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THE WHITE HOUSE
WASHINGTON

April 2, 1975

General

Didn't you already convey your views to
Director Colby that you were opposed to
declassification of these NIE's/SNIE's?
(Also against providing summaries?)
If so, this action is OBE.

REM

Yes. 10

NSS Review Completed.

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29 March 75

NATIONAL SECURITY COUNCIL

BUD

Re-telecom -

Dick

MEMORANDUM

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NATIONAL SECURITY COUNCIL

URGENT
ACTION~~SECRET~~

March 29, 1975

MEMORANDUM FOR: GENERAL SCOWCROFT

FROM: Richard Ober ✓

SUBJECT: Establishment of Policy on Declassification
Requests for NIEs and SNIEs

In his memorandum to you on March 25, 1975 (Tab A), Mr. George Carver, D/DCI for National Intelligence Officers explains that DCI Colby is faced with the question of how to handle declassification requests for certain NIEs and SNIEs. He asks for your views on the subject and indicates that he has made a similar request to Philip Buchen. As background information, he forwards with his memorandum two attachments; a memorandum for USIB members from Mr. Carver on Freedom of Information requests for the declassification of certain NIEs in preparation for discussion at USIB on March 27, 1975 (Tab B) and a staff study which assesses the issues for and against the declassification of such documents (Tab C).

The issue has arisen because of two broad requests for the release of NIEs and SNIEs on the Soviet Union, particularly on Soviet strategic forces prior to 1965 and on Soviet intentions in Cuba from 1960 through 1963. One of these requests has been resubmitted since the effective date of the Freedom of Information Act by Walter Slocombe, formerly of the NSC Staff, and a response must be made by March 31, 1975 in order to comply with the FOI deadline.

The staff study drafted by Mr. Robert Hewitt (Tab C) offers several options for handling the issue of continued classification of estimates on Soviet strategic matters:

- complete refusal to release this kind of estimate,
- refusal to release entire estimates, but a willingness to sanitize portions for release, and
- consideration of each request individually without trying to set up a special category for this kind of estimate.

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Although Messrs. Carver and Hewitt tend to discount the importance of the documents on Cuba and feel that they can be dealt with "at a lower level", Stephen Low feels strongly (see Tab D) that no portion of any NIE or SNIE should be released without a case-by-case review by the NSC Staff. Jan Lodal basically agrees with the necessity of a case-by-case approach to the issue (see Tab E) because he feels that such an approach provides a sound basis for judgment and upholds the spirit of the FOI Act. In general, Denis Clift is against the release of such documents.

The issue of the declassification requests for certain NIEs and SNIEs was discussed at the USIB meeting on Thursday, March 27, 1975, but, because of the pressure of other business, a final position was not adopted. I understand that Bill Hyland of the State Department strongly urged the adoption of a position of blanket refusal for estimates on Soviet strategic matters. In fact, he indicated that this issue would make a good test case in courts as he felt that denial could be successfully defended. His position on denial was supported by DIA, NSA and ERDA. Later in the discussion, Mr. Hyland reportedly expanded his position by saying that all NIEs and SNIEs as a category of documents could not be released. I understand that one of the members recommended that a request be made for an extension of the March 31 deadline and that several members expressed their intention to check with their respective legal offices on the feasibility of complete denial.

The DCI after consulting with USIB and obtaining the opinion of the legal authorities of USIB agencies, has decided to respond to the request for the NIEs and SNIEs by denying release of these documents but offering to provide the summary and conclusion sections of the estimates. The rationale for this position is that the summary and conclusion sections have in effect been declassified for their use in the unclassified posture statements by the Secretary of Defense. The legal advisors anticipate a refusal by the requestor to accept this compromise offer and that consequently there will be an appeal and a court case on this request. They feel that an offer to provide the summary and conclusion sections will help the government's case by showing a willingness to be as forthcoming as possible in responding to the requestor. Mr. Buchen has reportedly agreed with the proposed action.

