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<i>AI/DDA, 7D02,</i> [Redacted]			<i>12/12/78</i>
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MEMORANDUM FOR: [redacted]

CLLO, RMS

OLC #78-3523

12 DEC 1978

FROM : [redacted]

AI/DDA

SUBJECT : CIA Contribution to FOIA Report for HPSCI

1. Forwarded herewith is the CIA input for the report to HPSCI.

2. I suggest that the following themes be emphasized in the Director's transmittal letter, all of which are treated in the CIA's portion of the report.

a. The CIA believes that it has just about reached the limits of the resources that can be employed without detracting seriously from its ability to carry out its foreign intelligence mission.

b. An example of the absurdity of the FOIA is the request [redacted]

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[redacted] It is estimated that as much as nine man-years may be expended on this case prior to its completion.

c. The decision in the Ray/Schaap case will have the effect of increasing the amount of work expended on FOIA requests because of its holding that agencies must describe in considerable detail, on a deletion-by-deletion basis, the nature of the material being withheld and justify its denial.

d. It is believed that legislative changes to remove sensitive operational data from the purview of the Act are of highest priority. Such changes, while relieving the CIA from the most significant burdens of the FOIA, would not result in the withholding of much material which would otherwise be made available to the public.

3. I request that the final report be forwarded through my office on its way to Admiral Turner for signature. A quick response is promised.

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[redacted signature box]

Attachment

IPS/CES/ch/12 December 1978

Orig. - Adse. w/attach

- 1 - AI/DDA (w/attach)
- 1 - IPS Subject (w/attach)
- ① - OLC [redacted] (w/attach)
- 1 - NFAC/FOIO (w/attach)
- 1 - OGC [redacted] (w/attach)
- 1 - DDO/IRO (w/attach)
- 1 - DDS&T/FOIO (w/attach)

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REPORT ON THE CENTRAL INTELLIGENCE AGENCY'S EXPERIENCES
IN ADMINISTERING THE FREEDOM OF INFORMATION ACT
AND RELATED PROGRAMS - BURDENS AND OTHER PROBLEMS
RESULTING THEREFROM

1. Organization

The CIA's program for administering the Freedom of Information Act (FOIA), the Privacy Act (PA), and the mandatory classification review provisions of Executive Order 12065 (which superseded Executive Order 11652 on 1 December 1978) is decentralized, reflecting the decentralized nature of the Agency's records systems. Overall policy is determined by the Information Review Committee (IRC). This Committee is comprised of the Deputy Director for Administration (Chairman), the Deputy Director for Operations, the Deputy Director for Science and Technology, and the Deputy Director of the National Foreign Assessment Center. It is supported by the Information Review Committee Working Group (IRC/WG), established in May 1978, which includes, in addition to representatives of the above officials, members from the Office of Public Affairs, the Office of Legislative Counsel, and the Office of General Counsel.

The Information and Privacy Staff (IPS), located organizationally within the Office of the Deputy Director for Administration, is the focal point within the Agency for the receipt of requests from the public and is responsible for the coordination of their processing, the preparation of replies and other correspondence, and the maintenance of records of all transactions. The Office of the DCI, the National Foreign Assessment Center, and each of the Directorates has a person who serves as Freedom of Information officer, and, within these organizations, each major subcomponent has its own Freedom of Information officer (full-time or part-time, depending upon the workload). The program within the Directorate of Operations, however, is somewhat more centralized than is the case elsewhere in the Agency. That Directorate, which bears a significant share of the Agency's FOI/PA burden, has a rather sizeable central staff. All of the Directorate's contacts with IPS are through that staff, whereas the IPS usually deals directly with offices below the Directorate level in other parts of the Agency. Requests involving Intelligence Community records or equities are processed through the CIA mechanism,

as well, and the Intelligence Community Staff has appointed a Freedom of Information officer to serve as its contact point with IPS.

