

DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

SECOM-D-377

19 September 1978

STAT MEMORANDUM FOR: [redacted]
Office of General Counsel

STAT FROM: [redacted]
Security Committee Staff

SUBJECT: SCI Denials Working Group - Comments
Concerning Tasking for SCI Appeals
Procedures

1. Reference our recent conversation concerning subject, at which time I expressed the desire of this office to convene the working group at an early date to begin complying with the tasking to prepare SCI appeals procedures.

2. Attached is a copy of a recent draft concerning this matter prepared by Mr. Maynard Anderson, Deputy Director for Security Policy for Admiral Murphy. It is believed that this draft is a good starting point for our first meeting. Incidentally, Mr. Maynard Anderson will attend such meetings as his schedule permits.

STAT 3. A copy of the attached draft is also being sent to [redacted] CIA Member, SCI Denials Working Group. It is suggested that both of you review same in the near future inasmuch as a meeting will be called of the group in the next few days.

4. Your cooperation in this matter is sincerely appreciated.

[redacted]

STAT

78/37
Attachment

STAT cc: [redacted]

Not possible

DRAFT

From:

Subj: Procedures for Determining SCI Access Eligibility or Ineligibility and for Appealing Determinations of Ineligibility

- Encl: (1) Instructions for Appealing a Determination of SCI Access Ineligibility
(2) Sample Format of an Appeal of a Determination of SCI Access Ineligibility

1. Purpose. To state _____ policy with respect to the administrative procedures for determining SCI (Sensitive Compartmented Information) access eligibility or ineligibility and for appealing determinations of SCI access ineligibility.

2. Policy. It is the policy of _____ that each determination of SCI access eligibility or ineligibility shall be made in accordance with the Personnel Security Approval Criteria set forth in reference (a) and through a uniform application of administrative procedures, so that each individual who is the subject of an SCI access eligibility determination shall receive full administrative due process in the consideration of his or her case. In furtherance of this policy, no determination of SCI access ineligibility shall be implemented which has not first been reviewed and affirmed, and no determination of ineligibility shall be considered as final until the individual affected by such action has been:

- a. notified of the ineligible determination;
- b. given a statement of the reason(s) for the ineligible determination; and
- c. given a reasonable opportunity to appeal the ineligible determination in accordance with paragraph 7 of this Instruction.

3. Definitions.

a. SCI. Refers to "Sensitive Compartmented Information" which includes all information and material bearing special community controls indicating restricted handling within the present and future community intelligence collection programs and their end products for which community systems of compartmentation have been or will be formally established.

b. Personnel Security Approval Criteria. Those standards, as set forth in reference (a).

c. SCI Access Eligibility. An administrative determination based upon all available information that an individual (1) meets all minimum investigative requirements; (2) is eligible for a Top Secret security clearance; (3) has an actual or potential need for access to SCI; and (4) meets the Personnel Security Approval Criteria.

d. SCI Access Ineligibility. An administrative determination based upon all available information that an individual does not meet Personnel Security Approval Criteria either because of clearly derogatory information, or because the minimum investigative requirements have not, or cannot, be met.

e. Individual. A military or civilian person who is either employed by, assigned to, detailed to, or seeking employment with, or assignment or detail to, the Agency.

4. SCI Access Eligibility/Ineligibility Determination Authority.

a. Determination of SCI access eligibility or ineligibility shall be made by the adjudicating officials, hereinafter called Determination Officials.

b. Determinations of SCI access ineligibility shall be reviewed by the Reviewing officials of Personnel and Security, hereinafter called Determination Review Officials.

The Determination Official shall make or cause to be made all determinations of SCI access eligibility or ineligibility. Each determination shall be based upon findings that:

- (1) All minimum investigative scope and coverage requirements have not been satisfactorily met; and
- (2) The facts in each case are consistent with the application of Personnel Security Approval Criteria, Executive Orders, and any instructions, directives, or regulations which may apply to such determinations.

The Determination Official shall cause all SCI access eligibility determinations to be administratively processed without further review.

Determinations of SCI access ineligibility shall be forwarded by the Determination Official to the Determination Review Official for further consideration.

Functions of the Determination Review Official.

