

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title:

FBI Files [2]

Staff Office-Individual:

Counsel's Office-Wallman, Kathleen

Original OA/ID Number:

CF 849

Row:	Section:	Shelf:	Position:	Stack:
21	4	4	2	v

MEMORANDUM
OF CALL

Previous editions usable

TO:

MMc

☐ YOU WERE CALLED BY- ☐ YOU WERE VISITED BY-

→ Irwin Redliner -

OF (Organization)

Craig Henington

☐ PLEASE PHONE ► ☒ FTS ☐ AUTOVON

212 / 535-9707

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

RECEIVED BY

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TIME

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**Report of the
FBI General Counsel
on
The Dissemination of FBI File
Information to the White House**

Washington, D.C.
June 14, 1996

Howard M. Shapiro
General Counsel



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

**FOR IMMEDIATE RELEASE
JUNE 14, 1996**

FBI Director Louis J. Freeh today said he has ordered sweeping new measures to protect sensitive background investigation files from improper use to prevent a recurrence of egregious violations of privacy that occurred when the White House earlier requested and received certain FBI records.

Freeh said he took the action after an intensive FBI internal inquiry showed that the Bureau has failed to adequately safeguard such records against negligent or intentional misuse.

"The inquiry shows the FBI gave inadequate protection to the privacy interests of persons in FBI files," Freeh said. "The inquiry also found the Bureau failed to make certain that agencies receiving files followed exacting privacy procedures."

Freeh said that the inquiry's discovery of "egregious violations of privacy" required that the FBI move promptly and firmly to reform procedures and solve the problems. The new protective measures are being put into place at once.

The FBI inquiry has also discovered, Freeh said, that the White House has identified 408 files sought and received by the White House "without justification." Freeh said those files have been voluntarily surrendered by the White House to the FBI, including: 333 files on June 6; and, following "a further query from the FBI," 71 more improperly-sought files yesterday, June 13. The status of 17 other White House file requests is still to be determined.

Freeh said the results of the FBI inquiry are being given to Independent Counsel Kenneth W. Starr, who is investigating matters related to the White House Travel Office. Since part of the file problem relates to the Travel Office, the FBI could not question White House employees about the files and thus limited its inquiry to FBI personnel, Freeh said.

It is important to note, Freeh said, that the FBI report contains this finding on the files requested by and given to the White House: "Among the unquestionably unjustified acquisitions were reports relating to discharged Travel Office employees Billy Ray Dale and Barnaby Brasseux."

Freeh ordered the inquiry on learning a week ago that the White House requested and received the background file of Dale, a former White House Travel Office director, months after he was fired. Dale was later acquitted of charges of wrongdoing in the Travel Office position.

The FBI inquiry was expanded when it was learned that the White House, early in the Clinton Administration, also requested and received a large number of files on officials in the previous Bush Administration and other persons. In addition, the FBI learned the White House requested and received the FBI file on a second, discharged Travel Office employee, Brasseux.

FBI General Counsel Howard M. Shapiro directed the inquiry and wrote the report that was submitted to Freeh today. Deputy Attorney General Jamie S. Gorelick concurred with Freeh's new measures to prevent further privacy abuses.

Freeh said he has scrapped the long-standing former system where the White House submitted a file-request form that merely contained the typed-in name of the White House Counsel, with no indication who actually sought the information and who approved the request.

Freeh said the FBI's new safeguards include:

-- A requirement that the White House must use a detailed new request form containing the actual signatures of the official requesting the material and a White House Counsel's Office attorney approving the request.

-- The White House officials must certify that the information is sought only for official purposes and give more detailed reasons why the material is needed.

-- The White House officials are put on strict notice by the FBI form that criminal sanctions are available for any violations of the law, including false statements or disclosure of information violating the Privacy Act.

-- White House requests for file material must be accompanied by the consent of the file subject or a White House Counsel letter to the FBI General Counsel explaining why such consent cannot be obtained or should not be sought.

-- The FBI will make certain that high-level FBI officials will review White House information requests instead of such requests being routinely filled by low-level personnel. For example, the FBI Office of General Counsel will receive and review a copy of each White House request for FBI files.

-- In the past, the FBI routinely filled White House requests for copies of previous background files without checking to see if there were pending criminal investigations of the subjects. Under the new procedures, there will be checks on all subjects to determine if there are criminal investigations. If so, information dissemination will be halted, high-level FBI officials will be informed, and the matter will be referred to the Deputy Attorney General to determine what, if any, communication should be made to the White House.

Freeh said the now-scrapped system of providing files to the White House dated back to the Johnson and Nixon Administrations and for decades and through many Presidents it presumably appeared that there was compliance with the law. Freeh said he believes that over the years the FBI complied with various federal laws governing FBI release of background files to the White House and other federal agencies for security clearances and other legitimate functions.

However, Freeh said, it is now clear that the system was very vulnerable to misuse and that government officials over several decades, including himself, had not provided adequate oversight of the system, resulting now in violations of privacy.

Freeh said "As FBI Director since September of 1993, I am responsible for the FBI problems and shortcomings since then, and I fully accept that responsibility. I pledge to make certain that no such problems occur again while I hold this post.

"While I only learned about these problems a week ago, I do not stand on any technical defense or make any excuses," Freeh said. "I was not vigilant enough."

Freeh said "The prior system of providing files to the White House relied on good faith and honor. Unfortunately, the FBI and I were victimized. I promise the American people that it will not happen again on my watch."

Freeh said he also wanted to stress that no blame should be attached to the FBI research analysts who processed requests and forwarded files to the White House.

Freeh said "I agree completely with this finding from the FBI report: '...these employees have in no way failed the FBI...the FBI has surely failed them, and has failed in a larger sense to institute sufficient protections to effectively safeguard the very real privacy interests that we, as custodians of so many people's files, are responsible for protecting.'"

Freeh said that Howard Shapiro, the FBI's Counsel, deserves great credit for conducting a thorough internal inquiry and writing a comprehensive report that pulls no punches.

The report said that "As the events which prompted this inquiry reveal...while we have complied with all applicable law, we have failed to afford sufficient protection to the privacy interests of those whose files we maintain.

"There is, of necessity, a tradeoff between effectively serving the needs of the executive agencies for the prompt provision of reliable information and ensuring the vigilant protection of privacy," the report said.

"In our drive to maximize our productivity and responsiveness to client agencies, we have not been sufficiently attentive to our own responsibilities to safeguard our files against negligent or intentional misuse, nor have we been sufficiently exacting of the executive agencies we serve," the report said.

"We are, in some respects, fortunate that the recent discovery of the egregious violations of privacy which occurred here has focussed our attention upon an operation which has received far too little management or executive oversight," the report said.

The report emphasized that the FBI's inquiry began with the discovery of the Dale file being sent to the White House, and added: "It has subsequently been admitted by the White House that Dale's file was one of many, in excess of four hundred, sought from the FBI and relating to employees, some quite prominent, of previous administrations."

Among other things, the report said, the inquiry on FBI file practices found that "It appears that over time a tradition of considerable deference to the White House has developed."

The report took a close look at White House requests for copies of previous reports in the period from December 6, 1993, to February 3, 1994. During this time, the report said, the Bureau "received no fewer than 481 requests which bear the characteristics of a single series.

"These requests, when parsed out from the normal traffic of requests, arrived in nearly perfect alphabetical order--from Aa to Go--all seeking copies of previous reports and all providing the same justification--'ACCESS (S),' " the report said.

The report said that "We now know that many of these 481 requests, while facially valid, were without justification and served no official purpose. In recognition of this fact, the White House Counsel's Office has voluntarily surrendered to the FBI more than 400 folders containing FBI records since June 6, 1996.

"Folders relating to three hundred and thirty-three individuals were returned on June 6, 1996," the report said. "Apparently, these were folders that had already been segregated and shipped to the White House archives because an employee of OPS [Office of Personnel Security] had determined, over time, that these materials had been inappropriately gathered.

"One file of FBI material was returned separately on Monday, June 10, 1996," the report said. "Another had previously been provided to the IC [Independent Counsel]. In response to a further query from the FBI, folders relating to 71 additional individuals were identified as having been improperly sought and were turned over to the FBI on June 13, 1996.

"...As of June 14, 1996, then, requests relating to 408 individuals have been identified by the White House as having been sought without justification...In addition, the status of an additional seventeen requests has not yet been resolved," the report said.

A copy of the FBI report is attached.

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U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

June 14, 1996

BY COURIER

Mr. John M. Quinn
Counsel to the President
The White House
Washington, D.C.

Dear Mr. *Jack* Quinn:

Enclosed please find a copy of the report on the dissemination of FBI File Information to the White House that is to be released today. Also enclosed is a copy of the recommendations for changing procedures which the Deputy Attorney General approved today.

Sincerely,

Howard M. Shapiro
General Counsel

Enclosures - 3

- ① - Mr. David Fein
Associate Counsel to the President
The White House
Washington, D.C.



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

June 14, 1996

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

FROM: DIRECTOR, FBI *LJF/Hms*
SUBJECT: THE DISSEMINATION OF FBI FILE
INFORMATION TO THE WHITE HOUSE

PURPOSE: To obtain your approval of the attached memorandum which recommends changes in procedures concerning the dissemination of FBI file information to the White House.

