

BRENNAN
CENTER
FOR JUSTICE

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June 6, 2018

Via Certified Mail and E-Mail

George W. Bush Presidential Library and Museum
c/o FOIA Coordinator
2943 SMU Boulevard
Dallas, TX 75205

Re: Freedom of Information Act Request

Dear Sir/Madam:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Presidential Records Act, 44 U.S.C. §§ 2201-2207.

I. Factual Background

The Brennan Center for Justice at NYU School of Law (“Brennan Center”) is engaged in a research and public education project focused on emergency powers. As part of this project, the Brennan Center is seeking the text of “Presidential Emergency Action Documents” and/or “Presidential Emergency Action Directives”, also referred to by the acronym “PEADs” (hereinafter, collectively “PEADs”). In addition to PEADs themselves, the Brennan Center is also seeking documents related to, discussing, or referring to PEADs.

PEADs originated during the Eisenhower Administration as part of continuity of government planning in case of a nuclear attack,¹ and they have been updated in subsequent administrations.² The Federal Emergency Management Agency (FEMA) has described PEADs as including “[f]inal drafts of Presidential messages, proposed legislation proclamations, and other formal documents, including DOJ [Department of Justice]-issued cover sheets addressed to the

¹ Patrick A. Thronson, *Toward Comprehensive Reform of America’s Emergency Law Regime*, 46 U. MICH. J. L. REFORM 737, 762 (2013).

² See, e.g., *id.* at 767 (2013) (quoting 2004 Bush Administration document discussing PEADs).

President, to be issued in event of a Presidentially-declared national emergency.”³ PEADs have been referred to in popular media,⁴ scholarly articles,⁵ as well as in un- or de-classified documents from presidential administrations.⁶

There are dozens of PEADs covering different topics, and they are titled numerically. For example, during the Eisenhower Administration, “PEAD 17 authorize[d] the Secretary of State to seize property”⁷ and “PEAD 20 is an Executive Order directing the Secretary of Defense to restore and maintain law and order when it has broken down.”⁸ Similarly, available documents from the Johnson Administration discuss PEADs by stating: “A1-7 refers to control of alien enemies in the time of emergency; A1-8 suspends the privilege of the writ of habeas corpus and authorizes apprehension and detention of certain persons, the search of persons and premises, and the seizure of property; A1-57 authorizes additional departments and agencies of the Executive Branch to classify information and material pursuant to Executive Order 10501.”⁹

II. Formal Request

In order to better understand the content, context, operation, and evolution of presidential emergency powers including PEADs, the Brennan Center requests the following documents through this FOIA request:

³ FED. EMERGENCY MGMT. AGENCY [FEMA], FEMA MANUAL 5400.2 111 (effective Feb. 29, 2000), *quoted in* Patrick A. Thronson, *Toward Comprehensive Reform of America’s Emergency Law Regime*, 46 U. MICH. J. L. REFORM 737, 762 (2013).

⁴ Marc Ambinder, *The American Government’s Secret Plan for Surviving the End of the World*, FOREIGN POLICY, Apr. 14, 2017 (“The basic blueprint was contained in a series of proposed PEADS — presidential emergency action documents — which National Security Advisor Zbigniew Brzezinski’s military aide Col. Bill Odom then reviewed and revised.”), *available at* <http://foreignpolicy.com/2017/04/14/the-american-governments-secret-plan-for-surviving-the-end-of-the-world/>; *FOX Hannity* (Fox News Network television broadcast Apr. 29, 2010), *quoted in* Patrick A. Thronson, *Toward Comprehensive Reform of America’s Emergency Law Regime*, 46 U. MICH. J. L. REFORM 737, 768 (2013); *see also* 128 CONG. REC. 17,177 (1982) (placing into the record a March 1982 Esquire Magazine article by Ed Zuckerman containing the passage “Circling thousands of feet above the fall-out, the President will have at his fingertips a copy of the classified Federal Emergency Plan D, which outlines federal recover plans and contains a set of ‘Presidential Emergency Action Documents’ authorizing the creation of emergency agencies and powers for mobilization and reconstruction in the event of nuclear war.”).

⁵ *See, e.g.*, Patrick A. Thronson, *Toward Comprehensive Reform of America’s Emergency Law Regime*, 46 U. MICH. J. L. REFORM 737, 761 (2013) (“Presidential declarations of national emergency enable the president to use draft classified orders to exercise perhaps even more expansive powers, known variously as Presidential Emergency Action Documents or Presidential Emergency Action Directives (PEADs).”).

⁶ *See, e.g.*, Letter from Julius W. Becton, Jr., Director of the Federal Emergency Management Agency to Edwin Meese, III, Attorney General of the United States (August 5, 1986) (on file with the Brennan Center) (stating that “efforts are underway to update and expand Presidential Emergency Action Documents (PEADs). ... The PEADs are pivotal to enhancing national security emergency preparedness, and deserve the direct attention of high-level policymakers.”).

⁷ Patrick A. Thronson, *Toward Comprehensive Reform of America’s Emergency Law Regime*, 46 U. MICH. J. L. REFORM 737, 764 (2013) (quoting memorandum to W.O. Cregar on Presidential Emergency Action Documents).

⁸ *Id.*

⁹ Memorandum from W.C. Sullivan, Federal Bureau of Investigation, to [Redacted], December 4, 1967 (on file with the Brennan Center).

- 1) Any records reflecting, setting forth, discussing, pertaining to, incorporating, memorializing presidential emergency powers, including but not limited to documents referred to as PEADs; and,
- 2) Any documents prepared in anticipation of potential emergencies, to be utilized in the event an emergency transpires.

Thank you in advance for your attention to this request. Should you have any questions regarding this request, please contact me at your earliest convenience at the address above, by telephone at (202) 753-5909, or by e-mail at boylea@brennan.law.nyu.edu.

Very truly yours,



Andrew Boyle
Counsel, Liberty and National Security Program