.

In all WH BIs, the investigative results are reviewed by the SIGBIU to ensure that all facets of the investigation have been completely addressed. The results are furnished only to the WH, except in the case of the BI results of U.S. Attorneys, U.S. Marshals, and certain Federal Judgeships, which are forwarded to the WH through DOJ. It is the WH's responsibility to disseminate the results of the FBI's completed BI to those involved in the appointment process. The FBI does not adjudicate, nor does it render opinions on, the results of the BIs. Also, the FBI does not assess the reliability or credibility of the sources of the information contained in the investigation. The FBI's function in conducting WH BIs is purely fact finding.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

To: The Deputy Attorney General Date: February 7, 1996
From: Director, FBI
Subject: FBI BACKGROUND INVESTIGATIONS
INFORMATION MEMORANDUM

In addition to conducting BIs on its own employees, the FBI is also responsible for conducting BIs for certain other Government entities (hereinafter referred to as "clients"). These clients are the White House, Department of Justice (DOJ), Department of Energy (DOE), Nuclear Regulatory Commission (NRC), the Administrative Office of the United States Courts, Office of the Pardon Attorney, Office of Personnel Management (OPM) and certain Congressional committees, i.e., Senate and House Appropriations Committees, Senate and House Judiciary Committees, Senate Foreign Relations Committee, Senate and House Intelligence Committees, and Senate Ethics Committee.

The BI is a comprehensive inquiry designed to verify background data provided by the subject of the BI (hereinafter referred to as the "candidate") and gather information to assist the client (and others, as necessary) in the decision-making process concerning the candidate's suitability for Federal employment and/or access to classified national security information. The FBI's goal is to provide its clients complete, thorough, and impartial BIs within established time frames.

All BIs have a projected completion date (deadline), that is, a date in which the results of the BI are expected to be furnished to the client. Flexible time frames for the completion of BIs have been negotiated which each client, depending upon the nature and priority of the particular position. These time frames range from 30 to 90 calendar days, e.g., 30 days for Presidential appointment BIs and 90 days for reinvestigations. Occasionally, the standard deadlines may be shorter to accommodate the needs of the client. Although the FBI makes every effort to provide the results of BIs to the client within the established time frames, there are occasions when circumstances prevent the FBI from doing so, e.g., significant unfavorable information, unavailability of records that must be reviewed and/or persons that must be interviewed. While timeliness is a concern, it is never allowed to overshadow the primary importance of thoroughness.

Before the investigation begins, the candidate completes a Standard Form (SF-86), "Questionnaire for National Security Positions," or a Standard Form 85P (SF-85P), "Questionnaire for Public Trust Positions." The SF-86 or SF-85P is forwarded to the FBI by the client with a request for a BI. Utilizing the information provided, the FBI initiates a BI. At the outset of the investigation, the candidate is interviewed by the FBI to ensure that information provided on the SF-86 is complete and accurate. The interview also seeks to identify any information known to the candidate that could have a bearing on his or her suitability for Government employment and/or access to national security information, such as potential conflicts of interest.

The scope of a BI will vary depending upon the nature of the position for which the candidate is being considered; however, all BIs consist of personal interviews and a wide variety of records checks. Depending on the position involved, the scope of the BI can range from three years (e.g., DOJ reinvestigations) to the candidate's entire adult life (e.g., all lifetime Federal judicial appointments and Cabinet-level Presidential appointment BIs).

Areas addressed during the BIs include education, residences, military service, employments, and credit; records checks are conducted at appropriate Federal, state and local law enforcement and regulatory agencies and licensing authorities. Inquiries are also conducted to verify birth, naturalization, and divorce information, and address any issues which may develop during the BI, i.e., illegal drug use and alcohol prescription drug abuse; financial responsibility; involvement in civil suits; existence of any type bias or prejudice; psychological or psychiatric counseling (excluding marital or grief counseling); contact with foreign nationals; and any other circumstances that could have a bearing on the candidate's suitability for Federal employment and/or access to national security information.

In addressing the areas mentioned above, persons who are knowledgeable of the candidate are interviewed. These interviews typically include references, associates, superiors, colleagues, neighbors, etc. Information obtained through personal interviews may be the opinion, hearsay or personal knowledge of the person interviewed. The principal areas to be addressed when conducting interviews relate to the candidate's character, a person's general attitude and possession of characteristics such as trustworthiness, reliability, and discretion or lack thereof; associates, types of persons, groups, or organizations with which a person has been associated, with particular concern as to whether any of these associations have been of a disreputable or disloyal nature; reputation, the individual's general standing in the community; and loyalty, the person's attitude and allegiance toward the United States.

Certain BIs also address the candidate's substantive ability in the area of the prospective appointment, e.g., judicial appointees, and persons affiliated with the DOJ and the U. S. Courts.

If the BI develops information of alleged misconduct or any other type of unfavorable information about the candidate, all aspects of the allegation are thoroughly explored. Both sides of the allegation are fully reported.

If unfavorable information developed is of a serious nature, the client is notified immediately. If requested to do so, the FBI will provide the client with an interim report containing the unfavorable information while completing the remainder of the investigation. If, during the course of a BI, information is developed about the candidate which may constitute a violation of Federal law within the FBI's investigative jurisdiction, the FBI will consult with the DOJ to determine if any type of criminal investigation should be initiated. Pending that decision, any further investigation of the information which may constitute the violation of law will be held in abeyance; however, the remainder of the BI will be completed. After obtaining the decision as to whether or not a criminal investigation should be initiated, the client will be notified. If a criminal investigation is initiated, the remainder of the BI will be completed, except for inquiries addressing the criminal allegation, and the results reported to the client. If no criminal investigation is to be conducted, inquiries will be conducted, within the parameters of the BI, in an effort to substantiate or refute the information. It should be noted that the FBI does not discontinue BIs or reopen BIs unless specifically requested by the client. Also, pursuant to a recent request of the Deputy Attorney General, on high visibility DOJ BIs wherein the client has instructed the FBI to discontinue the BI, the FBI will notify the Deputy Attorney General of the discontinuance.

The FBI arranges for an interview with the candidate in an attempt to resolve the issue and/or to make as part of an official record the candidate's response to any allegations. The FBI does not adjudicate, nor does it render opinions on, the BI results provided to the client. Furthermore, the FBI does not assess the reliability or credibility of the source of the information. The FBI's function is purely fact finding.

Once the investigation is completed, the results are reviewed at FBIHQ to ensure that all facets of the investigation have been completely addressed. The results are furnished to client entities only (unless otherwise instructed by the client) in the form of actual investigative reports (referred to as "raw data") and/or summary memoranda. It is the client's responsibility to disseminate the results of the FBI's completed

BI to those involved in the appointment process. The format (investigative reports or summary memoranda) is determined by the needs and requests of each client.

When summary memoranda are prepared, they are organized into sections addressing the areas of the background investigation, e.g., birth, education, employment, interviews, agency checks, etc. If unfavorable information is developed, all pertinent information is reported within the appropriate category. For example, if a colleague of the candidate is interviewed and he or she alleges that the candidate uses illegal drugs, then that colleague's comments are summarized and reported under the Interviews section. Also, any investigation that was conducted to credit or disprove his or her statements are also included. For example, if the colleague provided the names of individuals who supposedly witnessed the candidate's illegal drug use, those individuals would be interviewed and the results reported in the summary memorandum. Lastly, the results of the interview conducted with the candidate in an attempt to resolve the issue are also reported in the summary memorandum.

Set forth below is a list of client entities, the positions for which the FBI conducts BIs, and how the results of the BIs are reported (summary memoranda or investigative reports):

<u>Client</u>	<u>Position</u>	<u>Reporting Format</u>
The White House	Presidential appointments requiring Senate confirmation (Except Ambassadorships, which are handled by the Department of State)	Summary memoranda only, except for those cases requiring Senate Judiciary Committee review. ¹ Summary memoranda and investigative reports are prepared for those cases.

¹Those that require Judiciary Committee review are: U.S. Supreme Court Justices, U.S. Court of Appeals Judges, Court of International Trade Judges, U.S. Claims Court Judges, Court of Military Appeals Judges, Court of Veterans Appeals Judges, Attorney General, FBI Director, DEA Administrator and Assistant Administrator, Deputy Attorney General, Assistant Attorney General, other Department of Justice Executives.

<u>Client</u>	<u>Position</u>	<u>Reporting Format</u>
The White House	White House staff and access employees	Summary memor- anda ²
DOJ	Presidential appointments requiring Senate confirmation, i.e., U.S. District Court Judges U.S. Attorneys U.S. Marshals	Summary memor- anda and investigative reports
	Schedule C appointees DOJ Headquarters personnel (attorneys, honor recruits, staff members and paralegals) U.S. Attorney's Office staff	Investigative reports Investiga- tive reports
	U.S. and Assistant U.S. Trustees Chapter 13 Trustee Administrative Law Judge Immigration Law Judge Foreign Intelligence Surveil- lance Court Judges Individuals applying for a Presidential pardon after completion of their sentence	
Administrative Office of the U.S. Courts	U.S. Bankruptcy Judge U.S. Magistrate U.S. Public Defender U.S. Circuit or District Court Executive	Investiga- tive reports

²When only summary memoranda are prepared for the White House, portions of the investigative reports may be provided in addition to the summary memorandum. The portions which are sent include results of interviews addressing matters which may impact upon the candidate's suitability for a position of trust or access to classified information. As indicated above, this format is used at the request of the client.

<u>Client</u>	<u>Position</u>	<u>Reporting Format</u>
Administrative Office of the U.S. Courts	U.S. Bankruptcy Court Trustee U.S. Probation Officer U.S. Pretrial Services Officer	Investigative reports
Congressional Committees	Staff-personnel requiring access to national security information	Summary memoranda (Except for the Senate Judiciary Committee, which receives investiga- tive reports)
DOE	Select employees requiring a high-level security clearance	Investiga- tive reports
NRC	Select employees requiring a high-level security clearance	Investiga- tive reports
OPM	Key Government employees and other cases referred to the FBI by OPM as a result of a security concern	Investiga- tive reports

January 15, 1997

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: NELSON W. CUNNINGHAM *NW*
KATHI WHALEN
PETER ERICHSEN
TREY SCHROEDER

SUBJECT: FBI Lending Library Proposal

TO

cc: Cdm
KW

The four of us (along with Chuck Easley) have reviewed the FBI's "Proposed Model for Managing Personnel Investigations," and conclude that it is probably workable, with some important changes.

The attached response reflects our concerns. Some points are minor. Others, like the lack of an expected response time to our after-hours requests in Paragraph "o", are potentially fatal.

The attached response is designed to guide your discussions with Justice. Or, if you would prefer, you could delegate to us the task of negotiating the fine points with our counterparts at Justice/FBI.

*Yes, pls. proceed
on that basis.
Thanks.*

1/15/97

**RESPONSE TO FBI DOCUMENT:
"PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS"**

Para. 1(d): "All requests for FBI-provided materials under the Freedom of Information Act would be referred to, and handled by, the FBI."

