



Department of Justice

STATEMENT OF

MARY C. LAWTON
Counsel for Intelligence Policy

Before

The Senate Select Committee on Intelligence

On

S. 1324 -- To amend the National Security Act
of 1947 to regulate public disclosure of information
held by the Central Intelligence Agency

June 28, 1983

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to appear before the Committee in support of S. 1324. While the bill, by its terms, relates solely to information in the files of the Central Intelligence Agency, it has significance for the Department of Justice which, of course, represents the CIA in Freedom of Information Act litigation.

As the Committee is aware Freedom of Information Act requests to the CIA impose enormous burdens on the Agency and on the Department of Justice when litigation ensues. While many agencies are burdened with FOIA requests, the compartmented nature of CIA files and the sensitivity of the information contained in them pose particular difficulties in searching and processing requested materials. These difficulties are compounded in litigation. The Department of Justice can only assign to CIA cases those attorneys who have the necessary clearances to deal with the information at issue. Working with the CIA, these attorneys must formulate the sort of public affidavit called for in Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976) and Ray v. Turner, 587 F.2d 1187 (D.C. Cir. 1978), without at the same time disclosing the very information they

- 2 -

are required to protect. Often, in order for the courts to appreciate the national security implications of requested records, extensive classified affidavits explaining their sensitivity must be filed. The courts, in turn, must struggle with the paradox of explaining the reasons for their decisions without disclosing the underlying facts. And all to what end? When the litigation is over the information remains classified just as it was before the request was filed.

If there were any public benefit served by FOIA requests of this type, consideration of this bill would require this Committee to weigh the benefit against security concerns. With respect to the records covered by S. 1324, however, we perceive no such benefit. The CIA must divert valuable intelligence personnel from their mission to identify and review the records. Processing must be scrutinized to minimize the risk of erroneous release which might jeopardize sources or diminish the value of the intelligence. Attorneys at the Agency and the Department spend countless hours preparing documents. Already heavy court dockets are further burdened by these cases. Yet in the end the public receives only the bill for this needless expense.

The findings set forth in S. 1324 essentially recognize that this process wastes intelligence community and litigative

- 3 -

resources without any offsetting public benefit. Equally important, S. 1324 recognizes the problem posed by the perception of those who cooperate with intelligence agencies that protection of information furnished cannot be ensured. Whether or not this perception is justified, it is real. Congressional recognition that the problem exists and that it warrants remedy should help to allay the concern.

I am sure that the Committee is aware that the Department of Justice sought in the last Congress and is seeking in this Congress generic relief from some of the undue burdens imposed by FOIA on the government as a whole. We are delighted that the Senate Judiciary Committee has agreed to report S. 774. The need for that legislation, however, in no way diminishes the need for legislation such as S. 1324.

This bill focuses on the specific protection of CIA sources and methods and addresses the particular problems of processing and reviewing compartmented files. It is, quite properly, an amendment to the National Security Act of 1947. As exemption (b) (3) of the Freedom of Information Act itself contemplates, it addresses the specific need for protection of an agency's files

- 4 -

in the organic act applicable to that agency. Only a proposal of this type could address with such specificity the files to be protected. Precisely because S. 1324 deals with the CIA alone, it can describe the exempt files in terms which address that Agency's particular filing system. It is entirely appropriate that it be considered by the Congress as separate and distinct from efforts to secure government-wide amendments to the Freedom of Information Act itself.

We have no further comments, Mr. Chairman, other than to reiterate our wholehearted support of S. 1324 and urge its speedy enactment.