

STATEMENT OF
JOHN H. WRIGHT
OF THE
CENTRAL INTELLIGENCE AGENCY
BEFORE THE
SUBCOMMITTEE ON TECHNOLOGY AND THE LAW
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

2 AUGUST 1988

MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEE ON TECHNOLOGY AND THE LAW. I AM PLEASED TO APPEAR HERE TODAY TO OUTLINE FOR YOU SOME OF CIA'S RECENT EXPERIENCES AND ACHIEVEMENTS IN RESPONDING TO FOIA REQUESTS FROM THE PUBLIC AND TO DESCRIBE THE STEPS WE HAVE TAKEN IN CIA TO IMPLEMENT THE PROVISIONS OF THE FOIA REFORM ACT OF 1986. I SERVE AS INFORMATION AND PRIVACY COORDINATOR FOR CIA AND AM RESPONSIBLE FOR PROCESSING REQUESTS FOR INFORMATION SUBMITTED NOT ONLY UNDER THE FOIA BUT ALSO UNDER THE PRIVACY ACT AND THE MANDATORY DECLASSIFICATION REVIEW PROVISIONS OF EXECUTIVE ORDER 12356 AS WELL. I WOULD FIRST LIKE TO DESCRIBE SOME OF THE UNIQUE ASPECTS OF OUR PROGRAM, SOME OF THE SPECIAL PROBLEMS WE FACE IN CARRYING OUT OUR RESPONSIBILITIES UNDER THE ACTS, AND CONCLUDE BY DISCUSSING THE IMPACT OF RECENT LEGISLATION, INCLUDING THE REFORM ACT, ON THE OVERALL CONDUCT OF OUR PROGRAM.

THE CIA CURRENTLY EXPENDS APPROXIMATELY 100 MAN-YEARS ANNUALLY IN RESPONDING TO INFORMATION REQUESTS SUBMITTED BY THE PUBLIC. ABOUT HALF OF THE INFORMATION REQUESTS RECEIVED ARE SUBMITTED UNDER THE FOIA; THE REMAINING HALF OF THE REQUESTS RECEIVED ARE PRIVACY ACT AND MANDATORY DECLASSIFICATION REVIEW REQUESTS. WE FACE SPECIAL DIFFICULTIES IN RESPONDING TO INFORMATION REQUESTS BECAUSE OF THE NATURE AND MISSION OF OUR ORGANIZATION. THE FIRST DIFFICULTY IS THAT THE RECORDS SYSTEMS WHICH WE MUST SEARCH IN RESPONSE TO INFORMATION REQUESTS ARE DECENTRALIZED AND HIGHLY DISSIMILAR IN TERMS OF HOW THEY CAN BE

SEARCHED AND THE PURPOSE FOR WHICH THEY WERE INITIALLY ESTABLISHED. FURTHER, THE RECORDS SYSTEMS OF THE CIA ARE DELIBERATELY COMPARTMENTED FOR REASONS OF NATIONAL SECURITY, WITH ACCESS CONTROLLED ON A STRICTLY NEED-TO-KNOW BASIS. WHEN RECORDS POTENTIALLY RESPONSIVE TO INFORMATION REQUESTS FROM THE PUBLIC ARE LOCATED IN THE RECORDS SYSTEMS, THEY MUST BE PAINSTAKINGLY REVIEWED BY SENIOR INTELLIGENCE OFFICERS ON A LINE-BY-LINE BASIS BECAUSE OF THE HIGHLY SENSITIVE NATURE OF THE INFORMATION THEY CONTAIN. IN MANY INSTANCES, ADDITIONAL REVIEWS MUST BE CONDUCTED BY OTHER CIA COMPONENTS IN ORDER TO INSURE THAT ALL INFORMATION REQUIRING CONTINUED PROTECTION IS IDENTIFIED. THE POINT I WISH TO MAKE IS THAT THE RECORDS REVIEW PROCESS IN CIA IS LABORIOUS, TIME CONSUMING, AND EXPENSIVE. THE OVERRIDING CONSIDERATIONS IN THE REVIEW OF RECORDS TO DETERMINE WHETHER OR NOT THEY ARE RELEASABLE ARE THE STATUTORY REQUIREMENT LEVIED ON THE DIRECTOR OF CENTRAL INTELLIGENCE TO PROTECT INTELLIGENCE SOURCES AND METHODS FROM UNAUTHORIZED DISCLOSURE AND HIS MANDATE UNDER THE EXECUTIVE ORDER TO PROTECT CLASSIFIED INFORMATION. THESE MANDATES ARE TAKEN VERY SERIOUSLY.

