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MEMORANDUM FOR: Director of Central Intelligence
Deputy Director of Central Intelligence
Deputy Director for Administration
Director, National Foreign Assessment Center
Deputy Director for Operations
Deputy Director for Science and Technology
Inspector General
Legislative Counsel
Comptroller
Director of Public Affairs

FROM: Anthony A. Lapham
General Counsel

SUBJECT: Section 1-707, Executive Order 12036

1. Action Requested: None. This memorandum is for your information only. It concerns a recent Department of Justice opinion construing Section 1-707 of Executive Order 12036.

2. Background: Section 1-707 states:

> The senior officials of each entity of agencies within the Intelligence Community shall ...[i]n any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation.

In April 1978 a case was brought to my attention as a possible candidate for reporting which led me to ask the Department of Justice for an opinion concerning several aspects of Section 1-707. A copy of my letter is attached at Tab A, and a copy of the Department of Justice memorandum opinion is attached at Tab B.

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3. The following are the most significant points in the opinion:

a. Section 1-707 is mandatory and requires that cases be brought to the Attorney General's attention once they have been determined by the entity concerned to be "serious or continuing breaches of security."

b. Section 1-707 is not limited to breaches of security by employees of the Executive branch, and it could apply to members of Congress and their staffs, former Federal employees, and to journalists "in appropriate circumstances."

c. Section 1-707 applies to certain types of non-criminal conduct, such as possible violation of a secrecy agreement, and the authority of the FBI is not limited to investigation of possible violations of the Federal criminal laws.

d. In some circumstances the unauthorized disclosure of classified information to a newsman may be a Federal crime in violation of 18 U.S.C. §793(d) or (e). However, a stronger case could be made for prosecution of a current or former Federal employee who by such conduct violates an obligation of confidentiality.

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Anthony A. Lapham

Attachments

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