

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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February 23, 2022

The Honorable Lloyd J. Austin III
Secretary
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

Dear Secretary Austin:

We write to express our concern that the Department of Defense (DOD) and armed services have inappropriately limited access to information related to military weapon systems by marking the information as controlled unclassified information (CUI).

As DOD works to protect sensitive details about U.S. military weapon systems, the Department must strike a balance to ensure that sensitive information is handled appropriately, while information in the public interest is not kept secret. Increased secrecy will result in less transparency and accountability regarding the efficacy of these systems.

On January 26, 2022, DOD's Director, Operational Test and Evaluation (DOT&E) issued its annual report for fiscal year (FY) 2021, as required by law.¹ Since Congress created DOT&E in 1983, its annual reports have provided Congress and the American people with objective evaluations of the effectiveness, viability, and suitability of major weapon systems.

Until this year, DOT&E has produced its annual reports in a publicly releasable, unclassified format. However, in a break from historical precedent, the FY 2021 annual report includes both a public and CUI version. While the CUI version contains significant information about military weapon systems, it is only available to Congress and U.S. government personnel. Meanwhile, the public version has been significantly watered down and stripped of key details about U.S. weapons systems.

The previous acting director at DOT&E stated that while the office chose to release two versions of the report, "the decision about what constitutes 'controlled unclassified information' ultimately rests with the services, not DOT&E itself." This official also stated the CUI version

¹ Department of Defense Director, Operational Test & Evaluation, *Fiscal Year 2021 Annual Report* (Jan. 26, 2022) (online at www.dote.osd.mil/Publications/Annual-Reports/2021-Annual-Report/); 10 U.S.C. § 139.

was necessary to ensure sensitive information does not “wind up in our adversaries’ hands.”² While we recognize the importance of protecting sensitive information, DOD and DOT&E appear to have applied this concern too broadly. As a result, information on military weapon systems that was previously available to the public is now marked CUI in multiple instances, hiding it from the view of U.S. taxpayers.

For example, the public version of the FY 2021 annual report excludes certain performance information about the CH-53K and HH-60W helicopters, even though similar data was included in the public version of the FY 2020 report.³ In addition, the latest public version excludes information about the contractors that will supply the Army with M1158 7.62 mm ammunition, even though DOT&E reported the suppliers in its FY 2020 report.⁴

The public version of the FY 2021 DOT&E report also excludes information on the F-35 Joint Strike Fighter, the most expensive weapons acquisition system program in the history of the Department. For example:

- The public version of the FY 2021 report excludes a basic description of the F-35 system and its intended operational use, even though DOT&E published descriptions in the FY 2019 and FY 2020 reports, which were publicly available.⁵
- Details about how a shortage of F135 engines is impacting the readiness and availability of the F-35 fleet are excluded from the FY 2021 public report.⁶ However, DOD officials have testified publicly about this shortage and discussed the extent to which the shortage could impact the F-35 fleet.⁷
- Several key indicators of the F-35’s performance, including availability and reliability metrics, as well as specific details about hardware and software

² *Pentagon Tester to Restrict Info on Weapons Programs, Raising Transparency Concerns*, Breaking Defense (Dec. 6, 2021) (online at <https://breakingdefense.com/2021/12/pentagon-tester-to-restrict-info-on-weapons-programs-raising-transparency-concerns/>).

³ Director, Operational Test & Evaluation, Department of Defense, *Fiscal Year 2020 Annual Report* (Jan. 13, 2021) (online at www.dote.osd.mil/Publications/Annual-Reports/2020-Annual-Report/).

⁴ *Id.*

⁵ See e.g., Director of Operational Test & Evaluation, Department of Defense, *Fiscal Year 2020 Annual Report* (Jan. 13, 2021) (online at www.dote.osd.mil/Publications/Annual-Reports/2020-Annual-Report/); Director of Operational Test & Evaluation, Department of Defense, *Fiscal Year 2019 Annual Report*, (Jan. 31, 2020) (online at www.dote.osd.mil/Publications/Annual-Reports/2019-Annual-Report/).

⁶ Director, Operational Test & Evaluation, Department of Defense, *Fiscal Year 2021 Annual Report* (Jan. 26, 2022) (online at www.dote.osd.mil/Publications/Annual-Reports/2021-Annual-Report/).