TIMETABLE: As soon as possible.

DISCUSSION: This forwards to you a memorandum captioned "The Dissemination of FBI File Information to the White House," dated June 14, 1996, which recommends changes in procedures concerning FBI background investigations to be put into effect immediately upon your approval.

RECOMMENDATION: That you approve the proposed changes in procedures.

Enclosure

APPROVE *[Signature]*

DISAPPROVE _____

OTHER _____

Memorandum



To : The Director

Date 6/14/96

From : H. M. Shapiro *HMS*
General Counsel

L. J. McCormick *L*
Inspector

Subject : THE DISSEMINATION OF FBI FILE
INFORMATION TO THE WHITE HOUSE

As a result of the week we spent examining the process of responding to requests for background information and name checks from the White House and other executive agencies, we recommend that you approve, and forward for the Attorney General's approval, the following changes in procedure:

1. That the form and manner in which White House requests for information from FBI files are made be changed as set forth below. Had these changes been in place, the approximately 400 files improperly obtained would never have been requested or provided.

1a. That any request seeking copies of or information distilled from FBI files must be accompanied by either the consent of the person whose files are being reviewed, or by a letter from the Counsel to the President 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.

1b. That all requests by the White House for information from FBI files, which had previously been submitted anonymously under the typed name of the Counsel to the President (in recent administrations) or some other White House official, now require the actual signatures of both the requesting official and of an attorney in the Counsel's Office who will have reviewed and approved all requests prior to their transmittal to the FBI. The requesting official should certify,

Enclosure

Memorandum from H. M. Shapiro/L. J. McCormick to The Director
Re: The Dissemination of FBI File
Information to the White House

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.

1c. That greater specificity be provided regarding the reason for the request (see attached form).

1d. That a copy of each White House request for information from FBI files be provided to the FBI Office of the General Counsel (OGC) for review.

Regardless of the procedures, the FBI record check process remains a necessity for any effective system that accommodates the security and employment functions of the White House. To be effective, the procedures at both ends must complement each other. For these reasons, these recommendations have been coordinated with the White House Counsel's Office, which oversees the White House Office of Personnel Security. That office must implement procedures at the White House that will allow the system to operate given these changes. The Counsel to the President advised that he will be implementing complementary procedural changes. He raised no procedural objection to these changes, and indeed had independently arrived at many of them.

A revised Form incorporating these recommended changes is attached.

2. That a complete indices check be conducted for all White House requests for information from FBI files, including when the request seeks only copies of previous reports. Whenever a record check reveals a pending criminal investigation concerning the subject, dissemination of any information will be halted and notification be made to the Headquarters Supervisor and to FBI OGC. The Headquarters Supervisor and FBI OGC will consult to determine what information could be disseminated without harm to the investigation. The FBI General Counsel will then refer the matter to the Deputy Attorney General in order to determine what if any information should be communicated to the White House Counsel.

3. That written protocols be developed regarding what information from FBI files may be properly disseminated.

Memorandum from H. M. Shapiro/L. J. McCormick to The Director
Re: The Dissemination of FBI File
Information to the White House

4. That the FBI's Privacy Act routine use notice be amended, as set forth in the accompanying report, to constrain and better define the boundaries of appropriate routine use disseminations.
5. That appropriate personnel meet with representatives of the White House and the United States Secret Service to better coordinate requests for FBI file information and to reduce the incidence of duplicative requests.
6. That appropriate personnel from the FBI and the White House meet to discuss the retention and archiving of FBI background investigation or name check information by the White House to ensure that appropriate safeguards are in place.
7. That FBI executive management provide greater oversight to the process of responding to White House requests for information from FBI files.
8. That any request to the FBI which results in the provision of copies of or information from FBI files be indexed and maintained for subsequent review and retrieval.
9. That the data presently purged periodically from the FBI database regarding White House requests be maintained instead in a magnetic medium which will permit more effective review, analysis and audit.
10. That the FBI establish a periodic audit procedure, to be conducted by the FBI's Inspection Division, to ensure compliance with these recommendations.

THE WHITE HOUSE
WASHINGTON

Date _____

To: Federal Bureau of Investigation

Attn: _____

From: The White House

☐ Office of Personnel Security

☐ White House Counsel's Office

Subject's Full Name _____

Other names used _____

Social Security Number _____ Date of Birth _____ Place of Birth _____

Permanent Address _____

Current Employer _____

☐ I hereby authorize the FBI to provide the information specified below to the White House.

(Signature)

(Date)

Request of FBI (Subject's consent or written explanation from White House Counsel is required for any request seeking copies of, or information from, FBI files.)

☐ Name/Indices check

☐ Expanded name check

☐ Copy of previous report

☐ Full field investigation ☐ Level 1 ☐ Level 2 ☐ Level 3

☐ Limited update investigation

☐ Other (specify) _____

The applicant is being considered for:

☐ Presidential appointment

☐ White House employee ☐ detailee ☐ intern ☐ volunteer

☐ Presidential recognition

☐ Other (specify) _____

Attachments: ☐ SF-86 ☐ SF-86 Supplement ☐ SF-87 Fingerprint Card

Remarks/special instructions: _____

I certify, subject to 18 U.S.C. Section 1001, that the above is sought for official purposes only and I understand that any unauthorized disclosure may be a violation of the Privacy Act, 5 U.S.C. Section 552a.

Requested by: _____

This request has been reviewed and approved by the White House Counsel's Office.

Approved by: _____

White House Counsel's Office

1 - Original - To FBI

2 - Yellow - To FBI (Office of the General Counsel)

3 - Pink - To FBI (Return to White House)

4 - Blue - White House Copy



Report of the
FBI General Counsel
on
The Dissemination of FBI File
Information to the White House

June 14, 1996

Howard M. Shapiro
General Counsel

TABLE OF CONTENTS

INTRODUCTION	1
I. HISTORICAL AND LEGAL CONTEXT	3
II. THE PRIVACY ACT	8
III. THE PROCESS TODAY	14
IV. THE DECEMBER 1993-JANUARY 1994 REQUESTS	22
V. CONCLUSION	27
EXHIBITS	TABS 1 - 13
CHARTS	TABS 14 - 16

REPORT ON THE DISSEMINATION OF FBI FILE
INFORMATION TO THE WHITE HOUSE

INTRODUCTION

The Federal Bureau of Investigation (FBI) has been providing sensitive background investigation (BI) reports and material to the White House and other executive agencies upon request for as long as anyone involved in the current process can remember. That historical memory, as well as available documentation, extends back to the Johnson Administration. The process has changed remarkably little over the intervening three decades, although it has become somewhat more rigorous and structured, and the FBI has kept pace with the expanding Federal workforce and the attendant expansion in the number of requests. Today, thirty-seven professional support employees, many of long tenure, handle hundreds of thousands of requests for information, name checks, and reports from the White House and other executive agencies. This cottage industry on the fourth floor of FBI Headquarters is a stunningly efficient operation, and has become an integral component of the Federal employment process.

As the events which prompted this inquiry reveal, however, while we have complied with all applicable law, we have failed to afford sufficient protection to the privacy interests of those whose files we maintain. There is, of necessity, a tradeoff between effectively serving the needs of the executive agencies for the prompt provision of reliable information and ensuring the vigilant protection of privacy. In our drive to

maximize our productivity and responsiveness to client agencies, we have not been sufficiently attentive to our own responsibilities to safeguard our files against negligent or intentional misuse, nor have we been sufficiently exacting of the executive agencies we serve. We are, in some respects, fortunate that the recent discovery of the egregious violations of privacy which occurred here has focussed our attention upon an operation which has received far too little management or executive oversight.

In the report which follows, I set forth a brief explanation of the process, the legal and historical context in which it operates, and some observations regarding the White House's requests between December 1993 and February 1994 for nearly 500 previous BI reports. A series of recommendations for prospective changes is being forwarded under separate cover for your consideration and the approval of the Attorney General.

This limited investigation was ordered in response to the discovery on or about June 5, 1996, that the White House had, in December 1993, sought copies of the background reports of Billy Ray Dale, several months after he had been fired from the White House amid great controversy and while a criminal investigation concerning his activities at the White House was pending. It has subsequently been admitted by the White House that Dale's file was one of many, in excess of four hundred, sought from the FBI and relating to employees, some quite prominent, of previous administrations. This inquiry did not

attempt to provide definitive answers to all of the questions which naturally arise from these events. At the request of the Office of the Independent Counsel (IC), I have confined my inquiry to the FBI's conduct in the dissemination of these background files and, in deference to the IC's wishes, we have not interviewed any of the White House personnel involved either in the request for BI and name check information generally or in the specific requests which occasioned this inquiry. As a result, I have not reached any conclusions about the motivations of any White House employee. What little can be concluded based upon an examination of the requests themselves is set forth below.¹

I. HISTORICAL AND LEGAL CONTEXT

In accordance with its investigative mission, the FBI has for many years compiled and maintained information on a variety of individuals for a number of reasons. Some of this information, for example, is used as a basis for making determinations about the suitability of applicants for Federal employment. Similarly, some is used to make decisions about the trustworthiness of individuals being considered for access to classified or sensitive information or to sensitive or

¹ In preparing this report, I have been immeasurably assisted by Deputy General Counsel Thomas A. Kelley, Inspector Larry J. McCormick, Patrick W. Kelley, Chief, Administrative Law Unit; Supervisory Special Agents Paul D. Allen, Jr., Marlene M. Hunter, J. Stephen Tidwell, and Duncan J. Wainwright; Paul C. Cignoli, Jr., Chief, Supervisory Paralegal Specialist Patricia Jo Giannico, and Paralegal Specialist Sarah Eckberg, Civil Discovery Review Unit; and, my Executive Assistant, Dana D. Sauer.

secure areas, such as the White House complex. Information in FBI systems is also used for licensing or civil employment determinations under certain circumstances.

