

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

14 JAN 1974

Honorable Roy L. Ash, Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This submits proposed legislation in accordance with Office of Management and Budget Circular No. A-19, revised. Enclosed are six copies of a draft bill, "To amend the National Security Act of 1947, as amended." Also enclosed are copies of a sectional analysis, a comparison with existing law, cost analysis, and drafts of the letters of transmittal to the President of the Senate and the Speaker of the House of Representatives.

The proposed legislation amends Section 102 of the National Security Act of 1947 by adding a new subsection (g) defining "information relating to intelligence sources and methods" as a separate category of classified information to be accorded statutory recognition and protection similar to that provided "Restricted Data" under the Atomic Energy Act. The proposed law grants the Director of Central Intelligence the authority to issue rules and regulations limiting the dissemination of information related to intelligence sources and methods of collection and provides for a criminal penalty for the disclosure of such information to unauthorized persons and for injunctive relief.

The continued effectiveness of the United States foreign intelligence collection effort is dependent upon the adequate protection of the intelligence sources and methods involved. In recognition of this, Congress, under Section 102(d)(3) of the National Security Act of 1947, made the Director of Central Intelligence responsible for the protection of intelligence sources and methods from unauthorized disclosure. Unfortunately, there is no statutory authority to implement this responsibility. In recent times, serious damage to our foreign intelligence effort has resulted from unauthorized disclosures of information related to intelligence sources and methods. The circumstances of these disclosures precluded punitive criminal action.

In most cases, existing law is ineffective in preventing disclosures of information relating to intelligence sources and methods. Except in cases involving communications intelligence, no criminal action lies against persons disclosing classified information without authorization unless it is furnished to a representative of a foreign power or the disclosure is made with intent to harm the United States or aid a foreign power. It also requires the revelation in open court of confirming or additional information of such a nature that the potential damage to the national security precludes prosecution. Furthermore, prevention of disclosure in order to avoid serious damage to the intelligence collection effort better serves the national interest than punishment after disclosure; however, there is no existing statutory authority for injunctive relief.

The greatest risks of disclosure come from persons who are entrusted with information relating to intelligence sources and methods through a privity of relationship with the U.S. Government. When such persons, without authorization, disclose information to representatives of the public media, it receives wide publication, and, of course, is revealed to the foreign nations which may be the subject of or otherwise involved in the intelligence activities, leading to their termination as well as political or diplomatic difficulties.

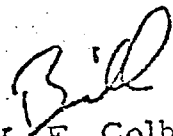
A fully effective security program might require legislation to encompass the willful disclosures of classified information by all persons knowing or having reason to know of its sensitivity. However, in order to limit the free circulation of information in our American society only to the degree essential to the conduct of a national foreign intelligence effort, this legislation proposes that prosecution be provided only for persons who have authorized possession of such information or acquire it through a privity of relationship to the Government. Other persons collaterally involved in any offense would not be subject to prosecution. Further, disclosures to Congress upon lawful demand would be expressly excluded from the provisions of the proposed law.

In order to provide adequate safeguards to an accused, while at the same time preventing damaging disclosures during the course of prosecution, subsection (g)(5) provides for an in camera determination by the court of the reasonableness of the designation for limited distribution of the information upon which prosecution is brought.

Finally, in order to prevent disclosures, subsection (g)(6) provides statutory authority for the enjoinder of threatened acts in violation of the subsection upon a showing by the Director of Central Intelligence that any person is about to commit a violation of the subsection or any rule and regulation issued thereunder.

Your advice is requested as to whether there is any objection to the submission of the proposed legislation to the Congress from the standpoint of the Administration's program.

Sincerely,


W. E. Colby
Director

Enclosures

cc: Chairman and Members of PFIAB
Chairman and Members of NSCIC
Members of USIB