

OGC 82-01429

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82.9.20/4

MEMORANDUM FOR: Director of Central Intelligence

FROM: Stanley Sporkin
General Counsel

SUBJECT: Current Status of Executive Order 12065
Revision

1. Attached for your review is the latest revised version of Executive Order 12065, "National Security Information." This draft order has been provided to various congressional committees for review and comment, and it is reasonable to assume that a certain amount of public debate and controversy will ensue before the proposed order is signed by the President.

2. The attached order is based, in large part, on a draft prepared by an Intelligence Community group chaired by this Agency's Deputy General Counsel. This Intelligence Community draft was circulated by the Information Security Oversight Office (ISOO) to the approximately thirty-five (35) Executive branch agencies involved in the classification process. After reviewing the comments submitted by these agencies, ISOO made a number of changes in the Intelligence Community proposal and then forwarded this revised draft to the Assistant to the President for National Security Affairs in early December 1981. In Mr. Allen's absence, this revised draft was circulated to interested agencies for one final round of comments by Edwin Meese on 23 December 1981. As you will recall, the Agency's comments concerning this draft were forwarded to Mr. William Clark by your letter of 18 January 1982. After making a number of limited changes, Mr. Clark provided the attached revised draft to both the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence and certain other congressional committees some time last week. At the same time, the attached draft was also forwarded by Mr. Clark to the Director of OMB, who circulated the draft to concerned agencies for comments which must be submitted by 19 February 1982.

3. As to the attached draft itself, it still reflects to a significant extent the changes originally proposed by the Intelligence Community working group. One of the

revisions made by Mr. Clark in this latest draft, however, is of some concern to the Agency. This revision effectively reduces the scope of the presumption of damage that had been afforded to "information relating to intelligence sources or methods" in Section 1.3(c) of the draft order. This section provides that the unauthorized disclosure of certain particularly sensitive information is "presumed to cause damage to the national security," and thus significantly reduces the burden of agencies in defending classification decisions in court. The earlier draft had included "information relating to intelligence sources or methods" as a category of information subject to this presumption. The attached revision has dropped the language "information relating to," and would now extend the added protection of this presumption only to the "unauthorized disclosure of ...intelligence sources or methods." It should be noted, however, that the presumption contained in the present E.O. 12065 does not include intelligence sources or methods in any form, and that the inclusion of even this more limited language is still an improvement over the existing Order. Nonetheless, the need to adequately protect intelligence sources or methods requires, in my view, that the presumption apply not only to names or personal identifiers of intelligence sources, but to any information which could lead to or significantly facilitate the identification of such sources. This and other suggested comments are presently being prepared by this Office, subject to your review and coordination with other interested components, for submission to OMB by the 19 February deadline.

4. I should emphasize with respect to the current congressional review of the proposed order that our ability to influence this process is somewhat limited. Representatives of ISOO, at the direction of Mr. Clark, are assuming major responsibility for selling this proposal to Congress and the public. Greater Agency involvement in this process does not appear necessary at the present time until some indication as to the scope of the changes that will be sought by the various committees is provided.

5. You should also know that Mr. Clark has instructed the Director of ISOO to make the attached available to various public interest groups, including the Association for Former Intelligence Officers (AFIO) and the ACLU. Thus, it is virtually certain that public debate on this order will ensue shortly.

STANLEY SPORKIN

Stanley Sporkin

Attachment

OGC/SWH:ba (10 Feb 82)

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