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THE DIRECTOR OF CENTRAL INTELLIGENCE

PRM-11
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Intelligence Community Staff

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28 March 1977

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MEMORANDUM FOR: See Distribution

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FROM :

[Redacted]

Director of Performance Evaluation
and Improvement

SUBJECT : Issues for SCC Subcommittee on PRM-11,
Task 2

1. On 1 April 1977 at 1500 the DCI is scheduled to hold a second meeting of the SCC Subcommittee on PRM-11, Task 2, to discuss key issues expected to emerge from the PRM-11, Task 2 report on the DCI's role. The attached package identifies eight key issues that are likely to merit Presidential attention and, therefore, to reappear in Task 3 of PRM-11, to be chaired by Dr. Brzezinski. Six of these issues are discussed in brief papers aimed at focusing the 1 April meeting.

2. Pursuant to guidance from the first subcommittee meeting, these papers reach forward toward the contending opinions and possible decision options that might be developed in Task 3. This is to stimulate discussion only. It is not intended to display the final content of the Task 2 report, or to prejudge issues to be confronted in Task 3. Seven additional issues judged to be of intra-Community character are also identified, but no issue papers supplied.

3. Given the press of time, any comments, additions, rebuttals, or cries of distress must reach me by close of business 29 March 1977 to be assured of inclusion in the issue papers.

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[Redacted]

Attachment:

Issue Papers for 1 April meeting

[Redacted]

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Issues for Meeting of SCC Subcommittee
on PRM-11, Task 2, 1 April

Front Piece

Among the issues confronted in examining the DCI's role, responsibilities, and authorities, the following eight can be identified at this point as deserving Presidential guidance or decision. All are likely to reappear as issues for attention in Part 3 of PRM-11.

1. The DCI's power and Community structure for managing national intelligence resource allocations
2. Enhancing the relevance and quality of intelligence products
3. The DCI's role in wartime.
4. Intelligence and non-intelligence foreign information gatherers of the government
5. Net assessment and "Blue" information needs
6. DCI responsibilities to Congress [incomplete]
7. Intelligence security [forthcoming]
8. National counterintelligence policy and coordination [forthcoming]

Brief papers on each issue are at Tabs 1 through 8, each presenting:

- Issue
- Discussion
- Possible conclusions of the PRM-11 Task 2 Report
- Possible Decision Options for the President

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The DCI, the intelligence agencies, and the Community as a whole face many other issues, problems, and challenges that must be addressed in PRM-11. By and large, however, these are matters that the DCI and other intelligence authorities should resolve as part of their jobs. Understanding of these issues at the Presidential and NSC levels can be helpful, but decisions or guidance from those levels is unlikely to be required. Among the more important of them are:

- a. Assuring an effective collection guidance and requirements system.
- b. Assuring an effective process for preparing national intelligence estimates.
- c. Creating systems for measuring the performance of intelligence collection and production entities.
- d. Creating mechanisms in the Intelligence Community for accomplishing evaluation, planning, programming, and budgeting (assuming a prior definition of the DCI's role and powers).
- e. Striking the proper balance between current, analytical, and estimative intelligence; and between production, collection, and processing.
- f. Assuring a functioning crisis support mechanism for the Intelligence Community.

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g. Developing Community personnel policies or goals that assure the availability of necessary technical, linguistic, and analytic talent over the long term.

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Issue No. 1

Defining the DCI's responsibilities and powers, and the appropriate Intelligence Community structure for managing, planning, programming, and budgeting national intelligence resources, especially with relation to the responsibilities and authorities of the Secretary of Defense.

Discussion

Since World War II, a complex community of organizations has been created to produce national intelligence. These organizations are lodged in numerous departments of government, most of them in the Defense Department. Since the late 1960s, all Presidents and, increasingly, the Congress have looked to the DCI to lead and to manage this Community. Emphasis on the importance of Community resource management has steadily grown. The President and Congress expect the DCI to assure that resource allocations are optimally balanced across intelligence activities for the best product at the least cost. In the presence of vague or overlapping definitions of "national," "departmental," and "tactical" intelligence, Congress has tended to press on the DCI more responsibility for the latter classes of activities.

Defining and empowering this DCI responsibility has been studied intensely several times in recent years. To date, each round of decisions has resulted in giving the

DCI Community management mechanisms that have been essentially collegial in nature. That is, DCI responsibilities and powers overlapped or conflicted with those of other officers, notably the Secretary of Defense, requiring a negotiating forum to reach decisions. President Ford's Executive Order 11905 created such a forum for resource management matters in the Committee on Foreign Intelligence (CFI), now called the Policy Review Committee (Intelligence).

Several of the elements of the Community are primarily national by charter and mission: CIA, NSA, Special Air Force, and Special Navy. Only CIA is directly subordinate to the DCI. Other elements, such as DIA, other components of the General Defense Intelligence Program, State/INR, and the intelligence elements of Treasury, FBI, and ERDA, exist primarily to serve departmental needs, but secondarily play a vital role in national intelligence collection and production.

Current operations of technical collection entities are coordinated by the DCI through a Community committee structure. Such a clearing-house approach to current tasking is necessitated by the nature of the intelligence process; under any Community structure, a variety of data consumers with varying needs must be served by a variety of collectors.

In the areas of Imagery and SIGINT, these mechanisms for establishing current requirements are formal, relatively

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effective, although beset by the frictions attending any committee process. Users of SIGINT reporting, moreover, frequently complain about the nature and timeliness of NSA reporting on collected data. Because it embraces many information gatherers outside intelligence, the committee for human resource coordination is as yet far less influential.

The question before the house is whether and how well, via present collegial mechanisms, the DCI can accomplish effective resource management in the Community, especially as regards planning and programming for the future.

During the past year the first fully consolidated National Foreign Intelligence Program (NFIP) and budget were developed under the provisions of E.O. 11905. This was a major accomplishment. But it was accompanied by persistent struggle over conflicting authorities and substantive judgments between the DCI and the Department of Defense. Moreover, it was waged largely over new initiatives proposed by program elements or issues imposed from the outside. Much less was accomplished in examining fundamental resource balances among the collection disciplines, intelligence processing, analysis and production, of the sort implied by "zero base budgeting."

The achievements of the past year were attended by growing tension between the two management roles of the DCI: head of the Central Intelligence Agency and leader of the Community. Some argue that he should be divested of the

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former so as to be "neutral" in executing the latter role. Others contend that this alone would only create a weaker DCI, with no executive base, and simply place another, weaker authority between CIA and the President. To be a strong Community leader, the DCI needs, not less authority over his only operating base, but more over other key Community elements.

Possible Conclusions of the PRM-11, Task 2 Report

One may reach the following divergent conclusions on the present Community management mechanism:

Opinion 1:

The present system did not work too badly for the first year. A learning curve will show improvement. Moreover, whatever the cost in bureaucratic struggle, it is essential that the future programs and budgets of the main national intelligence entities be thrashed out in a forum where a diversity of needs and views are authoritatively represented.

Opinion 2:

The present system leaves the DCI with limited power over entities other than CIA to achieve what is expected of him, a fundamental rationalization of resource allocation among the major national intelligence organizations and activities. He does not have the power, except through the PRC(I), to investigate, call up well-supported program

alternatives on, experiment with changes to, and, in the face of divergent views, conclusively resolve disputes on the major national intelligence programs whose integration he is charged to accomplish. In addition, line command of CIA along with collegial leadership of the Community imposes tension on both jobs. The Community suspects the DCI and his Community officers of favoring CIA. CIA fears loss to the Community arena of its senior protagonist and only link to the President. To be a true Community manager, in his own right without reliance on the PRC(I) mechanism, the DCI must have line authority and budget control over at least the "commanding heights" of the Intelligence Community: CIA, NSA, and Special Air Force.

Opinion 3:

Emphasis on the resource management aspect of the DCI's Community role is misplaced. It is based on the assumption that there is substantial fat in the system or that improvement is to be found by trading off resources among programs and activities. The real problem is that national intelligence budgets are too lean overall. Initiatives are being starved and the system is getting over-bureaucratized. The most important part of the DCI's Community resource management role is to sell growth programs to the President and Congress. Further search for efficiencies through resource trade-offs will lead to dangerous shortfalls. Hence, it is folly to predicate Community reorganization on such a search.

Possible Decision Options for the President

The following schematic presents possible options on DCI authority and Community structure that could be developed for Presidential consideration by Task 3 of PRM-11:

1. Status quo of E.O. 11905
2. Amend E.O. 11905 to give the DCI direct access to data from and programming authority over:
 - Variant A: NSA, Special Air Force, possibly Special Navy
 - Variant B: All NFIP elements
3. Separate the DCI from direct operational and substantive responsibility for CIA. Subordinate the head of CIA to the President and the NSC for operational and substantive matters, to the DCI (as Intelligence Community manager) and Chairman, PRC(I) for resource programming and budgeting.
4. Place NSA, Special Air Force, along with CIA, in line subordination to the DCI:
 - retain PRC(I) for coordination of other NFIP elements, influence on DCI management
 - retain NFIB as collegial element for tasking and estimative judgments

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5. Create new National Intelligence Agency (NIA) combining present elements of CIA, NSA, Special Air Force

- retain PRC(I) for coordination of other NFIP elements, influence on DCI management
- retain NFIB as collegial element for tasking and estimative judgments

6. Create broad national intelligence authority along lines of SSCI (Miller) draft bill.

7. Create a separate national intelligence analytical center under NSC, place major national collection programs in variants as follows:

- All national imagery, SIGINT, and clandestine collection under a national foreign intelligence collection authority.
- All such collection under Department of Defense.
- All technical collection in Department of Defense, clandestine service in Department of State, coordinated at NSC level.

