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THE WHITE HOUSE  
WASHINGTON

April 18, 1972

Larry Houston

Attached please find working  
draft copy of the NSC Directive  
implementing Executive Order  
11652.

Could I have your comments  
by close of business Monday,  
April 24.


David Young *DY*

Copy 9 of 13

MEMORANDUM FOR: Mr. David Young  
The White House

Dave:

I attach two papers with comments concerning the draft copy of the NSC Directive implementing Executive Order 11652. These are preliminary comments only in an effort to meet the tight deadline. We will expect to get some additional comments to you in the next few days.

  
LAWRENCE R. HOUSTON  
General Counsel, CIA

(DATE)

24 April 1972

FORM NO. 101 REPLACES FORM 10-101  
1 AUG 54 WHICH MAY BE USED.

(47)

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COMMENTS CONCERNING NSC DIRECTIVE  
IMPLEMENTING EXECUTIVE ORDER 11652

1. The implementing directive contains some duplication of wording already in the Executive Order. The length of the directive could be reduced somewhat by elimination of such duplication and by incorporating portions of the directive into appendixes or by requiring Departments and Agencies to submit their implementing directives to the Interagency Classification Review Committee for approval. Two of our comments identify such portions.
2. The need for a section on "EXPLANATION OF TERMS" is questionable. If it is retained, the definition of Material should be changed to read: "Any document, product, substance, equipment, supplies or apparatus."
3. If Section II is retained, the following definition of Sensitive Intelligence Information should be added: "Such intelligence information, the unauthorized disclosure of which could lead to counteraction (a) jeopardizing the continued productivity of intelligence sources or methods which provide intelligence vital to the national security or (b) offsetting the value of intelligence vital to the national security."
4. The last sentence of Section III A., Page 4, "This authority extends only to the official designated, and may not be delegated," should be eliminated. The Executive Order is already specific on this point.
5. The phrase "title and name" on lines 2 and 6 of Section III B., Page 5, should be changed to "title or name." This Agency proposes to designate positions rather than names of people having original classification authority. The provision in the Executive Order permitting a system to identify the classifier, if not specifically named, will furnish adequate information for this purpose. This approach will yield substantial economy in manpower demands.
6. The last sentence of Section III B., Page 5, "The foregoing listings and records shall be updated on a monthly basis

beginning July 1, 1972" should be amended to "The foregoing listings and records shall be maintained on a current basis beginning July 1, 1972." We recommend this change for ease and practicality of administration.

7. Section IV A., Page 5, should be so worded as not to specifically require identification of the original classifier on the face of the document if the system devised by an individual Department adequately identifies the classifier by some other means. It is felt that this implementing determination should be left to the individual Departments, particularly since the Executive Order is not as restrictive on this point.

8. It is recommended that the phrase "and shall maintain adequate records to support his action" set forth in Section IV A., Page 5, be eliminated. This requirement is exceptionally demanding on the time of professional employees and would adversely affect the timely production of intelligence. It would create a considerable number of additional documents which would complicate already overburdened record maintenance systems.

9. The last sentence of Section IV A., Page 5, should read as follows: "Any inquiry originating outside a Department as to the propriety of a classification assigned should be directed to the Head of the Department concerned." We do not feel that it is necessary for the directive to indicate how intra-departmental inquiries should be handled. Inquiries originating outside the Department concerned should be addressed to the Head of the Department for action prior to submitting them to the Interagency Classification Review Committee. This apparently is the intent of Section XIII D., Page 31.

10. The words "at least annually" should be deleted from the first sentence of Section VI A., Page 8A. The volume of classified information produced by this Agency precludes an annual review of all classified information and material for the purpose of accomplishing downgrading, declassification, transfer, retirement and destruction. Compliance with the requirements set forth in the directive would require an inordinate and impractical expenditure of manpower.

11. The last sentence of Section VII B., Page 12, should be amended to read: "Each interior page of a document which is not permanently bound will be conspicuously marked or stamped at the top and bottom, and when practicable according to its own content, including the designation 'Unclassified' when appropriate."

12. The first sentence of paragraph VII C., Page 13, should read as follows: "Whenever a classified document contains either more than one security classification category or unclassified information, each section, part or paragraph should be marked, whenever practicable, to show its classification category or that it is unclassified." The last sentence of this paragraph should be deleted. This provision is beyond the requirement of the Executive Order and would prevent the timely production of intelligence.

13. Section VII H. (3), Page 16, should be amended as follows: The phrase "furnished to persons outside the Executive Branch of the Government" should be added to the phrase, "For classified information or material other than described in 1. and 2. above." This amendment would necessitate changing the last two sentences of the warning notice to read as follows: "Failure to comply with the foregoing could result in the imposition of a fine and/or imprisonment." Persons inside the Executive Branch are required by Executive Order 11652 to be aware of penalties for violation thereof.

