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OFFICE OF LEGISLATIVE COUNSEL

Thursday - 1 May 1975

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25X1A



[redacted] and I met with Gary Clary, 25X1A

Legislative Assistant to Senator Strom Thurmond (R., S. C.), regarding three bills (S. 1210, S. 1289, and S. 743); at least two of these bills, S. 1210 and S. 1289 are before the ~~Senate Judiciary~~ Subcommittee on Administrative Practice and Procedure, of which Senator Thurmond is a member. Clary seemed to share our views on these three bills, and pledged the Senator's active support for our position, but with the caveat that there was no way Senator Thurmond could carry the vote in this Subcommittee. He added that prospects were somewhat better in the full committee.

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3. [redacted] and I met with J. C. Argetsinger, aide to Senator Roman L. Hruska (R., Nebr.), regarding S. 1210, S. 1289, and S. 743. Argetsinger seemed quite concerned about the impact of these bills on the Agency as we outlined it for him. He indicated that the ideological line-up of the full ~~Judiciary Committee~~, of which Senator Hruska is a member, was 8-7 against Senator Hruska's viewpoint, but that two members of the majority were flexible and sometimes voted with the ideological minority. He checked on the status of S. 743 and reported that despite the indications we had that the bill was referred to the Subcommittee on Administrative Practice and Procedure, he was positive the bill would be referred to Senator John L. McClellan's (D., Ark.) Subcommittee on Criminal Laws and Procedures. A good rapport was established with Argetsinger and he assured us that he would watch these bills closely.

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IMPDET CL [signature]

MEMORANDUM

SUBJECT: S. 1289 - "Open Communications Act of 1975"

1. S. 1289 would require that employees of executive agencies who are compensated under the Executive Schedule of Title 5 U. S. C. or at grade 15 or above under the General Schedule maintain records of oral or written communications initiated by persons outside the agency. The records would be maintained in categories for full summary and internal disclosure. Records of communications maintained for full and summary disclosure would be kept in public files "located in the public reading room of the agency," to be maintained for a period of five years and to be available for public inspection and copying. In addition, the "prospective and retrospective calendars" of agency officials compensated under the Executive Schedule of Title 5 would be maintained for public inspection in the public reading room.

2. The scope and impact of the bill is clear and certain in one regard: Section 2(d) would require the Director and Deputy Director of the Central Intelligence Agency to maintain their prospective and retrospective calendars for inspection in a public reading room.

3. It appears that the other provisions of S. 1289 are aimed at Federal regulatory agencies and lend themselves to arguments that they do not apply to CIA or its employees. However, the issue cannot be said to be beyond all doubt based solely on the language of the bill itself. The language of Section 2(b)(1) in particular, is ambiguous and elastic enough to warrant clarification.

4. The bill defines "agency official" (those who must maintain records under Section 2(b)(1)) as "those employees of the executive branch who are compensated in grade 15 and above under the General Schedule under section 5332 of title 5 (emphasis added)." Section 5332 establishes the basic pay schedule for positions to which Subchapter III, Chapter 53 of Title 5 applies. Section 5331 provides that "agency" and "employee," for purposes of Subchapter III, have the meanings given them by Section 5102. Section 5102 specifically provides that "agency," for purposes of Chapter 53, does not include the Central Intelligence Agency. Thus, it would seem that this portion of the definition of agency officials who must maintain records of communications would not apply to CIA. However,

"agency official" is further defined to include those compensated under the Executive Schedule. This portion of the bill seems clearly to encompass the Director and Deputy Director of CIA.

5. Section 2(b)(1) requires records to be maintained for summary disclosure "for each oral or written communication initiated by persons outside the agency pertaining to a substantive policy matter before the agency." This section raises the question of whether the CIA ever has before it a "substantive policy matter"--defined as "any important agency action or policy issue as prescribed in regulations promulgated by the agency." It seems the language is intended to cover important actions and policy decisions of Federal regulatory agencies in their enforcement role. This interpretation is supported by the proviso--"except that no such regulation shall apply to agency proceedings as defined in Section 551(12) of this chapter." Federal agency proceedings as thus defined include rule making, adjudication and licensing as set out in 5 U. S. C. § 551(5), (7) and (9). Apparently, the proviso is intended to except agency rule making, adjudication and licensing from the requirement of maintenance of records for summary disclosure although those proceedings can be considered agency actions and deal with policy issues. In any event, CIA does not engage in these kinds of agency proceedings or "agency action" as defined in Section 551(13). However, the term "policy issue" is not defined in the U. S. Code, and is ambiguous enough to require clarification. The phrase "prescribed in regulations promulgated by the agency" may be interpreted in at least two ways. It could mean that agency regulations can henceforth define which "policy issues" should be subject to the disclosure requirements; or it could mean that all important policy issues defined or addressed in agency regulations constitute a "substantive policy matter." If this latter construction holds, it could be argued that CIA has before it, from time to time, "policy issues" defined by agency regulations.

6. In sum, the calendar provision of S. 1289 (Section 2(d)) would clearly apply to the Director and Deputy Director of the Central Intelligence Agency. Moreover, while the other provisions of the bill appear directed at federal regulatory agencies, clarification should be sought in light of the ambiguities pertaining to summary disclosure in section 2(b)(1).

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25X1 24. [ ] Roger Stillwell of Delegate Antonio Borja Won Pat's (Delegate, Guam) office called to request an Agency seal for the Delegate's office. I told him I would look into it for him.

25X1 25. [ ] Called Bill Skidmore at OMB to determine what the Administration's position is on S. 1210, Senator Edward M. Kennedy's (D., Mass.) amendment to the Freedom of Information Act. He put me in touch with Frank Reader who is handling the bill in that office. Mr. Reader and I discussed the bill's impact on the government at large and the Agency in particular. He asked me what I thought the chances of the bill moving were and I told him I thought they were good considering that it was pending before Senator Kennedy's subcommittee. Mr. Reader said that he did not want to act precipitously, but could not envision the Administration supporting such a bill; he offered to keep me in touch if there are any developments at this end.

25X1 26. [ ] Met with Ms. Davidson, in the office of Representative Fred Richmond (D., N. Y.), concerning a letter from the Representative to the Agency's FOI Coordinator complaining that a request of a constituent was taking six months to answer. I clarified for her that the initial letter of the constituent was dated 10 March 1975 and after an interim reply she received a final response on 16 April 1975.

25X1 27. [ ] Left for Pat Yack, in the office of Representative Alan Steelman (R., Texas), a report on the grain situation which was for the Representative and prepared by [ ], OCI. 25X1A

25X1C 28. (Confidential - PLC) Met with J. Sourwine, Chief Counsel, Senate Judiciary Subcommittee on Internal Security, and left with him two short blind memoranda on [ ] 25X1C

25X1C [ ] The latter was also for Duke Short of the Subcommittee staff. I also explained to Sourwine that I would be by in a few days with an advance [ ]

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