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FOIA

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

OCT 10 1984

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5164 - Central Intelligence Agency Information Act
Sponsors - Rep. Mazzoli (D) Kentucky and 3 others

Last Day for Action

October 15, 1984 - Monday

Purpose

To authorize the Director of the Central Intelligence Agency to exempt certain files from disclosure under the Freedom of Information Act.

Agency Recommendations

Office of Management and Budget	Approval
Central Intelligence Agency	Approval (Signing statement attached)
Department of Justice	Approval
Department of Defense	Approval (Informal)
National Security Council	Approval
Department of State	No objection
General Services Administration	No objection
Department of the Treasury	No comment

Discussion

The Freedom of Information Act (FOIA) requires the Central Intelligence Agency to search and review every file which might contain information responsive to an FOIA request. Searching files containing sensitive national security information that is almost always exempted from disclosure has proven to be particularly burdensome because of the extensive expenditure of time and effort by senior intelligence personnel who strive to identify non-sensitive material that may be released, but whose work results in virtually no benefit to the public. In addition, the courts have consistently ruled in favor of the CIA in challenges to its withholding of information.

H.R. 5164, as the CIA notes in its enrolled bill views letter, represents the culmination of several years of effort by the Administration to achieve relief for the CIA from unwarranted burdens imposed by the FOIA. The major provisions of the enrolled bill are summarized below.

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Major Provisions of H.R. 5164

The major provisions of H.R. 5164 concern "operational files" of the CIA, which include material concerning intelligence sources and collection methods. The provisions would:

-- Permit the Director of the CIA to exempt certain types of "operational files", as defined in H.R. 5164, from the search, review and disclosure requirements of the FOIA. Notwithstanding this exemption, the CIA must continue to search the "operational files" in response to a request (1) from United States citizens or permanent resident aliens seeking information about themselves pursuant to the FOIA or the Privacy Act; (2) concerning any special activity the existence of which is not exempt from disclosure under FOIA; and (3) concerning the specific subject matter of an investigation by the intelligence committees of Congress or by specified Executive branch agencies for any violation of law or Executive order or for any impropriety in the conduct of an intelligence activity;

-- Provide for de novo judicial review of allegations that the CIA has improperly withheld records. The legislation contains detailed provisions specifying the procedural rules governing such litigation;

-- Require the Director of the CIA to review at least once every ten years the exemptions in force to determine whether the exemptions can be removed from any category of exempted files or any portion thereof. The bill further contains various criteria which must be considered when conducting the decennial review, and permits an individual to bring suit on grounds that the CIA has improperly withheld records because of a failure to (1) comply with the requirement for a review or (2) consider the specified criteria when conducting the required review;

-- Require the Director of the CIA, in consultation with the Archivist of the United States, the Librarian of Congress, and historians selected by the Archivist, to report to specified congressional committees by June 1, 1985, on the feasibility of conducting a systematic review for declassification and release of CIA information of historical value. The Director is also required to submit a report to the committees detailing various factual information about the Agency's processing of FOIA requests. This report is required to be submitted four times, once each six months beginning six months after enactment of the bill; and

-- Amend the Privacy Act, in a way that would affect all government agencies, to prohibit any agency from using a Privacy Act exemption to deny access to records requested

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under the FOIA. (This provision, which is unrelated to the general purpose of H.R. 5164, overturns the position taken by the Justice Department before the Supreme Court, and in effect clarifies that the two statutes represent independent means by which an individual may seek access to records containing information.)

H.R. 5164 further provides that the operational file exemptions and related provisions will apply to civil actions not commenced prior to February 7, 1984, and to any request for records, regardless of when the request was made.

Agency Views

As previously noted, H.R. 5164 fulfills a major objective of the CIA by relieving the Agency of the burdensome requirement to search files containing information that because of national security concerns is extremely unlikely to be released in response to an FOIA request. However, in order to obtain enactment of this legislation, the Administration did not object to the legislative package as a whole, notwithstanding an objectionable amendment to the Privacy Act.

The amendment, of serious concern to the Department of Justice, as well as OMB, would provide that the exemptions to access contained in the Privacy Act could not be used as a basis for withholding records that would otherwise be accessible to requesters under FOIA. Justice believes that the amendment would be harmful to law enforcement efforts because it may permit individuals in some circumstances to attempt to circumvent the Privacy Act's systematic exemption for criminal law enforcement records. A September 24, 1984 letter from the Attorney General to Senator Goldwater, which is attached to Justice's enrolled bill views letter, details the Department's views on this issue. That letter concludes by indicating support for H.R. 5164 solely because of its importance to the CIA, and consistent with that position, the Department recommends approval of the bill.

The CIA has prepared a signing statement (attached to its views letter) for your consideration; we understand, however, that the National Security Council is preparing a signing statement for your consideration in lieu of the CIA-proposed statement.

H.R. 5164 passed the House by a vote of 369 to 36, and the Senate by voice vote.

(signed) David A. Stockman

David A. Stockman
Director

Enclosures

Approved For Release 2009/02/05 : CIA-RDP89B00236R000200230002-5