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Thursday, September 19, 2013

Agency Release Panel
Michele Meeks, Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Reference: F-2010-01210 CIA records "relating to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel."

Dear Michele Meeks,

On August 28, 2013 the CIA denied in entirety the release of material on the above-referenced FOIA request of May 13, 2010. (Attached) We appeal to the Agency Release Panel to reconsider this denial and release in full all requested records, including the Carter administration Nuclear Materials and Equipment Corporation (NUMEC) files.

The CIA Information Act of 1984, cited in the Agency's September 10, 2010 FOIA confirmation letter (Attached), provided guidance over the review for release of relevant CIA files. As an outside public-interest nonprofit, it is impossible for us to know whether the majority of the CIA's thousands of files about NUMEC are considered to be "operational" or not. We believe they probably should not be since the diversion was not a CIA operation, according to officials who spoke publicly about the matter.

Carl Duckett, the executive director for CIA operations, revealed that CIA Director Richard Helms wrote a classified letter to Attorney General Ramsey Clark telling him that highly enriched uranium "processed at Apollo might have ended up at Dimona" and requested that the FBI investigate NUMEC and its officials, many who had strong ties to Israel. Helms also informed President Lyndon Johnson about Israel's nuclear weapons program, to which LBJ famously responded, "Don't tell anyone else, even [Secretary of State] Dean Rusk and [Defense Secretary] Robert McNamara."¹ CIA Tel Aviv Station Chief John Hadden called the NUMEC incident an "Israeli operation from the beginning." These and other comments by CIA officials imply that while the diversion of weapons-grade uranium from Apollo to Dimona was indeed an operation, it was not a clandestine CIA operation authorized by a presidential finding, and is therefore probably unworthy of the decades of agency refusals to researchers seeking file release.

However, even if CIA considers NUMEC files to be "operational files," under Sec. 702 "Decennial review of exempted operational files" the CIA would have had to have conducted ten-year reviews for removal of exemptions for release of NUMEC files. In particular, under subsection (b) CIA would have had to consider the historical value and ongoing heavy public interest in the subject matter.

The NUMEC affair has been of intense public interest since the first press accounts of massive NUMEC uranium losses were reported by the *New York Times* on September 17, 1966. A lingering question is whether the ramshackle NUMEC facilities and operations that polluted the Kiski Valley, currently requiring a U.S. Army

¹ McTiernan, Tom "Inquiry into the Testimony of the Executive Director for Operations" Volume III, Interviews, February 1978. The CIA's Carl Duckett briefed NRC commissioners in 1976. In 1978, Tom McTiernan of NRC investigated the 1977 Congressional testimony of NRC's Executive Director for Operations Lee Gossick to see if Gossick lied to Congress about whether officials thought there was evidence of a diversion. The 1978 report of McTiernan's investigation contains recollections by NRC people who attended the Duckett briefing in 1976. There is also a four page summary of an interview with Duckett. Nearly all of what Duckett said or what others recalled he said was redacted from the public version of McTiernan's report that was eventually released to the public. However, one page (number 3) of the four pages summarizing Duckett's interview summary was inadvertently released to the Natural Resources Defense Council when the report was first made public.

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Corps of Engineers cleanup costing up to half a billion taxpayer dollars, were the result of its core mission as a budget smuggling operation. Many such operations were established across the United States in the 1940s to illegally obtain and smuggle conventional weapons. One key figure in the NUMEC scheme, David Lowenthal, was just such a smuggler for Israel. Even in 2013, civil suits over accidental death and injury compensation continue to be filed in Pennsylvania district courts by victims of NUMEC. However, aside from the public remarks of Carl Duckett and John Hadden affirming an illegal diversion, the CIA has never fully divulged its findings about NUMEC to the American public.

It is now known that the CIA generated a vast amount of data about NUMEC which could reveal a great deal about the functions of government and fill important gaps in the historical record—which is the primary purpose of the Freedom of Information Act. According to a Carter Administration memo obtained from the National Archives this year dated April 25, 1979, the Internal Security Section of the Justice Department completed a review of "thousands of CIA documents" about the NUMEC diversion. (Attached). Although Congress was to have received the review to take warranted action, apparently such an accountability moment never occurred.

According to a previously released October 6, 1978 memo from John H. Stein, Acting Deputy Director for Operations which accompanied the August 28, 2013 FOIA denial to us, the CIA believed intelligence sources and methods might have been compromised if CIA material submitted for a 1978 GAO report² were combined with information already in the public domain. Further, the CIA felt it could not declassify their report "because of the need to have a coordinated Executive Branch position and our desire to protect a sensitive and valuable liaison equity."

The Executive branch is demonstrably reticent to release classified files about Israel's nuclear weapons arsenal in observance of the Nixon-Kissinger Meir policy of "strategic ambiguity." However, no educated person inside or outside the Middle East any longer believes Israel doesn't have a nuclear arsenal. There is an abundance of public domain information about clandestine nuclear weapons funding through nonprofit corporations, yellowcake and technology transfers that helped build the arsenal—often against the wishes of the countries from which such resources were extracted. Perhaps the Stein memo is saying that the U.S. was once so reliant on Israel as an intelligence liaison it would have been counter-productive to let the public know that Israel's agents stole sensitive military material. However, the Cold War is now over. Furthermore, the Obama administration's 2009 executive order on Freedom of Information calls for a new "presumption" of openness, and prohibits retaining material for decades that is "embarrassing" or casts a harsh light on decisions made under such circumstances. Exempting 30+ year-old records under (b)(1) contradicts Obama guidelines that "nothing should remain classified forever" and new automatic 25-year declassification targets.

As you may know, the ISCAP panel, which has an established record declassifying tightly held intelligence files, is currently reviewing a number of NUMEC-related files for release, including the 1978 GAO report. CIA is no longer the sole decision point for release of sensitive records about NUMEC. We believe it would be best for compliance with the spirit of FOIA, the reputation of the CIA, and the benefit of the American public, if all of the CIA's NUMEC-related material were released immediately.

Sincerely,



Grant F. Smith
Director of Research

Attachments.

(b)(6)

² *Nuclear Diversion in the US? 13 Years of Contradiction and Confusion*, GAO, partially declassified and released in 2010