This information is gathered and disseminated under a variety of legal authorities. Pursuant to Section 534 of Title 28, United States Code, for example, the Attorney General is required to --

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

. . . .

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.²

Other authorities under which the FBI collects and discloses information include: (1) Public Law 92-544,³ under which the FBI is authorized to exchange information with officials of federally chartered or insured banking institutions and to the States for employment and licensing determinations; (2) Section 2165 of Title 42, United States Code, authorizing the FBI to conduct "full field investigations" on certain employees, contractors, and others provided access to "restricted data" and to furnish the results to the Office of Personnel Management (OPM) or to the Nuclear Regulatory Commission; (3) Section 0.85

² Per 28 U.S.C. § 534(c), the Attorney General has delegated the authority to perform these functions to the Director of the Federal Bureau of Investigation in 28 C.F.R. § 0.85.

³ Title II, § 201 (Oct. 25, 1972), 86 Stat. 1115.

of Title 28, Code of Federal Regulations, authorizing the FBI to "[c]onduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise"; (4) Executive Order 10450, which requires the appointment of each civilian employee of the Government to be "made subject to investigation" including at least a "national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation)"; (5) Executive Order 12968, which makes all employees "subject to investigation by an appropriate government authority prior to being granted access to classified information and at any time during the period of access to determine whether they continue to meet the requirements for access"; and, (6) Parts 732 and 736 of Title 5, Code of Federal Regulations, which sets forth OPM's investigative requirements and responsibilities for sensitive positions in the Government (OPM has, through long-standing practice, utilized FBI files and data to help it fulfill these responsibilities). Additionally, applicants for Federal positions requiring access to classified or sensitive information specifically authorize the FBI, OPM, and other authorized agencies to gather and disclose a wide range of personal information in connection with the application process.⁴

⁴ See Standard Form 86, "Authorization for Release of Information."

The information thus gathered is organized into various records systems, including the largest, the "FBI Central Records System." Procedures governing the disclosure of information from the Central Record System have evolved over the years. This evolution, for example, is reflected in procedures governing disclosures to the White House. Since the late 1950's, and undoubtedly earlier as well, the White House has routinely requested background investigations and checks to determine the suitability of applicants for Federal employment or the wisdom of allowing particular individuals to gain access to the President. Prior to 1974,⁵ the provision of information to the White House was considerably less formalized. Apparently, for example, it was not uncommon practice in the mid-sixties and early seventies for the President to call the Director (or a senior Bureau executive) personally to ask for a "name check" on a particular individual.⁶ Internal records also reveal that prior to March 1, 1966, the Bureau would at times respond orally to requests for name checks or other information from White House staff.⁷

⁵ The year that the Privacy Act was enacted.

⁶ See, e.g., April 9, 1965 FBI memorandum entitled "Preparation of White House Name Check Requests;" January 30, 1973 "Instructions Folder, White House Memoranda Unit, Name Check Section," at p 7.

⁷ Memorandum of G. H. Scatterday, "Correspondence to White House," dated March 1, 1966, ending the practice.

The Bureau's focus in responding to these requests was to process them as effectively and efficiently as possible. This is not to say that the Bureau employed no safeguards in protecting the privacy interests of the individuals about whom information was provided. Processing guidelines, for example, permitted only the results of its investigations to be released and required that the information disclosed "be pertinent to the inquiry." Information in the "rumor or gossip" category was not to be released absent "compelling reason[s]" and only with caveats that the information had not been verified by the FBI. Other steps to ensure accuracy were also built into the process, but it is fair to say that the FBI often relied on "good judgment" rather than any formalized protocols when assessing what to disclose and when.⁸

In 1965, approximately 4,700 names were processed for the White House.⁹ By 1968, the volume of requests was estimated at 10,000 per year.¹⁰ As the volume of White House requests increased, processing procedures became standardized.¹¹ In 1969, for example, a pre-printed unsigned form asking for an FBI

⁸ Quotations from a January 23, 1968 FBI memorandum entitled "Dissemination of Information in Answer to White House Name Check Requests."

⁹ January 12, 1966 FBI memorandum entitled "Suggestion Re: White House Name Checks."

¹⁰ January 23, 1968 memorandum.

¹¹ The White House, too, modified its procedures over the years. For example, in 1977, the FBI was notified that the U.S. Secret Service would take over responsibility for obtaining "name checks" on individuals being considered for temporary access to the President or the First Family while the White House Security Office retained responsibility for obtaining name checks on persons who required access to the White House complex on a regular basis.

"name check" investigation was used to facilitate Nixon Administration requests.¹² This form was modeled on one used in the previous administration. According to an internal FBI memorandum of April 3, 1969, "all requests [in the Nixon Administration were to be] handled in the same format as those previously sent to the Johnson Administration." The form showed that the request originated with the White House, the name of the official under whose authority the request was being submitted, the name of the individual actually making the request, the name and identifying particulars of the subject, the type of information requested,¹³ and why the information was being requested.¹⁴

II. THE PRIVACY ACT

In 1974, Congress instituted sweeping changes to the manner in which the entire Executive Branch collected, maintained, and disclosed personal information by enacting the Privacy Act.¹⁵ In passing this landmark legislation, Congress struck a balance between the Government's need to maintain and use information about individuals on the one hand and the rights of individuals to be protected against unwarranted invasions of

¹² The form is markedly similar to that used by the present Administration; see discussion below.

¹³ Copy of previous report, name check, or full-field investigation.

¹⁴ White House staff position, presidential appointment, or position with another agency.

¹⁵ 5 U.S.C. § 552a.

privacy on the other. The historical context of the Act is important to an understanding of its remedial purposes. Congress, in 1974, was clearly concerned with curbing illegal surveillance and investigation of individuals by Federal agencies. It was also concerned about potential abuses presented by the Government's increasing use of computers to store and retrieve personal information. The result was a careful crafting of a comprehensive legislative scheme that permits Government agencies, including the FBI, to disclose information about individuals to other agencies or non-Governmental entities only in a controlled and careful way. After its passage, the Bureau implemented the Act and took steps to ensure compliance with its dictates.

Under the Privacy Act, the FBI's Central Records System is classified as a "Privacy Act System of Records" since information in the system is retrieved by the names or other personal identifiers of individuals in the system. This means that the maintenance of, and disclosures from, the Central Records System must be in compliance with the Privacy Act. In general, the Privacy Act prohibits disclosures of information from a Privacy Act System of Records without the written consent of the individual about whom the information pertains. This general rule, however, is subject to 12 exceptions.

The broadest exception is that provided by Section 552a(b)(3) of the Act "for a routine use," i.e., for a use which is compatible with the purposes for which the information was originally collected. By its terms, Section 552a(b)(3) sets forth two requirements for a proper routine-use disclosure: (1) Federal Register publication providing constructive notice to the public of the routine uses to which the information in question may be put by the agency collecting it; and, (2) compatibility with the purposes for which it was collected.

The routine uses for the FBI Central Records System were most recently published in the Federal Register on October 5, 1993.¹⁶ This notice states that information in the Central Records System may be disclosed by the FBI, to, among others --

. . . any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.¹⁷

¹⁶ 58 Fed. Reg. 51,858 (10/5/93).

¹⁷ 58 Fed. Reg. 51,870 (10/5/93).

With one exception, this language adequately puts individuals on notice of "the categories of users and the purpose of such use"¹⁸ concerning the information in the system. The exception is the last portion quoted: "to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function." This language is so encompassing that it hardly provides any useful information at all. Worse, it implies that information in the system may be disclosed whenever a Federal agency considers possession of the information to be relevant to any of its myriad functions. In our view, this provision is overbroad and should be eliminated. This will have the effect of requiring the FBI to determine, on a case-by-case basis, whether a proposed agency use that is not encompassed within the listed examples of suitability, trustworthiness, and access determinations is compatible with the purposes for which the information was originally gathered and whether disclosure falls within the parameters of our published routine uses.

This one specific problem notwithstanding, we have long construed the routine uses published in the Federal Register together with the authority reposed in the Bureau by the various legal authorities cited above as authority to provide information from the Central Records System to the White House and other executive agencies when requested to do so for a purpose

¹⁸ 5 U.S.C. § 552a(c)(4)(D).

ostensibly compatible with the purposes for which the information was compiled.¹⁹ As noted above, we have, for example, responded to White House requests for information about individuals being considered for employment on the White House staff, for presidential appointments, and for access to classified or sensitive information or for access to the White House complex.

