

Declassification in an Open Society

APPROVED FOR RELEASE 1994
CIA HISTORICAL REVIEW PROGRAM
2 JULY 96

UNCLASSIFIED

The problem of making classified information public

Gail F. Donnalley

People are creatures of habit and have an innate resistance to change. The dilemma created for intelligence agencies in June 1972 by the implementation of Executive Order 11652 — the Executive Order dealing with classification and declassification of national security information — bears out this theory. The concept that "the interests of the United States and its citizens are best served by making information regarding the affairs of Government readily available to the public," is reflected in that Executive Order and in the Freedom of Information Act. The Order acknowledges that information bearing directly on the effectiveness of our national defense and the conduct of our foreign relations "must be subject to some constraints for the security of our nation and the safety of our people and our allies." It identifies the information to be protected, prescribes classification, downgrading, declassification and safeguarding procedures to be followed, and establishes a monitoring system to ensure its effectiveness.

The Contradiction of Security and Openness

The application of Executive Order 11652 and the Freedom of Information Act to the Central Intelligence Agency postulates a real contradiction in definitions and philosophies. The CIA reflects the society of which it is a part; and to that extent, it is the most open intelligence agency in the world. But there remains the inherent conflict between an open society, which wants all official information made available to members of that society, and the aims of an intelligence organization engaged in the collection and production of intelligence derived from sources which cannot be identified. For this reason, our application of the Executive Order takes place in a dichotomy and involves a considerable amount of trauma as a result of our previous history.

The Director is charged by the National Security Act of 1947 with the protection of intelligence sources and methods. This legal requirement is consciously and unconsciously instilled in each employee of the Central Intelligence Agency every day of his employment. For those of us who have been with the Agency for some time, protection of sources and methods has thus become instinctive. We have been trained to err on the side of caution, because a mistake the other way could have dire effects. Perhaps the most recognizable effect that could immediately result is the loss of a source; someone will no longer provide us with information. This loss could go even further. The individual, rather than just deciding he would no longer provide us with information, could be incarcerated or even lose his life.

The loss of the primary source is not the most important consideration; having lost a source of intelligence through an error in judgment in terms of protecting that source, we then run the risk that we no longer will be able to attract additional sources. In a sense, in the intelligence world, we lose our credibility; and, having lost our credibility, we lose our capability to attract. So it is quite fair to say that the application of Executive Order 11652 gives us psychological problems. We have to re-think; we now have to make better decisions as to what is important in source protection and what isn't. All this is salutary and I think necessary and perhaps overdue. The general philosophy which we are now trying — to instill in our employees is that we can better protect those things which need protection if we limit our protective measures to those things which truly require protection and do not apply the same measures willy-nilly across the board. Other national intelligence services do not operate in the same atmosphere as we do and hence have difficulty understanding this Government's approach to the protection of classified matters. We can already sense an erosion of

confidence on the part of some of our friends.

As to what is going on, a little history might be useful to set the stage for you. As you can appreciate, the traditional view has seen our intelligence services cloaked in extreme secrecy taken to the limits of not revealing names of employees or informants for ever and ever; indeed, if you lived in a pure world which was dominated only by the influences affecting intelligence, the ideal situation would be this: a complete and final removal of intelligence-related matters in terms of informants, agents, and employees from any aspect of public knowledge. But we don't live in that kind of a world. We do, however, concern ourselves with protecting the sources after they have stopped being sources. We are concerned that it may be necessary to protect information relative to a source for a period of time in excess of the 30 years specified in the Executive Order. The question might well be, "Why more than 30 years?" The answer is that frequently the activities of the first generation informant could carry over to a second generation; and, if we don't protect that first generation, we may not be able to attract the services of a second generation.

Early Classification Procedures

Of course, classification and security protection had not really been a major problem to the government until World War II, and I would say that even in the second World War, though we did need to protect war plans, operational plans and so forth, we still had not developed a very coherent philosophy of classification. The system then was modeled after the English system. The most important judgment exercised seemed to be what color ink to use in the stamp pad. Certainly in the predecessor organization to CIA, the Office of Strategic Services, this was true. We have found, for example, in reviewing OSS documents for declassification, that in many cases the stamp put on the document when it was received in the OSS mail room classified the document Confidential when it previously had been unclassified. That is to say, the act of receipt itself had a classification built right into it.

