

26 October 1977

STAT MEMORANDUM FOR: [redacted] Office of Security, DDA
 [redacted] Information Services Staff, DDO
 [redacted] Policy and Coordination Staff, DDO
 [redacted] Special Assistant for Information, DDA
 [redacted] Information Systems Analysis Staff, DDA
 Mr. Harry Eisenbeiss, Director of Central Reference, DDI
 [redacted] Special Assistant, DDS&T

STAT

STAT FROM : [redacted]
 Office of General Counsel

SUBJECT : Proposed National Security Council Directive Concerning
 National Security Information and Material

STAT 1. Attached are two proposals for implementing the Executive Order that is to replace Executive Order No. 11652. The accompanying note to me from [redacted] participant on the group that drafted these directives, requests any comments to be submitted to him by early November before the directive is forwarded to the NSC.

2. Some general comments about what should be included in such a directive have already been submitted to me, and I am not requesting additional remarks, especially regarding an implementing directive for an Order that has not yet been finalized. However, if you wish me to transmit your comments to Don for possible inclusion in the draft, I would be glad to do so when I make suggestions of my own.

STAT 3. The "politics" of drafting which Don mentions refers to the difficulty involved in making any changes in such directives even when they have been circulated for official comment, as they shall be at a later date. I believe Don is suggesting that we should attempt to make our changes now rather than later. While I don't urge anyone to "burn the midnight oil" in order to respond, please call me [redacted] by Thursday, 3 November 1977, if you have any comments.

STAT

cc: Acting Deputy Director for Administration
 Deputy Director for Intelligence
 Deputy Director for Operations
 Deputy Director for Science & Technology

STAT

OGC 77-6634

INTELLIGENCE COMMUNITY STAFF

18 October 1977

NOTE FOR: [redacted] OGC
FROM : [redacted]
DCI Security Committee

Attached for your information are recent drafts of the NSC implementing directive for the proposed E.O. on security classification. The one labeled "draft" and dated 5 October 1977 is by Art Van Cook, Defense. The undated one is by Bob Wells, ICRC. Wells' draft essentially takes Van Cook's version and changes it where Bob Wells believes such is necessary. I find Wells' version much better (but note that changes still need to be made to put it into final shape). You may wish to circulate Wells' draft for comment. Please advise me reasonably soon (say by early November) of comments received; earlier advice on comments of major Community significance should be provided as soon as received. I read the "politics" of drafting this directive as pushing us to use the maximum possible amount of Van Cook's version and Wells' changes thereto.

[redacted]

STAT.

INFORMATION

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Approved For Release 2006/04/19 : CIA-RDP86-00674R000300050002-0

Next 61 Page(s) In Document Exempt

Approved For Release 2006/04/19 : CIA-RDP86-00674R000300050002-0

The Washington Star

SIDNEY EPSTEIN, Executive Editor EDWIN M. YODER JR., Editorial Page Editor

PHILIP EVANS, BARBARA COHEN, Managing Editors

SUNDAY, JULY 2, 1978

Unsealing the 'secrets'

What's in a government secret? Often very little. The eminent British historian A.J.P. Taylor, who is usually at war with his country's restrictive treatment of public documents, used to say *the Foreign Office has no secrets*. He called it Taylor's Law.

We shall see what secrets, if any, are sprung betimes by President Carter's new executive order relaxing and liberalizing the security classification system. The new regulations may bring on a deluge of junk that merely confirms the applicability of Taylor's Law to U.S. affairs as well.

One episode that reinforces that supposition was the famous proceeding against major newspapers publishing the so-called Pentagon Papers. The government was challenged in court to say specifically what secrets in that study might compromise national security and found itself embarrassed for reply. Yet their publication caused a great hue and cry.

There are other kinds of controversies, for instance the current court case involving Mr. Frank Snepp's book on the CIA and the fall of Saigon, that raise important but hardly crucial issues of secrecy.

So far as we can see, the Carter administration's plan for dismantling or at least diminishing Washington's absurdly active classification industry is intelligently conceived.

It would, to mention a few salient points:

- Reduce the number of officials who are authorized to classify documents;
- Strip classification authority entirely from 11 departments, agencies and commissions who really should have it to begin with, their business being entirely domestic;
- Require classifications in the name of

national security to be based on potential damage that is "identifiable," not vague and hypothetical;

- Make possible the separate treatment of various parts of a lengthy document, so that all of it needn't be classified according to the most sensitive sections;

- Shorten the classification period for many documents;

- And, finally, make it easier to gain access to a requested document by establishing a "balancing" test in which the merits of continuing classification must be weighed against the public's interest in knowing what it contains.