2. Processing Procedures

Requests fall into two general categories--those received directly from members of the public and those referred to the CIA by other agencies. In the latter instances, searches are not usually required. We need only to review the records found by the referring agency in the course of searching its files. If the referred records are of CIA origin, we respond directly to the requester; if they are the records of another agency containing material falling under CIA's cognizance, they are examined and returned to the referring agency with our review findings for final disposition.

The paper flow in processing requests is depicted on the attached chart (Tab A). Requests are recorded in an automated request log by IPS and, once all questions have been resolved (fees, description of records, etc.), copies of the letters of request are sent to those components which might hold relevant information in their files. (In the case of referrals, copies of the referred records are sent to appropriate components for review.) All processing transactions are entered into the automated log. As soon as the components have completed their searches and reviewed any records found for releasability, the results are reported back to IPS. IPS takes care of whatever inter- and intra-agency referrals are deemed necessary and, when all processing has been completed, prepares responses to the requesters, transmitting copies of all documents being released in whole or in part, explaining the legal basis for withholding any information being denied, and informing the requesters of their right to administrative appeal. If denials are appealed, the information withheld is reviewed again, but by personnel not involved in the initial decisions. Working closely with a member of the Office of General Counsel, the reviewers prepare recommendations for the Deputy Director whose records are involved, and the Deputy Director, acting on behalf of the IRC, makes the final determinations. The results are transmitted to the appellant in a letter prepared in the Office of General Counsel, and he is apprised at that time of his right to judicial review.

3. Request Levels, Manpower Costs, and Fees Collected

Since the beginning of CY 1975, through 15 November 1978, the CIA has logged 19,504 requests, of which 10,030 were processed under the provisions of the FOIA. (See Tab B for a further breakdown on these requests.) We anticipate

receiving between 4,000 and 5,000 requests per year through FY 1983 barring some change in the law or in public attitudes vis-a-vis the Agency. Approximately 35-40 percent of these requests, judging from past experience, will be FOIA requests.

TAT There are about [] persons in the Agency who are employed on a full-time basis in complying with the demands of the FOIA, the PA, and mandatory classification review requests. Most of these full-time employees work in the Operations Directorate, IPS, the Office of General Counsel, or the Office of Security. In addition, hundreds of other Agency employees get involved in the programs on a part-time, ad hoc basis--conducting searches, reviewing records, etc. The total manpower expended each year is the equivalent of 110 or more full-time employees. This figure has tended to increase each year, caused in part by the increasing demands of appeals and litigation. Yet we believe that we have just about reached the limit of the resources that can be employed without detracting from our ability to carry out our foreign intelligence mission.

A great deal of manpower can be expended on individual requests, particularly if they go into the appeal and/or litigation stages

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A recent opinion by the U.S. Court of Appeals for the District of Columbia Circuit (Ellen L. Ray and William H. Schaap v. Stansfield Turner) will have the effect of increasing the manpower needed to process FOIA requests, appeals, and litigation. The Court, in this case, required that agencies describe in considerable detail, on a deletion-by-deletion basis, the nature of the material being withheld under FOIA exemptions and the justification for its denial. Early

experience in complying with this new requirement indicates that it may take as much as one man-hour per document to satisfy it fully. Ironically, the new ruling will result in the disclosure of less information by the Agency than heretofore. Greater description will make more evident that which the CIA is statutorily bound to protect. The release of segregable portions of records, therefore, will not be feasible in those instances where the required descriptions and justifications of withheld material would destroy the very purpose of the withholding. Moreover, the possibility that any FOIA request may result in litigation, at which point detailed statements would be required, will often force upon the Agency a more conservative disclosure policy in responding to initial requests, despite the fact that only a few of these requests will ever reach the litigation stage.