This type of generic overclassification is one of the reasons for the genesis of the Executive Order on classification and a valid reason for

attempting to improve access to documents. I think that this overclassification, this classification without thought, probably has contributed in its own way to the deplorable habit of certain individuals who decide on political grounds that a particular piece of classified information no longer merits classification, because its release can produce a given effect that they wish — so it appears in the press or is leaked some other way. It is true that occasionally such leaks have been for personal gain, or simply because somebody wants to capitalize on his own personal experiences and become the first to declassify or publish something previously classified.

In the past 50 years there has been an increasing amount of quite accurate intelligence tradecraft and methodology revealed in fictional and non-fictional works, usually by authors who had had experience in either wartime or peacetime intelligence work. This trend was started after World War I with Somerset Maugham's *Ashenden*, based on Maugham's personal experience as an intelligence officer. It describes the frustrations and failures encountered in such work; if something can go wrong, whether from human weakness or stroke of fate, it usually does. In a much different tone, Ian Fleming's James Bond tends to glamorize intelligence work in the post-World War II era, though his exploits do contain a leaven of tradecraft in realistic detail. John LeCarre's *The Spy Who Came in From the Cold* is a fine example of the grubby life of an intelligence agent, played like a puppet by those who hired him. In the non-fiction field, I should mention Allen Dulles' *The Craft of Intelligence* which purveys a fine flavor for intelligence as a profession. There are also good books on cryptography and code-breaking. Obviously, these deal extensively with the past, inasmuch as it is in our national interest to keep current techniques and methodologies closely controlled.

What We Are Trying to Protect

I have covered this background material, which I'm sure is familiar to most of you, in order to lead up to the question of what we in the CIA are trying to protect. It includes: (a) the names of *some* of our employees — those working overseas (even if disclosed to host governments) and those in line for such assignments in the future; (b) the names of all our

agents — for obvious reasons. Incidentally, much confusion seems to exist in the public mind over the term "agent of the CIA." All too frequently, the media use "CIA agent" to mean *anyone* working for the CIA — directly and full-time or only on an *ad hoc* basis, openly labelled as CIA or identified otherwise. This is improper and needs clarification. The confusion probably arises out of the practice of our FBI colleagues who perform their investigative and security functions under the professional title of agents.

CIA uses the term "agent" in its dictionary sense of "a person empowered to act for another." Thus all our so-called agent operations engage individuals, usually foreign nationals, in the conduct of intelligence work as guided and directed by CIA officers. The agent is the doer, the CIA officer is the representative of the U.S. Government, and the Agency is charged with insuring that the agent does what is required in the manner chosen within the time allowed. Thus, it is improper to refer to E. Howard Hunt as a CIA agent; Hunt was a CIA officer charged with the direction of agents, as in his role leading up to the Bay of Pigs.

Resuming the list of the types of information we are trying to protect, next is (c) the current methods we are using to obtain intelligence — maybe you've read about them in James Bond, but perhaps they aren't in anything you could have read; (d) all information dealing with cryptography and cryptanalysis; (e) the details of the processing and analysis of intelligence information — the Soviets would like this; and (f) the finished intelligence publications — because they reveal what has been provided to the decision makers in our government. This list is by no means complete, but it does include those of most significance.

Bundy's List of 'Real Secrets'

Perhaps you have not had the opportunity to read some of the recent testimony given before the Senate Subcommittee on Government Operations. McGeorge Bundy, National Security Advisor to President Kennedy, testified on May 22, 1974 to the Subcommittee, which was inquiring into classification practices in the government. Bundy identified what he called "real secrets" and divided these into six

classes: (1) defense information, such as the details of military contingency planning and the design of nuclear weapons systems; (2) current diplomatic negotiations; (3) covert activity abroad (incidentally, he suggests that, since some of such activity is out of tune with national sentiment, it should not exist, and other types of such activity should be governed by the Congress through its share of the war power); (4) the covert collection of intelligence — including secret agents, interception of electronic transmissions, or any other where revelations could enable the enemy to take countermeasures; (5) material whose capacity for *international* embarrassment outweighs its values for enlightenment of the public — he cites confidential assessments of foreign leaders coming to meet the President; and (6) legitimate secrets relating to the process by which a President makes a decision.