Of course it's only at the fringes and margins that classification rules matter at all. Most classified documents are as void of interest as they are inaccessible. Most controversies over leaks and such are colorful but empty games people play. And if the new rules indeed increase the volume of declassification from 350 to about 600 million pages during the next 10 years — as a White House spokesman suggested they could — there will be far more chaff in the wind, to confuse as well as instruct. Rare are the disclosures that startle or change perspectives. Which, we guess, is what Professor Taylor's law suggests to begin with.

But the new regulations move in the right direction. The public's right to know what its government puts on paper ought to be presumed, except in rare cases where security and diplomatic sensitivity are actually involved. Often there is a contrary presumption: that government has a right to keep secrets just for the hell of keeping them, or for double insurance against red faces.

That presumption is always out of order.

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OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
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3	A/DDA	21 OCT 1977	by
4			
5	RAB 502828 Attn: Dave	23 Oct 77	R
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Remarks:
 I'm sure their concerns are valid to them, but sources tell me that there's little likelihood their suggestions will be taken up.
 Encl

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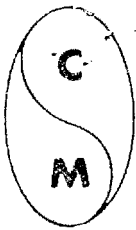
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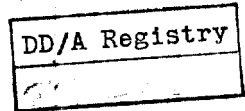
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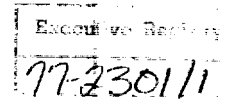
EXECUTIVE SECRETARY, P.O. BOX 7453, ALEXANDRIA, VIRGINIA 22307



REPLY TO:

13 October 1977

Mr. William M. Nichols
General Counsel
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503



Dear Mr. Nichols:

We appreciate having the opportunity to provide comments on the draft of the forthcoming Executive Order, *National Security Information and Material*.

Our Society has previously provided comments concerning the forthcoming Executive Order — most recently relating to a draft of the Order which was prepared in July. At that time we prepared a draft executive order which contained all of our Society's recommendations in addition to our comments on the structure and substance of the draft order we were reviewing. Since a number of points to which we will invite your attention are reflected in our draft order, we provide a copy for your information. This draft was initially furnished to the National Security Council and subsequently to the Executive Director of the ICRC and the Director of Information Security, OSD.

There are, we believe, three major points of weakness within the forthcoming Executive Order draft:

1. The lack of a mandatory requirement for original classifiers to prepare classification guides as soon as practicable and not later than the initial funding, or implementation (if funding is not required) of a program, plan, or project. We noted, of course, the duty specified in Section 7 (b)(6). This, however, is an agency function to be implemented as the agency desires. The Order should direct original classifiers to prepare guides which identify that information which is to be classified, at what level, and for how long. Mandatory classification guides, widely distributed and periodically reviewed and updated, are the most effective means of insuring consistent and appropriate classifications; of insuring rapid and timely downgrading and declassification (to include the ultimate elimination of the need for declassification *guidelines*); and for insuring that the identity of the original classifier is recorded. We recognize that there should be a provision for exceptions to this requirement if adequately documented and approved by competent authority.
2. We have recommended and continue to support the philosophy that the Security Information Oversight Office should be an office exercising Presidential authority. The Oversight Office, supervising and enforcing the desires of the President in these matters, and the policy responsibilities of the National Security Advisor to the President, should be placed on a level equal to or higher than that of the agencies responsible for implementing the National Security Program. One must remember that Freedom of Information, the Right to Privacy, and National Security are of equal and paramount importance to all citizens. These items must be constantly weighed, one against the other and will, of course, at times be conflicting - senior authority will be needed in cases of dispute.
3. The Executive Order should, to the degree and extent possible, contain such words as are necessary to insure that its provisions are equally and uniformly applied to *all* users/holders of National Security Information whether they are within the Executive Branch or in the Industrial

Page 2

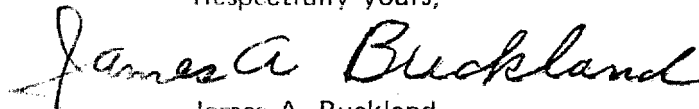
NCMS letter of 13 October 1977

community. The draft under review lacks this direction. This can, and no doubt will, result in imprecise and conflicting implementing directives. This potential, based on experience, is of grave concern to the industrial and academic communities which handle vast quantities of classified information. We wish to eliminate the *do as I say, not as I do* syndrome that has remained all too prevalent in the implementation of prior Executive Orders.