Redraft as follows: "All requests for FBI-provided materials under the Freedom of Information Act and the Privacy Act that relate to staff affiliated with EOP agencies subject to those acts would be referred to, and handled by, the FBI."

The proposal as drafted is fine for EOP components subject to FOIA and the Privacy Act. However, the WHO and various other EOP components are exempt from the provisions of the FOIA and the Privacy Act. Thus, language should be inserted to the effect that FOIA and Privacy Act requests relating to employees of those components should be rejected as outside the scope of those laws -- rather than passed along to the FBI.

Para. 2(c) 3d bullet: "The requesting official must certify . . . that the information is sought only for official purposes [and should be on express notice that unauthorized disclosure of any information obtained may violate the Privacy Act]."

Strike the bracketed language. The Privacy Act does not apply to the WHO and various other EOP components. In any event, the Privacy Act will govern disclosures by agencies that are subject to it, whether or not there is such a warning in the request document.

Para. e: Sets an initial 30 day period for retention of the BI's by EOP, with multiple 30-day extensions permitted with respect to presidential appointments.

Objectionable on a number of grounds. Why give extensions only for presidential appointments, and not for personnel security reviews? In any event, 30 days will usually be too short for appointment vetting purposes, and will often be too short for security reviews.

Instead, propose an initial 60 day period (FBI had initially informally discussed a 90 day period), with 2 extensions of 60 days each that would be available automatically (for a total of 180 days, which the FBI proposal permits); extensions beyond that would be subject to agency justification and FBI concurrence (as provided in the present proposal).

1/15/97

Paras. h, i, j: Describe the rules under which individuals will be given access to the files.

These three paragraphs tend to blur the difference between access to the files, and access to the information they contain. Everybody understands that the attorneys and personnel specialists who handle the actual files must be authorized by the CoS or the appropriate agency head to do so. But everybody also understands that these authorized individuals will sometimes have to share the information in the files (as opposed to the files themselves) with other persons, such as the President, the CoS, or other agency head.

This practice needs to be affirmatively sanctioned in the procedures; access to the files needs to be distinguished from access to the information contained therein.

Para. j: Creates a requirement that each person with "access" (to what is not specified) must sign a separate nondisclosure agreement.

This is unduly bureaucratic, and creates a separate piece of paper that generations of lawyers down the line may inadvertently neglect to sign -- thus subjecting them to the claim that they violated the agreement.

Suggestion: eliminate para. "i" and instead add a non-disclosure legend to the log sheets that will accompany each BI (per para. "j"). This way, every time an individual signs the log, he or she will be making the nondisclosure certification required by the FBI. And because the FBI provides the log sheet, it can ensure that the appropriate legend is on each one.

Para. m: Provides for an FBI audit "at least yearly" of WH/EOP procedures.

What is FBI intending to learn through an audit? Such things as the length of time the EOP holds onto a file, whether extensions are properly filed, and whether accesses are properly recorded, are auditable by the FBI without having to come to the WH/EOP to conduct a physical audit.

Suggestion: require that the WH/EOP will be required to certify, whenever asked by the FBI, that it is following the procedures laid out in this document. This approach is followed in other instances -- for example, DOE has required that agencies possessing nuclear weapon information periodically certify that they are protecting the information.

Alternative suggestion: permit the FBI to view the physical storage of the files, to ensure that they are properly segregated and maintained.

1/15/97

Para. n: Provides that FBI GC will resolve any issues of interpretation or revision of these procedures, and that the FBI GC may delegate this authority to an attorney in his office.

The FBI GC should be required to interpret or revise these procedures "in consultation with the Counsel to the President and/or other appropriate official in the agency involved." This should not be a unilateral decision made by FBI GC. Further, these matters should not be delegable to another FBI attorney.

Para. o: Provides that FBI will provide after-hours ability to receive emergency requests. Provides that "resort to this avenue is to be limited to only the most extraordinary situations."

The paragraph says that the FBI will receive emergency requests after hours, but gives no delivery time (i.e., how soon will the requested files be available?). Also, their definition of "extraordinary situations" will differ from ours, as will their definition of what constitutes a "normal working day."

Suggestion: FBI must provide files within 2 hours of receiving any request between 8 am and 8 pm on weekdays or Saturdays -- which will be considered normal working hours. Any request after 8 pm or on Sunday will be limited to "extraordinary situations," and up to 4 hours will be permitted for delivery.

**PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS¹
CONDUCTED BY THE FBI FOR THE WHITE HOUSE (WH) AND
THE EXECUTIVE OFFICE OF THE PRESIDENT (EOP)**

1. The keystone for this model is continued FBI ownership and control of all materials provided to requesting WH/EOP clients.

a. Authority for retained FBI ownership and control includes Executive Order 10450² and General Records Schedule (GRS) 18.³

b. Retained FBI ownership and control must be unequivocally articulated and manifest in both documentation and practice throughout the process. Means to this end should include execution on behalf of the President and EOP "agency" heads of Memorandums of Understanding (MOUs) with the FBI/DOJ confirming retained FBI ownership and control of all FBI-furnished materials and embodying the key details of the resulting procedures to be followed.

c. In order to permit exercise of their respective responsibilities under the Presidential Records Act (PRA) or the Federal Records Act (FRA), client entities would not be precluded from making or preserving their own official notes or summaries of the investigative materials involved in entity decisions.

d. All requests for FBI-provided materials under the Freedom of Information Act would be referred to, and handled by, the FBI.

2. Proposed details:

a. This model would apply to personnel investigation requests on behalf of the President and the Vice President, their respective offices, and other entities of the EOP.

b. This model would apply to all WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, copies of previously conducted personnel investigations, and the like. As detailed below, however, certain aspects would be inapplicable to "no-record" responses (i.e., responses to requests for name checks or copies of previous investigations which advise that FBI files contain no identifiable information).

c. All such WH/EOP requests must be submitted in accordance with the existing procedures established by the FBI, the Deputy Attorney General, and the Counsel to the President (subject to any subsequent modifications as responsible

authorities may authorize).⁴ These procedures now include requirements that:

- Any WH/EOP request seeking copies of or information distilled from FBI files must be accompanied by either timely consent of the person whose files are being reviewed, or by a letter from the Counsel to the President (or comparable authority for independent EOP entities) through the Deputy Attorney General to the FBI General Counsel, setting forth a written explanation why such consent cannot be obtained or should not be sought in the circumstances.⁵

- WH/EOP requestors need not provide a new consent form when requesting follow-up inquiries which can reasonably be viewed as being within the ambit of a previously provided consent (e.g., when asking the FBI to further develop matters raised in a report of background investigation to which the subject consented.) WH/EOP requests for supplemental inquiries submitted within 30 days of the preceding FBI response shall be presumed to be within the ambit of the original consent, except when the supplemental request is made more than six months after the date of the original consent or during a different presidential administration.⁶

- Each WH/EOP request to the FBI must be submitted on an FBI-approved form indicating the specific reason for the request and signed by both the requesting official and a designated attorney in the White House Counsel's Office (or designated official in independent EOP entities) who will have reviewed and approved all requests prior to their transmittal to the FBI. The requesting official must certify, subject to the criminal penalties for making a false statement, that the information is sought only for official purposes and should be on express notice that unauthorized disclosure of any information obtained may violate the Privacy Act.

- A copy of each WH/EOP request for information from FBI files must be provided to the FBI Office of the General Counsel (OGC) for review prior to any FBI response.

d. The responsible FBI unit will prominently mark each response as FBI property (e.g., via use of an "FBI-property" stamp).

e. WH/EOP client entities must return FBI-furnished materials to the FBI. The responsible FBI unit will prominently mark each response to indicate this return requirement and the date by which the FBI must be in receipt of returned materials. This date will normally be no later than 30 days after the transmittal date of the FBI response. In the case of prospective presidential appointments, an attorney in the Office of the Counsel to the President who is authorized to

approve personnel investigation requests may obtain an automatic 30-day extension of the return date by providing the FBI a signed certification that retention by the White House is required for a particular candidate whose consideration for appointment remains ongoing as of the return date. No more than 5 such automatic extensions are authorized, and each must be effected by a separate certification. Other exceptions will only be permitted when the client agency documents reasons why more time is needed under particular circumstances, and the FBI approves the requested extension.

- Returns would not be required for "no-record" responses.

f. Each responsible FBI unit will: establish an effective "tickler" system to monitor the status of all outstanding WH/EOP responses to ensure that materials are returned on time, immediately coordinate with the responsible WH/EOP entity to effect resolution of any overdue returns, and keep the FBI General Counsel informed of the status and resolution of all overdue situations.

- Such tracking will not be required for "no-record" responses.

g. The responsible FBI unit will ensure that returned materials are appropriately recorded in pertinent FBI records.

h. Access to FBI-furnished materials within the WH/EOP will be limited to United States employees who have a need to know the information for the proper performance of constitutional, statutory, or other official or ceremonial executive branch functions. The responsible WH/EOP entity shall inform the FBI via official correspondence of the names and titles of the person(s) to be authorized such access, and shall further apprise the FBI by official correspondence of any subsequent changes in access authority and the reasons therefor. No WH/EOP entities or personnel will permit access to FBI-provided materials by any person or entity not on an authorized access list previously provided to the FBI, except where such access may be necessary under the particular circumstances for an authorized purpose, in which case the responsible WH/EOP entity will promptly notify the FBI and provide a written explanation.

i. Also prior to being granted access, each affected WH/EOP officer/employee must execute an agreement not to disclose the information for other than purposes for which the investigation was authorized. The responsible WH/EOP entity shall include a copy of completed non-disclosure agreements when informing the FBI of access authorizations.

j. The names and signatures of all personnel who are actually accorded access to FBI-furnished materials, along with the date and reason for each access, will be recorded on access-record forms to be provided by the FBI with each investigation. Access records will be returned to the FBI for retention when the respective investigations are returned.

- Access records will not be required for "no-record" responses.

k. FBI materials shall be securely stored apart from WH/EOP files.

l. WH/EOP entities may make and preserve their own records of the official activities involved, which may include WH/EOP-initiated questionnaires, notes and summaries of FBI-furnished materials, and other records reflecting WH/EOP processing of the matters.

m. WH/EOP procedures for handling and protecting FBI-furnished materials will be subject to FBI audit. Audits will be conducted at least yearly as determined by the FBI in coordination with the responsible WH/EOP unit(s).

n. The FBI General Counsel (GC) may resolve issues involving interpretation or revision of these procedures, including their applicability to situations not anticipated in their formulation. In so doing the FBI GC will give due consideration to applicable statutes and regulations, the policy considerations underlying these procedures, along with a "rule of reason." The FBI GC may delegate this authority to an attorney in his office.

o. The FBI will provide a 24-hour, 7-day-a-week capability for receiving emergent WH/EOP requests for name checks or copies of existing investigations outside of normal working hours. Resort to this avenue is to be limited to only the most extraordinary situations. Any such requests must include a properly completed request form (though submission via fax is permissible).

Notes:

1. As used herein, the term "personnel investigations" refers to any of the non-criminal investigative inquiries conducted by the FBI for the White House and EOP units for the purpose of evaluating suitability, security, loyalty, or access. These include WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, and copies of previously conducted personnel investigations.