Our personnel costs for administering these programs grow each year. We estimate the costs for 1975 at \$1,400,000; for 1976, \$2,000,000; and for 1977, \$2,377,000. Almost one-half of these sums can be attributed to the FOIA; FOIA requests tend to be more complex and are more likely to lead to expensive litigation. By contrast, very little has been collected in fees to offset these expenses. We do not charge for processing PA requests, and we are required by law to waive or reduce fees for FOIA requests whenever it is in the public interest to do so. Moreover, the most expensive part of the process--the review of records--must be totally absorbed by the Agency; we can charge only for searches and for the duplication of records. Only \$1,867 was collected in 1975; \$10,035 in 1976; and \$16,439 in 1977. All of these fees were for FOIA requests.

4. Efforts to Improve Efficiency and Productivity

Despite the considerable manpower diverted to these programs, we have been unable to keep up with the requests and large processing backlogs exist. Currently, there are approximately 2,800 unanswered requests and over 300 unanswered appeals. With rare exceptions, requests and appeals are handled on a first-in, first-out basis and, because of the backlogs, the statutory deadlines usually expire long before we can act.

The Agency has developed an active training program designed to further employees' knowledge of the Acts and to enhance their ability to deal with requests. Two-day workshops are conducted periodically to familiarize employees with the programs and to afford them an opportunity to review documents under controlled conditions. In addition, two Agency-wide

symposia have been held to discuss mutual concerns and to exchange ideas for the solution of problems. A weekly report on FOI/PA activities is also distributed throughout the Agency and a newsletter is published on an irregular basis.

A systems study has been underway which, utilizing data from the automated request log to create a computer model of the overall process, seeks to identify bottlenecks and other problem areas and to devise possible solutions. A greater degree of centralization will be among the alternatives considered in evaluating the collected data. There are, however, certain factors present which make greater efficiency difficult, or perhaps even impossible to achieve. Our files are decentralized and searches are therefore complex and often involve numerous systems of records. More important, however, is the sensitivity of most of the records contained in our files. Each document must be carefully and painstakingly reviewed by at least two levels of authority to ensure that intelligence sources and methods are not disclosed. The review cannot be done in haste and must be performed by fully qualified officers.

5. Problems

The two principal problems for the CIA in administering the FOIA and related public disclosure programs have been the drain on its manpower resources (with relatively little information being released of significant value to the general public) and the chilling effect that the fear of exposure has had on our agents and other sources and on various cooperating foreign intelligence and security liaison services.

The manpower we must devote to processing FOIA requests, which includes a not inconsiderable amount of time expended by senior Agency officials, obviously detracts from our ability to perform our critically important foreign intelligence mission. Moreover, a 2 percent personnel reduction projected for FY 1980 will make this diversion of manpower even more serious. We take no issue with the basic concept that the American public has a right to know what its Government is doing and to benefit therefrom whenever possible. Indeed, the Agency has, to the degree consistent with its obligation to protect intelligence sources and methods, voluntarily made its analytical products available to the public whenever feasible. Numerous unclassified monographs, reference aids, maps, and translations of the foreign media are released each year through the distribution facilities of the Library of Congress, the Government Printing Office, and the Department of Commerce. With respect to FOIA requests, however, it is clear to us that the public is not getting much for its tax dollar. Some of the requests

we receive are for records concerning sensitive covert operations, the existence of which we are not even free to acknowledge. No information is released, but manpower is nonetheless diverted from other essential tasks, particularly so if the denials are appealed or litigated. In other requests, the search for and review of hundreds or thousands of pages of material has more often than not led to the release of little more than fragmentary and sometimes inaccurate raw intelligence data, which, rather than enlightening the public, has sometimes resulted in highly publicized misinterpretations of what actually occurred. (More accurate reports responsive to the requests often had to be withheld to protect sensitive sources or collection systems.) On the other hand, we have been able to release a large number of finished intelligence studies, in whole or in part, without posing undue risk to intelligence sources and methods and to the benefit of American scholars and other researchers.