Issue No. 2

Enhancing the quality and relevance of intelligence products to consumers through improved producer-consumer relationships and, possibly, institutional separation of analysis and production from collection.

Discussion

Delivering high-quality and relevant finished intelligence to policymakers is the purpose of intelligence. It is the DCI's main responsibility as an agency head and Community leader.

The quality of intelligence products has been criticized increasingly in recent years by congressional committees and selected figures in the Executive branch. Some criticisms cancel each other out (some want more hard data, others more speculative analysis); some reflect the unlimited appetite of consumers for more information.

A frequent criticism is that producing entities are given too little guidance by policymakers as to what their real intelligence needs are, and that producers are too reluctant or lethargic about seeking such guidance.

Community experience shows that formal mechanisms for involving consumers in establishing production priorities and needs run a high risk of non-use. The defunct NSC

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Intelligence Committee met twice and disappeared. The most important consumers tend to be too busy and distracted to articulate their intelligence needs thoughtfully.

Intelligence production entities find that informal means of keeping in touch with consumer needs and views are more productive. Often the best way to determine what the consumer needs is to find out what he is trying to accomplish, i.e., to understand policy goals.

In the past three years, numerous experiments and innovations have sought to improve product quality by, among other things, improving producer-consumer contact. The DCI's NIOs and DIA's DIOs have this responsibility. In some components, middle management and analysts are encouraged to seek out consumer contacts. Other managers find this troublesome and threatening. Defense intelligence has created a Defense Intelligence Board to link producers and consumers in the Pentagon.

Evaluation of intelligence product has been emphasized in the past two years. E.O. 11905 stipulated that the NSC would meet twice annually to consider a report on intelligence product quality submitted by the DCI. The President's Foreign Intelligence Advisory Board (PFIAB) has been active in criticizing intelligence product and promoting experiments, such as competitive analysis, to improve it.

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Intelligence professionals, especially in CIA, harbor strong reservations as to the impact of close producer-consumer relations on product quality. They fear that too close a tie would tend to draw intelligence analysis into the policy process directly and jeopardize the objectivity of intelligence product. Some would cite the experience of intelligence support to SALT negotiations, which created a very close intelligence-policy relationship, as refuting this fear. Others would cite the SALT experience as confirming its validity.

Concern about the quality of intelligence analysis has several possible implications for Community management structure:

- Some argue that analysis and production are starved for resources relative to collection and processing. Modest resource shifts from the latter to the former would, supposedly, yield major benefits. While intuitively persuasive, this cannot as yet be proved to the satisfaction of all authorities involved. In any case, it would take strong central leadership in the Community to accomplish a meaningful shift of this sort.
- Some maintain that major improvements in product quality can only be achieved by breaking intelligence analysis away from organizations

that are dominated by collection and related intelligence activities. A self-standing national intelligence analysis organization is required, in this view, to allow its management to concentrate on analysis, to make persuasive claims for resources, and to maintain academic and foreign contacts that are now inhibited by identification with collection, especially CIA's clandestine service.

- Others would argue that separation of analysis from collection is dangerous and counterproductive. Collection can only be focused efficiently if it is directly responsive to the information requirements of analysts. In turn, analysis must be based on a thorough awareness of source capabilities.

Attention to the quality of intelligence products and the involvement of consumers in establishing production priorities has lately been given new impetus by President Carter's expressed interest.

Possible Conclusions of the PRM-11, Task 2 Report

Full satisfaction of consumer desires for intelligence is not possible because needs are theoretically unlimited and constantly growing in practice. Major improvements require

steady effort at many levels of the Community. No single innovation will be a panacea.

Because there are so many different kinds of consumers with different needs, diversity of intelligence service at the "output end" is required. Although uneven in effectiveness, the Community has such diversity today in several major departmental production entities and one major national production organization -- CIA. They can serve a diversity of consumers and also be brought together for a national judgment on vital issues. The challenge is to make this system work better.

Closer producer-consumer relations are probably desirable. But fears for their impact on objectivity are not baseless. Formal mechanisms are less promising than steady management attention within the Community, and a more thoughtful attitude on the part of consumers.

Possible Decision Options for the President

Task 3 of PRM-11 may present the President with options such as the following on ways to improve intelligence quality:

- Explicit exhortation to consumers and intelligence managers to pursue many paths toward improvement; emphasis on product evaluation

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by Community elements, consumers, and the NSC (as in the NSC Semiannual Review); use of the PFIAB for product evaluations.

- Creation of formal mechanisms, like the NSCIC, to establish production goals and quality criteria.
- Giving added authority to the DCI to manage Community resources, permitting shifts of such resources in favor of analysis and production.
- Separation of analysis from collection and other intelligence activities. (See Option ~~4~~⁷, under Issue No. 1.)

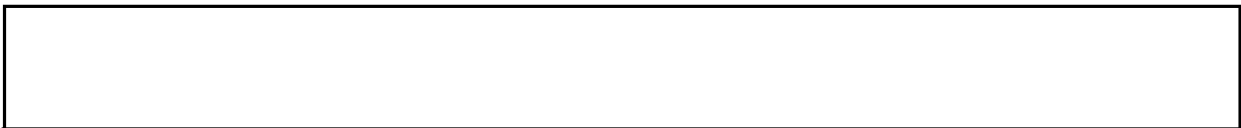
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Issue No. 3


Defining the role and authorities of the DCI in wartime.

Discussion

The role of the DCI in wartime is left exceedingly vague by present law and executive orders. No statute implies that the role of the DCI in war should be substantially different from that in peacetime. Several executive instruments and agreements stipulate that specific assets managed by the DCI in peacetime should come under the Secretary of Defense or military commands in wartime. NPIC becomes subordinate to the Secretary of Defense in wartime under NSCID No. 8.



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25X1  NSCID No. 5 provides that CIA clandestine operations "in or from a theater [of war]" shall, with certain exceptions, come under the theater commander.

It is explicitly assumed by the Department of Defense that national intelligence collection assets in the Department of Defense, notably NSA and the Special Air Force, will be fully and directly responsive to Department of Defense tasking and control during wartime, although in peace they derive their routine requirements and tasking from Community mechanisms presided over by the DCI.

Underlying this problem are two divergent philosophies. The Department of Defense, especially the Joint Chiefs of Staff, tend to believe that no intelligence or reconnaissance asset not directly commanded by defense elements can be expected in wartime to be available to meet defense needs. Since such defense needs are clearly paramount in war, Department of Defense elements have a prima facie case for controlling all or most national intelligence assets in war, according to this view.

Past DCI's have tended to acquiesce at least tacitly to this philosophy, in part to avoid potential conflicts with the Department of Defense over a condition that was generally believed either to be unlikely or not practically relevant to the DCI's peacetime concerns.

Another philosophy holds, however, that the DCI is as much a leader and manager in war as in peacetime. Two de facto wars, Korea and Vietnam, saw more or less orderly adjustment of peacetime arrangements to the conduct of war without major shifts in authority. In a major conflict, short of all-out nuclear exchange, in this view, there would be as much need as in peace for a well-managed national intelligence effort and autonomous channels of intelligence advice to the President and the NSC.

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Lack of clarity in the DCI's wartime role has

- complicated the task of sorting out overlapping interests and responsibilities with respect to "national," "departmental," and "tactical" intelligence in peacetime.
- prevented the DCI from instituting realistic contingency plans for wartime, e.g., with respect to location, communications, collection tasking.
- complicated DCI crisis management planning.

This entire subject tends to produce emotional reactions when directly confronted.

Possible Conclusions of the PRM-11, Task 2 Report

Lack of clarity in the DCI wartime role has produced serious problems along lines discussed above.

Complete acceptance of the Department of Defense philosophy would put the DCI out of business as a Community leader in wartime.

There is a good case that the reasons to have a DCI-led Community in peacetime are equally valid in war. But the Department of Defense would have to be assured that its needs for intelligence at all levels could be adequately met. This is particularly pressing as national intelligence assets, notably space systems, acquire more capability to supply tactical intelligence.

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The Department of Defense's lack of control over national reconnaissance systems in space during war might augur for their acquisition of more specialized wartime reconnaissance capabilities. But the physical vulnerability of space systems in war is likely to be a more compelling motive in this respect.

Possible Decision Options for the President

It is highly likely and certainly would be desirable that Task 3 of PRM-11 clarify the DCI's role in war. Some aspects of this problem will have to be left for further study and detailed planning. Reliance on space assets for tactical reconnaissance will be a major issue in the prospective PRM on national space policy. But the president could constructively decide on the general philosophy to be followed in defining the DCI's wartime role:

- All Community elements located in the Department of Defense today, plus CIA, become fully subordinated to the Secretary of Defense in wartime.
- Some elements, such as NSA, Special Air Force, and clandestine assets in theaters of war come under the direct tasking authority of the Secretary of Defense or his subordinates; the DCI loses his role in defining requirements.
- The DCI commands the Community in war as fully as he commands it in peacetime; what changes is the degree of attention he must pay to military

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Issue #5

Defining the role of intelligence organizations in analysis that combines intelligence data and judgments with data and judgments on U.S. policy, capabilities and operations; *W* e.g., net assessments and crisis situation reporting.