The Determination Review Official shall review all ineligible determinations and shall take the most appropriate course of action as described below:

- (1) Affirm the determination of ineligibility;
- (2) Reverse the determination of ineligibility;
- (3) Modify the determination of ineligibility;
- (4) Remand the case to the Determination Official for further investigation, additional information, or re-adjudication; or
- (5) Forward the case to higher authority for additional review.

b. A determination of ineligibility that is affirmed by the Determination Review Official shall be considered as final unless the individual affected by the ineligible determination elects to appeal in accordance with paragraph 7 of this Instruction.

c. The Determination Review Official shall inform the Director for Security who shall notify or cause to be notified each individual whose determination of SCI access ineligibility has been affirmed. Each notification shall:

(1) Be in writing and be transmitted to the individual via his or her Commanding Officer;

(2) Contain a statement of the reason(s) for the ineligible determination in as detailed and comprehensive terms as possible, consistent with the Privacy Act of 1974 and national security; and

(3) Inform the individual of the procedure for appealing a determination of ineligibility, either by reference to this Instruction or by forwarding of a copy of Enclosure (1) to this Instruction, as may be appropriate.

7. Appeal Procedure for a Determination of SCI Access Ineligibility. The privilege of appealing a determination of SCI access ineligibility is granted by the Agency head solely for the purpose of affording to each individual determined to be ineligible for SCI access the opportunity to be heard. An appeal must, however, have merit or valid reasons to support it, and any appeal which is frivolous or merely disputes the ineligible determination without offering any substantive basis for a reconsideration will be denied. To be considered, an appeal must comply with the following requirements:

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a. Notice of Intent to Appeal. Each individual who intends to appeal shall notify his or her Commanding Officer in writing, and not later than fifteen calendar days after the individual has received a written notification by letter from the Agency of the ineligible determination. The Commanding Officer shall notify the Agency Head by message of receipt of the Notice of Intent to Appeal. Civilian applicants for employment shall notify the Agency Head directly.

b. Time of Appeal. An appeal must be dated and received by the ineligible individual's Commanding Officer (or the Agency Head in cases of civilian applicants for employment) not later than thirty calendar days after the individual's receipt of the letter notification described above.

c. Form of Appeal. Only written documentation will be considered in the evaluation of an appeal by the Agency. Appeals shall be prepared in letter format in accordance with the Correspondence Manual and forwarded via the Commanding Officer to the Agency Head. Appeals by civilian applicants for employment shall be prepared in standard business letter format.

d. Contents of Appeal. An appeal shall clearly state the reason(s) why the individual believes the ineligible determination should be reconsidered, and shall demonstrate that the purpose in appealing is based upon merit (is not frivolous). The appeal must contain any facts, knowledge, new information, or clarification or explanation of prior information, where relevant, that might have a bearing on the determination of ineligibility. Enclosure (2) contains a sample letter of appeal.

e. Endorsement of Appeal. Except for civilian applicants for employment, Appeals shall be endorsed by the individual's Commanding Officer, who shall include in the endorsement any comments deemed pertinent to the case and a recommendation for disposition of the appeal.

f. Extensions of Time. Under normal conditions, strict compliance with all time limits shall be observed. However, in the event of circumstances beyond the control of the appealing individual, reasonable extensions of time may be granted. A request for an extension of time shall be made in writing to the Agency and forwarded via the individual's Commanding Officer who shall endorse the request with a recommendation that the extension be granted or denied.

g. Review of Appeals. Appeals shall be reviewed by the Agency Access Appeal Board in accordance with the provisions of paragraph 9 of this Instruction.

8. Establishment of Board. The Access Appeal Board is hereby established and shall assist the Agency Head by reconsidering all SCI access determinations of ineligibility which have been affirmed by the Determination Review Official and appealed in a timely and proper manner by the individual who has been declared ineligible. Under normal circumstances, the Access Appeal Board shall serve as the final determination authority with respect to SCI access ineligibility.

b. Composition of the Board. The Access Appeal Board is hereby established and shall assist the Agency Head by reconsidering all SCI access determinations of ineligibility which have been affirmed by the Determination Review Official and appealed in a timely and proper manner by the individual who has been declared ineligible. Under normal circumstances, the Access Appeal Board shall serve as the final determination authority with respect to SCI access ineligibility.

b. Composition of the Board. The Agency Access Appeal Board shall consist of the incumbents of the following billets:

The Executive Secretary is authorized, subject to the concurrence of the Senior Member, to appoint any other individual within the Agency as a temporary member for the purpose of assisting in the review of a specific appeal when such appointment is deemed to be in the best interests of both the Agency and the appellant.

