

Executive Registry

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THE AMERICAN INTELLIGENCE COMMUNITY

Recognition of the need for intelligence about the strength and intentions of our adversaries is as old as the nation itself. During the War of Independence General Washington observed:

The necessity of procuring good intelligence is apparent and need not be further urged--all that remains for me to add is that you keep the whole matter as secret as possible. For upon secrecy, success depends in most enterprises of the kind, and for the want of it they are generally defeated, however well planned and promising a favorable issue.

During the first 165 years of our nation's history, however, we were able to flourish behind the security of wide oceans and friendly borders. Moreover, during that time the need for intelligence was episodic. The world changed drastically for America in general, and for the fledgling intelligence community in particular on December 7, 1941. For better or worse; the world will never again be the same. The United States no longer enjoys the splendid isolation that its oceans and borders once provided. It must now exist in a world in which the minimum period of warning in the event of nuclear attack is counted in less than 20 minutes.

To assure the nation's security in today's dangerous world, the intelligence community must count and measure the capabilities of weapons systems held by current and potential adversaries, follow all indications and warnings of their use, and pass on this information to policymakers for appropriate action. In addition, we must assess and deal with a wide range of initiatives and tactics--diplomacy, subversion, disinformation, destabilization provision of sophisticated weapons, support and exploitation of terrorism and insurgency.

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To perform all these vital chores, we have today a national intelligence community organized to collect information from around the globe, to analyze this raw information, and to provide policymakers with our best intelligence judgments in a timely, effective manner. You are probably aware that we use photography, electronics, acoustics, and other technological marvels. You may not realize that our intelligence community includes more scholars in the social and physical sciences than any university can boast.

Clearly, the business of collecting and analyzing intelligence has changed dramatically from George Washington's day. But the nature of the game remains the same--and always will. Secrecy is not sufficient to assure success. But without secrecy, the chances for success are small indeed.

Today one of the greatest threats to our intelligence community comes from a piece of legislation called the Freedom of Information Act. To put it bluntly, FOIA is a self-inflicted wound. By lifting the veil of secrecy in the wrong way, FOIA is serving neither the public's "right to know" or the country's need for an effective intelligence community.

Let me outline, briefly, the administrative history and current burden of FOIA:

The Freedom of Information Act was first passed in 1966. President Johnson described the Act as stemming from the principle that "a democracy works best when the people have all the information that the security of the Nation permits." The declared purpose of the Act was to broaden access to government information connected with activity impacting upon the public, with certain exceptions in areas in which Congress believed exemptions were warranted in the national interest. From 1966 until the Act was amended in 1974, there was no

major impact upon the day to day functioning of the intelligence community. Then, in 1974, during the post-Watergate period of pressure for more openness in government, amendments to the FOIA were enacted over President Ford's veto. The Supreme Court's decision in EPA v. Mink was a key impetus for these amendments. The Supreme Court had ruled that an agency must examine classified documents before invoking the FOIA exemption permitting such documents to be withheld from disclosure, but that it was not for the courts to rule on whether the classification itself might be unwarranted.

The 1974 amendments made several fundamental changes in the Act, the most notable of which:

- 1) Required that reasonably segregable portions of a document not falling under the Act's exemptions be provided to the requester; and
- 2) Gave the courts authority to review agency determinations that records were withholdable under the Act.

These amendments led to an explosion in FOIA requests directed at the CIA, and a corresponding increase in associated litigation. The CIA's latest annual report on its administration of the Act contains the following statistics for calendar year 1980:

- 1200 new FOIA requests were logged during 1980.
- 141 person-years were devoted to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigation, as compared with the 100 person-years of labor devoted in 1979. Approximately 50% of these resources were devoted to the processing of requests for subject matter information under the FOIA.
- Nearly \$4 million was expended in personnel costs for processing, appeals, and litigation related to these requests. About two-thirds of this amount was spent on FOIA requests.

If gross personnel and resource figures represented the major problems, the solution would be obvious--more money. However, the last seven years have shown that the intelligence community faces other problems even more important and far more unique. These problems, which I shall outline, stem from the fundamental incompatibility of applying the FOIA to intelligence agencies whose missions must be conducted in secret.

The search and review of records in response to FOIA requests poses a special set of problems. The CIA's records systems, for example, are an integral part of the Agency's security system. The need to protect intelligence sources and methods through a complex system of compartmented and decentralized records is in direct conflict with the concept of openness under the FOIA. Under the "need to know" principle CIA employees normally have access only to information necessary to perform their assignments, but the process of compiling documents responsive to FOIA requests is incompatible with good "need to know" practices.

