

*Review Recommendation team*  
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20 October 1975

MEMORANDUM FOR: Deputy Director for Administration

SUBJECT: Analysis of the 15 October Version of the  
Proposed Executive Order on Foreign  
Intelligence Activities

1. The 15 October version of the proposed Executive order establishing restrictions on foreign intelligence activities includes a new preamble (based on the last section of the previous version of the order), rearranges a number of the provisions of the previous version, deletes the two provisions under which electronic surveillance equipment may be tested in the United States without the consent of the person monitored, deletes other scattered phrases, includes a few new phrases, and replaces the definition for the "United States" with a definition for "United States citizens." The most crucial and far-reaching change may be the inclusion of this definition of a United States citizen, depending on how the definition is interpreted.

2. For ease of comparison, red ink interlineations and marginal notations have been made on the 15 October version (Tab A) to show the changes from the preceding version as forwarded by the Agency to the White House (Tab B).

3. A section-by-section comparison of the 15 October draft with the previous draft follows:

Preamble - New, but incorporates the last section (Section 6) of the previous draft.

Section 1 - Definitions

(a) Deletes the word "processing" from the definition of "collection."

- Deletes definition of United States. (formerly (b))
- (b) Domestic Activities - no change (formerly (c))
  - (c) Foreign Intelligence - no change (formerly (d))
  - (d) United States citizens - new and defined to include "and other persons who have been accorded the legal rights of United States citizens." If "the legal rights" is interpreted as all legal rights, it would be synonymous with U.S. citizens and superfluous. This interpretation would not affect the basic mission of CIA and the resident alien, who may be excluded by the definition, would still enjoy his Constitutional rights which could not be infringed upon with or without the Executive order. If, on the other hand, "the legal rights" means some legal rights, then every person within the sovereign jurisdiction of the United States presumably would be covered, including foreign nationals visiting the United States, assigned to foreign missions in the United States, working in the United States, or touring the United States. Since treaties extend legal rights to both persons and corporations, even they might be covered by the provisions of the Executive order.

This latter interpretation would impact on such provisions of the Executive order as that requiring an agency to disclose its identity when seeking intelligence from "United States citizens," restricting physical surveillance of "United States citizens," limiting the solicitation of foreign intelligence information from "United States citizens" only on a witting and voluntary basis, and so on.

The fact that the Executive order recognizes a category identified as "foreign nationals" in the United States argues against such a broad interpretation but the matter is so critical that I believe clarification is essential.

- (e) Foreign counterintelligence is redefined in more direct, active, and broader terms.

- (f) Subparagraph (f) of the previous version defined "infiltration." (This now has been incorporated in Section II(g).) "Incidental reception," formerly subparagraph (g), becomes subparagraph (f), but it is defined in more abbreviated terms with no change in meaning.
- (g) Definition of "foreign intelligence agency" (formerly paragraph (h)) includes a clarifying phrase relating to a U.S. Government department or agency but with no change in meaning.

Section II

- (a) No change
- (1) No change
- (2) No change
- (i) No substantial change but includes military personnel and eliminates phrase "actual or imminent" as relating to voluntary sources. This version reverts to the language of the earlier version with respect to persons who must be given access to classified information rather than our suggested language of persons who "require" access. This change in language does not appear critical. The deletion of the last phrase of this subparagraph "or otherwise to the extent the head of the Agency deems . . ." also does not appear critical.
- (ii) The focus of the previous version was on information from or about a United States citizen collected abroad or from foreign sources. The focus of this version is on information about a United States citizen "reasonably believed to be involved in (certain specific activities)." This change in focus would seem to have no detrimental impact on the Agency mission.
- (iii) The ramifications of deleting the phrase "from persons who are not United States citizens" and substituting four words requires consideration.
- (iv) The addition of "most" to "departments and agencies" is no real change.

- (v) This new paragraph permits the Agency to continue to receive information from other government agencies but only under guidelines and procedures issued by the Attorney General. If this includes information received, for example, from the Agricultural Department on the domestic grain crop, the requirement to adhere to guidelines and procedures issued by the Attorney General may be too restrictive.
- (3) The rearrangement of the sentence involves no change.
- (b) The physical surveillance provisions are relocated from former paragraph (j). The term surveillance of persons within the United States is replaced by surveillance of United States citizens (again the interpretation of United States citizens is critical); reference to surveillance and coordination with the FBI is deleted and the provisions formerly spelled out in three subparagraphs have been consolidated into two.
- (c) Formerly subparagraph (b). The restriction now applies to "electronic surveillance" rather than "electronic interception of wire or oral communication" and provides that electronic surveillance be conducted "under procedures" approved by the Attorney General. The ramifications of this change need to be considered. Surveillance connotes a planned purposeful activity which would exclude incidental intercepts.
- (d) Testing of electronic surveillance equipment (formerly subparagraph (c)) is much more restrictive since exceptions for testing without the consent of the persons monitored have been deleted, and even though when done in accordance with law, a provision has been added requiring that such testing be "under procedures approved by the Attorney General."
- (e) Formerly paragraph (d). The addition of the phrase "United States mail" appears to make this paragraph less restrictive, but also requires an interpretation of "United States mail."

- (f) Formerly paragraph (i). Access to federal income tax returns. No change.
- (g) Infiltration of organizations of United States citizens (formerly covered in the definitions Section I, and in Section II, paragraph (f)). No change if "United States citizens" does not include foreign nationals.
- (h) Formerly paragraph (g). No change.
- (i) Formerly paragraph (k). No change.

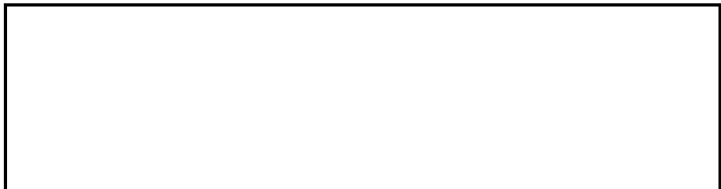
Section III - Formerly paragraph (4), Section II.  
No substantial change.

Section IV

- (a) Formerly paragraph (h), Section II. No change.
- (b) Formerly Section III. No change.

Section V - Formerly Section IV. No change.

Section VI - Formerly Section V. No change.



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