2. Section 9(c) of Executive Order 10450 expressly provides that "[t]he [security, loyalty, and suitability] reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in . . . this order shall remain the property of the investigative agencies conducting the investigations."

3. In ¶ 22b of GRS-18, the National Archive and Records Administration has expressly provided that "[i]nvestigative reports and related documents furnished to agencies by investigative organizations for use in making security/suitability determinations" may be "[d]estroy[ed]" in accordance with the investigating agency instructions." In this case, the FBI would be "instructing" that these documents be returned to the FBI for eventual destruction by the FBI.

4. See, e.g., Memorandum for FBI Director Freeh of 6/14/96 from FBI General Counsel Shapiro, Re: "The Dissemination of FBI File Information to the White House" (approved same date by Director Freeh and Deputy Attorney General Gorolick); Memorandum for White House Chief of Staff Pasetta of 6/14/1996 from Counsel to the President Quinn, Re: "White House Requests to the FBI"; letters to Counsel to the President Quinn and Office of Administration General Counsel Cunningham of 8/2/96 from FBI General Counsel Shapiro.

5. However, as indicated in the Quinn memorandum of 6/14/96, the provision that FBI personnel investigations will only be predicated upon the subject's consent (or the Deputy Attorney General's approval) does not apply to "computerized criminal history check[s]." The referenced checks only encompass searches of the National Crime Information Center's (NCIC) files of "wanted persons" and criminal history record information ("rap sheets") on individuals who have been criminally fingerprinted.

6. Under limitations Congress imposed in FY-97 WH/EOP appropriations, WH/EOP funds may not be used to request from the FBI any official background investigation report unless the subject has given express written consent for such request not more than six months prior to the date of such request and during the same presidential administration (an exception applies to exceptional circumstance involving national security). Pub. L. No 104-208.

Talking Points Regarding File Management Procedures

- Pursuant to the procedures approved by Leon Panetta, call Louis Freeh to explain that the President wishes to have FBI files in the control and maintenance of the FBI.
- Then request that he consider the following:
 - Establish an FBI-controlled office in the NEOB that will be staffed by FBI personnel Monday through Friday 8:00 a.m. to 8:00 p.m. and Saturdays 9:00 a.m. through 1:00 p.m. (authorized White House officials will be able to request files at other times with reasonable notice).
 - Entry will be monitored/controlled by the FBI in a manner they deem appropriate.
 - Files will be transmitted from the background unit to the NEOB FBI office. Notice will be provided to our office, and authorized individuals in Counsel's office will pick up the files. A process will be created for subsequent review of files.
 - NEOB FBI staff (in consultation with WH Counsel's office) will establish a tracking and sign-out system for the files.
- [Possibly: Provide him with a copy of the proposed procedures.]

THE WHITE HOUSE

WASHINGTON

August 7, 1996

MEMORANDUM FOR LEON E. PANETTA
CHIEF OF STAFF

FROM: JACK QUINN *jq*
COUNSEL TO THE PRESIDENT

JODIE TORKELSON *JT*
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

SUBJECT: FBI Files Management Procedures

The President has suggested that we take additional steps to ensure that the Federal Bureau of Investigation (FBI) has custody of its files except to the extent essential to our operations. In response, we have drafted the following proposed procedures. In sum, they would require that FBI files be maintained here at the White House under the control of the FBI except during very limited periods of time to permit use by authorized and identifiable White House and Executive Office of the President (EOP) employees.

If you approve this proposal (and the FBI agrees), the FBI will be provided space in the New Executive Office Building to maintain all background investigation files that have been provided to the EOP (including the White House Office) and that the FBI agrees need to be kept on these premises. This space will be physically located in close proximity to the EOP Security Office but will not be a part of the EOP Security Office and will be separately maintained by the FBI.

Our proposal, more specifically, is as follows:

1. ACCESS TO FBI OFFICE

We propose that only those White House officials authorized by the Chief of Staff and the Counsel to the President, or other EOP officials authorized by their agency heads, may have access to the NEOB FBI Office. Entry to the NEOB FBI Office will be controlled by the FBI in a manner they deem appropriate (e.g., "smart cards," thumbprints, or a code number). Office hours will be determined in consultation with the FBI, although we will recommend that they be 8:00 a.m. to 8:00 p.m. Monday through Friday and 9:00 a.m. through 1:00 p.m. Saturdays. In any event, during times when the office is not open and where the need is sufficiently urgent, authorized EOP officials would have the

ability to call an appropriate FBI official to open the NEOB FBI Office.

2. TRANSMISSION OF FILES TO FBI OFFICE

We propose to have the files transported by the FBI to the NEOB FBI Office and then made available to authorized EOP officials for review in their offices. After a reasonable period of time for review of the background investigation or namecheck (several weeks is typical), the file will be transmitted to the NEOB FBI Office for permanent retention. The FBI in consultation with one of us may, however, determine that it is preferable, after a period of time, to return to FBI headquarters those files to which future access is likely not to be necessary.

3. SUBSEQUENT REVIEW PROCEDURES/SAFEKEEPING OF FILES

Subsequent Reviews. Subsequent reviews of certain files may be necessary for various reasons, including conducting follow up, upgrading security clearances (i.e., SCI or DOE clearances), or permitting agency reviews. For subsequent reviews, an authorized official will be permitted to sign out a file and return to his/her office with the file. Again, the authorized official will be permitted a reasonable period of time -- not to exceed 7 days -- within which to review the file and return it to the NEOB FBI Office.

Safekeeping of Files While in Possession of Authorized Official. Whenever an authorized official is in possession of a background investigation or namecheck pursuant to the procedures set forth above, that official shall store the file in a class 6 security container (i.e., safe) located in the White House Counsel's Office or an accredited storage facility (i.e., a vault) in the EOP Security Office.

4. SIGN OUT AND SIGN IN PROCEDURES

Sign in by NEOB FBI Office. The FBI staff employed in the NEOB FBI Office will track the files that are in its possession or control. They will maintain a master list and a database so that at all times the whereabouts of a particular file will be known.

Sign out by an Authorized Official. When checking out a file, an authorized official must sign out the file. Authorized officials may sign out files on behalf of another authorized official (i.e., pick up a file from the NEOB and transmit it to the other authorized official in the OEOB) provided that the file is to be used within the component for which both individuals have been permitted access (e.g., Cliff Mauton may sign out a

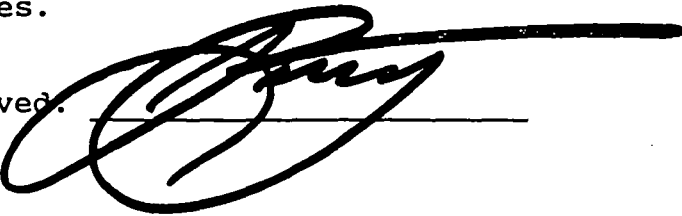
file to be reviewed by Kathi Whalen as part of the Presidential appointment process; however, Cliff Mauton would not be permitted to sign out a file to be reviewed by David Fein as part of the White House Security personnel process).

The authorized official will sign a log maintained by the NEOB FBI Office staff. If an authorized official signs out a file on behalf of another authorized official, he/she must so indicate, and the other authorized official must certify in the file that he/she has received the file for his/her use. The NEOB FBI Office staff will also note in the file to whom and when the file was signed out. The authorized official will initial that entry.

Sign in at the Time of Return of the File. At the time that the authorized official returns a file, the NEOB FBI Office staff and the authorized official will initial the log sheet in the file, and the NEOB FBI staff member will enter the return date in the master log and database.

* * *

We believe that this process will adequately address the President's concerns and at the same time create a workable situation for the White House and EOP employees who are required to review FBI files as part of their responsibilities. With your approval, we will work with the FBI to implement or refine these changes.

Approved. 

Peber -

It seems to me that this
has now fallen on your capable
shoulders, so you should have my
slim file.

Cheers.

Ally 4/5



U. S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

DATE: March 13, 1997TO: Cheryl MillsTelephone No. () - Fax No. () 456 - 6279FROM: David W. Ogden
Associate Deputy Attorney GeneralTelephone No. (202) 514 - 8633 Fax No. (202) 514 - 9368TRANSMISSION CONTAINS 6 SHEETS INCLUDING THIS COVERSHEET

SPECIAL NOTE(S) _____

WARNING: Many fax machines produce copies on thermal paper. The image produced is highly unstable and will deteriorate significantly in a few years. It should be copied on a plain paper copier prior to filing as a record.

DEC-05-1996 11:40

Admin. Law/Inves. Law

202 324 1039 P.02

**PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS¹
CONDUCTED BY THE FBI FOR THE WHITE HOUSE (WH) AND
THE EXECUTIVE OFFICE OF THE PRESIDENT (EOP)**

1. The keystone for this model is continued FBI ownership and control of all materials provided to requesting WH/EOP clients.

a. Authority for retained FBI ownership and control includes Executive Order 10450² and General Records Schedule (GRS) 18.³

b. Retained FBI ownership and control must be unequivocally articulated and manifest in both documentation and practice throughout the process. Means to this end should include execution on behalf of the President and EOP "agency" heads of Memorandums of Understanding (MOUs) with the FBI/DOJ confirming retained FBI ownership and control of all FBI-furnished materials and embodying the key details of the resulting procedures to be followed.

c. In order to permit exercise of their respective responsibilities under the Presidential Records Act (PRA) or the Federal Records Act (FRA), client entities would not be precluded from making or preserving their own official notes or summaries of the investigative materials involved in entity decisions.

d. All requests for FBI-provided materials under the Freedom of Information Act would be referred to, and handled by, the FBI.

2. Proposed details:

a. This model would apply to personnel investigation requests on behalf of the President and the Vice President, their respective offices, and other entities of the EOP.

b. This model would apply to all WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, copies of previously conducted personnel investigations, and the like. As detailed below, however, certain aspects would be inapplicable to "no-record" responses (i.e., responses to requests for name checks or copies of previous investigations which advise that FBI files contain no identifiable information).

c. All such WH/EOP requests must be submitted in accordance with the existing procedures established by the FBI, the Deputy Attorney General, and the Counsel to the President (subject to any subsequent modifications as responsible

DEC-05-1996 11:40

Admin. Law/Inves. Law

202 324 1039 P.03

authorities may authorize).⁴ These procedures now include requirements that:

- Any WH/EOP request seeking copies of or information distilled from FBI files must be accompanied by either timely consent of the person whose files are being reviewed, or by a letter from the Counsel to the President (or comparable authority for independent EOP entities) through the Deputy Attorney General to the FBI General Counsel, setting forth a written explanation why such consent cannot be obtained or should not be sought in the circumstances.⁵

- WH/EOP requestors need not provide a new consent form when requesting follow-up inquiries which can reasonably be viewed as being within the ambit of a previously provided consent (e.g., when asking the FBI to further develop matters raised in a report of background investigation to which the subject consented.) WH/EOP requests for supplemental inquiries submitted within 30 days of the preceding FBI response shall be presumed to be within the ambit of the original consent, except when the supplemental request is made more than six months after the date of the original consent or during a different presidential administration.⁶

- Each WH/EOP request to the FBI must be submitted on an FBI-approved form indicating the specific reason for the request and signed by both the requesting official and a designated attorney in the White House Counsel's Office (or designated official in independent EOP entities) who will have reviewed and approved all requests prior to their transmittal to the FBI. The requesting official must certify, subject to the criminal penalties for making a false statement, that the information is sought only for official purposes and should be on express notice that unauthorized disclosure of any information obtained may violate the Privacy Act.