14. Paragraph I of Section VII, Page 17, should be deleted. Executive Order 11652 covers this matter in sufficient detail.

15. To improve the format of the directive, consideration should be given to placing paragraph A., Section VIII (1) through (5), Pages 18 through 20, as an appendix to the directive. Paragraph (6) would then become paragraph (1) under Section VIII, the title of which should be changed from "Custody and Safekeeping" to Protection of Classified Information.

16. The words "the safeguarding of" should be deleted from the second sentence of paragraph A. (2) of Section IX, Page 21. Personnel charged with only safeguarding of classified information are normally not those who determine need-to-know.

17. Paragraph A. (3) of Section IX, Page 21, should be amended to read as follows: "Whenever a person no longer has a need-to-know, his access to classified information shall cease. Security clearances shall be maintained at a level commensurate with need-to-know requirements." This revision eliminates the reference to "withdrawal of security clearances"--a term which has a sensitive connotation in many instances. It also effectively ties security clearance with the determination of need-to-know handled in the preceding paragraph.

18. In paragraph E., Section IX, Page 24, the term "intelligence office" should be amended to "Intelligence Chief." This would place the directive in line with instructions already in effect within the intelligence community.

19. It is pointed out that strict compliance with the requirement set forth in the second sentence of paragraph H., Section IX, Page 24, would negate some intelligence operations. An exception for such operations must be recognized. To accomplish this requirement, it is recommended that the sentence be eliminated, particularly since the first sentence of the paragraph is sufficiently encompassing.

20. Because of the vast amount of classified information produced by this Agency, an annual physical inventory would require an unacceptable expenditure of manpower. It is recommended, therefore, that paragraph I. (2) of Section IX, Page 25, be amended to require an annual physical inventory of Top Secret material and that this inventory be limited to recording the document and copy numbers of each Top Secret document. Recording the information set forth in (a) through (g) of this paragraph would be unnecessarily time-consuming and have little or no effect on the control of the Top Secret documents.

21. Paragraphs A. through F. of Section X, Pages 26 through 29, could well be removed from the body of the directive and made an appendix thereto. This would improve the format of the directive. Alternately, each Agency or Department could submit its own regulations covering TRANSMISSION to the Interagency Classification Review Committee for approval.

22. It should be noted that paragraph C. of Section X, Page 27, does not show any approved method of transmitting Secret material to or from the State of Hawaii, the State of Alaska or the Commonwealth of Puerto Rico. We suggest that material classified Secret could be transmitted within and between the fifty states or between the fifty states and the Commonwealth of Puerto Rico by methods set forth in paragraphs C. (1) and (2).



ADDITIONAL COMMENTS CONCERNING NSC  
DIRECTIVE IMPLEMENTING EXECUTIVE ORDER 11652

1. Portions of Section IV B. on page 5a., "Administrative Enforcement", are contrary to law and the section is troublesome on other counts. The annuity of a retiree cannot be "suspended". The administrative sanctions proposed for the interdepartmental committee properly are the responsibilities of agency heads and command channels and are not appropriate for committee action. Similarly, the Interagency Committee could not be empowered to discipline individual employees.

2. Section VII E., "Burden of Proof", on page 10 likewise appears illegal and inappropriate. The provision which would place on the originating department "the burden of proof" is contrary to the Freedom of Information Act. Further, the courts have declined to question the classification which departments have given to various documents. The concept is inappropriate in any event. To whom would the department sustain "the burden of proof"? The first sentence should be deleted. The last two sentences of the section are unnecessary.

3. Section VI F. on page 11 also is legally objectionable. It would not be in order to require departments to explain to requesters the reason why classified information cannot be declassified. This is not required under the Freedom of Information Act, nor by court decisions. The appeal provisions of the section are inappropriate in view of the regulations issued under the Freedom of Information Act. Under the CIA regulation (copy attached), a refusal to furnish information to a requester may be appealed to the Executive Director of the Agency. To the extent that refusal is for reasons of classification of information, an appeal of the refusal would amount to an appeal to the Executive Director to declassify. Section F. also should be deleted.

4. We believe Section XIII D. (other than the first sentence) on page 31, "Classification Complaints", is inappropriate under the Freedom of Information Act and the National Security Act of 1947. Under the former, appeals from a departmental decision denying information to a requester are to be directed to the authority specified in the regulations of the department concerned. In the case of

CIA, the appeal is to the Executive Director of the Agency. The National Security Act imposes on the Director of Central Intelligence the responsibility of protecting intelligence sources and methods. A procedure whereby an Interdepartmental Committee could declassify CIA information would effectively bar the Director from discharging that responsibility.

