

FOIA MARKER

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Personnel Security [8]

Staff Office-Individual:

Legal Advisor-Derosa, Mary

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4058

Row:	Section:	Shelf:	Position:	Stack:
39	6	9	1	V

Baker

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

September 15, 1995

MEMORANDUM FOR PETER SADERHOLM
Director, Security Policy Board Staff

SUBJECT: Guidelines and Standards Recommended by the
Security Policy Board, Per EO 12968

Thank you for the opportunity to suggest the appropriate mechanism for handling the SPB's recommendations to the President pursuant to EO 12968, Access to Classified Information, as well as some preliminary edits of the draft Adjudicative Guidelines for Clearances endorsed by the Security Policy Forum on July 28, 1995.

As you know, Section 6.3 of E.O. 12968 provides that the SPB shall make recommendations on implementing guidelines to the President through the Assistant to the President for National Security Affairs. I was concerned that some drafts I have reviewed might suggest otherwise, or suggest that the guidelines were not appropriate for Presidential attention. The order and the President's intent, however, are clear. No guidelines shall be issued unless they have first been approved by the President.

Therefore, I recommend that we proceed along the following lines. Simultaneous with SPB consideration of draft guidelines and standards (after SPF recommendation of the drafts to the SPB), I propose that you provide the drafts to me, and I will arrange their publication in the Federal Register, with a short comment period. After the expiration of the comment period, the SPB can transmit the finalized draft to the Assistant to the President for National Security Affairs, noting the public comments and identifying which ones have been incorporated. This will afford

Mr. Lake a full range of public and interagency views before recommending that the President endorse the guidelines. This would likely be accomplished by memorandum from Mr. Lake to the Chairman of the SPB conveying the President's approval, although the specific modality for accomplishing this has yet to be resolved.

My view is that Forum approval of a draft and referral to the NSC for publication in the Federal Register meets the EO's deadline, if it is within 180 days of the Executive Order. I think that it is premature to suggest a new kind of directive, to implement PDD-29 and EO 12968, particularly in light of Section 6.3. The President did not delegate authority to direct security policies to the SPB, and it is doubtful that he could do so with respect to agencies that do not sit on the SPB. Of course, the SPB is free to make recommendations to the President, however, I think such a recommendation at this time is premature.

In line with these comments, I would suggest the following edits to the Hall/Clark memo:

At p. 1, 2.b.:

b. The Order requires the Board to submit its recommendations regarding the guidelines to the President through the Assistant to the President for National Security Affairs (APNSA). Based on discussions with NSC staff, we recommend that the draft be submitted to the NSC staff, who will arrange publication of the draft in the Federal Register, with a short deadline for response. Upon consideration of any comments and final edits, the Board would submit the guidelines to the NSC staff for Presidential approval.

Regarding the Deutch/White draft memo, I suggest you may wish to edit paragraph #3. While there is nothing wrong with coining the term "Security Policy Directive," it would be premature to suggest that the SPB should issue directives, before the President has reviewed the guidelines and considered their implementation.

Please let me know if you have any questions regarding this memorandum. I appreciate the work you and your staff have put into this effort and look forward to working with you on the guidelines, consistent with Section 6.3.

A handwritten signature in cursive script, reading "Edward J. Appel".

Edward J. Appel
Director, Counterintelligence
Programs

cc: Randy Beers
James Baker

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9521242
RECEIVED: 25 OCT 95 10

TO: LAKE

FROM: GARFINKEL, S

DOC DATE: 19 OCT 95
SOURCE REF:

KEYWORDS: ISOO
CLASSIFICATION

EO
DECLASSIFICATION

J B

PERSONS:

SUBJECT: REQUESTS STATUS RPT RE IMPLEMENTATION OF EO 12958

ACTION: PREPARE MEMO FOR LAKE

DUE DATE: 28 OCT 95 STATUS: S

STAFF OFFICER: LEARY

LOGREF:

FILES: NS

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

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FOR CONCURRENCE

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KRECKO

FOR INFO

COMMENTS: _____

DISPATCHED BY _____

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OPENED BY: NSVJD

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DOC 1 OF 1

UNCLASSIFIED



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 19, 1995

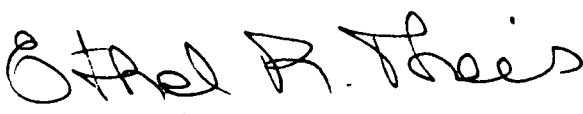
Dear Dr. Lake:

Under Executive Order 12958, "Classified National Security Information," the Director of the Information Security Oversight Office (ISOO) is responsible for overseeing agency actions to ensure compliance with this Order and its implementing directives. Critical to the Order's implementation are initial actions which executive branch agencies should be completing. In order that we conduct a thorough evaluation of agency progress, ISOO has developed a status report as an attachment for agencies to complete.

Upon request, a copy of the status report is available on a 3.5" diskette (Microsoft Word version 2.0b). Also, we have included, as a second attachment, a copy of the Order of October 13, 1995, in which the President has designated agency heads and White House officials as original classification authorities.

Please provide the status report to ISOO by November 8, 1995. ISOO's fax number is (202) 395-7460. If you have any questions, please call your ISOO liaison.

Sincerely,


Steven Garfinkel
Director
Information Security Oversight Office

The Honorable Anthony Lake
Assistant to the President for
National Security Affairs
The White House
Washington, DC 20500

Attachments

A-1

IMPLEMENTING ACTION	AUTHORITY	YES (See below)	NO (See below)
4. Has the President been notified of any file series proposed for exemption from automatic declassification?	Section 3.4(c)		
Status			
(If yes, please indicate the date of the notification. If no, please provide an estimated date of notification.)			
IMPLEMENTING ACTION	AUTHORITY	YES (See below)	NO (See below)
5. Have internal regulations been developed and issued? Have those portions of the regulations which affect members of the public, e.g., mandatory review requests and appeals, been published in the <u>Federal Register</u> ?	Section 5.6(c)(2)		
Status			
(If yes, please indicate the date the internal regulations were issued and the date of publication of those portions of the regulations that affect members of the public. If no, please provide estimated dates of completion.)			
IMPLEMENTING ACTION	AUTHORITY	YES (See below)	NO (See below)
6. Have procedures been established for challenging the classification of information?	Section 1.9(b)		
Status			
(If yes, please indicate the completion date of the implementing action. If no, please provide an estimated date of completion.)			

[illegible]

IMPLEMENTING ACTION	AUTHORITY	YES (See below)	NO (See below)
10. Has a senior level official been appointed to serve on the Interagency Security Classification Appeals Panel?*	Section 5.4(a)(1)		
Status			
(If yes, please indicate the name, title, mailing address, and phone number of the official. If no, please provide an estimated date of appointment.)			

* Applies to only the Secretaries of State and Defense, the Attorney General, Director of Central Intelligence, the Archivist, and the Assistant to the President for National Security Affairs.