All such responses, however, fall within the scope of the routine uses published in the Federal Register for the FBI Central Records System. Providing such information to the White House assists the White House staff in determining whether particular individuals are sufficiently trustworthy to be provided access to classified or sensitive information or to the White House complex, or are suitable for White House employment or political appointment. It is equally clear that such uses are compatible with the purposes for which such information was collected. Background investigations, for example, are conducted for the very purpose of determining suitability, trustworthiness, or both.

Even though the Privacy Act made major changes in Federal information collection and dissemination practices, it had little discernable effect on the manner in which the Bureau processed White House requests for background investigations, name checks, and the like. This was so because the "routine use" exception generally authorized the FBI to provide information to

¹⁹ An agency's construction of its own routine use is entitled to deference. See FLRA v. United States Dep't of the Treasury, 884 F.2d 1446 (D.C. Cir. 1989), cert. denied 493 U.S. 1055 (1990).

the White House and other Federal agencies for the same reasons that we had provided such information to these agencies for several decades past.

The pre-printed forms which have been in use since the Johnson Administration meet all the conditions which our "routine use" require to be satisfied in order for the responding disclosure to be legally permissible under the Privacy Act. They identify the agency (the White House), the authorized official, the specific information requested, and the reason for which the information was desired.²⁰ As long as the forms were facially valid, the FBI was legally entitled to assume that their author was acting within the scope of his or her authority²¹ and that the requests for information were properly presented to us in the everyday course of White House business, as such requests have been presented day in and day out for at least 30 years.

Even though we have acted in compliance with the Privacy Act, it is apparent that we have been institutionally inclined to process facially valid White House requests without reflection and without any effort to assess and balance the inherently competing interests underlying the Privacy Act. Put

²⁰ That the forms were generally not signed or initialled does not detract from this conclusion since, unlike Section (b)(7) of the Privacy Act, Section 552a(b)(3) does not require a request for information to be signed before a "routine use" response may be provided. In fact, a "routine use" disclosure need not be predicated upon a request at all; that is, information may be disclosed under the routine use exception whether or not the individual to whom it is disclosed requested it.

²¹ United States v. Chemical Foundation, Inc., 272 U.S. 1, (1926). This presumption of regularity attaches to documents prepared by such officials in the execution of their office or in pursuit of the Government's business. See, e.g., exception 803(9) (Public Reports and Records) to the Federal Hearsay Rule (Rule 802), in Title 28, United States Code.

simply, we have unduly relied on technical compliance with the law without questioning the need for or establishing additional safeguards.

III. THE PROCESS TODAY

The White House initiates requests for information from FBI files by submitting one of four forms currently in use. (Attached as Exhibits 1, 2, 3, and 4.) These forms correspond with requests from the Office of Personnel Security (OPS) under D. Craig Livingstone (Ex 1); those relating to presidential appointments submitted by Clifford Mauton, a paralegal in the White House Counsel's Office (Ex 2); from the Executive Office of the President, Office of Administration (EOP-OA) (Ex 3); and, from the National Security Council (NSC) (Ex 4). The latter two forms, from EOP-OA and the NSC are signed by their respective security officers. The forms sent by Messrs. Livingstone and Mauton are sent under the typed name of the White House Counsel, now John M. Quinn, without the signature or any other indication of the actual requestor. Form 1 from OPS accounts for the vast majority of requests (e.g., 82% of those submitted in 1995).

The White House form presently in use by OPS has remained substantially unchanged since it was first used in 1965. It has been identical for more than five years, other than the substitution of the various Clinton Administration White House Counsel for Bush Administration Counsel C. Boyden Gray. (Earlier versions of Form 1 now in use are appended as Exhibits 5-13.)

Available records, and the recollections of FBI personnel involved in the process, establish that these forms have been submitted without signature on the authority of the typed name of the designated White House official for the more than 30 years they have been in use. FBI staff have long understood the name on the form was typically not the actual requestor of the information. Indeed, the White House contacts with whom FBI personnel discussed procedures or raised any question and to whom the responses were provided were generally not the people whose names are reflected on the forms.

Once completed, the requests submitted by OPS²² are picked up from the White House by FBI couriers and delivered each working day, between approximately 2:30 pm and 3:00 pm, to the Special Inquiry and General Background Investigations Unit (SIGBIU) of the FBI's Personnel Division. There the forms are preliminarily examined, generally by the senior security assistant, who ascertains what each form is requesting. If the request will require the mobilization and coordination of FBI field resources in order to conduct a full field investigation, a limited update or an expanded name check, the forms are retained by SIGBIU and a background investigation is initiated. If, instead, the form requests information from FBI files, such as copies of previous reports or a name check, the Executive

²² For added clarity, I will limit the following discussion of the process to that aspect involving requests from the White House OPS. The other White House requests are handled similarly.

Agencies Sub-Unit (EASU) of the Executive Agencies, Personnel and Administrative Support Unit of the Information Resources Division of the FBI, is notified to pick up the request for processing.²³

The EASU is headed by Peggy J. Larson, a Supervisory Research Analyst, who entered on duty with the FBI in 1956, and has been working in EASU (or its predecessors) since 1964. Ms. Larson oversees a staff of 36, comprised of 18 research analysts, 11 file assistants, and seven clerks or typists. EASU handles requests for file information from all Executive Branch agencies. Including the 76-80% of all requests received on magnetic computer tape and handled electronically, EASU processes close to (and last year in excess of) two million name check requests each year. Each agency has its own form to request record checks from the FBI and each has an established liaison. EASU will only provide FBI file information to a known liaison contact through established channels. Of the total number of requests, the White House accounts for only a small portion, even of the paper requests, ranging from 3,025 to 10,197 annually over the past six years.²⁴

Despite its relative insignificance in size, because of the importance and sensitivity of requests emanating from the White House, the White House desk of EASU is staffed by two of the most senior research analysts, supported by a file assistant.

²³ EASU is commonly referred to as the Name Check Unit. Sometimes the envelopes arrive from the White House marked "name checks," in which case they are forwarded, unopened, to EASU.

²⁴ Computer recordkeeping of the White House name check process began in 1990.

The senior research analyst assigned to the White House desk has been working in EASU (or its predecessors) since 1966. The more junior analyst on the White House desk (until March 1996) began her Bureau career in EASU in 1968.

Each of these analysts was interviewed in connection with this inquiry. They advise that the policies and procedures for processing White House record requests, like the forms themselves, have changed relatively little since the 1960s. Some minor changes have occurred. For example, in previous administrations, three White House offices requested information from the FBI: OPS; EOP; and, NSC. The Clinton Administration was the first to have a separate entity requesting checks on presidential appointments. As far as FBI staff can determine, the Security Office requests checks on White House staff, as well as on visitors, award recipients, interns and contractors needing White House access. Checks on potential presidential appointees are handled by a paralegal in the Counsel's Office.

The White House form (Ex. 1) also provides an explanation for the request, indicating that the subject is being considered for either a White House staff position, a presidential appointment,²⁵ or for another specified reason,

²⁵ This is apparently vestigial, as requests relating to presidential appointments in the Clinton Administration are handled separately and requested by use of a different form (Ex 2).

usually access or award. The FBI analysts advise that in the case of requests based upon "access," the White House adds another letter parenthetically, reflecting an internal code.²⁶

On occasion, the analysts have called the White House Security Office to ask questions about the reason for access when the record check reflects the individual is the subject of a pending case or when a sensitive issue is involved. Generally however, no inquiries are made by the EASU regarding the White House requests, as the analysts apparently believe that such inquiries are outside the scope of their employment. It appears that over time a tradition of considerable deference to the White House has developed.

The first step taken by EASU to process a request depends upon what information is requested. In the case of a request for copies of previous reports, an FBI file number relating to the subject of the request is obtained either from SIGBIU through a query of their separate BI database or from a check of FBI central indices. In either case, the relevant BI files are obtained from FBI files, and the summary memoranda which are prepared in connection with each FBI BI are copied, as are any previous transmittal letters. These documents are attached to the original request form, which is stamped to indicate the number of attachments, and returned to the White

²⁶ The analysts have determined the meaning of two codes by calling the White House Security Office. Their call was prompted by concern over the young age of the individuals requesting White House access marked "I" and the large number of "C" requests. Through their telephonic contact, they determined that "I" represents intern, and "C" is contractor. Other codes remain a mystery.

House in a sealed envelope by the next outgoing FBI courier. Any document in FBI files which is copied for transmittal to the White House is stamped on the back showing the identity of the agency requesting the record, the date the request was received, the date of the dissemination, and the initials of both the analyst and the person retrieving records. At no time are original, complete files or raw data provided. Instead, summaries of relevant information are provided. Prior to 1994, copies of the White House request forms were only retained for six months. However, as FBI personnel noticed a high number of duplicate requests, they began retaining copies of all request forms in January 1994.

The name check process is somewhat more involved. When a request for a name check is received, the file assistant makes four copies of the request form and distributes copies to three other FBI units. These units, together with EASU, check the name against four different computer databases and the FBI central indices. These databases provide information on criminal histories, arrest records, and outstanding warrants, as well as specialized information relating to organized crime, terrorism, and foreign counterintelligence. The central indices search indicates all FBI files in which the subject has been indexed. The file assistant gathers the relevant files and computer printouts and forwards the information to the research analyst assigned to the case.

