

76-4013

11 AUG 1976

MEMORANDUM FOR: Assistant for Information, DDA  
FROM : Robert W. Gambino  
Director of Security  
SUBJECT : Agency EO 11905 Implementation  
Working Group

Attached are comments and suggestions from the Office of Security offered in connection with the current study of the subject Group.

[Redacted Signature Box]

Robert W. Gambino

Atts

OS 6 3573

OBSERVATION

Section 4(a)(5) deals with the requirement to report to the Attorney General that information which relates to detection or prevention of crimes by any person. Problems associated with a literal and very broad interpretation of this provision have, in large measure, been relieved by guidance which limits reporting responsibility to matters involving Title 18 of the U.S. Code. However, to legalize this interpretation, it is believed advisable to present clear guidelines as to the exact intent of the mandate.

RECOMMENDATION

*ok dir*

Section 4(a)(5) be revised in a manner to read, "Report to the Attorney General, information, allegations, or complaints of violations of Title 18 of the United States Code involving any Government officer and employee, in compliance with 28 U.S.C. 535."

*alter when correspondence & rego matters are completed*

*State's operations: alter E.O. to permit retention of other than Federal sources*

*- fix up 5 b (7) OGC to do.*

*Withdrawn*

OBSERVATION

Sections 4(a)(9) and 3(c)(1)(viii) deal with the responsibility of the DCI and the senior officials of the I.C. to establish and monitor the downgrading and declassification of foreign intelligence information. When computers and micrographics are involved, downgrading or declassification may not be feasible and, at best would be extremely costly in time, effort, and system retrofit. Until current systems are modified or new systems are developed which would allow declassification to be cost effective or feasible it is unrealistic to impose a requirement that the material involved will be declassified "promptly."

RECOMMENDATION

Section 3(c)(1)(viii) be amended to read: "Conduct a continuing review of all classified material originating within his organization and, when feasible, promptly declassifying such material consistent with Executive Order No. 11652, as amended."

OBSERVATION

Section 5(b)(1)(ii) concerns physical surveillance of a United States person in contact with the subject of an authorized inquiry, "but only the extent necessary to identify" such a person. The term "identify" might be clarified, since the process of identification will vary if such factors as an alias or false address are involved.

RECOMMENDATION

Section 5(b)(1)(ii) be revised to read: "a United States person, who is in contact with either such a present or former contractor or employee or with a non-United States person who is the subject of a foreign intelligence or counterintelligence inquiry, but only to the extent of establishing positive identification of such United States person."

*dk*

OBSERVATION

Section 5(b)(2) limits electronic surveillance within the United States to testing of equipment under procedures approved by the Attorney General consistent with law. The area of audio countersurveillance was carefully reviewed from a legal standpoint during implementation of EO 11905, and it has been determined that if there is no intent to eavesdrop electronically, and if no use is made of information picked up during testing, there is no conflict with the letter or spirit of the Order. However, the Order does not specifically authorize emanations security testing.

RECOMMENDATION

An addition be made to the Executive Order <sup>5(b)(2)</sup> which would specify that the prohibition against electronic surveillance does not preclude the use of countermeasures to detect electronic surveillance mounted against the Central Intelligence Agency, when conducted under procedures approved by the CIA General Counsel.

*OGC - will add same language as current bill.*

*7pg. 2 - 5 b(2) on conducting countermeasures agt. tech. surveil.*

*Withdrawn*

*16 AUGUST '76*

*ICS*

~~ICS~~ Suggestions

Sec. 2, (b), Top of Page 3, Add:

(10) Officers in other departments and agencies who are designated to be the point of contact on intelligence-related matters.

Rationale: The National Human Resources Plan (NHRP) now being drafted will serve as a framework for the coordination and guidance of all government elements involved in foreign information gathering activities. Certain departments and agencies outside of the "Intelligence Community" may be asked to designate officers to function as a point of contact on intelligence-related matters. It is intended that these officers, and others from user entities receiving close intelligence support such as those countering international terrorism, the Drug Enforcement Agency, the Arms Control and Disarmament Agency, etc., will be encouraged to participate directly in interagency intelligence activities which concern them or to which they can contribute.