10-17-95
Vol. 60 No. 200
Pages 53691-53846

Tuesday
October 17, 1995

Federal Register

Presidential Documents

Order of October 13, 1995

National Security Information

Pursuant to the provisions of Section 1.4 of Executive Order No. 12958 of April 17, 1995, entitled "Classified National Security Information," I hereby designate the following officials to classify information originally as "Top Secret", "Secret", or "Confidential":

TOP SECRET

Executive Office of the President:

The Vice President
The Chief of Staff to the President
The Director, Office of Management and Budget
The Assistant to the President for National Security Affairs
The Director, Office of National Drug Control Policy
The Chairman, President's Foreign Intelligence Advisory Board

Departments and Agencies:

The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force
The Attorney General
The Secretary of Energy
The Chairman, Nuclear Regulatory Commission
The Director, United States Arms Control and Disarmament Agency
The Director of Central Intelligence
The Administrator, National Aeronautics and Space Administration
The Director, Federal Emergency Management Agency

SECRET

Executive Office of the President:

The United States Trade Representative
The Chairman, Council of Economic Advisers
The Director, Office of Science and Technology Policy

Departments and Agencies:

The Secretary of Commerce
The Secretary of Transportation
The Administrator, Agency for International Development
The Director, United States Information Agency

CONFIDENTIAL

The President, Export-Import Bank of the United States

The President, Overseas Private Investment Corporation

Any delegation of this authority shall be in accordance with Section 1.4(c) of Executive Order No. 12958.

This Order shall be published in the Federal Register.

William Clinton

THE WHITE HOUSE,
Washington, October 13, 1995.

[FR Doc. 95-25922

Filed 10-16-95; 11:14 am]

Billing code 3195-01-P

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122.8 million.

These deferrals affect the International Security Assistance program, and the Departments of Health and Human Services and State.

William J. Clinton

The White House,
October 19, 1995.

Letter to Senator Edward M. Kennedy on the "Employment Non-Discrimination Act"

October 19, 1995

Dear Ted:

I am writing in regard to the Employment Non-Discrimination Act, which you and Senator Jeffords have reintroduced in the current session of Congress.

As you know, discrimination in employment on the basis of sexual orientation is currently legal in 41 states. Men and women in those states may be fired from their jobs solely because of their sexual orientation, even when it has no bearing on their job performance. Those who face this kind of job discrimination have no legal recourse, in either our state or federal courts. This is wrong.

Individuals should not be denied a job on the basis of something that has no relationship to their ability to perform their work. Sadly, as the Labor and Human Resources Committee documented last year, this kind of job discrimination is not rare. Cases of job discrimination on the basis of sexual orientation are seen in every area of our country.

The Employment Non-Discrimination Act, however, is careful to apply some exemptions in certain areas. I understand that your bill provides an exemption for small businesses, the Armed Forces, and religious organizations, including schools and other educational institutions that are substantially controlled or supported by religious organizations. This provision, which I believe is essential, respects the deeply held religious beliefs of many Americans.

Moreover, your bill specifically prohibits preferential treatment on the basis of sexual orientation, including quotas. It also does not require employers to provide special benefits.

The bill, therefore, appears to answer all the legitimate objections previously raised against it, while ensuring that Americans, regardless of their sexual orientation, can find and keep their jobs based on their ability and the quality of their work. The Employment Non-Discrimination Act is designed to protect the rights of all Americans to participate in the job market without fear of unfair discrimination. I support it.

Sincerely,

Bill Clinton

**Executive Order 12977—
Interagency Security Committee
October 19, 1995**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the quality and effectiveness of security in and protection of buildings and facilities in the United States occupied by Federal employees for nonmilitary activities ("Federal facilities"), and to provide a permanent body to address continuing government-wide security for Federal facilities, it is hereby ordered as follows:

Section 1. Establishment. There is hereby established within the executive branch the Interagency Security Committee ("Committee"). The Committee shall consist of: (a) the Administrator of General Services ("Administrator");

(b) representatives from the following agencies, appointed by the agency heads:

- (1) Department of State;
- (2) Department of the Treasury;
- (3) Department of Defense;
- (4) Department of Justice;
- (5) Department of the Interior;
- (6) Department of Agriculture;
- (7) Department of Commerce;
- (8) Department of Labor;
- (9) Department of Health and Human Services;
- (10) Department of Housing and Urban Development;
- (11) Department of Transportation;
- (12) Department of Energy;
- (13) Department of Education;
- (14) Department of Veterans Affairs;

- (15) Environmental Protection Agency;
- (16) Central Intelligence Agency; and
- (17) Office of Management and Budget;
- (c) the following individuals or their designees:

- (1) the Director, United States Marshals Service;

- (2) the Assistant Commissioner of the Federal Protective Service of the Public Buildings Service, General Services Administration ("Assistant Commissioner");

- (3) the Assistant to the President for National Security Affairs; and

- (4) the Director, Security Policy Board; and

- (d) such other Federal employees as the President shall appoint.

Sec. 2. Chair. The Committee shall be chaired by the Administrator, or the designee of the Administrator.

Sec. 3. Working Groups. The Committee is authorized to establish interagency working groups to perform such tasks as may be directed by the Committee.

Sec. 4. Consultation. The Committee may consult with other parties, including the Administrative Office of the United States Courts, to perform its responsibilities under this order, and, at the discretion of the Committee, such other parties may participate in the working groups.

Sec. 5. Duties and Responsibilities. (a) The Committee shall: (1) establish policies for security in and protection of Federal facilities;

(2) develop and evaluate security standards for Federal facilities, develop a strategy for ensuring compliance with such standards, and oversee the implementation of appropriate security measures in Federal facilities; and

(3) take such actions as may be necessary to enhance the quality and effectiveness of security and protection of Federal facilities, including but not limited to:

- (A) encouraging agencies with security responsibilities to share security-related intelligence in a timely and cooperative manner;

- (B) assessing technology and information systems as a means of providing cost-effective improvements to security in Federal facilities;

- (C) developing long-term construction standards for those locations with threat lev-

els or missions that require blast resistant structures or other specialized security requirements;

- (D) evaluating standards for the location of, and special security related to, day care centers in Federal facilities; and

- (E) assisting the Administrator in developing and maintaining a centralized security data base of all Federal facilities.

Sec. 6. Agency Support and Cooperation.

(a) **Administrative Support.** To the extent permitted by law and subject to the availability of appropriations, the Administrator, acting by and through the Assistant Commissioner, shall provide the Committee such administrative services, funds, facilities, staff and other support services as may be necessary for the performance of its functions under this order.

(b) **Cooperation.** Each executive agency and department shall cooperate and comply with the policies and recommendations of the Committee issued pursuant to this order, except where the Director of Central Intelligence determines that compliance would jeopardize intelligence sources and methods. To the extent permitted by law and subject to the availability of appropriations, executive agencies and departments shall provide such support as may be necessary to enable the Committee to perform its duties and responsibilities under this order.

(c) **Compliance.** The Administrator, acting by and through the Assistant Commissioner, shall be responsible for monitoring Federal agency compliance with the policies and recommendations of the Committee.

Sec. 7. Judicial Review. This order is intended only to improve the internal management of the Federal Government, and is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

William J. Clinton

The White House,
October 19, 1995.