The search for information responsive to an FOIA request is a time-consuming task. A relatively simple FOIA request may require as many as 21 CIA record systems to be searched, a difficult request more than 100 systems. I must emphasize, however, that it is not the quantity of time and effort devoted to FOIA that is of ultimate concern to us. It is rather the level of employee who must become involved in the review process. By this I mean the types of highly trained people who must participate in the processing of an FOIA request.

In other government agencies the review of information for possible release under the FOIA is a routine administrative function; in the Central Intelligence Agency it can be a matter of life or death for human sources. In some circumstances mere acknowledgment of the fact that CIA has any information on a

particular subject or has engaged in a particular type of activity could be enough to place the source of that information in danger, compromise ongoing intelligence operations, or impair relations with foreign governments. Agency records must be scrutinized with great care because bits of information which might appear innocuous on their face could possibly reveal sensitive matters if subjected to sophisticated analysis or combined with other information available to FOIA requesters.

This review is not a task that can be entrusted to individuals hired specifically for this purpose, as is the case with many other government agencies whose information has no such sensitivity. The need for careful professional judgment in the review of intelligence information surfaced in response to FOIA requests means that this review requires the time and attention of intelligence officers whose primary responsibilities involve participation in, or management of, vital programs of intelligence collection and analysis for the President and our foreign policymaking establishment.

But experienced operations officers and analysts are not commodities that can be purchased on the open market. It takes years to develop first-class intelligence officers. Again, let me emphasize that these reviewing officers are not FOIA professionals, they are intelligence officers who are being diverted from their primary duties. This diversion is impacting adversely upon the fulfillment of vital intelligence missions.

The greatest damage to our nation's intelligence efforts from FOIA comes from the perception this law has created overseas. Individual human sources and foreign intelligence services are aware of the Act; they view it as a threat to our country's ability to maintain the confidentiality of its intelligence

sources, and to protect the information they provide. An intelligence agency cannot operate effectively under such conditions. Human intelligence is as important today as it has ever been. To obtain this intelligence it is vital that there be confidence in the ability of the United States Government to honor assurances of secrecy. Keep in mind that many individuals who cooperate with the intelligence efforts of the United States do so at great personal risk. Identification as a CIA agent can ruin a career, endanger a family, or even lead to imprisonment, torture or death.

We who manage the intelligence community must be able to provide our human sources with absolute assurance that the fact of their cooperation with the United States will forever be kept secret, and that the information they provide will never be revealed or attributed to them. The FOIA has raised doubts about our ability to maintain such commitments, despite our explanations that the Act provides exemptions which allow for the safekeeping of sensitive information.

You will appreciate that the concept of an intelligence agency being subject to an openness in government statute is not uniformly understood by individuals and intelligence services abroad. You wouldn't believe how much time we spend attempting to convince foreign intelligence services that they should not discontinue their liaison relationships with us because of the FOIA.

You may recall a dust-up I had up on Capitol Hill a while back over just this point. Some Senators tried to pin me down as to precisely how many foreign sources we've lost due to FOIA, and when I told them I really had no idea they jumped all over me. But let me suggest an analogy to illustrate why it's impossible to know precisely how many people don't come forward in certain circumstances. Rub your body with garlic every morning for a month. Then try

to calculate how many new friends you didn't make, and how many old ones managed to keep their distance. Can you prove that your social standing deteriorated. Of course not--but it's self-evident. Unfortunately--and this is the case with FOIA's impact on our ability to recruit new agents and work with older ones-- the hardest thing to prove is something that's self-evident.

Simply put, FOIA and an effective intelligence community are not compatible. We have to choose between them. In my judgment, the intelligence community must be granted an exemption from this law.

Let me point out that in no way would an exemption from FOIA reduce the ability of Congress to oversee the intelligence community. Not at all. The fragmentary information obtainable under the FOIA has not, cannot, and will not ever remotely compare in value with the congressionally established oversight responsibility which has been given to the select committees on intelligence in the Senate and House of Representatives. These two committees are specifically responsible for overseeing authorizations of appropriations and operations of the various intelligence agencies. I believe that it is fair to say that no other agencies in the Government are subject to such close congressional scrutiny on a permanent, ongoing basis. This system of vigilant and effective congressional oversight, along with extensive Executive Branch review mechanisms, provides the means through which the American people are assured that the operation of their intelligence agencies is in accordance with applicable law.

To be sure, we must never allow any retreat from our Government's historic and cherished commitment to protecting essential liberties. But we should also bear in mind, as Justice Goldberg once said, that "while the Constitution protects against invasions of individual rights, it is not a suicide pact."

Ironically, secrecy is accepted without protest in many areas our society. Physicians, lawyers, clergymen, grand juries, journalists, income tax returns, crop futures--all have confidential aspects protected by law.

Can national security information be entitled to any less protection?

I believe the answer is no.