RECOMMENDATIONS

- That you authorize me to advise the DCI that he should request a ten-day delay in responding to the request for release of the NIEs and SNIEs. During this time, there could be a review of the content of the conclusion and summary sections to determine whether, in fact, all information of concern has been used in the declassified Defense statements. More deliberate consideration of the possibility of setting up policy on non release of all NIEs and similar documents could also be considered during this period.

_____ Approve

_____ Disapprove

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- That you authorize me to advise the DCI that in the future all requests under the Freedom of Information Act for declassification of NIEs, SNIEs, NIAMs and similar "national level" intelligence documents be referred to the NSC for an opinion before a decision is made.

_____ Approve

_____ Disapprove

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THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

25 March 1975


MEMORANDUM FOR: Lieutenant General Brent Scowcroft, USAF
Deputy Assistant to the President for
National Security Affairs

SUBJECT : Request for the Declassification of
Certain National Intelligence Estimates

Brent:

1. Attached is a memorandum and accompanying staff study circulated to the United States Intelligence Board on the issue of how to handle requests the DCI has already received for the release of certain National Intelligence Estimates dealing with the Soviet Union and, specifically, Soviet strategic capabilities. The DCI plans to address this matter at the USIB meeting now scheduled for Thursday, 27 March, and would appreciate receipt of your views prior to that date.

2. I am sending a similar note, with the same attachments, to Mr. Buchen.


George A. Carver, Jr.
Deputy for National Intelligence Officers

Attachments
Cy No. 112

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USIB-D-13.1/47
25 March 1975

THE DIRECTOR OF CENTRAL INTELLIGENCE

112

Office of the Director

25 March 1975

MEMORANDUM FOR THE UNITED STATES INTELLIGENCE BOARD

SUBJECT: Freedom of Information Requests for the
Declassification of Certain National
Intelligence Estimates

1. We have in hand two very broad requests for the release of National Intelligence Estimates and Special National Intelligence Estimates relating to the Soviet Union. One of these asks for all NIEs and SNIEs on Soviet strategic forces for all years prior to 1965, plus those concerning Soviet intentions and actions in Cuba from 1960 through 1963. The other asks for all NIEs relating to the Soviet Union for the years 1961 through 1964 (including 1965, if possible) and for portions of other NIEs for those years which deal with Soviet capabilities and intentions for producing strategic weapons.
2. These requests were not filed under the Amended Freedom of Information Act (having been submitted prior to its effective date) but one of the requestors (Mr. Slocombe) has now submitted an FOIA letter with an initial ten-day deadline which expires on 31 March 1975.
3. The matter of the Cuban Estimates can be dealt with at a lower level, but the DCI feels that the broad requests for Estimates on Soviet strategic forces should be discussed at the USIB before a final decision is made. The decision made on these requests will clearly set a precedent with which we will have to live for years to come.

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USIB-D-13.1/47
25 March 1975

4. In addition to soliciting the views of the United States Intelligence Board, the DCI will also be consulting with the NSC Staff and the President's Special Counsel.

5. Please note that the points specifically at issue are how we handle a request for the release of Estimates dealing with Soviet strategic capabilities and (slightly more generally) other Soviet matters. We are not addressing the question of whether to release any National Intelligence Estimates or Special National Intelligence Estimates but, instead, trying to set a policy for Estimates on these specific, particularly sensitive subjects.

6. The decision on release of these Estimates, or portions thereof, will hinge on a determination as to what extent they should still be regarded as classified and the extent to which such release would jeopardize intelligence sources and methods. In this regard, the DCI will want to consider to what extent, if any, his decision with respect to the release of strategic Estimates ought to be affected by the fact that the Posture Statements of the Secretary of Defense and other senior Defense Department officials (military and civilian) draw on these Estimates' arguments and conclusions.

7. Appended to this memorandum is a staff study done by a retired Agency officer brought back as a consultant for this purpose. It assesses the issues involved and lays out several possible alternate courses of action. It would be helpful if recipients of this memorandum could have reviewed this study prior to the USIB's discussion of this topic, which the DCI would like to take up at the meeting scheduled for Thursday, 27 March. It would also be useful if the members of the USIB could consult their respective General Counsels prior to this meeting to have the advantage of their opinions when this subject is raised for discussion.