[Filed with the Office of the Federal Register,
2:55 p.m., October 20, 1995]



U. S. Department of Justice

Office of Intelligence Policy and Review

Washington, D.C. 20530

Date:

5/23/95

TO:

JAMIE BAKER
Name of RecipientNSC/LEGAL
Name of OrganizationRoom Number, Address (City and State)Fax Number: 202 456 9110

FROM:

JERRY SCHROEDER
Name of Sender

U.S. Department of Justice
Office of Intelligence Policy & Review
10th & Pennsylvania Avenue, N.W.
Suite 6325
Washington, D.C. 20530
Office Telephone: (202) 514-~~5600~~ ⁵⁶⁰⁵
Office Fax Number: (202) 514-7858

Number of Pages Transmitted, Including This Sheet: 4Comments: Per your request.

NOTE: Please call sender if document is illegible or incomplete. Thank you.

**SENATE SELECT COMMITTEE ON INTELLIGENCE
COMMENTS ON EXECUTIVE ORDER ON ACCESS TO CLASSIFIED INFORMATION**

Agency Discretion

SSCI Comment: Draft order leaves too much discretion with agency heads, particularly with regard to designating employees with access to sensitive information and requiring annual financial disclosure statements.

SSCI Proposal:

- ▶ Periodic agency implementing reports to the Security Policy Board should be provided to the congressional oversight committees.
- ▶ SSCI also requests notification of SPB development of standard financial disclosure form, adjudicative guidelines, and investigative standards.

Administration Response:

- ▶ E.O. is not an appropriate vehicle to mandate reports to oversight committees.
- ▶ Administration will work with the intelligence committees to provide information they need for oversight.
- ▶ E.O. amended to specifically require implementation of financial disclosure requirements in periodic reports to the Security Policy Board.

Security vs. Suitability

SSCI Comment: If a security decision can be hidden within a suitability determination, employees will not receive appeal procedures set out in the order.

SSCI Proposal:

- ▶ Amend definition of "applicant" to include a specific reference to the Standard Form 86.
- ▶ Make it clear that any determination based in whole or in part on security will trigger the appeal procedures.

Administration Response:

- ▶ Can't include a specific reference to the SF-86 because conditional offers can be withdrawn for reasons other than security, e.g. misrepresentation of employment qualifications.

- 2 -

- ▶ We have included a specific prohibition against using a suitability decision to deny appeal procedures where there has been a denial or revocation of a security clearance.

Use of Polygraphs

SSCI Comment: The order does not adequately address the use of polygraphs to ensure uniformity and reciprocity.

SSCI Proposal:

- ▶ Security Policy Board should develop a common set of counterintelligence issues to be used by agencies using the polygraph as a tool in adjudicating access to classified information.

Administration Response:

- ▶ SPB will do this.

Financial Disclosure

SSCI Comment: Categories of information triggering financial disclosure obligations appear to cover a contractor who has access to commercial cryptographic information.

SSCI Proposal:

- ▶ Limit application of this section to employees and contractors who have access to the listed categories of sensitive information by virtue of their employment with the government.

Administration Response:

- ▶ Order amended so that categories of sensitive information are limited to "classified" information, which by definition can be only information owned by or produced for the U.S. government.

Non-U.S. Citizen Access

SSCI Comment: Order does not adequately address classified information that is regularly shared with non-U.S. citizens pursuant to bilateral and multilateral agreements.

SSCI Proposal:

- ▶ Order must recognize and address this issue.

- 3 -

Administration Response:

- ▶ Order addresses only employees, including non-U.S. citizens, who receive security clearances.
- ▶ Clearances are not given by the U.S. to employees of allied governments who receive classified information pursuant to bilateral and multilateral agreements -- the allied governments grant those clearances.
- ▶ These arrangements are governed by the National Disclosure Policy, which already provides a framework for approval or denial of disclosure of classified information to foreign governments and international organizations.

Sexual Orientation and Access E.O.

Points

- The President's executive order provides that no inference concerning the standards for granting and keeping security clearances may be raised solely on the basis of the sexual orientation of the employee.
- The order also requires that the government-wide guidelines that the Security Policy Board will develop to implement the Order shall be consistent with the guidelines and policy on sexual orientation adopted by the FBI in March 1994.
- The Security Policy Board has 180 days to develop these guidelines before submitting them to the White House for review and approval. The President's directive that no inference may be drawn solely on the basis of sexual orientation, however, is effective immediately.
- The FBI's approach has been endorsed by the Joint Security Commission and is supported by Representative Frank.

Question: What do the FBI guidelines say?

- The FBI's guidelines include guidance to interviewers regarding what questions are appropriate to ask candidates for clearances as well as how to appropriately respond to particular scenarios. (An example is attached.)

Question: Why didn't the President simply write the FBI's guidelines into the Order?

- The FBI's guidelines provide a series of question and answer scenarios. As such, they do not lend themselves to incorporation per se into an executive order.
- The President wants to ensure that the government's guidelines reflect the spirit of the FBI guidelines and address all the scenarios that might come up at agencies other than the FBI.

Question: Does the Order permit agencies to investigate anything other than conduct?

- In determining eligibility for access, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security.
- If an employee's conduct, or any other matter, could credibly serve as a basis for coercion, then the order would permit agencies to assess the risk of coercion as well as the employee's willingness to address that risk. As noted above, however, no inference may be raised regarding the potential for coercion, or any other matter, solely on the basis of sexual orientation.
- The FBI guidelines, for example, include a series of questions to assess the risk of coercion involving an employee whose sexual orientation is concealed.

POINTS TO BE MADE
Sexual Orientation and Access E.O.

- The President's executive order provides that no inference concerning the standards for granting and keeping security clearances may be raised solely on the basis of the sexual orientation of the employee.
- The order also requires that the government-wide guidelines that the Security Policy Board will develop to implement the Order shall be consistent with the guidelines and policy on sexual orientation adopted by the FBI in March 1994.
- The Security Policy Board has 180 days to develop these guidelines before submitting them to the White House for review and approval. The President's directive that no inference may be drawn solely on the basis of sexual orientation, however, is effective immediately.
- The FBI's approach has been endorsed by the Joint Security Commission and is supported by Representative Frank.

Question: What do the FBI guidelines say?

- The FBI's guidelines include guidance to interviewers regarding what questions are appropriate to ask candidates for clearances as well as how to appropriately respond to particular scenarios. (An example is attached.)

Question: Why didn't the President simply write the FBI's guidelines into the Order?

- As I noted, the FBI's guidelines provide a series of question and answer scenarios. As such, they do not lend themselves to incorporation per se into an executive order.
- In addition, the President wants to make sure that the government's guidelines address all the scenarios that might come up at agencies other than the FBI. Moreover, while the FBI guidelines are widely praised, if there is room to even better reflect the President's directive then we want to find it.

Question: Does the Order permit agencies to investigate anything other than conduct?

