

**NATIONAL  
ARCHIVES**

September 28, 2012

John Roberson  
Senior Trial Counsel  
United States Dept. of Justice  
1100 L Street, NW, Room 1011  
Washington, DC 20530

Re: Starr International Co. v. United States, et al., No. 11-CV-00779 (TCW) (Ct. Fed. Claims)

Dear John:

You have requested that our office memorialize in writing the position of the National Archives and Records Administration (NARA) regarding whether any restrictions exist with regard to the government responding to discovery requests from one or more private parties in the above-captioned litigation for certain records from the Financial Crisis Inquiry Commission (FCIC or the Commission).

As you are aware, by documentation dated February 11, 2011, the FCIC's records were transferred into the legal custody of NARA. In accordance with our organic statute, 44 U.S.C. 2108(a), the Commission established a five-year restriction on public access to its non-public records. A copy of a letter NARA received from FCIC Chairman Phil Angelides is attached at Tab A. (This letter has been provided in other litigation and can be freely produced.) As set out in the Chairman's letter, NARA is to begin making FCIC's records available to the public "to the greatest extent possible consistent with the terms of this letter," beginning on February 13, 2016 (five years after the termination of the FCIC by statute). The letter also went on to detail specific instructions as to which records should not be disclosed after February 13, 2016, if they contain (a) personal privacy information; (b) confidential financial supervisory or regulatory information; (c) proprietary business information which remains confidential or contains trade secrets; or (d) information otherwise barred from disclosure as determined by the Archivist."

As you also may be aware, the Congressional Oversight Panel (the "Panel") separately submitted documentation to NARA, dated April 3, 2011, requesting that the Panel's documents be closed for 20 years, subject to certain exemptions for documents that could be immediately disclosed. A copy of that letter is attached at Tab B.

We understand that in connection with the government's preparation in defending the lawsuit, at your request NARA staff provided you and your colleagues a large number of documents on electronic media (comprising several million files), as well as some textual or hard-copy

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documents. We further understand that out of this universe of documents, you have identified a subset that are responsive to a request for production of documents by plaintiff that concerns "all documents connected with any governmental investigations concerning the Government's assistance to AIG, including a January 25, 2010 Report to the House."

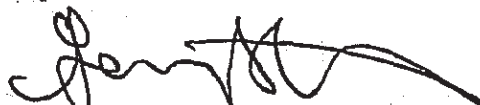
At the time that NARA staff provided DOJ with FCIC records, we informed DOJ contracting staff that the records being provided "remain closed to public access at NARA," and requested that DOJ "do not make these records publicly available or distribute them outside of your office." See correspondence to Seamus McCloskey, a contractor working for DOJ, dated August 2, 2012, is attached at Tab C.

Consistent with our prior admonition, we believe that the intent of the Commission, as expressed in the transfer letter of Chairman Angelides, is worthy of continued respect from a coordinate Branch of the government. The documents in your possession contain multiple sensitivities, and it has always been NARA's intent, after the five year period has lapsed, to open them for public access upon request only after careful review and processing by archival staff, to ensure that restricted information is not released. Thus, NARA would intend to follow the dictates of the Commission as expressed in the transfer letter, except insofar as ordered by a Court to make a public release. The same holds true for the Panel's records subject to the longer prohibition period as specified in its separate transfer letter to us.

Given all of the above circumstances, we would urge that DOJ seek an appropriate means by which litigation demands can be met while protecting the interests of the FCIC and NARA in continued withholding of the documents, in whole or in part, from public release. To that end, we have discussed the desirability of DOJ crafting a protective order sufficient to allow for use of the documents by parties in the litigation. We do not take a position on whether FCIC records that end up being filed with the Court as part of the litigation must be treated as under seal. However, short of court-filed records, if there is any consideration being given to disclosure of large volumes of FCIC records without review for privilege and sensitive information, then we believe DOJ should consider itself compelled to seek a protective order sufficient to protect both the governmental interests and interests of named persons in the documents themselves.

If the Panel's records can be identified as falling outside any restrictions, or if individual documents have been publicly released by either the FCIC or the Panel, then of course they can be produced to the private parties immediately. Absent, however, your being able to identify or categorize specific documents within the larger repositories you have received from NARA that are free of restrictions, we urge that a default rule apply and that a protective order is sought.

We would be happy to review an appropriate protective order, as well as to answer further questions.



GARY M. STERN  
General Counsel  
Enc.