Discussion

U.S. intelligence is continually obliged to analyze international developments in which the United States is itself an influential actor. Such problems arise in analysis of the foreign policy objectives, military goals and capabilities, and perceptions of other countries. Since the foreign view of U.S. behavior and capabilities is frequently not complete and explicit in intelligence sources or may be inaccurate, sound intelligence judgment frequently requires the inclusion of data or judgments about the U.S. If such inclusion is not explicit, it occurs implicitly with the result that conclusions are unpersuasive or appear biased by subjective, but unrevealed assumptions.

Prevailing professional attitudes within intelligence organizations, especially CIA, oblige a considerable distance from U.S. policy matters and a reluctance to pass judgment on them. This is reinforced by the reluctance of some policymakers, notably in the Department of Defense, to see intelligence entities involved directly in policy deliberations. But the

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amalgam of foreign and U.S. perspectives of "Red and Blue" information must occur anyway. For example, any effort to assess the capabilities, present and future, of Soviet military forces must confront the question: Capabilities to do what? The major concern has to be capabilities to wage war against present and future U.S. forces. Similarly, any overall assessment of Soviet objectives in world affairs must include an assessment of the Soviet view of the U.S. Such a view is impossible to insulate from the analysts' own appreciation of the U.S. As in all analytical work, the more explicitly such considerations are treated, the better.

Dilemmas of mixing "Red and Blue" information have been increasingly acute for intelligence in connection with the rising demand for net assessments and other comparative analyses involving the U.S. side. In addition to voicing fears about being drawn into judgments on U.S. policy and capabilities, intelligence organizations have complained that they are not supplied with sufficient information on the U.S. side of most net assessment problems; nor do they have the requisite number of trained analysts, e.g., in military operations research, to meet increased demands for net assessments.

A related problem arises in the area of crisis situation reporting. Following crises in the Middle East and Southeast Asia, President Ford instructed the DCI to consolidate into one authoritative National Intelligence Situation Report (NISR)

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the plethora of crisis "sitreps" that flood the upper reaches of government from the several departments. He further stipulated that such reports should include necessary information on U.S. actions and events. Procedures have been devised that would create a single interagency task force to produce a single NISR. Although not formally promulgated yet, these procedures were tried out during the Korean "Paul Bunyan" contingency with favorable results.

The JCS has been very reluctant, however, to see any operational information on U.S. military actions included in an intelligence publication, both for security reasons and to preserve its ability to advise and report directly to the President. A DCI-JCS-SecDef Memorandum of Understanding has been under consideration at lower levels to compromise on this problem. It would provide for inclusion of JCS operational information in the NISR at JCS discretion and afford the DCI information on JCS options under consideration for his use in NSC or SCC discussions, provided that information does not appear in intelligence publications.

State has been reluctant to participate in NISR Task Forces, largely for reasons of scarce manpower. State has also been reluctant to share its version of "Blue information," sensitive diplomatic cables, with intelligence elements.

Possible Conclusions of the PRM-11, Task 2 Report

A large part of the problem with net assessment is semantic. At one level, net assessment merely comprises a

set of tools to be used for analytic purposes. To the extent those tools illuminate the capabilities, perceptions, and options of a foreign country, intelligence can and must use them, assembling the data and necessary skills to do so. Failure to do so detracts from the quality and relevance of intelligence analysis. Some risk of appearing to pass judgment on U.S. policies and capabilities has to be run.

The more knotty question arises when the principal purpose of a net assessment is explicitly to inform selection among U.S. policy or force capability options. Here, intelligence professionals would prefer to play a secondary, supportive role, fearing that their credibility would be eroded and their competence overtaxed by direct involvement in policy disputes. Some, notably in DoD, approve this reluctant posture. Others, occasionally found in the NSC and Congress, would like to see intelligence more deeply involved in policy net assessments as a counterweight to established policy departments.

With respect to crisis reporting, the main requirement of the Intelligence Community is to design a consolidated crisis management and reporting system for itself. It is then up to higher authority to determine if and to what extent that system should also embrace reporting to the U.S. side of a crisis situation.

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Possible Decision Options for the President

- Accept the somewhat confused status quo on net assessment.
- Create a net assessment element under the NSC.
- Direct the policy departments to augment their net assessment capabilities.
- Direct the DCI to become more involved in net assessments.
- Direct that the amalgam of "Red and Blue" crisis data should occur in the NSC Staff, DoD, or State.
- Direct the DCI to take responsibility for all source crisis reporting.

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Issue #6

Defining the role of the DCI as substantive intelligence advisor and advisor on intelligence operations to Congress.

Discussion

In all probability, neither the amiable discretions of several decades nor the broad but retrospective investigations of the past three years are instructive precedent for the future relations of U.S. intelligence and Congress. The character of those relations is just now evolving and cannot be unilaterally shaped by the Executive Branch. But at the same time, constructive initiative by the President and the DCI at this crucial time seems likely to influence those relations for a considerable period into the future.

The DCI will have basic responsibilities to Congress:

- To defend the NFIP and Budget
- To give testimony on legislation relating to intelligence operations, restrictions, structures, security, etc.
- To inform with respect to sensitive foreign operations
- To provide substantive intelligence relating to U.S. foreign and national security policy.

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Although the last two roles have long antecedents, they may prove to be the most troublesome in light of Congress's determination to exert more influence over intelligence operations specifically and U.S. foreign and defense policy more generally. These roles appear likely to raise important concerns about security and about the respective prerogatives of Congress and the President in the conduct of U.S. foreign affairs.

The nature of these relations will depend, of course, on the number and make-up of Congressional committees with special oversight responsibilities regarding intelligence, security rules established, and other modalities.

But much more crucial will be any basic charter legislation that defines the roles, missions, responsibilities and structures of intelligence entities, including the DCI or other senior national intelligence functionary of the U.S.

The draft bill to establish a National Intelligence Authority (Miller draft) currently under consideration in the SSCI gives an indication of the maximalist conception of DCI responsibilities to Congress some in the Congress hold reasonable. It would in effect make the DCI coequally

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responsible to the President and Congress. Yet it displays little willingness on the part of the Congressional committees to assume responsibility for intelligence operations on which they demand extensive prior information.

Undoubtedly, the future relations of intelligence and Congress will be governed by some combination of new law and evolutionary practice.

Possible Conclusions of the PRM 11, Task 2 Report

Deferred

Possible Decision Options for the President

Deferred

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Issue #7

Enhancing the effectiveness of the DCI in the protection of intelligence sources and methods.

(Forthcoming)

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Issue #8

Establishing national policy and appropriate coordinating mechanisms on U.S. counterintelligence activities.

(Forthcoming)

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MEMORANDUM FOR ~~Mr. John F. Blake~~ ^M
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30 MAR 1977

Attached is a package of material on PRM-11, "Intelligence Structure and Mission." Your comments are welcome.

[redacted] secretary apologizes for getting package to you so late. Also said that comments would be received as late as Noon, 30 March.

Del/29 March

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Advised [redacted] secretary, by phone, that the DDA has "no comment."

HGB/30 March 1977

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Date

Outline PRM 11, Task 2

18 March Revision

The Role of the DCI:

Responsibilities, Authorities and Problems

Purpose

To develop a thorough but brief description and analysis of the role of the DCI, including identification and critique of problem areas.

Scope and Emphasis

The study will consider all DCI roles, but will emphasize a) DCI interaction with other departments, especially DoD and State, and b) issues where DCI responsibilities and powers appear to be out of balance.

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18 March 1977

Outline: PRM 11, Task 2

- I. Introduction
 - A. Historical retrospect
 - B. How management structure affects performance
 - C. The organizational setting: a brief description of the scope of present day intelligence activities
- II. The Statutory Authority of the DCI and Other Government Officials in the Intelligence Arena
 - A. The DCI
 - B. The Secretary of Defense
 - C. The Secretary of State and Director, ACDA
 - D. Others
 - E. Congressional and Executive directives
 - F. De facto roles -- activities not covered by statute
- III. Roles, Responsibilities, and Authorities of the DCI
 - A. The DCI as the President's Foreign Intelligence Advisor
 - 1. Advisor on policy
 - 2. Spokesman on substance
 - 3. Spokesman on operations
 - 4. Spokesman on the NFIP and budget
 - 5. Spokesman to Congress
 - B. The DCI as Producer of National Intelligence
 - 1. What is national intelligence
 - 2. NIEs and the national estimates process
 - 3. Current national intelligence
 - 4. Warning and crisis-related intelligence
 - C. The DCI as Head of the Intelligence Community
 - 1. A large role in flux
 - 2. Community mechanisms
 - a. The NFIB and its subcommittees
 - b. The NIOs
 - c. The Intelligence Community Staff
 - d. The DCI Planning System (Perspectives, DCID 1/2, etc.)
 - e. PRC (CFI)
 - 3. Non-Community mechanisms affecting the DCI
 - a. NSC level (e.g., PRC-PRMs, SCC, NSC reviews, MODE process)

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- b. DoD (e.g., DDI/ASD(I), program-budget process)
- c. State (e.g., foreign service reporting, coordination of overseas actions)
- D. The DCI as Head of the CIA
 - 1. Executive management
 - a. Production
 - b. Collection
 - c. R&D
 - d. Covert action
 - 2. CIA in the Intelligence Community
 - a. Services of common concern
 - b. Dependence on other departments

IV. Management Problems

- A. Problems in Collection, Processing, Analysis and Production
 - 1. Establishing user needs
 - 2. Setting priorities and requirements
 - 3. Tasking and operational controls
 - 4. Producing national intelligence
 - 5. Meeting departmental product needs
 - 6. Net assessment
 - 7. I&W and crisis support
 - 8. The national-tactical relationship
 - 9. The peace-war dichotomy
 - 10. Compartmentation and dissemination
 - 11. Performance evaluation
- B. Problems in Programming and Budgeting
 - 1. Planning and requirements: Do needs or capabilities drive programs?
 - 2. Programming and budgeting: The process of deciding
 - 3. Programming and budgeting: The process of defending to OMB, President, Congress
 - 4. Intelligence-related activities
 - 5. Data, access, and authority

V. Other DCI Roles

- A. As protector of sources and methods
- B. As guarantor of propriety
- C. As counterintelligence participant
- D. As public spokesman
- E. Foreign liaison

VII. Conclusions

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18 March

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1. PRM-11, Task 2, calls for a diagnosis of the DCI's roles, responsibilities, and authorities. A key issue is, therefore, the tension between his role as head of CIA and his role as Community leader.