The research analyst reviews the material and determines whether any dissemination should be made. Summary memoranda contained in files may be copied for direct dissemination. Other information may be culled from the various files and reports and is summarized in memorandum form. All outgoing memoranda prepared by EASU research analysts are reviewed and approved by Supervisory Research Analyst Larson prior to dissemination and a copy of any memoranda prepared by the research analysts is retained in file. When the documents are gathered and/or prepared, they are attached to the original request form, which is stamped to indicate the number of attachments, and are returned by courier to the White House.

In the event that a check of indices reveals that the individual is the subject of a pending FBI investigation, the analyst contacts the FBI Headquarters Supervisory Special Agent (SSA) assigned to the case to determine what may be disseminated. In addition, EASU personnel estimate they may call FBI field office agents five or six times per year when clarification is needed on the subject of a closed case of a serious nature, such as an organized crime case. It is important to note that if the request seeks only copies of previous reports, as opposed to a name check, no effort is made to ascertain whether there is a pending investigation prior to returning copies of the reports to the White House.²⁷

²⁷ Graphic depictions of the White House name checks process are attached as Charts 1 and 2.

From March 1991 until August 1995, retired SA Vernon Thornton was Chief of the Executive Agencies, Personnel and Administrative Support Unit and, therefore, Ms. Larson's nominal supervisor. Thornton advises that while he was generally aware of the volume of requests received by EASU, he was not involved in the name check process except in extraordinary circumstances which, he further advises, never arose during his tenure as Unit Chief. Ms. Larson and her research analysts confirm Agent Thornton's account of his non-involvement.

Ms. Larson herself indicated that she had plenary authority to manage her sub-unit, and would only raise issues with the Unit Chief or Section Chief if she were aware of a complaint about to be made to the FBI by an official in another agency or where she was considering dissemination of information about a controversial pending case and the Headquarters SSA was uncomfortable with the dissemination. She recalls raising such issues on two occasions with John Hartingh, who was Chief of the relevant section in the Information Resources Division from November 1993 until February 1996. Neither occasion related to matters associated with White House requests.

Internal recordkeeping has improved in recent years. Since 1990, a computer database has been maintained in EASU to record all White House requests and the corresponding responses. Although that data base has been regularly purged, hard copies of its contents are retained.

IV. THE DECEMBER 1993-JANUARY 1994 REQUESTS

It is the collective experience of those FBI personnel with the responsibility for conducting name checks and background investigations that transitions between administrations tend to be chaotic and unpredictable. This is especially true, we have learned, when a different political party is taking control of the White House. In these cases, the outgoing administration typically removes all of its records, leaving the incoming administration to totally reconstitute the entire collection of personnel records for all White House personnel, including the non-political staff who have remained. The three analysts with responsibility for the White House desk at the time of the Clinton transition had each been in EASU through six different presidential administrations and were experiencing their third change in party (Ford-Carter; Carter-Reagan; Bush-Clinton). Accordingly, the increased volume of requests received from the White House was not unexpected.

The increase was substantial, and it is clearly discernable from the computer records. In 1990, 1991 and 1992, the White House requested, on average, between 252 and 290 name checks each month. In 1993, as the Clinton Administration took office, the average dramatically increased to 850 per month (total 10,197 for the year) and has since subsided somewhat to averages of 501 per month in 1994 and 355 per month in 1995 (see Charts - Tab 16). As always, the bulk of the requests continue to come from OPS: 92% in 1993; 86% in 1994; and, 82% in 1995.

Although the increase in the overall volume of requests was not unexpected, the analysts did notice that an unusually large number of requests were arriving for copies of previous reports only. They recall that someone contacted the White House Security Office to ensure that its relatively new occupants understood that when such requests were made, the FBI did not conduct a complete name check. They are unable to recall who from the FBI made this call, and our brief inquiry has not yet succeeded in identifying that individual. They do recall learning that personnel in the White House Security Office understood the procedure and expressed no concern about it.

The analysts with responsibility for the White House recall quite clearly, however, that in late 1993 a large number of such requests seeking copies of previous reports were received from the Office of Personnel Security. One analyst in particular bore the brunt of the increased volume, and was compelled to work a significant amount of overtime to keep up with the incoming requests. That analyst remembers being surprised by the volume of such requests, all of which, she notes, covered names in the first several letters of the alphabet and were sought for purposes of "access." To assist in processing these requests, SIGBIU was enlisted to check their separate database to ascertain the file numbers for the previous background investigations.

Despite the mass of requests, they were all apparently handled in routine fashion and no particular inquiry was made of the White House. There was nothing on any of the forms (or in

available FBI databases) to indicate whether the individuals about whom information was sought were new employees, holdovers from the previous administration, or persons in need of only temporary access. There was no reason to suspect and no means to readily determine whether any of these requests related to individuals not actually seeking access to the White House. Both Ms. Larson and Unit Chief Thornton say that they were made aware of the significant influx in requests but did not consider them particularly noteworthy. Ms. Larson recalls further that she was told that the White House was simply updating their files.

An analysis of EASU's computer records confirms the recollections of the analysts regarding the influx of requests. Between December 6, 1993, and February 3, 1994, amid all of the other requests flowing in from the White House, EASU received no fewer than 481 requests which bear the characteristics of a single series. These requests, when parsed out from the normal traffic of requests, arrived in nearly perfect alphabetical order -- from Aa to Go -- all seeking copies of previous reports and all providing the same justification -- "ACCESS (S)." In addition, although constituting only a small proportion of the total White House requests, this series constituted 88% of the requests for "previous reports only" received during December 1993 and January and February 1994.²⁸

²⁸ The total number of such requests was 249 in December 1993, 219 in January 1994, and 84 in February 1994. In contrast to these large numbers, only 79 such requests were submitted by the White House Office of Security throughout the ten remaining months of 1994.

We now know that many of these 481 requests, while facially valid, were without justification and served no official purpose. In recognition of this fact, the White House Counsel's Office has voluntarily surrendered to the FBI more than 400 folders containing FBI records since June 6, 1996. Folders relating to three hundred and thirty-three individuals were returned on June 6, 1996. Apparently, these were folders that had already been segregated and shipped to the White House archives because an employee of OPS had determined, over time, that these materials had been inappropriately gathered. One file of FBI material was returned separately on Monday, June 10, 1996. Another had previously been provided to the IC. In response to a further query from the FBI, folders relating to 71 additional individuals were identified as having been improperly sought and were turned over to the FBI on June 13, 1996. Two more were identified as having been improperly obtained but were retained as now relevant to present needs for access. As of June 14, 1996, then, requests relating to 408 individuals have been identified by the White House as having been sought without justification.

Others in the series were apparently properly requested. The White House Counsel's Office reports that their "records confirm that 47 of the individuals [out of 138 queried] were employed by the White House or otherwise in need of access

at the time the FBI received the requests for reports."²⁹ In addition, the status of an additional seventeen requests has not yet been resolved. The FBI does not have access to information, other than through a time-consuming and painstaking reference to public sources or individual inquiries, which could independently determine which of these individuals was a member of the White House staff (or otherwise seeking access to the President in a manner that would justify the obtaining of prior background reports) at the time that the requests were made. It is noteworthy that the United States Secret Service also lacks any ability "to verify an individual's continued need for a [White House] pass." According to a report of the General Accounting Office in October 1995, "Secret Service officials stated that they rely on the White House to notify them when an individual leaves or a pass should be terminated."³⁰

Among the unquestionably unjustified acquisitions were reports relating to discharged Travel Office employees Billy Ray Dale and Barnaby Brasseux.³¹ The request for Dale's previous reports was received by the FBI on December 28, 1993, and a response enclosing 11 letters and 11 memoranda was returned to

²⁹ Letter from Jane Sherburne, Special Counsel to the President, to Howard M. Shapiro dated 6/13/96.

³⁰ Personnel Security: Pass and Security Clearance Data for the Executive Office of the President, at 7.

³¹ A request for a third discharged employee from the Travel Office, John Paul Dreylinger, was prepared by OPS but was never forwarded to the FBI. The folder containing this pristine request has been surrendered to the FBI.

the White House OPS on January 6, 1994. The request for Brasseux's records request was received on December 16, 1993. It too sought copies of previous reports, and four letters and memoranda were provided to OPS on December 27, 1993.

Nothing on the face of either request stood out to either of the experienced research analysts who were involved in the processing, nor did the documents collected for return to the White House in any way attract attention. Because these requests were for previous reports only, general FBI indices were not queried, so a pending criminal case involving or relating to either of these men was not, and in the general course of business would not have been, discovered. In short, given the procedures in place at the time, other than by recognizing one of these names and associating it with news reports about the Travel Office firings, there was no information available to the FBI research analysts which would have revealed that the requests for these men's previous reports were without foundation. As nothing brought these requests to the particular attention of EASU, they were processed routinely and the information sought was provided.

V. CONCLUSION

Other than the sheer volume, nothing about the nearly 500 requests for copies of previous background reports appeared noteworthy to the research analysts processing the files and, accordingly, no one at the FBI questioned the propriety of the

requests.³² Instead, those assigned to the White House desk of EASU redoubled their efforts to meet the increased demand, sought limited assistance in identifying file numbers from SIGBIU, and devoted the necessary overtime hours to complete the required tasks without undue delay. It would be unconscionable to now fault these employees for not having somehow discerned that these facially-valid requests from the White House were made without justification.

