

REQUEST FOR BOARD ACTION BY A BOARD MEMBER

Requester: Bruce Hamilton August 19, 2016

Brief description of Requested Action: The attached letter requests a U.S. Department of Justice opinion on Board Member access to agency information covered by the Privacy Act. The Board authorizes and directs the Chairman to transmit the attached letter no later than August 31, 2016, if this Request for Board Action is approved. The Board further directs the Chairman to provide all Board Members immediately with copies of all information and documents subsequently provided to the Department of Justice as a result of this request.

Justification: The Department of Justice can provide an independent and impartial opinion to resolve a contentious internal Board issue, and the development of any Board policy or directive related to this issue would benefit from having such an opinion as a reference.

Attachments (init) 1 (included clean version of any proposed document or modified document)

Summarize any time sensitive considerations:

Requestor signature signature on file August 22, 2016

Assistant Executive secretary signature on file August 22, 2016

| | APRVD | DISAPRVD | ABSTAIN | NOT PARTICIPATING | COMMENT | DATE |
|--------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------|
| Joyce L. Connery | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| Jessie H. Roberson | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| Sean Sullivan | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| Daniel J. Santos | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| Bruce Hamilton | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Final Disposition Summary

Executive Secretary signature _____ [Click here to enter a date.](#)

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access to Information

Doc Control#2016-100-042

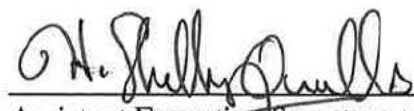
The Board, with Board Member(s) Sean Sullivan, Bruce Hamilton *approving*, Board Member(s) Joyce L. Connery, Jessie H. Roberson, Daniel J. Santos *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *recusing*, have voted to disapprove the above document on August 30, 2016.

The votes were recorded as:

| | APRVD | DISAPRVD | ABSTAIN | NOT PARTICIPATING* | COMMENT | DATE |
|--------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|----------|
| Joyce L. Connery | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 08/29/16 |
| Jessie H. Roberson | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 08/29/16 |
| Sean Sullivan | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 08/24/16 |
| Daniel J. Santos | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 08/30/16 |
| Bruce Hamilton | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 08/24/16 |

*Reason for Not Participating:

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.


Assistant Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

cc: Board Members
OGC
OGM Records Officer
OTD

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

NOTATIONAL VOTE RESPONSE SHEET

FROM: Joyce L. Connery

SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access to Information

Doc Control#2016-100-042

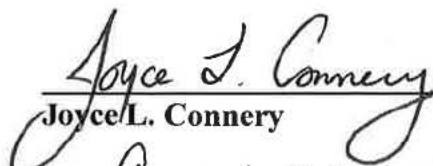
Approved _____ Disapproved X Abstain _____ Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

I cannot support this request for Board Action. While a Board Member can obtain unfettered access to any nuclear safety information held by the Agency, access to information subject to protections provided by Congress, such as Privacy Act information, requires appropriate controls. The Board has voted to establish procedures for allowing access to agency documents containing Privacy Act information, in accordance with our statute and a previous Department of Justice opinion. This Board already took a decision to provide reasonable protections to the most private information of our staff by creating a policy governing access to and protection for Privacy Act information.

If we follow the model of the proposed letter, we will be returning to the Department of Justice each time there is a Board Member request for Privacy Act information, rather than allowing the Board to establish a policy that will govern all Board Member requests. The letter frames the argument as the Board being “unable to determine definitively the circumstances under which access should be denied due to the restrictions of the Privacy Act.” That is not what I perceive the issue to be. As noted, the Board voted to develop a policy to provide appropriate safeguards and procedures for accessing such information, it did not address any attempt to deny access, nor has any such attempt been voiced. Board Members’ requests for information, ostensibly for “policy” reasons, should be subject to such safeguards and the information can be provided once safeguards are in place. Because the Board as a whole sets policy for the Agency and determines what matters constitute issues of policy, this is a situation where the Board itself can address these recurring requests for Privacy Act information based upon an expressed policy “need” for the information and a majority of the Board can resolve these requests through the pending creation of a broader policy statement.