- A copy of each WH/EOP request for information from FBI files must be provided to the FBI Office of the General Counsel (OGC) for review prior to any FBI response.

d. The responsible FBI unit will prominently mark each response as FBI property (e.g., via use of an "FBI-property" stamp).

e. WH/EOP client entities must return FBI-furnished materials to the FBI. The responsible FBI unit will prominently mark each response to indicate this return requirement and the date by which the FBI must be in receipt of returned materials. This date will normally be no later than 30 days after the transmittal date of the FBI response. In the case of prospective presidential appointments, an attorney in the Office of the Counsel to the President who is authorized to

approve personnel investigation requests may obtain an automatic 30-day extension of the return date by providing the FBI a signed certification that retention by the White House is required for a particular candidate whose consideration for appointment remains ongoing as of the return date. No more than 5 such automatic extensions are authorized, and each must be effected by a separate certification. Other exceptions will only be permitted when the client agency documents reasons why more time is needed under particular circumstances, and the FBI approves the requested extension.

- Returns would not be required for "no-record" responses.

f. Each responsible FBI unit will: establish an effective "tickler" system to monitor the status of all outstanding WH/EOP responses to ensure that materials are returned on time, immediately coordinate with the responsible WH/EOP entity to effect resolution of any overdue returns, and keep the FBI General Counsel informed of the status and resolution of all overdue situations.

- Such tracking will not be required for "no-record" responses.

g. The responsible FBI unit will ensure that returned materials are appropriately recorded in pertinent FBI records.

h. Access to FBI-furnished materials within the WH/EOP will be limited to United States employees who have a need to know the information for the proper performance of constitutional, statutory, or other official or ceremonial executive branch functions. The responsible WH/EOP entity shall inform the FBI via official correspondence of the names and titles of the person(s) to be authorized such access, and shall further apprise the FBI by official correspondence of any subsequent changes in access authority and the reasons therefor. No WH/EOP entities or personnel will permit access to FBI-provided materials by any person or entity not on an authorized access list previously provided to the FBI, except where such access may be necessary under the particular circumstances for an authorized purpose, in which case the responsible WH/EOP entity will promptly notify the FBI and provide a written explanation.

i. Also prior to being granted access, each affected WH/EOP officer/employee must execute an agreement not to disclose the information for other than purposes for which the investigation was authorized. The responsible WH/EOP entity shall include a copy of completed non-disclosure agreements when informing the FBI of access authorizations.

j. The names and signatures of all personnel who are actually accorded access to FBI-furnished materials, along with the date and reason for each access, will be recorded on access-record forms to be provided by the FBI with each investigation. Access records will be returned to the FBI for retention when the respective investigations are returned.

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m. WH/EOP procedures for handling and protecting FBI-furnished materials will be subject to FBI audit. Audits will be conducted at least yearly as determined by the FBI in coordination with the responsible WH/EOP unit(s).

n. The FBI General Counsel (GC) may resolve issues involving interpretation or revision of these procedures, including their applicability to situations not anticipated in their formulation. In so doing the FBI GC will give due consideration to applicable statutes and regulations, the policy considerations underlying these procedures, along with a "rule of reason." The FBI GC may delegate this authority to an attorney in his office.

o. The FBI will provide a 24-hour, 7-day-a-week capability for receiving emergent WH/EOP requests for name checks or copies of existing investigations outside of normal working hours. Resort to this avenue is to be limited to only the most extraordinary situations. Any such requests must include a properly completed request form (though submission via fax is permissible).

Notes:

1. As used herein, the term "personnel investigations" refers to any of the non-criminal investigative inquiries conducted by the FBI for the White House and EOP units for the purpose of evaluating suitability, security, loyalty, or access. These include WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, and copies of previously conducted personnel investigations.

2. Section 9(c) of Executive Order 10450 expressly provides that "[t]he [security, loyalty, and suitability] reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in . . . this order shall remain the property of the investigative agencies conducting the investigations."

3. In ¶ 22b of GRS-18, the National Archive and Records Administration has expressly provided that "[i]nvestigative reports and related documents furnished to agencies by investigative organizations for use in making security/suitability determinations" may be "[d]estroy[ed] in accordance with the investigating agency instructions." In this case, the FBI would be "instructing" that these documents be returned to the FBI for eventual destruction by the FBI.

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5. However, as indicated in the Quinn memorandum of 6/14/96, the provision that FBI personnel investigations will only be predicated upon the subject's consent (or the Deputy Attorney General's approval) does not apply to "computerized criminal history check[s]." The referenced checks only encompass searches of the National Crime Information Center's (NCIC) files of "wanted persons" and criminal history record information ("rap sheets") on individuals who have been criminally fingerprinted.

6. Under limitations Congress imposed in FY-97 WH/EOP appropriations, WH/EOP funds may not be used to request from the FBI any official background investigation report unless the subject has given express written consent for such request not more than six months prior to the date of such request and during the same presidential administration (an exception applies to exceptional circumstance involving national security). Pub. L. No. 104-208.

January 15, 1997

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: NELSON W. CUNNINGHAM *NW*
KATHI WHALEN
PETER ERICHSEN
TREY SCHROEDER

SUBJECT: FBI Lending Library Proposal

TO
*cc: Cdm
KW*

The four of us (along with Chuck Easley) have reviewed the FBI's "Proposed Model for Managing Personnel Investigations," and conclude that it is probably workable, with some important changes.

The attached response reflects our concerns. Some points are minor. Others, like the lack of an expected response time to our after-hours requests in Paragraph "o", are potentially fatal.

The attached response is designed to guide your discussions with Justice. Or, if you would prefer, you could delegate to us the task of negotiating the fine points with our counterparts at Justice/FBI.

*Yes, pls. proceed
on that basis.
Thanks.*

1/15/97

**RESPONSE TO FBI DOCUMENT:
"PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS"**

Para. 1(d): "All requests for FBI-provided materials under the Freedom of Information Act would be referred to, and handled by, the FBI."

Redraft as follows: "All requests for FBI-provided materials under the Freedom of Information Act and the Privacy Act that relate to staff affiliated with EOP agencies subject to those acts would be referred to, and handled by, the FBI."

The proposal as drafted is fine for EOP components subject to FOIA and the Privacy Act. However, the WHO and various other EOP components are exempt from the provisions of the FOIA and the Privacy Act. Thus, language should be inserted to the effect that FOIA and Privacy Act requests relating to employees of those components should be rejected as outside the scope of those laws -- rather than passed along to the FBI.

Para. 2(c) 3d bullet: "The requesting official must certify . . . that the information is sought only for official purposes [and should be on express notice that unauthorized disclosure of any information obtained may violate the Privacy Act]."

Strike the bracketed language. The Privacy Act does not apply to the WHO and various other EOP components. In any event, the Privacy Act will govern disclosures by agencies that are subject to it, whether or not there is such a warning in the request document.

Para. e: Sets an initial 30 day period for retention of the BI's by EOP, with multiple 30-day extensions permitted with respect to presidential appointments.

Objectionable on a number of grounds. Why give extensions only for presidential appointments, and not for personnel security reviews? In any event, 30 days will usually be too short for appointment vetting purposes, and will often be too short for security reviews.

Instead, propose an initial 60 day period (FBI had initially informally discussed a 90 day period), with 2 extensions of 60 days each that would be available automatically (for a total of 180 days, which the FBI proposal permits); extensions beyond that would be subject to agency justification and FBI concurrence (as provided in the present proposal).

1/15/97

Paras. h, i, j: Describe the rules under which individuals will be given access to the files.

These three paragraphs tend to blur the difference between access to the files, and access to the information they contain. Everybody understands that the attorneys and personnel specialists who handle the actual files must be authorized by the CoS or the appropriate agency head to do so. But everybody also understands that these authorized individuals will sometimes have to share the information in the files (as opposed to the files themselves) with other persons, such as the President, the CoS, or other agency head.

This practice needs to be affirmatively sanctioned in the procedures; access to the files needs to be distinguished from access to the information contained therein.

Para. i: Creates a requirement that each person with "access" (to what is not specified) must sign a separate nondisclosure agreement.

This is unduly bureaucratic, and creates a separate piece of paper that generations of lawyers down the line may inadvertently neglect to sign -- thus subjecting them to the claim that they violated the agreement.

Suggestion: eliminate para. "i" and instead add a non-disclosure legend to the log sheets that will accompany each BI (per para. "j"). This way, every time an individual signs the log, he or she will be making the nondisclosure certification required by the FBI. And because the FBI provides the log sheet, it can ensure that the appropriate legend is on each one.

Para. m: Provides for an FBI audit "at least yearly" of WH/EOP procedures.

What is FBI intending to learn through an audit? Such things as the length of time the EOP holds onto a file, whether extensions are properly filed, and whether accesses are properly recorded, are auditable by the FBI without having to come to the WH/EOP to conduct a physical audit.

Suggestion: require that the WH/EOP will be required to certify, whenever asked by the FBI, that it is following the procedures laid out in this document. This approach is followed in other instances -- for example, DOE has required that agencies possessing nuclear weapon information periodically certify that they are protecting the information.

Alternative suggestion: permit the FBI to view the physical storage of the files, to ensure that they are properly segregated and maintained.

1/15/97

Para. n: Provides that FBI GC will resolve any issues of interpretation or revision of these procedures, and that the FBI GC may delegate this authority to an attorney in his office.

The FBI GC should be required to interpret or revise these procedures "in consultation with the Counsel to the President and/or other appropriate official in the agency involved." This should not be a unilateral decision made by FBI GC. Further, these matters should not be delegable to another FBI attorney.

Para. o: Provides that FBI will provide after-hours ability to receive emergency requests. Provides that "resort to this avenue is to be limited to only the most extraordinary situations."

The paragraph says that the FBI will receive emergency requests after hours, but gives no delivery time (i.e., how soon will the requested files be available?). Also, their definition of "extraordinary situations" will differ from ours, as will their definition of what constitutes a "normal working day."

Suggestion: FBI must provide files within 2 hours of receiving any request between 8 am and 8 pm on weekdays or Saturdays -- which will be considered normal working hours. Any request after 8 pm or on Sunday will be limited to "extraordinary situations," and up to 4 hours will be permitted for delivery.

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c. In order to permit exercise of their respective responsibilities under the Presidential Records Act (PRA) or the Federal Records Act (FRA), client entities would not be precluded from making or preserving their own official notes or summaries of the investigative materials involved in entity decisions.

