

78-0045/2-01C

14 JAN 1978

FOIA

MEMORANDUM FOR: Office of Legislative Counsel

FROM : Michael J. Malanick
Acting Deputy Director for Administration

SUBJECT : Amendments to the Freedom of Information Act

REFERENCE : OLC 775748, Same Subject, dtd 30 Dec 77

1. In addition to the suggested legislative modifications (Tab A) that were considered in preparation for the Administrative Practices and Procedures Subcommittee of the Senate Judiciary Committee hearing in September, one major exemption for the Intelligence Community should be considered. It is requested that Congress consider revisions to the Freedom of Information Act that would exempt intelligence organizations from a review and release of documents involved in the collection of intelligence and other covert operations and place the effort on search, review and release of the analysis product. It was the intent of Congress that the Freedom of Information Act would provide enlightenment of the public regarding the activities of the federal government. However, experience to date has shown that most worthwhile documents involve sources and methods, are sensitive or classified and must be denied or sanitized in a manner which may result in a very incomplete or distorted release of information to the public. Further, raw intelligence reports do not necessarily represent an accurate evaluation of the subject. The CIA product from a FOIA request often only provides the requester with a few pieces to a puzzle or information that is misleading or may not reflect the true CIA evaluation of the material. Because of the nature of FOIA, as a matter of policy, we have avoided editorializing on the value of the information released through this channel.

2. Two very clear examples of this are reflected in the information released regarding the Israeli attack on the USS Liberty and the alleged nuclear accident in the Southern Urals. Analysis of this problem was provided in Section 4b of the 2 December 1977 Information and Privacy Staff Weekly Report (Tab B).

3. It is believed that an unnecessary exercise can be eliminated and the true purpose of FOIA achieved by exempting operational reports and documents originated in the collection process and limit the application of FOIA to those finished intelligence and estimative documents that can be released to the public. The shift of manpower to the review and release to the public of the Agency's finished product could fulfill the desired spirit of the Act and better utilize the resources now being expended by the Agency in administering the FOIA. All information collected about U.S. citizens would still be accessible through the provisions of the Privacy Act.


Michael J. Malanick

Attachments

Suggestions for Changes or Modification in the FOIA

Response Deadlines

a. Change the mandatory response time on initial processing of requests from present 10 working days to 30 calendar days, plus an additional week for every 100 pages of material requiring a review.

b. Change the mandatory response time on appeals from present 20 working days to 30 calendar days, plus two additional weeks for every 100 pages of material requiring a second review.

Fees

Permit agencies to charge requesters for review time in addition to search time.

Scope of Requests

Limit requests to one specific subject of manageable proportions, rather than permitting blanket, omnibus-type requests which cover a variety of topics, e.g. [redacted]

[redacted] with its 44 categories of requested record STATINTL



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2 December 1977

MEMORANDUM FOR: Acting Deputy Director for Administration
 FROM :
 Chief, Information and Privacy Staff
 SUBJECT : IPS Weekly Report (25 November - 2 December)

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1. The Week in Review

	<u>25 Nov-1 Dec</u>	<u>1977 Weekly Average</u>
a. New cases logged	40	91.0
b. Cases closed	28	71.1
c. New appeals logged	0	3.4
d. Appeals closed	6	2.6
e. Manpower (man-weeks)	97.2	90.5

2. Spotlighted Requests

a. Among the recent requests received for access to personal records were those submitted by former Agency employees Victor Marchetti and Philip Agee. Mr. Agee is being represented by ACLU attorney Melvin Wulf. Hugh Hefner, publisher of Playboy, has also requested copies of any CIA records pertaining to him, as has Larry Flynt of Hustler.

b. Daniel A. Muse of Brookline, Mass., sent us a request for copies of records pertaining to U.S. activities in Guatemala from 1944 to 1955. His detailed description of the specific information he seeks runs to three full pages. We propose to obtain estimates of search fees, which we assume will amount to thousands of dollars, and require an advance deposit before actually commencing processing the request. We have had several previous requests for records concerning the overthrow of Arbenz in June 1954, but very little has been released thus far, and nothing of an operational nature.

c. Mark Dowie, resident fellow of the Foundation for National Progress, has requested "an index" of all matter held by the Agency regarding the overseas operations of Bechtel Corporation, Bechtel Power, or Bechtel Inc. This information, he writes, will be used in connection with "a major energy study" the Foundation plans on publishing in its monthly journal.

(It is unlikely that such an index exists, and we are not obliged to create records for requesters.)

d. Morton Mintz of The Washington Post has asked for copies of any records showing CIA involvement in the shaping of IRS regulations requiring medical research foundations to distribute 4 percent of the fair market value of their assets to charity or medical research. He, in addition, requested copies of any records concerning IRS's delay in determining whether the Howard Hughes Medical Institute comes under these regulations. The regulations, according to Mr. Mintz, were promulgated in February 1976--about five years after they were proposed in draft form.