Page 9, paragraph (vii) (B):

Insert the words. . . "and information gathering" between intelligence and activities. The sub-paragraph would then read:

"(B) providing leadership, guidance and technical assistance to other government departments and agencies performing foreign intelligence and information gathering activities; and"

Rationale: Most non-intelligence agencies which collect and report foreign intelligence or information would not acknowledge that they are "performing foreign intelligence activities", and the added words would broaden the scope of the paragraph more clearly to include such agencies (which is believed to be the intent of the drafter).

*OK + a (iv) not vii  
put it in both places*

Page 10:

Add a Section (xvi) as follows:

"(xvi) Maintain, consult and establish liaison arrangements with departments and agencies other than those specifically in the Intelligence Community, as defined in Section 1.(b), to assure that any foreign intelligence information gathered by these organizations is incorporated into the national intelligence product."

Rationale: The Executive Order fails to provide guidance for foreign intelligence contribution of non-intelligence departments and agencies involved in foreign affairs activity. This paragraph would help overcome that failure.

*Duplicate  
pg 11 (4)  
pg 12*

*Change (4) to read:  
provide him  
then give him  
rather*



Page 17; Sec. 4, (c) The Department of State, (5):

OK  
Shorten subparagraph (5) by placing a period after the word abroad, thus deleting "and provide guidance for their collection effort." The subparagraph would then read:

(5) Transmit reporting requirements of the Intelligence Community to our Chiefs of Missions abroad.

Rationale: The point of this subparagraph is that the Department of State is the Intelligence Community action element for communications between Washington and the Intelligence Community representation abroad. In this role State is brokering for the Intelligence Community. The clause "and provide guidance for their collection effort" introduces a different subject not germane to this subparagraph. In addition, when taken separately the wording of this clause implies that "The Secretary of State shall: provide guidance for (their?) collection abroad." This is confusing as regards collection guidance responsibilities of collection managers in departments and agencies other than State.

PARTLY COVERED  
BY ANNOTATIONS  
ISSUED BY W.H.

25X1

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AUTHORIZATION

Section 4(g) (4)

Observation: The FBI is permitted under Section 4(g) (4) of Executive Order 11905 to disseminate foreign intelligence and counterintelligence information to appropriate Federal, State and local law enforcement agencies "and cooperating foreign governments." Under Section 4(b) which relates to the Central Intelligence Agency, there is no such explicit statement of permission for CIA to disseminate foreign intelligence and counterintelligence information to "cooperating foreign governments." Under E.O. 11905 sections that apply to other named members of the Intelligence Community, there is no implicit or explicit permission to pass information of the described type to foreign governments. If anything, the tenor of the language in the appropriate sections seems to restrict dissemination to "within the United States Government." Section 4(b) associates the National Security Act of 1947, the CIA Act of 1949 as amended, "and other laws, regulations, and directives" with the provisions of E.O. 11905. The Executive Memorandum that sets policy for furnishing "classified defense information" of the U.S. Government to foreign governments is dated 23 September 1958 and has as an attachment a document titled "Basic Policy Governing the Release of Classified Defense Information to Foreign Governments."

25X1

That document, in turn, prompted pertinent CIA issuances including the current [redacted] The cited Executive Memorandum does not explicitly authorize CIA in terms comparable to those of E.O. 11905 as applicable to the FBI to convey intelligence information to foreign governments. Moreover, the opening sentence of the same Section 4(b) of E.O. 11905 expressly states that "all duties and responsibilities of the Central Intelligence Agency shall be related to the foreign intelligence functions outlined below." This sentence, of more recent date, could be construed in a limiting manner because the dissemination of intelligence information to foreign governments is not, as in the case of the FBI, explicitly sanctioned. "It is possible that authority for CIA to pass intelligence information to foreign governments is implicit in Section Section 4(b)(2) which authorizes the Agency to "develop and conduct programs to collect" but in an epoch when implications or assumptions based on interpretations are being questioned, an explicit statement may be preferable despite the fact that many foreign governments do not wish to acknowledge that they are cooperating with CIA in the Agency's collection effort. In any event, CIA is now actively engaged in giving intelligence information to "cooperating foreign governments." (The FBI is as well but presumably on a less broad scale.)

