

Executive Registry
11-9002

Honorable Maurice H. Stans
Director
Bureau of the Budget
Washington 25, D. C.

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Dear Mr. Stans:

There is forwarded herewith a proposed Executive Order to authorize the Central Intelligence Agency to communicate, in accordance with the terms and conditions of agreements for cooperation arranged pursuant to subsections 144a, b, or c of the Atomic Energy Act of 1954, as amended, such Restricted Data as is determined to be transmissible under the agreement for cooperation involved. Subsection 144d, which was added to the Atomic Energy Act of 1954 by Public Law 85-479, dated July 2, 1959, specifically provides for such authorization by the President for any agency of the United States. It was specifically added to cover the Central Intelligence Agency problem and agency representatives supported it in testimony before the Joint Committee on Atomic Energy.

The background relating to the transfer of Restricted Data for intelligence purposes was summarized in part in our letter of September 19, 1958, in commenting on the provisions of the draft of Executive Order 10841, dated September 30, 1959, entitled "Providing for the Carrying Out of Certain Provisions of the Atomic Energy Act of 1951, as amended, Relating to International Cooperation." As was indicated in that letter, a very effective and profitable exchange of atomic energy intelligence information has been developed and conducted with [redacted]

[redacted] The Central Intelligence Agency has provided the focal point and channel for the exchange of this information, and pursuant to a letter from President Truman to the Chairman of the Atomic Energy Commission, dated June 25, 1952, has prescribed the mechanism for disseminating for intelligence purposes the limited amount of Restricted Data information

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authorized for exchange. Public Law 85-479 and the [redacted] [redacted] make possible significant increases in this collaboration, and the cooperation authorized by the President in the exchange of United States nuclear weapons design data provides a meaningful frame of reference for the exchange of corresponding Restricted Data information on Soviet nuclear weapons. Authority granted to the Central Intelligence Agency to communicate for intelligence purposes will permit the continuation of the previous practices in this field in providing a focal point for this effort and insuring adequate coordination and representation of the various intelligence agencies which have a keen interest in this vital area. It will avoid the necessity of authorization by the President presently required in each instance where transmission under the authority of subsection 144d of the Act is desired.

With regard to Executive Order 10841, which was approved on September 30, 1959, a determination was made by the Bureau of the Budget that it was desirable to include in that Order only the delegation of certain responsibility vested in the President under subsections 31(c), 144a, 144b, and 144c of the Atomic Energy Act of 1954, as amended by Public Law 85-479, and to exclude the delegation of authorities under subsection 144d which was requested in our letter of September 19, 1958. It is now necessary to provide by separate order the delegation authorized by subsection 144d of the Act.

Authorization by the President of transmission of Restricted Data for intelligence purposes under subsection 144d of the Act has been under consideration for well over a year and has been the subject of many discussions with representatives of the Atomic Energy Commission and the Department of Defense. The proposed Order submitted herewith has two major changes from one prepared and forwarded to us informally under date of August 18, 1959, by representatives of the Atomic Energy Commission. First, there has been deleted a requirement that each communication made in accordance with agreements under the Act be specifically approved by the Atomic Energy Commission and the Department of Defense. Secondly, the requirement has been removed that each recipient of a communication be approved by the Atomic Energy Commission and the Department of Defense. Both of the items are unacceptable to this Agency for the reason that they constitute additional procedural requirements and are inconsistent with existing exchange agreements relating to transfer of military and other Restricted Data.

Executive Order 10841 was approved on September 30, 1959, without the inclusion of authorization for the Central Intelligence Agency under subsection 144d of the Act for the transmission of Restricted Data for intelligence purposes. It is requested that a review and approval of the proposed Order forwarded herewith be provided as expeditiously as possible.

