



DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION DCN 5787  
2521 South Clark Street, Suite 600  
Arlington, VA 22202  
Telephone: 703-699-2950

July 29, 2005

Senator John Ensign  
United States Senate  
Washington, DC 20510-5050

Dear Senator Ensign:

I am responding to your letter of July 29, 2005 in which you express concern about the openness and transparency of the Defense Base Closure and Realignment (BRAC) Commission.

Recognizing your authority and responsibility for oversight of the BRAC process, I readily accede to your request for a meeting between your staff and appropriate representatives of the Commission. We stand ready to meet as you request no later than August 3<sup>rd</sup> and will provide any and all assistance that is requested, to include access to Commission files and records.

I am confident that we have conducted all of our activities in the spirit of openness and complied with all provisions of the Base Closure Act. We have made unprecedented efforts to ensure transparency and to be receptive and responsive by every possible means to the public, community groups, and the Congress. We have been guided by a well-grounded understanding of the law, enhanced by interaction with your staff. I have made extraordinary efforts to ensure we fulfill the mandate that guides our actions, that is to be open and thorough in our deliberations and independent and resolute in our decisions.

Necessary arrangements can be made by your staff with my Executive Director, Mr. Charles Battaglia.

Sincerely,

A handwritten signature in cursive script that reads "Anthony J. Principi".

Anthony J. Principi  
Chairman

**Chairman:** Anthony J. Principi  
**Commissioners:** The Honorable James H. Bilbray, The Honorable Philip E. Coyle III, Admiral Harold W. Gehman Jr., USN (Ret), The Honorable Jim Hansen, General James T. Hill, USA (Ret), General Lloyd Newton, USAF (Ret), The Honorable Samuel K. Skinner, Brigadier General Sue Ellen Turner, USAF (Ret)  
**Executive Director:** Charles Battaglia

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## United States Senate

COMMITTEE ON ARMED SERVICES  
 WASHINGTON, DC 20510-8050

July 29, 2005

Honorable Anthony J. Principi  
 Chairman, Base Closure and Realignment Commission  
 2521 South Clark Street, Suite 600  
 Arlington, Virginia 22202-3920

Dear Chairman Principi:

Section 2902 of the Defense Base Closure and Realignment Act of 1990, as amended, provides that "All the proceedings, information, and deliberations of the [Base Realignment and Closure] Commission shall be open, upon request" to the Chairman of the Subcommittee on Readiness and Management Support of the Committee on Armed Services and other named persons. By including this provision in the BRAC statute, Congress authorized my subcommittee to provide oversight on the Commission's activities. It is in my capacity as Chairman of the Subcommittee on Readiness and Management Support that I write to you regarding the performance of the Commission in carrying out its statutory duties. I have been asked to specifically look at whether Department of Defense officials, who were personally or substantially involved in the preparation of information and recommendations concerning the closure or realignment of military installations, provided members of the BRAC Commission *ex parte* or uncertified information that has not been made part of the public record to date by the BRAC Commission.

The Congress, in enacting the BRAC statute, was aware that the process of base closure is a highly controversial one, and that the deliberations of the Commission must be open and transparent. Therefore, the Congress included a provision in BRAC law which requires that Department of Defense officials, in submitting information to the Commission, "shall certify that such information is accurate and complete to the best of that person's knowledge and belief." (Section 2903) Other provisions in the BRAC law direct that all testimony at public hearings of the Commission be under oath and establish the requirements for open hearings and deliberations, site visits, separation of the Commission's staff from the Department of Defense, and other protections.

Moreover, insofar as the Administrative Procedure Act applies to the deliberations of the Commission, private conversations would appear to violate that Act's limitations on *ex parte* communications, as well as its fundamental requirement that decisions of agencies be made on the basis of evidence of record. Any deviation from these legal requirements clearly gives rise to potential litigation that could delay or

Honorable Anthony J. Principi **DCN 5787**  
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impede the BRAC process or result in a federal court taking action that could call into question the integrity of the entire process.

Apart from the potential legal ramifications is the risk of undermining the public's perception of the integrity and reliability of the BRAC process. We must remember that there inevitably will be the need for a future Secretary of Defense to initiate a BRAC process. We must simply have the support of the public and the Congress to enact that process.

Because of the vital importance of these matters, I therefore request that you allow my staff to meet with appropriate representatives of the 2005 BRAC Commission no later than August 3, 2005 and that all relevant documentation be produced by August 10, 2005, which will allow for examination of all records, materials, and other evidence relating to any *ex parte* communications and to assess, if in fact they occurred, whether these *ex parte* communications may have unduly or improperly influenced the Commission's actions to date.

I look forward to your prompt reply.

Sincerely,



John Ensign  
Chairman  
Subcommittee on Readiness and Management  
Support

cc: The Honorable Donald Rumsfeld