- In determining eligibility for access, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security.
- If an employee's conduct, or any other matter, could credibly serve as a basis for coercion, then the order would permit agencies to assess the risk of coercion as well as the employee's willingness to address that risk. As noted above, however, no inference may be raised regarding the potential for coercion, or any other matter, solely on the basis of sexual orientation.
- The FBI guidelines, for example, include a series of questions to assess the risk of coercion involving an employee whose sexual orientation is concealed.

Scenario 4
(Interview of a Concealed Homosexual)

During the initial interview, an applicant/candidate is asked if there is any concealed activity or conduct in her/his background that, if discovered, might be used to attempt to influence, coerce, or compromise her/him in the official performance of duty. In response, the applicant/candidate replies, "I am gay. I suppose someone who found out could threaten to tell others."

The interviewing Agents should ask the applicant/candidate how "open" she/he is concerning her/his sexual orientation. If the applicant/candidate replies that she/he has told no one, and to her/his knowledge, no one other than her/his partner is aware, she/he should be asked to assess her/his reaction if someone discovered her/his homosexuality and threatened to disclose it to others. If the applicant/candidate replies that she/he would not be compromised and would face the disclosure of the information rather than be influenced or coerced in the performance of duty, no further inquiry is needed on that issue. (Vulnerability to compromise will, however, be discussed with other persons contacted in the course of the complete background investigation.) Such **FBI applicants** should also be told that if she/he is hired, she/he has a continuing and affirmative obligation to immediately notify the FBI in writing of any attempt by any person, organization, or entity to exert influence or pressure, directly or indirectly.

If the applicant/candidate replies that the worst possible thing she/he could imagine would be to be disclosed as a homosexual, such information should be forwarded to FBIHQ **immediately**. Such information should also be accurately and precisely included in the investigative report(s) provided to FBIHQ. **FBI applicants** who admit to such a vulnerability should be told that their desire that the information not be revealed may be a significant factor in the FBI employment decision and will be reported to FBIHQ, and that if she/he is hired, she/he has a continuing and affirmative obligation to immediately notify the FBI in writing of any attempt by any person, organization, or entity to exert influence or pressure, directly or indirectly.

**TALKING POINTS
EXECUTIVE ORDER ON
ACCESS TO CLASSIFIED INFORMATION**

This Executive Order is:

- The first to require uniform government security standards
- Designed to correct flaws which could lead to such cases as the Aldrich Ames espionage case
- Fair for government and contractor employees with clearances:
 - forbids discrimination (including sexual orientation)
 - establishes a fair revocation/denial process, including:
 - appeal, representation, access to files, a hearing, a three-member appeal panel
 - reciprocal acceptance of clearances by all agencies

Under the Order:

- Uniform investigative standards and adjudicative guidelines will be drafted within 180 days by the Security Policy Board
- Facilities and employee clearances will be recognized by all agencies (which will save expensive reinvestigations)
- Clearances may be reinstated within five years, without additional investigation
- Only those with a need for access will get clearances
- Financial disclosure and access forms will enable security to spot unexplained wealth or indebtedness
 - required by FY 95 Intelligence Authorization Act
 - forms and guidelines will be designed by the Security Policy Board and reviewed by the White House
- Drafts were reviewed, and comments incorporated, from all government agencies, the Congress, the American Bar Association, government employee unions and industry

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

5901

July 31, 1995

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: R. RAND BEERS

FROM: EDWARD J. APPEL

SUBJECT: Executive Order on Access to Classified
Information

Attached at Tab A is a memorandum for the President, recommending that he sign the Executive Order on Access to Classified Information.

As you are aware, the Security Policy Board and National Security Council staff have been drafting this order since October, 1994. Since March, 1995, additional refinements have been added to address due process concerns. The draft was produced with the collaboration of the government's security intelligentsia, vetted by all relevant agencies and reviewed by the Intelligence Committees, Secrecy Commission, American Bar Association, government unions, industry associations and OMB.

While industry is still worried about the financial disclosure provisions (and agencies about the cost of implementation), they have been consulted throughout the process. Industry comments will also be sought as the Security Policy Board prepares its recommendations, as required by the order. Those recommendations, including draft financial disclosure forms, standards and guidelines, will be sent to the White House for approval, prior to being promulgated.

The order is summarized in the attached memo to the President.

Concurrence by: Alan Kreczko ^{AK}

RECOMMENDATION:

That you sign the memo to the President, recommending that he sign the Executive Order on Access to Classified Information.

Attachments

Tab I Memo for the President
Tab A Executive Order

TAB I

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE

SUBJECT: Executive Order on Access to Classified
Information

Purpose

To recommend that you sign the attached Executive Order.

Background

In the wake of the Ames case and with the support of the Administration, the FY 95 Intelligence Authorization Act required the executive branch to establish minimum, uniform standards for access to classified information. It also required that employees with access to particularly sensitive classified information furnish financial and foreign travel information as directed by the President.

Twenty-six executive agencies, industry representatives, the American Bar Association, US Government employee unions, and the Congressional intelligence committees actively participated in the drafting and review of the attached order. Judge Mikva and the Deputy Attorney General took particular care to ensure the order reflects this Administration's views on due process and sexual orientation in the clearance process.

Among other things, the order:

- establishes, for the first time, uniform standards for granting clearances throughout the government and requires, with narrow exception, agencies to accept clearances on a reciprocal basis.
- provides that no inference concerning the standards for granting and keeping clearances may be raised solely on the basis of sexual orientation and requires implementing guidelines that are consistent with the FBI's guidelines, which are supported by Barney Frank. Likewise, no negative inference may be raised solely on the basis of mental health counseling, although additional inquiry may be considered where it directly relates to the standards for access.

cc: Vice President
Chief of Staff

-- provides due process protections for persons whose clearances are denied or revoked. (Previous efforts to rewrite the 1950's agency-specific guidelines have failed for lack of consensus over due process provisions.) Your order would require, among other things, a written explanation of the reasons for revocation; an opportunity to request the investigative files without waiting in the FOIA queue, but subject to FOIA privileges; and the right to appeal to a panel comprised of at least three persons, two from outside the security field. Agency heads or their deputies, however, would retain authority to exempt procedures if they personally certify that their use could damage national security.

The order also establishes parameters for the submission and review of financial information from employees with regular access to particularly sensitive information (i.e., information on sources and methods, nuclear weapons design, or special programs.) Agency heads are given discretion to determine which employees are covered; we anticipate this will range from virtually all employees at CIA to a relative handful at State, Defense and Energy. The order requires financial reports at the time of investigation and reinvestigation (i.e., every five years) and on an annual basis as determined by the head of each agency. Agency heads may use this additional authority as a random check, or require it on a wider basis.

The financial disclosure provisions have been a particular concern to contractors, who are covered by the order. While industry associations would clearly prefer to be exempt from the requirement, they were included in the Congressional definition of employee, and we feel many of their concerns can be addressed as they continue to participate in the Security Policy Board's drafting of implementing guidelines and forms. These forms, along with the other guidelines called for by the order, require my concurrence on your behalf.

The order is supported by all participating government agencies, the Office of Management and Budget and by interested members of Congress, industry, the American Bar Association and the government unions and industry representatives who reviewed it.

RECOMMENDATION:

That you sign the Executive Order on Access to Classified Information at Tab A.

