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MEMORANDUM FOR: Deputy Director for Science and Technology

FROM: Harry E. Fitzwater
Deputy Director for Administration

SUBJECT: File Designation Under the CIA Information Act

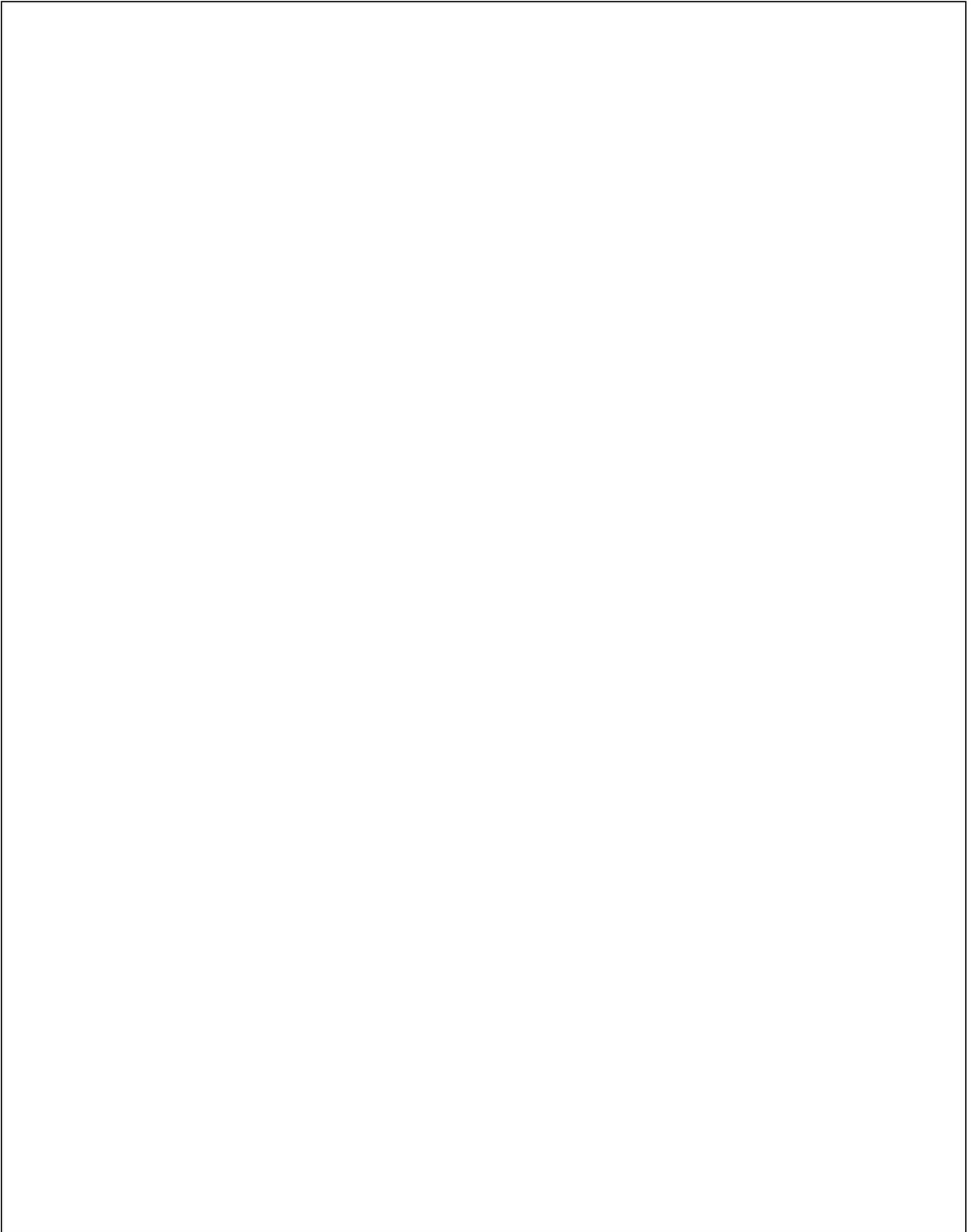
1. As you know, the DCI has approved your recommendation that four categories of files in the Directorate of Science and Technology be designated as exempt from search, review, publication, and disclosure under the Freedom of Information Act. In accordance with prior agreement, these file designations were provided to the Agency's oversight committees for review before implementation.