Suggestion: That an amendment of E.O. 11905 or congressional legislation expressly authorize CIA to disseminate information to foreign governments.

Authorization

Section 3(a)(3), PAGE 4

Observation: The statement regarding "semiannual review of intelligence policies and of ongoing special activities in support of national foreign policy objectives" is not specific as to whether all or selected "ongoing special activities" are to be reviewed; it does not accommodate planned activities as opposed to ongoing activities. Finally there is no mention of how or if NSC decisions/directives/recommendations will be imparted to the appropriate component(s) of the Intelligence Community.

Suggestion:

That Section 3(a)(3) be modified along the following lines:

The National Security Council shall conduct a semiannual review of intelligence policies and of all ongoing or planned special activities in support of national foreign policy objectives. NSC decisions/directives/recommendations resulting from those reviews will be specifically stated and forwarded to the Chairman of the Committee on Foreign Intelligence.

Authorization

Section 3(c), PAGE 6

Observation: This section does not clearly state the relationship of the Operations Advisory Groups (OAG) to the NSC and the CFI when handling similar issues.

Suggestion:

That the relationships among the various Committees and Groups be included as part of the Section 3.

Authorization

Section 3(d)(1)(vii)(B)

Observation: The statement "technical assistance to other government departments and agencies performing foreign intelligence activities;" could be interpreted to permit assistance to law enforcement activities within the U.S. involving foreign intelligence matters.

Suggestion:

Modify the wording to include reference to the restriction 5(e).

Authorization

Section 4 (a), Page 12

Observation: Nowhere in the document is there a statement that addresses the need for cooperation and exchange of scientific and technical information among members of the intelligence community and between the intelligence community and other government agencies. In fact, a number of government agencies are spending significant amounts of money on mutually supportive technologies most of which are in themselves unclassified -- in general, it is the application that is sensitive. Encouragement of cooperation could be incorporated as 4(a)(2) with the present 4(a)(2) becoming 4(a)(3) and subsequent subparagraphs also being renumbered.

Suggestion:

Insert a new 4(a)(2) to read approximately as follows:

Insure the exchange of scientific and technical data between his organization and other elements of the intelligence community and, as practicable, between his organization and other government agencies.

*repealed*

Authorization

Section 4(b)(2), Page 14

Observation: Inclusion of the words "of common concern" immediately before the words "not otherwise obtainable" would more clearly state the authorization for collection and would be compatible with sub para (6).

Suggestion:

Change the first sentence to read:

"Develop and conduct programs to collect political, economic, scientific, technical, military, geographic, and sociological information of common concern or not otherwise obtainable, relating to foreign intelligence, in accordance with directives of the National Security Council.

Another Observation: This section authorizes the CIA to develop and conduct collection programs. It does, however, contain one phrase, i.e., ".....not otherwise obtainable.....," that is unclear in purpose and meaning. In its strictest interpretation it could be extremely delimiting and cause for considerable deliberation. Who determines whether information is ".....not otherwise obtainable....."? The phrase does not appear in other agencies/departments duties and responsibilities, and the necessity for its inclusion here is questionable. Recommend it be stricken from the document or at least modified to "not directly obtainable."

Authorization

None - [4(b)(3), Page 15

Observation: The CIA is not explicitly given authority or responsibility in the areas of reconnaissance or signal intelligence activities.

Suggestion:

A new paragraph 4(b)(3) be included with the current 4(b)(3) becoming 4(b)(4) and all following paragraphs being renumbered accordingly. The new 4(b)(3) to be substantially as follows:

Direct, fund, and operate reconnaissance and signals intelligence activities in accordance with directives of the National Security Council, the Committee on Foreign Intelligence, or the Operations Advisory Group, except as otherwise specified by law.



Authorization

Section 4(b)(3), PAGE 15

*rejected*  
Observation: The sentence should be expanded to include what CIA responsibilities are for reporting on United States persons who are reasonably believed to be involved in terrorist or narcotic activities in a foreign country.