Statutory Authority for Protection

As I mentioned, when the CIA was established under the National Security Act of 1947, the Director was given statutory authority to protect intelligence methods and sources. This Act, and the successive Executive Orders on classification, have been the foundation for our policies in protecting national security information, whether originated by us or received from other government components of foreign sources. Additional authority to protect certain information, particularly that relating to names and numbers of employees, was included in the CIA Act of 1949. These acts have in no way been superseded by the Freedom of Information Act of 1966. You should be aware, however, that there is a very strong possibility that this Act will be amended significantly in the near future,^{*} and both versions passed by the House (in March) and the Senate (in May) contain sections which appear in potential conflict with the Agency's statutory authorities mentioned a moment ago. The most important change lies in the provision for *in camera* review by a court in cases where the reasonableness of the classification of a document or material is challenged. Leaving aside the question of how to protect sensitive intelligence information while it is in the possession of a court, the basic problem is whether a court could overrule the Director's decision, taken under his statutory responsibility, that certain information requires protection because it involves intelligence sources and methods.

The Declassification Machinery

Let me now return to 1 June 1972, when Executive Order 11652 became effective. The Central Intelligence Agency integrated the implementation of classification practices into its Records Management Program. Other agencies selected different options; some included it in public relations programs, others in security programs. To date, our experience is that it operates quite effectively in the Records Management Program, but could operate equally effectively in any of the other programs.

The Chief, Information Systems Analysis Staff, is charged with the responsibility for ensuring compliance with Executive Order 11652 and the Freedom of Information Act within the Agency. In August 1973, a Classification Programs Branch was established within this Staff with a basic mission of carrying out the program, emphasizing coordination rather than centralized declassification activity. The major task in terms of manpower requirements is the primary responsibility of the originating components or their successor organizations.

As you realize, the Order required an update of our procedures in several areas. It called for: (a) a sharp restriction in the number of authorized classifiers; (b) the refining of the criteria for materials to be classified, and accountability of classifiers for their actions; (c) the identification of classifiers on any materials classified; (d) the implementation of the General Declassification Schedule (GDS), which permitted much too brief periods of protection for most intelligence materials; (e) the exemption of material, if necessary, from the provisions of the GDS (but there is a question as to whether all the Agency's activities can be considered as falling under one or more of the four exemptions) ; (f) the development of procedures to implement the provisions for mandatory review of classified material, leaving the Agency with the question of what manpower would be needed; (g) the automatic review of classified material 30 years old, with declassification of all such material except that continued under classification by decision of the Director; (h) the systematic review of classified material with the view of downgrading or declassifying it as soon as possible (and again there was the problem of manpower) ; (i) the potential problem posed by the apparent authority of the Interagency Classification Review Committee to overrule the Director

in appeals from the denials of mandatory review requests; (j) access to classified documents by approved historical researchers (non-government) ; and (k) the requirement to provide quarterly lists of authorized classifiers to the ICRC.

Perhaps I should reemphasize here how these requirements conflicted with the training and practices acquired over the years by our professional intelligence case officers and analysts. In the intelligence field there are two aspects of information, the information itself, and the means by which it is obtained. It is obvious that if the leaders of a less than friendly foreign country know we have learned of their defense mechanisms, they will modify or completely change them. If they know we have been able to intercept and read their communications, they will no longer use those channels to transmit information helpful to us, or they may attempt to mislead us with misinformation.

But, more important, disclosure of the fact that we have certain pieces of information could seriously endanger the agent or agents who made them available to us, resulting in the termination of any more information from that channel, whether because of the removal of the agent or because the agent fears the consequences of his passing further intelligence material to us.

The intelligence case officer realizes that a particular piece of information may not require protection, but he is concerned with the likelihood that an accumulation of separate bits of intelligence will lead back to the source. Hence, his training conditions him to think of a continuing need to protect information not only from disclosure to the public, but even from his colleagues who do not need to know.

