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OLC 78-1230

THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

OLC RECORD COPY

Office of Legislative Counsel

FOIA

20 March 1978

Mr. Robert Carlstrom
Legislative Reference Division
Office of Management and Budget
Washington, D.C. 20503

Dear Bob:

Enclosed is a copy of the letter we discussed last Friday, 17 March 1978, from Mr. John F. Blake to Representative Bill D. Burlison. As you can see, the letter follows up discussions concerning the impact of the Freedom of Information Act on the CIA between Mr. Blake and the House Permanent Select Committee on Intelligence Subcommittee on Program and Budget Authorization, during a budget hearing on 7 March 1978. The background on the impact of the FOIA, of course, is not new, and the proposals on which Mr. Blake invites further consideration (page 4) are, I believe, fully consistent with previous discussions we have had on these matters.

I intended to have the letter delivered to you on Friday, 17 March, but the press of other urgent business precluded this. We would greatly appreciate your quick review of the letter, as we are anxious to complete our follow-ups to the 7 March 1978 hearing.

Sincerely,

STAT

Enclosure

Assistant Legislative Counsel

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

13 March 1978

Honorable Bill D. Burlison
Chairman, Subcommittee on Program
and Budget Authorization
Permanent Select Committee on
Intelligence
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

As a followup to my appearance before your subcommittee at the budget hearing of 7 March, I am providing additional information concerning the impact that the Freedom of Information Act and related Federal programs has had on the Agency. Proposals for legislative relief are also advanced for your consideration.

Requests for access to records are levied upon the CIA pursuant to the Freedom of Information Act, the Privacy Act, and Sec. 5(C) of Executive Order 11652. Executive Order 11652 has been in effect since 1 June 1972, but the request volume did not become a problem until 1975, when the Privacy Act of 1974 and the 1974 amendments to the Freedom of Information Act took effect. The table below sets forth the number of requests received, by category, from 1 January 1975 through 31 December 1977. The figures given include only those requests actually accepted for processing. An additional 3,997 requests, principally requests for access to personal records, were received during this period but never processed because of the failure of the requester to provide the information needed to establish his identity beyond doubt or to provide a more precise description of the records sought. Though never fully processed, each of these unlogged requests has required, at the minimum, the establishment of a case file and at least one letter of response, thereby adding to our workload.

	1975	1976	1977	Totals
FOIA requests	6,609	761	1,252	8,622
PA requests	552	2,356	3,023	5,931
EO requests	232	374	568	1,505
Totals	7,393	3,491	4,843	16,058

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The processing backlog at the close of 1977 amounted to 2,370 initial requests and 260 administrative appeals of initial denials. In addition, 95 cases had gone into litigation and the majority of these suits was still open as of the end of 1977.

During 1977, the Agency expended 192,800 man-hours (the equivalent of approximately 109 man-years) in processing requests, appeals, and litigation. We estimate the salary expenditure at $2,161,000. The total personnel costs come to approximately $2,377,700, of which $1,021,250 can be attributed to administration of the Freedom of Information Act. By contrast, only $16,439 in search and copying fees were collected during 1977 for these services.

The Freedom of Information Act, as you are aware, provides statutory deadlines of 10 working days and 20 working days for responding to requests and appeals, respectively. Unless requests happen to duplicate those previously processed, it has been impossible for the CIA to answer requests or appeals within these time frames. A number of factors, some of which are perhaps unique to this Agency, have contributed to this, including the following considerations:

1. The heavy volume of requests received in 1975, in the wake of the publicity given to questionable domestic activities in the past by the Agency, resulted in processing backlogs which still persist and are, in fact, still growing. In an effort to be fair to all, requests, unless exceptional circumstances dictate otherwise, are handled on a "first-come, first-served" basis. Generally speaking, the statutory time for responding elapses before we can even commence searching for the records requested.

2. Because of the specialized missions of various Agency components and the security requirement for compartmentalization, the CIA, unlike many other agencies, has no central file or index to its recordholdings. A search for "all" information on a given topic or topics may therefore entail the searching of several file systems, under different command authorities and with varying degrees of retrieval capabilities. Our date of response is governed by the time required to thoroughly search the least efficient of these systems.

3. Many of the Agency's records have become inactive and, as an economy measure, are stored in a records center. If "hits" made during the index search

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phase relate to inactive records, a not infrequent occurrence, it takes from two to three days to retrieve them from remote storage in order that their relevance can be determined, thereby delaying the process.

4. Searches in one component will often surface records originated by, or of subject-matter interest to, other components or other departments and agencies. The time required for reproduction and referral of such documents to the organization having cognizance for their review further delays completion of processing.

5. At best, the review of classified intelligence documents is a time-consuming process. A very careful review by knowledgeable officers is required to ensure that sensitive information is not inadvertently released. Mistakes, needless to say, would be costly. Unless our sources are afforded protection from disclosure, they could lose confidence in our ability to maintain secrets and back off from collaboration, thereby impairing the Agency's ability to collect the foreign intelligence essential to national survival in this atomic age. A single request can involve the review of hundreds or thousands of documents and, depending upon the subject matter, there are a limited number of experts qualified to perform this task. Often the review must be done by senior officers and managers, with numerous other demands, often more urgent, placed upon their time.

Many of the Freedom of Information requests which we receive are all-encompassing in scope, and other requests are for records concerning sensitive covert operations, the existence of which we are not even free to acknowledge. The Director has often expressed his view that the Agency's analytical products, to the degree consistent with his obligation to protect intelligence sources and methods, should be made available to the American public. To this end, numerous unclassified monographs, reference aids, maps, and translations of the foreign media are released by the CIA each year to the public through the distribution facilities of the Library of Congress, the Government Printing Office, and the Department of Commerce. In addition, every effort has been made by the Agency to comply fully with both the letter and spirit of the Freedom of Information Act, despite the drain on the Agency's resources. In many instances, however, compliance with the Act has led to the release of

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fragmentary and sometimes inaccurate data, which, rather than enlightening the public, result in a misinterpretation of what actually occurred.

In view of the above considerations, I would urge that the provisions of the Act be reviewed by a responsible congressional body to see if amendments can be made which would provide broader exemptions for intelligence material, particularly raw reports and operational data. If this is not possible, the following changes still merit congressional consideration:

1. Provision that the benefits of the Freedom of Information Act, like those of the Privacy Act, be available to U.S. citizens and permanent resident aliens only. If this change is not made, we could at some point in the future find the CIA becoming a world information bureau at the expense of the U.S. taxpayer.

2. Change of the mandatory response time on initial processing of requests from the present 10 working days to 30 calendar days, plus an additional week for every 100 pages, or fraction thereof, of material requiring a review. At the same time, the mandatory response time on appeals should be changed from the present 20 working days to 60 calendar days, plus two additional weeks for every 100 pages, or fraction thereof, requiring a second review.

3. Permit agencies to charge requesters for review time, as well as search time.

4. Limit requests to one specific subject of manageable proportions rather than permitting blanket omnibus-type requests which cover a wide date span and a variety of topics.

I appreciate your interest in this matter, and would be pleased to provide you with any additional information you may desire.

Respectfully,

John F. Blake
Deputy Director
for
Administration

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