2. A related, important, but not-so-clearly perceived issue is the tension between unique roles played by CIA as an agency and its role as a Community element. Many outside and some inside the Langley headquarters building see CIA as "just another agency," competing with other NFIP elements for DCI attention and blessing, unfairly in the eyes of some. But the following contrasting statements are clearly true:

a. CIA is the DCI's real executive base (NIO and Intelligence Community Staffs, both comparatively small, are viewed as both "of CIA" and Community).

b. Historically, CIA is supposed to be "central," tying together the performance of other intelligence elements.

c. Through the DCI, CIA is the only intelligence element that reports to the President without going through a policy official.

d. CIA is not an autonomous member of a Community; many of its functions are intimately dependent on other Community elements. CIA:

- gets vital intelligence inputs from others;

- supplies vital information to others;

- spends much time in collegial processes with others, e.g., requirements, NIEs;

- depends on others for cover and other services;

- gets people from other agencies and sends people to other agencies;

- coordinates clandestine operations government-wide;

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- supplies services of common concern;
- runs one element of a major DOD program office.

3. Can other agencies say the same thing about their functions, -- and to the same degree?

4. Is not the multi-hatted role of the DCI reflected in a multiplicity of CIA roles? Does this pose a problem for the DCI and for CIA managers? Is the problem that these multiple roles exist or that, while extant, they are not sufficiently recognized?

5. How should this problem be defined and treated in PRM-11?

PRM-11, Task 2Working Group Discussion

Date: 22 March 1977
Time: 2:00
Place: Room 6E0708 CIA Hqs. Bldg.

DCI and DOD: The National-Tactical Relationships and
Peace-War Issues

1. What de facto definitions currently apply with respect to national versus tactical intelligence:
 - a. Products or kinds of intelligence?
 - b. Users?
 - c. Resources or assets?
2. Is it better to admit we are dealing with an unbroken continuum or must we hammer out some definite distinctions?
3. What are good examples of (a) programmatic, and (b) tasking issues that illustrate current relations between the DCI and DOD on the national-tactical problem?
4. Are there not serious confusions and disagreements within DOD about program and tasking issues in the national-tactical relationship?
5. What basic model of US government decisionmaking would apply in a major war short of an unlimited nuclear exchange? A tight, vertical NCA concept? in which such authorities as Secretary of State and DCI seem to disappear? Or a crisis-management variant of peace-time government in which they would continue to operate? How do these models govern our thinking about peace-war transitions for intelligence?
6. Why have DCI's and CIA given so little attention to war-time functions?
7. How would present national-level, Washington-based intelligence production and collection management systems really work in a major war or deep crisis of more than some days duration?

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22 March 1977

PRM 11, Task 2
Working Group Discussion
24 March 1977 -- 1400 hours
Room 6 E 0708

The Collection Guidance and Requirements Process

1. The collection guidance and requirements process is supposed to do three things:

- focus collection tasking officially
- serve as a basis for performance evaluation
- serve as a basis for programming

How well, in general, is it perceived to work?

2. Is the requirements mechanism responsive specifically to the needs of the Department of Defense?

- Are tactical requirements given adequate consideration in the development of national collection systems?
- Where are the major impediments to the rapid free flow of requirements from the field?

3. Are the collection requirements mechanisms adequately responsive to departments and agencies other than Defense; particularly with respect to non-NFIB agencies such as NRC, ACDA, and Commerce?

4. Do the current DCI collection committee mechanisms impede or facilitate the development of requirements?

- Are they representative of community interests and responsive to the full range of needs?
- Are criticisms of the requirements process fundamental to that activity or traceable to collection limitations?

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SECRET

- Can the requirements system function adequately during crisis or in war-time?
- What are the organizational alternatives to the present system?

25X1A 5. Is the process of assessing satisfaction of requirements (adequacy and cost) effective?

7. Congressional committees have directed much critical questioning toward the requirements process and understand it poorly. Many inside intelligence do not understand it adequately. Why is this so and what might be done to alleviate the problem?

8. Is the Community knowledgeable about and sympathetic toward the efforts of ICS/OPP to build a comprehensive planning system that also embraces the requirements process?

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Next 2 Page(s) In Document Exempt

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CENTRAL INTELLIGENCE AGENCY

Approved For Release 2003/03/05 : CIA-RDP80-00473A000200120010-0

OLC 75-1642/a

Executive Registry
75-3327/A

DD/A 75-4470

Honorable John M. Ashbrook
House of Representatives
Washington, D. C. 20515

19 SEP 1975

Dear Mr. Ashbrook:

This is in reply to your letter of 15 July 1975 inquiring as to whether the recent amendments to the Freedom of Information Act have adversely affected the Agency and what amendments we might propose.

The amended Freedom of Information Act is seriously affecting the operations of this Agency. A number of foreign intelligence services with which we work have expressed serious concern as to whether the Agency can protect their secrets. Sensitive sources fear possible disclosure of their identity. Further, if the demands continue at the current rate, the drain on our manpower will be such that the Agency will find it difficult to effectively carry out certain of its statutory responsibilities to the President and the National Security Council and indeed its responsibilities to the Congress.

Prior to the effective date of the amendments to the Freedom of Information Act, CIA received few requests for documents and records. In 1974, only 193 requests were processed and the large majority of these were submitted under Executive Order 11652, "Classification and Declassification of National Security Information and Material." A staff of five people, who also monitored the Agency's classification system, handled the requests. With the effective date of the amended Freedom of Information Act in February 1975, the attendant publicity, and the strong interest in CIA which developed at about the same time, the receipt of requests for documents and records changed drastically. To date, the Agency has received about 6,500 requests. The number of man-hours presently devoted to Freedom of Information requests are equivalent to 100 full-time employees. This figure has been steadily increasing. Regardless, we are making every effort to be responsive within a reasonable time frame, but we simply cannot meet the ten-day deadline to respond to requests as required under the amended Act.



The large majority of requests received are for any information maintained on the requester. A substantial number involve requests for substantive information and a significant number of these have involved omnibus demands for records requiring a heavy commitment of manpower. Section 552(a)(3) was amended to require an agency to promptly submit records which a requester "reasonably describes." The exact title and description of the document are not necessary. Requests for documents are now being received under a broad identifiable subject. For example, one request is for "all files of" at least 25 or 30 specific items. The estimate to process this request involves a search of over 14,000 linear feet of files requiring the full-time services of over 100 professionals and several months of work. Another seeks records of "all expenditures" of CIA since its inception.

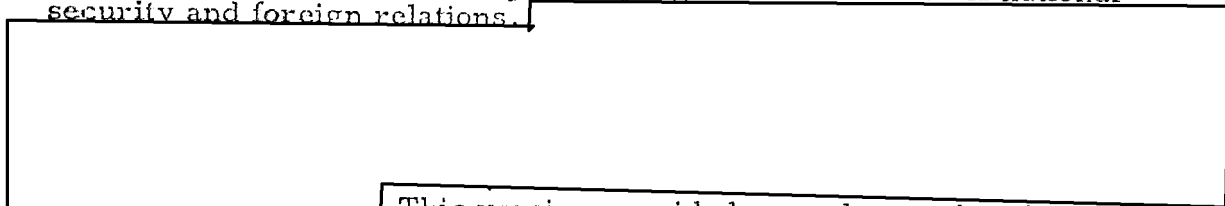
It should be emphasized, that the above statistics do not take into account one of the most significant aspects--the time devoted by the senior executives of the Agency. Decision-making in these matters is maintained at a high level to insure that these important decisions receive the attention that both the Agency's responsibilities and the requirements that the law demands. Appeals of initial Agency determinations are handled by the Deputy Directors. The number of appeals have been steadily increasing (now over 170 cases) and the time required of the Deputy Directors for attention to these matters has also increased. Further, a decided factor in the review time expended is the requirement to release "reasonably segregable portions" of a document. Because of this provision, the review process is greatly aggravated in that a document must be examined in its entirety and withhold and release decisions made as to each reasonably segregable portion. The demands upon the Deputy Directors are diverting them from priority matters of Agency management and substantive intelligence. This drain on management is being felt throughout the organization. Yet the amended Act in no way acknowledges this drain and specifically does not authorize agencies to charge any fees for review time expended.