February 10, 2011

The Honorable David Ferriero  
Archivist of the United States  
National Archives and Records Administration  
8601 Adelphi Road  
College Park, MD 20740

Dear Mr. Ferriero:

Phil Angelides  
*Chairman*

Hon. Bill Thomas  
*Vice Chairman*

Brooksley Born  
*Commissioner*

Byron S. Georgiou  
*Commissioner*

Senator Bob Graham  
*Commissioner*

Keith Hennessey  
*Commissioner*

Douglas Holtz-Eakin  
*Commissioner*

Heather H. Murren, CFA  
*Commissioner*

John W. Thompson  
*Commissioner*

Peter Wallison  
*Commissioner*

Wendy Edelberg  
*Executive Director*

When the Financial Crisis Inquiry Commission (the "Commission") terminates, by statute, on February 13, 2011, the records of the Commission will be transferred to the National Archives and Records Administration (NARA) for preservation and public access. This letter sets forth the Commission's continued interest in government and public access to information created or gathered during its investigation and establishes criteria under which these records should be made available.

The Commission has established a policy of making available to the public as much information as possible, while safeguarding personal privacy, law enforcement, private commercial, financial regulatory, and other sensitive information. The Commission's final report is highly detailed and discloses a significant amount of previously unavailable material. In addition, the Commission has released through its website many supplemental documents, including staff memoranda, documentary evidence, e-mails, witness statements, interviews, transcripts and summaries, audio and video files, and press releases. All of the records and information that the Commission has made available to the public should continue to be made publicly available by NARA. This includes the records that are accessible on the Commission's website, which NARA will maintain after February 13, 2011, and on the Commission's parallel website which the Commission will establish at Stanford University. Because the Commission was established in the legislative branch, its records have not been subject to the Freedom of Information Act (FOIA), and we understand that the FOIA will not apply to Commission records even after they are transferred to NARA.

The Commission recommends to NARA that records not already publicly available should be made available to the public, to the greatest extent possible consistent with the terms of this letter, beginning on February 13, 2016. The Commission encourages NARA to conduct a systematic review of the records that are not currently available to the public with the goal of releasing to the public as much information as is allowable by law and regulation on February 13, 2016, or as soon thereafter as possible. Records should not be disclosed immediately after February 13, 2016, if they contain (a) personal privacy information that the Commission agreed to protect from public disclosure for longer than 5 years; (b) confidential financial supervisory or regulatory information which remains sensitive at the time of release; (c) proprietary business information which remains confidential or contains trade secrets at the time of release, including any such information that the Commission has agreed will remain confidential for a longer period of time; or (d) information which is otherwise barred from public disclosure by law, as determined by the Archivist.

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We understand that there will be an initial period of at least several months during which NARA's staff will be organizing and processing the Commission's records. During this period, access to the records should be provided to the ten members of the Commission (Phil Angelides, the Honorable Bill Thomas, Brooksley Born, Byron S. Georgiou, Senator Bob Graham, Keith Hennessey, Douglas Holtz-Eakin, Heather H. Murren, John W. Thompson and Peter J. Wallison) and the following members of the Commission staff and advisors: Wendy Edelberg, Peter Kadzik, Esq., Gretchen Newsom, Scott Ganz, Gary Cohen, Greg Feldberg, Chris Seefel, Maryann Haggerty, and Cassidy Waskowicz. In addition, certain administrative staff of the Commission may have access as part of their duties to transfer the records to NARA. During the period when the FCIC transfers records to NARA and after February 13, 2011, it is important that the ten Commissioners and the designated members of the Commission staff and advisors have continuing access to the Commission's records once the records are transferred to NARA.

Thank you for your cooperation in carrying out the important task of preserving and providing access to the Commission's voluminous records.

Very truly yours,

  
Phil Angelides  
Chairman  
Financial Crisis Inquiry Commission

Cc: Members, Financial Crisis Inquiry Commission  
Gary M. Stern, NARA  
Wendy Edelberg, Executive Director  
Cassidy Waskowicz, Deputy General Counsel

CONGRESSIONAL OVERSIGHT PANEL

MEMORANDUM

To: National Archives and Records Administration  
From: Edward Kaufman, Chairman  
Date: April 3, 2011  
Re: Access Policy for the Records of the Congressional Oversight Panel

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This memorandum establishes the policy of the Congressional Oversight Panel (the "Panel") that shall govern access to the records of the Panel after its termination on April 3, 2011. Because the Panel was established in the legislative branch, its records are not subject to the Freedom of Information Act (FOIA). As the Panel has been advised by the National Archives and Records Administration (NARA), the policy governing access to the Panel's records is determined by the Panel in accordance with the Federal Records Act.