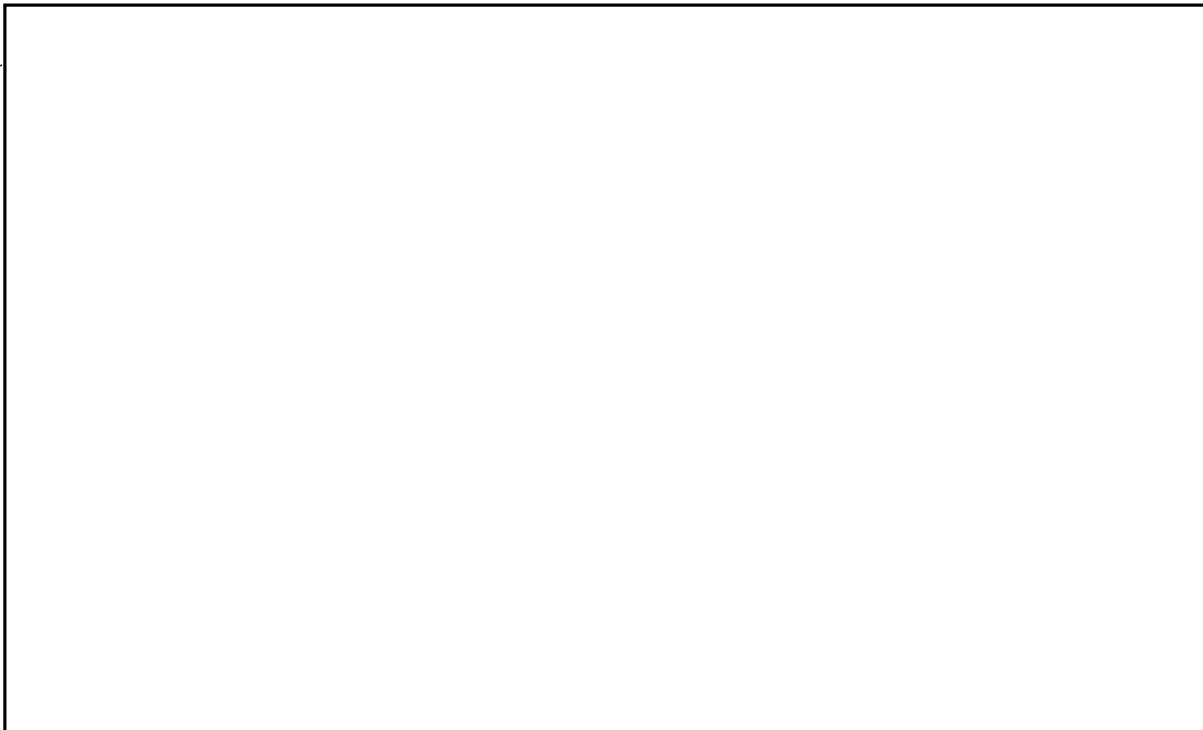
Suggestion:

Incorporation of appropriate language into the paragraph.

Authorization

4(b)(9), PAGE 16

25X1



Attachment 1 to  
NPIC/D-269/76

*revised*  
Authorization

Section 4 (b)(6), PAGE 15

25X1 Observation: The term photographic interpretation does not encompass the analysis of imagery derived from such [redacted] systems [redacted] 2

25X1 Suggestion: Consideration should be given to change the last phrase of 4 (b)(6) to: . . . acquisition and translation of foreign publications and the analysis of [redacted] imagery *interpretation*

Restriction

Section 5d, PAGE 30

*rejected*

Observation: The limitation on experimentation is limited to that involving drugs on human subjects. Other types of human testing could be equally damaging to the test subjects and to the image of foreign intelligence agencies.

Suggestion:

Insert the words devices or procedures in line three between the word "drugs" and the words "on human subjects."

Restriction

Section 5e(2)(ii), PAGE 30

*already done*

Observation: The phrase is incomplete, somewhat confusing and subject to misinterpretation.

Suggestion:

Expand the phrase to read somewhat as follows:

(ii) provisions of specialized equipment or technical knowledge for use by any Federal department or agency other than: the Law Enforcement Assistance Administration; or as expressly authorized by law.