

10 June 1981

MEMORANDUM FOR: Chief, Management and Planning Group, IMS/DO

FROM:
Chief, Classification Review Division, OIS/DA

SUBJECT: Downgrading of Classified Information

REFERENCE: Memorandum from Chief, IMS/MPG,
dated 16 December 1980; same subject.

1. First of all, my apologies for not responding to your position paper (Reference) earlier.

2. After careful consideration of the position set forth in Reference, we must advise that we find ourselves in some disagreement, to wit:

a. to say that all information concerning such a broad category of information as encompassed by intelligence sources, methods, and activities must be held at the SECRET level, as implied in Reference, is somewhat arbitrary and, we believe, indefensible;

b. some of this information was (and is) originally classified CONFIDENTIAL, or given only internal administrative protection; and

c. this approach tends to undercut the spirit of EO 12065 which states that "the least restrictive (classification) designation shall be used" when there is "reasonable doubt" as to which classification level should be assigned to a given item of information.

3. We are in agreement, of course, that classification and classification level are based on the degree of damage that would result to our national security from disclosure. We also agree that information concerning intelligence activities, sources, and methods requires protection certainly for twenty to thirty years and most likely for a much longer period. We also would be inclined to agree with the statement that "the unauthorized disclosure of information revealing intelligence sources and methods is generally expected to cause serious damage to national security and therefore it is initially classified at least at

- Orig - Addressee
- 1 - CRD (DDO Guidelines) w/att
- 1 - C/CRD/OPS w/att
- 1 - Chrono w/o att

the SECRET level." This is a rather broad, basic position, however, which leaves room for classification of some material at a lower level, if it is appropriate, and it is on this point that our viewpoints essentially differ. The key word in your statement is "generally," which is inoperative if we accept the conclusion given in the final unqualified sentence of Reference that "intelligence sources and methods information should remain classified indefinitely at least at the SECRET level." To exclude absolutely the possibility of using a lower level of classification for such material is, in our opinion, not justifiable.

4. Indeed a sizable quantity of the DO records that CRD receives for systematic classification review contains documents classified CONFIDENTIAL originally. We also find material bearing the obsolete RESTRICTED marking, and occasionally documents which have no classification markings at all. Our systematic classification review process is designed to correct the classification status of documents where that is necessary and appropriate, but in these cases we would be hard pressed to justify upgrading all such material to the SECRET level, which is what we would be required to do, of course, were we to interpret and apply your position literally. It is of particular interest to note that, even today, intelligence sources and methods information, which is being classified at the CONFIDENTIAL level. Indeed, the biggest single complaint we had about the DO Classification Guide put out under EO 12065 was that there was no allowance made for information that did not warrant more than a CONFIDENTIAL classification level. It must be remembered as well that in systematic classification review we consider each item or document on its own merits and judge the proper classification level accordingly. When classification is extended, we must mark on the document the date for declassification or the next review (Section 3-401, EO 12065).

5. It must be recognized, despite the entirely valid considerations set forth in paragraphs 3 - 5 of Reference, that some "intelligence activities, sources, or methods" information is in fact, less sensitive; e.g., certain operational support information. Other information becomes less sensitive with the passage of time and/or intervening events. One has only to look at such instances as the once highly clandestine Agency sponsorship of Radio Free Europe and Radio Liberty, now acknowledged, or the Pentagon Papers, MICHAOS, and MKULTRA information which is now in the public domain as a result of official disclosures (not always endorsed by the Agency, to be sure, but revealed nevertheless). Conversely, of course, some information may now be more sensitive than when initially classified (or sometimes not classified, through inadvertence or otherwise). Our systematic review procedures take both of these factors into account.

6. Section 1-101 of EO 12065 states that "the least restrictive (classification) designation" shall be used when, as is sometimes unavoidably the case in an uncertain world, there "is reasonable doubt" as to the classification level to be assigned to a given item of information. CRD must pay due regard

to this admonition which we believe is applicable to systematic classification review as well as to original classification actions. We are well aware of the possible consequences of revelations concerning intelligence activities, sources, and methods and every effort is made to ensure that all information reviewed retains an adequate level of classification. Downgrading (and, for the matter, upgrading) determinations are made only when the classification designation found on a document is deemed inappropriate at the time of review in terms of the extent to which unauthorized disclosure of the information could adversely affect the national security.