George A. Carver, Jr.
George A. Carver, Jr.
Deputy for National Intelligence Officers

Attachments

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6 February 1975

MEMORANDUM FOR: George Carver

SUBJECT : Requests for Release of National
Intelligence Estimates

1. Even before the amended Freedom of Information Act takes effect this month, CIA is confronted with two sweeping requests for NIEs under the provisions of Executive Order 11652 which provide for review on request of the classification of documents ten or more years old which had previously been exempt from downgrading. One is a long-standing (6 May 1974) request, recently renewed, by Walter Slocombe of the prominent Washington law firm Caplin and Drysdale. It asks that we make available to him for "inspection and copying" the NIEs and SNIEs on Soviet strategic forces for all years prior to 1965 and those concerning Soviet intentions and actions in Cuba for the year 1960-1963 inclusive. (Slocombe, incidentally, served as strategic forces/SALT planner on Dr. Kissinger's NSC Staff in the early 1970s and thus had full access to the strategic NIEs.) The other request, submitted on 17 January 1975 by Arthur Steiner on the letterhead of a Los Angeles firm called Pan-Heuristics, asks that we provide, in sanitized form if necessary, the agreed terms of reference for all NIEs relating to the Soviet Union for the years 1961-1964 (plus 1965 if possible) and for those portions of the NIEs for those years dealing with Soviet capabilities and intentions for producing strategic weapons. Except for the request for terms of reference -- presumably intended to provide a basis for further requests -- the Steiner request closely parallels Slocombe's for the years cited.

2. For the most part, the request for the Estimates involving Cuba poses no problem, since they concern a historical episode whose intelligence aspects are generally well known and no longer sensitive.

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Most of what the requestor presumably wants to know about estimated Soviet intentions and actions

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are contained in five SECRET-level NIEs or SNIEs on the situation and prospects in Cuba which were issued at intervals between 8 December 1960 and 14 June 1963. (The next in the series is dated 5 August 1964.) I believe that all of these Estimates -- including the crucial 19 September 1962 Estimate, The Military Buildup in Cuba -- can be declassified without deletions. There are also three SNIEs which assess Soviet and Cuban reactions to possible U.S. courses of action: two issued on a TOP SECRET codeword basis in October 1962, at the height of the crisis, when the U.S. was considering invasion and blockade, and one issued on 21 February 1963 which considered reactions to a low-level overflight program. I see no objection to their declassification and release from the standpoint of protecting intelligence sources and methods, though it is, I suppose, faintly conceivable that there could be some policy objection to explicitly documenting this aspect of U.S. policymaking during the crisis.

3. The requests for the Estimates on strategic military forces, in contrast, call for a substantial opening up of what has always been regarded as the most sensitive and closely held of the NIE files, virtually all items in them being of TOP SECRET or higher classification. By rough count, some 54 NIEs and SNIEs up through 1964 discuss Soviet strategic forces in some detail. Even excluding certain categories, such as overall Soviet Estimates in which strategic weapons are only one of several categories covered, or specialized Estimates on the technical aspects of weapon development, some 30-odd Estimates would remain. Even screening and processing them would be a messy problem. The honoring of these requests would also provide precedent for the wholesale declassification on demand of other annually updated military NIEs, such as those on theater forces. Under the new provisions of the Freedom of Information Act, we would presumably face requests, not only for the successive declassification of the military Estimates as they became ten years old, but for a case-by-case lowering of the time interval before declassification.

4. Admittedly, on an item-by-item basis, much of the specific information in the older strategic military estimates is no longer sensitive. We are no longer concerned with missile systems like the SS-1 and SS-2

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or airplanes like the Bull, which have long been retired. It is now openly accepted that we can tell when downrange missile testing takes place and keep quite accurate count of ICBM deployments and ballistic missile submarine production, using the "national technical means of verification" used to monitor the SALT accords. Nor is it a secret that we have sometimes misjudged the extent of the Soviet strategic buildup -- as with the bomber and missile "gaps" -- and were initially divided on the role of new weapon systems such as the SA-5. Thus the declassification and release of no longer currently applicable policy materials based on the Estimates, such as all but the more recent statements of the strategic threat contained in the Secretary of Defense's annual posture statements to Congress, is easy to justify.

