

CENTRAL INTELLIGENCE AGENCY  
WASHINGTON, D.C. 20505

OLC 74-0836

30 April 1974

Honorable John L. McClellan, Chairman  
Intelligence Operations Subcommittee  
Committee on Appropriations  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

This letter responds to your request for comments on the possible impact upon the operations of this Agency of S. 2543 which amends the Freedom of Information Act (5 U. S. C. 522).

Presently, this Agency's records are for the most part not available for public inspection because the Act exempts, among other things, matters that are:

"(b)(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

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(3) specifically exempted from disclosure by statute;"

Although S. 2543 retains these general exemptions, it adds a new provision which would permit an in camera court review of any or all records to determine whether they shall be subject to public inspection. This provision appears to be designed to overrule a Supreme Court decision that the contents of records withheld under exemption (b)(1) are not reviewable by the courts (Environmental Protection Agency v. Mink, 93 S. Ct. 827 (1973)).

The National Security Act of 1947 provides:

"... That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;" (Sec. 102(d)(3))

This language is designed to protect the lives and welfare of sources of sensitive foreign intelligence information and to protect against the compromise of technical collection efforts.

I do not believe that the nation's interest would best be served by legislation which would make it possible for the most sensitive of Agency records to be subject to court review as a result of a suit by an individual, who under the statute may not even be a U.S. citizen, for their public inspection. It is recommended that information which is made inherently sensitive by statute be exempted from the court review provisions of S. 2543. Suggested language accomplishing this for three categories of sensitive information recognized by statute (Intelligence Sources and Methods, Communications Intelligence and Restricted Data) is enclosed.

If S. 2543 or similar legislation is favorably considered, it is hoped that you would be able to support appropriate exemption for this Agency as proposed.

Sincerely,

/s/

W. E. Colby  
Director

Enclosure

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AMENDMENT TO S. 2543 (Committee Print, January 29, 1974)

The added language is underlined and would be inserted at line 16, page 3:

"(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall consider the case de novo, with, except for matters withheld under section 552(b)(3), involving, but not limited to, Restricted Data, intelligence sources and methods, and communication intelligence under sections 2162 of Title 42, 403(d)(3) and 403g of Title 50, 798 of Title 18 and 73 Stat. 64, such in camera examination of the requested records as it finds appropriate to determine whether such records or any part thereof may be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

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6. [redacted] Called Tom Korologos, White House staff, to check with him on the status of the inquiry that he and Pat O'Donnell were to make to the Justice Department on the Kennedy amendment to the Freedom of Information Act. Korologos said he knew Justice was doing something on this but he wasn't sure just what. I told him we were proceeding to protect our interests and Korologos offered no objection to this.

I also talked with Korologos about our draft legislation on intelligence sources and methods which is pending in the Office of Management and Budget. I told him I would like to send him a copy of it for his information adding the Director was most anxious to get this legislation cleared out of OMB. Korologos said he would be interested in looking it over.

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7. [redacted] I called Alan Parker, Counsel, Subcommittee on Civil Rights and Constitutional Rights, House Judiciary Committee, concerning the Chairman's 24 April letter to the Director requesting that Agency comments on four criminal justice information programs be expedited. Parker was appreciative of the call, explained that we were not delinquent but that he felt the letter was necessary to send out to a number of agencies who had not been previously canvassed for comments on the legislation in light of Ranking Minority member Charles E. Wiggins' (R., Calif.) concern that the legislation may have an adverse impact. I told Parker we would forward our views as soon as possible subject to OMB clearance which he understood. He said they were hopeful that following the impeachment proceedings the Committee could start the markup of the legislation on the basis of a complete record.

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GEORGE L. CARY  
Legislative Counsel

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cc: [redacted] Ex. Sec.  
DDI DDS&T Mr. Warner  
DDM&S Mr. Thuermer Mr. Lehman

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