2. We now have responses from both the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence posing no objections to the designations. Therefore, you should now proceed with implementation effective this date.

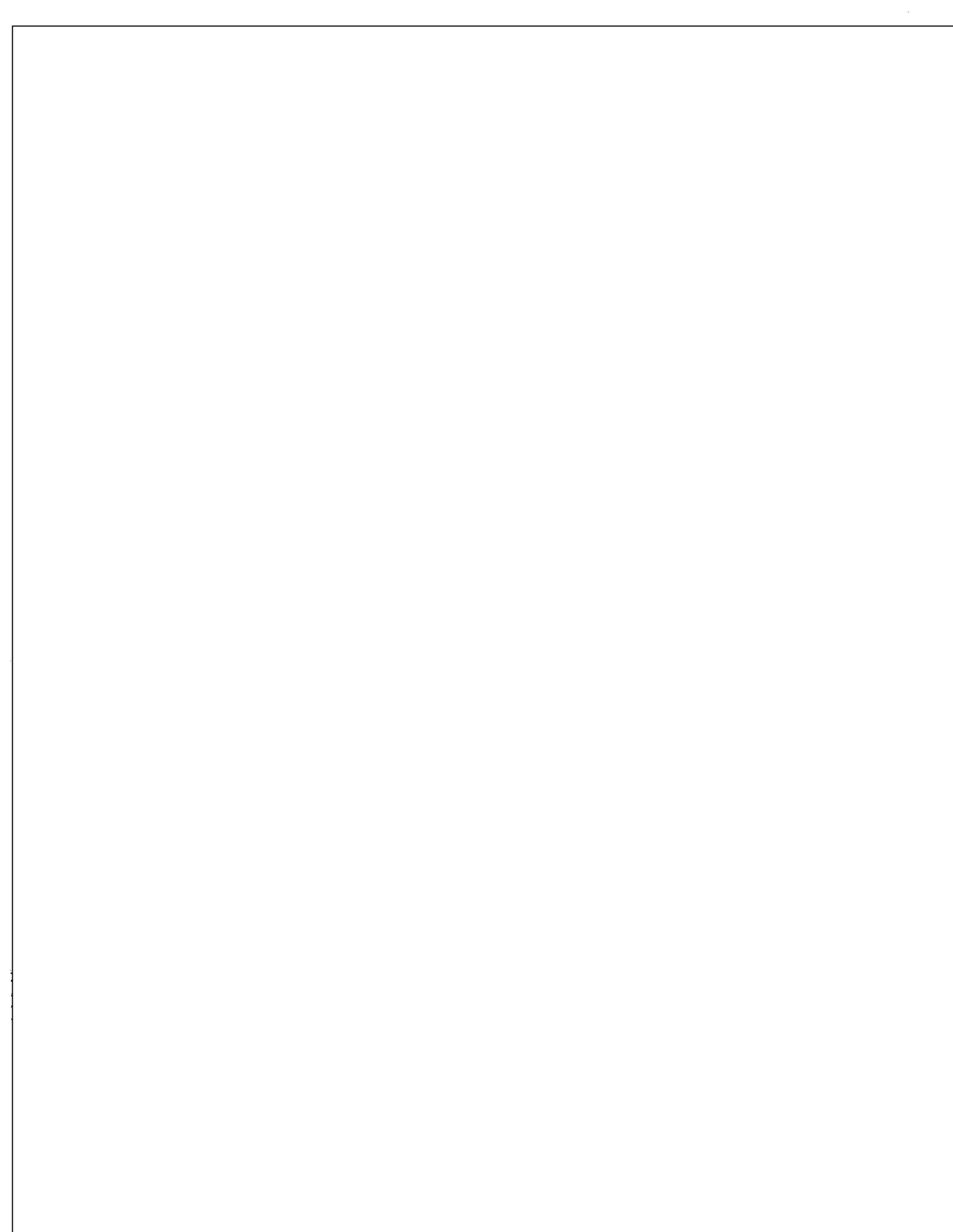


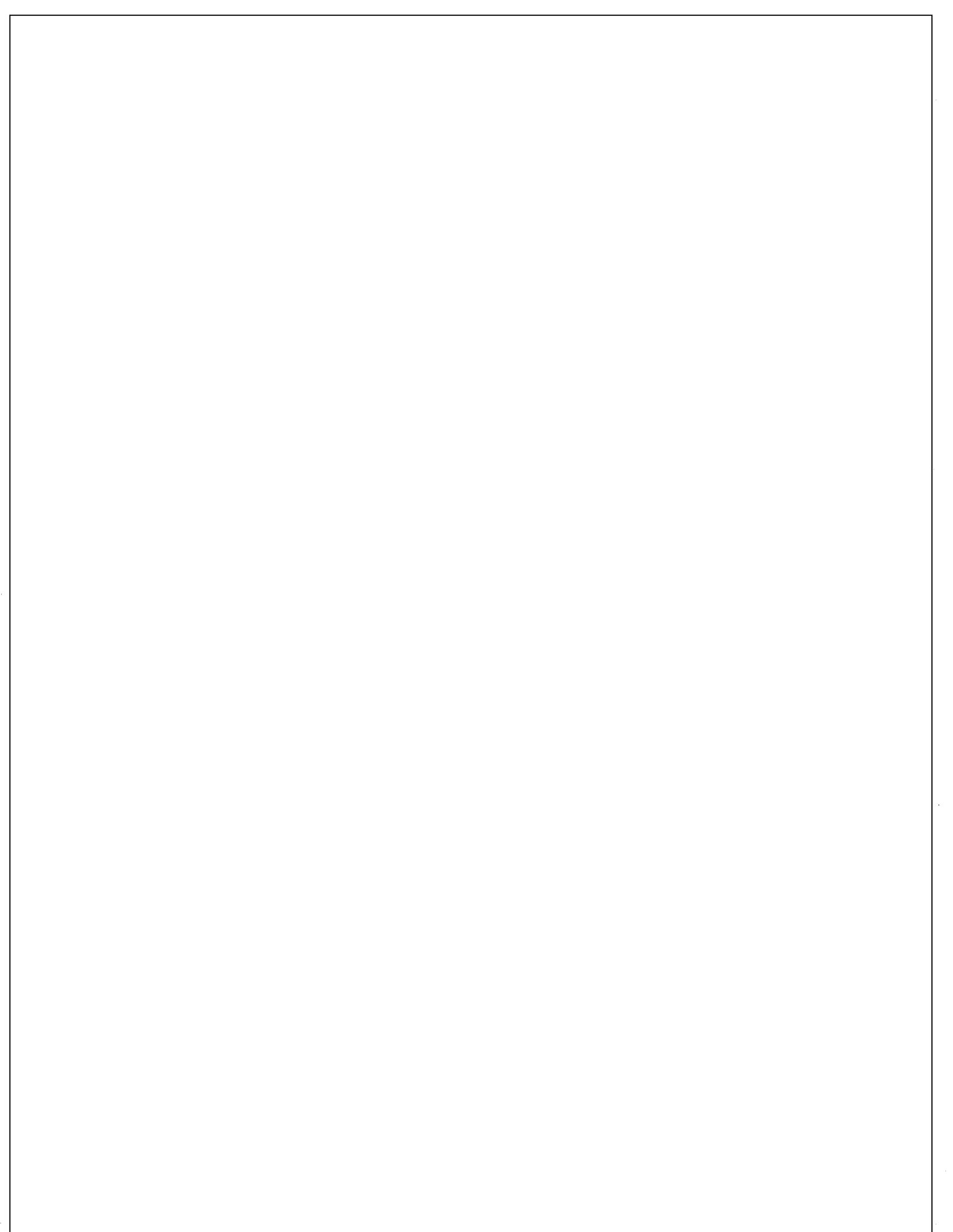
Harry E. Fitzwater

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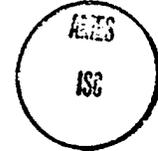


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U.S. HOUSE OF REPRESENTATIVES
PERMANENT SELECT COMMITTEE
ON INTELLIGENCE
WASHINGTON, DC 20515

Executive Registry	
85-	1435



April 1, 1985

THOMAS K. LATIMER, STAFF DIRECTOR
MICHAEL J. O'NEIL, CHIEF COUNSEL
STEVEN K. BERRY, ASSOCIATE COUNSEL

Honorable William J. Casey
Director of Central Intelligence
Washington, D.C. 20505

Dear Mr. Casey:

This is in response to the Agency's submission of the Directorate of Operations operational file exemptions you approved on February 22, 1985, and the Directorate for Science and Technology operational file exemptions you approved on March 5, 1985, under the Central Intelligence Agency Information Act (Public Law 98-477). A review of the exemptions shows that they appear consistent with the Act and its legislative history. Accordingly, the Committee has no objection to their taking effect.