7. We would welcome further discussion of this issue to obtain a mutually satisfactory position.



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16 December 1980

MEMORANDUM FOR: Chief, Classification Review Division,
DDA/OIS

STAT FROM:
Chief, Management and Planning Group, DO/IMS

SUBJECT: Downgrading Classified Information

STAT 1. This will confirm the results of discussions between the undersigned and Chief, Operations Branch, Classification Review Division, namely that information concerning intelligence sources and methods and activities should remain classified at least at the SECRET level and should not be downgraded in the course of systematic review for declassification. It is recognized that such information would continue to be protected were it downgraded to CONFIDENTIAL but the basis for classification is not protection but the degree of damage to national security that would be caused by the unauthorized disclosure of the information.

2. The unauthorized disclosure of information revealing intelligence sources and methods is generally expected to cause serious damage to national security and therefore it is initially classified at least at the SECRET level. As we see it, there are three bases for such classification:

- a. The need to protect the operation.
- b. The need to protect the source.
- c. The possible repercussions to foreign affairs and to intelligence operations in general which are caused by such revelations.

3. The need to protect an operation lasts much longer than the operation does. If war plans are stolen and it becomes known the recourse is to change those plans. If public opinion is changed or political action is undertaken because of clandestine activities the revelation of such activities goes a long way toward undoing the results of the activity. Similarly, the identification of a clandestine intelligence source has possible repercussions for the source his family and close associates ^{which} extend far beyond the period of clandestine activity. In both cases it is difficult to set time limits on the degree to which unauthorized disclosure would affect national security.

4. The third basis for classification, repercussions to foreign affairs or intelligence activities in general, can be equally serious and extend far beyond the life of an operation or agent. For example, revelations of specific cases of espionage in a country can seriously affect foreign relations with that country. It can not only incense the government and public but call into question whether or not the United States is continuing such activities in that country. Even if one can anticipate no such reaction from a current government, governments change and what might be tolerated today may be viewed as intolerable by a succeeding government. Iran is a good example.

5. Finally, repercussions to intelligence operations are also far-reaching and long lasting. As the result of disclosure of intelligence activities foreign governments may institute tighter security controls, set up counterintelligence activities and make operations much more difficult. An inability to protect agent identities could have serious effect upon the willingness of agents to work for an intelligence organization. For these reasons we believe intelligence sources and methods information should remain classified indefinitely at least at the SECRET level.



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MEMORANDUM FOR: Chief, Classification Review Division

FROM:
Chief, Operations Branch

SUBJECT: Comments on Memorandum Concerning
Downgrading Classified Information dated 16 Dec 80

1. Les makes a good point that classification is based on the degree of damage to national security that would be caused by unauthorized disclosure and not on how it is to be protected.

2. In paragraph 2 he talks of the unauthorized disclosure of classified information which reveals intelligence sources and methods is generally expected to cause serious damage to the national security. That, I believe, is a good point and a reasonably supportable one.

3. His argument that protection must last a long time is, I think, valid when it refers to the protection of intelligence sources, methods, and activities as well as to ~~protect~~ U.S. foreign relations. Thus I believe that we can agree with his conclusion that such information should remain classified for long periods even indefinitely.

4. Where he comes a cropper, in my opinion, is that in his conclusion Les implies that all information of this nature should remain classified at the SECRET level when his argument, which I believe is more accurate, is that such information "is generally expected to cause serious damage." I believe that his position would be acceptable if his conclusion agreed with his argument, i.e. that information concerning intelligence activities, sources, and methods and U.S. foreign relations generally is to be retained at the SECRET level but that there may be exceptions.

MEMORANDUM FOR : Chief, Management and Planning Group, DO/IMS
 STAT FROM :
 Chief, Classification Review Division, OIS/DDA
 SUBJECT : Downgrading of Classified Information
 REFERENCE : C/IMS/MPG memorandum dated 16 December 1980, same subject

1. Reference takes the position that the unauthorized disclosure of information revealing intelligence sources and methods is "generally expected" to cause serious damage to national security and therefore such information is initially classified at least at the SECRET level; and further, that information concerning intelligence sources and methods should not be downgraded below that level in the course of systematic review for declassification. We do not entirely agree.