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c. All such WH/EOP requests must be submitted in accordance with the existing procedures established by the FBI, the Deputy Attorney General, and the Counsel to the President (subject to any subsequent modifications as responsible

authorities may authorize).⁴ These procedures now include requirements that:

- Any WH/EOP request seeking copies of or information distilled from FBI files must be accompanied by either timely consent of the person whose files are being reviewed, or by a letter from the Counsel to the President (or comparable authority for independent EOP entities) through the Deputy Attorney General to the FBI General Counsel, setting forth a written explanation why such consent cannot be obtained or should not be sought in the circumstances.⁵

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approve personnel investigation requests may obtain an automatic 30-day extension of the return date by providing the FBI a signed certification that retention by the White House is required for a particular candidate whose consideration for appointment remains ongoing as of the return date. No more than 5 such automatic extensions are authorized, and each must be effected by a separate certification. Other exceptions will only be permitted when the client agency documents reasons why more time is needed under particular circumstances, and the FBI approves the requested extension.

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- Such tracking will not be required for "no-record" responses.

g. The responsible FBI unit will ensure that returned materials are appropriately recorded in pertinent FBI records.

h. Access to FBI-furnished materials within the WH/EOP will be limited to United States employees who have a need to know the information for the proper performance of constitutional, statutory, or other official or ceremonial executive branch functions. The responsible WH/EOP entity shall inform the FBI via official correspondence of the names and titles of the person(s) to be authorized such access, and shall further apprise the FBI by official correspondence of any subsequent changes in access authority and the reasons therefor. No WH/EOP entities or personnel will permit access to FBI-provided materials by any person or entity not on an authorized access list previously provided to the FBI, except where such access may be necessary under the particular circumstances for an authorized purpose, in which case the responsible WH/EOP entity will promptly notify the FBI and provide a written explanation.

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j. The names and signatures of all personnel who are actually accorded access to FBI-furnished materials, along with the date and reason for each access, will be recorded on access-record forms to be provided by the FBI with each investigation. Access records will be returned to the FBI for retention when the respective investigations are returned.

- Access records will not be required for "no-record" responses.

k. FBI materials shall be securely stored apart from WH/EOP files.

l. WH/EOP entities may make and preserve their own records of the official activities involved, which may include WH/EOP-initiated questionnaires, notes and summaries of FBI-furnished materials, and other records reflecting WH/EOP processing of the matters.

m. WH/EOP procedures for handling and protecting FBI-furnished materials will be subject to FBI audit. Audits will be conducted at least yearly as determined by the FBI in coordination with the responsible WH/EOP unit(s).

n. The FBI General Counsel (GC) may resolve issues involving interpretation or revision of these procedures, including their applicability to situations not anticipated in their formulation. In so doing the FBI GC will give due consideration to applicable statutes and regulations, the policy considerations underlying these procedures, along with a "rule of reason." The FBI GC may delegate this authority to an attorney in his office.

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Notes:

1. As used herein, the term "personnel investigations" refers to any of the non-criminal investigative inquiries conducted by the FBI for the White House and EOP units for the purpose of evaluating suitability, security, loyalty, or access. These include WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, and copies of previously conducted personnel investigations.

2. Section 9(c) of Executive Order 10450 expressly provides that "[t]he [security, loyalty, and suitability] reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in . . . this order shall remain the property of the investigative agencies conducting the investigations."

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1/15/97

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"PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS"**

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Objectionable on a number of grounds. Why give extensions only for presidential appointments, and not for personnel security reviews? In any event, 30 days will usually be too short for appointment vetting purposes, and will often be too short for security reviews.

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Suggestion: eliminate para. "i" and instead add a non-disclosure legend to the log sheets that will accompany each BI (per para. "j"). This way, every time an individual signs the log, he or she will be making the nondisclosure certification required by the FBI. And because the FBI provides the log sheet, it can ensure that the appropriate legend is on each one.

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What is FBI intending to learn through an audit? Such things as the length of time the EOP holds onto a file, whether extensions are properly filed, and whether accesses are properly recorded, are auditable by the FBI without having to come to the WH/EOP to conduct a physical audit.

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January 15, 1997

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: NELSON W. CUNNINGHAM 
KATHI WHALEN
PETER ERICHSEN
TREY SCHROEDER

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**PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS¹
CONDUCTED BY THE FBI FOR THE WHITE HOUSE (WH) AND
THE EXECUTIVE OFFICE OF THE PRESIDENT (EOP)**

1. The keystone for this model is continued FBI ownership and control of all materials provided to requesting WH/EOP clients.

a. Authority for retained FBI ownership and control includes Executive Order 10450² and General Records Schedule (GRS) 18.³

b. Retained FBI ownership and control must be unequivocally articulated and manifest in both documentation and practice throughout the process. Means to this end should include execution on behalf of the President and EOP "agency" heads of Memorandums of Understanding (MOUs) with the FBI/DOJ confirming retained FBI ownership and control of all FBI-furnished materials and embodying the key details of the resulting procedures to be followed.

c. In order to permit exercise of their respective responsibilities under the Presidential Records Act (PRA) or the Federal Records Act (FRA), client entities would not be precluded from making or preserving their own official notes or summaries of the investigative materials involved in entity decisions.

d. All requests for FBI-provided materials under the Freedom of Information Act would be referred to, and handled by, the FBI.

2. Proposed details:

a. This model would apply to personnel investigation requests on behalf of the President and the Vice President, their respective offices, and other entities of the EOP.

b. This model would apply to all WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, copies of previously conducted personnel investigations, and the like. As detailed below, however, certain aspects would be inapplicable to "no-record" responses (i.e., responses to requests for name checks or copies of previous investigations which advise that FBI files contain no identifiable information).

c. All such WH/EOP requests must be submitted in accordance with the existing procedures established by the FBI, the Deputy Attorney General, and the Counsel to the President (subject to any subsequent modifications as responsible

authorities may authorize).⁴ These procedures now include requirements that:

- Any WH/EOP request seeking copies of or information distilled from FBI files must be accompanied by either timely consent of the person whose files are being reviewed, or by a letter from the Counsel to the President (or comparable authority for independent EOP entities) through the Deputy Attorney General to the FBI General Counsel, setting forth a written explanation why such consent cannot be obtained or should not be sought in the circumstances.⁵

- WH/EOP requestors need not provide a new consent form when requesting follow-up inquiries which can reasonably be viewed as being within the ambit of a previously provided consent (e.g., when asking the FBI to further develop matters raised in a report of background investigation to which the subject consented.) WH/EOP requests for supplemental inquiries submitted within 30 days of the preceding FBI response shall be presumed to be within the ambit of the original consent, except when the supplemental request is made more than six months after the date of the original consent or during a different presidential administration.⁶

- Each WH/EOP request to the FBI must be submitted on an FBI-approved form indicating the specific reason for the request and signed by both the requesting official and a designated attorney in the White House Counsel's Office (or designated official in independent EOP entities) who will have reviewed and approved all requests prior to their transmittal to the FBI. The requesting official must certify, subject to the criminal penalties for making a false statement, that the information is sought only for official purposes and should be on express notice that unauthorized disclosure of any information obtained may violate the Privacy Act.

- A copy of each WH/EOP request for information from FBI files must be provided to the FBI Office of the General Counsel (OGC) for review prior to any FBI response.

d. The responsible FBI unit will prominently mark each response as FBI property (e.g., via use of an "FBI-property" stamp).

e. WH/EOP client entities must return FBI-furnished materials to the FBI. The responsible FBI unit will prominently mark each response to indicate this return requirement and the date by which the FBI must be in receipt of returned materials. This date will normally be no later than 30 days after the transmittal date of the FBI response. In the case of prospective presidential appointments, an attorney in the Office of the Counsel to the President who is authorized to

approve personnel investigation requests may obtain an automatic 30-day extension of the return date by providing the FBI a signed certification that retention by the White House is required for a particular candidate whose consideration for appointment remains ongoing as of the return date. No more than 5 such automatic extensions are authorized, and each must be effected by a separate certification. Other exceptions will only be permitted when the client agency documents reasons why more time is needed under particular circumstances, and the FBI approves the requested extension.

- Returns would not be required for "no-record" responses.

f. Each responsible FBI unit will: establish an effective "tickler" system to monitor the status of all outstanding WH/EOP responses to ensure that materials are returned on time, immediately coordinate with the responsible WH/EOP entity to effect resolution of any overdue returns, and keep the FBI General Counsel informed of the status and resolution of all overdue situations.

- Such tracking will not be required for "no-record" responses.

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c. All such WH/EOP requests must be submitted in accordance with the existing procedures established by the FBI, the Deputy Attorney General, and the Counsel to the President (subject to any subsequent modifications as responsible

authorities may authorize).⁴ These procedures now include requirements that:

- Any WH/EOP request seeking copies of or information distilled from FBI files must be accompanied by either timely consent of the person whose files are being reviewed, or by a letter from the Counsel to the President (or comparable authority for independent EOP entities) through the Deputy Attorney General to the FBI General Counsel, setting forth a written explanation why such consent cannot be obtained or should not be sought in the circumstances.⁵

- WH/EOP requestors need not provide a new consent form when requesting follow-up inquiries which can reasonably be viewed as being within the ambit of a previously provided consent (e.g., when asking the FBI to further develop matters raised in a report of background investigation to which the subject consented.) WH/EOP requests for supplemental inquiries submitted within 30 days of the preceding FBI response shall be presumed to be within the ambit of the original consent, except when the supplemental request is made more than six months after the date of the original consent or during a different presidential administration.⁶

- Each WH/EOP request to the FBI must be submitted on an FBI-approved form indicating the specific reason for the request and signed by both the requesting official and a designated attorney in the White House Counsel's Office (or designated official in independent EOP entities) who will have reviewed and approved all requests prior to their transmittal to the FBI. The requesting official must certify, subject to the criminal penalties for making a false statement, that the information is sought only for official purposes and should be on express notice that unauthorized disclosure of any information obtained may violate the Privacy Act.

- A copy of each WH/EOP request for information from FBI files must be provided to the FBI Office of the General Counsel (OGC) for review prior to any FBI response.

d. The responsible FBI unit will prominently mark each response as FBI property (e.g., via use of an "FBI-property" stamp).

e. WH/EOP client entities must return FBI-furnished materials to the FBI. The responsible FBI unit will prominently mark each response to indicate this return requirement and the date by which the FBI must be in receipt of returned materials. This date will normally be no later than 30 days after the transmittal date of the FBI response. In the case of prospective presidential appointments, an attorney in the Office of the Counsel to the President who is authorized to

approve personnel investigation requests may obtain an automatic 30-day extension of the return date by providing the FBI a signed certification that retention by the White House is required for a particular candidate whose consideration for appointment remains ongoing as of the return date. No more than 5 such automatic extensions are authorized, and each must be effected by a separate certification. Other exceptions will only be permitted when the client agency documents reasons why more time is needed under particular circumstances, and the FBI approves the requested extension.

- Returns would not be required for "no-record" responses.

f. Each responsible FBI unit will: establish an effective "tickler" system to monitor the status of all outstanding WH/EOP responses to ensure that materials are returned on time, immediately coordinate with the responsible WH/EOP entity to effect resolution of any overdue returns, and keep the FBI General Counsel informed of the status and resolution of all overdue situations.