In an effort to counteract the erosion of confidence in the CIA's ability to protect secrets, we have repeatedly assured our intelligence sources that the exemptions afforded by the FOIA provide adequate protection--and, indeed, the inadvertent release of sensitive information has been exceedingly rare. However, as long as CIA operational records are subject to the FOIA there is always the risk of unintentional exposure (which has in fact occurred), and this weighs heavily on the minds of those persons and foreign services upon whom we must rely as sources of intelligence. It would be difficult to prove that information has in fact been withheld from the Agency as a consequence of those misgivings, but the apprehensions have been manifested on several occasions and a reluctance to entrust secrets to the CIA would logically follow.

6. Legislative Relief

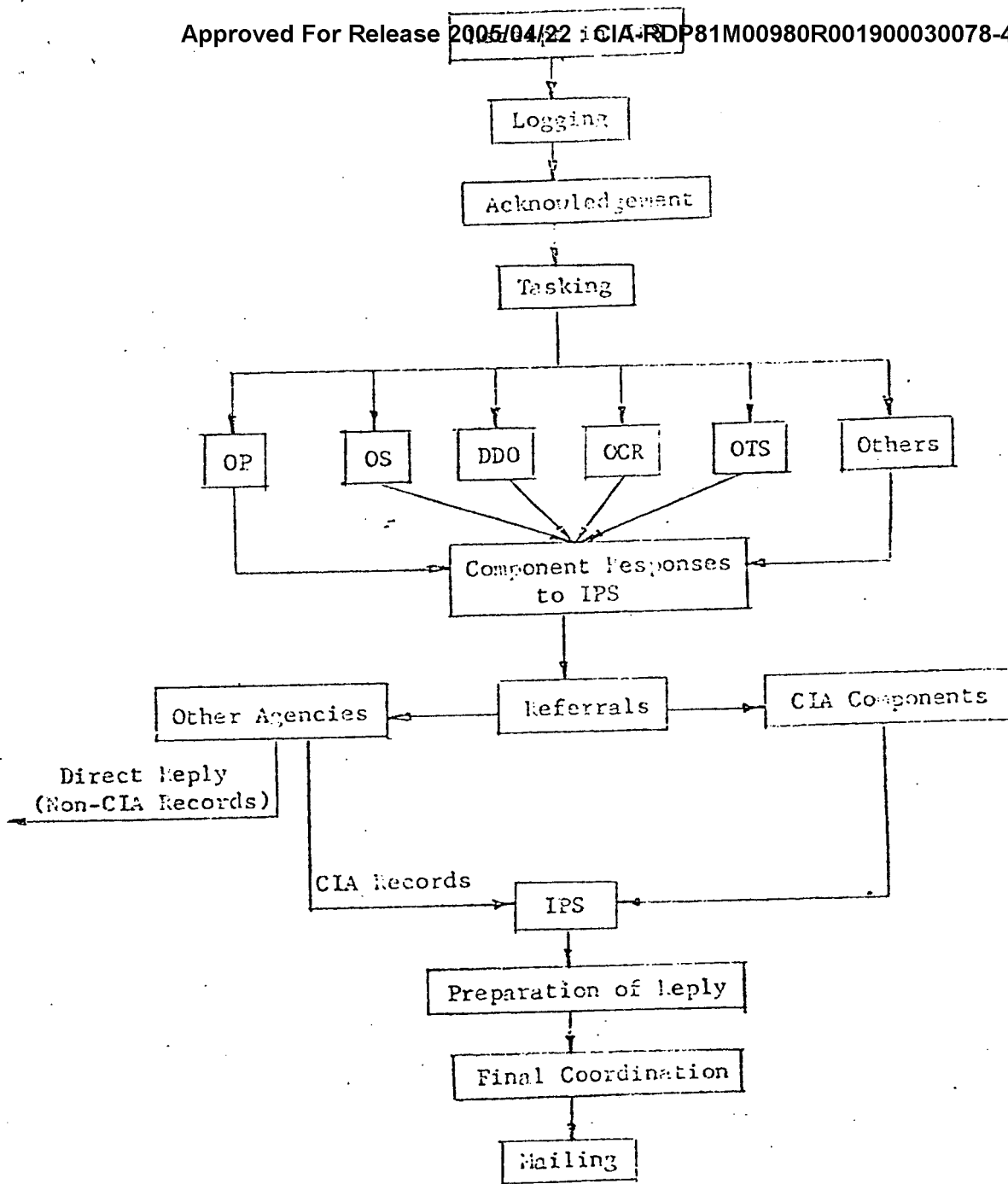
We submit that the CIA, as a foreign intelligence service, is somewhat unique among U.S. Government agencies and that legislative relief from the risks and burdens posed by the FOIA is urgently needed. This relief could be achieved through a number of legislative vehicles. Formal proposals to this end will be forthcoming and Agency officials would welcome an opportunity to consult with members of the Committee as appropriate.