You can perhaps appreciate, then, the traumatic effect of the disclosure provisions of the Executive Order on such professional intelligence officers. Not only were they asked to review intelligence documents for possible disclosure in response to mandatory requests; but, on the basic question of what level of classification, if any, a document needed, they were required, when in doubt, to use the less restrictive treatment

We have now lived with the Order for more than two years, however, without things going to pot. This is in part because of the helpful and cooperative attitude taken by the ICRC on several procedural matters. It is due much more to most Agency people having learned to follow the spirit of the new system, though sometimes reluctantly; having learned

the refined basis for classification; and now thinking before routinely stamping a classification on a document.

Experience to Date

In monitoring our progress in complying with the Order, we find we have accomplished several things, such as: (a) greatly reducing the number of classifiers (and this is still an on-going process) ; (b) significantly reducing the current amount of classified materials being produced, particularly as classifiers increasingly realize that little administrative or support material needs protection; (c) beginning the review of 30-year-old material (as you know, we are the successors to the OSS and CIG); and (d) keeping abreast of the requests for mandatory review.

I will expand a bit on this matter of handling mandatory review requests, for there are points here which will likely be of interest to you. We were initially apprehensive that we would be swamped by requests from the news media and private individuals, especially historical researchers. Yet two years after the Executive Order went into effect, we have received only 240 requests.

Among the first of these was the request from one of the major news services for records related to the Guatemalan Revolution of 1954, in which the Agency is alleged to have played a significant role. It was quite a task to identify and retrieve the relevant documents; and, after a careful review, it was determined that most of them could not be declassified because sources of information were identified. However, it was possible to sanitize many of these papers and thus meet the larger part of the requester's needs.

We have had an oft-repeated request from a well-known historian and academician, mainly for documents relating to the Cuban Missile Crisis. This request was made initially under the FOIA, but since classified documents were involved, it has been processed under the provisions of the Executive Order. It was pointed out to the Professor that he appeared to be eligible for approval as a historical researcher, but he declined to take this route, preferring to use only declassified source materials. It has been possible to declassify some of the documents he wants, but others can be released only in sanitized versions, if at all, and

historians understandably don't like sanitized documents.

Occasionally, we have had requests for declassification from former employees (including those of the OSS). We have declassified a considerable number of documents dealing with OSS operations in Vietnam (then French Indochina) for a former OSS officer who served there in the latter part of 1945 and who knew Ho Chi Minh. And we have been able to declassify documents on OSS operations in Yugoslavia for a former OSS man who served there and is writing a book.

There are still several challenges for the Agency to meet in implementing various facets of the classification policies mandated by the Executive Order, and some of these may well be the same as you are facing. For example, you probably see occasional documents which are obviously overclassified or are exempted for no apparent reason. It's clear that someone hasn't gotten the word — or has unthinkingly used former procedures — or signed what his secretary prepared without reviewing it for the appropriateness of the classification. There is a continuing need for both indoctrination of newly authorized classifiers and re-indoctrination periodically of the "old hands. " We are still working to develop effective means to accomplish this.

A different problem we face is in getting together the necessary resources to get current on the review of classified material which is 30 years old or older. With rare exceptions, all OSS documents still on file are classified, and the review of these has been a challenge in terms of making qualified personnel available to do the job. In fact, as a practical matter, we re-hired three retirees to work on the OSS records previously held by the Department of State and turned over to the National Archives some time back, but this is only a part of the problem. From 1977 on, when we pass the 30th anniversary of the establishment of the Agency, we will have increasing numbers of documents eligible for review and we will have to gear up to handle that workload.

We have taken steps to reduce the average time of responding to mandatory review requests. Your problems in this area may be somewhat different from ours, for we must first search out the documents and then find busy operations people to review them in terms of current classification criteria. Because of our many internal reorganizations over the years, it is often not too clear which component should make the review, and perhaps two or three different offices should look at it. All this takes time; but, needless to say, we are doing

our best to be responsive to the anticipated new requirements, both for requests and appeals of denials.

In closing, I would say that if our problems, as I have tried to point out, have been psychological and have been brought about by the requirement to re-think old habitual practices, I think it's been healthy for us and it's certainly an interesting challenge to an intelligence agency steeped in the tradition of silence to comply with the current demands of our society for more freedom of information.

Footnotes

*From a speech to the National Classification Management Society in San Diego, Calif., in July 1974.

*These amendments have since been enacted over Presidential veto—Ed.

UNCLASSIFIED

Posted: May 08, 2007 08:41 AM