- Such tracking will not be required for "no-record" responses.

g. The responsible FBI unit will ensure that returned materials are appropriately recorded in pertinent FBI records.

h. Access to FBI-furnished materials within the WH/EOP will be limited to United States employees who have a need to know the information for the proper performance of constitutional, statutory, or other official or ceremonial executive branch functions. The responsible WH/EOP entity shall inform the FBI via official correspondence of the names and titles of the person(s) to be authorized such access, and shall further apprise the FBI by official correspondence of any subsequent changes in access authority and the reasons therefor. No WH/EOP entities or personnel will permit access to FBI-provided materials by any person or entity not on an authorized access list previously provided to the FBI, except where such access may be necessary under the particular circumstances for an authorized purpose, in which case the responsible WH/EOP entity will promptly notify the FBI and provide a written explanation.

i. Also prior to being granted access, each affected WH/EOP officer/employee must execute an agreement not to disclose the information for other than purposes for which the investigation was authorized. The responsible WH/EOP entity shall include a copy of completed non-disclosure agreements when informing the FBI of access authorizations.

j. The names and signatures of all personnel who are actually accorded access to FBI-furnished materials, along with the date and reason for each access, will be recorded on access-record forms to be provided by the FBI with each investigation. Access records will be returned to the FBI for retention when the respective investigations are returned.

- Access records will not be required for "no-record" responses.

k. FBI materials shall be securely stored apart from WH/EOP files.

l. WH/EOP entities may make and preserve their own records of the official activities involved, which may include WH/EOP-initiated questionnaires, notes and summaries of FBI-furnished materials, and other records reflecting WH/EOP processing of the matters.

m. WH/EOP procedures for handling and protecting FBI-furnished materials will be subject to FBI audit. Audits will be conducted at least yearly as determined by the FBI in coordination with the responsible WH/EOP unit(s).

n. The FBI General Counsel (GC) may resolve issues involving interpretation or revision of these procedures, including their applicability to situations not anticipated in their formulation. In so doing the FBI GC will give due consideration to applicable statutes and regulations, the policy considerations underlying these procedures, along with a "rule of reason." The FBI GC may delegate this authority to an attorney in his office.

o. The FBI will provide a 24-hour, 7-day-a-week capability for receiving emergent WH/EOP requests for name checks or copies of existing investigations outside of normal working hours. Resort to this avenue is to be limited to only the most extraordinary situations. Any such requests must include a properly completed request form (though submission via fax is permissible).

Notes:

1. As used herein, the term "personnel investigations" refers to any of the non-criminal investigative inquiries conducted by the FBI for the White House and EOP units for the purpose of evaluating suitability, security, loyalty, or access. These include WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, and copies of previously conducted personnel investigations.

2. Section 9(c) of Executive Order 10450 expressly provides that "[t]he [security, loyalty, and suitability] reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in . . . this order shall remain the property of the investigative agencies conducting the investigations."

3. In ¶ 22b of GRS-19, the National Archive and Records Administration has expressly provided that "[i]nvestigative reports and related documents furnished to agencies by investigative organizations for use in making security/suitability determinations" may be "[d]estroy[ed]" in accordance with the investigating agency instructions." In this case, the FBI would be "instructing" that these documents be returned to the FBI for eventual destruction by the FBI.

4. See, e.g., Memorandum for FBI Director Freeh of 6/14/96 from FBI General Counsel Shapiro, Re: "The Dissemination of FBI File Information to the White House" (approved same date by Director Freeh and Deputy Attorney General Gorelick); Memorandum for White House Chief of Staff Panetta of 6/14/1996 from Counsel to the President Quinn, Re: "White House Requests to the FBI"; letters to Counsel to the President Quinn and Office of Administration General Counsel Cunningham of 8/2/96 from FBI General Counsel Shapiro.

5. However, as indicated in the Quinn memorandum of 6/14/96, the provision that FBI personnel investigations will only be predicated upon the subject's consent (or the Deputy Attorney General's approval) does not apply to "computerized criminal history check[s]." The referenced checks only encompass searches of the National Crime Information Center's (NCIC) files of "wanted persons" and criminal history record information ("rap sheets") on individuals who have been criminally fingerprinted.

6. Under limitations Congress imposed in FY-97 WH/EOP appropriations, WH/EOP funds may not be used to request from the FBI any official background investigation report unless the subject has given express written consent for such request not more than six months prior to the date of such request and during the same presidential administration (an exception applies to exceptional circumstance involving national security). Pub. L. No. 104-208.

THE WHITE HOUSE
WASHINGTON

DATE: 1/4/97

TO: Nelson

FROM: *Kathi*
White House Counsel
Room 136, OEOB, x6-6229

- ☒ FYI
- ☐ Appropriate Action
- ☐ Let's Discuss
- ☒ Per Our Conversation
- ☐ Per Your Request
- ☐ Please Return
- ☐ Other

*I'm sure
you don't need
all the cover
memos.
Attached
(finally) is
the piece
on the
FBI
reading
room*

Kathy,

I've reviewed and can sign off on the portions of this memo that I am familiar with, namely, 2a-d, which pertain to the reforms we instituted on how we request FBI background information. I did not work on the Lending Library idea, which occupies the rest of the memo and so don't know if this memo captures what we had in mind.

David

To Kathy -
Can you please review at your
earliest convenience. Delay as
my part has made urgent.
KW

THE WHITE HOUSE

WASHINGTON

COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE:

12/16/96

TOTAL PAGES (INCLUDING COVER PAGE):

8

TO:

David Fein

ATTN:

FACSIMILE NUMBER:

Rm 128

TELEPHONE NUMBER:

FROM:

Kathy Wallman

at (202) 456-6611

COMMENTS:

URGENT!!

PLEASE DELIVER AS SOON AS POSSIBLE

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Office of the Deputy Attorney General
Washington, D.C. 20530

RED DOT

DATE: Dec. 10 1996

TO: Kathy Wallman

Fax No.: () 456 - 6279 Telephone No.: () 456 6611

FROM: Damie Gorelick

Fax No.: () _____ Telephone No.: () _____

TRANSMISSION CONTAINS 7 SHEETS INCLUDING THIS COVER SHEET

SPECIAL NOTE(S): _____

If any page(s) are missing from this transmission, please
telephone sender at the above telephone number for re-
transmission.

*David -
Can you please
review. My delay
has made urgent.
KW*

12/10/88

FROM: COUNSEL OFFICE

11:53

202 514 0467

202-456-2632

ODAC

TO: RM128

PAGE: 03

002/007



U.S. Department of Justice
The Deputy Attorney General

Washington, D.C. 20530

Kathy -

Please review

This and give
me a call. We
need to pin this
down before the
Bureau is delayed.

James

**PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS¹
CONDUCTED BY THE FBI FOR THE WHITE HOUSE (WH) AND
THE EXECUTIVE OFFICE OF THE PRESIDENT (EOP)**

1. The keystone for this model is continued FBI ownership and control of all materials provided to requesting WH/EOP clients.

a. Authority for retained FBI ownership and control includes Executive Order 10450² and General Records Schedule (GRS) 18.³

b. Retained FBI ownership and control must be unequivocally articulated and manifest in both documentation and practice throughout the process. Means to this end should include execution on behalf of the President and EOP "agency" heads of Memorandums of Understanding (MOUs) with the FBI/DOJ confirming retained FBI ownership and control of all FBI-furnished materials and embodying the key details of the resulting procedures to be followed.

c. In order to permit exercise of their respective responsibilities under the Presidential Records Act (PRA) or the Federal Records Act (FRA), client entities would not be precluded from making or preserving their own official notes or summaries of the investigative materials involved in entity decisions.

d. All requests for FBI-provided materials under the Freedom of Information Act would be referred to, and handled by, the FBI.

and Privacy Act

2. Proposed details.

a. This model would apply to personnel investigation requests on behalf of the President and the Vice President, their respective offices, and other entities of the EOP.

b. This model would apply to all WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, copies of previously conducted personnel investigations, and the like. As detailed below, however, certain aspects would be inapplicable to "no-record" responses (i.e., responses to requests for name checks or copies of previous investigations which advise that FBI files contain no identifiable information).

c. All such WH/EOP requests must be submitted in accordance with the existing procedures established by the FBI, the Deputy Attorney General, and the Counsel to the President (subject to any subsequent modifications as responsible

authorities may authorize).⁴ These procedures now include requirements that:

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and
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security

2

60 days?
30 day
2 extensions

approve personnel investigation requests may obtain an automatic 30-day extension of the return date by providing the FBI a signed certification that retention by the White House is required for a particular candidate whose consideration for appointment remains ongoing as of the return date. No more than 5 such automatic extensions are authorized, and each must be effected by a separate certification. Other exceptions will only be permitted when the client agency documents reasons why more time is needed under particular circumstances, and the FBI approves the requested extension.

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access to materials or info?

i. Also prior to being granted access, each affected WH/EOP officer/employee must execute an agreement not to disclose the information for other than purposes for which the investigation was authorized. The responsible WH/EOP entity shall include a copy of completed non-disclosure agreements when informing the FBI of access authorizations.

*We included the info
will be shared w/ others;*

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cust.

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n. The FBI General Counsel (GC) may resolve issues involving interpretation or revision of these procedures, including their applicability to situations not anticipated in their formulation. In so doing the FBI GC will give due consideration to applicable statutes and regulations, the policy considerations underlying these procedures, along with a "rule of reason." ~~The FBI GC may delegate this authority to an attorney in his office.~~ *the GC - the audit?*

o. The FBI will provide a 24-hour, 7-day-a-week capability for receiving emergent WH/EOP requests for name checks or copies of existing investigations outside of normal working hours. ~~Resort to this avenue is to be limited to only the most extraordinary situations.~~ Any such requests must include a properly completed request form (though submission via fax is permissible).

Notes:

1. As used herein, the term "personnel investigations" refers to any of the non-criminal investigative inquiries conducted by the FBI for the White House and EOP units for the purpose of evaluating suitability, security, loyalty, or access. These include WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, and copies of previously conducted personnel investigations.