9. Functions and Jurisdiction of the Access Appeal Board.

The Access Appeal Board shall consider all appeals of determinations of SCI access ineligibility which are received in a timely manner and in appropriate form. The Access Appeal Board shall:

a. Review all of the facts, available information, and actions taken which relate to the case under appeal, and give particular emphasis to any new information provided by the individual as a basis for appeal; and

b. Affirm, reverse, or modify the previous ineligible determination in accordance with the following provisions:

(1) Not less than three Members of the Board shall review an individual appeal, and a majority decision shall constitute the determination of the Board.

(2) The determination rendered by the Board shall be considered as a final determination of SCI access eligibility or ineligibility within the Agency, unless the Senior Member of the Board concludes that a case merits review by higher authority, in which event the case shall be referred to the Agency Head for consideration and determination.

10. Ultimate Determination Authority of the Agency Head. Nothing in this Instruction shall be deemed to constitute any abrogation of the final and ultimate authority of the Agency Head to render determinations of SCI access eligibility or ineligibility with respect to Agency members at any stage in the proceedings of an initial determination or appeal of SCI access ineligibility. However, a determination of ineligibility by the Agency prior to the exercise of an appeal by an individual shall not deprive that individual of the privilege of appeal.

1. You are entitled to appeal the determination of your ineligibility for access to SCI (Sensitive Compartmented Information) if one or more of the following conditions exist:

(a) You believe the determination was made on the basis of incomplete or inaccurate information; or

(b) You believe there were extenuating or unusual circumstances which the Determination Review Official did not know about when the ineligible determination was made; or

(c) You believe the information upon which the ineligible determination was based, while true, does not adequately support or justify the ineligible conclusion reached.

2. No appeal will be considered which merely disputes an ineligible determination without a good reason, or is filed solely to try and delay the implementation of a determination of ineligibility.

3. You must prepare two documents in order to make an appeal:

(a) Notice of Intent to Appeal. You must inform the Agency that you intend to appeal. This notice must be in writing and must be received by your Commanding Officer within fifteen calendar days after the date you receive your Notice of Determination of SCI Access Ineligibility. Civilian employment applicants should mail the Notice of Intent to the Commander,

within fifteen days after the date of receipt of the Notice of Determination of SCI Access Ineligibility.

(b) The Appeal. Your appeal must be dated and received by your Commanding Officer (or mailed to the Agency Head in the case of civilian

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employment applicants) within thirty days after you receive your Notice of Determination of SCI Access Ineligibility. Appeals from Navy and USMC military personnel and civilian employees of the Navy must be written and prepared in accordance with the Navy Correspondence Manual. The appeal should tell why you believe the determination of SCI access ineligibility should be reconsidered, and must contain any facts or knowledge you have which might have a bearing on that determination. You may, if necessary or desired, enclose any documentation which you think might be helpful to the Access Appeal Board, such as statements from other persons or any records which might not have been available when the initial determination was made. (See attached sample format of an appeal.)

4. Extensions of Time. Under normal conditions, strict compliance with all time limits will be observed. However, if circumstances beyond your control should prevent you from meeting a time requirement, a reasonable extension of time may be granted. Military personnel must forward a request for extension of time to their Commanding Officer who will endorse the request with a recommendation that the extension be granted or denied. All requests for an extension of time must be in writing.

5. Questions About Your Appeal. If you have any questions which have not been answered in these Instructions, you may write to the Agency Head, (address _____) or telephone (numbers _____).

SAMPLE FORMAT OF AN APPEAL OF A DETERMINATION OF SCI ACCESS INELIGIBILITY

26 May 1978

From:
To:
Via:

Subj: Appeal of Determination of SCI Access Ineligibility

Ref:

1. I was notified by reference (a) that I was determined to be ineligible for access to SCI. By reference (b) I informed the Agency of my intent to appeal this determination.
2. The reason given me for the determination of my ineligibility was that my sister is married to a non-citizen of the United States and is living in a foreign country where she might be subjected to some form of duress that could possibly be used to try and influence my actions. This fact was considered to cause me not to meet the requirements of paragraph 3b(2) of reference (c).
3. It is true that my sister had moved to, and was living in, a foreign country at the time I completed my update Statement of Personal History. She was also still living in that country when my update Special Background Investigation was conducted. However, she and her husband returned to the United States on 22 March 1978, and are currently residing at 9876 Main Street, Anytown, Anystate. Neither my sister nor her husband plan to return to his country. This information can be verified by my sister or by contacting my parents. My sister is now, and has always been, a U.S. citizen.
4. Based upon the above information, I believe there is no longer any reason why I should not be eligible for access to SCI.
5. A favorable reconsideration of reference (a) is hereby requested.