DESPITE THE INHERENT DIFFICULTY CIA FACES IN RESPONDING TO INFORMATION REQUESTS FROM THE PUBLIC, WE HAVE MADE GREAT STRIDES IN PROCESSING REQUESTS. OUR BACKLOG OF OPEN CASES FOR YEARS WAS MEASURED IN TERMS OF THOUSANDS OF OPEN CASES. THE BACKLOG STOOD AT 3,146 OPEN CASES AT THE END OF 1983, BUT HAD

BEEN REDUCED TO 1,454 OPEN CASES BY THE END OF 1987 -- A REDUCTION OF WELL OVER 50 PERCENT. THE BACKLOG TODAY IS EVEN LOWER AND STANDS AT 1390 OPEN CASES.

EQUALLY DRAMATIC HAS BEEN OUR REDUCTION IN RESPONSE TIME TO PROCESS CASES, WHICH AVERAGED ABOUT 15 MONTHS IN 1985, BUT ONLY ABOUT ONE AND ONE-HALF MONTHS IN 1987. THESE IMPROVEMENTS IN PROCESSING PERFORMANCE WERE ACHIEVED DESPITE A 35% INCREASE IN THE VOLUME OF INCOMING REQUESTS OVER THE 1983-1987 TIME FRAME.

THE PRINCIPAL FACTOR RESPONSIBLE FOR OUR IMPROVED PROCESSING PERFORMANCE WAS THE ENACTMENT OF THE CIA INFORMATION ACT OF 1984, WHICH REMOVED FROM THE SEARCH, REVIEW AND DISCLOSURE REQUIREMENTS OF THE FOIA CERTAIN SENSITIVE CIA OPERATIONAL FILES. WE HAD PREVIOUSLY EXPENDED SIGNIFICANT RESOURCES IN SEARCHING FOR AND REVIEWING RECORDS CONTAINED IN THESE FILES ONLY TO FIND THAT THE LAW EXEMPTED MOST OF THE INFORMATION FROM DISCLOSURE ANYWAY. THE CIA INFORMATION ACT HAS CLEARLY ACHIEVED ITS PURPOSE OF ELIMINATING THIS UNPRODUCTIVE EXPENDITURE OF RESOURCES, THUS ENABLING THE CIA TO PROCESS REQUESTS FASTER AND MORE EFFICIENTLY WITH ESSENTIALLY NO REDUCTION IN THE AMOUNT OF INFORMATION ULTIMATELY DISCLOSED TO THE PUBLIC. IN A LETTER TO FORMER DIRECTOR CASEY, DATED 22 OCTOBER 1986, CONGRESSMAN ENGLISH, CHAIRMAN OF THE SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE AND AGRICULTURE STATED: "I CONGRATULATE YOU AND THE MEMBERS OF OF THE CENTRAL INTELLIGENCE

AGENCY'S FREEDOM OF INFORMATION ACT STAFF FOR THE PROGRESS REFLECTED IN THE FOURTH AND FINAL REPORT FILED UNDER THE REQUIREMENTS OF THE CIA INFORMATION ACT OF 1984. THE REDUCTIONS THAT HAVE BEEN ACHIEVED IN BOTH THE BACKLOG OF FOIA REQUESTS AND IN THE AVERAGE RESPONSE TIME ARE SIZEABLE." CONGRESSMAN ENGLISH CONCLUDES BY STATING: "THE IMPROVEMENTS MADE TO DATE FULFILL THE PROMISES MADE AT THE TIME THE ORIGINAL LEGISLATION WAS PASSED."