The search and review of intelligence documents involves more time and effort than nonintelligence documents. Releasability of an intelligence document cannot be determined by a review of the document alone. There is the added factor of protecting the intelligence sources and methodology involved. The reviewer must initiate a search and examine all source material to assure that all intelligence sources and methods involved which require protection are not compromised. This additional review is most critical and must be done carefully. Unfortunately, critical decisions as to withholding or releasing documents and information must be made under pressing deadlines.

The amended Act establishes a ten-day period during which agencies must respond to a request. Under the law, the requester may consider failure to respond in the ten-day period as a formal denial and may sue forthright. This threat of litigation is being faced in a large number of requests. Presently, there are twenty-three cases in litigation. This has caused a large drain on the Office of General Counsel requiring the addition of more lawyers. About a fourth of that office is devoted to Freedom of Information cases and even this effort is inadequate.

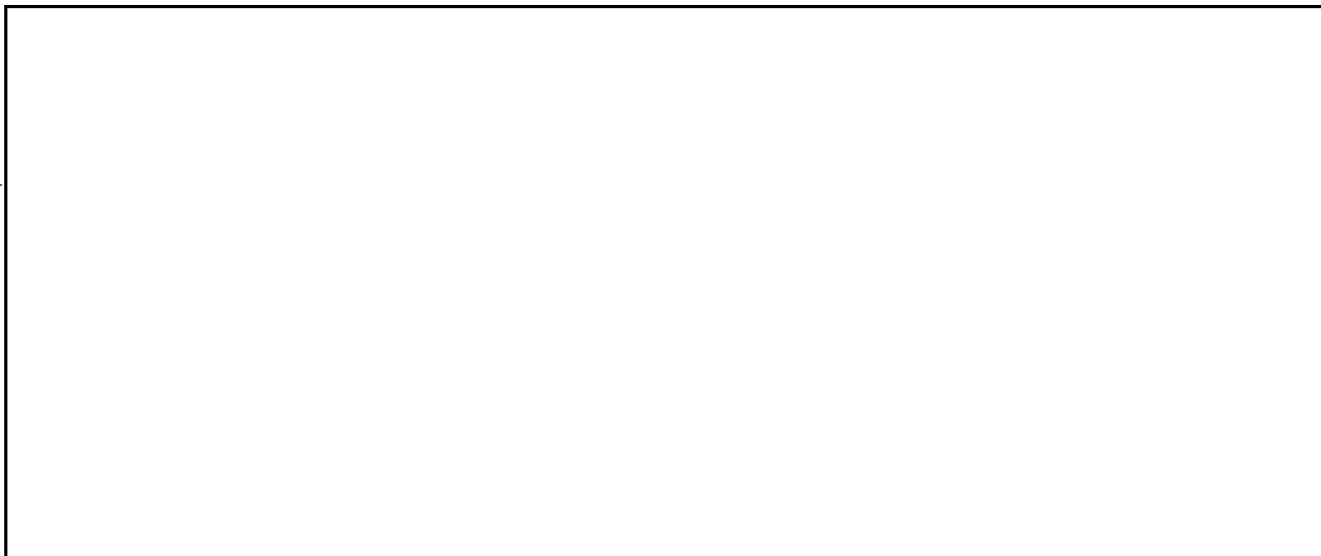
The court review procedures in the amended Act seriously jeopardize the protection of sensitive intelligence. The amended Act overrides the 1973 decision of the Supreme Court in the Mink Case by authorizing the courts to make their own determinations that the information at issue is or is not national security information and whether disclosure would be damaging to the national security. The decision of the court, therefore, is the final determinant as to the public releasability of sensitive information. Yet, there is a line of cases, e.g., C & S Airlines v. Waterman Corporation 333 U.S. 103 (1948), in which the courts have acknowledged their inability and lack of expertise to make proper judgments in the area of national security and foreign relations.

OGC
FOIAB5



This version provided procedures whereby the court must take cognizance of an affidavit of an agency head in its review of national defense or foreign policy information and cannot overrule an agency head decision unless it is found to be without a reasonable basis.

OGC
FOIAB5



The optimum remedial legislation for the Agency would, of course, be a total exemption. It is recognized, however, that under the present climate such action would be most difficult to achieve. I would urge, therefore, legislative action along these general lines:

a. Establish statutory court review procedures paralleling the concepts set forth in S. 2543, described above, whereby a court in its review would be required to give sufficient weight of evidence to an affidavit submitted by the head of an agency attesting that the documents should be withheld under the criteria established by Executive order or statute to be kept secret in the interest of national security or foreign policy under exemptions (b)(1) and (b)(3) of the Freedom of Information Act, as amended. The court would be required to sustain such withholding unless following its in camera examination, it finds the withholding is without a reasonable basis under such criteria.

b. Amend the requirement to respond in ten days to reasonably reflect the number of man-hours involved. An amendment establishing a criteria of reasonableness would accommodate the widespread variance in requests and would recognize those circumstances where due to the overwhelming volume of requests received, agencies cannot meet the short deadline despite their conscious efforts to do so.

c. The Congress assess the expenditures of manpower and money and the effect on the Agency's ability to carry out certain of its statutory responsibilities and its responsibilities to the Congress. The Congress consider either limiting the scope of requests or establishing a criteria to assure that broad demands are clearly in the public interest. In this regard, the position of the Agency be given due weight to offset the present situation whereby all of the equities are in favor of the requester.

We would be pleased to discuss this matter with you or a member of your staff should you so desire. Your personal interest is most appreciated and it is our hope that your concern is sufficiently shared so that some remedial action can be taken.

Sincerely,

W. E. Colby

W. E. Colby
Director

Distribution:

Orig. - Addressee
1 - DCI
1 - DDCI
1 - ER
1 - DDA
1 - C/IRS 1 - OGC
1 - OLC/Subj. w/basic

4

ER

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Office of Legislative Counsel	EXTENSION	NO. DD/A <u>95-4026</u>
		DATE 25 August 1975

STATINTL

TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		

STATINTL

STAT

TO: (Officer designation, room number, and building)	RECEIVED	FORWARDED	OFFICER'S INITIALS
1. DDA [Redacted]	27 AUG 1975		[Redacted]
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4. <i>File</i>			
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For your concurrence prior to your submitting to the Director for approval and signature, is a proposed reply to Representative Ashbrook inquiring as to our implementation of the recent amendments to the Freedom of Information Act, and any suggestions we may have for any further amendments.

STATINTL

STATINTL

This was coordinated with [Redacted] OGC, [Redacted] IRS. If you feel that review by the DD's is necessary, we will prepare required copies for their consideration which should be this week.

STATINTL

A copy of the attached was sent to OMB today at their request, for a preliminary review and clearance prior to forwarding to Representative Ashbrook.

[Redacted Signature]

Assistant Legislative Counsel

Attachment

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Honorable John M. Ashbrook
House of Representatives
Washington, D. C. 20515

Dear Mr. Ashbrook:

This is in reply to your letter of 15 July 1975 inquiring as to whether the recent amendments to the Freedom of Information Act have adversely affected the Agency and what amendments we might propose.

The amended Freedom of Information Act is seriously affecting the operations of this Agency. A number of foreign intelligence services with which we work have expressed serious concern as to whether the Agency can protect their secrets, sensitive sources fear possible disclosure of their identity. Further, if the demands continue at the current rate, the drain on our manpower will be such that the Agency will find it difficult to effectively carry out certain of its statutory responsibilities to the President and the National Security Council and indeed its responsibilities to the Congress.

Prior to the effective date of the amendments to the Freedom of Information Act, CIA received few requests for documents and records. In 1974, only 193 requests were processed and the large majority of these were submitted under Executive Order 11652, "Classification and Declassification of National Security Information and Material." A staff of five people, who also monitored the Agency's classification system, handled the requests. With the effective date of the amended Freedom of Information Act in February 1975, the attendant publicity, and the strong interest in CIA which developed at about the same time, the receipt of requests for documents and records changed drastically. To date, the Agency has received about 6,000 requests. The number of man-hours reported as being devoted to Freedom of Information requests are equivalent presently to 100 full-time employees. This figure has been steadily increasing.



Regardless, we are making every effort to be responsive within a reasonable time frame, but we simply cannot meet the ten-day deadline to respond to requests as required under the amended Act.

The large majority of requests received are for any information maintained on the requester. A substantial number involve requests for substantive information and a significant number of these have involved omnibus demands for records requiring a heavy commitment of manpower. Section 552(a)(3) was amended to require an agency to promptly submit records which a requester "reasonably describes." The exact title and description of the document are not necessary. Requests for documents are now being received under a broad identifiable subject. For example, one request is for "all files of" at least 25 or 30 specific items. The estimate to process this request involves a search of over 14,000 linear feet of files requiring the full-time services of over 100 professionals and several months of work. Another seeks records of "all expenditures" of CIA since its inception.