Indeed, the FBI personnel who work in the EASU perform a valuable service in providing reports and memoranda to the White House and other executive agencies necessary to make informed judgments regarding, for example, a person's suitability and trustworthiness for employment in sensitive positions, access to classified information or to secure areas or admission to the United States. In doing so, they accomplish the Herculean feat of responding to roughly two million requests for such information each year. Although much of the process has been automated, several hundred thousand requests are handled by the research analysts and other personnel each year. These requests typically require not only the identification of the relevant files, but a careful analysis of the file contents and, quite frequently, the preparation of memoranda summarizing the information contained within the files.

³² One of the analysts believes that the request for the files of James Baker may have caught her eye at the time, because of his prominence in a former administration, but she did not conclude that there was anything untoward about the request, as presidents were often appointing members of former administrations to various positions or granting them access to the White House.

With minor modifications, the process of providing FBI information to the rest of the government has functioned in the same manner for more than three decades. Certainly this is true of the relationship between the FBI and the White House. The forms used to request FBI information have evolved but little since the prototype dating from 1965. Likewise, the manner in which the information is transmitted back to the White House has remained essentially unchanged. Research analysts today follow the same, largely unwritten, rules and policies as did their predecessors during the Johnson and Nixon Administrations. Indeed, the last detailed set of instructions was issued in 1973.³³

But if, as I would maintain, these employees have in no way failed the FBI, the FBI has surely failed them, and has failed in a larger sense to institute sufficient protections to effectively safeguard the very real privacy interests that we, as custodians of so many people's files, are responsible for protecting. While Ms. Larson and her subordinates have worked tirelessly and with admirable success in managing the constant dam-burst of incoming requests, this inquiry has revealed a complete abdication of management responsibility at the level of her immediate superior, the Unit Chief and the executive level management above him.

³³ Handwritten updates were added in April 1974. A summary version of procedures was last issued in 1979.

A policy of benign neglect cannot be tolerated in an area as sensitive as the dissemination of information from FBI files. Although the natural instinct to defer to the great experience of the employees of EASU is understandable, it is ultimately unfair to them and inappropriate to make the analysts responsible for simultaneously handling the massive flow of requests and policing the process. The active involvement of the Unit Chief, as well as the conscious engagement, support, and oversight by the Section Chief -- which has also been lacking in recent years -- is necessary for the process to be not merely efficient, but properly balanced as well between the needs of the consumer agencies and the interests of those whose privacy we are charged with safeguarding.

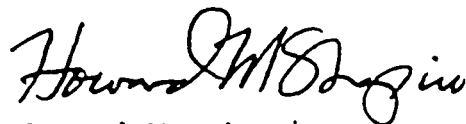
We have been on notice for some time now that the exchange of information between the FBI and the White House is both necessary and fraught with peril. In the Summer of 1993, after questions arose concerning the involvement of the FBI in matters relating to the discharge of several employees from the White House Travel Office, Attorney General Janet Reno and then-White House Counsel Bernard W. Nussbaum enunciated a new policy regarding contacts with investigative agencies, in particular, the FBI.³⁴ The new policy placed both the Counsel to the President and senior DOJ officials between the White House and

³⁴ Memorandum for White House Staff from Bernard W. Nussbaum, Counsel to the President, and Clifford M. Sloan, Associate Counsel to the President, dated July 2, 1993, entitled "Policy Regarding Investigations and Investigatory Agencies."

the FBI in matters relating to pending criminal investigations. While that policy had no direct bearing on the type of requests we have examined here -- an exception was made, and properly so I believe, for communications regarding "background investigations and clearances of governmental officials," in which cases direct contact between the White House Counsel and "appropriate FBI officials" is permitted -- we should have matched our scrupulous adherence to that policy in matters relating to pending investigations, with greater attention to this area of direct engagement. Our failure until now to have done so needs to be promptly remedied.

In conclusion, our examination of the process of providing background and other file information to the White House and other executive agencies revealed a channel which flows, if anything, too smoothly. It is incumbent upon us to recapture, or perhaps more accurately, acquire for the first time, the proper balance between the very real and significant needs of the government for the information contained in our files and our profound obligation to ensure that the information only be disseminated in appropriate circumstances.

As noted above, specific recommendations are being separately forwarded for your consideration and, upon approval, for transmittal to the Attorney General for her concurrence.



Howard M. Shapiro
General Counsel

Remarks/Special Instructions:

06/5/96
(Date)

TO: FEDERAL BUREAU OF INVESTIGATION
EXECUTIVE AGENCIES DISSEMINATION UNIT

FROM: JOHN M. QUINN
COUNSEL TO THE PRESIDENT

SUBJECT: FBI INVESTIGATIONS

Applicant's Name _____

Social Security Number _____

Date of Birth _____

Place of Birth _____

Home Address _____

We request:

_____ Copy of Previous Report

 X Name Check

_____ Expanded Name Check

_____ Limited Update

_____ Other

The applicant named above is being considered for:

 X Presidential Appointment

 X Requiring Senate Confirmation

_____ Not Requiring Senate Confirmation

_____ White House Staff Position

Remarks/Special Instructions:



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
WASHINGTON, D.C. 20503

JUN 07 1996

June 06, 1996

MEMORANDUM FOR FEDERAL BUREAU OF INVESTIGATION
10TH AND PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20535

ATTN: NAME CHECK SERVICE UNIT
ROOM 4790

FROM: CHARLES C. EASLEY *Charles C. Easley*
EOP SECURITY OFFICER
ROOM 4018, NEOB (395-6206)

SUBJECT: REQUEST FOR RECORDS AND
IDENTIFICATION CHECKS

It is requested that record and identification checks be conducted on the person listed below, who is under consideration for employment within the Executive Office of the President.

NAME:

DPOB:

SSN:

CURRENT ADDRESS:

OTHER INFORMATION:

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

JUN 05 1996

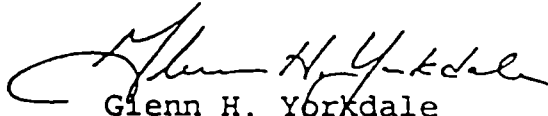
June 4, 1996

Dear Mr. Freeh:

Please find below the necessary information on
in order that a name check may be conducted. Your
expeditious assistance in this matter would be greatly
_appreciated.

Name:
SSN:
DOB:
POB:
Address:

Respectfully,


Glenn H. Yorkdale
Security Officer

The Honorable
Louis J. Freeh
Director
Federal Bureau of Investigations
Ninth Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20535

THE WHITE HOUSE
WASHINGTON

August 1, 1990

(Date)

TO: FBI, LIAISON
FROM: C. BOYDEN GRAY
SUBJECT: FBI Investigations

Subject's Name [REDACTED]

Date of Birth [REDACTED]

Place of Birth [REDACTED]

Present Address [REDACTED]

We request: ☒ Copy of Previous Report
☐ Name Check
☐ Expanded Name Check
☐ Full Field Investigation
☐ Limited Update
☐ Other

Summary memoranda and
letters dated 10/27/88,
10/24/88, 7/29/85, and
7/28/85 furnished to
White House on 8/1/90.

The person named above is being considered for:

☐ White House Staff Position
☐ Presidential Appointment
☐

Attachments:

☐ SF 86
☐ SF 87, Fingerprint Card
☐ SF 86, Supplement

Remarks/Special Instructions:

161-186414

7 OCT 23 1990

6- copy
file

1186414

THE WHITE HOUSE
WASHINGTON

August 19, 1988

(Date)

TO: FBI, LIAISON

FROM: ARTHUR B. CULVAHOUSE, JR.

SUBJECT: FBI Investigations

Subject's Name:

Date of Birth: Place of Birth:

Present Address:

We request: Copy of Previous Report

Name Check

X

Expanded Name Check

Full Field Investigation NO IPS TO FBI

Limited Update

The person named above is being considered for:

White House Staff Position

X

Presidential Appointment

*(PAS)

*Senate Confirmation

Attachments:

SF 86 1 2

SF 87, Fingerprint Card

SF 86, Supplement

Remarks/Special Instructions: EXPANDED NAME CHECK

NOTE: WE DO HAVE COPIES OF THE 1982 and 1985 REPORTS
AND THE EXPANDED NAME CHECK 12/10/87

LIMITED UPDATE TO FOLLOW

PLEASE EXPEDITE

100-111471

6/ab

THE WHITE HOUSE
WASHINGTON

Aug. 6
July 31, 1984
(Date)

TO: FBI, LIAISON
FROM: FRED F. FIELDING
SUBJECT: FBI Investigations

Subject's Name [REDACTED]

Date of Birth [REDACTED] Place of Birth [REDACTED]

Present Address [REDACTED]

We request: _____ Copy of Previous Report

_____ Name Check

☒ Full Field Investigation NO IRS TO FBI
(2 copies please)

_____ Limited Update

The person named above is being considered for:

☒ White House Staff Position

_____ Presidential Appointment

Attachments:

☒ SF 86 1 2

_____ SF 87, Fingerprint Card

☒ SF 86, Supplement

Remarks/Special Instructions:

NOTE: Previous investigation 1980.