2. Aside from the clear difference in meaning between "revealing" and "concerning", it should be noted that Executive Order 12065 provides a presumption of national security damage only in Section 1-303: "Unauthorized disclosure of foreign government information or the identity of a confidential foreign source is presumed to cause at least identifiable damage to the national security." This provision clearly dictates a minimum classification level of CONFIDENTIAL for such information (but for no other); it cannot in our view be stretched to imply a presumption of "serious" damage (warranting SECRET classification) for the above or any of the other categories of classifiable information covered by the Order, including that which "concerns intelligence activities, sources or methods" per Section 1-301(c). Indeed, information in this category as well as the others listed in Section 1-301 may clearly be classified at any level from CONFIDENTIAL to TOP SECRET. ~~It may not be classified at all unless the unauthorized disclosure "reasonably could be expected to cause it less identifiable national security damage (Section 1-302)."~~

3. It may be worth noting that a good deal of the information GRD receives for systematic review was initially classified, if at all, no higher than CONFIDENTIAL. Unmarked information (as well as that bearing the obsolete RESTRICTED classification) is sometimes

upgraded to CONFIDENTIAL or even higher upon review, if its content or other considerations so warrant. It has long been apparent, also, that some of the material reviewed was initially misclassified (too high, too low, or not at all) even under the lesser standards prevailing in former times. The review process is designed, among other things, to correct such misclassifications in accordance with E.O. 12065's requirements. Even aside from the implied violation of the letter and spirit of the present Order, moreover, CRD cannot in good conscience retain higher levels of classification than those appropriate to the degree of national security damage "reasonably to be expected" from unauthorized disclosure at the time of review or subsequently (i.e., until the next scheduled systematic review date), regardless of the circumstances under which it was initially classified -- 20 or more years ago, in most cases.

4. It must be recognized, despite the entirely valid considerations set forth in paragraphs 3-5 of Reference, that some "intelligence activities, sources, or methods" information does in fact become less sensitive and protectable with the passage of time and/or intervening events. One has only to look at such instances as the now long-acknowledged but once highly clandestine former Agency sponsorship of Radio Free Europe and Radio Liberty, or the Pentagon Papers, MHCHAOS and MKULTRA information which is now in the public domain as a result of official disclosures (not always endorsed by the Agency, to be sure, but revealed nevertheless). Conversely, of course, some information may now be more sensitive than when initially classified (or sometimes not classified, through inadvertence or otherwise). Our systematic review procedures take both these factors into account.

~~5. CRD does not downgrade, let alone declassify, information which reveals specific intelligence activities, sources or methods although such action is taken as and when appropriate in the case of information which merely "concerns" them in some way. The level of classification selected in each instance does, per paragraph 1 of Reference, reflect the degree of damage anticipated from unauthorized disclosure. At the same time, all levels except UNCLASSIFIED depend ultimately on an underlying "need to protect" --~~

5. Paragraph 1 of Reference correctly notes that information must be classified at a level corresponding to the degree of national security damage anticipated from its unauthorized disclosure. At the same time, as also discussed in Reference (paragraphs 2 through 5), all classification levels ultimately depend upon an underlying "need to protect" the information.
6. Section 1-101 of E.O. 12065 states in no uncertain terms that "the least restrictive (classification) designation" shall be used when, as is sometimes unavoidably the case in an uncertain world, there "is reasonable doubt" as to which classification level should be assigned to a given item of information. CRD regards this provision as binding, with due regard for the factors pertinent to each case, not only on initial classification determinations but also on those made upon systematic review. We are well aware of the possible consequences of revelations concerning intelligence activities, sources, and methods. Every effort is made to ensure that all information reviewed retains an adequate level of classification. Downgrading (and, for that matter, upgrading) determinations are made only when the classification designation initially assigned is deemed inappropriate in terms of the extent to which unauthorized disclosure of the information under review could adversely affect the national security -- defined as "the national defense and foreign relations of the United States" in Section 1-604 of the Order.

/s/

C/CRD

It is difficult to venture a ~~xx~~ meaningful or helpful comment on Les' memo inasmuch as there is little that he touches on ~~xxxx~~ in his paper that we have not already encountered and occasionally made bench-mark decisions on, in keeping with some of the suggested strictures he has favored (it is perhaps too easily forgotten that not too long ago most of ORB was furiously downgrading-~~often~~ often declassifying-~~SO~~ SO documents, until OCS branch personnel expressed their universal alarm and the flow was staunched based on the reviewers' recognition of potential cumulative damage).