Sincerely,

Allen W. Dulles
Director

Enclosure

OGC/LC:JGO:mmw:jeb

Q&I-addressee

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1-Legislative Counsel

EXECUTIVE ORDER

AUTHORIZATION FOR THE COMMUNICATION OF RESTRICTED DATA
BY THE CENTRAL INTELLIGENCE AGENCY

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U. S. C. 2011 et seq.), and Section 301 of Title 3 of the United States Code, and as President of the United States;

I hereby authorize the Central Intelligence Agency to communicate for intelligence purposes, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsections 144a, b, or c of the Act, such Restricted Data and data removed from the Restricted Data category under subsection 142d of the Act (42 U. S. C. 2162d) as is determined by the Atomic Energy Commission and the Department of Defense, in consonance with the provisions of the Act to be transmissible under the agreement for cooperation involved. Such communications shall be through mechanisms established by the Central Intelligence Agency in accordance with the terms and conditions of the agreement for cooperation involved.

THE WHITE HOUSE

, 1959

11-9002/1

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Proposed Executive Order to Authorize CIA to Communicate
for Intelligence Purposes in Accordance with the
Provisions of the Atomic Energy Act of 1954, As Amended.

1. This memorandum contains a recommendation for action by the Director of Central Intelligence. Such recommendation is contained in paragraph 4.

2. Public Law 85-479 contained an amendment to section 144d of the Atomic Energy Act of 1954 providing that "the President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsections 144a, b, and c such Restricted Data as is determined to be transmissible under the agreement for cooperation involved." The inclusion of this language in the law was a direct result of the efforts of this Agency to obtain a provision which would specifically authorize this Agency to disseminate such Restricted Data for intelligence purposes. In working with the Atomic Energy Commission and the Department of Defense for an appropriate provision, the Agency agreed to the general language contained in the law as enacted. The President signed the legislation on 2 July 1958.

3. On 15 September 1958, while the Agency was in the process of preparing an appropriate Executive Order authorizing the Agency to communicate Restricted Data for intelligence purposes, the Bureau of the Budget forwarded a joint Atomic Energy Commission - Department of Defense proposal for our comment. This proposed Executive Order did not include an authorization for communication of Restricted Data for intelligence purposes. However in view of the submission of the Atomic Energy Commission - Department of Defense proposal, it was determined an attempt should be made to obtain authorization through an amendment to that proposal rather than through the submission of a separate Executive Order. Accordingly, on September 19, 1958, General Cabell signed a letter to the Bureau of the Budget suggesting changes to include the Central Intelligence Agency requirements. The State Department also suggested changes in the Atomic Energy Commission - Department of Defense draft. The Atomic Energy Commission and the Department of Defense objected to the Central Intelligence Agency and State Department recommendations. On final review the Bureau of the Budget determined that the delegation of authority requested by this Agency not be included in that Order.

4. Since that time, Mr. Houston and I have been working with Atomic Energy Commission, Department of Defense and Bureau of the Budget representatives in an effort to reach an agreement on the language of an appropriate Executive Order. The attached draft Order has resulted from those negotiations.

5. The attached proposed Executive Order has two major changes from one prepared and forwarded informally to us by representatives of the Atomic Energy Commission. First, there has been deleted a requirement that each communication made in accordance with agreements under the Act be specifically approved by the Atomic Energy Commission and the Department of Defense. Second, the requirement has been removed that each recipient of a communication be approved by the Atomic Energy Commission and the Department of Defense. Both of these items are unacceptable for the reason that they constitute additional procedural requirements and are inconsistent with existing exchange agreements relating to transfer of military and other Restricted Data. We do not feel that further negotiation will provide agreement on these points.

6. Although I have no guarantee that the Atomic Energy Commission and the Department of Defense will formally accept the proposal, we have the informal recommendation of the General Counsel, Bureau of the Budget to forward our request for the separate Executive Order to the Bureau so that the remaining issues might be resolved expeditiously.

7. During the summer you have had an exchange of correspondence with [redacted] for

the transmission of Restricted Data intelligence material and in which he concurred. Recently the ACO and JABIG have refused to honor this channel despite a Presidential authorization for the Central Intelligence Agency to exchange this material. The proposed Executive Order will clear up this difficulty.

8. I recommend that you sign the attached letter forwarding the proposed Executive Order "Authorization for the Communication of Restricted Data by the Central Intelligence Agency."

JOHN C. WARDER
Legislative Counsel

Distribution:

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OCC/LC:JGO:mmw (3 November 1959)