Approved For Release 2007/05/09 : CIA-RDP83M00914R001

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI		X		
3	EXDIR				
4	D/ICS				
5	DDI				
6	DDA		X		
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC	X (Attn: [redacted]			
11	IG				
12	Compt				
13	D/EEO				
14	D/Pers				
15	D/OEA				
16	C/PAD/OEA				
17	SA/IA				
18	AO/DCI				
19	C/IPD/OIS		X		
20	ES				
21					
22					
	SUSPENSE	11 March Date			

Remarks:

Please consult with [redacted] and the appropriate DDA officer in preparing a draft response for the DDCI's consideration.

D/Executive Secretary
3 March 1982
Date

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Approved For Release 2007/05/09 : CIA-RDP83M00914R001

Approved For Release 2007/05/09 : CIA-RDP83M00914R001900080013-4

1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036
(212) 265-6300
Telex: 421686

acm Association for Computing Machinery

Executive Registry
82-0616

PETER J. DENNING
President

Reply To: Computer Sciences Department
Purdue University
West Lafayette, IN 47907
(317) 494-6003

February 24, 1982

Admiral B. R. Inman
Deputy Director
Central Intelligence Agency
Washington, DC 20505

Dear Bob:

I am writing in regard to the proposed revision of Executive Order 12065 on National Security Information. Copies of this order have been circulating and the gist of the changes were summarized in a recent issue of Science. I have carefully studied the present and proposed orders. I would like to offer some general comments in case someone is interested in taking them into consideration before the final draft is issued.

I know you are aware that this issue is stirring up a hornet's nest of controversy in the scientific community, that at least one congressional committee is sympathetic to the view that through this order the government is moving toward a policy of secrecy in science, and that the press is unsympathetic to proposed controls on publication. I know moreover you are aware that the members of the scientific community who are interested in a cooperative dialog with the government about national security are being discouraged by government actions that are apparently being planned without their input. I therefore will not dwell on these points.

Tone of the Proposed Order

According to the explanatory materials, the proposed order takes a "positive attitude" toward classification. This new attitude shows up throughout the order in many ways. For example:

1. The principle that "when in doubt use the lowest applicable level" is replaced with "when in doubt, use the highest applicable level".

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Approved For Release 2007/05/09 : CIA-RDP83M00914R001900080013-4

Approved For Release 2007/05/09 : CIA-RDP83M00914R001900080013-4

2. The list of categories is now introduced with "information may not be considered for classification unless it concerns" one of the categories. The proposal replaces this with "information shall be considered for classification if it concerns" one of the categories.

3. Scattered throughout the present order are statements of intent such as "declassification shall be accorded emphasis equal to classification," and "the need for public disclosure may outweigh the need for continuing classification." These statements are all deleted in the proposed order. The explanatory materials assert that there is no intent to broaden the categories or the amount of information classified, yet no such statement of intent appears in the order itself.

The problem is that the 7000 or so officials who will administer the policy will interpret the words as broadly as possible. They will widen the range of material that is classified, they will classify it at higher levels than has been the custom in the past, and they will lengthen the periods of classification. If, as the explanatory materials assert, the intent is not to broaden anything, these officials will not act accordingly because they will not know of this intent. Indeed, the proposed order is so positive about classification, the enforcement officials will interpret it as a significant change of intent despite assertions to the contrary in the explanatory material.

If I may restate this in crass vernacular, bureaucrats tend to widen their empires as far as the rules can reasonably be stretched. The proposed order will permit considerably bigger empires to be built. Ambitious bureaucrats will rise to the challenge.

If it is the intent of the Executive Branch to permit this, then why make assertions to the contrary in the explanatory material? If it is not the intent of the Executive Branch to permit this, why are no constraints expressed in the proposal?

Removal of Explicit Safeguards Concerning Public Domain Research

In establishing the National Science Foundation as a source of research funding, Congress intended to promote a certain amount of research in the public domain. Many defense agencies also fund research in the public domain because they feel that the results would thereby stand the greatest chance of turning into

Approved For Release 2007/05/09 : CIA-RDP83M00914R001900080013-4

Approved For Release 2007/05/09 : CIA-RDP83M00914R001900080013-4

products that strengthen the U.S. position of technological leadership.

The proposed order removes a number of statements explicitly recognizing this Congressional intent. Examples:

1. It removes the statement that basic research is not covered by the order unless it clearly relates to the national security.

2. It removes the statement that information about products developed using public information may not be considered for classification unless the government acquires a proprietary interest in those products.

3. It removes the requirement that the public good served by releasing information be explicitly balanced against the national security interest served by extending classification.

The explanatory materials state that no change in current policy is intended by these deletions. To be perfectly honest, I have trouble believing that statement.

Moreover, the deletion of the above principles is justified in the explanatory materials on the grounds they are "self-evident". I disagree. If one wants the self-evident to be clearly understood by everyone, especially those charged with carrying out policy, one must state it explicitly. The U.S. Constitution follows this principle.

There is one other point. I am not aware of any legislation that permits removing information from the public domain. Indeed, many constitutional scholars believe that information cannot be removed from the public domain. The Atomic Energy Act gets around this by declaring that Restricted Data is never in the public domain in the first place. The Export Control laws explicitly recognize that information must be "captured" before it gets into the public domain. For this reason, I am not aware of what constitutional basis the government asserts to reclassify previously declassified information. Nor am I aware of the government's constitutional basis for asserting a right to classify information from research conducted in the public domain. In other words, I foresee serious problems if the administrators of the new order invade the territory previously off limits.

Approved For Release 2007/05/09 : CIA-RDP83M00914R001900080013-4

Approved For Release 2007/05/09 : CIA-RDP83M00914R001900080013-4

Expansion of Classifiable Categories

Cryptology is added to the list of classifiable subjects. Although one can argue that this is implicitly covered by the current category of intelligence activities, we both understand that the science of codes is much broader than the application of that science to intelligence activities. Adding cryptology to the list of categories not only broadens the range of information subject to classification, it explicitly adds a science to the list. No other science is listed. Moreover, the addition of this category seems to undercut your effort to find methods of voluntary cooperation between the scientific community and the government. Is this the intent of the Executive Branch?

I note also that a new, catch-all category is added, permitting anything having to do with the capabilities or vulnerabilities of systems pertaining to the national security to be considered for classification. What is to prevent this from covering all of computer hardware and software? Telephone systems? Satellite communications systems?

At the end of the proposed order is a definition of "national security information." This definition is extended to include U.S. foreign relations. Under this extension, information could be classified merely because Japan or Germany might gain a competitive advantage. Is this the Executive Branch's intent?

It seems moreover that the quantity of information classified will rise under this order: more categories are included, administrators are encouraged to classify, no automatic declassification dates are required, and administrative procedures to review materials for declassification are discontinued on the grounds of being too expensive. Is this really the intent of the Executive Branch?

Summary

In my view, the tone of the proposed order and the deletions from the current order broaden, both qualitatively and quantitatively, the range of information that can and will be classified. The explanatory materials assert that this is not the intent, and yet none of the intent is stated in the proposed order. I also believe

Approved For Release 2007/05/09 : CIA-RDP83M00914R001900080013-4

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that the proposed order lays claim to territory intended by the Constitution and by Congress to be in the public domain.

I think it would be prudent that there be public hearings to obtain input from Congress and the scientific community before committing this draft to a signed Executive Order.

Sincerely,

Peter

Peter J. Denning

PJD:pp

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