⁷ *An Engine Shortage Is the Newest Problem to Hit the F-35 Enterprise*, Defense News (Feb. 12, 2021) (online at www.defensenews.com/air/2021/02/12/an-engine-shortage-is-the-newest-problem-to-hit-the-f-35-enterprise/); Subcommittee on Tactical Air and Land Forces and Subcommittee on Readiness, Committee on Armed Services, *Joint Hearing on Updated on F-35 Program Accomplishments, Issues, and Risks* (Apr. 22-23, 2021) (online at <https://armedservices.house.gov/2021/4/subcommittees-on-tactical-air-and-land-forces-and-readiness-joint-hearing-update-on-f-35-program-accomplishments-issues-and-risks>).

deficiencies, are excluded from the public FY 2021 report, although DOT&E provided similar metrics and details in prior public reports.⁸

Excessively marking information as CUI withholds important details about the performance of military weapon systems, such as critical design deficiencies, safety issues, and capability shortfalls. It also limits broader oversight of military weapon systems, restricting the ability of U.S. taxpayers to evaluate the viability of weapon systems they are paying for and hindering Congress' ability to address problems with these systems. In the long term, this could limit the government's ability to procure effective and safe weapon systems and lead to lower-performing weapon systems.

In April 2021, Chairman Lynch, Chairman Connolly, and Rep. Porter called on DOD to expand the amount of information made available to the public and build on a prior commitment that, under your leadership, DOD would "be forthcoming and transparent."⁹ Restricting critical information about military weapon systems from public release risks undermining that commitment and could diminish the public's trust that the government is investing in military weapon systems that are safe and effective.

We request that DOD and its components review the information regarding military weapon systems that is marked CUI and publicly release the greatest amount of information possible about these systems, consistent with the continued protection of sensitive information.

We also request that DOD provide the following information to the Committee no later than March 9, 2022:

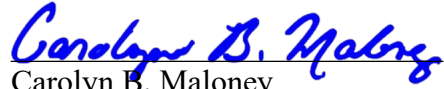
1. For each weapon system in the DOT&E's FY 2021 annual report that has information marked as CUI, a list of the designating component or authority that determined a CUI marking was necessary; and
2. For each weapon system in the DOT&E's FY 2021 annual report that has information marked as CUI, justification for why the information was marked CUI.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

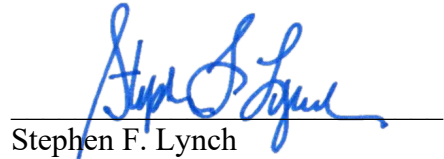
⁸ See e.g., Director of Operational Test and Evaluation, Department of Defense, *Fiscal Year 2020 Annual Report* (Jan. 13, 2021) (online at www.dote.osd.mil/Publications/Annual-Reports/2020-Annual-Report/).

⁹ Letter from Chairman Stephen F. Lynch, Subcommittee on National Security, Committee on Oversight and Reform; Chairman Gerald E. Connolly, Subcommittee on Government Operations, Committee on Oversight and Reform; and Rep. Katie Porter, to Secretary Lloyd J. Austin III, Department of Defense (Apr. 8, 2021) (online at <https://oversight.house.gov/news/press-releases/lynch-connolly-porter-urge-defense-department-to-recommit-to-public-transparency/>); See, Senate Committee on Armed Services, *Testimony of Lloyd J. Austin III, Hearing to Examine the Expected Nomination of Lloyd J. Austin III to Be Secretary of Defense* (Jan. 19, 2021) (online at www.armedservices.senate.gov/imo/media/doc/Austin_01-19-21.pdf).

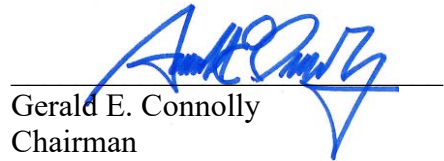
Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Stephen F. Lynch
Chairman
Subcommittee on National Security



Gerald E. Connolly
Chairman
Subcommittee on Government
Operations



Katie Porter
Member of Congress

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Glenn Grothman, Ranking Member
Subcommittee on National Security

The Honorable Jody Hice, Ranking Member
Subcommittee on Government Operations

The Honorable Nickolas Guertin
Director, Operational Test and Evaluation
Department of Defense