5. Declassifying the Estimates themselves, however, is another matter. On the one hand, the TOP SECRET versions of the older NIEs could probably be purged of specific references to sensitive sources and methods or to results thereof that are clearly still sensitive without losing more than about one fifth of their length (plus technical annexes) in the case of most in the strategic attack series. Sanitization of the strategic defense Estimates, which rely more heavily on technical collection and analysis techniques, would probably be more extensive but still possible. On the other hand, it is often very difficult to judge how far we safely can go in declassifying the older results of classified collection and analysis techniques we still employ. And even if fairly stringent standards were employed, release of the older strategic military Estimates would inevitably still tell a good deal more about our long-drawn out effort to understand Soviet strategic forces than we have been willing to reveal so far. Therein lies the dilemma.

6. My own review of the older Estimates in question thus leads me to question whether the older strategic military Estimates can be regarded, like most other government documents, as inherently releasable as a class except insofar as certain passages require sanitization or the special nature of the individual estimate's subject matter requires continued classification. My principal reasons are as follows:

- a. The Soviet military Estimates -- and especially the various strategic series -- are uniquely

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... tied to the military planning process. Most of those produced up through 1955, reflecting the atmosphere of the Korean war, were specifically concerned with Soviet capabilities -- and sometimes intentions -- for waging war against the U.S. and generally represented the intelligence input to a series of assessments of the results of a possible nuclear exchange prepared by a super-secret subcommittee of the NSC. Although later Estimates were less concerned with operational, war-gaming aspects (these have been handled through other, derivative documents) the annual NIEs have continued to represent the bedrock of agreed national intelligence on which all military planning is ultimately to be based. There has thus been a continuing requirement that these estimates be comprehensive and definitive, with a good deal of detail on the characteristics and operational capabilities of weapon systems.

b. Except for the Estimates of the early 1950s, which were issued somewhat sporadically at a time when the Soviet strategic buildup had scarcely begun to take place, the strategic military Estimates are part of a continuing series and mainly concerned with weapon systems which are still deployed. In view of the strenuous efforts the Soviets have undertaken to deny us information about their strategic forces, moreover, most of the findings and judgments in these estimates are very heavily dependent on a variety of classified collection systems and analysis techniques. Taken together, the strategic military Estimates thus provide the basis for a systematic year-by-year evaluation of U.S. strategic intelligence and, by implication, of its sources and methods.

c. The sensitivity of the Estimates has often been enhanced by the special analytical and presentational form they have come to assume. Because of their frequent dependence on incomplete or indirect evidence, their findings have often involved complicated chains of reasoning. Because of the critical influence of some intelligence judgments on force planning and resource allocation in the Pentagon, they have often been highly controversial.

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Hence the drafters have tended to be quite precise in identifying the evidential, analytical and judgmental basis for their findings.

d. This tendency is most evident in the TOP SECRET codeword versions of the basic Estimates on strategic attack forces and on strategic defense forces. They are replete with references to particular sources or methods, to details of evidence, to gaps in the evidence, to particular forms of reasoning such as use of U.S. experience as a guide. Most of these Estimates were also published in a sanitized TOP SECRET version omitting specific reference to the existence and results of certain codeword-designated collection efforts (notably overhead reconnaissance) which were then very closely held. Otherwise, they were unchanged, often retaining specific references to other, less exotic sources and methods. Even without specific references, the effort to differentiate between what could be factually justified and what could be not was often a revealing characteristic of the art form.

7. I think we should therefore consider rejecting requests that the strategic military Estimates as a class be declassified and released, on the ground that even after deletion of specific sensitive passages they would retain their essential character and structure as the comprehensive, definitive intelligence assessments on Soviet forces and capabilities over time. I very much doubt that the framers of the Executive Order and those who voted for the amendments to the Freedom of Information Act contemplated that strategic intelligence files of this nature would be systematically declassified, thereby providing anyone who asked with a basis for the systematic assessment of the effectiveness of the strategic intelligence effort and -- indirectly -- of the sources and methods on which it is based.