Further, the letter’s characterization of the two requests in question does not represent the situation in its entirety. The letter does not describe the attempts made to satisfy the purposes of the requests through alternate means intended to reduce the risk to the Agency of potential mishandling of Privacy Act information that could lead to legal action against the Agency or Board members. As such, I could not sign a letter that gave a version of history that does not fully comport with facts essential to an informed decision.



Joyce L. Connery
August 29, 2016

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Jessie H. Roberson

SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access To Information

Doc Control#2016-100-042


Approved _____ Disapproved X Abstain _____

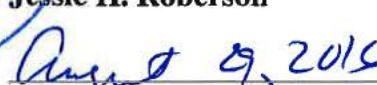
Recusal - Not Participating _____

COMMENTS: Below X Attached _____ None _____

I do not support this action because:

1. The Chairman is assigned the Chief Executive of the Board, subject to such policies as the Board may establish. The Board needs a policy in this area as I explained in my Request for Board Action #2016-300-021, Request for Board Action by Vice Chairman Jessie H. Roberson to Direct OGC and OGM to Develop Policy Regarding Board Member Access to Employee information. My justification in Action #2016-300-021 stands.
2. I believe OLC has provided its view on the subject, although I agree some questions remain. It is the Board's obligation to determine how it will both execute it and ensure all affected employees can be confident that their privacy information has access controls in place and will be safeguarded by all Board Members and Board members can be made aware in advance what those access requirements will be for the different types of privacy information. I believe a draft policy will flush out open questions and specific Board member disagreements regarding execution and an OLC review may be necessary to help resolve those differences.



Jessie H. Roberson


Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Sean Sullivan

SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access to Information

Doc Control#2016-100-042

Approved **Disapproved** _____ **Abstain** _____

Recusal – Not Participating _____

COMMENTS: **Below** _____ **Attached** _____ **None**



Sean Sullivan

8/24/16

Date

Shelby Qualls

From: Daniel J. Santos
Sent: Tuesday, August 30, 2016 9:35 AM
To: Lotus Smith; Shelby Qualls
Subject: RE: Notational Vote: Doc#2016-100-042 Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access to Information

Disapproved.

From: Lotus Smith
Sent: Wednesday, August 24, 2016 12:53 PM
To: Bruce Hamilton <[REDACTED]>; Daniel J. Santos <[REDACTED]>; Jessie Roberson <[REDACTED]>; Joyce Connery <[REDACTED]>; Sean Sullivan <[REDACTED]>
Cc: ExSec <[REDACTED]>
Subject: Notational Vote: Doc#2016-100-042 Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access to Information

The original message was recalled and the attached version has been corrected. The sentence towards the end should read, "The Board agrees to be bound by your opinion."

This email is an electronic record of Notational Vote. Voting ballot will follow shortly. Also, accepting electronic votes.

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Members of the Board
SUBJECT: Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access to Information

DOC# 2016-100-042

Office Directors have provided their input.

Approved _____
Disapproved _____
Abstain _____
Recusal – Not Participating _____

COMMENTS:

Below _____
Attached _____
None _____

Lotus Smith
Executive Secretary

Lotus Smith

From: Bruce Hamilton
Sent: Wednesday, August 24, 2016 2:26 PM
To: Lotus Smith; Shelby Qualls
Subject: Re: Notational Vote: Doc#2016-100-042 Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access to Information

I approve.
Comments: none.

From: Lotus Smith
Sent: Wednesday, August 24, 2016 12:53 PM
To: Bruce Hamilton; Daniel J. Santos; Jessie Roberson; Joyce Connery; Sean Sullivan
Cc: ExSec
Subject: Notational Vote: Doc#2016-100-042 Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access to Information

The original message was recalled and the attached version has been corrected. The sentence towards the end should read, "The Board agrees to be bound by your opinion."

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**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Members of the Board

Request for Board Action by Board Member Bruce Hamilton to Send a Letter Requesting DOJ Opinion on Board Member Access to Information

16-100-042

Office Directors have provided their input.

ved _____

Not Participating _____

NTS:

None _____