It should be emphasized, that the above statistics do not take into account one of the most significant aspects--the time devoted by the senior executives of the Agency. Decision-making in these matters is maintained at a high level to insure that these important decisions receive the attention that both the Agency's responsibilities and the requirements that the law demands. Appeals of initial Agency determinations are handled by the Deputy Directors. The number of appeals have been steadily increasing (now over 160 cases) and the time required of the Deputy Directors for attention to these matters has also increased. Further, a decided factor in the review time expended is the requirement to release "reasonably segregable portions" of a document. Because of this provision, the review process is greatly aggravated in that a document must be examined in its entirety and withhold and release decisions made as to each reasonably segregable portion. The demands upon the Deputy Directors are diverting them from priority matters of Agency management and substantive intelligence. This drain on management is being felt throughout the organization. Yet the amended Act in no way acknowledges this drain and specifically does not authorize agencies to charge any fees for review time expended.

The search and review of intelligence documents involves more time and effort than nonintelligence documents. Releasability of an intelligence document cannot be determined by a review of the document alone. There is the added factor of protecting the intelligence sources and methodology involved. The reviewer must initiate a search and examine all source material to assure that all intelligence sources and methods involved which require protection are not compromised. This additional review is most critical and must be done carefully. Unfortunately, critical decisions as to withholding or releasing documents and information must be made under pressing deadlines.

The amended Act establishes a ten-day period during which agencies must respond to a request. Under the law, the requester may consider failure to respond in the ten-day period as a formal denial and may sue forthright. This threat of litigation is being faced in a large number of requests. Presently, there are twenty-one cases in litigation. This has caused a large drain on the Office of General Counsel requiring the addition of more lawyers. About a fourth of that office is devoted to Freedom of Information cases and more is needed.

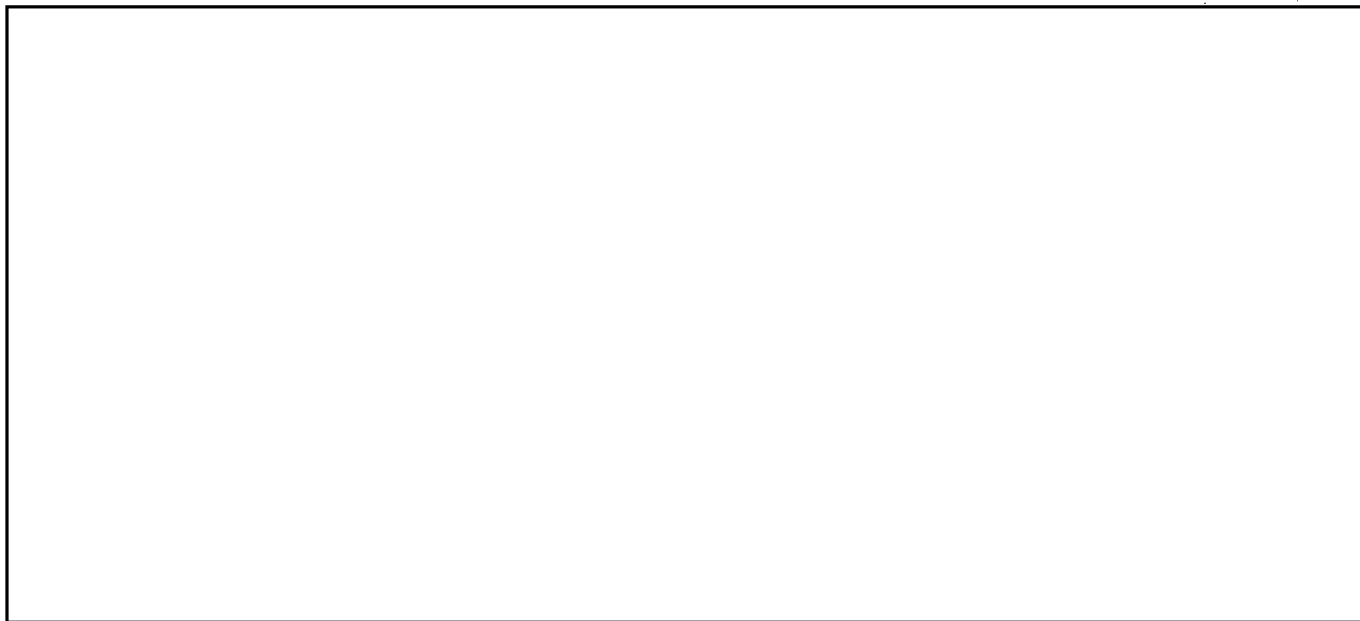
The court review procedures in the amended Act seriously jeopardize the protection of sensitive intelligence. The amended Act overrides the 1973 decision of the Supreme Court in the Mink Case by authorizing the courts to make their own determinations that the information at issue is or is not national security information and whether disclosure would be damaging to the national security. The decision of the court, therefore, is the final determinant as to the public releasability of sensitive information. Yet, there is a line of cases, e. g., C&S Airlines v. Waterman Corporation 333 U.S. 103 (1948), in which the courts have acknowledged their inability and lack of expertise to make proper judgments in the area of national security and foreign relations.

[REDACTED]

[REDACTED]. This version provided procedures whereby the court must take cognizance of an affidavit of an agency head in its review of national defense or foreign policy information and cannot overrule an agency head decision unless it is found to be without a reasonable basis.

OGC

FOIAB5



The optimum remedial legislation for the Agency would, of course, be a total exemption. It is recognized, however, that under the present climate such action would be most difficult to achieve. I would urge, therefore, the following remedial legislation:

a. Establish statutory court review procedures paralleling the concepts set forth in S. 2543, described above, whereby a court in its review would be required to take judicial notice of an affidavit submitted by the head of an agency attesting to the sensitivity of the information involved. A proposed amendment accomplishing this is enclosed.

b. Extend the ten-day period during which an agency must respond to more reasonably reflect the number of man-hours involved. A sixty-day period would not seem unreasonable or perhaps a temporary moratorium by the Congress is necessary.

c. Establish a clearly stated criteria of reasonableness upon requests for documents to preclude omnibus demands such as "all files" on particular subjects.

We would be pleased to discuss this matter with you or a member of your staff should you so desire. Your personal interest is most appreciated and it is our hope that your concern is sufficiently shared so that some remedial action can be taken.

Sincerely,

W. E. Colby
Director

Enclosure

PROPOSED AMENDMENT
FREEDOM OF INFORMATION ACT
(Section 552 Title 5)

Add as a new section 552 (a)(4)(C). Reletter existing paragraphs 552 (a)(4)(C) through (G) as 552 (a)(4)(D) through (H) respectively.

"(C) In determining whether a document is in fact specifically required by an Executive order or statute to be kept secret in the interest of national security or foreign policy, a court may review the contested document in camera if it is unable to resolve the matter on the basis of affidavits and other information submitted by the parties. In conjunction with its in camera examination, the court may consider further argument, or an ex parte showing by the Government, in explanation of the withholding. If there has been filed in the record an affidavit by the head of the agency certifying that he has personally examined the documents withheld and has determined after such examination that they should be withheld under the criteria established by statute or Executive order to be kept secret in the interest of national security a foreign policy under subsections (b)(1) and (b)(3) of this section, the court shall sustain such withholding unless, following its in camera examination, it finds the withholding is without a reasonable basis under such criteria."

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 INTERNAL USE ONLY
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Approved For Release 2003/03/05 : CIA-RDP80-00473A000200120010-0

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Office of Legislative Counsel

EXTENSION NO.

DATE 12 August 1975

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED FORWARDED

1.

8/14

For your comments and concurrence. Please respond soonest.

2.

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File

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OLC

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15.

Assistant Legislative Counsel

OLC notified of concurrence 8/14

DRAFT: PLC:cmw (typed 12 August 1975)

Honorable John M. Ashbrook
House of Representatives
Washington, D. C. 20515

Dear Mr. Ashbrook:

This is in reply to your letter of 15 July 1975 inquiring as to whether the recent amendments to the Freedom of Information Act have adversely affected the Agency and what amendments we might propose.

The amended Freedom of Information Act is seriously affecting the operations of this Agency. If the demands continue at the current rate, the drain on our manpower will be such that the Agency will not be able to effectively carry out its statutory responsibilities to the President and the National Security Council and indeed to the Congress. Equally important is the effect on our intelligence sources and cooperating individuals. A number of foreign intelligence services with which we work have expressed serious concern that the Agency can protect their secrets. Sensitive sources fear possible disclosure of their identity.

Prior to the effective date of the amendments to the Freedom of Information Act, CIA received few requests for documents and records. In 1974, only 193 requests were processed and the large majority of these were submitted under Executive Order 11652, "Classification and Declassification of National Security Information and Material." A staff of five people, who also monitored the Agency's response to these requests, handled

the requests. With the effective date of the amended Freedom of Information Act in February 1975, the attendant publicity, and the strong interest in CIA which developed at about the same time, the receipt of requests for documents and records changed drastically. We cannot meet the ten-day deadline required under the amended Act.

To date, the Agency has received about 5,000 requests. Most requests are for any files maintained on the requester. A substantial number involve requests for substantive information and a significant number of these have involved omnibus demands for records requiring a heavy commitment of manpower. The estimate to process one request involves a search of over 14,000 linear feet of files at a cost of over a million dollars. The number of man-hours reported as being devoted to Freedom of Information requests are equivalent presently to 100 full-time employees. This figure has been steadily increasing. Regardless, we are making every effort to be responsive within a reasonable time frame.