3. Spotlighted Responses

a. One of the cases completed during the week was a request from Dan Morgan of The Washington Post, levied on the Department of Agriculture, for copies of records related to the 1972 "Russian Wheat Deal." Some two dozen OER publications and memoranda which were made available to the Department of Agriculture at the time were referred by the Department to the Agency for review. This material ranged in content from assessments of the Soviet wheat crop and grain position to more comprehensive studies of the status of the Soviet economy and the potential for trade with the USSR. As a result of the review, three documents were declassified and released in their entirety, and almost all of the text of the remaining items was released in segregable form, deleting only the names of economic analysts and particular bits of sensitive information.

b. The Inspector General Report on the Bay of Pigs, and a rebuttal to that report, both of which were requested by David C. Martin (now with Newsweek), were denied in their entirety. The IG Report has been requested, and denied, on two or three previous occasions.

4. Analysis

a. The automated logging system now utilized by IPS is proving itself to be a mixed blessing. It requires more manpower to maintain it than was true of our former manual log, and system downtime, coupled with slow terminal responses, has further exacerbated the problem. A bottleneck has resulted. We propose adding another person to the logging unit or, if that is not possible, using overtime to surmount the manpower

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shortage. The system shortcomings, however, are beyond our power to remedy. ODP is aware of the problems.

b. Another FOIA release made the news last Saturday. In an article in the New Scientist, 4 November 1976, concerning dissidence among Soviet scientists, Dr. Zhores Medvedev, Russian expatriate now working in London, casually mentioned that there had been a serious nuclear accident in the southern Urals, near Chelyabinsk, in 1957 or 1958. This story, confirmed by another Soviet scientist who had immigrated to Israel, triggered a number of newspaper articles, arguments between environmentalists and nuclear power advocates, and, eventually, several FOIA requests. Among the requesters was Dr. Medvedev himself.

The reaction generated by the documents we subsequently released clearly demonstrates the inherent difficulty faced by the public in trying to draw a true picture from the fragments of intelligence documents we can release, and, conversely, the propensity of the press to leap to exaggerated conclusions from the same evidence.

The Agency's response, as originally drafted, had included only a few documents, and these tended to cancel each other out--creating the false impression that Medvedev had been mistaken. Before this reply could be released, however, additional material responsive to the request was received in IPS. This material, heavily sanitized clandestine service reports, repeated second- and third-hand descriptions of the accident, indicating extensive human casualties.

One of the organizations to which the documents were sent was Critical Mass--the Nader-associated "Citizens' Movement for Safe and Efficient Energy." On 25 November, Critical Mass released the documents to the media, with a Nader "slap" at the CIA for sitting on such vital information for 20 years. Articles which appeared the following day in both Washington newspapers stressed the most sensational aspects of the released documents. The Washington Post, which had picked up copies of the documents directly from the Agency, did mention the "raw data" caveats on the documents; The Washington Star did not even do that. According to a knowledgeable OSI analyst, the truth probably fell midway between the two extremist views. Human casualties and biological damage was probably not as serious or widespread as the raw clandestine service reports would indicate. Our dilemma, which was also faced in connection

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with the release on the Israeli attack on the USS Liberty, is this: we cannot withhold the misleading raw human source reports without violating the letter and spirit of the law; yet, more reliable data must be denied in order to protect from disclosure sensitive collection systems. In situations such as these, it is possible that there may be occasions where information provided by the agency could be misunderstood or misinterpreted. There is no valid basis for withholding raw reports under the Freedom of Information Act, and any effort on our part to place the information into proper perspective might lead to speculations and accusations that the Agency was attempting to manipulate the media.



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OLC 77-5748
30 December 1977

MEMORANDUM FOR: Morning Meeting Participants

FROM: George L. Cary
Legislative Counsel

SUBJECT: Amendments to the Freedom of
Information Act

1. (C) In a recent meeting with the Chairman of the Senate Select Committee on Intelligence, the Director expressed serious concern about the impact of the Freedom of Information Act on Agency activities, not only from the standpoint of the man-hours involved in record searches, reviews, appeals and litigation, but more importantly from the standpoint of the impact which FOIA disclosures were having in the aggregate on our relationships with foreign intelligence services and cooperating individuals.

2. (C) Chairman Inouye was both sympathetic and receptive to the Director's concerns and suggested that we draft proposed amendments to the Freedom of Information Act which might resolve some of these problems. This office is currently assessing the impact of FOIA and working on possible amendatory language. An essential part of this process is the argumentation to go with amendatory language stating the impact of the FOIA and giving examples of the difficulties which we have experienced as a result of it.

3. (C) I am aware that there are some differences of opinion as to whether or not FOIA has in fact has a negative or harmful impact on Agency activities and operations. With this in mind I would appreciate receiving your comments and suggestions plus any documentation you can give on your position on this subject by 15 January 1978.

[Redacted Signature Box]

George L. Cary

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