J. DOE

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18 September 1978

MEMORANDUM FOR: Deputy Director of Security
FROM: [REDACTED]
Executive Secretary, SECOM
SUBJECT: Community Alert About CIA's Security
Inspection Program

1. Per your instructions, all members or alternates of the Security Committee were informed of the upcoming initiation of the CIA Security Inspection Program, informed of the considerations incorporated into procedures for visitor, both liaison officers and intermittent callers, and assured that means were available to retain the integrity of their agency's classified material should an NFIB member enter and exit with it. I also identified myself as a point of contact in the event of difficulty. No member anticipated problems with compliance and all expressed complete support.

2. Specifically, the following people were contacted:

NSA

[REDACTED] Security Officer in lieu of [REDACTED] who were not available. [REDACTED] appreciated the call and informed that NSA officers would have no problems.

STATE

Mr. Karl Ackerman, State Security appreciated the call and said that he would take necessary action to advise potential visitors to CIA what to expect and how to respond. He anticipated no problems.

Mr. Donald Stiger, INR State was also contacted. He informed that he was aware of the planned action and had prepared, this day, a memorandum for INR Officers informing them of procedures. He saw no difficulties.

TREASURY

Denny Southern said he was not aware of the proposed CIA action, thought it was a good idea and said Treasury officials would have no problems in complying.

FBI

Mr. Frank Ryan said that Mr. Kreger had informed him following last Tuesday's NFIB meeting of the planned exit bag check. He took the details of how officials may exit with classified material, thanked me and then asked if we were going to check ladies purses. I asked him if the Bureau liaison agents were now carrying purses. He laughed and hung-up.

DOE

Mr. Martin Dowd, acting for SECOM Member Mr. Lyon had not heard of our proposed action. He took the information on procedures and said he anticipated no problems from DOE visitors to CIA.

JUSTICE

I briefed Mr. Rubino. He desired considerable detail least some of the Justice Department attorneys demonstrate impatience in their comings and goings. I tried to provide Jerry

with enough information so that he could draft a memo for visiting attorneys. I also informed Jerry that our Office of General Counsel and Office of Legislative Counsel were aware of needs of visitors to be assisted should they have to exit the building with classified material and that our officers would take care of needs.

COMMERCE DEPT.

I talked to Mr. David Laux in lieu of Mr. Randolph (on leave). Dave was not aware of the planned check and expressed appreciation for the call. He said that as an Agency employee with three or four people in his office at Department of Commerce with comparatively frequent occasion to visit the Agency, delivering and picking-up classified material, he would be willing to serve as a Document Control Officer. I thanked him for his offer and said I'd pass it on.

Mr. Laux said he would inform personnel in Commerce as appropriate. No problems expected.

DIA

Last Friday I had a call from [] on this issue and explained it to him. He asked for some kind of memo from us and I told him that something might be coming out but that the action would probably take place before anything in writing was available. I gave him the details of the plan for handling visitors. He expressed appreciation.

STAT

AIR FORCE

Maj. Henry Koch for Russell Newman. No problems.

NAVY

Mr. R. Welch. No problems.

DOD - Policy

Mr. Maynard Anderson had heard about the proposal. He took the details and said he anticipated no problems from his office.

3. Attached for your signature is a memorandum to the Director in the event you believe a report of completed action is desirable.



STAT

MEMORANDUM FOR: Director of Central Intelligence
FROM: Robert W. Gambino
SUBJECT: Security Inspection Program

1. Per your instructions, I have provided details of our new Security Inspection Program to security elements of the NFIB Agencies through their membership on the Security Committee. This included information on procedures and considerations incorporated as to how to allow visitors to retain the integrity of their agency's classified material should an NFIB member enter and exit a CIA facility with such material in his possession.

2. All contacted officers expressed appreciation for the information. They also offered assurances of complete support for this program.

Robert W. Gambino