Attachment

Tab A Executive Order on Access to Classified Information

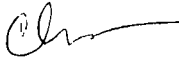
TAB A

NATIONAL SECURITY COUNCIL

August 29, 1995

NOTE FOR ANDREW

FROM:

CATHY 

I've received a call from Joan Vail, former Staff Assistant at the NSC, and now Counsel for Security Policy at the "Commission for Protecting and Reducing Government Secrecy". Joan and several members of the Commission (Staff Director, Deputy Staff Director and maybe one other) would like to schedule a meeting with you. They are also attempting to schedule a meeting with Randy Beers and possibly Alan Kreczko.

~~I think it would make more sense to schedule a joint meeting with the three of you (yourself, Alan and Randy).~~

Also, should Bill Leary be involved in meetings with this group?

yes!

Let me know how you'd like to handle.

FAX

Date

8/7/95

Number of pages including cover sheet

18

TO:

Cathy Millison
Executive Secretary
National Security Council

Phone

Fax Phone 456-9460

FROM:

Joan Vail

Counsel for Security
Policy

Commission for Protecting
and Reducing
Government Secrecy

2201 G Street NW

Room 225, SA-44

Washington, DC 20008

Phone

(202)776-8781

Fax Phone

(202)776-8773

CC:

REMARKS:

☐ Urgent☒ For your review☐ Reply ASAP☐ Please Comment

As promised.

DANIEL PATRICK MOYNIHAN, CHAIRMAN
LARRY COMBEST, VICE CHAIRMAN

JOHN M. DEUTCH
MARTIN C. FAGA
ALISON B. FORTIER
RICHARD K. FOX, JR.
LEE H. HAMILTON
JESSE HELMS
ELLEN HUMC
SAMUEL P. HUNTINGTON
JOHN D. PODESTA
MAURICE SONNENBERG

COMMISSION
ON
PROTECTING AND REDUCING
GOVERNMENT SECRECY
WASHINGTON, DC

July 1995

On January 21, 1993, Senator Daniel Patrick Moynihan (D-NY) introduced legislation to establish a Commission on Protecting and Reducing Government Secrecy. The legislation was signed into law by President Clinton on April 30, 1994 as Title IX of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995 (Public Law 103-236). It calls for "comprehensive proposals for reform" that are designed "to reduce the volume of information classified and thereby to strengthen the protection of legitimately classified information" and to improve current procedures for the granting of security clearances.

The bipartisan Commission consists of twelve members, four selected by the President and eight by the Republican and Democratic leadership of the House and Senate. Four are Members of Congress, one is a senior Executive Branch official, and seven are in the private sector. On January 10, 1995, the Commissioners met for the first time and selected Senator Moynihan as Chairman and Representative Larry Combest (R-TX) as Vice Chairman. The Commission staff includes specialists detailed from the Department of State, the Department of Defense, the Central Intelligence Agency, and the National Security Agency.

Since the initial meeting, the Commission has met four times to discuss the development of U.S. classification, declassification, and personnel security policies and Executive Branch activities concerning those policies. All of the meetings have been open to the public and were announced in the *Federal Register* and over the Internet system.

Beginning in September and continuing through spring 1996, the Commission intends to hold several public hearings on classification, declassification, and personnel security issues and on how new information technologies will affect the protection and reduction of secrecy for the rest of this decade and into the 21st century. The staff is currently investigating these issues and soliciting views from a wide range of government officials, industry representatives, scientists, historians and archivists, journalists, and other interested persons. Consistent with the two-year timeframe provided in the statute, the Commission plans to begin developing a report by mid-1996 and release a final report in early 1997 containing its findings and recommendations. An expected timetable for Commission activities is attached.

The Commission office is located on Navy Hill, next to the old Naval Observatory and across from the State Department. The phone number is (202) 857-0002 and the fax number is (202) 776-8773. Eric R. Biel is the Staff Director and Jacques A. Rondeau is the Deputy Staff Director. Inquiries and suggestions are welcome.

DANIEL PATRICK MOYNIHAN, CHAIRMAN
LARRY COMBEST, VICE CHAIRMAN

JOHN M. DEUTCH
MARTIN C. FAGA
ALISON B. FORTIER
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COMMISSION
ON
PROTECTING AND REDUCING
GOVERNMENT SECRECY
WASHINGTON, DC

Appointed by President Clinton:

The Honorable John M. Deutch
The Honorable John D. Podesta
The Honorable Richard K. Fox, Jr.
Ms. Ellen Hume

Appointed by then Speaker of the House of Representatives Thomas Foley:

Representative Lee H. Hamilton
Mr. Maurice Sonnenberg

Appointed by then Minority Leader of the House of Representatives Robert Michel:

Representative Larry Combest
The Honorable Martin C. Faga

Appointed by then Majority Leader of the Senate George Mitchell:

Senator Daniel Patrick Moynihan
Professor Samuel P. Huntington

Appointed by then Minority Leader of the Senate Robert Dole:

Senator Jesse Helms
Ms. Alison B. Fortier

DANIEL PATRICK MOYNIHAN, CHAIRMAN
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MAURICE SCHNENBERG

COMMISSION
ON
PROTECTING AND REDUCING
GOVERNMENT SECRECY
WASHINGTON, DC

Timetable

Jan. - Aug. 1995	Sept. 1995 - June 1996	June - Aug. 1996	Sept. - Dec. 1996	Jan. - March 1997
Convene Commission meetings and initiate staff work with government agencies.	Hold hearings, convene additional meetings, conduct investigations and research.	Begin drafting report and holding follow-up meetings.	Begin writing final report. Exchange of drafts.	Submit final report to Congress. Complete work and close Commission.

PUBLIC LAW 103-236 [H.R. 2333]; April 30, 1994

FOREIGN RELATIONS AUTHORIZATION ACT,
FISCAL YEARS 1994 AND 1995

TITLE IX—COMMISSION ON PROTECT-
ING AND REDUCING GOVERNMENT
SECRECY

Protection and
Reduction of
Government
Secrecy Act,
Classified
information.
50 USC 401 note.

SEC. 901. SHORT TITLE.

This title may be cited as the "Protection and Reduction of Government Secrecy Act".

SEC. 902. FINDINGS.

The Congress makes the following findings:

(1) During the Cold War an extensive secrecy system developed which limited public access to information and reduced the ability of the public to participate with full knowledge in the process of governmental decisionmaking.

(2) In 1992 alone 6,349,532 documents were classified and approximately three million persons held some form of security clearance.

(3) The burden of managing more than 6 million newly classified documents every year has led to tremendous administrative expense, reduced communication within the government and within the scientific community, reduced communication between the government and the people of the United States, and the selective and unauthorized public disclosure of classified information.

(4) It has been estimated that private businesses spend more than \$14 billion each year implementing government mandated regulations for protecting classified information.

(5) If a smaller amount of truly sensitive information were classified the information could be held more securely.

(6) In 1970 a Task Force organized by the Defense Science Board and headed by Dr. Frederick Seitz concluded that "more might be gained than lost if our Nation were to adopt—unilaterally, if necessary—a policy of complete openness in all areas of information".