5. The last sentence of Section XIV B. on page 32 is contrary to the CIA regulation under the Freedom of Information Act. As indicated above, under that regulation appeals are to the Executive Director of the Agency. In any event, action on suggestions and complaints should be for the department head and appropriate command channels, not the Interdepartmental Committee.

6. We believe no useful purpose would be served by the submission of the reports specified in Section XIV C.

Attachment

**CENTRAL INTELLIGENCE AGENCY**  
**PUBLIC ACCESS TO RECORDS**

**Procedures**

1. *Purpose.* Pursuant to the requirements of the Public Information Section of the Administrative Procedure Act (5 U.S.C. 552), the following are established as the rules of procedure with respect to public access to the records of the Central Intelligence Agency.

2. *Organization and requests for information.* The headquarters of the Central Intelligence Agency is located in Fairfax County, Va. Requests for information and decisions and other submittals may be addressed to the Assistant to the Director, Central Intelligence Agency, Washington, D.C. 20505.

3. *Procedures for request of records.*  
(a) Requests for access to records of the Central Intelligence Agency may be filed by mail addressed to the Assistant to the Director, Central Intelligence Agency, Washington, D.C. 20505.

(b) Requests need not be made on any special form but may be by letter or other written statement setting forth the pertinent facts with enough specificity that the requested record can be identified.

(c) If the request does not sufficiently identify the record, the Assistant to the Director shall so inform the requestor who may then resubmit his request together with any additional information which will help to identify it.

(d) When the requested record has been identified the Agency will determine whether it is exempt from public inspection under the provisions of 5 U.S.C. 552(b). If it is exempt, the Assistant to the Director shall deny the request.

(e) If the Agency determines that the requested record is not subject to exemption, the Assistant to the Director will inform the requestor as to the appropriate reproduction fee and upon receipt of this fee, will have the record reproduced and sent to the requestor. Fees paid in accordance with this paragraph will be paid by check or postal money order forwarded to the Assistant to the Director and made payable to the Treasurer of the United States.

4. *Appeals.* Any person aggrieved by any determination made or action taken pursuant to the foregoing provisions of this notice may request the Executive Director of the Agency to review that determination or action. No specific form is prescribed for this purpose and a letter or other written statement setting forth pertinent facts shall be sufficient. The Executive Director reserves the right to require the person involved to present additional information in support of his request for review. The Executive Director will promptly consider each such request and notify the person involved of his decision.

5. *Effective date.* This notice shall become effective upon its publication in the **FEDERAL REGISTER.**

L. K. WHITE;

Executive Director

**ADMINISTRATIVE-INTERNAL USE ONLY**

8 May 1972

MEMORANDUM FOR: Deputy Director for Support

SUBJECT : Implementation of Executive Order 11652


1. With regard to your memorandum of 5 May on implementation of Executive Order 11652, I am inclined to agree with your thought that this is more a records management problem than a security problem. I have no specific comments on the other portions of your memorandum.

2. As for participation, by copy of this memorandum I am designating Mr. Harry C. Eisenbeiss as my representative to the intra-Agency committee dealing with Executive Order 11652 and I strongly urge that Mr. Larry Houston would be an excellent candidate both to chair the Agency committee and to represent the Agency on the inter-Agency committee. As you know, Larry has been deeply involved with this new Executive Order and I think could contribute a great deal to these committees.



EDWARD W. PROCTOR  
Deputy Director for Intelligence

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STAT ODDI:  : swr (8 May 1972)  
Distribution:

- Original - Addressee
- 1 - Mr. Houston
- 1 - Mr. Eisenbeiss
- 1 - ODDI Chrono
- 1 - DDI File

**ADMINISTRATIVE-INTERNAL USE ONLY**

DD/S 72-1773

5 MAY 1972

MEMORANDUM FOR: Executive Director-Comptroller  
General Counsel  
Deputy Director for Intelligence  
Deputy Director for Plans  
Deputy Director for Science and Technology  
Deputy to the Director, Intelligence Community

SUBJECT : Implementation of Executive Order 11652

REFERENCE : Memo dtd 1 May 1972 to Above Adses fr DD/S;  
Subject: Delegations of Authority to Classify  
and Declassify Under the Provisions of Executive  
Order 11652 (DD/S 72-1746)

1. Section 7 of Executive Order 11652 requires that the Director designate a representative of the Agency as a member of an Interagency Classification Review Committee to assist the National Security Council in monitoring the implementation of the Order. The Director is also required to designate a senior member of his staff "who shall ensure effective compliance with and implementation of this order and shall also chair a Departmental committee which shall have authority to act on all suggestions and complaints with respect to the Department's administration of this Order."

