

March 13, 1976 Cf: 75-6769

3C

CIA Freedom of Information Coordinator
Central Intelligence Agency
Washington, DC 20505

E 76-066

NIO/SSC
action

Sir:

I recently made an FOI request for certain CIA records which was effectively denied at the initial stage and actually denied on appeal to the CIA Information Review Committee. Copies of my request and the Review Committee's denial are enclosed. I am aware that my only remaining recourse under the FOIA is to file suit for judicial relief.

In order to avoid unnecessary litigation over the documents in question, I would like to request a review of the same material under the provisions of section 5(C) of E.O.11652. While I am aware that such a review may come to the same conclusion as the FOI review which has already occurred, that result is not a fore-gone conclusion. A section 5(C) review will give CIA an opportunity to consider the classification of the requested records in light of representations which I make below, and it may also eventually lead to a review by the Interagency Classification Review Committee.

Therefore, I hereby request that CIA undertake a classification review, under the provisions of section 5(C) of E.O.11652, of any finding aids to all National Intelligence Estimates prepared before January 1, 1966. The term "finding aid" refers to any records such as locaters, indices and folder-title lists, which have been prepared in order to promote control over, and access to, the entire body of National Intelligence Estimates. The scope of this request includes, but is not limited to, a serial list of NIE's, a subject index to NIE's, a geographical index to NIE's, and a name index to NIE's.

For the purposes of the review hereby requested, I would like to make the following observations. (1) Section 4(A) of E.O.11652 provides that "material containing references to classified materials, which references do not reveal classified information, shall not be classified." (2) This provision of E.O.11652 is reflected, for example, in the Department of Defense Information Security Program Regulation's provision that "the subject or title of a classified document should normally be unclassified for ready reference. When the information revealed by a subject or title warrants classification protection, an unclassified short title should be added for reference purposes" (32 C.F.R. 159.202-9). (3) While this regulation does not apply to CIA, it is not unreasonable to suppose that CIA has a similar, but unpublished, regulation. (4) Common sense dictates that the records hereby requested would have to contain some separable unclassified information.

An example of unclassified information in the requested records would be found in the requested serial list of NIE's; that list must contain, inter alia, the titles of the NIE's which were published by the U.S. Government Printing Office in the officially declassified Pentagon Papers. Of course, I am not suggesting that CIA declassify those titles, since to do so would serve no useful purpose. My intention is to indicate, by way of illustration, the kind of information which is within the scope of this request and is not in need of any classification protection. Furthermore, I find it extremely doubtful that any damage to the national security would result from the disclosure that CIA prepared a National Intelligence Estimate of the defense capabilities of, say, Ruritania in 1965.

In the absence of any credible basis for the contention that the release of the titles of decades-old NIE's would compromise the national security, and in light of the requirement that substantial doubts as to security classification be resolved in favor of the lesser classification (NSC Directive of May 17, 1972, Sec. 1(E)), I believe that the present position of CIA, as set forth in the enclosed letter of February 10, 1976, is neither reasonable nor consistent with the regulation under which the requested records are classified.

I trust that I will be informed of the result of the review hereby requested in accordance with the provisions of section 3(B) of the NSC Directive of May 17, 1972. Thank you for your cooperation.

Sincerely,


Jonathan A. Bennett

PRIORITY HANDLING FOIA REQUEST

SUBJECT: (Optional) EO 11652 Request for Finding Aids for all Pre-1966 NIES	REQUEST NUMBER IPS E 76-066
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FROM: IPS/DDA 2 E 50	EXTENSION <div style="border: 1px solid black; width: 40px; height: 20px; margin: 0 auto;"></div>	DATE SENT 18 March 1976 SUSPENSE DATE 1 April 1976
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TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		
1. NIO/FIO 7E 62 AT Attn. <div style="border: 1px solid black; width: 80px; height: 15px; display: inline-block;"></div>				Dave, Jonathan Bennett, rather than appeal his FOIA/IRC denial to the courts on the above subject (F 75-6769), is resubmitting his request under the aegis of the EO. To insure that he receives due process, will you therefore please process the case as though it were a new request, and let us have something in writing for the record. <div style="border: 1px solid black; width: 150px; height: 80px; margin: 10px auto;"></div>
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RETURN TO:

PRIORITY HANDLING FOIA REQUEST