(7) The procedures for granting security clearances have themselves become an expensive and inefficient part of the secrecy system and should be closely examined.

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(8) A bipartisan study commission specially constituted for the purpose of examining the consequences of the secrecy system will be able to offer comprehensive proposals for reform.

SEC. 903. PURPOSE.

It is the purpose of this title to establish for a two-year period a Commission on Protecting and Reducing Government Secrecy—

(1) to examine the implications of the extensive classification of information and to make recommendations to reduce the volume of information classified and thereby to strengthen the protection of legitimately classified information; and

(2) to examine and make recommendations concerning current procedures relating to the granting of security clearances.

SEC. 904. COMPOSITION OF THE COMMISSION.

(a) **ESTABLISHMENT.**—To carry out the purpose of this title, there is established a Commission on Protecting and Reducing Government Secrecy (in this title referred to as the "Commission").

(b) **COMPOSITION.**—The Commission shall be composed of twelve members, as follows:

President.

(1) Four members appointed by the President, of whom two shall be appointed from the executive branch of the Government and two shall be appointed from private life.

(2) Two members appointed by the Majority Leader of the Senate, of whom one shall be a Member of the Senate and one shall be appointed from private life.

(3) Two members appointed by the Minority Leader of the Senate, of whom one shall be a Member of the Senate and one shall be appointed from private life.

(4) Two members appointed by the Speaker of the House of Representatives, of whom one shall be a Member of the House and one shall be appointed from private life.

(5) Two members appointed by the Minority Leader of the House of Representatives, of whom one shall be a Member of the House and one shall be appointed from private life.

(c) **CHAIRMAN.**—The Commission shall elect a Chairman from among its members.

(d) **QUORUM; VACANCIES.**—After its initial meeting, the Commission shall meet upon the call of the Chairman or a majority of its members. Seven members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

(e) **APPOINTMENT OF MEMBERS; INITIAL MEETING.**—(1) It is the sense of the Congress that members of the Commission should be appointed not later than 60 days after the date of enactment of this title.

(2) If after 60 days from the date of enactment of this Act seven or more members of the Commission have been appointed, those members who have been appointed may meet and select a Chairman who thereafter shall have authority to begin the operations of the Commission, including the hiring of staff.

SEC. 905. FUNCTIONS OF THE COMMISSION.

The functions of the Commission shall be—

(1) to conduct, for a period of 2 years from the date of its first meeting, an investigation into all matters in any way related to any legislation, executive order, regulation, practice,

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or procedure relating to classified information or granting security clearances; and

(2) to submit to the Congress a final report containing such recommendations concerning the classification of national security information and the granting of security clearances as the Commission shall determine, including proposing new procedures, rules, regulations, or legislation. Reports.

SEC. 904. POWERS OF THE COMMISSION.

(a) IN GENERAL.—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths, and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may deem advisable.

(2) Subpoenas issued under paragraph (1)(B) may be issued under the signature of the Chairman of the Commission, the chairman of any designated subcommittee, or any designated member, and may be served by any person designated by such Chairman, subcommittee chairman, or member. The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192-194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section.

(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, bureau, agency, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—(1) The Secretary of State is authorized on a reimbursable or non-reimbursable basis to provide the Commission with administrative services, funds, facilities, staff, and other support services for the performance of the Commission's functions.

(2) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(3) In addition to the assistance set forth in paragraphs (1) and (2), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may deem advisable and as may be authorized by law.

(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 907. STAFF OF THE COMMISSION.

(a) IN GENERAL.—The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(b) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 908. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay on account of their service on the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 909. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information pursuant to this section who would not otherwise qualify for such security clearance.

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SEC. 910. FINAL REPORT OF COMMISSION; TERMINATION.

(a) FINAL REPORT.--Not later than two years after the date of the first meeting of the Commission, the Commission shall submit to the Congress its final report, as described in section 905(2).

(b) TERMINATION.--(1) The Commission, and all the authorities of this title, shall terminate on the date which is 60 days after the date on which a final report is required to be transmitted under subsection (a).

(2) The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its final report and disseminating that report.

Approved April 30, 1994.

LEGISLATIVE HISTORY--H.R. 2333 (S. 1281):

HOUSE REPORTS: Nos. 103-126 (Comm. on Foreign Affairs) and 103-482 (Comm. of Conference).

SENATE REPORTS: No. 103-107 accompanying S. 1281 (Comm. on Foreign Relations).

CONGRESSIONAL RECORD:

Vol. 139 (1993): June 15, 16, 22, considered and passed House.

Vol. 140 (1994): Jan. 25-28, 31, Feb. 1, 2, S. 1281 considered in Senate;

H.R. 2333, amended, passed in lieu.

Apr. 23, House agreed to conference report.

Apr. 23, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 30 (1994):

Apr. 30, Presidential statement.

COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECRECY

WORK PLAN AND TIMETABLE

July 1995

A. Introduction

Over the past few weeks, the Commission staff has had the opportunity to meet on an individual basis with most of the Commissioners in order to develop a better understanding of what each of you views as the Commission's objectives and priorities. This "work plan" document is based in large part on the suggestions of the Commissioners in those meetings.

Based on those sessions, as well as the Commission meetings to date and the staff's background work, it appears that the Commission supports examining how best to promote greater openness and less secrecy while, at the same time, ensuring that such measures are consistent with U.S. national security interests. Put another way, you are interested in exploring ways to make the system more efficient by focusing on which secrets genuinely merit protection, thus avoiding overclassification and excessive secrecy -- toward the end of achieving greater access to information without breaching legitimate security concerns.

There is broad interest among the Commissioners in analyzing the costs -- both qualitative and quantitative -- of classification and declassification, and the cost effectiveness of personnel security. Many Commissioners also emphasized that they see a "culture" within the bureaucracy that has proven unyielding in its resistance to measures intended to reduce excessive secrecy and promote greater public confidence in the institutions and operations of the federal government. Finding ways to promote greater "accountability" has been a recurring theme of our discussions. Finally, several of you have reminded us not to assume that there are agreed-upon definitions of key terms such as "national security information".

Our individual meetings with you during this initial planning stage have been very helpful and productive. While the bulk of the staff's attention now turns toward the field and investigative work that we will be undertaking in the months ahead, as well as organizing and preparing for Commission hearings and additional meetings beginning in September, we hope to have the opportunity to continue to speak with you regularly on an individual basis as our work proceeds. We invite each of you to contact us whenever you wish to provide suggestions or seek information.

B. General Objectives and Timetable

The principal objectives of this Commission are set forth in the authorizing legislation, Title IX of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995. (A copy of the statute is attached.) Based on the findings therein, which address the extent of classification, consequences of overclassification, costs and other burdens of managing the classification system, and costs and inefficiencies of existing security clearance procedures, the Commission is tasked with making "comprehensive proposals for reform" of the system so as "to reduce the volume of information classified and thereby to strengthen the protection of legitimately classified information." (Sections 902 and 903 of Title IX, Public Law 103-236.)