2. The draft headquarters regulation distributed at the Deputies meeting two weeks ago assumed, in deference to tight deadlines, that it would be necessary to adapt our present classification control system to accommodate the new requirements of E.O. 11652. I believe this is a valid assumption if we are to submit our regulation to the White House for review and still have it printed and distributed in time for it to be effective on 1 June 1972. At the same time, I think we should consider this as an interim measure and proceed at once to overhaul our system to eliminate overlapping and duplicative functions and responsibilities now existing and provide a cohesive unified system to satisfy the new requirements.

3. With this in mind, I offer for your consideration the suggestion that we approach this as a records management problem rather than a security problem and that we select representatives for the inter- and intra-Agency committees

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accordingly. Security classification and declassification is a command responsibility, but so is records management. We already have working systems requiring that we schedule the retention periods of records and establish disposal dates. E.O. 11652 allows officials authorized to classify information Top Secret to exempt it from the General Declassification schedule if it falls within one of four exemption categories. In so doing, he is required to specify a date for automatic declassification. The decision to retain for a specified period and the decision to declassify after a specified period are both decisions taken in consideration of the content, sensitivity, long-term value and historical significance of the information. If these decisions are taken together rather than separately, we can simplify both the records management and classification systems immeasurably. The provisions of Section 5C, D and E of the Order prescribing mandatory review of exempted material after ten and thirty years under terms prescribed in the Order may be subject to more effective administration if they are given full consideration when the records retention schedules are established. It may be more reasonable, for example, to schedule a document for destruction after nine years than classification review after ten. By the same token, review of documents for declassification after the specified periods may result in a decision to destroy them rather than extend their retention and continue their classification or declassify them.

4. Paragraphs F and G of Section 6 of the Executive Order have the effect of tying the classification system directly to records management.

"(F) Classified information and material no longer needed in current working files or for reference or record purposes shall be destroyed or disposed of in accordance with the records disposal provisions contained in Chapter 33 of Title 44 of the United States Code and other applicable statutes." [underscoring added]

"(G) Classified information or material shall be reviewed on a systematic basis for the purpose of accomplishing downgrading, declassification, transfer, retirement and destruction at the earliest practicable date." [underscoring added]

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While the provision of Section 3, paragraph E, of the Order, having to do with the declassification of information or material transferred to the General Services Administration for accession into the Archives of the United States, does not have direct application to us, we will almost certainly be expected to observe the principles in transferring materials into our own archives. The same will apply to Section 11 in relation to papers held in our Records Center but identified as appropriate for inclusion in Presidential libraries.

5. Requirements of Section 4 of the Order, having to do with marking documents and showing the identification of the classifying authority, can be regarded as problems of correspondence management rather than security problems and perhaps can be dealt with more appropriately as a part of our records management programs. We don't yet know all of the implications of the Executive Order for administering a classification control system as it applies to computer files and output forms, microform systems and other media of modern information processing activities; but, again, they seem to be the kinds of problems that professional records managers should be solving.

6. There may be some feeling that we don't have the professionalism or seniority in some of our records management programs to permit the new requirements imposed by E.O. 11652 to be dealt with adequately in that context. Should this be so, it would seem to suggest that we seriously consider using the requirements of the Executive Order as the impetus to provide some needed and desirable strengthening of our records management systems rather than create a whole new classification control system to run in parallel.

7. I hope you agree that there is sufficient logic supporting these ideas to warrant serious consideration before candidates are selected for the Inter-agency Committee and for Chairman and members of the intra-Agency Committee. In any case, the first chore of the internal Agency group probably should be to devise an effective system for administering the Executive Order and its implementing instructions, and it would be useful to them to have some guidance relevant to the points raised in this memorandum.

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8. Your comments, alternative proposals or concurrences are solicited. If we are to meet the 1 June effective date, we will have to dispose of this fairly promptly. It would be useful to have your responses by 12 May. If you care to suggest the names of individuals to represent the Agency on the Interagency Committee and to chair and comprise the internal committee, I will be pleased to compile them for submission to the Director.



John W. Coffey  
Deputy Director  
for Support

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cc: Director of Security



TRANSMITTAL SLIP		DATE
TO:		5 MAY 1972
DD/I		
ROOM NO.	BUILDING	
7E 44		
REMARKS:		
EWP Harry + I agree Coffey has a point in FP3. We also agree (reluctantly) that Harry the E should be our man. Harry would like to see Houston chair the intra Agency committee		
FROM: DDS		
ROOM NO.	BUILDING	EXTENSION

FORM NO 241  
1 FEB 55

REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)

Normally Admin handles  
records management, but this  
doesn't look like their bag.