*Amel said to
WFO
45 day Update
from 1980
INVESTIGATION*

AUG 07 1984

THE WHITE HOUSE
WASHINGTON

MAY 29 1981

May 27, 1981
(Date)

TO: FBI, LIAISON
FROM: FRED F. FIELDING
SUBJECT: FBI Investigations

Subject's Name

Date of Birth

Place of Birth

Present Address

We request:

Copy of Previous Report

X

Name Check

Full Field Investigation NO IRS TO FBI

The person named above is being considered for:

X

White House Staff Position

Presidential Appointment

Attachments:

SF 86 1 2

SF 87, Fingerprint Card

Remarks/Special Instructions:

119

MEMORANDUM

THE WHITE HOUSE
Washington

161-1765

TO: FBI, LIAISON
FROM: JACQUELYN DINWIDDIE
SUBJECT: FBI INVESTIGATIONS

Subject's Name [REDACTED]

Date of Birth [REDACTED] Place of Birth [REDACTED]

Present Address: [REDACTED]

We request: _____ Copy of Previous Report

_____ Name Check

_____ Update _____ Full Field Investigation NO IRS TO FBI

The person named above is being considered for:

_____ XX _____ White House Staff Position

_____ Presidential Appointment

Attachments:

_____ XX _____ SF 86 1 2

_____ SF 87, Fingerprint Card

Amel to WFO
6-16-80
KAP
BA
DN
HS
RH

Remarks:

ENCLOSURE

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

MAR 24 1975

161-1765

TO: Robert H. Haynes, FBI

FROM: Jane Dannenhauer

SUBJECT: FBI Investigations

Subject's Name

Date of Birth

Place of Birth

Present Address:

We Request: _____ Copy of Previous Report

_____ Name Check

_____ Full Field Investigation

☒ 2 Copies Update 11/71

The person named above is being considered for:

☒ White House Staff Position

_____ Presidential Appointment

Attachments:

☒ SF 86 (no duplicate)

_____ SF 87, Fingerprint Card

_____ Biography

Remarks:

161-1765-
ENCLOSURE
40 WFO, DM, PH,
10, DE, AT, AX.
2/24/75
03 PM

MEMORANDUM

THE WHITE HOUSE

Washington

July 7, 1972

TO: Robert H. Haynes, FBI

FROM: Alexander P. Butterfield

SUBJECT: FBI Investigations

Subject's Name

Date of Birth

Place of Birth

Present Address

We request:

____ Copy of Previous Report

x Name Check

Full Field Investigation

The person named above is being considered for:

White House Staff Position

Presidential Appointment

 Position with another Agency

ATTACHMENTS:

 SF 86 (in duplicate)

 SF 87, Fingerprint Card

Biography

THE CENTRAL FILES OF THE FBI REVEAL NO RECORD OF INFORMATION IDENTIFIABLE WITH THE SUBJECT OF THIS REQUEST.

FILES OF THE IDENTIFICATION DIVISION OF THE
FBI CONTAIN NO ARREST RECORD IDENTIFIABLE
WITH SUBJECT OF THIS REQUEST BASED ON DATA
SUBMITTED.

REMARKS:

JUL 7 1972

REPORT SHOULD BE DELIVERED BY FBI TO: GERTRUDE BROWN

THE WHITE HOUSE
Washington

MEMORANDUM

DATE April 1, 1969

TO : Mr. Cartha D. DeLoach, FBI
FROM : John D. Ehrlichman
SUBJECT : FBI Investigation

Subject's Name [REDACTED]

Date of Birth [REDACTED] Place of Birth [REDACTED]

Present Address [REDACTED]

Egil Krogh has requested:

 Copy of Previous Report

 X Name Check

 Full Field Investigation

The person named above is being considered for:

 White House staff position

 Presidential appointment

 X Position with another Agency

ATTACHMENTS:

 SF 86 (in duplicate)

 SF 87, Fingerprint Card

 Biography

REMARKS:

REPORT SHOULD BE DELIVERED BY FBI TO: JOHN D. EHRLICHMAN

THE WHITE HOUSE
Washington

MEMORANDUM

TO : Mr. Cartha D. DeLoach, FBI

DATE: April 27, 1965

FROM : Mildred Stegall

SUBJECT: FBI Investigation

Subject's Name _____

Date of Birth _____

Place of Birth _____

Present Address _____

Douglas Cater

has requested:

- ☐ Copy of Previous Report
- ☒ Name Check
- ☐ Full Field Investigation

The person named above is being considered for:

- ☐ White House staff position
- ☐ Presidential Appointment
- ☐ Position with another Agency

ATTACHMENTS:

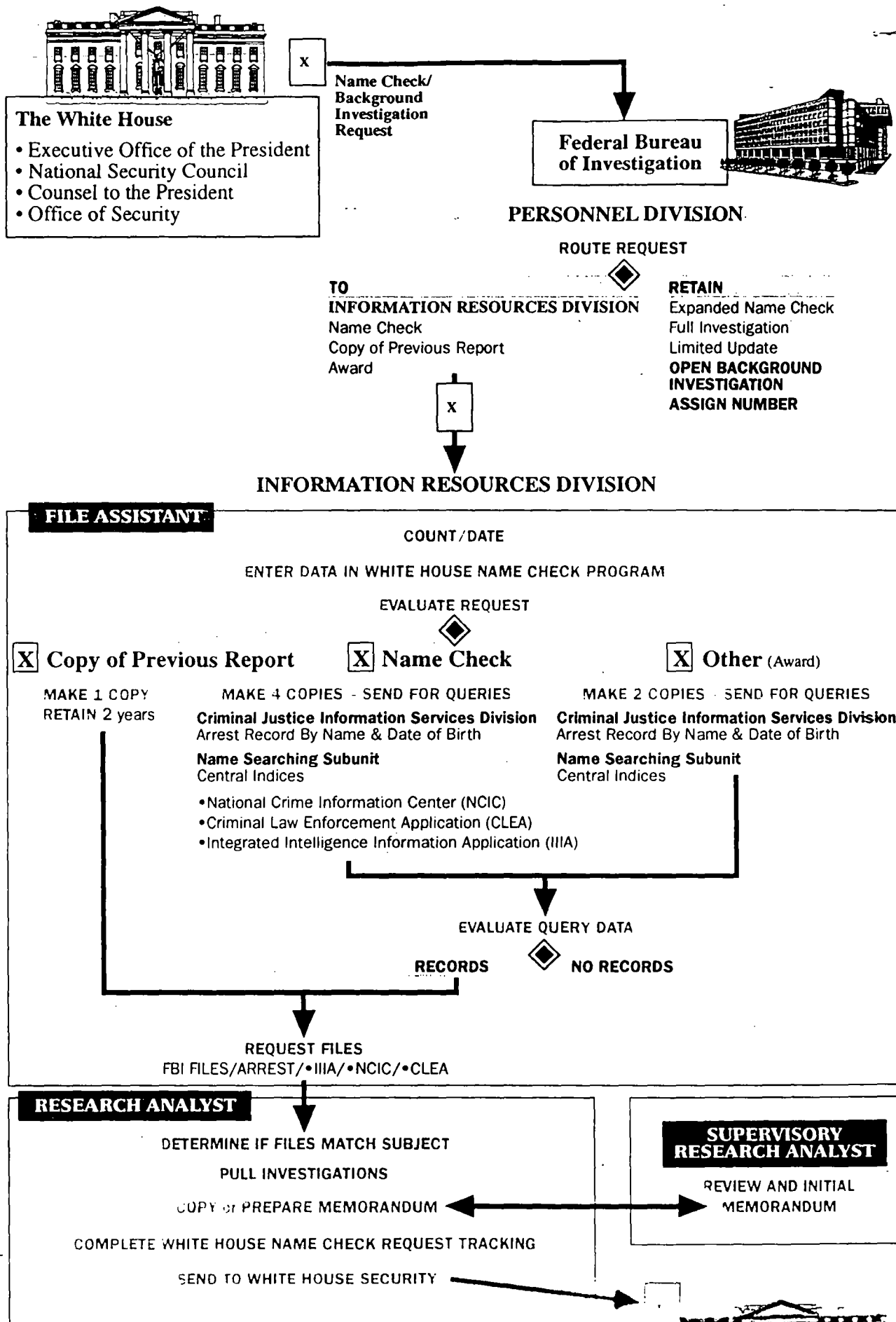
- ☐ SF 86 (in duplicate)
- ☐ SF 87, Fingerprint Card
- ☐ Biography

REMARKS: _____ was reared in _____ had a secret clearance when he was in the Army _____

