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OGC 74-1652

DD/S&T# 3654-74/1

Honorable Thomas E. Kauper
Assistant Attorney General
Antitrust Division
Department of Justice
Washington, D. C. 20530

8 OCT 1974

Re: United States v International Business Machines Corporation,
69 Civ. 200 (S. D. N. Y.)

Dear Mr. Kauper:

This is to express my deep concern that in connection with the discovery activities being conducted in the referent case, certain classified Agency materials have been released by the Department of Commerce to representatives of the International Business Machines Corporation (IBM) without this Agency's consent.

The documents to which I refer are:

1. Report on Production of Peripheral Equipment in the U. S. S. R. and Eastern Europe, transmitted to Arthur H. Hausman, Chairman, Computer Peripherals, Components and Related Equipment Technical Advisory Committee by memo from [redacted] dated October 19, 1973.
(classified CONFIDENTIAL)
2. Report on Production of Computers in the U. S. S. R., transmitted to John Collins, Chairman of Computer Systems Technical Advisory Committee from [redacted] by memo dated October 29, 1973.
(classified CONFIDENTIAL)
3. Soviet RYAD Computer Program, dated August 1973. (classified SECRET)
4. Soviet Computer Software, dated July 1973.
(classified SECRET)

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It is my understanding that these documents were released by the Department of Commerce despite a member of my staff specifically asking both the Department of Commerce and the Antitrust Division that such action not be taken without Agency approval.

The reasons for my concern over this development are several. It constitutes a violation of The Third Agency Rule which proscribes one department from disseminating classified material originating in another without the consent of the originating department (3A CFR 1972 Comp. at page 237), and a possible infringement of the statutory responsibility to protect intelligence sources and methods from unauthorized disclosure as vested in the Director of Central Intelligence by the National Security Act of 1947, as amended, (50 U.S.C.A. 403(d)(3)). In addition, it is contrary to the previous understanding between our respective agencies and IBM regarding the matter of IBM's inspection of classified Agency materials.

Under the terms of that understanding, classified Agency materials were inspected by IBM only under Agency supervision, and while IBM was permitted to examine all relevant materials, copies of the materials it desired were made available to it only after sensitive intelligence information had been excised from the documents. I consider it extremely unfortunate that no attempt was made by the Department of Justice to impose the same restrictions on inspection of Agency documents in the possession of the Department of Commerce, as were agreed to among the Agency, IBM, and the Department of Justice for the previous inspections of Agency documents in the possession of the Agency.

It is for the above reasons that I find it necessary to bring this matter to your personal attention. While I recognize that in releasing these documents the Government was seeking to comply with a court order, the fact remains that the release was effected in a manner contrary to regulations of the Executive Branch. Should future IBM discovery requirements call for the release of classified Agency material, it would be appreciated if you would ensure that the release occurs only in accordance with the conditions previously agreed upon.

Sincerely,

s/ John S. Warner

JOHN S. WARNER

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COORDINATION:

[Redacted]

Edward W. Proctor
Deputy Director
for
Intelligence

19 Sept 74
Date

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[Redacted]

Carl E. Duckett
Deputy Director
for
Science & Technology

1 Oct 74
Date

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[Redacted]

John F. Blake
Deputy Director
for
Administration

26 SEP 1974
Date