Although it may appear, albeit superficially, that most of our prior recommendations are included in the draft at hand, let us hasten to assure you that the permissiveness, the vagaries of language, and the imprecision of definition and expression of the proposed Order have greatly weakened or destroyed many of our recommendations. In contacts with other agencies we find that they too have difficulties with the language and semantics of the proposed Order. We find also conflicting opinions on the same items, frequently because of interpretations. On an allied point, there needs to be remembered that a "goodness of fit" is important among this Order and the forthcoming revisions to EO 11905 and EO 10450. We have stated our major objections. We enclose a list of points which we believe are worthy of your consideration. We do not repeat in detail our rationale for these points as it is already contained in our enclosed draft.

Again, we appreciate this opportunity to express the views of the National Classification Management Society and offer whatever further comments or views you may find contributory. As a Society and as individual citizens, we consider the efforts underway of significance to the defense of the nation and to providing a proper flow of information to the public.

Respectfully yours,



James A. Buckland
President

Attachment and Enclosure

Copy to:

Chairman, ICRC; Departments of State, Defense, Justice; ERDA; CIA; Mr. Robert Gates, NSC
(with attachment but not enclosure)

Approved For Release 2006/04/19 : CIA-RDP86-00674R000300050002-0
POINTS TO BE CONSIDERED FOR CHANGE

NOTE: Page and section identification refers to your draft of 13 September 1977. Citations of page and section within a comment refer to the enclosed draft executive order prepared by the Society.

1. Page 7, Section 2c.: This section should include a prohibition relating to the classification status of *officially* released information (page 5, subsection (5)).
2. Pages 8-10, Section 2 (d): This subsection lacks the clarity and the conciseness of definition so necessary for the proper interpretation of its meaning (pages 6, 6a, and 7).
3. Pages 11/12, Section 2 (f): As stated in our covering letter and pages 8 and 8a of the enclosure, we believe that the failure of the draft order to make mandatory the preparation of classification guides is the most serious deficiency. Our Society's members through surveys, at seminars, at schools, and during training sessions have consistently indicated that lack of current, concise classification guidance is their major problem. The ERDA, of course (continuing from the predecessor AEC) has issued detailed guidance since the inception of the Atomic Energy Act with singular success. More recently to be commended is the Department of Defense for establishing its Index of Security Classification Guides along with the Department of Navy for its more advanced "RANKIN" system for indexing and changing classification guides. Such actions are considered major steps forward in the control of National Security Information.
4. Page 12, Section 2 (g): The "Identification of the original classification authority" is, at best, elusive if not evasive. This identification requirement could be eliminated if mandatory classification guides were required (Pages 9 and 9a).
5. Page 15, Section 4 (a): This subsection should, in the last sentence, make the "guidelines" available to *all* holders of the material concerned.
6. Page 21-22, Section 5: The need to notify individual holders of material being downgraded should not be required when the action results from published guidance (page 11, Subsection (b)).
7. Page 22, Section 6: This section, in one of its subsections, should require the uniform application of the provisions of the Order — as stated in our covering letter. "Dual standards" exist between agencies of the Executive Branch and organizations in the "industrial community" and these are unconscionable. It goes almost without saying that the diverse approaches of the Legislative and Judicial Branches give concern.
8. Pages 25/26, Section 6 (e): This subsection should be eliminated. These instructions, if required, should, more appropriately, be placed in implementing directives. However, should they be retained in the Order they must be clarified and simplified. It is of interest to note that the Society's Directors could *not* reach a uniform interpretation of this subsection.
9. Page 26, Section 7: As stated within our covering letter, the placement and authority of the Security Information Oversight Office is considered of paramount importance.
10. Page 28, Section 7 (b)(1): We believe that agencies should "submit for *review*" rather than submit for *approval*. We suggest, however, that the words "*submit for review and determination of consistency...*" would make clear that the uniform application of the principles of the Order is required (page 17, subsection (b)(1)).

Attachment to NCMS letter of 13 October 1977

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