It is felt that total exemption from the FOIA is probably neither desirable nor feasible. However, we believe that the most sensitive information held by the Agency--including that concerned with or resulting from technical collection systems, espionage, covert operations, counterintelligence

activities, security investigations, intelligence and security liaison arrangements, and internal organizational and budgetary matters--should be made unreachable under the FOIA. If possible, we would also like to have raw, unevaluated intelligence reports and cables--as contrasted with finished intelligence studies and estimates--exempted from the access provisions of the FOIA. Most of the information described above is already covered by the existing exemptions of the FOIA. The public would thus not be denied any significant amount of information which would not now be withheld in any event under the current FOIA exemptions, but the CIA would be spared the necessity of using its scarce manpower going through the legally mandated motions of searching its many files, carefully reviewing relevant documents, and defending its denials through administrative appeal and litigation stages. Even more important perhaps, we would be in a position to assure our sources that records revealing their collaboration with the Agency would not be subject to FOIA requests, thereby eliminating the risk of inadvertent disclosure.

The above results could be achieved through legislation describing or listing certain systems of records held by the CIA which are exempt from the publication or disclosure provisions of any other law. Another approach might be to exempt the CIA from the requirement of searching its files when the subject of an FOIA request pertained to specified categories of sensitive information or types of sensitive records. The potential manpower savings to the Agency would be difficult to estimate at this time. Fewer searches would be required, but CIA-originated records of an operational nature and third agency records affecting CIA's equities would still be surfaced by other agencies in responding to FOIA requests and would therefore have to be dealt with by the CIA. It is certain, however, that the resources required of us to process FOIA requests received directly from members of the public would be appreciably reduced.

In previous communications to the Committee, CIA officials have questioned whether other provisions of the FOIA were not in need of change. These provisions included the right of foreigners to submit FOIA requests, the short deadlines for responding to requests and appeals, the prohibition against charging fees for reviewing documents, and the lack of any restrictions over the scope of requests. We continue to believe that these provisions warrant reconsideration by the Congress. Legislative changes to remove sensitive operational data from the purview of the Act, however, are of far greater importance to the Agency and should be given priority.



REQUEST STATISTICS

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u> (thru 15 Nov)
<u>FOIA</u>				
Requests received	6609	761	1252	1406
Granted in full	300	148	167	161
Granted in part	428	562	241	251
Denied in full	174	122	95	114
Misc.*	4577	523	269	587
<u>PA</u>				
Requests received	552	2356	3023	1978
Granted in full	4	154	195	169
Granted in part	3	404	520	469
Denied in full	0	56	124	115
Misc.*	189	1500	1559	1116
<u>EO</u>				
Requests received	232	374	568	398
Granted in full	63	81	156	61
Granted in part	88	220	268	93
Denied in full	28	37	101	22
Misc.*	5	6	11	12
Total requests rec'd	7393	3491	4843	3782

*Misc. category includes "no record available" and "no CIA record available" responses; canceled and withdrawn requests; requests referred to other agencies; early appeals; etc.

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