The Committee will engage in continuing oversight of the Agency's implementation of the CIA Information Act and looks forward to receiving the Agency's first semi-annual report under Section 3(b) of the Act on April 15, 1985.

The Committee strongly urges the Agency to include in its responses to initial requests for records under the Freedom of Information Act a reference to the provisions of the CIA Information Act along with the usual statutory reference to the Freedom of Information Act. By indicating in its initial response to an FOIA requester that his request will be processed in accordance with the Freedom of Information Act and the Central Intelligence Agency Information Act, as applicable, the Agency would give fair notice to requesters of the statutes which govern their request.

With best wishes, I am

Sincerely yours,

Lee H. Hamilton
Chairman

OLL#85-1026

30 March 1985

MEMORANDUM FOR THE RECORD

FROM:

[Redacted]

Office of Legislative Liaison

SUBJECT: SSCI Approval of FOIA Designations

1. On 28 March, I received a call from Gary Chase, Majority Staff Counsel to the SSCI. Mr. Chase informed me that the SSCI had approved the Director's decision designating certain operational files of the Directorate of Operations and Directorate of Science and Technology as exempt from the FOIA. Mr. Chase also stated that a letter to this effect would be sent to the Director in the near future. I informed Mr. Chase that the designations would become effective as soon as we received HPSCI's concurrence. Mr. Chase had no objections to this procedure.

[Redacted]

Distribution:

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OLL: [Redacted] (30Mar85)

APPROVED FOR RELEASE
DATE: DEC 2006

vidual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).

PROVIDING INFORMATION TO CONGRESS

SEC. 605. [50 U.S.C. 425] Nothing in this title may be construed as authority to withhold information from the Congress or from a committee of either House of Congress.

DEFINITIONS

SEC. 606. [50 U.S.C. 426] For the purposes of this title:

(1) The term "classified information" means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

(2) The term "authorized", when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

(3) The term "disclose" means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

(4) The term "covert agent" means—

(A) an officer or employee of an intelligence agency or a member of the Armed Forces assigned to duty with an intelligence agency—

(i) whose identity as such an officer, employee, or member is classified information, and

(ii) who is serving outside the United States or has within the last five years served outside the United States; or

(B) a United States citizen whose intelligence relationship to the United States is classified information, and—

(i) who resides and acts outside the United States as an agent of, or informant or source of operational assistance to, an intelligence agency; or

(ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or

(C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified information and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.

(5) The term "intelligence agency" means the Central Intelligence Agency, a foreign intelligence component of the Department of Defense, or the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation.

(6) The term "informant" means any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.

(7) The terms "officer" and "employee" have the meanings given such terms by section 2104 and 2105, respectively, of title 5, United States Code.

(8) The term "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(9) The term "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(10) The term "pattern of activities" requires a series of acts with a common purpose or objective.

TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

SEC. 701. [50 U.S.C. 431] (a) Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence from the provisions of section 552 of title 5, United States Code (Freedom of Information Act), which require publication or disclosure, or search or review in connection therewith.

(b) For the purposes of this title the term "operational files" means—

(1) files of the Directorate of Operations which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services;

(2) files of the Directorate for Science and Technology which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; and

(3) files of the Office of Security which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources;

except that files which are the sole repository of disseminated intelligence are not operational files.

(c) Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning—

(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 of title 5, United States Code (Freedom of Information Act), or section 552a of title 5, United States Code (Privacy Act of 1974);

(2) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code (Freedom of Information Act); or

(3) the specific subject matter of an investigation by the intelligence committee of the Congress, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of Central Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

(d)(1) Files that are not exempted under subsection (a) of this section which contain information derived or disseminated from exempted operational files shall be subject to search and review.