62-5- 22250

REPORT SHOULD BE DELIVERED BY FBI TO: MILDRED STEGALL

*Let to Hon. Thomas D. Watson
4-29-66 JMM:pin*





Name
Check
Request

Federal Bureau of Investigation
PERSONNEL DIVISION



ROUTE REQUEST



Billy Ray Dale

INFORMATION RESOURCES DIVISION

FILE ASSISTANT

COUNT/DATE

ENTER DATA IN WHITE HOUSE NAME CHECK PROGRAM
Request Tracking Program

EVALUATE REQUEST



☒ Copy of Previous Report

MAKE 1 COPY
RETAIN 2 years



REQUEST FILES
FBI FILES/ARREST/•IIIA/•NCIC/•CLEA

RESEARCH ANALYST

DETERMINE IF FILES MATCH SUBJECT

PULL INVESTIGATIONS

COPY or PREPARE MEMORANDUM

COMPLETE WHITE HOUSE NAME CHECK REQUEST TRACKING

SEND TO WHITE HOUSE SECURITY

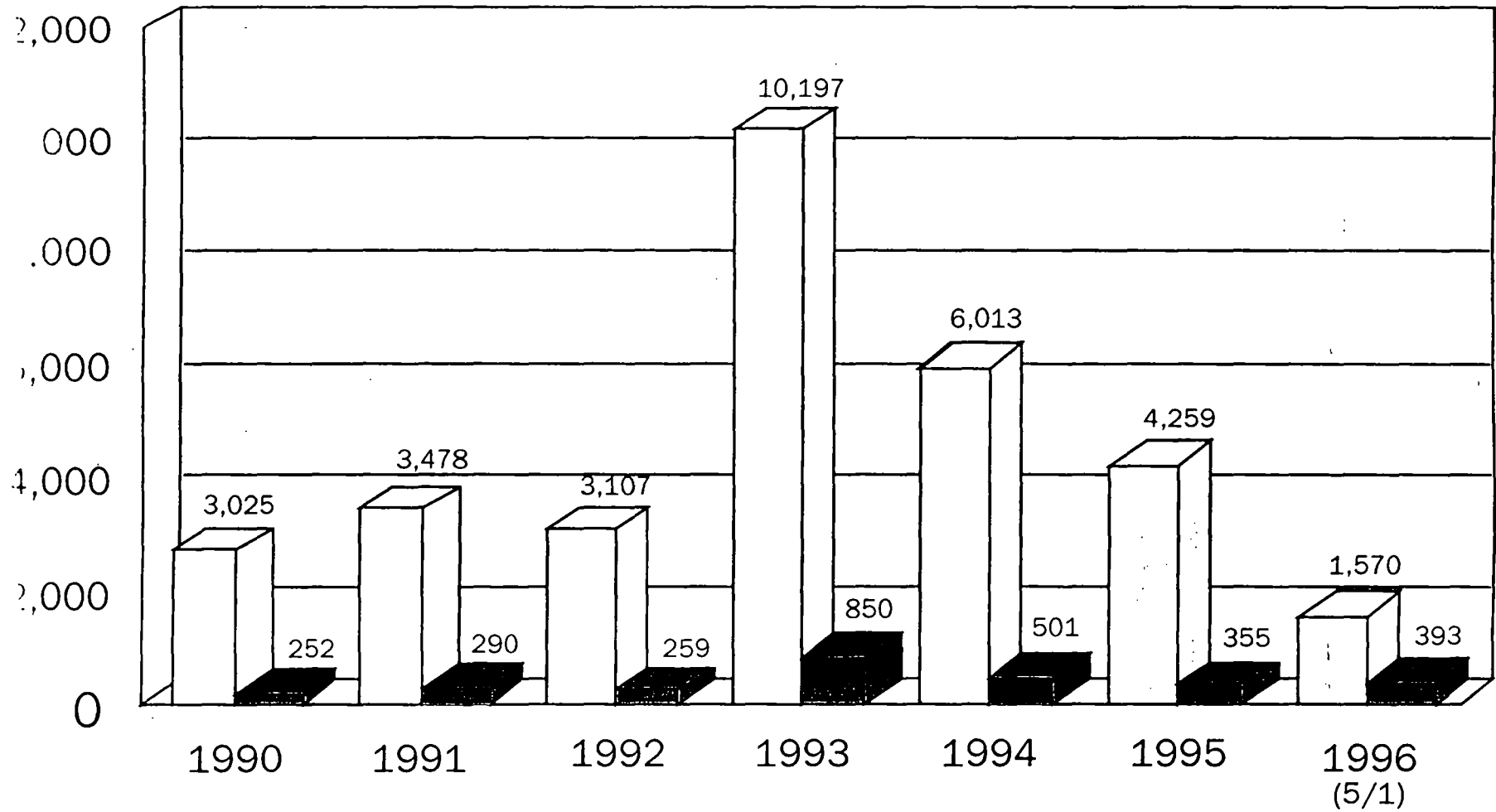
**SUPERVISORY
RESEARCH ANALYST**

REVIEW AND INITIAL
MEMORANDUM



White House Name Checks

Jan 1, 1990–May 31, 1996



□ Actual Number of White House Name Check Per CY
■ Monthly Average of Name Checks Per CY

- Dale
- drugs
- Livingstone
- Newt - Fox - 9 am Sun.

JAN 5 / cc kw

where are we on
this ?

J. Q.

THE WHITE HOUSE
WASHINGTON

THE WHITE HOUSE
OFFICE OF LEGISLATIVE AFFAIRS
FAX COVER SHEET

NOTE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS
CONFIDENTIAL AND INTENDED FOR THE RECIPIENT ONLY.

DATE: 7/8/96

TO:

Counsel

FAX:

66279

FROM:

CHRISTOPHER WALKER

J

TRIPP DONNELLY

456-7500 (TEL)

456-6221 (FAX)

RE:

PAGE 1 OF _____

If there are any problems with this transmission, please call
(202) 456-7500.

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ONE HUNDRED FOURTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT 2 L

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

July 2, 1996

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MAJORITY—(203) 225-6074
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President William J. Clinton
The White House
Washington, D.C. 20500

Counsel
URGENT

Dear Mr. President:

I appreciate your office's assistance in providing this Committee with a copy of Mr. David Craig Livingstone's personnel records. Unfortunately, this is the only item among many that I have requested on June 21 and 28, 1996, that has been provided to date. These files, and other evidence recently uncovered by this Committee regarding the employment and work history of Mr. Livingstone, appear to directly contradict statements by representatives of your Administration during several public appearances and by Mr. Livingstone himself in testimony before Congress.

It appears that Mr. Livingstone developed a significant level of experience over the course of his employment in your Administration and in previous presidential campaigns conducting opposition activities and "dirty tricks." In light of the serious questions raised by the misuse of sensitive Federal Bureau of Investigation background files by your staff, I hope that you and your former security director will be forthcoming with his entire background history.

Among the numerous inconsistencies to which this information is relevant:

- ◆ Mr. George R. Stephanopoulos, appearing on your behalf on a number of television programs, suggested that the late Vincent Foster was responsible for hiring Mr. Livingstone. That charge is unsubstantiated. Who sponsored Mr. Livingstone during the Presidential Transition for employment with the White House? What role did Eli Segal play in support of Mr. Livingstone's application? Who provided letters of recommendation on Mr. Livingstone's behalf to the Clinton White House?
- ◆ We also have received contradictory information concerning the date Mr. Livingstone received his own security clearance. Is it correct that although Mr. Livingstone was appointed on March 11, 1993, his security clearance was not approved until December of 1995? This contradicts Mr. Livingstone's sworn deposition when he was asked:

Question: "Do you know when you got your security clearance in 1993?"

President William J. Clinton
July 2, 1996
Page Two

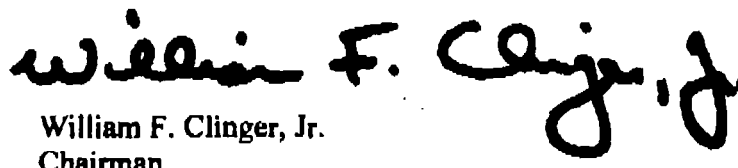
Answer: "I believe March it was completed."

If Mr. Livingstone did not receive a security clearance until December of 1995, why did four White House Counsels permit him to review sensitive FBI background files?

- ◆ It appears that Mr. Livingstone communicated directly with Mr. Stephanopoulos when seeking advancement while employed at the White House. This does not comport with Mr. Stephanopoulos' statements this past week that he barely knew Mr. Livingstone. About this same time, Mr. Stephanopoulos was quoted in the Pittsburgh Post-Gazette as saying, "[Mr. Livingstone] does a terrific job. . . And he knows how to cut through the bureaucracy and get things done." What role did Mr. Stephanopoulos play in hiring Mr. Livingstone and, considering their close personal relationship, is it appropriate to have Mr. Stephanopoulos serve as your spokesman on this matter?
- ◆ Mr. Livingstone's own resume describes his position in the Clinton/Gore campaign as "Senior Consultant to Counter-Event Operations, Clinton-Gore '92," where he says he successfully deployed several of the infamous 'Pinocchio' and 'Chicken George' media events. Not only do I question the need for such a dirty tricks operation in a presidential campaign, I question what in Mr. Livingstone's background qualified him for the highly sensitive position of Director of White House Security. What role did Mr. Stephanopolous play in supervising Mr. Livingstone in the Counter-Event Operations office? If Mr. Stephanopolous did not supervise this office, who did?
- ◆ The manner in which Mr. Stephanopoulos has responded to questions posed to him by the media appears to suggest that he has participated in a review of the FBI files issue with White House staff. Has the White House conducted its own inquiry into the matter, contrary to what I was previously told, or has Mr. Stephanopoulos simply been guessing when responding to the media? Have any White House staff participated in interviewing participants in the FBI story during the last several weeks?

These are serious questions which must be addressed before you or your spokesmen give partial or misleading answers to the American people. I would appreciate your assistance in answering these questions and in making Mr. Livingstone's full history available to the public.

Sincerely,


William F. Clinger, Jr.
Chairman