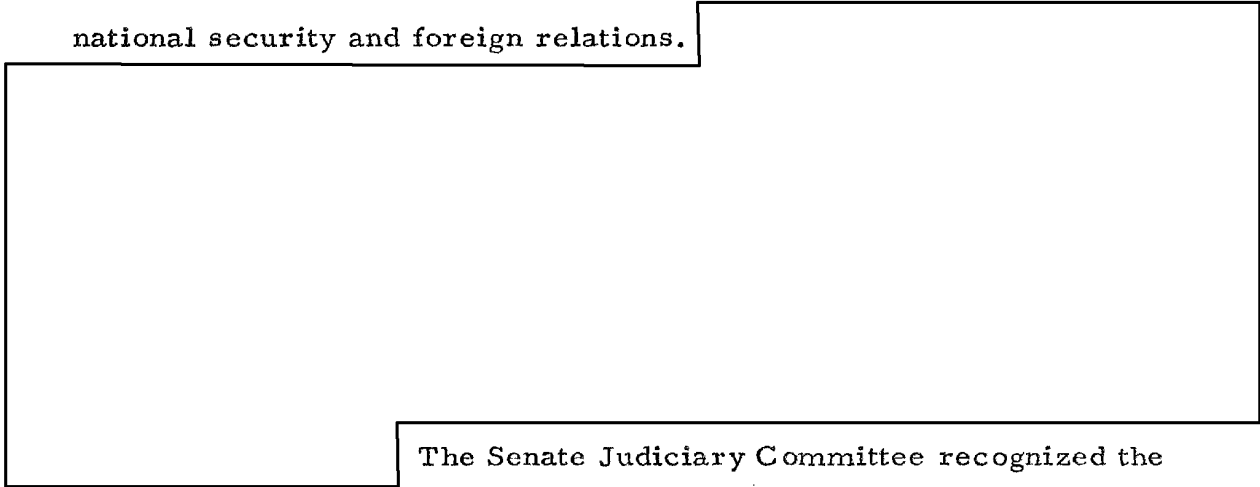
It should be emphasized, however, that these statistics do not take into account one of the most significant aspects--the time devoted by the senior executives of the Agency. Decision-making in these matters is maintained at a high level to insure that these important decisions receive the attention that both the Agency's responsibilities and the requirements that the law demands. Appeals of initial Agency determinations

are handled by the Deputy Directors. The number of appeals have been steadily increasing (now approaching 150 cases) and the time required of the Deputy Directors for attention to these matters has also increased. The demands upon the Deputy Directors are diverting them from priority matters of Agency management and substantive intelligence. This drain on management is being felt throughout the organization. Yet the amended Act in no way acknowledges this drain and specifically does not authorize agencies to charge any fees for review time expended.

The review of intelligence documents involves more time and effort than is realized by those not familiar with the intelligence process. Releasability of an intelligence document cannot be determined by a review of the document alone. There is the added fact of protecting the intelligence sources and methodology involved. The reviewer must examine all source documents to assure that all intelligence sources and methods involved which require protection are not compromised. This additional review is most critical and must be done carefully.

The amended Act establishes a ten-day period during which agencies must respond to a request. Under the law, the requester may consider failure to respond in the ten-day period as a formal denial and may sue forthright. This threat of litigation is being faced in a large number of requests. Presently, there are ¹⁶ ~~fifteen~~ cases in litigation.

The court review procedures in the amended Act seriously jeopardize the protection of sensitive intelligence. The amended Act overrides the decision of the Supreme Court in the Mink Case in 1973 by authorizing the courts to make their own determinations that the information at issue is or is not national security information and whether disclosure would be damaging to the national security. The judgment of the court is, therefore, the final determinant as to the public releasability of sensitive information. Yet there is a line of cases in which the courts have acknowledged their inability and lack of expertise in the area of national security and foreign relations.



OGC

FOIAB5

The Senate Judiciary Committee recognized the concern of security agencies when it reported out S. 2543, the Senate version of the Freedom of Information Act amendments, of 16 May 1974. This version provided procedures whereby the court must take cognizance of an affidavit of an agency head in its review of national defense or foreign policy information and cannot overrule an agency head decision unless it is found to be without a reasonable basis.



OGC

FOIAB5

The optimum remedial legislation for the Agency would, of course, be a total exemption. It is recognized, however, that under the present climate such action would be most difficult to achieve. I would urge, therefore, the following remedial legislation:

- a. Establish statutory procedures as set forth in S. 2543, described above, whereby a court in its review would be required to take judicial notice of an affidavit submitted by the head of an agency attesting to the

sensitivity of the information involved. A copy is enclosed.

b. Extending the ten-day period during which an agency must respond to more reasonably reflect the number of man-hours involved. A ninety-day period would not seem unreasonable.

I would be pleased to have Mr. George L. Cary, my Legislative Counsel, discuss this matter personally with you should you so desire.

Your personal interest in the problems faced by the Agency under this amended law is most appreciated. I would hope that this concern is shared by other Members of the Congress and that the seriousness of the situation will be recognized and prompt remedial action taken.

Sincerely,

W. E. Colby
Director

Enclosure

STATINTL

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Approved For Release 2003/03/05 : CIA-RDP80-00473A000200120010-0

29 July 1975

MEMORANDUM FOR: Legislative Counsel

ATTENTION :

SUBJECT : FOIA Impact

1. Attached is a draft of a paper which I have prepared for possible use in response to Congressman Ashbrook's request and for other uses as may be appropriate.

2. Since the paper has been prepared for multiple uses, it may not be appropriate in its present form for the specific reply to Congressman Ashbrook. However, I find that it is not possible to reflect accurately the impact of FOIA on the Agency by simply using a statistical approach. Looked at from the point of view of an outsider, 5,000 requests and the devotion of 100 people to responding may not seem unduly out of line. However, when you combine these figures with a description of the impact of FOIA on senior management and on our efforts to fulfill our responsibilities for the protection of true secrets, I believe the picture comes into focus.

Assistant to the DDA

cc: DDA
OGC
C/IRS

AI/DDA: ydc (29 July 1975)

Distribution:

- Original - Addressee w/Att.
- ✓ - DDA w/Att.
- 1 - OGC w/Att.
- 1 - C/IRS w/Att.
- 1 - HGB Chrono w/o Att.

Approved For Release 2003/03/05 : CIA-RDP80-00473A000200120010-0

The FOIA and CIA1. The Statistical Picture

a. Prior to the effective date of the 1974 amendments to the Freedom of Information Act, CIA received few requests for documents and records. For example, in CY 1974 only 193 requests were processed and, by far, the majority of these were levied under the provisions of Executive Order 11652 and did not involve the extreme deadlines imposed by the amended FOIA. A small branch existed in the Office of the Deputy Director for Administration to process these requests for records and most of the material requested was released either in full or in part. The manpower commitment involved in handling these requests was small with but five full-time employees assigned to handle requests for documents and information in addition to monitoring the Agency's classification system and programs. Individual cases were routed to specific components of the Agency which had the requested documents in their possession, and with the small volume of requests the burden on these components was nominal.

b. With the effective date of the amended Freedom of Information Act in February 1975 and with the abnormal

publicity and interest in CIA which has developed since December 1975, the statistical picture has changed dramatically. The Agency has received approximately 5,000 FOIA and Executive Order requests since the first of the year. While many of these have had to be returned to the requester for additional identifying data, approximately 4,000 have been put into process to date. The majority of the requests are for files maintained on the requester, a relative, or an organization with which he is affiliated. The high volume of such requests appears to have been generated by the publicity given the Agency in recent months and in a great number of cases by the extensive mailing campaigns supported by several organizations as well as public exhortations by certain prominent figures. Approximately 350 of the requests put in process have dealt with information of a more substantive nature, and a significant number of this latter category of requests has involved omnibus demands for records requiring a heavy commitment of manpower.

2. Agency Preparation and Organization

a. While the Agency did not entirely anticipate the volume of requests with which we are now faced, it did realize early on that the amendments to the FOIA would substantially increase the requests being made to the Agency for documents and records. Starting in November 1974,

extensive and concentrated efforts were undertaken to prepare the Agency for the February effective date of the amendments. Both internal and public regulations and procedures were written, a centralized staff was established to receive and process requests, an appeal mechanism was established, and FOIA officers were designated and trained in all Agency components. In certain Agency components where it could be anticipated that the workload from FOIA would be unusually heavy, personnel were diverted from their normal assignments to handle these matters as they arose. A series of briefings was conducted at all levels and components of the Agency and the subject of the FOIA was interjected into appropriate Agency training courses.

b. Notwithstanding these preparations, the ever-increasing volume of requests has steadily exceeded the Agency's ability to respond within the strict deadlines imposed by the Act while at the same time conducting a thorough, professional search and review of the material involved. The decentralized nature of Agency records systems and the compartmentation which is normal to intelligence operations necessitate the sending of most requests to a variety of offices for search, review and decision making. Additionally, the sophisticated system of indexing and cross-indexing employed in Agency records

systems usually requires extensive leg work to insure that no meaningful documents pertaining to a request are overlooked. The combination of the high volume of requests and the work involved has resulted in a situation where the 10-working-day initial request period can usually accommodate only those requests where the Agency has no record material.

