

Legal 3
6 JAN 1982

Y.E.O. 12065

MEMORANDUM FOR: Chief, Records Management Division
Office of Information Services

STAT FROM:
Chief, Policy and Plans Group
Office of Security

SUBJECT: ISOO Draft of Proposed New Executive Order to
Replace EO 12065

REFERENCE: Memo for Distribution from DDA dated 4 January
1982, same Subject, (DDA Regulation No. 82-0008)

1. Reference requests review of Subject and response by COB today. In the time permitted, Subject has been reviewed, primarily in terms of previous Office of Security input. It has also been examined with respect to ISOO changes pointed out in Reference, other changes suggested by the Agency incorporated into the proposal, and Agency comments previously submitted that were not featured in this latest revision.

2. Significant changes included in Reference.

a. Section 1-302. This section deals with aggregate classifications and, according to Reference, has been reworded in a manner that may restrict its application. The Office of Security agrees with this interpretation and recommends that the language in the version circulated in October 1981 be supported.

b. Section 1-303. This has been revised in a positive manner to protect the identity of a confidential source. The revision is supported.

c. Section 1-502. This office is not supportive of the change that partially restores paragraph marking. The new provision would permit the release of Agency information marked as unclassified by other Government entities without any opportunity for Agency review to determine if it warrants classification in the aggregate. We would not object to a compromise that would establish portion marking as optional.

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d. Section 3-404. A requirement for D/ISOO review of all mandatory review procedures has been dropped. There is no objection to this change.

e. Section 6-106. The definition of confidential sources has been expanded to include jeopardy. This is supported as an improvement.

3. Previous Agency comments incorporated into the revision.

a. Sections 1-501 and 3-401(b) have been changed to accommodate technical matters within the purview of Office of Information Services. No security equities are involved.

b. Suggested revision of Section 3-304 has been adopted in part in a new Section 3-203. The original Agency suggestion is preferred in that it specifies that approval of the issuing authority is required in matters concerning systematic review for declassification. The revised Section 3-203 could be interpreted to read that agency guidelines or criteria are among the last and least important governing factors to be considered in the declassification or downgrading decisions to be made by the archivists.

4. Agency comments previously submitted and not incorporated into the instant revision by ISOO.

a. Section 1-303. The Agency version that was not adopted should be supported. It is much more comprehensive in terms of delineation and specificity in citing factors of primary interest to the CIA.

b. Section 3-301. The Agency suggestion presumably was a strategic rather than a substantive change in that the respective authorities of the Secretary of Defense and the DCI were separated from those applicable to the rest of the government. This strategy is supportable. Of more import, the current 3-301 adds: "after consultation with affected agencies." This refers to the DCI authorization to establish special procedures for systematic review for declassification of classified intelligence information and other types of information of interest to CIA. I recommend we oppose the addition on the grounds of possible weakening of the DCI's prerogative.

c. Section 4-101. The suggested addition regarding issuance and maintenance of minimum investigative standards is supported, although this is covered in Executive Order 10450. The latter directive is outdated, subject to interpretation by individual agencies, and in some instances virtually ignored.

d. Section 4-201. The addition concerning the authority of the DCI to establish common security and other security-related controls is desirable. This provision probably has caused more dissension within the Community, particularly DoD, than any other. Nevertheless, it states the current reality recorded by existing DCID's. The DoD objection is based on the worst-case interpretation of the possibility of imposition of such controversial security programs as the polygraph.

e. Section 4-202. The Agency previously recommended deletion of this entire section. The rationale is that it is unclear, unnecessary, and burdensome. In the previous exercise we certainly found it unclear. Deletion is appropriate.

f. Section 5-402(a). This section deals with sanctions and adds negligence as a sanction for unauthorized disclosure. The addition is consistent with our own regulations. In terms of the overall statement contained in this section, I note a contradiction in releasing classified information to unauthorized persons with the proper authority. Without intending to do so, this suggests that there is such a thing as an authorized leak. Admittedly, this is a bit of a purist interpretation. I do not advocate making an issue of it.

g. Section 5-404. This concerns a matter addressed in the November response to a previous version of the order. This office objected to the D/ISOO being notified on every occasion when there was an improper disclosure of classified information; a requirement which could have impacted adversely on the polygraph program. The Agency response advocates a change that would insure that the D/ISOO be informed periodically of violations, an approach that is consistent with oversight but does not intrude on the prerogative of individual agencies. As a matter of direct interest to this office, the previous suggestion by the Agency is given our strong endorsement.

h. Section 6-107. Our Agency recommended a new definition to be added for cryptology to read: "Cryptology for the purpose of this order means cryptography and communications security." This is directly related to the point emphasized in our November response; i.e., Section 4-201 as written is in direct contravention to the statutory authority of the DCI. With the addition of this definition, Section 4-201 is innocuous in terms of infringement on the DCI's authority to set protective standards for intelligence sources and methods. This office gives its strongest endorsement to the original Agency suggestion that was not incorporated into the Subject.

i. Sections 6-108 and 6-109. These sections concern two additional definitions for unauthorized disclosures and unauthorized persons. Both definitions are entirely consistent with internal Agency regulations and should be supported for inclusion in the final version of the proposed order.

5. The latest ISOO version does not satisfy previously expressed Office of Security concerns. Further, it failed to incorporate other Agency-suggested provisions that we agree should be featured in a final version of the replacement Executive Order. We appreciate the opportunity to contribute and request that the Office of Security be permitted to review any future iteration of the proposal.

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(5 January 1981)

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