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OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

POLICY REVIEW

22 SEP 1980

MEMORANDUM FOR ACTING CHAIRMAN, INVESTIGATIVE STANDARDS WORKING GROUP (ISWG)

SUBJECT: SCI Appeal Procedures

It is the position of the Office of the Secretary of Defense that Annex B, which proposes specific due process guidelines, is neither necessary nor desirable. We would prefer, as an alternative, an amendment to DCID 1/14 itself which sets forth a more general DCI policy along the following lines:

> "Each Senior Intelligence Officer shall establish formal procedures to ensure that individuals to be denied access to SCI are notified of the impending denial and the reasons therefor, and are afforded a reasonable opportunity to respond prior to denial of such access."

We believe such a policy issued by the DCI would establish a uniform requirement for basic procedural due process in the intelligence community, while leaving component agencies the flexibility to adopt their own specific procedures to implement the more general policy.

The Department of Defense, has, in fact, adopted its own specific due process procedures which, at present, apply to denials of SCI access, as well as adverse actions taken in the collateral area. These procedures, which do not require all of the procedural steps proposed by Annex B, do, in our judgment, meet the basic standard proposed above without incurring an unacceptable administrative burden on Defense components. Indeed, similar procedures have been in effect in the military departments for over a decade in circumstances where collateral clearances have been denied; not only have they not proved administratively burdensome, they have not provoked legal challenges in terms of their constitutional sufficiency.

We are concerned if the steps proposed in Annex B were adopted, that we would have a difficult time in distinguishing what constitutes "acceptable" due process in the SCI context from what is "acceptable" due process in the non-SCI area. In short, we are concerned that the more rigorous due process procedures required by Annex B might have to be adopted for the collateral area as well, entailing unacceptable administrative costs.

On file OSD release instructions apply.

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Therefore, it is recommended that the Investigative Standards Working Group reconsider the submission to the DCI Security Committee of the draft Annex B and consider the alternative of placing language such as is recommended above in DCID 1/14.

Peter R. Nelson

Peter R. Nelson
OSD Member, ISWG

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