It does seem curious that at this point in time, when the Agency's classification mechanism is taking a more realistic and ~~xxxx~~ and more rational stance on the ~~xxxx~~ flow of ~~papers, reports, etc.~~ documents created in 1981, Les is fighting hard to assure that documents relating to sources and methods 20 and 30 years old are held at the secret level ~~xxx~~ for an indefinite period of time, perhaps in perpetuity (Comment: It has been confirmed that, at the present time, complete IOA's which cite complete bio data on potential, and at times, already partially active agent assets, are given a confidential classification. Perhaps this reduction in the classification standing of such clear cut source and ~~method~~ method material is made possible by the marvels of modern computer ~~xxxx~~ storage and record technology). This is a far cry however from the ancient endemic classification practices of 20 and 30 years ago when practically everything, even the most innocuous logistical gross, was routinely marked with ~~xxx~~ secret stamp ~~xxx~~ more out of habit rather than any concern that a particular piece of paper represented potential grave damage to the ~~xxx~~.

I would have been much happier with this memo if Les had provided a healthy list of ~~samples~~ samples of the variety of materials that he deems to constitute serious or grave damage to national security. We all have a pretty firm grasp of what constitutes damage to the national security and in many cases we have perhaps been overly stringent in our ~~xxxx~~ assessment of potential damage in instances involving sources and ~~methods~~ methods and possible problems in connection with foreign affairs. By the same token however, even in the most sensitive of cases, we have all come across materials (administrative, finance, logistics) ~~xxxx~~ many of which are unmarked, which in themselves could not possibly be construed as ~~xxxx~~ items bearing the stigma of possible damage to the security of the USCO (a package of receipts for entertainment and miscellaneous expenses devoid of names, locations, purpose and other damning data could not conceivably be regarded as damaging unless the reader had ~~xxxx~~ access and understanding of the operational context e.g. the entire backdrop).

It is unfortunate that in the first paragraph of his memo, the writer got caught in something of a semantic wicket ~~xxx~~ which vitiates or weakens some of his later comments. He states that the basis for classification is not protection but rather the degree of damage, as if protection and damage were mutually exclusive. From this he leaps to the conclusion that ~~xxx~~ all intelligence sources and methods ~~xxx~~ materials must be classified secret to assure protection, thus admitting the premise that classification in any degree is designed to assure a form of protection. Our position should be that although we generally agree that all sources and methods material warrants protection, there are shades and degrees of damage that require differing gradations of protection. Some elements of security damage are more grievous than others as we well know and, in such instances (atomic related data is an example), special designations have been created to assure that such data is protected without any time limits. Although there is ~~xxxx~~ of course no comparison that can be drawn between the damage inherent in the revelation of atomic related data and that connected with sources and methods materials, it does appear from studying the memo in question that an effort is being made to extend an all embracing Secret classification umbrella over materials that do often diminish in significance with the passage of time and must be reviewed periodically by knowledgeable reviewers to determine if they have lost their ~~xxx~~ damage potential that originally prompted the SECRET classification. Another factor to be considered and one which seems to fly in the face of the Executive order, is that the over-arching restrictive posture recommended in the memo precludes the use of downgrading which the Executive order never countenances but, rather in fact, recommended as part of the review procedure.

A final reservation that should be considered stems from the fact that, if the inflexible stand taken in the memo becomes doctrine, we may be buying the Agency a good deal of grief in the event of court cases involving F.I.C.A and manuscript review etc. It may be difficult to convince a judge of the validity of our cause if we continue to use the grave damage classification/excuse in documents touching on the minutiae of sources and methods when the passage of time has rendered them clearly less damaging and when it is evident that we have not even taken the trouble to recognize this diminution in damage potential by employing a lesser classification permitted and recommended by law (will the judge be understanding or amused when we tell him that a [redacted] must still remain at the Secret level because its revelation would otherwise do grave damage to the USG. I think he might ask with venom if this grave damage to the US could have been reduced in size and importance and made more realistic by reducing the classification to Confidential [redacted]

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*Superseded by new draft
entitled "Downgrading Classified Info"*

MEMORANDUM FOR: Chief, Classification Review Division

STAT FROM:

[redacted]
Chief, Operations Branch

STAT SUBJECT:

Comments on [redacted] Memorandum Concerning
Downgrading Classified Information dated 16 Dec 80

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Date 17 June 81

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2. [Redacted]		15 JUN 1981
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4. [Redacted]		16 June 81
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