

OGC 73-0478



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

17 MAR 1973

Dr. Clarence W. Morris



Dear Dr. Morris:

I refer to your request to the President on December 21, 1972 that the Oleg Penkovskiy special collection of documents be declassified and to the subsequent correspondence relative to a review of its security classification.


On July 17, 1972, the United States District Court for the Southern District of Illinois dismissed a request that the Department of Defense release the Penkovskiy collection of documents. (John M. Ashbrook et al. v. Melvin R. Laird, et al., (S. D. Ill.) Civil Action No. S-Civ. 72-40). The Court concluded that "the withholding action was required under the standards and criteria of Executive Order 10501 and within the statutory exemption from disclosure prescribed by the Congress *** and established that the agency action in withholding the documents was not arbitrary and capricious ****" This ruling has been appealed to the Circuit Court of Appeals, but a Court of Appeals decision has not been rendered.

Inasmuch as the issue of release of the documents is still in litigation it would not be appropriate to conduct an administrative review for declassification purposes. This is particularly so because of the District Court's decision that the Department's withholding of the document was legally justified.

Sincerely yours,

(Signed) J. Fred Buzhardt

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cc: SA/IC 
Asst to the DCI Thuerner
per JDM 3/22/73

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Approved For Release 2005/01/04 : CIA-RDP75-00793R000200130023-9

Next 1 Page(s) In Document Exempt

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