*in counsel's w/
the GC could be Res
or other appropriate response
officer*

2. Section 9(c) of Executive Order 10450 expressly provides that "[t]he [security, loyalty, and suitability] reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in . . . this order shall remain the property of the investigative agencies conducting the investigations."
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6. Under limitations Congress imposed in FY-97 WH/EOP appropriations, WH/EOP funds may not be used to request from the FBI any official background investigation report unless the subject has given express written consent for such request not more than six months prior to the date of such request and during the same presidential administration (an exception applies to exceptional circumstance involving national security). Pub. L. No. 104-208.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	re: Security Assurance for Facility (2 pages)	01/15/1997	b(7)(E)

COLLECTION:

Clinton Presidential Records
Counsel Office
Peter Belk
OA/Box Number: 18952

FOLDER TITLE:

Access to FBI Files

2006-1066-F

jm1360

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

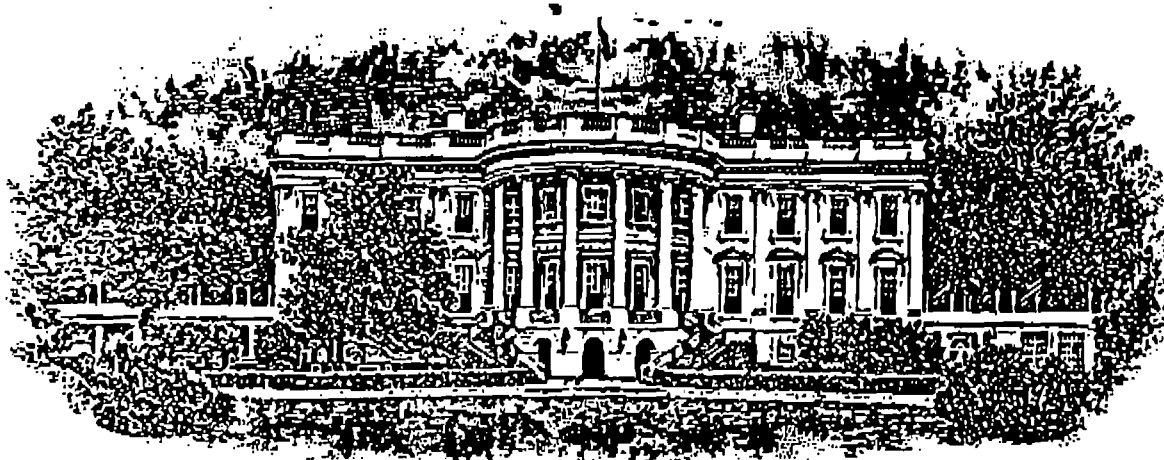
b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	1104	
CONNECTION TEL		96161239
CONNECTION ID	DAG	
ST. TIME	04/10 16:33	
USAGE T	02'00	
PGS.	4	
RESULT	OK	

The White House



COUNSEL'S OFFICE

Facsimile Transmission Cover Sheet

Telephone 202 456-6229

Fax 202 456-2146

DATE: April 10, 1997

TO: Roslyn Mazer

FACSIMILE NUMBER: 616-1239

TELEPHONE NUMBER: 514-1013

FROM: Peter Erichsen

TELEPHONE NUMBER: 456-6229

PAGES (WITH COVER): 4

COMMENTS: _____

**RESPONSE TO FBI DOCUMENT:
'PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS'**

Para. 1(d): "All requests for FBI-provided materials under the Freedom of Information Act would be referred to, and handled by, the FBI."

Redraft as follows: "All requests for FBI-provided materials under the Freedom of Information Act and the Privacy Act that relate to staff affiliated with EOP agencies subject to those acts would be referred to, and handled by, the FBI."

The proposal as drafted is fine for EOP components subject to FOIA and the Privacy Act. However, the WHO and various other EOP components are exempt from the provisions of the FOIA and the Privacy Act. Thus, language should be inserted to the effect that FOIA and Privacy Act requests relating to employees of those components should be rejected as outside the scope of those laws -- rather than passed along to the FBI.

Para. 2(c) 3d bullet: "The requesting official must certify . . . that the information is sought only for official purposes [and should be on express notice that unauthorized disclosure of any information obtained may violate the Privacy Act]."

Strike the bracketed language. The Privacy Act does not apply to the WHO and various other EOP components. In any event, the Privacy Act will govern disclosures by agencies that are subject to it, whether or not there is such a warning in the request document.

Para. e: Sets an initial 30 day period for retention of the BF's by EOP, with multiple 30-day extensions permitted with respect to presidential appointments.

Objectionable on a number of grounds. Why give extensions only for presidential appointments, and not for personnel security reviews? In any event, 30 days will usually be too short for appointment vetting purposes, and will often be too short for security reviews.

Instead, propose an initial 60 day period (FBI had initially informally discussed a 90 day period), with 2 extensions of 60 days each that would be available automatically (for a total of 180 days, which the FBI proposal permits); extensions beyond that would be subject to agency justification and FBI concurrence (as provided in the present proposal).

1/15/97

Paras. h, i, j: Describe the rules under which individuals will be given access to the files.

These three paragraphs tend to blur the difference between access to the files, and access to the information they contain. Everybody understands that the attorneys and personnel specialists who handle the actual files must be authorized by the CoS or the appropriate agency head to do so. But everybody also understands that these authorized individuals will sometimes have to share the information in the files (as opposed to the files themselves) with other persons, such as the President, the CoS, or other agency head.

This practice needs to be affirmatively sanctioned in the procedures; access to the files needs to be distinguished from access to the information contained therein.

Para. i: Creates a requirement that each person with "access" (to what is not specified) must sign a separate nondisclosure agreement.

This is unduly bureaucratic, and creates a separate piece of paper that generations of lawyers down the line may inadvertently neglect to sign -- thus subjecting them to the claim that they violated the agreement.

Suggestion: eliminate para. "i" and instead add a non-disclosure legend to the log sheets that will accompany each BI (per para. "j"). This way, every time an individual signs the log, he or she will be making the nondisclosure certification required by the FBI. And because the FBI provides the log sheet, it can ensure that the appropriate legend is on each one.

Para. m: Provides for an FBI audit "at least yearly" of WH/EOP procedures.

What is FBI intending to learn through an audit? Such things as the length of time the EOP holds onto a file, whether extensions are properly filed, and whether accesses are properly recorded, are auditable by the FBI without having to come to the WH/EOP to conduct a physical audit.

Suggestion: require that the WH/EOP will be required to certify, whenever asked by the FBI, that it is following the procedures laid out in this document. This approach is followed in other instances -- for example, DOE has required that agencies possessing nuclear weapon information periodically certify that they are protecting the information.

Alternative suggestion: permit the FBI to view the physical storage of the files, to ensure that they are properly segregated and maintained.

1/15/97

Para. n: Provides that FBI GC will resolve any issues of interpretation or revision of these procedures, and that the FBI GC may delegate this authority to an attorney in his office.

The FBI GC should be required to interpret or revise these procedures "in consultation with the Counsel to the President and/or other appropriate official in the agency involved." This should not be a unilateral decision made by FBI GC. Further, these matters should not be delegable to another FBI attorney.

Para. o: Provides that FBI will provide after-hours ability to receive emergency requests. Provides that "resort to this avenue is to be limited to only the most extraordinary situations."

The paragraph says that the FBI will receive emergency requests after hours, but gives no delivery time (i.e., how soon will the requested files be available?). Also, their definition of "extraordinary situations" will differ from ours, as will their definition of what constitutes a "normal working day."

Suggestion: FBI must provide files within 2 hours of receiving any request between 8 am and 8 pm on weekdays or Saturdays – which will be considered normal working hours. Any request after 8 pm or on Sunday will be limited to "extraordinary situations," and up to 4 hours will be permitted for delivery.



U. S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

DATE: March 13, 1997TO: Cheryl MillsTelephone No. () _____ - _____ Fax No. () 456 - 6279FROM: David W. OgdenAssociate Deputy Attorney GeneralTelephone No. (202) 514 - 8633 Fax No. (202) 514 - 9368TRANSMISSION CONTAINS 6 SHEETS INCLUDING THIS COVERSHEET

SPECIAL NOTE(S) _____

WARNING: Many fax machines produce copies on thermal paper. The image produced is highly unstable and will deteriorate significantly in a few years. It should be copied on a plain paper copier prior to filing as a record.

DEC-05-1996 11:40

Admin. Law/Inves. Law

202 324 1039 P.02

**PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS¹
CONDUCTED BY THE FBI FOR THE WHITE HOUSE (WH) AND
THE EXECUTIVE OFFICE OF THE PRESIDENT (EOP)**

1. The keystone for this model is continued FBI ownership and control of all materials provided to requesting WH/EOP clients.

a. Authority for retained FBI ownership and control includes Executive Order 10450² and General Records Schedule (GRS) 18.³

b. Retained FBI ownership and control must be unequivocally articulated and manifest in both documentation and practice throughout the process. Means to this end should include execution on behalf of the President and EOP "agency" heads of Memorandums of Understanding (MOUs) with the FBI/DOJ confirming retained FBI ownership and control of all FBI-furnished materials and embodying the key details of the resulting procedures to be followed.

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b. This model would apply to all WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, copies of previously conducted personnel investigations, and the like. As detailed below, however, certain aspects would be inapplicable to "no-record" responses (i.e., responses to requests for name checks or copies of previous investigations which advise that FBI files contain no identifiable information).

c. All such WH/EOP requests must be submitted in accordance with the existing procedures established by the FBI, the Deputy Attorney General, and the Counsel to the President (subject to any subsequent modifications as responsible

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authorities may authorize).⁴ These procedures now include requirements that:

- Any WH/EOP request seeking copies of or information distilled from FBI files must be accompanied by either timely consent of the person whose files are being reviewed, or by a letter from the Counsel to the President (or comparable authority for independent EOP entities) through the Deputy Attorney General to the FBI General Counsel, setting forth a written explanation why such consent cannot be obtained or should not be sought in the circumstances.⁵

- WH/EOP requestors need not provide a new consent form when requesting follow-up inquiries which can reasonably be viewed as being within the ambit of a previously provided consent (e.g., when asking the FBI to further develop matters raised in a report of background investigation to which the subject consented.) WH/EOP requests for supplemental inquiries submitted within 30 days of the preceding FBI response shall be presumed to be within the ambit of the original consent, except when the supplemental request is made more than six months after the date of the original consent or during a different presidential administration.⁶

- Each WH/EOP request to the FBI must be submitted on an FBI-approved form indicating the specific reason for the request and signed by both the requesting official and a designated attorney in the White House Counsel's Office (or designated official in independent EOP entities) who will have reviewed and approved all requests prior to their transmittal to the FBI. The requesting official must certify, subject to the criminal penalties for making a false statement, that the information is sought only for official purposes and should be on express notice that unauthorized disclosure of any information obtained may violate the Privacy Act.

- A copy of each WH/EOP request for information from FBI files must be provided to the FBI Office of the General Counsel (OGC) for review prior to any FBI response.

d. The responsible FBI unit will prominently mark each response as FBI property (e.g., via use of an "FBI-property" stamp).

e. WH/EOP client entities must return FBI-furnished materials to the FBI. The responsible FBI unit will prominently mark each response to indicate this return requirement and the date by which the FBI must be in receipt of returned materials. This date will normally be no later than 30 days after the transmittal date of the FBI response. In the case of prospective presidential appointments, an attorney in the Office of the Counsel to the President who is authorized to

approve personnel investigation requests may obtain an automatic 30-day extension of the return date by providing the FBI a signed certification that retention by the White House is required for a particular candidate whose consideration for appointment remains ongoing as of the return date. No more than 5 such automatic extensions are authorized, and each must be effected by a separate certification. Other exceptions will only be permitted when the client agency documents reasons why more time is needed under particular circumstances, and the FBI approves the requested extension.

- Returns would not be required for "no-record" responses.

f. Each responsible FBI unit will: establish an effective "tickler" system to monitor the status of all outstanding WH/EOP responses to ensure that materials are returned on time, immediately coordinate with the responsible WH/EOP entity to effect resolution of any overdue returns, and keep the FBI General Counsel informed of the status and resolution of all overdue situations.

