



Office of Inspector General United States Department of State

UNCLASSIFIED

July 21, 2020

TO: Bureau of Political-Military Affairs – R. Clarke Cooper, Assistant Secretary

FROM: OIG – Sandra Lewis, Assistant Inspector General for Inspections

SUBJECT: Request for Clarification on Department Redactions Related to OIG’s Review of the Department of State’s Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates

The Office of Inspector General (OIG) has reviewed the Department of State’s (Department) response and comments to OIG’s draft report and classified annex entitled *Review of the Department of State’s Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates*.¹ Based on our review, we require clarification on the Department’s requested redactions, including additional information with respect to the reference to “potential Executive Privilege concerns.” **OIG requests that the Department provide by Friday, July 24, 2020, the information outlined below so we may finalize and transmit our report, in accordance with OIG’s statutory obligations.**²

In its July 10, 2020, response, the Department indicated its intent to withhold from release substantive information contained in OIG’s report and classified annex on three bases: (1) Sensitive But Unclassified information, (2) a deliberative process exemption under the Freedom of Information Act (FOIA),³ and (3) “potential Executive Privilege concerns.” OIG’s specific concerns about the Department’s withholding/redaction requests fall into three categories, described below.

1. Unclear Privilege Claim. Executive Privilege must be specifically claimed by the Department or the owner of the privilege. Citing “potential Executive Privilege concerns” does not properly invoke a claim of privilege that would justify the withholding of information that is otherwise appropriately released to the Congress and/or the public.⁴
2. Redactions Do Not Conform to U.S. Government Practices. In some instances, the Department’s proposed redactions appear to be overly broad and do not conform to U.S. Government practices for making redactions, including the Department’s own FOIA regulations.⁵ For example, the Department is

¹ ISP-I-20-19 and ISP-S-20-19A, respectively. Both documents were released to the Department in draft on July 1, 2020.

² Consistent with the Inspector General Act of 1978 (5 U.S.C.S. app. 3 § 2(3)), OIG is required to keep Congress fully and currently informed about our work. OIG is also required to publish our reports on our website within three days of completion, as outlined in 5 U.S.C.S. app. 3 § 8M(b)(1)(a).

³ The Department cites the exemption contained in 5 U.S.C. § 552(b)(5).

⁴ In addition to the Department’s reference to “potential Executive Privilege concerns,” the Department is requesting a similarly expansive set of redactions to the unclassified report based on the deliberative process exemption under the Freedom of Information Act. See 5 U.S.C. § 552(b)(5).

⁵ 22 CFR §171.11(l) requires the Department to release any reasonably segregable portion of a record after redaction of the exempt portions.

requesting that OIG redact full sentences and paragraphs rather than requesting the redaction of specific words and phrases that might reveal deliberative or privileged information.⁶ In the case of our classified annex, the Department requested that we redact all but the summary and recommendation, which would result in the redaction of non-privileged factual information (e.g., specific actions taken by the U.S. Government).

3. Inconsistent Application. In the Department's formal response on the unclassified report, it makes a blanket assertion (see page 2, paragraph 4) that certain categories of information should be redacted based on the FOIA exemption for deliberative process as well as "potential Executive Privilege concerns." In the Department's request for specific redactions, however, it did not request redaction of all information that appears to fall into the categories outlined in the blanket assertion. Similarly, some of the Department's specific redaction requests are not consistently applied. For example, the Department has requested specific redactions for information contained in OIG's draft report but has not requested that the same information be redacted from the Department's formal comments. Additionally, the Department did not request redaction of Figure 2 in the unclassified report but did request redaction of associated text in the body of the report. The Department also did not specifically request redaction of headings associated with text for which redactions are requested. OIG raises this issue notwithstanding our broader concerns about the Department's requested redactions, outlined above.

To address these concerns and ensure that any withholdings of information in OIG's work product are consistent with law, regulation, and policy, OIG requests that the Department provide by Friday, July 24, 2020, a final, complete, and authoritative list of requested redactions to OIG's report and classified annex, including any redactions that should be made to the Department's formal responses to OIG. All requests for redactions must satisfy the following requirements:

1. For each redaction request, identify the specific text—word for word—contained in the report or the Department's formal response to be redacted. Please ensure that requested redactions are narrow to maximize public disclosure, consistent with the Department's obligations under 22 CFR §171.11(l) which, for FOIA purposes, requires the Department to release any reasonably segregable portion of a record after redaction of the exempt portions.
2. For each requested redaction, cite the specific basis for the redaction (i.e., the FOIA exemption(s) or privilege(s) the Department is asserting to withhold the information).

OIG assumes no responsibility for disclosures of information contained in the report and annex for which the Department does not make a specific request for redaction. OIG will not interpret nor apply a blanket assertion to redact text that is not specifically requested by the Department.

Please provide the requested information by July 24, 2020, to [REDACTED] or [REDACTED]

⁶ By contrast, the Department's requested redactions of Sensitive But Unclassified information are clear and narrowly applied to elements of information—usually specific words or phrases—that reasonably appear to meet the Department's criteria outlined in 12 FAM 541(b).

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Should you require additional information, I am prepared to make my staff available to discuss this matter in person or by phone, as appropriate. If you have questions or wish to schedule such a meeting, please contact OIG Team Leader [REDACTED] at [REDACTED] or [REDACTED] [@stateoig.gov](mailto:[REDACTED]@stateoig.gov).

cc: Office of the Legal Adviser