

SUBJECT: Letter to All Congressional Signers of Form 4193, Non-Disclosure Agreement, re Court Order on Term "classifiable."

Distribution:

Original - Addressee
 1 - D/OCA
 1 - CIB/OS
 1 - OGC
 1 - OCA/LEG
 1 - OCA Record
 1 - JMD Subject
 1 - JMD Chrono

OCA: (29 September 1988)

STAT

List of Recipients

Cong. Rodino (Chmn Judiciary Cmte)	OCA 3229-88
Sen. Dole (Minority Leader)	OCA 3229/1 - 88
Mr. Giugni, Sgt. at Arms/Sen. (C. Police)	OCA 3229/2 - 88
Sen. Leahy (Chman, Agriculture Cmte)	OCA 3229/3 - 88
Sen. Glenn (Chman Govt'l Affairs)	OCA 3229/4 - 88
Sen. Cranston (Chman Vets Affairs)	OCA 3229/5 - 88
Mr. Di Silvestro (Sen. Security Ofc)	OCA 3229/6 - 88
Sen. Biden (Chman Judiciary Cmte)	OCA 3229/7 - 88
Sen. Heflin (Chman Ethics Cmte)	OCA 3229/8 - 88
Sen. Johnston (Chman Energy Cmte)	OCA 3229/9 - 88
Sen. Chiles (Chman Budget Cmte)	OCA 3229/10 - 88
Sen. Pell (Chman Foreign Relations Cmte)	OCA 3229/11 - 88
Sen. Hollings (Chman Comm, Sci & Trans)	OCA 3229/12 - 88
Sen. Stennis (Chman Appropriations)	OCA 3229/13 - 88
Sen. Nunn (Chman Armed Services Cmte)	OCA 3229/14 - 88
Messrs. Myers, Burnett & Smith/ACOG	OCA 3229/15 - 88
Sen. Sarbanes (Chman Jt Econ Cmte)	OCA 3229/16 - 88
Mr. Gibbons (Director OTA)	OCA 3229/17 - 88
Cong Aspin, (Chman Armed Serv. Cmte)	OCA 3229/18 - 88
Cong Dingell (Chmn Energy & Comm Cmte)	OCA 3229/19 - 88
Cong Gray (Chmn Budget Cmte)	OCA 3229/20 - 88
Cong Fascell (Chmn Foreign Affairs Cmte)	OCA 3229/21 - 88
Cynthia Wilkins (Lib. of Congress)	OCA 3229/22 - 88
Mr. Bowsher (Compt Gen'l, GAO)	OCA 3229/23 - 88
Cong Rangel (Chmn Narcotics Cmte)	OCA 3229/24 - 88
Mr. Vandergrift (HAC S&I)	OCA 3229/25 - 88
Cong Chappell (Chmn Appropriations)	OCA 3229/26 - 88
Cong Stokes (Chmn HPSCI)	OCA 3229/27 - 88
Cong Roe (Chmn Sci. Space & Tech)	OCA 3229/28 - 88
Mr. Anderson (Cl of House - Reporters))	OCA 3229/29 - 88
Cong Ford (Chmn PO & Civil Serv)	OCA 3229/30 - 88
Cong Brooks (Chmn Govt Ops Cmte)	OCA 3229/31 - 88
Mr. Blum (Dir/Cong Budget Ofc)	OCA 3229/32 - 88
Cong. Hoyer (Chmn Helsinki Commission)	OCA 3229/33 - 88
Mrs. Roseanne Sharp (Alderson Reporters)	OCA 3229/34 - 88
Sen. Boren (SSCI)	OCA 3229/35 - 88

Central Intelligence Agency



Washington, D.C. 20505

30 September 1988

Mr. Kenneth A. Myers
Arms Control Observer Group
United States Senate
Washington, DC 20510

Dear Mr. Myers:

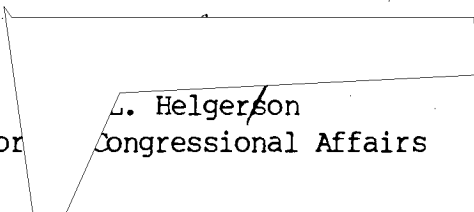
I have been advised by the DCI's Special Security Center that on 28 July 1988, the United States District Court for the District of Columbia issued its decision in the cases of National Federation of Federal Employees v. United States, et al., Civil Action No. 87-2284-OG, and American Federation of Government Employees v. Garfinkel, et al., Civil Action No. 87-2412-OG, which challenged the constitutionality and legality of Form 4193, the "Sensitive Compartmented Information Nondisclosure Agreement." Essentially, the decision upheld the Government's use of the Form 4193 as both constitutional and legal.

The Court has required the Government to clarify the scope of the term "classifiable" as used in the Form 4193 (and any equivalent SCI nondisclosure agreement) by defining the term in an appropriately limited manner and informing, within thirty (30) days, all current U.S. Government employees who have signed such agreements of this clarification. I have enclosed copies of this clarification for your convenience.

As a member of the staff of the Arms Control Observer Group, you have signed a Form 4193, or equivalent SCI nondisclosure agreement, that contains the term "classifiable," and we are required to provide you with a copy of the enclosed clarification no later than 22 October 1988 in order to comply with the Court's order.

For your information, the enforcement of all other aspects of the Form 4193 and equivalent SCI nondisclosure agreements is not affected by the notice requirement pertaining to the term "classifiable."