WE UNDERSTAND THAT YOUR PRIMARY INTEREST HERE TODAY IS TO FOCUS ON IMPLEMENTATION OF THE PROVISIONS OF THE FOIA REFORM ACT OF 1986, ESPECIALLY THOSE PORTIONS OF THE ACT DEALING WITH THE DETERMINATIONS OF REQUESTERS' FEE STATUS. ALTHOUGH WE HAVE ATTEMPTED TO BE AS COMPREHENSIVE AS POSSIBLE IN RESPONDING TO THE ITEMS CONTAINED IN YOUR LETTER OF 30 JUNE 1988 -- WHICH WAS RECEIVED IN MY OFFICE ON 19 JULY -- OUR FOIA LOGGING AND TRACKING SYSTEM IS NOT STRUCTURED TO ENABLE US TO ANSWER CERTAIN OF THE QUESTIONS YOU HAVE POSED. FURTHER, WE HAVE NOT HAD SUFFICIENT EXPERIENCE WITH THE REFORM ACT TO PROVIDE DEFINITIVE ANSWERS TO OTHERS. NEVERTHELESS, THERE ARE SEVERAL GENERAL OBSERVATIONS THAT WE CAN MAKE CONCERNING THE IMPACT OF THE FEE PROVISIONS AND I AM CONFIDENT THAT THESE OBSERVATIONS WILL BE BORNE OUT AS OUR DATA BASE GROWS.

THE FIRST GENERAL OBSERVATION I WISH TO MAKE IS THAT THE PERCENTAGE OF FOIA REQUESTERS OF CIA RECORDS WHO ARE ASSESSED

FEEES WILL PROBABLY DECREASE AS A RESULT OF THE PASSAGE OF THE REFORM ACT. MOST OF THE REQUESTS RECEIVED ARE SUFFICIENTLY WELL DEFINED AND SPECIFICALLY FOCUSED SO AS TO BE SERVICEABLE WITHIN THE 100 FREE PAGES OF RELEASABLE MATERIAL AND TWO HOURS OF FREE SEARCH TIME. FURTHER, WE BELIEVE THAT THE AMOUNT OF FEES ASSESSED THOSE REQUESTERS WHO DO NOT FALL WITHIN THESE PARAMETERS WILL BE LESS THAN THE AVERAGE AMOUNT PREVIOUSLY COLLECTED PER REQUESTER. THESE OBSERVATIONS ARE BASED ON MY EXPERIENCE AS COORDINATOR IN PERSONALLY REVIEWING THE CASE FILES PRIOR TO SIGNING THE FINAL RESPONSE LETTERS TO THE REQUESTERS.

IN SUM, WE BELIEVE THAT THE PROVISIONS OF THE FOIA REFORM ACT STRIKE A REASONABLE BALANCE BETWEEN THE INTERESTS OF THE PUBLIC IN ACCESS TO GOVERNMENT RECORDS AND THE RESPONSIBILITY OF THE GOVERNMENT TO RECOVER USER COSTS. IN PARTICULAR, WE BELIEVE THAT THE FEE PROVISIONS FOR COMMERCIAL REQUESTERS PROPERLY PERMIT THE OPPORTUNITY TO COLLECT ACTUAL PROCESSING COSTS FROM THOSE REQUESTERS WHO SERVE TO BENEFIT COMMERCIALY FROM DISCLOSURES MADE TO THEM UNDER THE FOIA BY THE GOVERNMENT AT TAXPAYERS' EXPENSE. OUR EXPERIENCE TO DATE, HOWEVER, IS THAT VERY FEW OF OUR REQUESTERS MUST BE PLACED IN THE COMMERCIAL CATEGORY, AND, NOTABLY, MOST HAVE ACCEPTED THIS DETERMINATION.

AN ADDITIONAL FACT THAT WE WISH TO MAKE THE SUBCOMMITTEE AWARE OF IS THAT THE CIA FEE COLLECTIONS OVER THE YEARS HAVE BEEN VERY SMALL IN RELATION TO THE VOLUME OF RECORDS DISCLOSED AND, IF EXPRESSED AS A PERCENTAGE OF FOIA PROGRAM OPERATING COSTS, AMOUNT TO ABOUT ONE HALF CENT COLLECTED FOR EVERY DOLLAR EXPENDED. THE NEW FEE PROVISIONS SPECIFIED BY THE REFORM ACT HAVE BEEN INTERPRETED IN ACCORDANCE WITH OFFICE OF MANAGEMENT AND BUDGET AND DEPARTMENT OF JUSTICE GUIDANCE AND ARE NOW SPECIFIED IN OUR REGULATIONS PROMULGATED IN THE CODE OF FEDERAL REGULATIONS AT TITLE 32, PART 1900.

THIS CONCLUDES MY STATEMENT AND I SHALL BE PLEASED TO ANSWER TO THE BEST OF MY ABILITY ANY QUESTIONS THAT MEMBERS OF THE SUBCOMMITTEE MIGHT HAVE AT THIS TIME.