(2) The inclusion of information from exempted operational files in files that are not exempted under subsection (a) of this section shall not affect the exemption under subsection (a) of this section of the originating operational files from search, review, publication, or disclosure.

(3) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under subsection (a) of this section and which have been returned to exempted operational files for sole retention shall be subject to search and review.

(e) The provisions of subsection (a) of this section shall not be superseded except by a provision of law which is enacted after the date of enactment of subsection (a), and which specifically cites and repeals or modifies its provisions.

(f) Whenever any person who has requested agency records under section 552 of title 5, United States Code (Freedom of Information Act), alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code, except that—

(1) in any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign relations which is filed with, or produced for, the court by the Central Intelligence Agency, such information shall be examined *ex parte*, in camera by the court;

(2) the court shall, to the fullest extent practicable, determine issues of fact based on sworn written submissions of the parties;

(3) when a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission, based upon personal knowledge or otherwise admissible evidence;

(4)(A) when a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Central Intelligence Agency shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission

that exempted operational files likely to contain responsive records currently perform the functions set forth in subsection (b) of this section; and

(B) the court may not order the Central Intelligence Agency to review the content of any exempted operational file or files in order to make the demonstration required under subparagraph (A) of this paragraph, unless the complainant disputes the Central Intelligence Agency's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence;

(5) in proceedings under paragraphs (3) and (4) of this subsection, the parties shall not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admission may be made pursuant to rules 26 and 36;

(6) if the court finds under this subsection that the Central Intelligence Agency has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Central Intelligence Agency to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code (Freedom of Information Act), and such order shall be the exclusive remedy for failure to comply with this section; and

(7) if at any time following the filing of a complaint pursuant to this subsection the Central Intelligence Agency agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES

SEC. 702. [50 U.S.C. 432] (a) Not less than once every ten years, the Director of Central Intelligence shall review the exemptions in force under subsection (a) of section 701 of this Act to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

(b) The review required by subsection (a) of this section shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(c) A complainant who alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with this section may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining (1) whether the Central Intelligence Agency has conducted the review required by subsection (a) of this section within ten years of enactment of this title or within ten years after the last review, and (2) whether the Central Intelligence Agency, in fact, considered the criteria set

forth in subsection (b) of this section in conducting the required review.

CENTRAL INTELLIGENCE AGENCY ACT OF 1949

ACT OF JUNE 20, 1949

AN ACT To provide for the administration of the Central Intelligence Agency, established pursuant to section 102, National Security Act of 1947, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. [50 U.S.C. 403a] That when used in this Act, the term—

- (a) "Agency" means the Central Intelligence Agency;
- (b) "Director" means the Director of Central Intelligence;
- (c) "Government agency" means any executive department, commission, council, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government.

SEAL OF OFFICE

SEC. 2. [50 U.S.C. 403b] The Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency, of such design as the President shall approve, and judicial notice shall be taken thereof.

PROCUREMENT AUTHORITIES

SEC. 3. [50 U.S.C. 403c] (a) In the performance of its functions the Central Intelligence Agency is authorized to exercise the authorities contained in sections 2(c) (1), (2), (3), (4), (5), (6), (10), (12), (15), (17), and sections 3, 4, 5, 6, and 10 of the Armed Services Procurement Act of 1947¹ (Public Law 413, Eightieth Congress, second session).

(b) In the exercise of the authorities granted in subsection (a) of this section, the term "Agency head" shall mean the Director, the Deputy Director, or the Executive of the Agency.

(c) The determinations and decisions provided in subsection (a) of this section to be made by the Agency head may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final. Except as pro-

¹The Armed Services Procurement Act of 1947 was repealed by the law enacting titles 10 and 32, United States Code (Act of August 10, 1956, 70A Stat. 1). The cited sections were replaced by sections 2304(a) (1)-(6), (10), (12), (15), and (17), 2305 (a)-(c), 2306, 2307, 2308, 2309, 2312, and 2313 of title 10. Section 49(b) of that Act provided: "References that other laws, regulations, and orders make to the replaced law shall be considered to be made to the corresponding provisions of the sections enacting titles 10 and 32."