Sincerely,


L. Helgeson
Director, Congressional Affairs

Enclosure

Central Intelligence Agency



Washington, D.C. 20505

30 September 1988

Mr. David J. Smith
Arms Control Observer Group
United States Senate
Washington, DC 20510

Dear Mr. Smith:

I have been advised by the DCI's Special Security Center that on 28 July 1988, the United States District Court for the District of Columbia issued its decision in the cases of National Federation of Federal Employees v. United States, et al., Civil Action No. 87-2284-OG, and American Federation of Government Employees v. Garfinkel, et al., Civil Action No. 87-2412-OG, which challenged the constitutionality and legality of Form 4193, the "Sensitive Compartmented Information Nondisclosure Agreement." Essentially, the decision upheld the Government's use of the Form 4193 as both constitutional and legal.

The Court has required the Government to clarify the scope of the term "classifiable" as used in the Form 4193 (and any equivalent SCI nondisclosure agreement) by defining the term in an appropriately limited manner and informing, within thirty (30) days, all current U.S. Government employees who have signed such agreements of this clarification. I have enclosed copies of this clarification for your convenience.

As a member of the staff of the Arms Control Observer Group, you have signed a Form 4193, or equivalent SCI nondisclosure agreement, that contains the term "classifiable," and we are required to provide you with a copy of the enclosed clarification no later than 22 October 1988 in order to comply with the Court's order.

For your information, the enforcement of all other aspects of the Form 4193 and equivalent SCI nondisclosure agreements is not affected by the notice requirement pertaining to the term "classifiable."

Sincerely,

STAT
Direc

L. Helgeson
Congressional Affairs

Enclosure

Central Intelligence Agency



Washington, D.C. 20505

30 September 1988

Mr. Wallace D. Burnett
Arms Control Observer Group
United States Senate
Washington, DC 20510

Dear Mr. Burnett:

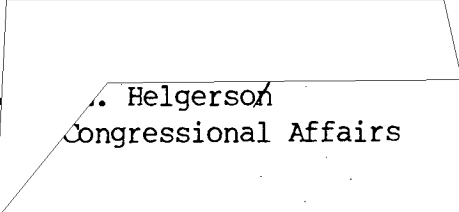
I have been advised by the DCI's Special Security Center that on 28 July 1988, the United States District Court for the District of Columbia issued its decision in the cases of National Federation of Federal Employees v. United States, et al., Civil Action No. 87-2284-OG, and American Federation of Government Employees v. Garfinkel, et al., Civil Action No. 87-2412-OG, which challenged the constitutionality and legality of Form 4193, the "Sensitive Compartmented Information Nondisclosure Agreement." Essentially, the decision upheld the Government's use of the Form 4193 as both constitutional and legal.

The Court has required the Government to clarify the scope of the term "classifiable" as used in the Form 4193 (and any equivalent SCI nondisclosure agreement) by defining the term in an appropriately limited manner and informing, within thirty (30) days, all current U.S. Government employees who have signed such agreements of this clarification. I have enclosed copies of this clarification for your convenience.

As a member of the staff of the Arms Control Observer Group, you have signed a Form 4193, or equivalent SCI nondisclosure agreement, that contains the term "classifiable," and we are required to provide you with a copy of the enclosed clarification no later than 22 October 1988 in order to comply with the Court's order.

For your information, the enforcement of all other aspects of the Form 4193 and equivalent SCI nondisclosure agreements is not affected by the notice requirement pertaining to the term "classifiable."

Sincerely,

Director  J. Helgeson
Congressional Affairs

Enclosure

Page Denied

CLARIFICATION OF FORM 4193 AND EQUIVALENT
SCI NONDISCLOSURE AGREEMENTS

Please be advised that, in conformance with the order of the United States District Court for the District of Columbia, the following is substituted for the term "classifiable" in all Sensitive Compartmented Information (SCI) nondisclosure agreements containing that term:

". . . information that is unmarked classified information, including oral communications, and unclassified information that meets the standards for classification and is in the process of a classification determination . . ."

By making this substitution, the Director of Central Intelligence is clarifying that SCI nondisclosure agreements that contain the term "classifiable" do not cover currently unclassified information that may be subject to classification at some future date, but is not currently in the process of a classification determination. Therefore, the only circumstances under which a signatory might violate the terms of an SCI nondisclosure agreement by disclosing unclassified information are when a signatory knows, or reasonably should know, that such information is in the process of a classification determination and requires interim protection as provided in section 1.1(c) of Executive Order 12356 or any other statute or Executive order that requires interim protection for certain unclassified information while a classification determination is pending.

Thus, a signatory of an SCI nondisclosure agreement containing the word "classifiable" may be liable for disclosing information falling within the substituted phrase if:

(a) He or she knows that the unmarked information is classified, or meets the standards for classification and is in the process of a classification determination, whether the unauthorized disclosure is willful or negligent; or

(b) He or she should know that the unmarked information is classified, or meets the standards for classification and is in the process of a classification determination, in which case the unauthorized disclosure is negligent. In no instance could a signatory be liable for violating nondisclosure

provisions by disclosing unmarked information when, at the time of the disclosure, there was no basis to suggest, other than pure speculation, that the information was classified or in the process of a classification determination.

Through this notice, signatories to SCI nondisclosure agreements that contain the term "classifiable" are advised that their continued access to SCI will be governed by the SCI nondisclosure agreement they signed as it has been amended by this notice, without any further action.