- Such tracking will not be required for "no-record" responses.

g. The responsible FBI unit will ensure that returned materials are appropriately recorded in pertinent FBI records.

h. Access to FBI-furnished materials within the WH/EOP will be limited to United States employees who have a need to know the information for the proper performance of constitutional, statutory, or other official or ceremonial executive branch functions. The responsible WH/EOP entity shall inform the FBI via official correspondence of the names and titles of the person(s) to be authorized such access, and shall further apprise the FBI by official correspondence of any subsequent changes in access authority and the reasons therefor. No WH/EOP entities or personnel will permit access to FBI-provided materials by any person or entity not on an authorized access list previously provided to the FBI, except where such access may be necessary under the particular circumstances for an authorized purpose, in which case the responsible WH/EOP entity will promptly notify the FBI and provide a written explanation.

i. Also prior to being granted access, each affected WH/EOP officer/employee must execute an agreement not to disclose the information for other than purposes for which the investigation was authorized. The responsible WH/EOP entity shall include a copy of completed non-disclosure agreements when informing the FBI of access authorizations.

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j. The names and signatures of all personnel who are actually accorded access to FBI-furnished materials, along with the date and reason for each access, will be recorded on access-record forms to be provided by the FBI with each investigation. Access records will be returned to the FBI for retention when the respective investigations are returned.

- Access records will not be required for "no-record" responses.

k. FBI materials shall be securely stored apart from WH/EOP files.

l. WH/EOP entities may make and preserve their own records of the official activities involved, which may include WH/EOP-initiated questionnaires, notes and summaries of FBI-furnished materials, and other records reflecting WH/EOP processing of the matters.

m. WH/EOP procedures for handling and protecting FBI-furnished materials will be subject to FBI audit. Audits will be conducted at least yearly as determined by the FBI in coordination with the responsible WH/EOP unit(s).

n. The FBI General Counsel (GC) may resolve issues involving interpretation or revision of these procedures, including their applicability to situations not anticipated in their formulation. In so doing the FBI GC will give due consideration to applicable statutes and regulations, the policy considerations underlying these procedures, along with a "rule of reason." The FBI GC may delegate this authority to an attorney in his office.

o. The FBI will provide a 24-hour, 7-day-a-week capability for receiving emergent WH/EOP requests for name checks or copies of existing investigations outside of normal working hours. Resort to this avenue is to be limited to only the most extraordinary situations. Any such requests must include a properly completed request form (though submission via fax is permissible).

Notes:

1. As used herein, the term "personnel investigations" refers to any of the non-criminal investigative inquiries conducted by the FBI for the White House and EOP units for the purpose of evaluating suitability, security, loyalty, or access. These include WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, and copies of previously conducted personnel investigations.

2. Section 9(c) of Executive Order 10450 expressly provides that "[t]he [security, loyalty, and suitability] reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in . . . this order shall remain the property of the investigative agencies conducting the investigations."
3. In ¶ 22b of GRS-18, the National Archive and Records Administration has expressly provided that "[i]nvestigative reports and related documents furnished to agencies by investigative organizations for use in making security/suitability determinations" may be "[d]estroy[ed] in accordance with the investigating agency instructions." In this case, the FBI would be "instructing" that these documents be returned to the FBI for eventual destruction by the FBI.
4. See, e.g., Memorandum for FBI Director Freeh of 6/14/96 from FBI General Counsel Shapiro, Re: "The Dissemination of FBI File Information to the White House" (approved same date by Director Freeh and Deputy Attorney General Gorelick); Memorandum for White House Chief of Staff Panetta of 6/14/1996 from Counsel to the President Quinn, Re: "White House Requests to the FBI"; letters to Counsel to the President Quinn and Office of Administration General Counsel Cunningham of 8/2/96 from FBI General Counsel Shapiro.
5. However, as indicated in the Quinn memorandum of 6/14/96, the provision that FBI personnel investigations will only be predicated upon the subject's consent (or the Deputy Attorney General's approval) does not apply to "computerized criminal history check[s]." The referenced checks only encompass searches of the National Crime Information Center's (NCIC) files of "wanted persons" and criminal history record information ("rap sheets") on individuals who have been criminally fingerprinted.
6. Under limitations Congress imposed in FY-97 WH/EOP appropriations, WH/EOP funds may not be used to request from the FBI any official background investigation report unless the subject has given express written consent for such request not more than six months prior to the date of such request and during the same presidential administration (an exception applies to exceptional circumstance involving national security). Pub. L. No. 104-208.

**PROPOSED MODEL FOR MANAGING PERSONNEL INVESTIGATIONS¹
CONDUCTED BY THE FBI FOR THE WHITE HOUSE (WH) AND
THE EXECUTIVE OFFICE OF THE PRESIDENT (EOP)**

1. The keystone for this model is continued FBI ownership and control of all materials provided to requesting WH/EOP clients.

a. Authority for retained FBI ownership and control includes Executive Order 10450² and General Records Schedule (GRS) 18.³

b. Retained FBI ownership and control must be unequivocally articulated and manifest in both documentation and practice throughout the process. Means to this end should include execution on behalf of the President and EOP "agency" heads of Memorandums of Understanding (MOUs) with the FBI/DOJ confirming retained FBI ownership and control of all FBI-furnished materials and embodying the key details of the resulting procedures to be followed.

c. In order to permit exercise of their respective responsibilities under the Presidential Records Act (PRA) or the Federal Records Act (FRA), client entities would not be precluded from making or preserving their own official notes or summaries of the investigative materials involved in entity decisions.

d. All requests for FBI-provided materials under the Freedom of Information Act would be referred to, and handled by, the FBI.

2. Proposed details:

a. This model would apply to personnel investigation requests on behalf of the President and the Vice President, their respective offices, and other entities of the EOP.

b. This model would apply to all WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, copies of previously conducted personnel investigations, and the like. As detailed below, however, certain aspects would be inapplicable to "no-record" responses (i.e., responses to requests for name checks or copies of previous investigations which advise that FBI files contain no identifiable information).

c. All such WH/EOP requests must be submitted in accordance with the existing procedures established by the FBI, the Deputy Attorney General, and the Counsel to the President (subject to any subsequent modifications as responsible

authorities may authorize).⁴ These procedures now include requirements that:

- Any WH/EOP request seeking copies of or information distilled from FBI files must be accompanied by either timely consent of the person whose files are being reviewed, or by a letter from the Counsel to the President (or comparable authority for independent EOP entities) through the Deputy Attorney General to the FBI General Counsel, setting forth a written explanation why such consent cannot be obtained or should not be sought in the circumstances.⁵

- WH/EOP requestors need not provide a new consent form when requesting follow-up inquiries which can reasonably be viewed as being within the ambit of a previously provided consent (e.g., when asking the FBI to further develop matters raised in a report of background investigation to which the subject consented.) WH/EOP requests for supplemental inquiries submitted within 30 days of the preceding FBI response shall be presumed to be within the ambit of the original consent, except when the supplemental request is made more than six months after the date of the original consent or during a different presidential administration.⁶

- Each WH/EOP request to the FBI must be submitted on an FBI-approved form indicating the specific reason for the request and signed by both the requesting official and a designated attorney in the White House Counsel's Office (or designated official in independent EOP entities) who will have reviewed and approved all requests prior to their transmittal to the FBI. The requesting official must certify, subject to the criminal penalties for making a false statement, that the information is sought only for official purposes and should be on express notice that unauthorized disclosure of any information obtained may violate the Privacy Act.

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i. Also prior to being granted access, each affected WH/EOP officer/employee must execute an agreement not to disclose the information for other than purposes for which the investigation was authorized. The responsible WH/EOP entity shall include a copy of completed non-disclosure agreements when informing the FBI of access authorizations.

j. The names and signatures of all personnel who are actually accorded access to FBI-furnished materials, along with the date and reason for each access, will be recorded on access-record forms to be provided by the FBI with each investigation. Access records will be returned to the FBI for retention when the respective investigations are returned.

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l. WH/EOP entities may make and preserve their own records of the official activities involved, which may include WH/EOP-initiated questionnaires, notes and summaries of FBI-furnished materials, and other records reflecting WH/EOP processing of the matters.

m. WH/EOP procedures for handling and protecting FBI-furnished materials will be subject to FBI audit. Audits will be conducted at least yearly as determined by the FBI in coordination with the responsible WH/EOP unit(s).

n. The FBI General Counsel (GC) may resolve issues involving interpretation or revision of these procedures, including their applicability to situations not anticipated in their formulation. In so doing the FBI GC will give due consideration to applicable statutes and regulations, the policy considerations underlying these procedures, along with a "rule of reason." The FBI GC may delegate this authority to an attorney in his office.

o. The FBI will provide a 24-hour, 7-day-a-week capability for receiving emergent WH/EOP requests for name checks or copies of existing investigations outside of normal working hours. Resort to this avenue is to be limited to only the most extraordinary situations. Any such requests must include a properly completed request form (though submission via fax is permissible).

Notes:

1. As used herein, the term "personnel investigations" refers to any of the non-criminal investigative inquiries conducted by the FBI for the White House and EOP units for the purpose of evaluating suitability, security, loyalty, or access. These include WH/EOP requests for background investigations, reinvestigations, update investigations, name checks, expanded name checks, and copies of previously conducted personnel investigations.

2. Section 9(c) of Executive Order 10450 expressly provides that "[t]he [security, loyalty, and suitability] reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in . . . this order shall remain the property of the investigative agencies conducting the investigations."

3. In § 22b of GRS-18, the National Archive and Records Administration has expressly provided that "[i]nvestigative reports and related documents furnished to agencies by investigative organizations for use in making security/suitability determinations" may be "[d]estroy[ed] in accordance with the investigating agency instructions." In this case, the FBI would be "instructing" that these documents be returned to the FBI for eventual destruction by the FBI.

4. See, e.g., Memorandum for FBI Director Freeh of 6/14/96 from FBI General Counsel Shapiro, Re: "The Dissemination of FBI File Information to the White House" (approved same date by Director Freeh and Deputy Attorney General Gorolick); Memorandum for White House Chief of Staff Panetta of 6/14/1996 from Counsel to the President Quinn, Re: "White House Requests to the FBI"; letters to Counsel to the President Quinn and Office of Administration General Counsel Cunningham of 8/2/96 from FBI General Counsel Shapiro.

5. However, as indicated in the Quinn memorandum of 6/14/96, the provision that FBI personnel investigations will only be predicated upon the subject's consent (or the Deputy Attorney General's approval) does not apply to "computerized criminal history check[s]." The referenced checks only encompass searches of the National Crime Information Center's (NCIC) files of "wanted persons" and criminal history record information ("rap sheets") on individuals who have been criminally fingerprinted.

6. Under limitations Congress imposed in FY-97 WH/EOP appropriations, WH/EOP funds may not be used to request from the FBI any official background investigation report unless the subject has given express written consent for such request not more than six months prior to the date of such request and during the same presidential administration (an exception applies to exceptional circumstance involving national security). Pub. L. No 104-208.