

POLICY STATEMENT CONCERNING IDENTIFICATION OF TRANSITION CONTACTS AND INFORMATION DISCLOSURE TO TRANSITION PERSONNEL

To effect an orderly transition, the President-elect and his team must become knowledgeable about current government policies and operations so that they can begin making informed decisions immediately upon taking office. This policy statement addresses the procedures for identifying individuals charged with transition responsibilities and for disclosing information to transition personnel. It implements a Memorandum of Understanding between the Chief of Staff to the President (the “Chief of Staff”) and the designated Chair of the President-elect’s Transition Team (the “Chair of the PETT”).

I. Identification of Transition Contacts

In order to protect the interests of the President and the President-elect and to avoid unnecessary interference with ongoing government operations, it is important that Departments and Agencies verify that the individuals who seek access to government information or employees are, in fact, authorized members of the PETT. Consequently, the Departments and Agencies should, before they have any dealings with individuals representing themselves as members of the PETT, verify that the individuals’ names appear on the official register of the PETT. The Chair of the PETT (or his designee) has agreed to provide to the Chief of Staff the names of all authorized individuals (including Transition Team leads for each Department and Agency), along with written assurance that the individuals have agreed to abide by the Transition’s Code of Ethical Conduct and have thereby represented that they have no conflict of interest that precludes them from working on the matters they have been assigned to work on by the PETT. The Chief of Staff (or his designee, Ross Kyle, Special Assistant to the President for Cabinet Liaison) will forward to each Department or Agency the names of PETT members authorized to work with that Department or Agency and provide updated information as necessary. Only PETT members authorized to work with specific Departments or Agencies may receive assistance or information from those Departments or Agencies. Any unauthorized communication by a PETT member or a person purporting to be a PETT member should be referred to the designated Department or Agency contact person responsible for coordinating transition matters on behalf of that Department or Agency; the Department or Agency contact person should then inform the White House Transition Coordinating Office.

II. Transition Point of Contact

The official transition points of contact designated by each Department and Agency will serve as the points of contact for providing other contacts, information, and services to authorized members of the PETT. Accordingly, any meetings between Administration personnel and PETT members must be authorized by the contacts for the relevant Department or Agency, and any materials that may be provided to PETT members must be authorized by those contacts.

III. Disclosure of Information Not Available to the General Public

As a general matter, most of the information needs of the PETT should be met by providing access to public information. In some circumstances, it likely will be necessary to provide

specified transition personnel with access to information or records not available to the general public. Such information may be protected by constitutional, statutory, or common law privileges, or its distribution may otherwise be restricted by law. In addition, providing such information may raise issues under the Government's standards of conduct, which preclude government employees from allowing the improper use of non-public information to further the private interests of another through knowing unauthorized disclosure. Care should also be taken to ensure that PETT members abide by any applicable nondisclosure requirements of each Department or Agency.

Department and Agency legal counsel will receive from Fred Fielding, Counsel to the President, a memorandum setting forth guidance on certain issues to consider when responding to requests for non-public information. Please discuss with agency counsel any questions about the propriety of disclosing non-public information in particular instances.

The following procedures should be observed in the event that a Department or Agency decides to provide non-public information to authorized members of the PETT.

A. General Procedures for Disclosure of Information Not Available to the General Public

Before providing non-public information to a member of the PETT, Departments and Agencies should expeditiously:

- Brief the PETT member on the importance of maintaining the constitutional, statutory and/or common law safeguards afforded the non-public information.
- Clearly label non-public records provided to PETT personnel with a warning against subsequent disclosures to unauthorized individuals, including unauthorized members of the PETT.
- Specifically advise PETT members that non-public information provided to them cannot be shared with other transition personnel unless those other personnel satisfy the requirements for access to that information set forth in the Memorandum of Understanding between the Chief of Staff and the Chair of the PETT.
- Require the PETT member to sign a statement representing that, to the member's knowledge, he or she has no financial interest or imputed financial interest that would be directly and predictably affected by a particular matter to which the information is pertinent.¹ It is sufficient to satisfy this requirement for the PETT member to pledge in writing that upon learning of any such conflict of interest, he or she will recuse him or herself from the

¹ The terms "financial interest," "imputed financial interest," "direct and predictable effect," and "particular matter" have the same meaning in this memorandum as in 18 U.S.C. § 208 and the regulations interpreting those terms set out in 5 C.F.R. parts 2635 & 2640. A financial interest for which 5 C.F.R. part 2640 provides a waiver will not block access to the information.

particular matter that raises the conflict. The Department or Agency may require such additional information from the PETT member as the Department or Agency deems necessary, in light of the proposed disclosure.

- Where advisable, prohibit the PETT member from removing records containing non-public information from the offices of the Department or Agency.

Upon request from the Executive Office of the President, a Department, or an Agency, the PETT will provide a written statement indicating that PETT member's need for access to the non-public information. The statement of need will be provided by the Chair of the PETT (or his designee) to the Chief of Staff (or his designee, Ross Kyle, Special Assistant to the President for Cabinet Liaison).

Department or Agency personnel must make a written record of any disclosure of non-public information to a member of the PETT, including when the disclosure was made, the form of disclosure (e.g., in written or oral form), a general description of the categories of information disclosed, the person(s) to whom the disclosure was made, the Administration personnel who approved the disclosure, the Administration personnel who provided the information, and a summary of the steps taken to protect the information from subsequent unauthorized disclosure.

B. Classified Information

Before providing any classified information to a member of the PETT, pursuant to Executive Order 12958, as amended, it must be established:

- That the member has the security clearances necessary to have access to that information, and has the requisite need to know, and
- That the member has signed the requisite non-disclosure agreement.

C. Attorney-Client Material

Information protected by the attorney-client privilege should not be disclosed without the express approval of the transition point(s) of contact for the relevant Department or Agency after consultation with the general counsel or other chief legal officer for that Department or Agency and other officials as appropriate.

D. Privacy Act Material

Consistent with the requirements of the Privacy Act, Departments and Agencies should not disclose any Privacy Act records or information including official personnel folders, performance evaluation information, information from a resume, or Form SF-171 Personnel Qualification Statement, without the express written consent of the affected employee.

E. Material Subject to Other Statutory and Legal Protections

The above list does not exhaust the statutory and legal protections that may limit disclosure of non-public information. Departments and Agencies should, of course, abide by other applicable legal and prudential restrictions on disclosure of information.

F. Issues Relating to This Policy Statement

Any issues between members of the PETT and Departments and Agencies should be addressed, in the first instance, by discussion between the Department's or Agency's transition contacts and the PETT designated Transition Team leads for the Department or Agency. Matters that cannot be resolved informally should be referred to the Chief of Staff (or his designee, Blake Gottesman, Assistant to the President and Deputy Chief of Staff for Operations).