

THE WHITE HOUSE

WASHINGTON

February 13, 1976

MEMORANDUM FOR

PHIL BUCHEN
BILL HYLAND
DON OGILVIE
RICHARD WILEY
JOHN WARNER ✓
HAROLD SAUNDERS

FROM:

MASON CARGILL *MC*

SUBJECT:

Restrictions Executive Order

Attached is the retyped final version of the restrictions order. The only change included which was not agreed on at yesterday's meeting is the insertion of the words "even if acquired by means other than those prohibited above" in Section II (g). These were included at the insistence of the Attorney General. In my view, they only say explicitly what the effect of II (g) would have been without them.

If you object to the new words, please call Nino Scalia to discuss the matter. If you still object after talking with Mr. Scalia, please advise me by memo as soon as possible, stating briefly the reason for your objection.

DIRECTOR OF CENTRAL INTELLIGENCE

Gentlemen:

Attached is the latest
draft of the restrictions
Ex. Order and the
draft Ed Proctor and
I worked on Sat.
morning at the
W.H. It does not
recognize Section 3.

Cheers,



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1076

ICG DRAFT - 2/12/76

EXECUTIVE ORDER

Information about the capabilities, intentions and activities of other governments is essential to informed decision-making in the field of national defense and foreign relations. The measures employed to acquire such information should be responsive to the legitimate needs of our Government and must be conducted in a manner which preserves and respects our established concepts of privacy and our civil liberties.

Recent events have clearly indicated the desirability of government-wide direction which will ensure a proper balancing of these interests. This order does not confer any authority not included, and does not derogate from any restrictions included, in any other laws, regulations or directives. Unless otherwise specified, the provisions of this Order apply to activities both inside and outside the United States. References to law are to applicable laws of the United States.

By virtue of the authority vested in me as President pursuant to my powers under Article II, Sections 2 and 3 of the Constitution, and statutes of the United States, including the National Security Act of 1947, and finding such actions necessary in the national interest, it is hereby ordered as follows:

SECTION I: Definitions.

As used in this Order, the following terms shall have the meanings ascribed to them below:

(a) "Collection" means any one or more of the gathering, analysis, dissemination or storage of non-publicly available information without the informed express consent of the subject of the information.

(b) "Electronic surveillance" means acquisition of a non-public communication by electronic means, without the consent of a person who is a party to, or, in the case of a non-electronic communication, visibly present at, the communication.

(c) "Employee" means a person employed by, assigned or detailed to, or acting for a United States foreign intelligence agency.

(d) "Foreign intelligence" means information concerning the capabilities, intentions and activities of any foreign power, or of any non-United States person, whether within or outside the United States, or concerning areas outside the United States.

(e) "Counterintelligence" means information concerning the protection from detection or disclosure of foreign intelligence or of national security information and its collection.

(f) "Foreign intelligence agency" means the Central Intelligence Agency, National Security Agency, Defense Intelligence Agency; and further includes any other department or agency of the United States Government or component thereof while it is engaged in the collection of foreign intelligence or counterintelligence, but shall not include any such department, agency or component thereof to the extent that it is engaged in its authorized civil or criminal law enforcement functions; nor shall it include in any case the Federal Bureau of Investigation.

(g) "National security information" has the meaning ascribed to it in E. O. 11652.

(h) "Physical surveillance" means continuing visual observation by any means; or acquisition of a non-public communication by a person not a party thereto or visibly present threat through any means which does not involve electronic surveillance.

(i) "United States persons" means United States citizens, aliens admitted to the United States for permanent residence and corporations or other organizations incorporated or organized in the United States.

SECTION II. Restrictions on Collection.

Foreign intelligence agencies shall not engage in any of the following activities:

(a) Physical surveillance directed against a United States person, except a lawful surveillance both conducted pursuant to procedures approved by the head of the foreign intelligence agency and directed against either:

(1) a present or former employee of such agency, its present or former contractors or their present or former employees, for the purpose of protecting foreign intelligence or counterintelligence sources or methods or national security information from unauthorized disclosure; or

(2) 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 necessary to identify such United States person; or

(3) a United States person outside the United States who is reasonably believed to be acting on behalf of a foreign power or engaging in international terrorist or narcotics activities or activities threatening the national security.

(b) Electronic surveillance involving a communication which is made from, or is intended by the sender to be received in, the United States, or directed against United States persons abroad, except lawful electronic surveillance under procedures approved by the Attorney General; provided that the Central Intelligence Agency shall not perform electronic surveillance within the United States, except for the purpose of testing equipment under procedures approved by the Attorney General consistent with law.

(c) Unconsented physical searches within the United States; or unconsented physical searches directed against United States persons abroad, except lawful searches under procedures approved by the Attorney General;

(d) Opening of mail or examination of envelopes of mail in United States Postal channels except in accordance with applicable statutes and regulations.

(e) Examination of Federal tax returns or tax information except in accordance applicable statutes and regulations.

(f) Infiltration or undisclosed participation within the United States in any organization for the purpose of reporting on or influencing its activities or members; except such infiltration or participation with respect to an organization composed primarily of non-United States persons which is reasonably believed to be acting on behalf of a foreign power.

(g) Collection of information, even if acquired by means other than those prohibited above, concerning the domestic activities of United States persons except:

(1) Information concerning corporations or other commercial organizations which constitutes foreign intelligence or counterintelligence.

(2) Information concerning present or former employees, present or former contractors or their present or former employees, or applicants for any such employment or contracting, necessary to protect foreign intelligence or counterintelligence sources or methods or national security information from unauthorized disclosure; and the identity of persons in contact with the foregoing or with a non-United States person who is the subject of a foreign intelligence or counterintelligence inquiry.