In exploring how -- and for how long -- national security information is classified and security clearances are granted, and recommending changes to the current system, the Commission also is confronted with several broader issues. These include: (1) How the classification system relates to other methods utilized by the federal government to protect various "sensitive" information and to ensure access to information that no longer is sensitive; (2) How security clearance procedures relate to other methods used for safeguarding such information; and (3) How the development of new technologies, and the increasing reliance on electronic means to create, record, store, and disseminate national security information, is forcing a reassessment of traditional approaches to protecting such information.

The Commission staff will conduct research and investigations, organize hearings, and convene additional meetings of the Commissioners with a vision of submitting a final report to the Congress and the Administration in early 1997 -- two years from the date of the first Commission meeting. In certain respects, that date for completion of the Commission's work is fortunate, for it ensures that the report will be drafted without knowing who will be in control of the Congress and the White House at the time the final report is submitted.

A tentative timetable for the Commission's work follows.

Jan. - Aug. 1995	Sept. 1995 - June 1996	June - Aug. 1996	Sept. - Dec. 1996	Jan. - March 1997
Convene Commission meetings and initiate staff work with government agencies.	Hold hearings, convene additional meetings, conduct investigations and research.	Begin drafting report and holding follow-up meetings.	Begin writing final report. Exchange of drafts.	Submit final report to Congress. Complete work and close Commission.

C. Staff Work Organization

We propose dividing the Commission staff into three "work teams" organized along the three broad subject areas of classification, declassification, and personnel security clearances. These teams will consist of the following staff members:

Classification: Joan Vail, John Hancock, Terry Szuplat

Declassification: Sheryl Walter, Mike White, Pauline Treviso

Personnel Security: Tom Becherer, Gary Gower, Maureen Lenihan

Eric Biel and Jacques Rondeau will have overall responsibility for coordinating the Commission's staff work and the hearings (described below).

These work teams will be structured fairly loosely so as to ensure that issues that overlap (such as how a particular agency or department is implementing the new Executive Order) can be addressed by staffers from more than one team. Moreover, we intend to rotate the Research Associates, and perhaps some of the other staff members, among the three work teams during the course of our field and investigative work. In addition, some of these work assignments may change once additional "detailees" from the Central Intelligence Agency and National Security Agency, and perhaps the Federal Bureau of Investigation, begin work with the Commission. Finally, a fourth team may be organized to discuss issues raised by new technologies, *i.e.*, the threats presented to protection of national security information disseminated across electronic information systems; Jacques Rondeau will coordinate any work in that area.

D. Key Elements of the Work Plan

Below, we list key elements of the proposed staff Work Plan. Rather than simply organizing this along the lines of the three work teams established, we have attempted to structure it consistent with what we believe might be the organization of the Commission's final report.

Thus, we begin with a review of how current classification, declassification, and personnel security systems evolved and an analysis of several key concepts on which these systems are based. We turn next to an examination of existing policies and procedures: their organization, the bureaucratic "culture," and the costs attributable to them. We conclude with a review of new issues affecting the protection and release of government information. At this stage, we envision including the Commission's recommendations at the end of each chapter, rather than grouping all recommendations in a separate concluding section of the report.

We have organized the Work Plan as follows:

I. Historical Context

- Evolution of the Classification and Declassification System: Review of the Governing Statutes and Executive Orders
- Evolution of the Personnel Security System
- Findings of Previous Commissions and Task Forces

II. Defining the Issues

- What Are "Secrets"?
- What Is "National Security Information"?
- Why Is Certain Information Classified?
- What Is the "Public Interest" In Protecting and Obtaining Information?
- Have These Definitions Changed Over Time, and If So, How?

III. Organizing to Protect Secrets and Provide Access

- How Is the Government Organized to Protect Secrets?
- How Is the Government Organized to Provide Access?
- What Is the Role of Industry?
- Who Classifies and Who Reviews?
- What Guidelines Exist For the Duration and Level of Classification?

- Are Procedures Standardized? Are There Redundancies in Classification and Personnel Security?
- Who Oversees Within the Executive Branch, and What Roles Do Congress and the Courts Play?
- How Is The "Reinventing Government" Process Likely to Affect Existing Organizational Structures?
- Recommendations for Change

IV. Examining the "Culture" of Secrecy

- What Motivates Decisions to Classify?
- How Do Classifiers Assess Risk?
- How Does This Affect the Amount of Information Classified?
- How Does It Affect the Duration and Level of Classification?
- What Efforts Have Been Made to Counter the "Culture"?
- Recommendations for Change

V. Evaluating the Costs of Protecting and Reducing Secrecy

- What Are the Costs to Government of Classification?
- What Are the Costs to Industry?
- What Are the Costs to the Public?
- What Are the Costs to Government of Declassification?
- What Costs Are Associated With Personnel Security?
- Will New Approaches to Budgeting -- As Part of the "Reinventing Government" Process -- Affect These Costs?
- How Should The Government Fund Classification and Declassification Activities?
- Recommendations for Change

VI. The Impact of New Technologies on Protecting and Reducing Secrecy

- How Do New Technologies Affect the Scope and Cost of Protecting Secrets?
- How Can These Technologies Be Used to Reduce Secrecy?
- How Do New Technologies Affect the Ability to Protect Secrets?

E. Proposed Hearings (September 1995-June 1996)

The staff proposes holding approximately six Commission hearings in the nine-month period from September 1995 through June 1996. At this stage, we would anticipate that each of these would be an open hearing, at which the Commissioners would hear from both government and private sector witnesses with a broad range of perspectives and interests. The hope is that these hearings will complement the ongoing field and investigative work of the staff.

However, anticipating that certain issues (such as the intelligence community's application of the "sources and methods" language in the National Security Act of 1947) will arise that warrant discussion among the Commissioners and with government and private sector officials on a non-public basis, we also expect to schedule one or more closed meetings of the Commission interspersed among the public hearings listed below. In addition, certain of the hearings listed below (in particular, the fourth one on different means of protecting and reducing secrecy) may well involve issues that necessitate separate sessions, which might be held immediately prior to or after the public hearing.

Consistent with the timetable set out above, the staff anticipates that, beginning in June 1996, the Commission's focus will turn from these hearings to the beginning of deliberations on the contents of a Commission report. Those deliberations may be held in closed sessions, consistent with the Commission's legal status as a legislative branch entity not subject to certain statutory requirements pertaining to the conduct of official deliberations.

The staff envisions the six hearings organized as follows:

- (1) An Overview of Government Secrecy: What Are "Secrets", Which Secrets Warrant Which Form of Protection and For How Long, and How Does "National Security" Information Relate to Other Sensitive Materials Held by the Government?