3. The Burden

a. The current burden resulting from the FOIA workload is felt to some extent throughout the Agency and in a truly hardship degree in certain critical components. Given the nature of the majority of the requests being received, the heaviest responsibility for the search and review of records falls on the Office of Security and the Directorate of Operations. In both of these Agency components it has been necessary to divert substantial numbers of personnel from their primary assignments to assist in the processing of FOIA requests. The Office of Security has even assigned field personnel to the Washington headquarters in a temporary duty status to perform FOIA work; such diversion, while absolutely necessary, nonetheless slows the accomplishment of field investigative work. Both the Directorate of Operations and the Office of Security have been obligated to establish FOIA staffs to coordinate the work being done on the high number of cases for which they are responsible.

b. Speaking to the Agency as a whole, our manpower commitment to FOIA is such that the manhours reported as being devoted to FOIA are the equivalent to 100 full-time employees. It should be emphasized, however, that these statistics do not take into account that personnel commitment which must be considered as one of the most significant aspects of the FOIA burden -- the time devoted to FOIA and related matters by the senior executives of the Agency. Given the administrative arrangements established by the Agency, the decision-making level in FOIA matters is maintained at a high level to insure that these important decisions receive the attention that both the Agency's responsibilities and the requirements of the law demand. In the initial request phase, such decisions are the responsibility of the office directors. Upon appeal, decisions are elevated to the level of the six Deputy Directors of the Agency. Since the number of appeals submitted to the Agency has been steadily increasing and is now approaching 150 cases, the time required of the Deputy Directors for attention to these matters has also increased. They meet weekly as the Information Review Committee to handle such appeals and are additionally required to spend time individually both in preparation for the meetings and in dealing with particular cases. Since by the very nature of their assignments these

are officers with no spare time, the requirements imposed by FOIA are diverting them from priority matters of Agency management and substantive intelligence.

c. The above speaks to the initial request and appeal phases of FOIA in the Agency. We are now entering the third phase in that 14 suits have been filed in Federal court as the result of appeal denials. Each of these suits will require extensive preparation on the parts of both the Agency's legal personnel and other individuals involved in the FOIA process. Here, again, we anticipate that the most significant burden will be at the very senior level. Our past experience in litigation indicates that it is normal for senior Agency officials involved in the matter being litigated to have to prepare affidavits and depositions as well as having to possibly appear as witnesses in particular instances. Even more so than in the earlier phases of FOIA, we anticipate that the requirements in the litigation phase will seriously jeopardize our ability to conduct the basic mission of the Agency.

d. In addition to the burden FOIA presents as regards time and manpower, there is the added stress it places on our efforts to protect information warranting protection. While the FOIA provides exemptions designed to protect certain categories of information, we have little doubt but that some information that should be kept secret

will be made public. We are faced with a situation at present where the sheer volume of requests being processed is resulting in errors, oversights, and hasty decisions. Even setting aside the effects of haste and errors, we believe that the cumulative effect of the disclosures being made is erosive of our overall security. Lastly, in the area of security, it can be anticipated that in particular instances we will be compelled in the courts to release information which should be protected but which may not meet the technical requirements of the exemptions provided by the law.

4. Recommended Relief

a. While the Agency continues to make adaptations in organization, systems and personnel commitments in order to better cope with the requirements of FOIA, it becomes increasingly clear that the requirements of the law as it is now written place burdens on CIA which interfere with the organization's ability to conduct its basic mission. Secrecy is an absolutely unavoidable aspect of intelligence activities of this Nation's intelligence services and in relationship to those vital liaison relationships conducted on the basis of mutual confidentiality with friendly foreign governments. Continued erosion of the Agency's ability to maintain proper secrets because of the requirements of FOIA

and other "sunshine in government" legislation and practices will eventually render the Agency impotent. Debate is now occurring on the basic question of the nature of Government intelligence activities in an open society such as ours. However, most reasonable persons engaged in this debate agree that our Government must conduct secret intelligence activities and that properly secret information must be protected. The thrust and spirit of FOIA is such that it runs contrary to this concept.

b. The need for secrecy notwithstanding, the public does have legitimate needs for certain types of information either now possessed by the Agency or which will be generated by it in the future. For example, historians, journalists and the like must have available to them a system for obtaining information pertaining to Agency activities and the intelligence it produces where the need for protection of such information no longer exists. Likewise, the general public must be in a position to insure that its government and individual components thereof are not abusing their powers and infringing upon the rights of individual citizens. We contend that systems which will satisfy these basic requirements either exist now or will in the immediate future. The provisions of Executive Order 11652 do, indeed, provide a system whereby historians, journalists and others may

request the declassification and release of material where appropriate. In a like manner, the Privacy Act of 1974 when it becomes effective in September of this year will give citizens a means of determining the nature and use of records maintained on individual citizens. By relying on these two systems, the legitimate needs of the public can be met without bringing to bear the more punitive aspects involved in the FOIA.

c. There is no indication in the history of the FOIA that it was drafted with any intent that it should provide a mechanism for prying legitimate secrets out of the hands of intelligence agencies. That it is doing so to some degree is the result only of the fact that intelligence agencies are being treated in a manner identical with that of more public Government entities. We do not believe that this sameness of treatment should be continued.

d. We are faced with the need to continue secret intelligence activities and to establish such controls and oversight mechanisms as our necessary to insure that these activities are carried out within the strict bounds imposed by the nature of our society. When such controls and oversights have been established and when the charter for activities is clarified, we must then accept the fact of the absolute need for secrecy and confidentiality, and we must

make exceptions to general rules to permit our intelligence activities to move forward in an effective and secure manner. In such an atmosphere of review and control, the balance between the public's right to know and the Government's right to withhold must be reestablished. We would recommend that as part of this re-balancing effort serious consideration be given to exempting CIA and other intelligence organizations from the requirements of the FOIA.

EXECUTIVE SECRETARIAT
Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
	1	DCI			
	2	DDCI			
	3	S/MC			
	4	DDS&T			
	5	DDI			
	6	DDA			
	7	DDO			
	8	D/DCI/IC			
	9	D/DCI/NIO			
	10	GC			
	11	LC			
	12	IG			
	13	Compt			
	14	D/Pers			
	15	D/S			
	16	DTR			
	17	Asst/DCI			
	18	AO/DCI			
	19				
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	22				
		SUSPENSE	Date		

Remarks: *Interesting 2nd paragraph*
Please prepare reply for DDA's
signature.

[Signature]

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TO:		DDA
REMARKS:		<i>[Handwritten signature]</i>
FROM:		OLC
ROOM NO.	BUILDING	EXTENSION

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STATOTHR

STAT

OFFICIAL ROUTING SLIP

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DD/A Registry
File Legal
76 files

STA

TO	NAME AND ADDRESS	DATE	INITIALS
1	ALL		
2	MT [Redacted]		
3	Legislative Counsel [Redacted]		
4			
5			
6			

<input type="checkbox"/>	ACTION	<input type="checkbox"/>	DIRECT REPLY	<input type="checkbox"/>	PREPARE REPLY
<input type="checkbox"/>	APPROVAL	<input type="checkbox"/>	DISPATCH	<input type="checkbox"/>	RECOMMENDATION
<input type="checkbox"/>	COMMENT	<input type="checkbox"/>	FILE	<input type="checkbox"/>	RETURN
<input type="checkbox"/>	CONCURRENCE	<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	SIGNATURE

STATINTL

Remarks:

George
Review memorandum of
Tuesday afternoon the
attached represents, as far as
I know, what has been
done to effect changes on
FOIA [Redacted]

STATINTL

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.		DATE
DD/A	[Redacted]	25 MAR 1977
<input type="checkbox"/>	UNCLASSIFIED	<input type="checkbox"/>
<input type="checkbox"/>	CONFIDENTIAL	<input type="checkbox"/>
<input type="checkbox"/>	SECRET	

STATOTHR

DDA 76-6160, Memo for DCI fr DDA, dtd 14 Dec 1976; Subject; Revisions to the Law on Freedom of Information

DDA Remarks to LC:

"George:
"Per our conversation of Tuesday afternoon, the attached represents, as far as I know, what has been done to effect changes on FOIA. /s/Jack Blake

Distribution:

- Orig RS - LC w/atts (DDA 75-4470, Ltr to John M. Ashbrook, House of Reps, fr W.E. Colby, DCI, dtd 19 Sept 1975 and DDA 76-6160)
- 1 RS - DDA Subject w/atts
- 1 RS - DDA Chrono w/o atts
- 1 RS - JFB Chrono w/o atts

DDA:JFBlake:der (24 March 1977)

JOHN M. ASHBROOK

17TH DISTRICT
OHIO

1436 LOGSWORTH HOUSE OFFICE BUILDING

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COMMITTEES:
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Congress of the United States

House of Representatives

Washington, D.C. 20515

Executive Registry
75-3327

DD/A 75-3352

July 15, 1975

Director William E. Colby
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Director:

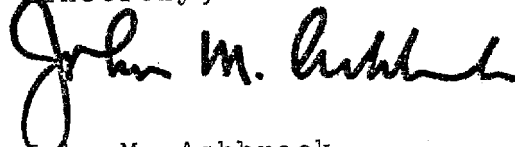
Since the recent amendments to the Freedom of Information Act press reports have described the strain placed on Federal bodies to accommodate requests for information from private sources.

As the Agency's prime responsibility is to the Administration, the task of supplying information to the public is of a minor priority.

I should like to receive your personal opinion as to the workability of the FOI Act in its present form, whether its requirements have adversely affected the Agency's basic responsibilities, and what, if any, amendments you might care to recommend.

Your consideration of this request will be much appreciated.

Sincerely,



John M. Ashbrook
Representative to Congress
17th District