

Congress
of the
United States
House of Representatives

June 12, 2001

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Room 3E880
Washington, DC 20301-1000

JOHN F. TIERNEY
MASSACHUSETTS
SIXTH DISTRICT



Dear Secretary Rumsfeld:

I am writing in response to a May 31, 2001, letter from the Defense Department's legal counsel. This letter requested that the Subcommittee withhold from the public an internal Pentagon study highlighting severe deficiencies in the national missile defense program. The study was written by Phil Coyle, the former Director of Operational Test and Evaluation within the Department of Defense.¹ This office is an independent assessment group created to oversee testing programs and, in particular, to ensure that weapons development programs are adequately tested in realistic operating conditions.

Last September, Mr. Coyle testified before our Subcommittee about problems with the missile defense development program. During that hearing, it became readily apparent that the Pentagon was overstating the technological progress and potential of the missile defense system. Mr. Coyle reported on severe deficiencies in the test program. He testified that the program fails to test basic elements of the system, and that the program has been altered to make tests easier.

As a result, I felt it was imperative that the public have full access to Mr. Coyle's study. I asked him to provide his complete report for the record, and he agreed to my request. I also made an official request that the Subcommittee include the study in the public record for that September 8, 2000, hearing. This motion was accepted without objection. At no time did either Mr. Coyle or Lieutenant General Ronald Kadish, the director of the missile defense program, express any reservation about making this study public.

I expected my request to be granted expeditiously. One of the primary purposes of the office of Operational Test and Evaluation is to provide independent analyses to Congress. According to the legislation establishing this office:

The Director [of the testing office] shall comply with requests from Congress (or any committee of either House of Congress) for information relating to operational test and evaluation in the Department of Defense.²

¹Phil Coyle, *Operational Test and Evaluation Report in Support of National Missile Defense Deployment Readiness Review* (August 10, 2000).

²10 U.S.C. §139(g).

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Despite this statutory mandate, the Department prevented Mr. Coyle from transmitting his study for over eight months. I repeated my request on numerous occasions during that time, the first of which was in a letter to Rep. Christopher Shays, Chairman of the Subcommittee, with official questions for the hearing record. In that letter, I restated my request that Mr. Coyle “submit for the record his formal report.”³ In a letter conveying my request to the Department, Chairman Shays also made clear the Subcommittee’s intent to include the study “in the official hearing record.”⁴

After four months with no response, I sent another letter to Chairman Shays requesting that the Subcommittee subpoena the study, again recounting that it “would be included in the hearing record.”⁵ I then joined 54 other Democratic members from the Committees on Government Reform, Armed Services, and International Relations in seeking action directly from you. As you know, we again made clear in that letter that we wanted to make this report public:

Mr. Coyle agreed to make the report available to the Subcommittee, which voted unanimously to make it part of the hearing record You are requested to deliver Mr. Coyle’s report to the Subcommittee forthwith, in its entirety, and without alteration.⁶

Finally, the Department delivered the study on May 31, 2001, to members of the Subcommittee. At the same time, after delaying delivery of the study for months, your legal counsel asked that the report be kept confidential. In the cover letter conveying the study to the Subcommittee, your legal counsel stated that the study was provided “as a matter of discretion for use by the committee for its oversight purposes only.”⁷ This letter stated further that the Department “has not approved the release of this report to the general public.”⁸

I do not understand the basis for your request for confidentiality. There has never been any claim that the study is classified, either in its entirety or with respect to any of its contents (*i.e.*, data, charts, or other information). The Department has had over eight months to review the document for national security or other sensitive information and has made no such determinations. Moreover, there are no claims that the document contains personal financial or

³Letter from Rep. John Tierney to Chairman Christopher Shays (Sept. 28, 2000) (emphasis added).

⁴Letter from Chairman Christopher Shays to Lieutenant General Ronald Kadish (Oct. 4, 2000) (emphasis added).

⁵Letter from Rep. John Tierney to Chairman Christopher Shays (Jan. 24, 2001) (emphasis added).

⁶Letter from Rep. John Tierney and 54 Other Members of Congress to Secretary of Defense Donald Rumsfeld (May 4, 2001) (emphasis added).

⁷Letter from Stewart F. Aly, Acting Deputy General Counsel (Legal Counsel) to Chairman Christopher Shays (May 31, 2001).

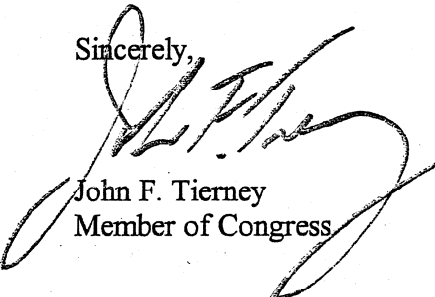
⁸*Id.*

medical information, confidential business information, or any other sort of privileged information.

In light of these circumstances, I am concerned that the Department may have requested confidentiality simply to keep this information hidden from public view. It indicates that there are critical flaws in the missile defense program. According to the study, the program will not include flight test against a wide range of unsophisticated countermeasures that can defeat the system. The program also fails to conduct flight tests with multiple engagements, which are expected to be the norm for this system. The study also raises grave concerns about the dangers of deploying a premature system that has not been fully tested. Problems arose with simulation tests in which operators could not prevent the launch of interceptors against "phantom tracks" that did not exist, according to the study. This is exactly the kind of information that should inform the public debate.

Since the Subcommittee has voted already to include Mr. Coyle's study in the public hearing record, it is my belief that nothing in your letter of May 31, 2001, provides any justification for your counsel's request that the document continue to be withheld from the public. I urge you to reconsider your position on this matter. If you continue to believe the document should be withheld, I request that you provide, by Friday, June 15, 2001, a detailed justification of the Department's rationale for the continued suppression of the document.

Sincerely,



John F. Tierney
Member of Congress

cc: Members of the Committee on Government Reform