(Witnesses to include current and former senior government officials and high-level officials from business, science, academia, and journalism)

- (2) Industry Perspectives on Protecting and Reducing Secrecy: The Views of Private Sector Officials on the Effects of the Classification System and Personnel Security Procedures

(Witnesses to include officials from major defense contractors and other firms which deal extensively with classified information and require significant numbers of clearances for their employees)

- (3) Assessing the Costs of Protecting and Reducing Secrecy: Approaches to Defining the Costs of Classification, Declassification, and Personnel Security Measures

(Witnesses to include officials from the Office of Management and Budget and other executive branch agencies, the General Accounting Office, the private sector, and Members of Congress, who have attempted to delineate the costs of classification, declassification, and clearance procedures)

- (4) Approaches to Protecting and Reducing Secrecy: How Different Federal Agencies and Departments Implement Classification and Declassification Policies, Including Those Specified in Executive Order 12958, As Well as Other Methods for Protecting Sensitive Information

(Witnesses to include senior officials from several Executive Branch agencies and departments, and private sector officials familiar with the operations of those agencies, addressing issues such as the structure of classifying authority within each agency, automatic declassification of older documents, other means for declassifying large volumes of information, use of the Freedom of Information Act, and means of protecting information other than the classification system)

- (5) Improving Clearance Procedures and Other Functions of Personnel Security: Assessing Past Failures, Proposals to Reorganize the Personnel Security System, and Whether Security and Privacy Interests Conflict

(Witnesses to include senior Executive Branch and private sector officials involved in formulating and implementing personnel security procedures, and in promoting the interests of government employees subject to such procedures)

- (6) Toward A New Paradigm: Protecting and Reducing Government Secrecy in the 21st Century: Evaluating How the Increasing Use of Computers and Other Electronic Systems to Create, Process, and Distribute Information Mandates A Reassessment of Threats, the Means to Protect Against Such Threats, and Ways of Releasing Information

(Witnesses to include senior governmental and industry officials involved in assessing threats to classified and other sensitive information, developing policies to protect against and counter such threats, and developing policies for the release of information; also one or more persons -- such as a Soviet defector -- who participated in efforts to gain unwarranted access)

STAFF MEMBERS OF THE
COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECURITY

Eric R. Biel, Staff Director

International Trade Counsel, Senate Committee on Finance, 1990-95 (working for Senators Moynihan and Bentsen); private law practice in Washington (Mayer, Brown & Platt; Arnold & Porter), 1985-90; Yale Law School (J.D. 1985), Princeton University/Woodrow Wilson School (M.P.A. 1985), Johns Hopkins University (B.A. 1981)

Jacques A. Rondeau, Deputy Staff Director

United States Air Force, 1968-94 (career pilot, retired as Colonel, various responsibilities including Executive & Military Assistant to the Assistant Secretary of Defense for International Security Affairs, 1991-94; other operations, management, and intelligence positions); Naval Postgraduate School (M.A. 1977), Boston College (B.S. 1966)

Sheryl L. Walter, General Counsel

General Counsel, Assassination Records Review Board, 1994-95; General Counsel, National Security Archive, 1989-94; private law practice in Washington (Mayer, Brown & Platt), 1987-89; Federal Judicial Clerkships, Minnesota 1984-87; University of Minnesota (J.D. 1984), Grinnell College (B.A. 1978)

Joan R. Vail, Counsel for Security Policy

Private law practice in Washington (Dunaway & Cross), 1993-95; Federal Judicial Clerkship, Greensboro, N.C., 1992-93; Office of National Drug Control Policy, 1989-92; National Security Council, 1986-89; Washington College of Law/American University (J.D. 1992), UCLA (B.A. 1985)

Thomas L. Becherer, Research and Policy Director

Special Assistant to the Under Secretary and Deputy Under Secretary for Policy, Department of Defense, 1993-95; Defense Fellow, 1993; Legislative Assistant, Akin, Gump, Strauss, Hauer & Feld, 1990-93; Office of Senator David Pryor, 1988-90; Office of Senator Alan Dixon, 1986-88; University of Mississippi (B.A. 1985)

John R. Hancock, Senior Professional Staff (State Department)

Over 25 years experience in classification and industrial security matters, including with the Department of State, Defense Investigative Service, and Defense Security Institute; also private industry and consulting experience; North Central College, IL (B.A. 1967)

Gary H. Gower, Senior Professional Staff (State Department)
24 years experience in security and intelligence matters at the Defense Logistics Agency, 1971-85, and Department of State, 1985-present; University of Washington (B.A. 1969)

Michael J. White, Senior Professional Staff (Defense Department)
Over 30 years experience in counterintelligence, security, and investigative operations, including with the Department of Defense and the White House Military Office; Southern Illinois University (M.S. 1990), University of Maryland (B.S. 1974)

Paul Stratton, Administrative Officer (State Department)
17 years experience in administrative and personnel matters at the Department of State, including the Foreign Service Institute, Office of the Under Secretary for Management, and Office of Operations, Bureau of Administration; Northern Virginia Community College (A.S. 1976)

Maureen Lenihan, Research Associate
Researcher, Henry L. Stimson Center, 1994-95; Tufts University (B.A., 1994)

Terence P. Szuplat, Research Associate
The American University (B.A., 1995)

Pauline M. Treviso, Research Associate
Princeton University (B.A., 1995)

Karen Smith, Executive Assistant (June-August, 1995)

(Note: The Commission also plans to add detailees in the near future from the Central Intelligence Agency and National Security Agency, and possibly the Federal Bureau of Investigation)

Baker, James E.

From: Sens, Andrew D.
To: Baker, James E.; Millison, Cathy L.
Cc: /R, Record at A1; Appel, Edward J.; Beers, Rand R; Danvers, William C.; Kreczko, Alan J.; Leary, William H.
Subject: RE: Meeting with Secrecy Commission Staff [UNCLASSIFIED]
Date: Thursday, August 31, 1995 3:33PM

Jamie -- That's fine. Will you contact Vail and set up a meeting including Leary if he wants to be there? I agree I don't need to be involved. Thanks

From: Baker, James E.
To: Millison, Cathy L.; Sens, Andrew D.
CC: /R, Record at A1; Appel, Edward J.; Beers, Rand R; Danvers, William C.; Kreczko, Alan J.; Leary, William H.
Subject: Meeting with Secrecy Commission Staff [UNCLASSIFIED]
Date: Thursday, August 31, 1995 03:11 PM

You asked for our recommendation on how you should respond to Joan Vail's request that you and possibly Randy and Alan meet with the staff and/or members of the "Secrecy Commission." We recommend that NSC staff do so; it also makes more sense that they do so in one sitting as Cathy suggests. Among other things, such a meeting will offer NSC staff an opportunity to describe the steps the President has already taken to address the sorts of concerns the Commission is looking at.

Based on the topics presented in the background materials, i.e., classification of national security information and personnel security, Alan would recommend that I meet with the Staff/Commission in his place given my prior affiliation with Sen. Moynihan and work on the two relevant executive orders. I also agree that Bill Leary should be involved in any discussion of the classification process. Randy may want Ed to participate or go in his place, but that is up to them. As long as the Commission is satisfied, we see no reason why you should have to participate, unless your schedule permits you to and you would like to do so.

I hope this responds to your inquiry. Thank you.

Baker, James E.

From: Baker, James E.
To: Sens, Andrew D.; Millison, Cathy L.
Cc: /R, Record at A1; Kreczko, Alan J.; Beers, Rand R; Appel, Edward J.; Leary, William H.; Danvers, William C.
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