

February 1, 2022

Mr. Nickolas Guertin
Director
The Office of the Director, Operational Test and Evaluation
Department of Defense
4800 Mark Center Drive
Alexandria, VA 22311

Dear Mr. Guertin:

I am writing regarding my concern over the office of the Director of Operational Test and Evaluation's (DOT&E) submission of a controlled unclassified version of its annual report to Congress, and that this unjustified restriction of public access will not serve to protect national security information but will instead be abused to avoid disclosure of failures in our major weapons programs.¹ In light of your recent confirmation, I urge you to reverse the decision to classify these reports.

DOT&E was established in 1983 after Pentagon officials and the Government Accountability Office (GAO) exposed deficient combat testing of new weapons to include rigged tests, falsified reports, and outright lies to Congress to keep the money flowing.² For example, the GAO found the services were deploying systems "without having fully demonstrated their capabilities under representative combat conditions."³ Congress created this office specifically to provide "objective, unvarnished reporting on the results and implications of operational testing for the effectiveness and combat suitability of each major acquisition program."⁴ This office has faced challenges from the military services and the defense industry since its creation because it performs an essential function: telling us the truth about whether our weapon systems work and will be effective in combat.

¹ Breaking Defense, "Pentagon tester to restrict info on weapons programs, raising transparency concerns," Valerie Insinna, December 6, 2021, <https://breakingdefense.com/2021/12/pentagon-tester-to-restrict-info-on-weapons-programs-raising-transparency-concerns/>.

² Office of the Director, Operational Test and Evaluation, "Background," <https://www.dote.osd.mil/About/Background/>; Christian Science Monitor, "GAO: Pentagon isn't tough enough when testing key weapons," Brad Knickerbocker, June 24, 1983, <https://www.csmonitor.com/1983/0624/062452.html>.

³ Christian Science Monitor, "GAO: Pentagon isn't tough enough when testing key weapons," Brad Knickerbocker, June 24, 1983, <https://www.csmonitor.com/1983/0624/062452.html>.

⁴ Letter from the Project on Government Oversight to Robert F. Behler, then-Director of OT&E, October 31, 2018, <https://www.pogo.org/letter/2018/10/pogo-urges-testing-director-to-maintain-annual-report-transparency/>.

As you know, one of the most important elements in the creation of DOT&E is the annual public report it releases detailing its findings. While some of its findings are appropriately classified, the requirement for an unclassified report has always been the intent of Congress and clearly established in law.⁵ However, in December 2021, Acting Director of DOT&E Raymond O'Toole announced that only a "controlled unclassified" version of the report will be made available to Congress.⁶ The report, published on January 27, 2022, is already raising alarms amongst watchdog groups due to its lack of transparency. 22 programs have had information redacted, including the CH-53K King Stallion, one of the Marine Corps' most troubled programs, which has been entirely eliminated from the report.⁷

This "controlled unclassified" categorization of the report means lawmakers will not have complete insight to DOT&E's findings. Controlled unclassified information is "government created or owned information that requires safeguarding or dissemination controls," and is also not classified information nor intellectual property.⁸ As a practical matter, it will limit the type of information available for those tasked with holding the Department accountable and ensuring taxpayer dollars are being spent responsibly. This also endangers national security by making it more likely we will field weapon systems that unnecessarily jeopardize the lives of servicemembers and negatively affect their performance on the battlefield. Preventing full disclosure makes it less likely that key design deficiencies, safety issues, and capability shortfalls will be properly addressed before they are deployed.

The public report is a hallmark of your office that serves as a bulwark of its independence. This office has been able to release an unclassified version of this report for nearly 40 years, and it is simply not credible to think it cannot and should not continue to do so. The value of these public reports was reaffirmed by the 809 Panel, which was created by Congress and composed of individuals from the government, the military services, and the defense industry to streamline and improve defense acquisitions.⁹ The panel said that the report "[a]ssists with both the office's internal success and the ability of Congress to exercise proper oversight."¹⁰ Congress itself has also reiterated the value of these public and unclassified reports in the fiscal year 2022 National Defense Authorization Act by eliminating the sunset for making this report publicly available.¹¹

⁵ 10 U.S.C. § 139

⁶ Breaking Defense, "Pentagon tester to restrict info on weapons programs, raising transparency concerns," Valerie Insinna, December 6, 2021, <https://breakingdefense.com/2021/12/pentagon-tester-to-restrict-info-on-weapons-programs-raising-transparency-concerns/>.

⁷ Breaking Defense, "New Pentagon report censors details on weapons programs' performance, flaws," Valerie Insinna, January 28, 2022, <https://breakingdefense.com/2022/01/new-pentagon-report-censors-details-on-weapons-programs-performance-flaws/>.

⁸ Defense Counterintelligence and Security Agency, "Controlled Unclassified Information," <https://www.dcsa.mil/mc/ctp/cui/>.

⁹ Defense Technical Information Center, Section 809 Panel, Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 1, Recommendation 24," January 2018, https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume1/Recommendation_24.pdf.


¹⁰ *Id.*, pp. 37.

¹¹ House Committee on Rules, "National Defense Authorization Act for Fiscal Year 2022," pp. 176, December 7, 2021, <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117S1605-RCP117-21.pdf>.

This is a continuation of an unacceptable trend at the Department to reduce the public's access to basic information essential for accountability.¹² Relegating the findings of your office to be categorized as "controlled unclassified information" will fundamentally undermine its ability to accomplish its mission. Opponents of independent operational testing have worked diligently to neutralize DOT&E since its creation and submitting to this unjustified classification sabotages your own office. During your confirmation hearing we discussed the importance of DOT&E's annual report being released in an unclassified form to the public, including the need to avoid hiding your office's findings behind pseudo classifications. You committed to keeping these reports public to the "maximum extent possible."¹³

These reports and the transparency they offer are crucial to ensuring taxpayer dollars are being utilized efficiently and that our servicemembers are provided with the tools they need to complete their missions. Now that you have been confirmed, I urge you to resume public, unclassified reporting on the results of your office's findings.

Sincerely,



Elizabeth Warren
United States Senator

¹² Project on Government Oversight, "The Pentagon's War on Transparency," Jason Paladino, December 5, 2019. <https://www.pogo.org/analysis/2019/12/the-pentagon-war-on-transparency/>.

¹³ Senate Armed Services Committee, "Hearing to consider the nominations of: Mr. Nickolas H. Guertin, et al.," October 19, 2021, https://www.armed-services.senate.gov/imo/media/doc/21-78_10-19-2021.pdf.