(3) Information concerning persons who are reasonably believed to be potential sources or contacts, but only for the purpose of determining the suitability or credibility of such persons.

(4) Foreign intelligence or counterintelligence gathered abroad or from electronic surveillance conducted in compliance with Section II (b); or foreign intelligence acquired from cooperating sources in the United States.

(5) Information about a United States person who is reasonably believed to be acting on behalf of a foreign power or engaging in international terrorist or narcotics activities.

(6) Information concerning persons or activities that pose a clear threat to foreign intelligence agency facilities or personnel, provided that such information is retained only by the foreign intelligence agency threatened and that proper coordination with the Federal Bureau of Investigation is accomplished.

SECTION III. Dissemination and Storage

Nothing in this Order shall prohibit:

(a) Lawful dissemination to the appropriate law enforcement agencies of incidentally gathered information indicating involvement in activities which may be in violation of law.

(b) Storage of information required by law to be retained.

(c) Dissemination to foreign intelligence agencies of information of the subject matter types listed in Section II (g).

SECTION IV. Restrictions on Experimentation.

Foreign intelligence agencies shall not engage in experimentation with drugs on human subjects, except with the informed consent, in writing and witnessed by a disinterested third party, of each such human subject and in accordance with the guidelines issued by the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

SECTION V. Assistance to Law Enforcement Authorities.

No foreign intelligence agency shall, except as expressly authorized by law:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or to State or local police organizations of the United States.

(b) Participate in or fund any law enforcement activity within the United States.

These prohibitions shall not, however, preclude (i) cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or counterintelligence or (ii) provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

SECTION VI. Assignment of Personnel.

An employee of a foreign intelligence agency detailed elsewhere within the Federal Government shall be responsible to the host agency and shall not report to such employee's parent agency on the affairs of the host agency, except as may be directed by the latter. The head of the host agency, and any successor, shall be informed of the detailee's association with the parent agency.

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SECTION VII. Implementation.

This order shall be effective on March 1, 1976. Each department and agency affected by this order shall promptly issue internal directives to implement this Order with respect to its foreign intelligence operations.

SENDER WIDE CHECK CLASSIFICATION FOR UNCLASSIFIED	CONFIDENTIAL	SECRET
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OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	D/OSR 3G00, <input type="text"/>		
2			
3			
4			
5			
6			

<input type="checkbox"/> ACTION	<input type="checkbox"/> DIRECT REPLY	<input type="checkbox"/> PREPARE REPLY
<input type="checkbox"/> APPROVAL	<input type="checkbox"/> DISPATCH	<input type="checkbox"/> RECOMMENDATION
<input type="checkbox"/> COMMENT	<input type="checkbox"/> FILE	<input type="checkbox"/> RETURN
<input type="checkbox"/> CONCURRENCE	<input type="checkbox"/> INFORMATION	<input type="checkbox"/> SIGNATURE

Remarks:

You have already received a copy of the latest Restrictions Executive Order dated 13 Feb 1976. I was informed at 1800 hours today that the draft as written has been approved by all agencies concerned. However, there is one addition; there will ~~probably~~ be a new section dealing with assassination as follows:

No employee of the United States Government shall engage in, or conspire to engage in, political assassination.

John S. Warner

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE
General Counsel	2/13/76

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Restrictions Executive Order

FROM:

Deputy General Counsel

EXTENSION

NO.

DATE

13 February 1976

25X1

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. ADDI - EX-1

2.

3. ADDO - BX-3

4.

5. A/DDA - BX-4

6.

7. ADD/S&T - 6E45 Hqs.

8.

9. Inspector General - DX-2

10.

11. D/OSR - CZ-4 via GX-2

12.

13. D/Security - FX-1

14.

C/ISAS/DDA - 7C18 Hqs.

15.

OLC - 7D35 Hqs.

Please let me know your comments, if you wish, this afternoon.

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CIA Guidelines:

In August 1973 and June 1974, the CIA implemented comprehensive guidelines covering all its conduct. These guidelines, together with the recommendations of the Rockefeller Commission and other White House guidance, were codified into Agency regulations in November 1975. These specifically addressed the following subjects: the proper scope of CIA's relations with other agencies and departments of the Federal Government as well as state and local governments; appropriate CIA relations with American citizens both at home and abroad; and new guidelines to define CIA's proper domestic activities. In addition, the total ban issued in 1972 on any CIA involvement with any assassination plot or effort was categorically restated.

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should also ensure that appropriate sanctions will be applied against Members of Congress who improperly disclose secrets.

In addition, a statutory procedure should be enacted to ensure that secrets disclosed to the Congress are not unilaterally disclosed by individual Members or by either house. In the unlikely event of an impasse, where the President certifies that the disclosure of a particular secret would be detrimental to the national interest, and the Congress considers disclosure imperative, the final decision should be left to the courts.

Lastly, successful and effective Congressional oversight of the foreign intelligence agencies depends on mutual trust between the Congress and Executive. Each branch must recognize and respect the rights and prerogatives of the other if anything is to be achieved.

In this context, a general Congressional requirement to keep the oversight committees "fully and currently" informed is more desirable and workable as a practical matter than formal requirements for prior notification. Specifically, Section 662 of the Foreign Assistance Act, should be repealed. This step was urged by the Commission on the Organization of the Government for the Conduct of Foreign Policy chaired by Ambassador Robert Murphy. I urge the Congress to adopt this recommendation promptly.

TRANSMITTAL SLIP		DATE	12 Feb
TO: <i>Mr. Lehman</i>			
ROOM NO.	BUILDING		
REMARKS: <i>This is being LDX to David now. GX-analyte CZ-4 Red</i>			
FROM	[Redacted]		EXTENSION
ROOM NO.	[Redacted]		

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

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