**ACCESS BY PANEL MEMBERS AND STAFF**

The following individuals may have unrestricted access to all Panel records.

- Naomi Baum, Executive Director, Panel Staff
- Tewana Wilkerson, Deputy Executive Director, Panel Staff

**GENERAL POLICY**

Panel records not already publicly available should be made available to the public, to the greatest extent possible consistent with the terms of this memorandum and all applicable laws and regulations, in accordance with the designations set forth below.

The Panel encourages NARA to conduct a systematic review of Panel records that are not currently available to the public with the goal of releasing to the public as much information as is allowable by law and regulation in accordance with these designations. In the course of this review, NARA should provide copies of records that originated with the U.S. Department of the Treasury ("Treasury") and that remain confidential to those designated by Treasury, as described below, and should request a review of those records with a view towards releasing those records as soon as possible. To facilitate this review, Acting Assistant Secretary for Financial Stability

Timothy Massad, or his successor, and any person designated by Secretary Massad or his successor may access these documents for the purpose of reviewing them and providing a recommendation to NARA regarding their public release, but no recommendation shall permit any material to be kept confidential for more than 20 years. At the expiration of the period recommended by Treasury or 20 years from April 3, 2011, whichever is earlier, we recommend that NARA review each document to determine whether public release would be lawful at that time. To the extent that Treasury fails to respond to this request with respect to any document, and NARA finds no other impediment to the document's public release, that document is to be made available to the public on October 3, 2011.

NARA may grant access to Panel records that are designated "open" at the time of the request, provided that NARA has reviewed the information requested and determined that no confidential information falls within the scope of the request. If any of the requested information remains confidential at the time of the request, NARA should withhold such information and satisfy the remaining request as appropriate.

Before releasing any documents, the Panel recommends that NARA ensure that no personal information is contained in the document and that any such information is redacted before the document is publicly released.

The policies established herein can be amended by a letter or memorandum to NARA signed by both Naomi Baum and Tewana Wilkerson.

### DESIGNATIONS

The designations below indicate when the records of the Panel, identified by box and specific contents, may be made available to the public. The timing for such designations shall be calculated from April 3, 2011.

Box	Contents	Designation
	Staff files – Confidential (personnel)	Do not open <sup>1</sup>
	Panel Member and Staff files – Confidential	Open in 20 years <sup>2</sup>

<sup>1</sup> These materials include personal information about Panel staff, such as social security numbers and home addresses, and therefore should not be released to the public at any time.

<sup>2</sup> These materials include attorney/client communications or other communications reflecting the internal deliberative process of the Panel. Any of these materials may be kept confidential

	(privileged)	
	Panel hearing materials – immediate release	Open immediately
	Panel hearing materials – delayed release	Open in 20 years <sup>3</sup>
	Panel Reports: Materials Produced to the Panel by Treasury – Confidential	Open as designated by Treasury or on October 3, 2011 if Treasury provides no guidance <sup>4</sup>
	Panel Reports: Materials Produced to the Panel by Third Parties – Non Confidential	Open immediately
	Panel Reports: Materials Produced to the Panel by Third Parties – Confidential	Open in 20 years <sup>5</sup>
	Official Correspondence	Open immediately
	General Correspondence	Open immediately, subject to removal of all personal information
	Web Site	Open immediately
	All Other Records	Open immediately unless designated otherwise
	Press Materials – immediate release	Open immediately

beyond 20 years if NARA determines in reasonable exercise of its judgment that the document(s) remains privileged.

<sup>3</sup> These materials reflect internal Panel deliberations.

<sup>4</sup> These materials were provided to the Panel under the terms of the Protocols for the Protection of Potentially Protected Information Produced or Disclosed to the Congressional Oversight Panel (see appendix). The information in these materials was designated as “protected information” under the terms of this agreement at the time they were provided to the Panel and contain information that arguably may be classified as “trade secrets” under the Trade Secrets Act or may include market sensitive information.

<sup>5</sup> These materials include information designated as “trade secrets” under the Trade Secrets Act and therefore should be kept confidential for a period of years or until such information is no longer classifiable as a “trade secret.”

	Press Materials -- delayed release	Open in 20 years <sup>6</sup>
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<sup>6</sup> These materials reflect internal Panel deliberations.