8. At the same time we must acknowledge that strategic intelligence certainly does figure in the right of the American people to know how the public business has been conducted. Any responsible, critical account or evaluation of the development of American national security policy and American strategic forces would have to take account of the extent to which key intelligence judgments affected (or failed to affect) policy and how accurate they proved to be. It would also have to take

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account of such factors as the emergence of overhead reconnaissance as a source of information and as a basis for verifying arms agreements. All I would add is that to achieve these good things does not require looking at all the nuts and bolts of the strategic military Estimates.

9. To conclude, I think we are left with roughly the following choices:

a. Refuse all requests for declassification of the strategic military estimates on the ground that Estimates in this special category are inherently too sensitive to release as such, even with deletions.

b. Refuse all requests for declassification of entire estimates, on the above grounds, but:

-- Be receptive to requests for pertinent documentary excerpts on specific issues, drawing primarily but not exclusively on sanitized summary and conclusion sections of the Estimates.

-- Consider some systematic release program for historically significant passages or sections of past Estimates, perhaps along the lines of State Department's historical documents series.

-- Consider clearing selected researchers who, in the course of their own work, would do the job of identifying the key passages and sections of past Estimates warranting declassification action.

c. Respond to requests by sanitizing the summary and conclusion sections of the Estimates in question, arguing that the Estimates themselves are inherently too sensitive to release as such.

-- Under this course of action, we could also carry out any of the steps listed under Para b.

d. Make no special effort to treat strategic military Estimates as a special category, responding to requests for declassification and release on a case-by-by basis.



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NATIONAL SECURITY COUNCIL

LIMITED OFFICIAL USE

March 26, 1975

MEMORANDUM FOR:

JEANNE W. DAVIS

FROM:

STEPHEN LOW *SL*

SUBJECT:

FOI Declassification Request
for NIE s on Cuba

I am uneasy with the prospect of making a decision that a range of NIEs and SNIEs on a given subject may be declassified and released, even given the fact that the Cuban ones deal with an historical episode "whose intelligence aspects are generally well known and no longer sensitive." I would prefer that determination on declassification be made on a case-by-case basis despite the burden on the system required by such examination. It may in fact prove possible for the Cuban documents to be released without substantial deletions. However, the recommendation contained in the memo for Carver is based solely on the consideration of whether or not intelligence sources and methods are protected. From our standpoint this is only one of the considerations involved. We have not seen copies of the documents involved but it is conceivable that information on other Latin American countries, for example, might be included rather than information strictly limited to the assessment of military capabilities within Cuba. NIEs generally discuss political factors and the surrounding environment, and I would be opposed to automatically declassifying such material without further review. I therefore recommend that declassification be made only on a case-by-case basis.

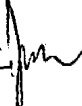
WJ to Mr. Carver

LIMITED OFFICIAL USE

MEMORANDUM

NATIONAL SECURITY COUNCIL

March 26, 1975

MEMORANDUM FOR: RICHARD OBER
FROM: JAN M. LODAL 
SUBJECT: Request for Declassification
Request of Soviet NIEs

It is difficult to consider in an abstract manner the procedural question of "how to handle a request" for the release of NIEs without making a judgment on whether these Estimates, in whole or in part, should be released.

If most of the information in the Estimates at issue can in fact be declassified and if this determination can be made without undue demands on resources, then the letter and spirit of the Amended FOIA would be served through a cooperative response to these requests. Presumably, the judgment on what information can be declassified would take into account the possible compromise of collection assets and analysis techniques which are still being employed.

The author of the staff study concluded, not surprisingly, that none of the Estimates could be released without sanitization. However, he then leaps to the judgment that even after sanitization the "essence" of the undertaking to produce these documents would remain and that this is ground for denial of the request. That type of judgment is unsupportable.

At the same time, I am highly skeptical that the declassification process would leave anything but a heavily gnawed skeleton of the original body. I think the only way to answer the current issue is to undertake selective declassification of a sample Estimate. If an honest effort turns out to require excessive resources and leaves little of conceivable interest, then there would be valid grounds for wholesale rejection of current and future requests. If not, then the requests should be honored consistent with the FOIA.